

TRADE NEWS WEEKLY

November 15–November 19, 2021

A summary of international business news prepared by the Hawaii Foreign-Trade Zone 9 with the collaboration of the Research and Economic Analysis Division of the Department of Business, Economic Development & Tourism, and based on research and shipment data from Panjiva, Inc. which tracks companies involved in global trade. Other news sources may occasionally be included where indicated.

China WTO

In a review of China's trade policy since 2018 at the World Trade Organization (WTO), the U.S., EU, Japan, Britain, Australia, and Canada were critical of Chinese trade policy, citing China's failure to reform its economy consistent with market-based principles as required by China's 2001 WTO accession protocol, and China's labor practices, national security restrictions on trade, and failure to fully notify the WTO of subsidy programs.

Source: *Miller & Company P.C.*

Steel and Aluminum Deal

On October 31, the U.S. and EU reached an agreement in their dispute over the U.S. Section 232 additional duties on steel and aluminum. Beginning January 1, the U.S. agreed to forego Section 232 additional duties on steel (25%) and aluminum (10%) products imported from the EU for the next two years and will instead impose a tariff-rate quota consistent with historic levels of steel and aluminum imports. In return, the EU will lift its retaliatory tariffs.

The U.S. and Japan are reportedly negotiating a similar settlement.

Source: *Miller & Company P.C.*

Cybersecurity Controls

BIS has published an Interim Final Rule on export controls relating to cybersecurity items, including National Security (NS) and Anti-terrorism (AT) controls and new license exception Authorized Cybersecurity Exports (ACE), which authorizes exports to most destinations. The rule goes into effect on January 19, 2022. Comments are due by

December 6. 86 Fed. Reg. 58205 (October 21, 2021).

BIS has issued a new Frequently Asked Questions (FAQ) document on the rule.

Source: *Miller & Company P.C.*

Digital Services Taxes

On October 21, the UK, France, Italy, Spain, and Austria announced revisions to their implementation of Digital Services Taxes (DSTs). The U.S. has responded by terminating its Section 301 investigations into their DSTs.

Source: *Miller & Company P.C.*

Cyber to Entity List

BIS has issued a Final Rule that added four companies to the Entity List for engaging in "malicious cyber activities." Two are based in Israel, one in Russia, and one in Singapore. 86 Fed. Reg. 60759 (November 4, 2021).

Source: *Miller & Company P.C.*

AD/CVD Non-Reimbursement

Pursuant to the new AD/CVD regulations published on September 21, AD/CVD non-reimbursement certifications now require a link to the relevant entry or entry line numbers. CSMS #49927834 (October 29, 2021).

Source: *Miller & Company P.C.*

Haptic Motors

CBP has ruled that haptic motors are classified in Heading 8501 as "electric motors and generators" instead of in Heading 8512 as "a part of electrical lighting or signaling apparatus of a kind used for motor vehicles." CBP determined that the haptic motor transmitted



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mechanical energy from its electric motor to the intended load, consistent with the Explanatory Notes to Heading 8501. HQ H311099 (October 18, 2021).

Source: Miller & Company P.C.

COVID Food Tests

On October 25, the U.S. Department of Agriculture announced that the Hong Kong government has disposed of three food shipments after a year of monitoring and testing food to prevent the spread of COVID-19. The disposed food were shipments of chilled fish from Indonesia that tested positive for COVID-19.

Source: Miller & Company P.C.

FDA Guidance Withdrawal

On November 5, the Food and Drug Administration (FDA) announced that it was withdrawing the guidance on export certification provided in Section 110.100 of the FDA Compliance Policy Guide because it has issued other guidance on FDA export certifications, including its FDA's August 2021 publication of guidance for industry entitled FDA Export Certification. 86 Fed. Reg. 61279 (November 5, 2021).

Source: Miller & Company P.C.

Forced Labor

U.S. Customs and Border Protection (CBP) Executive Assistant Commissioner in the Office of Trade, AnnMarie Highsmith, indicated in public comments that CBP is aware of the complexities of the Withhold Release Orders (WROs) involving Hoshine Silicone Industry and cotton produced in China's Xinjiang region. Ms. Highsmith stated that CBP would attempt to better engage with the trade to facilitate the entry of legitimate merchandise.

CBP has revised its Hoshine WRO Frequently Asked Questions (FAQs).

On October 21, CBP issued a WRO for tomatoes from Agropecuarios Tom S.A. de C.V., Horitcola Tom S.A. de C.V., and its subsidiaries in Mexico due to the alleged use of forced labor.

On October 25, Congressman Earl Blumenauer (D-OR) called on the Biden Administration to

take action to prevent the use of forced labor in the Dominican Republic sugar industry.

On October 21 and November 4, CBP issued WROs for disposable gloves produced by nine companies in Malaysia for the alleged use of forced labor.

Source: Miller & Company P.C.

HUAWEI and SMIC Licenses

According to information released by the House Foreign Relations Committee on October 21, the Bureau of Industry and Security (BIS) has approved 113 licenses for Huawei valued at \$61 billion and 188 licenses for SMIC valued at \$41 billion, between November 2020 and April 2021. Approximately 70% of license applications for Huawei and over 90% for SMIC were approved. Contact Sean Murray or Chuck Ballard with questions or for assistance with a license application.

Source: Miller & Company P.C.

Trade Secrets Theft

A former Broadcom engineer has been indicted for taking trade secrets from Broadcom and providing them to his new employer, a Chinese startup. If convicted, the engineer could face up to ten years in federal prison. Another former engineer, a Canadian who worked for GE, has been sentenced to 24 months in prison for taking GE trade secrets and using them with his new company, ThermoGen Power Services. The engineer was also ordered to pay \$1.4 million in restitution to GE.

Source: Miller & Company P.C.

Nicaragua Sanctions

On November 10, President Biden signed the "Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform Act of 2021" (S. 1064) into law. The act imposes sanctions on the Nicaraguan government to restrict multilateral bank lending and to target corruption in President Daniel Ortega's regime.

Source: Miller & Company P.C.

301 Duties Watches/Clocks

CBP has provided guidance on invoice and entry reporting requirements for watches and clocks composed of both components subject to China



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Section 301 duties and non-China origin components. China-origin and non-China origin components must be reported on separate entry lines by origin. The invoice and supporting documents must provide sufficient detail to determine value, quantity, HTSUS classification, and country of origin. Clients are reminded this guidance does not alter CBP's long-standing interpretation that, for origin marking purposes, the clock movement determines the origin. CSMS #50019756 (November 2, 2021).

Source: Miller & Company P.C.

New Customs MOD Act

On November 3, Senator Bill Cassidy (R-LA) circulated a discussion draft of a bill titled the Customs Modernization Act of 2021. The bill's stated aim is to increase CBP's visibility into international supply chains, expand CBP's use of trade data, enhance enforcement, and bring e-commerce companies within the full scope of U.S. customs laws. Specific changes include removing grossly negligent violations of 19 U.S.C. § 1592, altering the threshold for fraudulent violations of § 1592, providing for the summary forfeiture of counterfeit merchandise and merchandise found in violation of the Food, Drug and Cosmetics Act, expanding record keeping requirements to include e-commerce platforms, and broadening CBP authority to suspend and fine exporters for illegal exports. The discussion draft may turn into a 2022 bill, so importers are encouraged to review and consider comments.

Source: Miller & Company P.C.

HTS 2022 Changes

Clients should be preparing for the changes to the Harmonized Tariff Schedule (HTS) at the international heading and subheading levels that take effect on January 1, 2022. The 351 amendments to the HTS nomenclature include new provisions for cell therapy products, placebos, clinical trial kits, diagnostics kits, 3D printers, electric vehicles, drones (UAVs), e-waste, and other items. The World Trade Organization (WTO) has posted an online tool for tracking changes and the U.S. International Trade Commission (ITC) issued a report on the changes in April 2021.

Source: Miller & Company P.C.

Right to Make Entry

Importers are reminded that only entities with the "right to make entry" can file Customs entry. CBP has issued a ruling that a wind tower exporter did not possess a sufficient financial interest in the wind towers at the time of importation to establish the right to make entry. CBP distinguished a proposed security interest and delayed payments from rulings involving other post-entry obligations.

Source: Miller & Company P.C.

New DOJ Enforcement

In prepared comments by Deputy AG, Lisa Monaco, on October 28, the U.S. Department of Justice (DOJ) announced three new enforcement initiatives involving corporate criminal investigations: cooperation credit requires the disclosure of all non-privileged information about individuals involved in misconduct; all prior corporate misconduct will be evaluated; and the appointment of independent monitors is no longer an exception. DOJ states that it "will ensure the absence of [compliance] programs inevitably proves a costly omission for companies who end up the focus of [DOJ] investigations."

Source: Miller & Company P.C.

False Claims Act

On October 18, the U.S. Attorney for the Southern District of New York announced the settlement of a civil fraud lawsuit brought under the False Claims Act against a garment manufacturer for fraudulently underreporting the value of imported garments to avoid customs duties. The importer has agreed to pay \$50,000.

Source: Miller & Company P.C.

Steel Section 232s Swapped for Quotas, Retaliatory Tariffs Axed

Thyssenkrupp, Voestalpine set to gain from sweeping U.S.-EU steel, aluminum deal as the U.S. and the EU have announced an agreement to partially lift the Section 232 "national security" tariffs on steel and aluminum. The breakthrough came right at the deadline set by the EU, thus preventing an increase in retaliatory tariffs on U.S. goods that was set to go into effect in December. The deal transitions



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the Section 232 tariffs, which have been in force since 2018, into a tariff rate quota scheme that lifts a large part of the burden on EU exporters of those metals. It may also serve to head off further confrontation with the EU and possibly with the World Trade Organization, which in 2019 ruled that national security exemptions were subject to review.



The agreement touches on other areas as well, including climate and China, and President Biden has said, “It ensures a strong and competitive U.S. steel industry for decades to come and creates good-paying union jobs at home.” Part of the reason for reaching resolution may have come from the high prices for both steel and aluminum, swinging more burden on companies who use the metals as raw materials and so incentivizing companies and governments to find a solution. The third quarter saw the price of steel increase 264.2% year over year and that of aluminum rise 43.2%.

The deal removes duties on the first 3.3 million tons of steel imported from the EU. In 2018, the bloc accounted for 20.7% of subject U.S. steel imports, which had fallen to 14.0% in the first eight months of 2019, and negotiators may be expecting imports moving forward to be around those marks. Competition may come from Canada and Mexico — which have already been exempted from the Section 232 duties via the U.S.-Mexico-Canada Agreement, or USMCA, signed in 2019. It is likely that the slide in imports from other countries that are not exempted will continue.

USMCA IMPORTS SOLIDIFY POST PANDEMIC

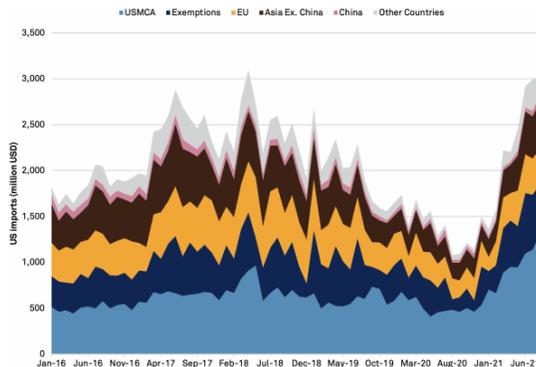


Chart shows imports of steel under the Section 232 rules by origin. Source: Panjiva



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