



INFANT FORMULA ACT

On July 21, President Biden signed the Formula Act into law. The Act temporarily suspends duties (including HTSUS Chapter 99 safeguard duties) and tariff-rate quotas (TRQs) on certain imported infant formula products. Contact [Brian Murphy](#) or [Sean Murray](#) with questions. [P.L. 117-160](#) (July 21, 2022).

CTPAT TRADE COMPLIANCE

U.S. Customs and Border Protection (CBP) has posted a new [handbook](#) that provides a lengthy description of the CTPAT Trade Compliance program application and ongoing requirements. The CTPAT Trade Compliance program has replaced the Importer Self-Assessment program. Contact [Marshall Miller](#) or [Sean Murray](#) with questions.

FIRST SALE AND NMEs

The U.S. Court of Appeals for the Federal Circuit (CAFC) has set aside a U.S. Court of International Trade (CIT) decision that had denied Nissho Iwai first sale customs valuation solely because China is a non-market economy (NME). The CAFC ruled NME status is not indicative of “nonmarket influences” between the buyer and seller under the customs value law. Meyer Corp., U.S. v. U.S., CAFC Slip Op. [2021-1932](#) (Aug. 11, 2022).

CBP USER FEES INCREASE

CBP has announced that COBRA fees for 23 separate user-fees will increase by 18.62% for fiscal year 2023. As of October 1, the Customs Merchandise Processing Fee (MPF) will increase by \$46.95 to \$575.35. [87 Fed. Reg. 46973](#) (Aug. 1, 2022).

SECTION 321 - NEXT STEPS

• In a series of public statements, James Moore, CBP Cargo Security and Control Division Program Manager, and Craig T. Clarke of the Office of Trade Relations (recently retired) have indicated that the Section 321 Entry Type 86 test will be expanded to create a new, more detailed data collection process with new mandatory data elements.

• Speaking on July 18 at the CBP Trade Facilitation and Cargo Security Summit, Acting CBP Executive Director of Trade Policy & Programs Gail Kan stated that CBP is looking to adopt a lower, “reasonably reliable” standard in the context of de minimis Section 321

2022 FALL TRAINING SEMINARS

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

- 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.

FAR EAST CABLE

On July 29, the Bureau of Industry and Security (BIS) [issued](#) an [Administrative Charging Letter](#) against Far East Cable (FEC). FEC is accused of “aiding and/or abetting” ZTE when ZTE attempted to sell U.S. origin equipment to Iran. ZTE paid \$1.19 billion in penalties.

EMERGING TECH

BIS has issued an Interim Final Rule, effective August 15, to implement controls on certain gallium oxide and diamond substrates of ultra-wide bandgap semiconductors, electronic computer aided design (ECAD) software for the development of certain integrated circuits, and pressure gain combustion (PGC) technology. Comments are due by September 14. [87 Fed. Reg. 49979](#) (Aug. 15, 2022).

CFIUS REVIEWS

The Committee on Foreign Investment in the United States (CFIUS) annual [report](#) to Congress disclosed a record number of foreign investment and real estate transaction reviews during 2021, the first full year operating under regulations implemented by the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA). Contact [Sean Murray](#) or [Bryan Brown](#) with questions.

USMCA - MX ENERGY

On July 20 the U.S. [requested](#) dispute settlement consultations with Mexico under the U.S.-Mexico-Canada Agreement (USMCA) concerning certain Mexican policies that favor Mexican state-owned energy companies over U.S. companies and U.S.-produced energy.

FORCED LABOR UPDATE

• On July 29 the U.S. Department of Homeland Security (DHS) [announced](#) a formal strategic partnership with Liberty Shared, a non-governmental organization (NGO) that will provide DHS with forced labor intelligence and help with forced labor investigations.

• On August 3, the Acting Executive Director of the Uyghur Forced Labor Prevention Act (UFLPA) Implementation Task Force stated at the Detroit CBP Virtual Trade Week that they had not yet seen any documentation sufficient to overcome rebuttable presumption.

• At the U.S. Customs and Border Protection (CBP) Trade Facilitation and Cargo Security Summit, CBP Deputy Executive Assistant Commissioner John Leonard stated that many Withhold Release Orders issued for specific entities are being modified to reflect remediation of forced labor issues.

• DHS has published a Notice on adding and removing entities from the UFLPA Entity List. [87 Fed. Reg. 47777](#) (Aug. 4, 2022).

• We are aware of instances where CBP has raised forced labor questions outside of the regular Detention Notice process.

• On August 2, Senators Marco Rubio (R-FL) and Robert Menendez (D-NJ) introduced the Sanctioning Supporters of Slave Labor Act (S. [4714](#)), which would impose secondary sanctions on foreign persons and entities that knowingly provide support to entities sanctioned for Uyghur-related human rights abuses. The Senate bill is related to H.R. 7998, which was introduced in the House by Rep. Jim Banks (R-IN) in June.

• Contact [Sean Murray](#) or [Brian Murph](#) with forced labor questions.

CHINA 301 LITIGATION

On August 1, the U.S. government filed a detailed [response](#) to the U.S. Court of International Trade (CIT) Order requiring it to identify materials the U.S. Trade Representative (USTR) relied on in deciding China Section 301 Lists 3 and 4A product coverage and duty rates. The CIT three-judge panel issued an [Order](#) on August 15 with filing dates for responsive briefings stretching to November 14. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

VESSEL ARRIVAL DATE

entries.

OFAC RUSSIA

- On July 22 OFAC issued General Licenses [45](#) and [46](#), [published](#) two new FAQs, and [amended](#) two FAQs regarding the Russian Harmful Foreign Activities Sanctions.
- On August 2 OFAC issued General Licenses [40B](#), [43A](#), [47A](#), [48A](#), and [49](#), and [published](#) three new FAQs regarding the Russian Harmful Foreign Activities Sanctions.
- On August 2 OFAC [designated](#) more Russian elites and companies generating substantial revenue for the Russian regime as Specially Designated Nationals (SDNs).

RUSSIA AIRCRAFT

On August 2, BIS [updated](#) its list of aircraft that have flown into Russia or Belarus in apparent violation of the EAR by adding 25 foreign-produced aircraft.

SECTION 232 & 301 HEARINGS

The U.S. International Trade Commission (USITC) held [public hearings](#) on July 20-22 in its investigation into the economic impact of Section 232 and 301 tariffs on U.S. industries. It received comments supporting and opposed to the tariff actions. ITC Investigation No. 332-591.

IMPORT VALUE FCA CASES

- On August 11, the Department of Justice (DOJ) [announced](#) a \$3.64 million settlement with an apparel importer and its manager who admitted to significantly underreporting customs values and sometimes changing supplier invoices. A foreign supplier filed the False Claims Act (FCA) lawsuit, which was later joined by the U.S. government.
- Also on August 11, the DOJ [announced](#) a \$1.02 million settlement with Eos Energy Storage, a publicly-traded importer and seller of industrial batteries, for failing to declare the value of assists it provided to a Chinese battery supplier on Customs entries. A whistleblower filed the FCA lawsuit.

HTSUS LITIGATION

In two court cases brought by importers seeking tariff refunds for reclassifications, the CIT has ruled that the government may assert an alternate tariff classification with a higher duty rate as a defense, but not a counterclaim. Contact [Brian Murphy](#) with questions. *Cyber Power Sys. (USA) Inc. v. U.S.*, CIT Slip Op. [22-85](#) (July 20, 2022); *Second Nature Designs, Ltd. v. U.S.*, CIT Slip Op. [22-86](#) (July 25, 2022).

DDTC OPEN GENERAL LICENSES

On July 20, the Directorate of Defense Trade Controls (DDTC) announced that it was introducing two Open General Licenses (OGLs) for one-year, effective August 1. [OGL 1](#) allows the retransfer of items previously licensed, to the governments of the United Kingdom, Canada, and Australia. [OGL 2](#)

USMCA - AUTO CASE

In the ongoing [dispute](#) over whether originating core parts may roll up as originating for USMCA vehicle Regional Value Content (RVC) purposes, the USMCA dispute panel issued written questions on August 8. Responses and comments by the U.S., Mexico, and Canada are due by August 22, and a panel decision is expected in September.

CPSC COMPLIANCE CERTS

On October 13, the Consumer Product Safety Commission (CPSC) will host an in-person and virtual public workshop on beta pilot testing of e-filing CPSC certificate of compliance data using the Partner Government Agency (PGA) Message Set. CSMS [#52911380](#) (Aug. 9, 2022).

SIMILAR MERCHANDISE VALUE

CBP has ruled that material imported for recycling and extraction of certain metals where the importer pays the supplier by applying a formula based on the metal market value minus the per-unit processing fee may be appraised for customs valuation purposes based on the transaction value of commercially interchangeable recyclable material when the processing fee exceeds the metal's value. HQ [H320747](#) (July 20, 2022).

VENEZUELAN AIRLINE

On August 2, BIS [announced](#) that it was issuing a Temporary Denial Order against the Venezuelan cargo airline Empresa de Transporte Aéreo cargo del Sur (a.k.a. EMTRASUR) after it obtained a U.S. origin Boeing 747 from the Iranian carrier Mahan. EMTRASUR is also accused of flying the aircraft to Iran and Russia. A seizure notice has been issued for the aircraft. 87 [Fed. Reg. 47964](#) (Aug. 5, 2022).

NOT A MICROSCOPE

CBP has revoked a ruling that classified a fluorescence confocal microscope as a microscope in HTSUS subheading 9012.10.0000 and reclassified it as "other" medical apparatus for functional exploratory examination in HTSUS subheading 9018.19.40 because the latter tariff provision is more specific and difficult to satisfy for the microscope, which enters a person's body. 56 [Cust. B. & Dec. 30](#) (Aug. 3, 2022).

COVID GL

OFAC has issued three General Licenses (GLs) related to the export of most COVID-related information and products to Syria, Iran, and Venezuela. 87 [Fed. Reg. 47932](#) (Aug. 5, 2022).

CHINA GLYCINE AD/CVD EVASION

CBP has issued a Notice of Determination letter that three U.S. importers, Starille, Ltd., Nutrawave Co., Ltd., and Newtrend USA Co., Ltd., transhipped China-origin glycine through Indonesia, evading AD/CVD orders. The CBP letter provides detailed [guidance](#) on the CBP factual inquiry analysis for

Vessel Arrival dates and time reports have become a serious compliance concern as some vessels have chosen dates prior to importers being able to gain access to cargo. The vessel "arrival date" impacts Customs entry, in-bond transfer, etc. The Port of Houston/Galveston has issued a Public Information Notice (PIN) clarifying that "arrival" is when the vessel is "all-fast," which means the vessel is properly tied up at the dock and the vessel is available for unloading. [PIN HOU-SEA-22-003](#), (Aug. 2, 2022).

BIS NON-MONETARY PENALTY

BIS has settled an administrative [penalty](#) without fining the individual or his company. Instead, BIS agreed to a two-year suspended denial of the owner's export privileges, but required an internal audit of the company's export compliance program and export compliance training.

FMC CHARGES

The Federal Maritime Commission (FMC) has published [Interim Procedures](#) on submitting "Charge Complaints" under the Ocean Shipping Reform Act of 2022 (OSRA) to dispute common carrier charges.

CHEMICAL ANALYSIS APPARATUS

Interpreting the meanings of "chemical analysis" and "process variable," the CIT has ruled that sensor probes which determine the concentration of nitric oxide ("NOx") in automotive exhaust gas are properly classified as apparatus for chemical analysis in HTSUS subheading 9027.10.20, rather than as apparatus for measuring or checking the flow, level, pressure or other variables of gases in HTSUS subheading 9026.80.20. *Continental Auto. Sys., Inc. v. U.S.*, CIT Slip Op. [22-94](#) (Aug. 12, 2022).

VESSEL ACE ACCOUNTS

CBP has issued a General Notice announcing the establishment of ACE Vessel Agency Portal Accounts through a pilot program. These accounts will allow electronic submission of vessel arrival, entrance, and clearance applications and provide access to vessel entrance and clearance reports. 87 [Fed. Reg. 43278](#) (July 20, 2022).

CYBERSECURITY

CBP has established a protocol for reporting cybersecurity incidents impacting transmissions to CBP. CSMS [#52858040](#) (Aug. 3, 2022).

SECTION 201

USTR has announced that Section 201 safeguards on certain Canadian-origin crystalline silicon photovoltaic cells are suspended, retroactive to February 1, 2022. 87 [Fed. Reg. 43369](#) (July 20, 2022).

OFAC RUSSIA GLS

OFAC has published nine General Licenses issued under the Ukraine-Russia Sanctions program that have been available on its website since

allows reexports of goods previously licensed between the governments of the United Kingdom, Canada, and Australia. The DDTTC also published a list of [FAQs](#) and a [fact sheet](#). 87 Fed. Reg. [43366](#) (July 20, 2022).

IMPROPER SCREENING

• OFAC has issued a "[Finding of Violation](#)" against MidFirst Bank after the bank handled transactions for two individuals on OFAC's SDN List. OFAC did not fine the bank because most of the transactions occurred just hours after the individuals went on the SDN List. However, OFAC noted that MidFirst was not screening customers and clients against updates to the SDN List on a daily or frequent enough basis.

• American Express National Bank agreed to [remit](#) \$430,500 for processing transactions for an account holder on OFAC's SDN List as a narcotics kingpin. American Express identified the issue two times, but processed additional transactions.

these matters.

FISHERIES

The National Marine Fisheries Service has issued a Proposed Rule regarding Certifications of Admissibility for designated fish products. CSMS #[52727444](#) (July 21, 2022).

U.S.-KENYA

USTR has requested comments on the U.S.-Kenya Strategic Trade and Investment Partnership (STIP), with a comment deadline of September 16, 2022. 87 Fed. Reg. [48060](#) (Aug. 5, 2022).

SEIZURE WARRANT

DOJ [announced](#) on August 8 that it had obtained a warrant for the seizure of an airplane owned by Russian oligarch Adrei Skoch worth over \$90 million.

February and March. 87 Fed. Reg. [47261](#) (Aug. 4, 2022).

CBP MRA WITH URUGUAY

CBP and Uruguay customs have agreed on a mutual recognition arrangement ([MRA](#)) for their supply chain security programs.

FTZ STATISTICS

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 8/15/2022

Approved	
Zones	298
Subzones*	876
Pending	
Zones	2
Subzones	9
Misc.	33

*From Fed. Reg. Notices

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