TRADE NEWS WEEKLY

September 19– September 23, 2022

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 *Sandler, Travis & Rosenberg P.A.*, which tracks companies involved in global trade. Other news sources may occasionally be included where indicated.

ITC FTZ Questionnaire

On September 6, the U.S. International Trade Commission (ITC) began emailing its FTZ questionnaire to Foreign-Trade Zones (FTZs) with production authority. The mandatory deadline for completion is October 6. The questionnaire includes many detailed questions which will be time-consuming to complete. We recommend FTZs review their FTZ Board Annual Reports for 2016 to 2021 to ensure consistency. Those operating these Foreign-Trade Zones are encouraged to include positive statements on FTZ benefits.
Source: Miller & Company, P.C.

FTZ Weekly Estimates

CBP has updated its ACE FAQ document to confirm that FTZ Type 06 weekly estimated Cargo Release entries only cover the quantity for the exact HTSUS line-item combination (i.e., tariff classification, zone status, Manufacturer Identification (MID) and country of origin). Different goods or excess quantities entered are considered unauthorized removals and subject to liquidated damages. CBP added a CBPF 7501 CATAIR note reminding that FTZ line-item quantities cannot exceed estimated CBPF 3461 quantities. Clients are encouraged to confirm their FTZ management and broker software are properly transmitting all the required date elements for weekly estimates.
Source: Miller & Company, P.C.

FTZ Board Annual Report

We encourage clients to review the 2021 Report. Highlights include:

- Merchandise Received of $835 billion vs. $625 billion in 2020.
- Exports of $123 billion vs. $94 billion in 2020.
- 77% domestic status merchandise for production operations.

Source: Miller & Company, P.C.

Russian Oil

The G7 countries issued a Joint Statement on September 2, confirming their intention to implement a comprehensive, global prohibition on services that enable maritime transportation of Russian crude oil and petroleum products unless they are purchased at or below a to-be determined price. The ban takes effect for oil on December 5, and for petroleum products on February 5, 2023.

OFAC has issued preliminary guidance.

https://home.treasury.gov/system/files/126/cap_guidance_20220909.pdf

Source: Miller & Company, P.C.

Russia WTO

USTR has requested comments on Russia's implementation of its WTO commitments. The deadline for comments is September 21, with a virtual public hearing on October 4.
87 Fed. Reg. 52102 (August 24, 2022).
Source: Miller & Company, P.C.

Semiconductor Exports

AMD and Nvidia, two U.S. semiconductor manufacturers, announced that they had been told by U.S. government officials they can no longer sell some of their semiconductors into China without a license. The U.S. government

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is concerned about the chips being diverted to military programs. Nvidia has indicated this could result in a $400 million drop in revenue over the next year.
Source: Miller & Company, P.C.

Made In USA

The U.S. Federal Trade Commission (FTC) has issued a request for comments on a proposed consent agreement with Electrowarmth Products, LLC and Daniel W. Grindle, a company officer, involving labeling and advertising certain textile fiber products as "Made in the USA" when some were wholly imported from China. Comments are due by September 26.
87 Fed. Reg. 52385 (August 25, 2022).
Source: Miller & Company, P.C.

Tablet Origin

CBP has issued a Notice of Final Determination that the country of origin of certain tablet computers is Taiwan for U.S. government procurement, making them eligible for a waiver of certain Buy American restrictions. The tablets are composed primarily of Taiwan origin components, including the chipset that accounts for 60% of their value, are assembled in China, and undergo a firmware upload in the United States.
87 Fed. Reg. 55013 (September 8, 2022).
Source: Miller & Company, P.C.

IPEF Ministerial

On September 9, the U.S. and thirteen other countries completed the first Indo-Pacific Economic Framework for Prosperity (IPEF) ministerial meeting. The countries issued consensus statements on trade, supply chain, clean economy, and fair economy. One country, India, has opted out of the trade pillar until more details are decided.
Source: Miller & Company, P.C.

Peptides Emerging Tech

The Bureau of Industry and Security (BIS) has issued a Proposed Rule regarding instruments used in the automated synthesis of peptides. BIS suspects these instruments should be considered emerging technology that may need controls to certain destinations and/or end uses. Comments are requested by October 28.
87 Fed. Reg. 55930 (September 13, 2022).
Source: Miller & Company, P.C.

Standards Exemption

BIS has issued an Interim Final Rule that authorizes the release of specified low-level EAR99 and AT-controlled technology and software without a license if released in the context of certain "standards organization" activities even where membership includes parties on the Entity List. Comments are due by November 8.
87 Fed. Reg. 55241 (September 9, 2022).
Source: Miller & Company, P.C.

Forced Labor WRO Stats

Updated trade statistics show that CBP detained more shipments pursuant to forced labor Withhold Release Orders (WROs) through June 30 of Fiscal Year 2022 (2,010) than it did for all of Fiscal Year 2021 (1,469).
Source: Miller & Company, P.C.

WRO Modified

CBP has modified a WRO against Natchi Apparel Ltd. Previously detained shipments will be released. Evidence was provided by an NGO that Natchi had addressed the five International Labor Organization indicators of forced labor identified in the WRO.

The modified WRO can be read at:

https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-natchi-apparel-p-ltd

Source: Miller & Company, P.C.

Customs Business

CBP has issued a ruling that World Customs Brokerage may share certain importer information with a related freight forwarder, invoice the forwarder for duties and fees, and receive payment from the forwarder (who has separately billed and received payment from the importer) without violating the regulatory restrictions on the performance of "customs

business." The ruling requires a careful read. HQ H318461 (August 25, 2022).
Source: Miller & Company, P.C.

Debarment

The Directorate of Defense Trade Controls (DDTC) has debarred three individuals, for approximately 3 years each, for conducting defense services with UAE-based DarkMatter Group without the required licenses. Their debarment was part of a deferred prosecution agreement whereby they paid $1,680,000 in fines.
Source: Miller & Company, P.C.

BIS Red Flags

BIS has issued new FAQs on Entity List red flags for semiconductor foundries and Russian-related export controls, including evasion, red flags, products of concern and transshipment countries of concern.
Source: Miller & Company, P.C.

Trade Barriers

USTR is preparing its 2023 National Trade Estimate Report and has requested public comments on significant foreign trade barriers by October 28.
87 Fed. Reg. 56741 (September 15, 2022).
Source: Miller & Company, P.C.

Notorious Markets

USTR is seeking input on foreign markets which engage in copyright piracy or trademark counterfeiting for its 2022 annual Special 301 Report. Comments are due by October 7.
87 Fed. Reg. 52609 (August 26, 2022).
Source: Miller & Company, P.C.

China Section 301

The Office of the U.S. Trade Representative (USTR) has issued a Notice that it is continuing the Section 301 List 1 and List 2 additional duties because it received hundreds of comments in support of the trade remedy action. The USTR will be issuing another Notice setting forth the process for its legally required four-year review. There will be opportunity for public comment.
87 Fed. Reg. 55073 (September 8, 2022).
Source: Miller & Company, P.C.

China Section 301 Litigation

On September 14, plaintiffs' counsel filed comments on the remand determination filed August 1 by USTR in the Court of International Trade (CIT) litigation challenging China Section 301 Lists 3 and 4A. The comments primarily argued that USTR's reasoning was prohibited post hoc reasoning and did not meaningfully respond to the public comments. The Government and plaintiffs still have one more round of filings.
Source: Miller & Company, P.C.

China Section 301 Protest

The Court of Appeals for the Federal Circuit (CAFC) has ruled that Protests are required to challenge CBP's failure to refund China Section 301 duties qualifying for retroactive product exclusions. ARP Materials, Inc. v. U.S., Harrison Steel Castings Co. v. U.S., CAFC Slip Ops. 2021-2176, 2021-2177 (September 6, 2022).
Source: Miller & Company, P.C.

Russia Controls

BIS has issued a lengthy Final Rule, effective September 15, that increases existing sanctions against Russia and Belarus by expanding the scope of industry sector sanctions to add advanced manufacturing and chemical industry items, adding Belarus to the industry sector sanctions, expanding military end user (MEU) controls, applying the Russia/Belarus MEU Foreign Direct Product (FDP) rule to additional entities, and lowering the value threshold for luxury good controls. The Final Rule also clarifies requirements related to Burma, Cambodia, China, and Venezuela.
87 Fed. Reg. 57068 (September 16, 2022).
Source: Miller & Company, P.C.

Bonded Warehouse Management

Showing the importance of maintaining effective controls over customs bonded merchandise, CBP has ruled that a former bonded warehouse proprietor is liable for additional duties and fees on unaccounted-for shoes. During a series of

compliance reviews, CBP determined, and the proprietor admitted, errors and guesswork in classifying merchandise and reporting quantities in its entries and withdrawals. HQ H289595 (May 10, 2022).
Source: Miller & Company, P.C.

HTSUS 9801

CBP has ruled that an importer did not establish duty-free treatment under HTSUS subheading 9801.00.10 for U.S. origin plastic pallets, trays, and lids due to discrepancies in supporting documentation. Clients are reminded of the detailed documentary requirements for HTSUS 9801 claims. HQ H325290 (June 13, 2022).
Source: Miller & Company, P.C.

Trade Deficit Falls for Fourth Straight Month as Imports Plummet

The monthly U.S. trade deficit in goods and services fell for the fourth straight month in July as exports edged up and imports tumbled.

According to statistics from the Department of Commerce, imports fell 2.9 percent from June to July, to $329.9 billion. Imports of goods were down 3.0 percent to $274.1 billion, with decreases of $3.0 billion for drugs, $900 million for toys, games, and sporting goods, and $900 million for gem diamonds along with a $1.8 billion increase for automotive vehicles, parts, and engines. Imports of services fell 2.1 percent to $55.9 billion. For the year-to-date, total imports were up 22.1 percent from July 2021.

Exports edged up 0.2 percent to $259.3 billion. Exports of goods were down 0.2 percent, with increases of $2 billion for non-monetary gold, $1 billion for passenger cars, and $600 million for industrial machinery along with decreases of $1.3 billion for natural gas, $1.3 billion for foods, feeds, and beverages, and $1 billion for other petroleum products. Services exports rose 1.1 percent to $76.3 billion. For the year-to-date, total exports were up 19.9 percent from a year earlier.

With exports up and imports down, the monthly U.S. trade deficit fell 12.6 percent in July to $70.6 billion. The deficit in goods trade declined 8.3 percent to $91.1 billion while the services trade surplus was up 11.5 percent to $20.4 billion. For the year-to-date, the overall trade deficit was up 29.0 percent from July 2021.
Source: Sandler, Travis & Rosenberg, P.A.

Magnets Used in Toys and Jewelry Get New Safety Standard

The Consumer Product Safety Commission has voted to approve a new mandatory federal safety standard that requires loose or separable magnets in certain magnet products to be either too large to swallow or weak enough to reduce the risk of internal injuries when swallowed.

The new rule applies to consumer products that (1) are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and (2) contain one or more loose or separable magnets. It does not apply to products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes. The new rule also does not apply to toys for children under 14 years old because the CPSC's mandatory toy standard already covers such products.

The CPSC has said that magnets in subject magnet products typically are small, powerful magnetic balls, cubes, cylinders, or other shapes that can be used to create jewelry (such as necklaces, bracelets, and simulated piercings) and can be aggregated to make sculptures, for use as desk toys, and as other building sets. They commonly include magnets between three and six millimeters in size and consist of several hundred magnets. The magnets themselves have a variety of compositions, such as alloys of neodymium, iron, and boron; ferrite/hematite; aluminum, nickel, and cobalt; and samarium and cobalt.

Source: Sandler, Travis & Rosenberg, P.A.