



SECTION 321 IMPORTS

U.S. Representative Earl Blumenauer (D-OR), Chairman of the House Ways and Means Trade Subcommittee, has [introduced](#) the “Import Security and Fairness Act,” which would prohibit duty free imports under Section 321 of the Tariff Act of 1930 (i.e., valued under \$800) from countries that are both Non-Market Economies and on the U.S. Trade Representative’s Priority Watch List. China is currently the only country satisfying both elements. The bill would also prohibit imports under Section 321 that are subject to Section 232 or 301 actions.

FTZs - EU STEEL/ALUMINUM

· U.S. Customs and Border Protection (CBP) has issued CSMS #[50668982](#) (Jan. 11, 2022) announcing the resolution of an ACE programming issue which had complicated filing Customs entries of EU steel and aluminum eligible for Section 232 duty-free Tariff-Rate Quotas (TRQs) held in FTZs with pre-January 1, 2022 Privileged Foreign (PF) status, as allowed by the EU steel and aluminum Presidential Proclamations [10327](#) and [10328](#). The CSMS message reverses the “special instructions” and other CBP Headquarters advice which had temporarily allowed FTZ entries of pre-2022 PF status EU steel/aluminum under TRQs with a unique product exclusion identifier (which never worked) in Non-Privileged Foreign (NPF) status. Clients that filed such entries in NPF status should contact [Marshall Miller](#), [Brian Murphy](#), or [Linda King](#) to discuss necessary next steps.

· Clients are reminded that the CSMS message is limited to pre-2022 PF status EU steel and aluminum. The government’s current position is that EU steel and aluminum with Privileged Foreign (PF) dates on or after January 1, 2022, are ineligible for EU TRQs, even if the TRQs are open.

· The firm is working with the National Association of Foreign Trade Zones (NAFTZ) to advocate for duty-free TRQ treatment for post-2021 FTZ admissions for storage or production. In the meantime, we recommend:

1. For clients with FTZ on-hand inventory of EU steel or aluminum for storage (not FTZ production) with PF election dates before January 1, 2022, file Customs entry as soon as possible while EU country-specific TRQs remain open.

2. For clients with FTZ on-hand inventory of EU steel or aluminum for FTZ production with PF election dates before January 1, 2022, contact the firm

2022 TRAINING SEMINARS

Due to COVID-19, our spring and fall training seminars will again be conducted by webinar only.

Spring

- FTZ 101 – March 1 – 3
- FTZ 201 – March 8 – 10
- Import/Export 101 – April 12 – 14
- Import/Export 201 – April 19 – 21

Fall

- FTZ 101 – Oct. 18 – 20
- FTZ 201 – Oct. 25 – 27
- Import/Export 101 – Nov. 8 – 10
- Import/Export 201 – Nov. 15 – 17

More detailed information is posted to our website. Visit our website www.millerco.com to register or contact [Kelley Randol](#). Webinars are offered to Miller & Company clients only.

2021 IMPORT/EXPORT RECORDS

With CBP and Census continuing to focus on compliance, clients are reminded that our annual import/export record review is a great way to thoroughly understand your 2021 imports and exports. Fees range from \$3,000 to \$5,000 per IOR/EIN for the data and reports. More information is available on our [website](#). Contact us now so we can secure 2021 records as soon as possible. Contact [Brenda Zeller](#) with questions.

NAFTZ PRESIDENT

Jeffrey Tafel has been appointed President of the National Association of Foreign-Trade Zones (NAFTZ) and will assume those responsibilities on February 1, 2022.

AES CHANGES

· Commerce and Census are adding capabilities to the Automated Export System (AES). A [change](#) that went into effect on January 13 will send a warning to the exporter if, based on the Export Control Classification Number (ECCN) and the destination, the commodity being exported needs a license and none is provided. In approximately 6 months, AES will no longer send a warning, but a Fatal Error notice.

· [AES](#) has been updated to include license code “C64” for the new Authorized Cybersecurity Exports (ACE) license exception.

· As reported in the December issues of Briefings, Census has issued a Proposed Rule that would require the reporting of the specific country or origin for foreign origin goods in AES filings. This could have a substantial impact on exporters that do not already

FORCED LABOR

· Between October 1 and December 31, 2021, CBP detained a total of 912 shipments over the possible use of forced labor. This is 62% of the total number of forced labor detentions for all of fiscal year 2021.

· On December 23, President Biden [signed](#) the Uyghur Forced Labor Prevention Act. Effective June 21, the Act creates a rebuttable presumption that goods with a nexus to China’s Xinjiang region were produced with forced labor. The Act also mandates a government report on Xinjiang forced labor concerns, enforcement strategy, and importer guidance. All clients should follow developments and consider impact.

· The Council on American - Islamic Relations [condemned](#) Intel’s decision to remove a reference to avoiding suppliers in China’s Xinjiang province from its standard letter to suppliers.

· On December 20, CBP [issued](#) a Withhold Release Order (WRO) for disposable gloves produced in Malaysia by Brightway Holdings, Laglove, and Biopro based on indications forced labor was used in the production of these products.

· Contact [Marshall Miller](#), [Brian Murphy](#), or [Sean Murray](#) with questions.

ACE PORTAL

CBP will deploy on January 22 Phase 1 of the modernization of the ACE Secure Data Portal to include a new login screen. Users must create a new username and password and link their existing ACE Portal access. Users will have until February 20 to link their accounts and transition to using the new login page. After February 20, users will no longer be able to log in from the legacy login page. The Trade Transformation Office will conduct a Deployment Support Call for trade users on January 25 from 2:00p–3:00p ET CSMS #[50752966](#) (Jan. 18, 2022)

2022 HTSUS

Since a 30-day implementation period is required from the date of publication, the approximately 350 changes to the Harmonized Tariff Schedule of the United States at the harmonized heading and subheading levels will go into effect on January 27, 2022. Clients are reminded that there are many changes and additions to HTS provisions to reflect new products and clarify the classification of older products, so existing classifications should be reviewed against the changes. Contact [Sean Murray](#) or [Brian Murphy](#) with questions. 86 [Fed. Reg.](#)

to discuss. [options](#).
3. For clients with EU steel and aluminum arriving on or after January 1, 2022, file Customs entry if EU country-specific TRQ remains open and admit in Domestic status rather than PF status to eliminate risk.

- Client are reminded that Section 232 product exclusions exempt EU steel and aluminum from Section 232 duties, and importers may still seek product exclusions.

- The EU TRQ guidance is complex, and questions remain, including how quickly particular EU country specific TRQ limits will fill up.

- Contact [Marshall Miller](#), [Brian Murphy](#), or [Linda King](#) with questions or for assistance.

FAKE COVID VAX CARDS

CBP [announced](#) that it has seized over 30,000 counterfeit COVID vaccination cards in almost 1,200 seizures since the beginning of the pandemic.

EXPORT ENFORCEMENT

On December 18, the Senate [confirmed](#) Matthew Axelrod as Assistant Undersecretary for the Office of Export Enforcement (OEE). Undersecretary Axelrod is the first confirmed chief of OEE in over 5 years. He indicated in his confirmation hearing that he intends to bring attention to export enforcement through more deterrence efforts and large penalties.

HTSUS 9801 GOODS RETURNED

In a decision that could narrow the scope of HTSUS 9801 returned goods claims, the U.S. Court of International Trade held that parts exported and offered for sale at car racing events in Canada were “professional books, implements, instruments, and tools of trade, occupation, or employment” and were not exported for a professional purpose, so they were not eligible for return under HTSUS 9801.00.8500. [Porsche Motorsport North America, Inc. v. U.S.](#), CIT Slip Op. No. [21-176](#) (Dec. 30, 2021).

AGOA CHANGES

Ethiopia, Guinea, and Mali were removed from the list of beneficiary sub-Saharan African countries under the African Growth Opportunity Act (AGOA) by [Presidential Proclamation](#) on December 23, 2021. Effective January 1, goods from these countries are [no longer eligible](#) for preferential benefits under AGOA.

BIS CYBERSECURITY

The Bureau of Industry and Security (BIS) is delaying implementation of its [Interim Rule](#) on new cybersecurity controls by 45 days to March 7, 2022 in order to consider modifications for the Final Rule based on public comments. 87 Fed. Reg. [1670](#) (Jan. 12, 2022).

EXPORTER PLEADS GUILTY

Mr. Jorge Orencel of Maryland has [pleaded guilty](#) to charges he and his company, Sumtech, shipped ionization chambers to Hong Kong without the required license. When purchasing the chambers from a U.S. supplier, Mr. Orencel told the suppliers they were going to be sold to Argentina. Mr. Orencel also misrepresented the values of the chambers when exporting them

capture this information. Comments are due by February 14. Contact [Sean Murray](#), [Bryan Brown](#) or [Chuck Ballard](#) with questions. 86 Fed. Reg. [71187](#) (Dec. 15, 2021).

AG EXPORT LOSSES

- A report [issued](#) by agricultural economists at the University of California indicates that port congestion and supply chain issues resulted in approximately \$2.1 billion in lost foreign sales to California producers. This amount exceeds the losses from the U.S.-China trade dispute.

- The Agriculture Department has [released](#) a report on the impact of the Section 232 and Section 301 tariffs on U.S. agricultural exports. The report indicates that U.S. agricultural exports decreased by more than \$27 billion from mid-2018 to the end of 2019 due to retaliatory tariffs, with the vast majority of those losses relating to reduced exports to China.

FTZ 3d PARTY FACILITIES

For 2022, plan to review third-party manufacturing and warehousing operations in your supply chains. We are seeing an increase in third-party facilities being structured as foreign-trade zones, which could increase financial savings for existing zones that can transfer or receive non-duty paid merchandise in zone-to-zone transfers.

EXPORT MANIFEST

CBP has issued a General Notice that it is extending the Automated Commercial Environment (ACE) test of the Export Manifest for Air Cargo for an additional two years until December 22, 2024. Participation in the test is voluntary and open primarily to carriers and freight forwarders. 86 Fed. Reg. [72610](#) (Dec. 22, 2021).

OFAC FAQs

On December 7, the Office of Foreign Assets Control (OFAC) issued new [frequently asked questions \(FAQs\)](#) related to financial dealings in Russia/Ukraine, Venezuela, and Belarus.

EXPORT PENALTIES INCREASED

- The State Department announced inflation increases for certain penalties issued under the Chemical Weapons Convention Implementation Act and the Arms Export Control Act. 87 Fed. Reg. [1072](#) (Jan. 10, 2022).

- The Bureau of Industry and Security (BIS) and the Directorate of Defense Trade Controls (DDTC) announced inflation increases for certain penalties. Effective January 15, BIS civil penalties will rise to \$328,121 and, effective immediately, DDTC civil penalties will increase to \$376,138. 87 Fed. Reg. [157](#) (Jan. 4, 2022); 87 Fed. Reg. [1072](#) (Jan. 7, 2022).

AFGHANISTAN

OFAC has issued a [fact sheet](#) and three general licenses, permitting some private remittances and humanitarian efforts. OFAC also issued 6 new frequently asked questions (FAQs): [FAQ 950](#), [951](#), [952](#), [953](#), [954](#), and [955](#) and modified FAQs [928](#), [929](#), and [931](#).

BANK OFAC SETTLEMENT

On December 23, OFAC [announced](#) a

[73593](#) (Dec. 28, 2021).

2022 AES HTS

Census has announced that the Automated Export System (AES) is [accepting the updated 2022 HTS and Schedule B codes](#). The old codes will continue to be accepted until January 31. After January 31, the use of old codes will result in a fatal error.

FDA NOTICES

- Beginning January 15, the Food and Drug Administration (FDA) is using new electronic ACE messaging when a final admissibility decision has been rescinded. CSMS #[50412777](#) (Dec. 16, 2021).

- FDA has announced that it will reject entries when it receives an FDA message set on an entry type not subject to FDA import requirements. CSMS #[50666399](#) (Jan. 11, 2022).

- Contact [Sean Murray](#) with questions.

WASSENAAR UPDATES

Among the [changes](#) from the 2021 Wassenaar Arrangement plenary meeting are new controls on computer-assisted design software tools and new controls on metallic and organic substrates used in certain high-end applications. There are also relaxed controls on fluorinated silicon fluids, metal working parameters, some high-performance computers, and radars and lasers used in automotive applications. These changes will eventually appear on the Export Administration Regulations (EAR) Commodity Control List (CCL).

NAVY EMPLOYEE SENTENCED

Ms. Ivy Wang was [sentenced](#) to 30 months in prison and fined \$20,000 for her role in attempting to send a device for identifying U.S. military personnel in the field to China. Ms. Wang was a purchasing specialist in the Naval Special Warfare Unit. When the device was delivered, she told her superiors it was to be used for her husband's camping trips, but they planned to resell it to the Chinese military. Her husband had been sentenced earlier to 46 months in prison.

CHINESE MILITARY COMPANIES

The Office of Foreign Assets Control (OFAC) has added eight entities to its Non-Specially Designated Nationals (SDN) Chinese Military-Industrial Complex Companies List. Investing in one of these entities requires a license or other OFAC authorization. 86 Fed. Reg. [72680](#) (Dec. 22, 2021).

USMCA DISPUTE: DAIRY TRQs

On January 4, the U.S. Trade Representative (USTR) [announced](#) that the U.S. prevailed in the first-ever dispute settlement panel proceeding under the U.S.-Mexico-Canada Agreement (USMCA). The panel found that, by reserving most of the in-quota quantity in its dairy tariff-rate quotas (TRQs) for the exclusive use of Canadian processors, Canada was in breach of its USMCA commitments.

USMCA DISPUTE: AUTO RULES

On January 6, Mexico [requested](#) the establishment of a dispute settlement panel to resolve automotive rules of

to Hong Kong. Mr. Orencel faces up to 10 years in prison when he is sentenced on February 22.

ENTITY LIST

On December 17, BIS added 37 entities to the Entity List, including 34 Chinese research institutes and technology companies, for supporting China's military modernization efforts or Iran's weapons program. Other entities added to the list provided U.S.-origin items to Iranian defense industries. 86 [Fed. Reg. 71557](#) (Dec. 17, 2021).

FTZ DRAWBACK

CBP has issued a ruling that an FTZ Operator may not claim substitution unused merchandise drawback on merchandise that is in its custody, but to which it does not have title. HQ [H302869](#) (Nov. 30, 2021).

BIS IN SPANISH

BIS has [published](#) two of its most popular guidance documents, [Elements of an Export Compliance Plan](#) (ECP) and [Export Compliance Guidelines](#), in Spanish.

AIRBNB IN CUBA

OFAC announced on January 3 that it had reached a [settlement](#) with Airbnb for violations of the Cuban sanctions. Airbnb was accused of processing payments for guests who traveled to Cuba outside of categories authorized by the U.S. government. Under terms of the settlement, Airbnb agreed to remit \$91,172.29 to OFAC.

\$115,005 civil settlement with TD Bank, N.A. ("TDBNA") allegedly involving nearly 1,500 prohibited transactions and 11 prohibited accounts for employees of the North Korean mission to the U.N. and a U.S. resident who is a Specially Designated National. According to OFAC, the apparent violations resulted from multiple sanctions compliance breakdowns, including screening deficiencies and human error.

DOD REVIEW

On December 16, the Defense Department [announced](#) procedures for reviewing transactions filed with the Committee on Foreign Investment in the U.S. (CFIUS).

IRAN SANCTIONS

On January 11, OFAC [announced](#) that it had fined Sojitz of Hong Kong \$5.2 million after employees purchased 64,000 tons of Iranian thermoplastic with U.S. dollars. The fine was mitigated because Sojitz management was unaware of the transactions and had repeatedly told its employees they could not buy products from Iran using U.S. dollars.

FLEAS & TICKS

CBP has proposed the revocation of two Customs rulings to classify topical flea drops as insecticides in Heading 3808 (6.5%) instead of as medicaments in Heading 3004 (Free). Comments are due by January 28. Contact [Sean Murray](#) with questions or for assistance with comments. 55 [Cust. B. & Dec. 1](#) (Dec. 29, 2021).

MONSANTO TRADE SECRETS

A Monsanto employee, Xiang Haitao, has [pleaded guilty](#) to taking Monsanto trade secrets on storing farm field data to China. Mr. Haitao faces up to 15 years in prison and \$5 million in fines. Sentencing is scheduled for April 7.

CHINA SALE CANCELED

Rockley Photonics, a U.S. company, [announced](#) it was pulling out of a joint venture with Jiangsu Hengtong Optic Electric Co. Ltd. in China, after Hengtong and its affiliates were added to the BIS Entity List.

origin under the USMCA. Canada [announced](#) on January 13 that it was joining Mexico's request. The request to establish a panel ensues from unsuccessful trilateral consultations that were initiated by Mexico and joined by Canada last August.

USMCA DISPUTE: LUMBER

On December 21, Canada's Minister of International Trade [indicated](#) that Canada would challenge the U.S. antidumping and countervailing duties (AD/CVD) imposed on Canadian softwood lumber by requesting a USMCA dispute settlement panel.

SDN LIST

On December 23, OFAC added 24 individuals and 34 entities to the Specially Designated Nationals (SDN) List. The entities are in a variety of countries, including the Marshall Islands, Angola, Bulgaria, Ukraine, Croatia, Serbia, Kosovo, Macau, United Arab Emirates, and South Sudan. 86 [Fed. Reg. 73091](#), [73095](#), and [73097](#) (Dec. 23, 2021).

AFRICAN TRADE

USTR has requested nominations for membership on the Trade Advisory Committee on Africa that will begin in March 2022. Nominations are due by February 4. 87 [Fed. Reg. 1473](#) (Jan. 11, 2022).

ZOOM DISCLOSURE

Zoom Video Communications indicated in a Securities & Exchange Commission (SEC) [filing](#) that it had filed a voluntary self-disclosure (VSD) with BIS. Zoom said that it may have inadvertently allowed its conferencing software to be used by sanctioned entities and countries.

FTZ STATS

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 1/15/2022

Approved	
Zones	297
Subzones*	873
Pending	
Zones	4
Subzones	11
Misc.	33

*From [Fed. Reg. Notices](#)