

TRADE NEWS WEEKLY

November 14 – November 18, 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.

Russia Export Charges

The Department of Justice (DOJ) has charged about a dozen individuals and several companies with participating in schemes to avoid U.S. sanctions and export dual-use technologies to Russia. Two defendants, who were arrested on October 17 in Germany and Italy, allegedly obtained military technology from U.S. companies, brokered and smuggled Venezuelan oil, and laundered millions of dollars for Russian industrialists and sanctioned entities. Four defendants, who were arrested in the Baltic states, and two European companies attempted to smuggle a jig grinder to Russia without the required license.

Source: *Miller & Company, P.C.*

Russia NME Status

On November 10, the Department of Commerce announced that it will no longer treat Russia as a market economy in antidumping (AD) proceedings. Commerce says that extensive government involvement in the Russian economy has distorted prices and costs. As a result, future AD cases involving Russian imports will apply an alternative non-market economy (NME) methodology for calculating AD duties.

Source: *Miller & Company, P.C.*

Customs Brokers

· CBP has issued a Final Rule eliminating customs broker districts and corresponding permit fees and transitioning all customs brokers to a national permit system, which allows permit holders to conduct customs

business throughout the customs territory of the U.S. 87 Fed. Reg. 63262 (October 18, 2022).

· CBP has also issued a Final Rule updating the supervision and control framework for customs brokers, increased customs broker license application fees, and deploying a new eCBP online portal for processing broker submissions and electronic payments. 87 Fed. Reg. 63267 (October 18, 2022).

Source: *Miller & Company, P.C.*

Customs Business

CBP has issued a challenging new ruling on “customs business” and HTSUS classification provided by suppliers. CBP has ruled that a company providing customers with 8- or 10-digit HTSUS classifications for specific products is conducting “customs business,” requiring a customs brokers license even if a disclaimer is provided advising them to consult a customs broker. Further, parties that rely on such classifications would not satisfy the reasonable care standard required when importing into the U.S. CBP noted that the provision of 6-digit subheadings is not customs business and that under certain circumstances, a database of subheadings not identifying specific products provided for reference purposes may not be customs business.

Source: *Miller & Company, P.C.*

USMCA Bi-National Panel

CBP is looking for individuals to serve on binational panels in support of the U.S.-Mexico-Canada Agreement (USMCA) to review antidumping and countervailing duty proceedings. Applications are due by



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November 30. 87 Fed. Reg. 64835 (October 26, 2022).

Source: *Miller & Company, P.C.*

Agriculture Section 301

On October 28, USTR announced that, in response to a petition received in September, it would not initiate a Section 301 investigation into certain Mexican agricultural practices but would coordinate with USDA to establish a private-sector advisory panel to promote the competitiveness of growers in the southeastern U.S. 87 Fed. Reg. 65280 (October 28, 2022).

Source: *Miller & Company, P.C.*

Spirulina Blue

CBP has ruled that Spirulina Blue is classified in HTSUS subheading 3824.99, a residual tariff provision for other chemical products of the chemical or allied industries, instead of as a microorganism or animal product. Spirulina Blue is a coloring product sold to various food manufacturers. It is made from spirulina algae but goes through an extraction process in manufacturing that CBP says alters its "character as a microorganism." HQ H324168 (August 26, 2022).

Source: *Miller & Company, P.C.*

China Section 301 Comments

The U.S. Trade Representative (USTR) has posted a detailed list of questions for public comments for its review of the China Section 301 duty actions. The questions are divided into three sections: (1) the effectiveness of the actions, (2) sector/industry-specific comments, and (3) comments on tariff headings. USTR is specifically requesting comments on adding or removing particular HTS provisions. Public comments may be filed until January 17, 2023, using the USTR website. Clients paying China Section 301 duties or relying on 301 product exclusions should consider filing comments to advocate for China Section 301 duty relief.

Source: *Miller & Company, P.C.*

Forced Labor

· CBP published a Trade User Information Notice on November 2 informing that it will deploy an enhancement to ACE (on a date to be

determined) that will require the Chinese postal code in ACE for Chinese origin goods based on the Manufacturer Identification (MID) Code. Users will receive a warning message when a Uyghur region postal code is provided and an error message if a valid Chinese postal code is not provided. A warning message will be notice to the importer that the rebuttable presumption under the UFLPA applies. Contact Sean Murray with questions.

· CBP has reported that, in September, it targeted 491 entries valued at more than \$158.6 million for suspected use of forced labor in the production of imported goods, including goods subject to the Uyghur Forced Labor Prevention Act (UFLPA) and Withhold Release Orders (WROs). These figures are down compared to CBP's reported figures for the previous month of 838 entries valued at more than \$266.5 million.

· Senator Marco Rubio and Representative Chris Smith have voiced objections to CBP Commercial Customs Operations Advisory Committee (COAC) efforts to promote ocean vessel manifest confidentiality and to get CBP to provide importers with advance notice when it suspects forced labor is being used.

Source: *Miller & Company, P.C.*

Microelectronics Survey

The Bureau of Industry and Security (BIS) Office of Technology Evaluation (OTE) has initiated a comprehensive assessment of the U.S. microelectronics industrial base. Companies contacted by OTE (manufacturers, designers, and distributors) are required by law to complete the survey within 60 days, which is estimated to require 16 hours to complete.

Source: *Miller & Company, P.C.*

ACE Ocean Bill Changes

CBP has initiated a number of technical changes in ACE that allow a range of actions involving release and in-bond trade at the House Bill of Lading level, including FTZ CBP authorization. CSMS #53864918 (November 3, 2022).

Source: *Miller & Company, P.C.*



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CBP Commissioner Resigns

U.S. Customs and Border Protection (CBP) Commissioner, Christopher Magnus, resigned on November 12, 2022. He served as Commissioner for only 11 months, being sworn in on December 13, 2021. News reports indicate that Commissioner Magnus had lost the support of Department of Homeland Security (DHS) Secretary, Alejandro Mayorkas.
Source: Miller & Company, P.C.

De Minimis & FDA

CBP has reminded the trade on admissibility requirements for de minimis Section 321 shipments of Food and Drug Administration (FDA)-regulated products. Such 321 shipments still require satisfying FDA regulatory requirements, including FDA Product Codes, FDA Prior Notice for food, correct bill of lading information, and other FDA data elements. CSMS #53697179 (October 20, 2022). CSMS #17-000388, which allows de minimis entries without FDA notification, remains in effect for the following 5 product categories: cosmetics, dinnerware, radiation-emitting non-medical devices, biologic samples for lab testing, and food (but Prior Notice requirements apply).
Source: Miller & Company, P.C.

De Minimis Stats

CBP has released statistics on Section 321 de minimis shipments for the years 2018 through 2021. The volume of shipments has increased yearly while the value of shipments increased through 2021 but fell below 2019 shipment values in 2021. Import volume from China was 1.49 billion shipments over the four-year period, accounting for 64% of all Section 321 imports, almost twice as many as all other countries combined.
Source: Miller & Company, P.C.

Part 102 Rules of Origin

CBP has issued a long Final Rule, effective November 15, that makes corrections to the rules of origin in Part 102 of the Customs Regulations to align them with HTSUS changes. These rules of origin apply to marking under the U.S.-Mexico-Canada Agreement (USMCA), determining whether goods are new or different

articles under the U.S.-Morocco and U.S.-Bahrain Free Trade Agreements, and determining the origin of most textile and apparel products. 87 Fed. Reg. 68339 (November 15, 2022).

Source: Miller & Company, P.C.

EEI Confidentiality

On October 27, Census issued a reminder that Electronic Export Information (“EEI”) submitted in the Automated Export System (AES) is confidential information that may not be provided to foreign governments for any purpose. The Internal Transaction Number (“ITN”) is not confidential and may be provided in place of the confidential EEI. Citations used in place of the ITN where an EEI filing was not required (e.g., AES downtime filing, exemptions, and exclusions) may also be provided in place of confidential EEI.

Source: Miller & Company, P.C.

Tech Data Transfer

On November 9, the Department of Justice (DOJ) announced that it had arrested three individuals and charged them and Quadrant Magnetics LLC for conspiring to send defense related technical data to China and to provide the Department of Defense with rare earth magnets from China for use in U.S. military aviation applications.

Source: Miller & Company, P.C.

Lab Equipment Exports

On October 17, InterTech Trading Corporation, a New-Hampshire-based lab equipment distributor, was fined \$140,000 and sentenced in federal court to two years of corporate probation and monitoring for falsely describing lab equipment exports to Russia, Ukraine, and other countries, as well as undervaluing the shipments, which allowed them to evade the Census Automated Export System (AES) filing requirement.

Source: Miller & Company, P.C.



Taiwan Trade Talks Get Underway

The U.S. and Taiwan continued to push forward this week an initiative to deepen bilateral trade relations.

The two sides launched in June the U.S.-Taiwan Initiative on 21st Century Trade after the U.S. left Taiwan out of the Indo-Pacific Economic Partnership due to concerns about how its inclusion might be received in China. In August, officials announced a negotiating mandate envisioning high-standard commitments and economically meaningful outcomes in areas such as trade facilitation, good regulatory practices, small and medium-sized enterprises, agriculture, standards, digital trade, labor and environment, state-owned enterprises, and non-market policies and practices.

The Office of the U.S. Trade Representative reports that, during a “productive” two-day meeting in New York City this week, the two sides “exchanged views on the key concepts to be addressed in several of the trade areas set out in the negotiating mandate.” Additional meetings are planned in the near future, though no further details were given.

Taiwan’s Office of Trade Negotiations said in a statement that it has three goals for the talks: shaping a competitive and level playing field for investors, reducing trade costs, and expanding overseas markets for SMEs.

The talks come amid continued tensions between China and the U.S., which identified Beijing as its top competitor in a recent national security strategy and has started restricting exports to China of high-tech items that could contribute to its military modernization. President Joe Biden said he intends to discuss Taiwan, trade, and other issues with Chinese President Xi Jinping during an anticipated bilateral meeting in Indonesia later this month.

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

Major Economies Ramp Up Trade Facilitation Measures

G-20 economies introduced more trade-facilitating than trade-restrictive measures on goods and services in recent months, according to a recent report from the World Trade Organization, but export restrictions were introduced at a faster pace.

According to the report, during the period mid-May through mid-October 2022, G-20 economies implemented 66 new trade-facilitating measures with a trade value of \$451.8 billion and 47 new trade-restrictive measures with a trade value of \$160.1 billion.

However, the stockpile of G-20 import restrictions in force has grown steadily since 2009, both in value terms and as a percentage of world imports. As of mid-October, 11.6 percent of G-20 imports were affected by such restrictions, up from 10.9 percent during the previous period.

In addition, WTO members still had in place 52 export restrictions on food, feed, and fertilizers as well as 27 export restrictions on products essential to combat COVID-19. Of these, 44 percent and 63 percent, respectively, were maintained by G20 economies.

The report states that over the past five months the implementation of new COVID-19-related trade measures (both those that facilitate and those that restrict trade) by G20 economies decelerated and the number of new support measures to mitigate the social and economic impacts of the pandemic also fell sharply. G20 economies also continued to phase out pandemic-related import and export measures, with 77 percent of export restrictions repealed as of mid-October and only 17 still in place (covering \$122.0 billion in trade value).

Further, initiations of trade remedy investigations by G20 economies declined sharply, to 17, after a peak in 2020 that was the highest since 2009. Antidumping measures continued to be the most frequent trade remedy action in terms of initiations and terminations.

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

