

## Client Alert

### The Month in International Trade – April 2021

May 10, 2021

*In this issue:*

- **Top Trade Developments**
  - [Crowell & Moring's Biden 2021](#)
  - [Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures](#)
  - [Latest on Section 301 Product Exclusions](#)
  - [Bipartisan Legislation to Address Issues Involving China Outlined in Proposed Strategic Competition Act of 2021](#)
  - [Major Reform Proposed for AD/CVD Laws](#)
  - [Will the Implementation of COVID-19 Vaccine Passports Reestablish Global Employee Mobility?](#)
  - [President Biden Imposes Additional Sanctions on Russia](#)
  - [OFAC Revokes Belarus General License \(General License 2G r GL 2G\)](#)
  - [BIS Adds Chinese Supercomputing Centers and Companies to Entity List](#)
  - [BIS Issues Interim Final Rule with Corrections/Changes to Military Intelligence End Uses and End Users](#)
  - [FinCEN Seeks Comment on Beneficial Ownership Reporting Requirements](#)
  - [Highlights from USTR's Annual Special 301 Report for 2021 Protection of Intellectual Property Rights](#)
  - [Customs Rulings of the Week](#)
- **[Crowell & Moring Speaks](#)**

*This news bulletin is provided by the International Trade Group of Crowell & Moring. If you have questions or need assistance on trade law matters, please contact [Jeff Snyder](#) or any member of the [International Trade Group](#).*

---

#### **[Top Trade Developments](#)**

**Crowell & Moring's Biden 2021 Series**

**The New Administration Begins**

Join us for [Biden 2021](#), Crowell & Moring's series about the new administration. Our bipartisan team of government affairs advisors and lawyers will take you behind the curtain as we provide breaking updates and in-depth analyses on developments as they unfold.

We will dig into key issues, including COVID-19, health care, infrastructure, tax, trade, energy, environment, national security, labor & employment, subjects of congressional investigations, digital transformation, and more.

[Please sign up](#) to receive alerts, webinar invitations, breaking news analyses, and forward-looking insights.

---

### **Latest U.S. Trade Actions/Tariffs and Other Countries Retaliatory Measures**

[Please click here anytime](#) for the latest actions, covered products rate increases, and effective dates.

*For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Spencer Toubia, Ru Xiao-Graham, Cherie Waltermann, Sam Boone, Clayton Kaier*

---

### **Latest on Section 301 Product Exclusions**

[Please click here anytime](#) for the latest actions regarding Section 301 Product Exclusions.

*For more information, contact: Dan Cannistra, Robert Holleyman, Bob LaFrankie, Spencer Toubia, Ru Xiao-Graham, Cherie Waltermann, Sam Boone, Clayton Kaier*

---

### **Bipartisan Legislation to Address Issues Involving China Outlined in Proposed Strategic Competition Act of 2021**

On April 8, 2021, Senate Foreign Relations Committee Chairman Bob Menendez (D-NJ) and Ranking Member Jim Risch (R-Idaho) introduced the Strategic Competition Act of 2021. The bipartisan proposal will be raised for consideration by the Senate Foreign Relations Committee during a legislative business meeting on April 14. In addition to addressing forced labor, forced sterilization, and other abuses in Xinjiang, the Senate Foreign Relations Committee provided the following outline summarizing key components of the legislation.

The Act:

- “Bolsters the United States diplomatic strategy in addressing challenges posed by the Chinese government and reaffirms America’s commitment to its allies and partners in the Indo-Pacific region and around the world, and calls for the United States to reassert its leadership within international

organizations and other multilateral fora. Renews America’s commitment to allies and partners by prioritizing security assistance for the Indo-Pacific region, and strengthens U.S. diplomatic efforts to address challenges posed by China in the Western Hemisphere, Europe, Asia, Africa, the Middle East, the Arctic, and Oceania.”

- “Focuses on countering and confronting China’s predatory international economic behavior, and includes measures to track intellectual property violators, Chinese government subsidies, monitor Chinese use of Hong Kong to circumvent U.S. export controls, and track the presence of Chinese companies in U.S. capital markets. Directs the United States to provide technical assistance to countries working to counter foreign corrupt practices, and debt relief to the poorest countries who have requested forbearance due to the COVID-19 pandemic.”
- “Strengthens American competitiveness with investments in science and technology, global infrastructure development, digital connectivity and cybersecurity partnerships, and reinforces U.S. efforts to counter Chinese Communist Party influence and malign operations.”
- “Calls for enhanced coordination and cooperation with allies on arms control in the face of China’s military modernization and expansion, and requires reporting on Chinese ballistic, hypersonic glide, and cruise missiles, conventional forces, nuclear, space, cyberspace and other strategic domains.”

The full text is available [here](#).

*For more information: John Brew, Jeff Snyder, Frances Hadfield, Clayton Kaier*

---

## **Major Reform Proposed for AD/CVD Laws**

Newly proposed legislation by Ohio Sens. Rob Portman (R) and Sherrod Brown (D) takes aim at “country-hopping,” whereby foreign companies shift production to third countries in order to evade U.S. antidumping and countervailing duties (AD/CVDs).

The bipartisan “Eliminating Global Market Distortions to Protect American Jobs Act” presented last week is just the latest volley in an ongoing battle by senior U.S. trade officials to counteract China’s expanding Belt & Road Initiative.

AD/CVD investigations are bifurcated between the International Trade Commission (ITC), which analyzes injury to the domestic industry, and the Department of Commerce, which determines the extent of necessary remedial measures, *i.e.*, the amount of duties ultimately imposed. The ITC’s injury analysis is currently limited to an examination of import data of the particular product at issue from the specific country in question, in light of key U.S. market indicators and domestic industry financial performance over the period of investigation. The bill introduces the concept of “successive investigations,” which establishes additional injury criteria that may be examined by the ITC under two scenarios: (1) the same class or kind of merchandise investigated at the same time, or (2) the same class or kind of merchandise for which the ITC made an affirmative injury finding within the

last two years. The additional criteria essentially allow the ITC to consider the cumulative effects of dumped and subsidized imports of a specific product on a domestic industry across multiple countries and time periods, with respect to both the volume of imports and underpricing.

Commerce, for its part, generally undertakes a comparatively lengthy examination of foreign exporter data, including subsidies, costs of production, and sales over the period of investigation. The earliest a petitioner may see relief is at the preliminary determination, 85 days after the date of initiation, at which point cash deposits reflecting the estimated duties owed are collected. A final determination is not due for another 75 days. These deadlines are subject to lengthy extensions at the discretion of the Secretary, and in the case of affirmative final determinations, at the request of exporters. However, with respect to the two new scenarios outlined above, the bill would block such extensions absent a request by the petitioner.

The bill also proposes a series of measures to address “market distortions,” specifically with respect to Commerce’s analysis of foreign production costs in “particular market situations.” Chinese producers are increasingly accused of leveraging Belt & Road Initiative infrastructure to effectively offshore operations to other countries, including subsidized inputs. In such cases, the bill would require adjustments to a foreign producer’s reported cost data to reflect market value. In other scenarios, even absent a finding of a “particular market situation,” a foreign producer’s reported cost data may be entirely substituted for market data if found “not reasonably reflective of market costs of production.”

Other proposals include –

- Authorizing Commerce to consider and address subsidies offered to a producer in a country under investigation by a government located elsewhere.
- Adjusting the definition of “ordinary course of trade” to increase scrutiny of and potentially disqualify reported home market sales if made in insufficient quantities at unusually high prices.
- Reducing allowable duty drawback adjustments to export prices to reflect only the actual amount of duties rebated or not collected on inputs in fact incorporated into the merchandise under consideration.
- Updating the process by which Commerce initiates a circumvention inquiry; shorten the period by which Commerce must respond to such inquiries; suspend liquidation and require cash deposits for all merchandise subject to a circumvention inquiry; and, make the findings of such inquiries applicable on a country-wide basis, subject to specific exceptions.
- Requiring Commerce to investigate allegations of currency undervaluation as a countervailable subsidy if those allegations meet the statutory requirements, and further, standardize the comparison method used to determine the extent of the alleged currency undervaluation.

The full text is available [here](#).

*For more information: Dan Cannistra, Michael Bowen, Clayton Kaier*

---

## **Will the Implementation of COVID-19 Vaccine Passports Reestablish Global Employee Mobility?**

As COVID-19 vaccination rates increase globally, governments across the world are developing and discussing COVID-19 vaccine passports or health certificates as a way to enable people to travel safely, for work or tourism, in the coming months. As multinational companies are navigating how to resume some sense of normalcy for employees to travel across borders, governments are beginning to provide a framework in which to facilitate travel.

Several legal considerations arise, including around data sharing and privacy (especially cross-border), and employment and anti-discrimination protections. Because both public and private stakeholders have to date adopted largely individualized approaches, an increasingly fragmented global ecosystem for such programs is likely to further complicate data sharing and privacy concerns in particular. How these efforts evolve alongside the arc of the COVID-19 pandemic, which has recently been complicated by the emergence of COVID-19 variants, creates the need for stakeholders to proactively address such challenges in the near-term.

For more, [please click here](#).

*For more information: Thomas Gies, Emmanuel Plasschaert, Nicole Simonian, Zhongdong Zhang, Yi Huang, Evelien Jamaels, Jackson Pai, Nicolas Diamond*

---

## **President Biden Imposes Additional Sanctions on Russia**

On April 15, 2021, the United States unveiled a sweeping series of additional sanctions on Russia, marking the first major Russia-related sanctions development of the Biden Administration and the most material such U.S. action in several years. The actions were spearheaded by President Biden's issuance of an as-yet-unnumbered [Executive Order](#) (the "EO") that grants the Department of Treasury a wide-ranging set of new designation authorities, including to designate persons "operating in" the "technology" and "defense and related material" sectors of the Russian economy. Acting under this authority, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated six Russian entities for operating in the "technology" sector as well as expanding existing restrictions on U.S. financial institutions to now restrict participation in the primary market for certain ruble-, as well as non-ruble-denominated bonds, as well as certain ruble- or non-ruble-denominated lending activities.

For more on this, as well as parallel actions taken by OFAC, [please click here](#).

*For more information: Dj Wolff, Carlton Greene, Nicole Succar, Brian McGrath, Laurel Saito*

---

## **OFAC Revokes Belarus General License (General License 2G r GL 2G)**

On April 19, 2021, the Office of Foreign Assets Control (“OFAC”) issued [Belarus General License 2H \(“GL 2H”\)](#) revoking General License 2G (“GL 2G”), which was due to expire on April 25, 2021.

For more than five years, OFAC regularly extended GL 2 G, and earlier versions of it, authorizing U.S. person activity with the following nine sanctioned Belarusian companies:

- Belarusian Oil Trade House
- Belneftekhim
- Belneftekhim USA, Inc.
- Belshina OAO
- Grodno Azot OAO
- Grondo Khimvolokno OAO
- Lakokraska OAO
- Naftan OAO
- Polotsk Steklovolokno OAO

The new GL 2H will end this authorization, allowing only a 45-day wind down period for transactions “ordinarily incident and necessary to the wind down” of transactions involving these nine entities and entities in which they own a 50 percent or greater interest. The wind down ends at 12:01 a.m. eastern daylight time on June 3, 2021.

The general license does not authorize the unblocking of property, nor transactions or activities that are otherwise prohibited. Authorized transactions of more than \$50,000 by U.S. persons must be reported to the State Department.

Thus far, these actions are U.S. only. There has been media speculation that the E.U. or U.K. might take similar actions, but to date they have not yet announced any actions.

*For more information: [Dj Wolff](#), [Carlton Greene](#), [Jeff Snyder](#), [Nicole Succar](#), [Laurel Saito](#)*

---

## **BIS Adds Chinese Supercomputing Centers and Companies to Entity List**

On April 8, [the Bureau of Industry and Security \(BIS\) issued a final rule](#) that added the following seven Chinese entities to the Entity List:

- National Supercomputing Center Jinan
- National Supercomputing Center Shenzhen
- National Supercomputing Center Wuxi
- National Supercomputer Center Zhengzhou

- Shanghai High-Performance Integrated Circuit Design Center
- Sunway Microelectronics
- Tianjin Phytium Information Technology

The entities were added on the basis of the End User Review Committee’s (ERC) finding that procurement of U.S.-origin items would support activities contrary to the national security and foreign policy interests of the U.S. Specifically, the final rule stated that the entities are involved in activities that support China’s military actors, its destabilizing military modernization efforts, and/or its weapons of mass destruction (WMD) programs.

For all seven entities, BIS imposed a licensing requirement for exports, reexports, or transfers (in-country) for all items subject to the Export Administration Regulations (“EAR”). No license exceptions apply and license applications are subject to a presumption of denial.

Items that were en route on April 8, 2021 or within a foreign destination are allowed to proceed to the destination under the previous eligibility for a license exception or export, reexport, or transfer (in-country) without a license (NLR).

*For more information: Jeff Snyder, Jana del-Cerro, Laurel Saito*

---

### **BIS Issues Interim Final Rule with Corrections/Changes to Military Intelligence End Uses and End Users**

On April 9, 2021, BIS issued an interim final rule to make corrections and changes to its January 15, 2021 interim final rule establishing new end-use and end-user controls with respect to certain military-intelligence end uses and end users.

Our prior updates on these restrictions can be found [here](#) and [here](#).

In addition to amending certain definitions, the rule amends the EAR to restrict U.S. persons’ activities in connection with military-intelligence end uses and end users in Burma. This change imposes a license requirement on the export, reexport, or transfer (in-country) of items subject to the EAR if the item is destined for a military-intelligence end use or end user in Burma. Specifically, BIS identified Burma’s Office of Chief Military Security Affairs as an entity subject to the new licensing restrictions.

BIS has also added Burma to the list of countries in which U.S. persons are prohibited from supporting military-intelligence end uses or end users, even when such support does not involve items subject to the EAR. These updates serve to impose additional restrictions on exports to Burma in response to the military coup and escalating violence.

*For more information: Jeff Snyder, Brian McGrath*

---

## FinCEN Seeks Comment on Beneficial Ownership Reporting Requirements

On April 5, 2021, the Financial Crimes Enforcement Network (FinCEN) published an [Advance Notice of Proposed Rulemaking](#) (ANPRM) in the Federal Register seeking public comment on 48 questions with respect to the implementation of the beneficial ownership reporting requirements in the Corporate Transparency Act (CTA) and the implementation of the related database maintenance use and disclosure provisions. The deadline for comment is May 5, 2021.

As we previously [reported](#), the CTA was enacted on January 1, 2021 as part of the 2021 National Defense Authorization Act and under the scope of the Anti-Money Laundering Act of 2020, to combat money laundering and the financing of terrorism and related crimes, including by discouraging the use of shell companies by money launderers and other illicit actors. The CTA imposes requirements on reporting companies—corporations, LLCs and other similar entities—to submit personal identifying information about their beneficial owners and applicants. FinCEN must promulgate rules implementing the reporting requirements by January 1, 2022.

FinCEN seeks input on the procedures by which companies will report beneficial ownership information and on FinCEN's maintenance and disclosure of reported information. The 48 questions posed by FinCEN fall into the following five categories: 1) definitions, 2) reporting of beneficial ownership information, 3) FinCEN identifier, 4) security and use of beneficial ownership and applicant information," and 5) cost, process, outreach and partnership.

For more on the key areas of inquiry, [please click here](#).

*For more information: Caroline Brown, Carlton Greene, Rebecca Ricigliano, Nicole Succar*

---

## Highlights from USTR's Annual Special 301 Report for 2021 Protection of Intellectual Property Rights

On April 30, 2021, the United States Trade Representative (USTR) released its annual [Special 301 Report](#) for 2021 on the adequacy and effectiveness of trading partners' protection of intellectual property rights.

### 301 Report Highlights

- The Report's Executive Summary stated that a priority of the Biden administration is to craft trade policy in service of America's workers, including those in innovation-driven export industries. The Report therefore serves a critical function by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets and by promoting job creation, economic development, and many other benefits that effective IP protection and enforcement support.
- USTR reviewed more than one hundred trading partners for the report, and placed thirty-two of them on the Priority Watch List or Watch List, listed below:



- **Priority Watchlist:** Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine, Venezuela
- **Watch List:** Algeria, Barbados, Bolivia, Canada, Colombia, Dominican Republic, Ecuador, Egypt, Guatemala, Kuwait, Lebanon, Mexico, Pakistan, Paraguay, Peru, Romania, Thailand, Trinidad and Tobago, Turkey, Turkmenistan, Uzbekistan, Vietnam
- While the Administration continues to conduct a full review of U.S.-China relations, including trade issues, the USTR fact sheet states that recent steps to reform IP-related laws and regulations “require effective implementation and fall short of the full range of fundamental changes needed to improve the IP landscape in China.” USTR also notes the large quantities of counterfeit supplies related to COVID-19 that originated from China.
- Given the importance of innovation and IP in developing the advances necessary for fighting the ongoing COVID-19 crisis, the Biden Administration is committed to trade policies that seek to save lives in this pandemic and ensure preparedness for the next one. USTR emphasizes that the U.S. “respects a trading partner’s right to protect public health and, in particular, to promote access to medicines for all” as affirmed in the Doha Declaration on the TRIPS Agreement and Public Health, while signaling that it “continues to seek adequate and effective protection for pharmaceutical and other health-related IP around the world to ensure robust American innovation in these critical industries to fight not only the current, but also future pandemics.”
- In light of the Administration’s emphasis on environmental issues, the report notes that “strong IP protection and enforcement are essential to promoting investment in innovation in the environmental sector...IP provides incentives for research and development in this important sector, including through university research.” This appears to be an area that will be developed out further in the future.

*For more information: Shelley Su, Joshua Boswell, Evan Yu*

---

### **Customs Rulings of the Week**

- [Classification of Tailgate Game Combo](#)
- [Classification of Shoe Sanitizing Mat](#)
- [Classification of Sidestream Mask and Tubing \(Disposable\) Kit](#)

*For more information, contact: Frances Hadfield, Rebecca Toro Condori*

---

### **Crowell & Moring Speaks**

[David Stepp](#) was featured in an April 12<sup>th</sup> *Law360* article titled, “[USMCA’s Trade Rules are Keeping Carmakers on Their Toes.](#)”

Jana del-Cerro co-taught an ACI International Traffic in Arms Regulations (ITAR) workshop on April 13<sup>th</sup>. Her topic was “Foreign, Dual, and Third Country Nationals, and Technology Transfers.”

Dan Cannistra was featured in an April 15<sup>th</sup> *S&P Global* article titled, “Good Reviews Buoy Odds Biden Keeps US Steel, Aluminum Tariffs Set By Trump.”

Crowell & Moring Partners Caroline Brown, Addie Cliffe, Jana del-Cerro, and Alan W.H. Gourley authored an April 28<sup>th</sup> article in *Westlaw* titled, “Commerce publishes ANPRM seeking comment on the licensing process for ICTS transactions.”

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Jeffrey L. Snyder**

Partner – Washington, D.C.

Phone: +1.202.624.2790

Email: [jsnyder@crowell.com](mailto:jsnyder@crowell.com)

**Edward Goetz**

Manager, International Trade Services – Washington, D.C.

Phone: +1.202.508.8968

Email: [egoetz@crowell.com](mailto:egoetz@crowell.com)