



CHINA SEMICONDUCTORS

· On January 18, the Bureau of Industry and Security (BIS) issued an Interim Final Rule adding Macau to its Chinese semiconductor controls. BIS indicated that since China was using Macau as a center of semiconductor research, there is concern technology or products sent to Macau can be easily diverted to China. 88 Fed. Reg. [2821](#) (Jan. 18, 2023).

· Broad Tech Systems (BTS), a California distributor of chemicals and photo resist, and its president [pled guilty](#) to money laundering and conspiracy to ship chemicals and photo resist to a Chinese semiconductor manufacturer known to make products for the Chinese military. After CBP returned the chemicals to the Rhode Island manufacturer, BTS asked them to ship additional quantities of the chemicals and photo resist to another Chinese entity. The manufacturer became suspicious and reported BTS to the Commerce Department.

TRADE DEFICIT

The U.S. trade [deficit](#) grew to \$948.1 billion, its highest level ever, in 2022 based on U.S. Commerce Department data. The deficit for goods and services rose \$103 billion, or about 12.2%.

ACE FTZ ERROR CODES

CBP has [issued](#) a revised version of CATAIR Appendix P with e214 foreign-trade zone admission error codes and descriptions. Contact [Marshall Miller](#) or [Linda King](#) with questions about FTZ error messages.

SECTION 321 DE MINIMIS

Representative Earl Blumenauer (D-OR) has introduced a bill which would exclude imports from nonmarket economies (such as China) and countries on the Priority Watch List from receiving Section 321 *de minimis* treatment. The bill also directs CBP to collect additional information on merchandise that may qualify for *de minimis* treatment. [H.R. 6412](#).

TAIWAN TRADE

In a January 14 - 17 negotiating [round](#), the U.S. and Taiwan exchanged views on proposed texts covering trade facilitation, anticorruption, small and medium-

2023 FIRM SEMINARS

Spring and Fall training seminars will again be conducted by webinar only.

Spring

- FTZ 101 – March 14-16
- FTZ 201 – March 21-23
- I/E 101 – April 18-20
- I/E 201 – April 25-27

Fall

- FTZ 101 – October 10-12
- FTZ 201 – October 17-19
- I/E 101 – November 7-9
- I/E 201 – November 14-16

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.

CHINESE BALLOONS

BIS has issued a Final Rule that added six Chinese companies to the [Entity List](#). The companies have all allegedly been involved in Chinese military aerospace programs, specifically including airships and balloons. Effective February 10, they are subject to a license requirement with presumption of license denial for exports, re-exports, and transactions of all items (including technology) subject to the Export Administration Regulations. Contact [Sean Murray](#) with questions. 88 Fed. Reg. [9389](#) (Feb. 14, 2023).

CHINA 301 LITIGATION

On February 7 the three-judge panel of the U.S. Court of International Trade (CIT) heard oral arguments in the China Section 301 Lists 3 and 4A litigation. The oral arguments centered on whether the U.S. Trade Representative's (USTR's) minimal documentary evidence satisfies Administrative Procedure Act (APA) requirements for agency consideration of public input in rulemakings. The CIT judges could now issue their opinion or order another remand to allow the U.S. Government to produce more records. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

301 COVID EXCLUSIONS

USTR has extended to May 15 the 81 China Section 301 product exclusions covering COVID medical-care products that were set to expire on February 28. Public comments on whether to further extend these exclusions are due by March 7. 88

CHINA POSTAL CODES - UFLPA

U.S. Customs and Border Protection (CBP) has issued an Updated Uyghur Forced Labor Prevention Act (UFLPA) [notice](#) that the new China postal code requirement will go into effect on March 18. China postal codes will be required (1) when creating or updating China Manufacturer Identification (MID) codes, and (2) for Manufacturer (MF) party and when the country is reported as China (CN) in ACE CBPF 3461 Cargo Release SE36 and/or SE56 records. Clients should be reviewing shipments from China for potential issues. Contact [Marshall Miller](#), [Brian Murphy](#) or [Sean Murray](#) with questions. CSMS [#54872860](#) (Jan. 27, 2023).

MORE FORCED LABOR

· In a January 26 webinar, CBP stated that only two importers have requested Exceptions from the UFLPA presumptions, and CBP is still reviewing their submissions. All other importers of detained merchandise have argued that their merchandise is outside the scope of UFLPA.

· CBP reported it targeted 444 Customs entries worth \$128 million in November 2022 for suspected use of forced labor.

· Three U.S. Senators have [written](#) to the CEO of SHEIN requesting responses to questions regarding its potential use of forced labor and of a pricing strategy to import under the Section 321 *de minimis* exceptions to avoid CBP scrutiny. The letter cites a media report that laboratory testing on two occasions found that SHEIN garments were made with cotton from China's Xinjiang region.

· Contact [Brian Murphy](#) or [Sean Murray](#) with forced labor questions.

FORCED LABOR CASES

· CBP has [modified](#) a 2022 Withhold Release Order against imports of synthetic disposable gloves manufactured by Malaysian company YTY Industry Holdings due to YTY actions including a corrective action plan and reimbursing recruitment fees paid by its migrant workers.

· CBP has issued a Determination that palm oil and derivative products produced by Sime Darby Plantation Berhad (SDP) and its affiliated companies are no longer produced with the use of forced labor. CBP explained only that SDP had "provided additional information to

sized enterprises, good regulatory practices, and domestic services regulation; reached consensus in several areas; and pledged to maintain an ambitious negotiating schedule. The trade press has reported that the Biden Administration expects the initiative to move quickly, and Taiwanese officials would like to complete a deal this year.

232 PRODUCT EXCLUSIONS

CBP has eliminated the requirement for importers that receive approved Section 232 steel/aluminum product exclusions to notify CBP. CBP will now activate approved Section 232 exclusions based on a list provided weekly by Commerce. CSMS #[55014059](#) (Feb. 7, 2023).

FIRST SALE RULE

The U.S. Court of International Trade has held that imports of cookware did not qualify for first-sale treatment, because the importer's parent company had the ability to influence the price paid for the goods that were sold between affiliates and the importer failed to submit parent company financial information requested during discovery. *Meyer Corp. U.S. v. U.S.*, CIT Slip Op. [23-13](#) (Feb. 9, 2023).

ADD/CVD ENTRY PROTESTS

The U.S. Court of Appeals for the Federal Circuit (CAFC) has ruled that an importer of Chinese tires subject to countervailing duties (CVD) was required to protest the liquidation of entries which CBP erroneously liquidated even though Commerce had issued suspension instructions. Importers should carefully monitor the liquidations of their entries, even if there are outstanding Commerce suspension instructions. *Acquisition 362, LLC v. U.S.*, CAFC Slip Op. [2022-1161](#) (Feb. 6, 2023).

BORDER SEARCH

The U.S. Court of Appeals for the First Circuit has upheld a district court ruling that sentenced a Chinese national to two years in prison for shipping hydrophones with anti-submarine applications to a Chinese military university on the Entity List, ruling that the border search challenged as unconstitutional was supported by reasonable suspicion that the defendant was engaged in on-going export law violations. *U.S. v. Qin*, 1st Cir. Slip Op. [21-1832](#) (Jan. 9, 2023).

OCEAN HOUSE BILL RELEASES

On March 5 CBP is deploying enhanced Ocean House Bill of Lading release functionality to release ocean cargo at the lowest shipment level. CSMS #[54965132](#) (Feb. 3, 2023).

QUI TAM VALUE CASE

The U.S. Department of Justice has [settled](#) with a Washington State auto broker accused of underreporting the price of automobiles purchased in Canada in order to pay lower Customs duties. The litigation ensued from a former employee's

[Fed. Reg. 8027](#) (Feb. 7, 2023).

ITC COVID INVESTIGATION

At USTR's request, the U.S. International Trade Commission (ITC) has instituted Investigation No. 332-596 into the supply and demand of COVID-19 diagnostics and therapeutics for use in World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) negotiations. March 15 is the deadline to request to appear at the March 29-30 public hearings. Written comments are due by May 5. 88 [Fed. Reg. 7757](#) (Feb. 6, 2023).

FALSE CLAIMS ACT

- High Life LLC has [agreed](#) to pay \$1.3 million to settle a False Claims Act (FCA) action that alleged it coordinated with its overseas vendor to knowingly underreport the value of apparel to avoid duty payments.
- In a whistleblower case, a U.S. subsidiary of Korean conglomerate Samsung C&T Corp. has [settled](#) an FCA action with the payment of \$1 million, admitting it misclassified China and Vietnam footwear imports to reduce customs duties owed. The misclassifications were supported by false invoices that misstated the footwear materials and construction.
- A vitamin and nutritional importer has [settled](#) an FCA action with a \$22.87 million payment, admitting to misclassifying 32 products in duty-free HTS provisions rather than as food preparations from 2015 to 2019, even after a consultant alerted the company to the misclassifications and although CBP issued Notices of Action in 2016 and 2017 for similar products misclassified as duty-free. The FCA action was initiated by a whistleblower who will [receive](#) over \$4.5 million.

SUPPLY CHAIN & FTAs

The General Accountability Office (GAO) has issued a report on supply chain resilience that points out limitations of traditional free trade agreements. [GAO-23-105534](#) (Feb. 2023).

HONG KONG ORIGIN

The U.S. will [appeal](#) a WTO dispute settlement panel ruling that the U.S. violated General Agreement on Tariffs and Trade (GATT) rules by requiring Hong Kong origin goods to be marked as China origin.

DCMA CERT CHANGES

The Defense Contract Management Agency (DCMA) implemented a new Procurement Integrated Enterprise Environment (PIEE) duty free entry system on January 15. Vendors (prime contractors) need to interface with the PIEE to manage the preparation and issuance of HTSUS 9808.00.30 duty-free certificates with their customs brokers. CSMS #[54755941](#) (Jan. 18, 2023).

IPEF NEGOTIATIONS

India hosted a special negotiating round for the Indo-Pacific Economic Framework for Prosperity (IPEF) from February 8-11. IPEF partners [agreed](#) to continue negotiations on

CBP, which CBP believes establishes by satisfactory evidence" that its palm oil is not produced by forced labor. 88 [Fed. Reg. 7451](#) (Feb. 3, 2023).

DOE EXPORTS

The Department of Energy has issued a Final Rule that will allow it to impose monetary penalties of \$112,131 per violation for illegal exports of certain nuclear items, including technology, in violation of the Atomic Energy Act of 1954. 88 [Fed. Reg. 1973](#) (Jan. 12, 2023).

EAPA

On January 24, CBP [announced](#) the commencement of an investigation under the Enforce and Protect Act (EAPA) against importers suspected of evading duties on entries of thermal paper subject to Antidumping Duty Orders A-428-850 (Germany) and A-580-911 (South Korea).

AUSTRALIA GROUP UPDATES

BIS has issued a Final Rule implementing updates from the 2022 Australia Group meetings. The updates impact marine toxins, plant pathogens, and biological equipment classified in Export Control Classification Numbers (ECCNs) 1C350, 1C351, 1C353, 1C354, 1C991, and 2B352. 88 [Fed. Reg. 2507](#) (Jan. 17, 2023).

SECTION 301 ACTIONS

The Congressional Research Service (CRS) has published a [document](#) summarizing Section 301 actions and commenting that Congress could amend Section 301 to require greater consultation and approval before Presidential action.

USMCA RVC AND TARIFF-SHIFT

CBP has ruled that certain HTS Heading 8537 automotive parts with some Chinese content are ineligible for U.S. - Mexico - Canada Agreement (USMCA) preferential tariff treatment based on application of a two-part USMCA rule of origin. In a puzzling interpretation, CBP read a tariff-shift requirement into the secondary Regional Value Content (RVC) origin rule, notwithstanding "whether or not" language. Contact [Brian Murphy](#) with questions. HQ [H327583](#) (Nov. 15, 2022).

CBERA

The U.S. International Trade Commission is preparing a report on the Caribbean Basin Economic Recovery Act (CBERA). The deadline for filing requests to appear at the March 9 public hearing is February 23. The deadline for all comments is March 28. 88 [Fed. Reg. 4844](#) (Jan. 25, 2023).

NIB MAGNET IMPORTS

BIS has published its June 2022 Section 232 report into the effect of imports of neodymium-iron-boron permanent magnets on U.S. national security. 88 [Fed. Reg. 9430](#) (Feb. 14, 2023).

qui tam (whistleblower) claim.

232 STEEL DERIVATIVES

The Court of Appeals for the Federal Circuit (CAFC) has reversed the lower court's decision that Section 232 tariffs on derivative steel products were improperly imposed. Primesource Building Products, Inc. v. U.S., CAFC Slip Op. [2021-2066](#) (Feb. 7, 2023).

the IPEF "pillars," with a goal of concluding agreements in covered areas.

ALUMINUM IMPORTS

The Department of Commerce is soliciting comments by March 1 on its Aluminum Import Monitoring and Analysis (AIM) system. 88 Fed. Reg. 5775 (Jan. 30, 2023).

FTZ STATISTICS	
FOREIGN-TRADE ZONES BOARD	
ACTIVITY AS OF 2/15/2023	
	Approved
Zones	299
Subzones*	882
	Pending
Zones	2
Subzones	6
Misc.	33
*From Fed. Reg. Notices	

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