

Client Alert

The Month in International Trade – May 2021

June 7, 2021

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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

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

Proposed Amendments to Trade Act of 2021 to Renew GSP, MTB, and Section 301 Exclusion Process

On May 20, 2021, Senate Finance Committee ranking member Mike Crapo (R-ID) introduced amendments to the Trade Act of 2021. The amendments include language renewing the Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB) as well as provision to renew the Section 301 product exclusion process. Notably, the amendments seek renewal of the GSP and MTB in the same fashion as Senate Finance Committee Chairman Ron Wyden's legislation, the Trade Preferences and American Manufacturing Competitiveness Act of 2021.

Key elements of the amendments include:

- Bolster efforts to prohibit goods made with forced labor from reaching the United States by strengthening Customs and Border Protection (CBP) enforcement efforts and expanding the Seafood Import Monitoring Program (SIMP).
- Modernize trade enforcement tools provided to U.S. Trade Representative (USTR) to address anti-competitive digital trade and censorship practices like China’s Great Firewall, including requiring USTR to identify trading partners that disrupt digital trade; allowing for the investigation of unreasonable digital trade measures detrimental to Americans; and expedited review of discriminatory digital trade proposals.
- Review of trade in essential supplies, including the sources of imports and an analysis of any vulnerabilities, as well as additional tools for businesses in the United States seeking reliable suppliers.
- Strengthen oversight over U.S. trade policy by providing an Inspector General to USTR and by ensuring the application of Section 301 tariffs related to China are calibrated to provide leverage, while ensuring U.S. competitiveness and manufacturing.
- Reauthorization of the Miscellaneous Tariff Bill (MTB) and an improved Generalized System of Preferences (GSP) that will promote human rights, the environment, women’s economic empowerment, the rule of law and digital trade.

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

For more information on the Generalized System of Preferences or Miscellaneous Tariff Bill please contact our team and see previous posts below.

[Generalized System of Preferences \(GSP\) Archives](#) | [International Trade Law \(cmtradelaw.com\)](#)

[Miscellaneous Tariff Bill Archives](#) | [International Trade Law \(cmtradelaw.com\)](#)

For more information: John Brew, Frances Hadfield, Clayton Kaier

Customs and Border Patrol (CBP) Issues Withhold Release Order (WRO) Against Chinese Fishing Vessels

On May 28, 2020, U.S. Customs and Border Protection (CBP) issued a [Withhold Release Order \(WRO\)](#) against Chinese fishing fleet Dalian Ocean Fishing Co., Ltd. (Dalian) on the basis of forced labor in the entity’s operations. The WRO against Dalian comes amid earlier WROs against other vessels in the distant water fishing industry—such as the Lien Yi Hsing No.12, the Da Wang, and the Yu Long No.2. Notably, while these previous mandates targeted specific vessels, this is the first WRO to be issued against an entire fishing fleet. The WRO instructs CBP personnel at all U.S. ports of entry to detain all tuna, swordfish, and other seafood harvested by vessels operated or owned by Dalian.

CBP has indicated that Dalian Ocean Fishing Co., Ltd. is a major supplier to a seafood distributor. During a press briefing with Mr. Troy A. Miller, the Senior Official Performing the Duties of the Commissioner (SOPDOC) for CBP today (May 28), he indicated that this WRO also obviously covered downstream products from the fleet such as canned tuna and pet food. Although the United States appears to be a lower priority market for Dalian, CBP data indicate that more than \$2.9 million of the company's seafood entered the United States between January 1, 2019 and April 30, 2021. This figure is broken down by calendar year in the table below.

Calendar Year	Import Value
2019	\$1,819,369
2020	\$320,808
2021 (thru April 30)	\$763,115

The Agency's Press Release identified all 11 indicators of forced labor, which include:

- Physical Violence
- Restriction of movement
- Isolation
- Intimidation and threats
- Withholding of wages
- Abusive living and working conditions
- Abuse of vulnerability
- Deception
- Physical and sexual violence
- Intimidation and threats
- Excessive overtime.

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 is available [here](#).

For more information on actions addressing human rights and forced labor abuses, contact our team and see previous posts below.

<https://www.cmtradelaw.com/category/forced-labor-uk-modern-slavery-act/>

<https://www.cmtradelaw.com/category/xinjiang/>

For more information: Frances Hadfield

CBP Seizes Millions of Disposable Gloves Following Forced Labor Finding Against Top Glove Corporation

On May 4, 2021, U.S. Customs and Border Protection (CBP) announced the seizure of almost 4 million nitrile disposable gloves valued at over half a million dollars. The seizure was made following the receipt of information leading to a March 29, 2021, forced labor finding against Malaysia-based Top Glove Corporation Bhd (Top Glove). The finding determined that disposable gloves produced by Top Glove have been mined, produced, or manufactured with the use of convict, forced, or indentured labor.

The Agency's Press Release included 4 out of the 11 possible forced labor indicators:

- Debt bondage
- Excessive Overtime
- Abusive living and working conditions
- Retention of Identify Documents

Additional forced labor indicators include: Abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, and withholding of wages

Accordingly, Port officials were given the authority to seize gloves under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 3926.20.1020, 4015.11.0150, 4015.19.0510, 4015.19.0550, 4015.19.1010, 4015.19.1050, and 4015.19.5000 made in whole or in part by Top Glove.

Diann Rodriguez, Area Port Director-Cleveland stated that the "seizure sends a strong message that CBP will not tolerate imports made by forced labor, which is a form of modern slavery that hurts vulnerable workers and threatens our economy."

A copy of the press release is available [here](#).

For more information on actions addressing human rights and forced labor abuses, contact our team and see previous posts below.

[Xinjiang Archives | International Trade Law \(cmtradelaw.com\)](#)

[Forced Labor/U.K. Modern Slavery Act Archives | International Trade Law \(cmtradelaw.com\)](#)

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

Customs Denies Protest and Excludes Shipment of Cotton Garments for Violation of Xinjiang Withhold Release Order (WRO)

On May 10, 2021, U.S. Customs and Border Protection's (CBP) Office of Regulations and Rulings issued a denial of a protest in response to a request for an Application for Further Review (AFR) concerning a shipment of cotton garments that were suspected of violating CBP's Xinjiang Production and Construction Corps ("XPCC") Withhold Release Order (WRO). The WRO prohibits the importation of all cotton and cotton products produced by the XPCC, and its subordinate and affiliated entities. This WRO was issued due to rising concerns over reports of forced labor in Xinjiang.

In response to CBP's April 9, 2021 exclusion letter, the importer filed the AFR, despite the expiration of the 3-month regulatory deadline. CBP noted that although the importer provided evidence relating to the sale, acquisition, source location, transportation, and delivery of the raw cotton used to produce the subject cotton garments in their March 30, 2021 response, they did not provide any probative evidence to establish that the imported cotton garments were not produced in part by forced labor by the XPCC. The importer had argued that because the raw cotton used to produce the subject cotton garments did not originate from XPCC or, for that matter, in China, they were not subject to the WRO, and should therefore be released. Specifically, the importer argued that they had provided evidence to establish that the raw cotton used to produce the subject cotton garments was sourced from entities outside of China, specifically three (3) cotton suppliers in Australia, three (3) cotton suppliers in the United States, and one (1) cotton supplier in Brazil; however, the importer "has not provided substantial evidence to establish that the entities within the XPCC that processed that cotton into the subject goods did so without the use of forced labor."

The ruling explained that in a press release of December 2, 2020, the U.S. Department of Homeland Security announced that CBP personnel at all U.S. ports of entry "will detain shipments containing cotton and cotton products originating from the Xinjiang Production and Construction Corps (XPCC)." Accordingly, the shipment of cotton garments were excluded for violating the XPCC WRO and the subject goods were deemed inadmissible.

Crowell & Moring has been successful in modifying WRO orders and obtaining the release of goods subject to a WRO. For more information on actions addressing human rights and forced labor abuses, contact our team and see previous posts below.

[Xinjiang Archives | International Trade Law \(cmtradelaw.com\)](#)

[Forced Labor/U.K. Modern Slavery Act Archives | International Trade Law \(cmtradelaw.com\)](#)

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

U.S. Trade Representative (USTR) Proposes Forced Labor Provisions in WTO Fisheries Subsidies Negotiations

On May 26, 2021, the United States Trade Representative (USTR) proposed new measures to address forced labor on fishing vessels as part of the World Trade Organization's (WTO) agreement on curbing harmful fisheries subsidies. The negotiations, which began last year were delayed due to COVID-19. Negotiations restarted in April of 2021 with WTO Director-General Ngozi Okonjo-Iweala calling on members to reach an agreement by July 2021. The proposed amendments are outlined below and update the May 2021 negotiating text which has been publicly released.

- Article 3.1: No Member shall grant or maintain any subsidy to a vessel [or operator] engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of such fishing.
- The following text is proposed for inclusion in any preamble to the agreement: Recognizing that effective disciplines on and greater transparency of fisheries subsidies can contribute to Members' efforts to prevent and halt the use of forced labor on fishing vessels;
- The following text is proposed for inclusion as a chapeau to Article 3 concerning IUU fishing: Members recognize that the use of forced labor on fishing vessels is often associated with IUU fishing, and therefore that effective disciplines on subsidies to vessels and operators engaged in IUU fishing or fishing related activities in support of such fishing can contribute to Members' efforts to eradicate forced labor on fishing vessels.
- The following text is therefore proposed for inclusion as Article 8.2(b):

8.2. Each Member shall notify the [Committee] in writing on an annual basis of:

(a) any list of vessels and operators that it has determined as having been engaged in IUU fishing; and

(b) any vessels and operators for which the Member has information that reasonably indicates the use of forced labor, along with relevant information to the extent possible; and

(c) a list of any fisheries access agreements in force with another government or governmental authority, and such notification shall consist of the titles of the agreements and a list of their parties.

For more information on actions addressing human rights and forced labor abuses, contact our team and see previous posts below.

<https://www.cmtradelaw.com/category/forced-labor-uk-modern-slavery-act/>

<https://www.cmtradelaw.com/category/xinjiang/>

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

Importers May Consider De Minimis Value Shipments for Single Importations of \$800 or Less

A *de minimis* shipment, also called a Section 321 shipment, allows for goods valued at \$800 US Dollars or less to enter duty-free into the United States. Section 321 (19 U.S.C. 1321) is the statute that describes *de minimis*. With the passage of the [Trade Facilitation and Trade Enforcement Act \(TFTEA\)](#) (2016), the value amount increased from \$200 to \$800. Significantly, importers are permitted to enter these *de minimis* value shipments of goods without making a formal entry with Customs, such as on a Form 7501. This regulation provides a great option for importers to save money and time. However there are restrictions (listed below):

Section 321 Restrictions

- Goods needing inspection as a condition of release (regardless of value)
- Quota-class merchandise
- Merchandise subject to Anti-Dumping Duty (ADD) and/or Countervailing Duties (CVD)
- Products regulated by the following agencies:
 1. U.S. Department of Agriculture (USDA)
 2. Food Safety Inspection Service (FSIS)
 3. National Highway Transport and Safety Administration (NHTSA)
 4. Consumer Product Safety Commission (CPSA)
 5. Food and Drug Administration (FDA) *

*However, as of July 2017, the FDA provided exemptions for this restriction for the following goods:

- Food (excluding ackees, puffer fish, raw clams, raw oysters, raw mussels, and foods packed in airtight containers stored at room temperature)
- Biological samples for laboratory testing
- Cosmetics
- Radiation-emitting non-medical devices
- Dinnerware

Further FDA guidance is available [here](#):

Potential Import Compliance Pitfalls

Although the Section 321 shipment option reduces the amount of paperwork required for low-value shipments, it does create some potential compliance pitfalls. Notably, the single transaction requirement. The Section 321 benefit applies only to shipments of articles imported by one person (e.g., a company) **on one day**. As a consequence, importers can only take advantage of the Section 321 benefit **on one single transaction per day**.

Often, carriers may elect to make the Section 321 claim to expedite the clearance process. An importer's carrier will need to provide the section 321 goods details and paperwork to CBP officials upon request. Because it is not

a formal entry, no entry number is provided for section 321 shipments. However, an importer may make a self-filing.

Importers may choose to file informal entries without using Customs brokers.

Once the carrier notifies the importer of the shipment's arrival date, the importer must personally inform the entry port's Customs office that they will file an informal entry to process and pick up the merchandise.

Importers making self-filings will need invoices, bills of sale and valid identification if they want to claim the goods personally at the port.

If the merchandise is arriving at a distant port, and the importer has not arranged for freight or courier service, the importer can authorize another person to clear the goods on their behalf by writing a letter to the CBP Port Director. The letter must include sufficient details about the shipment proving that the rightful owners of the merchandise. Any shipments that are not picked up within 15 days of arrival will be sent to a warehouse and the recipient will be responsible for the storage fees. Goods unclaimed after six months in the warehouse may be sold at auctions.

How to Declare a Section 321 Shipment

1. Within the ACE eManifest select the shipment type 'section 321.'
2. Enter a shipment control number for the goods.
3. Include goods details including shipper, consignee, value, commodity, and country of origin.
4. Submit the eManifest to CBP

Avoiding CBP Penalties and Problems

In order to avoid penalties as a result of multiple transactions per day, importers may wish to consider controlling their shipment filings in the following manner:

- Identify the particular shipment the Section 321 claim will be used each day.
- Use a customs broker to ensure consistent filing of import/export transactions.
- Communicate regularly with the logistics team including carriers, freight forwarders, and customs brokers.

If you have any questions regarding these *de minimis* shipments or are interested in developing a program to take advantage of this benefit please contact our team.

For more information: John Brew, Frances Hadfield, Maria Vanikiotis, Rebecca Toro Condori

China Releases Guidelines on How to Develop Export Control Compliance Programs

On April 28, 2021, the Ministry of Commerce of China (“MOFCOM”) released an updated version of Guiding Opinion of the Ministry of Commerce on the Establishment of Internal Compliance Mechanism for Export Controls on Exporters of Dual-Use Items (“Order No. 10”) which was first published in August 2007 (“Order No. 69”). As an implementing rule of the Export Control Law (“ECL”), Order No. 10 aims to provide companies with “guidance and reference” in their establishment or enhancement of internal export compliance programs (“ECP”) to promote compliance under China’s new export control regime.

[Please click here to read the full alert.](#)

For more information: Evan Chuck, Jeff Snyder, Zhongdong Zhang, Zhiwei Chen

EU Suspends Increase in Steel and Aluminum Retaliatory Tariffs in Favor of Excess Capacity Dialogue

On May 17, 2021, European Commission Executive Vice President Valdis Dombrovskis [announced](#) that the European Union will temporarily suspend the increase of its rebalancing measures related to the United States’ Section 232 steel and aluminum tariffs. The [tariffs](#), previously scheduled to go into effect on June 1, 2021, would increase duties on U.S. products including whiskey, motorcycles, and power boats. The announcement was accompanied by a [joint statement](#) by U.S. Trade Representative Katherine Tai, U.S. Secretary of Commerce Gina M. Raimondo, and European Commission Executive Vice President Valdis Dombrovskis outlining the beginning of talks to address global steel and aluminum excess capacity.

The suspension follows the Biden Administration’s February 2021 decision to pause tariff increases on the EU related to the ongoing aircraft subsidy dispute and marks a growing trade détente between the U.S. and EU.

For more information on Section 232, U.S.-EU Trade, and WTO developments please contact our team and see previous posts below.

[Section 232 Posts](#)

[WTO Posts](#)

[EU Retaliatory Tariff Posts](#)

For more information: John Brew, Frances Hadfield, Clayton Kaier

Department of Commerce Issues First Analysis of Currency Undervaluation as a Countervailable Subsidy

On May 24, 2021, The Department of Commerce (Commerce) announced its affirmative final determinations in the antidumping duty (AD) investigation and countervailing duty (CVD) investigation of passenger vehicle and light truck tires (PVLTL). Notably, in the CVD investigation, Commerce found that exporters from Vietnam received subsidies including through undervalued currency exchange rates. This is the first time that the Currency Rule was used in an affirmative final determination and only the second time the rule has been used in a CVD investigation.

The determination follows an August 2020 decision by Commerce to accepted evidence related to currency undervaluation under regulations from a valuation assessment conducted by the Treasury Department.

The final decision fact sheet is available here.

For more information on the Currency Rule please reach out to our team and see previous posts below.

<https://www.cmtradelaw.com/2020/10/ustr-launches-section-301-investigation-targeting-imports-from-vietnam/>

For more information: John Brew, Alex Schaefer, Frances Hadfield, Clayton Kaier

European Commission Proposal on Foreign Subsidies: Towards a Globalization of EU State Aid Control?

On May 5, 2021, the European Commission unveiled a proposal for a Regulation “on foreign subsidies distorting the internal market.” This legislative initiative is aimed at remedying potential distortions of competition in the EU caused by companies receiving subsidies from non-EU governments. The proposal provides for three new regulatory tools, i.e., a mandatory filing obligation for certain mergers backed by foreign subsidies, a requirement to notify foreign financial contributions when submitting bids for public contracts over a certain value, and a general market investigation tool. The proposed scrutiny of foreign subsidies would complement existing State aid rules, which only apply to subsidies granted by EU Member States, with the aim of ensuring a level playing field for all market players within the EU. However, the proposal would add considerable complexity to an already complex regulatory landscape for international businesses in the EU.

Please click here to read the full alert.

For more information: Vassilis Akritidis, Karel Bourgeois, Karl Stas

Customs Rulings of the Week

- [Classification of Handheld Disinfectant Spray Machine](#)
- [Classification of Wireless Charging Alarm Clock](#)
- [Classification of Social Distancing Wristband](#)
- [Classification of Footwear Incorporating Wearable Technology](#)

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

Crowell & Moring Podcast

Global Trade Talks: All Things Data with James Sullivan, Former Deputy Assistant Secretary for Services at the Department of Commerce

Global Trade Talks is a podcast that shares brief perspectives on key global issues on international trade, current events, business, law and public policy as they impact our lives. In this podcast, hosts Nicole Simonian and Ambassador Robert Holleyman talk to [James Sullivan](#), former Deputy Assistant Secretary for Services at the Department of Commerce from July 2017 through January 2021 about data privacy, the digital economy, cross-border privacy frameworks and AI.

Click below to listen or access from one of these links:

[PodBean](#) | [SoundCloud](#) | [Apple Podcasts](#)

For more information, contact: Robert Holleyman, Nicole Simonian

Crowell & Moring Speaks

[Michael Bowen](#) was featured in a May 24th *Law360* article titled, "[UK Hones Retaliation Against US Metal Tariffs Post-Brexit.](#)"

[Andrew Blasi](#) was featured in a May 20th *Thomas Insights* article titled, "[Businesses Should Prepare For A Paradigm Shift in Global Free Trade.](#)"

[Jackson Pai](#) was featured in a May 18th *Law360* article titled, "[New Labor Trade Fights May Rest on Diplomacy, Not Legalese.](#)"

"[National Security: Strengthening Alliances and Global Engagement with Continued Focus on Foreign Adversaries and Emerging Technologies,](#)" OOPS 2021, Crowell & Moring's 37th Annual Ounce of Prevention

Seminar (May 13, 2021). Presenters: Michael K. Atkinson, Caroline E. Brown, Adelicia R. Cliffe, and Paul M. Rosen.

"US Sanctions Policy-What's Happened, and What Can We Expect from the Biden Administration?" ACAMS New York Chapter Webinar (May 13, 2021). Speaker: Nicole Sayegh Succar.

"The 50% Rule, Indirect Sanctions Exposure & Risk Screening: Keeping up with Regulatory Expectations and Industry Best Practices," Kharon & KPMG Webinar (May 6, 2021). Speaker: Nicole Sayegh Succar.

"Non-Fungible Tokens (NFTs) 101: What's All the Hype?" Crowell & Moring Webinar (May 4, 2021). Presenters: Caroline E. Brown, Michelle Ann Gitlitz, Michel C. Narganes, and Carissa Wilson.

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

Edward Goetz

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

Phone: +1.202.508.8968

Email: egoetz@crowell.com