

CLIENT ALERT

The Month in International Trade – December 2021

January 4, 2022

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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

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, Ru Xiao-Graham, 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, Ru Xiao-Graham, Sam Boone, Clayton Kaier

CBP Issues Liquidation Extension Request and Protest Guidance for Pending Section 301 Litigation

On December 2, 2021, U.S. Customs and Border Patrol (CBP) issued CSMS #50264295 providing guidance on requests for liquidation extensions and protest processing related to pending litigation in the Court of International Trade (CIT) challenging the lawfulness of Section 301 List 3 and/or List 4a duties on goods from China.

Regarding requests for liquidation extensions, CBP noted that it will “deny requests filed under 19 U.S.C. § 1504(b)(2) for an extension of time for liquidation of entries based solely on the pending CIT litigation.” As noted under 19 U.S.C. § 1504(b)(2), the Secretary of the Treasury may extend the liquidation period of an entry if “the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.” As determined by CBP, the pending litigation in the CIT regarding the Section 301 duties, as well as any other case stayed under this lead case, will not be considered sufficient enough to show good cause for extension.

CBP also provided additional guidance with regards to protest processing. The agency noted that, in an effort to facilitate administrative processing, it would designate these specific protests in “Suspended” status under the “Other” category. This is due to the fact that the agency will not be acting on these protests at the time. Notably, CBP stated that protests listed under the “Other” category are not acknowledged as valid and the decision to categorize them as such is “merely an administrative convenience for CBP.” The guidance issued under CSMS #50264295 does not pertain to any entries filed under List 1 (noted by subheading 9903.88.01), List 2 (noted by subheading 9903.88.02), submissions regarding exclusions requests submitted to the U.S. Trade Representative, and/or any submissions not contesting the lawfulness and validity of List 3 and/or List 4a Section 301 duties.

The CBP guidance can be found [here](#).

For more information, contact: Aaron Marx, Frances Hadfield, Martín Yerovi

Uyghur Forced Labor Prevention Act Signed into Law

On December 23, 2021, President Joe Biden signed into law the Uyghur Forced Labor Prevention Act (UFLPA). This action by President Biden comes a week after the law passed both chambers of Congress. After stalling in the Senate last year, an updated version of the bill was reintroduced on January 27, 2021 by Senator Marco Rubio (R-FL) and passed the Senate on July 14. The House version of the bill was introduced by Congressman James McGovern (D-MA) on February 18, 2021 and passed on December 8. Congressman McGovern and Senator Rubio reconciled the bill and delivered it to each respective chamber a week later. The reconciled version then passed the House and the Senate through unanimous decisions on December 14 and December 16, respectively.

The Uyghur Forced Labor Prevention Act instructs U.S. Customs and Border Protection (CBP) under Section 3 of the Act to adopt a rebuttable presumption that goods mined, produced, or manufactured in the Xinjiang Uyghur Autonomous Region (XUAR) or

by certain entities are prohibited from being imported into the U.S. An overview of the prohibitions as set forth by the UFLPA is provided below:

Prohibitions per Section 3 of the Uyghur Forced Labor Prevention Act	
<p>Section 3(a) – CBP shall take a rebuttable presumption that the import prohibition applies to goods mined, produced, or manufactured in the XUAR or by certain entities.</p>	<p>Scope – Under Section 3(a), any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the XUAR and by the following are prohibited and not entitled to entry:</p> <ul style="list-style-type: none"> • Entities in the XUAR that use forced labor; • Entities working with the government of the XUAR to relocate Uyghurs, Kazakhs, Kyrgyz, and members of other persecuted groups in the People’s Republic of China (PRC) out of the XUAR; • Entities that export products that used forced labor from the PRC to the U.S.; and • Entities that source from the XUAR or from the Xinjiang Production and Construction Corps (XPCC) or from persons working with the government of the XUAR (1) for the purposes of the “poverty alleviation” or (2) “pairing-assistance” programs or (3) similar government labor schemes that use forced labor.
<p>Section 3(b) – CBP shall apply the presumption under Section 3, subsection (a), unless the importer of record has fully complied with CBP guidance and CBP finds that there is clear evidence that the items were not partly or wholly produced using forced labor.</p>	<p>Scope –Section 3(b) provides exceptions to Section 3(a), where the importer of record must:</p> <ul style="list-style-type: none"> • Fully comply with the guidance set forth in the Act, which includes but is not limited to (1) proper due diligence, (2) effective supply chain tracing, and (3) supply chain management measures to ensure no

	<p>imports were produced using forced labor from the PRC; and</p> <ul style="list-style-type: none"> • Completely and substantively cooperate with CBP. <p>In addition, CBP must find “clear and convincing evidence” that the items were NOT made wholly and in part by forced labor. Under the following Section 3(c), CBP must provide a public report to Congress no later than 30 days after making a determination of an exception.</p>
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In addition, the Uyghur Forced Labor Prevention Act has assigned the Forced Labor Enforcement Task Force to publish an annual strategy report that includes a guidance to importers. The Forced Labor Enforcement Task Force was established under the United States-Mexico-Canada Agreement and is chaired by the Secretary of Homeland Security and composed of representatives from the Department of State, the Department of the Treasury, the Department of Justice, the Department of Labor, and the Office of the U.S. Trade Representative. Notable deadlines, including those in relation to the Forced Labor Enforcement Task Force’s activities, are as follows:

Notable Deadlines Set Forth in the Uyghur Forced Labor Prevention Act
<p>Sections 2(a)(1) and 2(a)(2) – no later than 30 days after the enactment of the Act (no later than January 22, 2022), the Forced Labor Enforcement Task Force, established under Section 741 of the USMCA, will publish a notice seeking comments within 45 days soliciting public comments on how to ensure items wholly or partly produced with forced labor in the PRC, and especially the XUAR, are not imported into the United States</p>
<p>Section 2(b)(1) – no later than 45 days after the close of the period to submit comments, the Forced Labor Enforcement Task Force shall conduct a public hearing inviting witnesses to testify with respect to the use of forced labor in the PRC</p>
<p>Section 2(e)(1) – no later than 180 days after the date of enactment of the Act (no later than June 21, 2022), and annually thereafter, the Forced Labor Enforcement Task Force shall submit to Congress a strategy report that includes:</p> <ul style="list-style-type: none"> • A risk assessment of importing goods that use forced labor in the PRC and the XUAR • Lists of entities that fall within the scope of the prohibitions and a list of high priority sectors • Tracing recommendations for CBP and recommendations on how CBP should use technologies to accurately identify and trace goods made in the XUAR entering U.S. ports

- Guidance to importers with respect to due diligence, supply chain tracing, and supply chain management measures as well as the type, nature, and extent of evidence that demonstrates that goods from the PRC, and especially the XUAR, were not produced using forced labor

Section 3(e) – All of Section (3) will take effect 180 days after the date of enactment of the Act (**beginning June 21, 2022**)

Chinese officials have been outspoken against the passage of the Uyghur Forced Labor Prevention Act. On December 15 – one day before the Act passed through the Senate – Chinese Foreign Ministry spokesperson Zhao Lijian announced that the Act was an attempt by Congress to interfere with China’s internal affairs and that China will retaliate. Shortly after the Act gained passage through Congress, the Chinese government then announced that it would be sanctioning four members of the U.S. government’s Commission on International Freedom.

The Uyghur Forced Labor Prevention Act is available [here](#).

For more information on the UFLPA and actions addressing human rights and forced labor abuses, contact our team.

For more information: Jeff Snyder, Jackson Pai, Martin Yerovi

Customs and Border Protection Issues Third Withhold Release Order (WRO) On Disposable Gloves from Malaysia

On December 20, 2021, U.S. Customs and Border Protection (CBP) issued a [Withhold Release Order \(WRO\)](#) against disposable gloves from Malaysia produced by Brightway Holdings Sdn Bhd, Laglove (M) Sdn Bhd, and Biopro (M) Sdn Bhd (collectively, Brightway Group). CBP issued this latest WRO based on information that indicated that the entities used forced labor in their manufacturing operations. CBP specifically identified 10 of [11 possible indicators of forced labor](#) from the International Labour Organization’s (ILO’s) list in its investigation into Brightway Group.

Notably, this is CBP’s third WRO against disposable gloves produced in Malaysia this year. On [October 21](#), CBP issued a WRO against disposable gloves produced by Supermax Corporation Bhd.’s wholly-owned subsidiaries, Maxter Glove Manufacturing Sdn. Bhd., Maxwell Glove Manufacturing Bhd., and Supermax Glove Manufacturing. Later, on [November 4](#), another WRO was issued against disposable gloves produced by Smart Glove Corporation Sdn Bhd, GX Corporation Sdn Bhd, GX3 Specialty Plant, Sigma Glove Industries, and Platinum Glove Industries Sdn Bhd. In both of those cases at least 7 of 11 possible indicators of forced labor were identified by CBP. In total CBP has now issued 8 WROs in 2021 – compared to 13 in 2020.

WROs are issued by the U.S. government when information reasonably but not conclusively indicates goods were made in whole or in part using forced labor. Merchandise detained under a WRO order must be exported immediately or a substantial submission made that provides specific information showing that the goods were not made with forced labor. To obtain a release of any shipment that has been subjected to a WRO, a certificate of origin along with this detailed statement regarding the merchandise’s production and supply chain origin must be submitted to CBP. CBP makes a determination on a case-by-case basis.

The Press Release from CBP is available [here](#).

For more information: John Brew, Frances Hadfield, Martín Yerovi

Treasury’s OFAC Adds Eight Chinese Companies to its Non-SDN Chinese Military-Industrial Complex Companies List for Alleged Involvement in Xinjiang Abuses

On December 16, 2021, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) added eight Chinese entities to its Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) list for “actively support[ing] the biometric surveillance and tracking of ethnic and religious minorities in China, particularly the predominantly Muslim Uyghur minority in Xinjiang.” As such, U.S. persons will be prohibited from purchasing and/or selling certain publicly traded securities connected with these eight entities. The eight entities include:

- Cloudwalk Technology Co., Ltd.;
- Dawning Information Industry Co., Ltd.;
- Leon Technology Company Limited;
- Megvii Technology Limited;
- Netposa Technologies Limited;
- SZ DJI Technology Co., Ltd.;
- Xiamen Meiya Pico Information Co., Ltd.; and
- Yitu Limited.

Most notable is SZ DJI Technology (DJI), which is the world’s largest drone manufacturer. As noted by OFAC, DJI was added to the list because the company has “provided drones to the Xinjiang Public Security Bureau, which are used to surveil Uyghurs in Xinjiang. The Xinjiang Public Security Bureau was previously [designated](#) in July 2020, pursuant to E.O. 13818, for being a foreign person responsible for, or complicit in, or that has directly or indirectly engaged in, serious human rights abuse.”

DJI is also currently on the Department of Commerce’s Bureau of Industry and Security’s (BIS’s) [Entity List](#). The company was added with three other Chinese companies on December 22, 2020 via [85 FR 83416](#) after BIS identified that the companies had “enabled wide-scale human rights abuses within China through abusive genetic collection and analysis or high-technology surveillance, and/or facilitated the export of items by China that aid repressive regimes around the world.”

The press release by OFAC announcing the addition of the eight companies is available [here](#).

For more information: Jeff Snyder, Martín Yerovi

U.S., EU, and UK Escalate Belarus Sanctions

On December 2, 2021, the United States, the European Union (“EU”), the United Kingdom (“UK”) and other allies took coordinated action to designate various individuals, entities, and aircraft connected to human rights abuses by Belarussian President Alexander Lukashenko and his regime. This builds on asset freezing actions by the U.S., UK, EU, and Canada earlier this year (which we discuss [here](#)).

[Click here to continue reading the full version of this alert.](#)

For more information: Carlton Greene, Michelle Linderman, Nicole Succar, Anand Sithian, Dj Wolff, Caroline Brown.

BIS and DDTC Add Cambodia To Their ‘Naughty’ List

On December 9, 2021, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) and the U.S. Department of State’s Directorate of Defense Trade Controls (DDTC) both issued final rules adding export restrictions on Cambodia.

BIS amended the Export Administration Regulations (EAR) to implement more restrictive export controls for Cambodia to ensure that items subject to the EAR are not available to Cambodia’s military and military intelligence services without prior review by the U.S. Government, and also added Cambodia to the list of countries subject to a more stringent review policy for license applications involving national security-controlled items.

Specifically, BIS made four changes to the EAR restricting exports to Cambodia as follows:

- (1) updating the controls applicable to Cambodia related to National Security-controlled items;
- (2) making Cambodia subject to the Military End User (MEU) list;
- (3) making Cambodia subject to the Military Intelligence End Use List (MIEU) list; and
- (4) adding Cambodia to Country Group D:5.

DDTC amended § 126.1(d)(2) of the International Traffic in Arms Regulations (ITAR) to add Cambodia to the list of proscribed countries. This change institutes a policy of denial to licenses and approvals for exports of defense articles or defense services to Cambodia, see additional information at § 126.1(o).

These country policy amendments were made in response to serious concerns about the deepening influence of China’s military presence in Cambodia and a concern that this presence presents a threat to regional security. Additionally, the changes were made in response to credible evidence of growing corruption and human rights abuses by the Government of Cambodia.

The Federal Register notices are available [here](#) and [here](#).

For more information: Jeff Snyder, Chandler Leonard, Rachel Schumacher.

Senate Confirms Chris Magnus As Customs and Border Protection's Next Commissioner

On December 7, 2021, the Senate confirmed Tucson, Arizona police chief Chris Magnus as the next U.S. Customs and Border Protection (CBP) commissioner with a vote of 50-47 in favor of Magnus. Magnus is CBP's first Senate-confirmed leader since 2019 – with his predecessor Mark Morgan serving until January 2021 and Troy Miller currently serving as acting commissioner. As commissioner, Magnus will oversee the 60,000-person agency and all of its work related to trade, border security, and travel. Previously, he served as Tucson's police chief and also has experience working for police departments in Michigan, North Dakota, and California.

Forced labor continues to be an issue of particular interest for both the Senate and Magnus. Senator Ron Wyden (D-OR), chairman of the Senate Finance Committee, stated on October 19, 2021 in the hearing on the nomination of Chris Magnus that the use of forced labor in China and elsewhere is “one such issue that’s posing a serious danger to our country’s values and American jobs.” Similarly, in that same hearing, Magnus also addressed forced labor and transparency as a top issue, committing CBP to providing “public summary data describing the number of allegations received, open investigations, suspended or inactive investigations, and other relevant information on a regular basis,” per the Government Accountability Office’s recommendation.

Another major topic of concern for Magnus is the current global supply chain blockage. In his October hearing, Magnus stated that he would aim to “ensure that {CBP} has the appropriate staffing at ports, and that CBP is working closely with port authorities, carriers, brokers, labor groups, and other key partners in the trade community to meet the increasing cargo screening and clearance demands” in order to tackle the supply chain crisis. In addition, he also stressed that he would prioritize the continued modernization of technology resources, including the Automated Commercial Environment (ACE) system used by CBP and others in the trade sphere.

The on the record questions and answers for the hearing on the nomination of Chris Magnus from October 19 is available here.

For more information: John Brew, Frances Hadfield, Martín Yerovi.

Customs Rulings of The Week

- [Classification of An Artificial Pumpkin Decoration](#)

For more information, contact: Frances Hadfield and Martín Yerovi.

Crowell & Moring Speaks

December 21, 2021 – Partner [Evan Chuck](#), leader of the firm’s Asia practice, speaks with *The American Lawyer** regarding the uncertainty facing U.S.-based law firms with a China presence as relations between the U.S. and China have spiraled downward

recently, and the shift from discussions based in legal rules to more politically sensitive discussions such as sanctions and export controls ([“Risky Business: Why US Firms Are Pulling Up Stakes in China”](#)). *subscription required

December 20, 2021 – *Law360* quotes [Ambassador Robert Holleyman](#), president and CEO of Crowell & Moring International and former Deputy U.S. Trade Representative, regarding a newly created Trade and Technology Council that will give the U.S. and EU a valuable tool for building a more proactive trade policy, rather than a series of responsive solutions to bilateral irritants ([“Looking Back at a Transitional Year in US Trade Policy”](#)).

December 10, 2021 – *Law360* speaks with partner [Caroline Brown](#), a former attorney at the DOJ’s National Security Division, regarding a renowned Harvard University nanotechnology professor who will be standing trial for allegedly hiding his ties to the Chinese government. Brown says this case has highlighted criticism of the mission and intent of the DOJ’s China Initiative and the stakes are high ([“DOJ’s China Initiative On Trial As Harvard Prof. Faces Jury”](#)).

December 9, 2021 – Partner [Dj Wolff](#) presented on International Community Sanctions against North Korea to a virtual conference hosted by SONOSA, a public institution within the Ministry of Unification of the Republic of Korea ([click here to watch](#)).

December 3, 2021 – *Law360* quotes [Ambassador Robert Holleyman](#), president and CEO of Crowell & Moring International and former Deputy U.S. Trade Representative, regarding the WTO’s recent deal to soften the regulation of service providers in foreign countries. Holleyman says the deal provides real value to the U.S. services industry by providing greater transparency and reducing friction points for services exports and foreign sales ([“Trade Leaders See Proof of Concept in WTO Services Pact”](#)).

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

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