

CLIENT ALERT

The Month in International Trade – September 2019

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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

Finding it hard to stay on top of the latest in tariff increases?

[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 Walterman](#)

Miscellaneous Tariff Bill (MTB) Portal Launches: Petitioners Must File by December 10th

On October 11, 2019, the United States International Trade Commission (ITC) formally launched the Miscellaneous Tariff Bill (MTB) Portal for the 2019 cycle. On the same day, the Commission published a [notice](#) in the Federal Register requesting

members of the public to submit petitions for a temporary suspension or reduction on import duties of specified raw materials and intermediate products used in manufacturing that are not produced or available domestically.

The process was established by the American Manufacturing Competitiveness Act of 2016 and is intended to provide an economic boost to American companies. Petitioners have until December 10, 2019, at 5:15 p.m., EST to apply for duty suspensions and reductions.

In the 2016 cycle, the ITC received a total of 3,162 petitions during the 60-day petition submission period and a total of 1,655 provisions were included in the MTB Act of 2018 approved by Congress.

All approved provisions will expire on December 31, 2020 and importers currently using a Chapter 99 duty suspension or reduction will need to file a renewal. The 2019 MTB cycle lacks firm dates beyond the December 10th closing of the portal, however the ITC has announced a general timeline. There will be a 45-day public commenting window that will stretch over January and February of 2020. Next, the Department of Commerce will deliver a report to Congress with an expected date sometime in April 2020. Finally, the ITC will take into account Commerce's input to produce a preliminary report in June 2020 and a final report in August 2020. If signed into law, approved MTB petitions become effective January 1, 2021, with an expiration date of December 31, 2024.

The ITC has published the rules and process for filing petitions, which are available at [19 C.F.R. part 220](#) and in a handbook found on the [MTB website](#). Below is a list of the required contents of a petition:

- (a) The name, telephone number, and postal and email address of the petitioner, and if appropriate, its representative in the matter;
- (b) A statement as to whether the petitioner is requesting an extension of an existing duty suspension or reduction or a new duty suspension or reduction; and if a duty reduction, the amount of the reduction;
- (c) A certification that the petitioner is a likely beneficiary of the proposed duty suspension or reduction;
- (d) An article description that meets the requirements of §220.6 for the proposed duty suspension or reduction and identifies the permanent classification of the article in chapters 1-97 of the HTS and the Chemical Abstracts Service registry number (if applicable);
- (e) To the extent available—
 - (2) A copy of other CBP documentation indicating where the article is classified in the HTS.
- (f) A brief and general description of the article and its uses, and the names of the principal countries from which it is imported.
- (g) A brief description of the industry in the United States that uses the article.
- (h) For each HTS number included in the article description:

(1) An estimate of the total and dutiable value (in United States dollars) of imports of the article covered by the petition for the calendar year preceding the year in which the petition is filed, for the calendar year in which the petition is filed, and for each of the 5 calendar years after the calendar year in which the petition is filed, including an estimate of the value of such imports by the person who submits the petition and by any other importers, if available.

(2) An estimate of the share of total imports represented by the petitioner's imports of the article that is the subject of the petition.

(i) The name of each person that imports the article, if available.

(j) The names of any domestic producers of the article, if available.

(k) A Commission disclosure form as defined in §220.2(d).

(l) The names of any likely beneficiaries, and their contact information.

(m) A certification that the petitioner has not separately filed, and has not withdrawn, a petition for duty suspension or reduction during the current filing cycle:

(1) For an article that is identical to that in the current petition;

(2) For an article whose article description includes the article covered by the current petition; or

(3) For an article that is included in the scope of the current petition.

(n) A certification from the petitioner that the information supplied is complete and correct to the best of the petitioner's knowledge and belief, and an acknowledgement from the petitioner that the information submitted is subject to audit and verification by the Commission.

(o) Such other information as the Commission may require.

If you need assistance with your MTB filing please contact us. Many companies did not receive MTB in prior cycle because of administrability and technical errors.

For more information, contact: John Brew, Frances Hadfield, Sam Boone

USTR Publishes Federal Register Notice for Section 301 Tariffs from U.S.-EU Large Civil Aircraft Dispute

On October 9, 2019, the Office of the United States Trade Representative (USTR) published a [Federal Register notice](#) informing that additional duties on products from certain member States of the EU will take effect starting at 12:01 a.m. on October 18, 2019. This action comes after the USTR determined that the EU and certain member states failed to implement World Trade Organization (WTO) Dispute Settlement Body recommendations to curb subsidy programs for the EU's large civil aircraft

industry. The United States received permission from the WTO to levy tariffs on \$7.5 billion worth of European products following a decision from a case involving subsidies to European aircraft manufacturer Airbus that dates back to 2005.

The Federal Register notice outlines the changes to the Harmonized Tariff Schedule (HTS) of the United States to account for the additional tariffs. To accomplish this, Subchapter III of chapter 99 of the HTS will be modified by inserting new codes that group together products from certain countries. For example, subheading 9903.89.49 groups product codes for single-malt Irish Whisky and sweaters from the United Kingdom and applies a 25% duty. In total there are 15 groupings, all with their own list of affected countries and all but one containing a 25% duty rate. The Crowell & Moring team has prepared a simplified table below with several of the prominent products for each subheading, but for the full list of countries and HTS codes please [see the link](#) to the unofficial excel version or the link to the official notice.

Subheading	Types of Products	Rates of Duty
9903.89.05	New airplanes and other new aircraft	10%
9903.89.10	Dairy products including cheese	25%
9903.89.13	Olive Oil	25%
9903.89.16	Cherries, peaches, juice	25%
9903.89.19	Pork	25%
9903.89.22	Cheddar, Parmesan, Provolone Cheese	25%
9903.89.25	Swiss cheese	25%
9903.89.28	Pecorino cheese	25%
9903.89.31	Cheeses & substitutes from cow's milk	25%
9903.89.34	Olives	25%
9903.89.37	Knives and Screwdrivers (Germany only)	25%
9903.89.40	Pork other than ham	25%
9903.89.43	Lithographs	25%
9903.89.46	Liqueurs and cordials	25%
9903.89.49	Articles of clothing (UK only)	25%

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

Five Withhold Release Orders (WRO) Issued by CBP for Five Different Products from Five Different Countries

On September 30, 2019, U.S. Customs and Border Protection (CBP) issued five Withhold Release Orders (WROs). CBP issued a statement that the WROs were based on information obtained and reviewed by CBP that indicated that the products are produced, in whole or in part, using forced labor.

The following WROs are effective immediately:

- Garments produced by Hetian Taida Apparel Co., Ltd. in Xinjiang, China; produced with prison or forced labor.
- Disposable rubber gloves produced in Malaysia by WRP Asia Pacific Sdn. Bhd.; produced with forced labor.
- Gold mined in artisanal small mines (ASM) in eastern Democratic Republic of the Congo (DRC); mined from forced labor.
- Rough diamonds from the Marange Diamond Fields in Zimbabwe; mined from forced labor.
- Bone black manufactured in Brazil by Bonechar Carvão Ativado Do Brasil Ltda; produced with forced labor.

The Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”) changed forced labor enforcement by CBP. Specifically, TFTEA law repealed the “consumptive demand” exception in 19 U.S.C. § 1307. The exception had allowed importation of certain forced labor-produced goods if the goods were not produced “in such quantities in the United States as to meet the “consumptive demands” of the United States.” Section 307 of the Tariff Act of 1930 now prohibits the importation of merchandise mined, produced or manufactured, wholly or in part, in any foreign country by forced or indentured child labor – including forced child labor and provides no exceptions. Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer. This means if any part of a good is fabricated, mined, produced, manufactured, farmed, etc. using forced labor it is prohibited from entering the commerce of the United States.

Importing into the United States is a privilege and not a right. *Buttfield v. Stranahan*, 192 U.S. 470, 493 (1904). Accordingly, when information reasonably but not conclusively indicates that merchandise within the purview of this provision is being imported, the Commissioner of CBP may issue withhold release orders and detain merchandise pursuant to 19 C.F.R. § 12.42(e). If the Commissioner is provided with information sufficient to make a determination that the goods in question are subject to the provisions of 19 U.S.C. § 1307, the Commissioner will publish a formal finding to that effect in the Customs Bulletin and in the Federal Register pursuant to 19 C.F.R. §12.42(f). Importers have the opportunity to either re-export the detained shipments at any time or to submit information to CBP demonstrating that the goods are not in violation.

International standards on child labor and forced labor were developed by the International Labor Organization (“ILO”), a specialized United Nation’s agency that brings together governments, employers’, and workers’ representatives of 187 member states to set international labor standards, develop policies, and devise programs to promote rights at work and decent work for all persons. The internationally recognized definition of forced or compulsory labor is found in ILO Convention 29. According to this Convention, forced or compulsory labor is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” There are four key elements to this definition, and indicators related to each element. The combination of indicators for each situation must be analyzed in order to determine whether the situation is one of forced labor or not.

- All work or service: This includes all types of work, service and employment, regardless of the industry, sector or occupation within which it is found, and encompasses legal and formal employment as well as illegal and informal work.

- Any person: This refers to adults and children.
- Menace of any penalty: This refers to a worker believing he or she will face a penalty if they refuse to work. "Menace" means the penalty need not be exacted, but rather, that threats of penalty may be sufficient, if the employee believes the employer will exact the penalty. A wide variety of penalties, such as confinement to the workplace, violence against workers or family members, retention of identity documents, dismissal from employment, and non-payment of wages, denunciation to authorities, or other loss of rights or privileges, may be sufficient to fulfill this element of the test for forced labor.
- Voluntary: This refers to workers' consent to enter into employment and their freedom to leave the employment at any time, with reasonable notice in accordance with national law or collective agreements. In essence, persons are in a forced labor situation if they enter work or service against their free choice, and cannot leave it without penalty or the threat of penalty. Involuntariness does not have to result from physical punishment or constraint; it can also stem from other forms of retaliation, such as the loss of rights or privileges or non-payment of wages owed. Note that a worker can be considered to be in forced labor even if his or her consent was given, if that consent was obtained through the use of force, abduction, fraud, deception or the abuse of power or a position of vulnerability, or if the consent has been revoked.

ILO Convention 105, another convention on forced labor, specifies that forced labor should never be used for the purpose of economic development or as a means of political coercion, discrimination, labor discipline or punishment for having participated in labor strikes.

CBP receives allegations of forced labor from a variety of sources, including from the general public. CBP uses the ILO definitions when determining whether imported goods were manufactured using Forced Labor.

For more information, contact: John Brew, Jeff Snyder, Frances Hadfield, Aaron Marx

Treasury Sanctions Iran's Central Bank, Again

On September 20, 2019, the U.S. Department of Treasury's Office of Foreign Assets Control designated the Central Bank of Iran, the National Development Fund of Iran, and the Etemad Tejarat Pars Co. under Executive Order 13224, OFAC's counter-terrorism authority (E.O. 13224). The U.S. pointed to attacks on Saudi Arabia's oil fields as the catalyst for this designation.

With respect to the Central Bank of Iran's counter-terrorism designation, OFAC finds that the Central Bank of Iran provided material support, specifically facilitating financial transfers for the Iranian Revolutionary Guard's Quds Forces (IRGC-QF) and Hizballah. The material financial support included providing the IRGC-QF extensive access to foreign currency in the amount of several billions of U.S. dollars and euros, and facilitation of IRGC-QF transfers to Hezbollah.

We highlight the Central Bank of Iran's designation as this is the most commercially significant. While the Central Bank of Iran is already blocked under U.S. sanctions as it is a part of the Government of Iran, that did not subject transactions with it to U.S. secondary sanctions but the September 20th 2019 counter terrorism designation does. Now, non-U.S. persons are subject to designation risk if their transactions with the Central Bank of Iran are deemed a "knowingly significant transaction" involving the Central Bank of Iran. For non-U.S. banks providing significant financial services for entities designated under E.O. 13244, this can also potentially subject that bank to U.S. correspondent account or payable-through account sanctions.

[OFAC Frequently Asked Question \(FAQ\) 636](#) provides insight on just how broad OFAC interprets the world of potentially significant transactions noting that the mere involvement of a designated bank, other than banks only blocked because of their Government of Iran status, may lead OFAC to determine a transaction is significant. With such a broad interpretation of a significant transaction, if banks were already somewhat apprehensive to assist with receipt of payments for business activity with Iran, this is only going to make this challenge greater as the Central Bank of Iran often plays a less obvious role in many of those transactions.

For example, in the humanitarian trade context [agricultural, medicine, and medical device sales] the Central Bank of Iran might take a financing or foreign currency provision role. Now such a Central Bank of Iran role might be enough of a hook to expose the whole transaction to U.S. secondary sanctions risk. While the September 20, 2019 designation came with a press release statement noting that the U.S. “has a long standing policy of allowing for the sale of [humanitarian trade] and OFAC will continue to consider [such] requests related to humanitarian trade with Iran as appropriate,” practically banks may still not be willing to service humanitarian trade transactions, or generally any other transactions that the Central Bank of Iran might “touch,” directly or indirectly without additional OFAC guidance, or potentially an OFAC license.

The ability to get paid for business activity with Iran just starkly increased in difficulty.

For more information, contact: Jeff Snyder, Dj Wolff, Nicole Succar

Administration Moves to Complete FIRRMA Implementation by the February 13, 2020 Statutory Deadline

The Department of the Treasury has released the long-awaited proposed rules that would complete implementation of the Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018 that expanded the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS) to review investments by foreign persons. One [proposed rule](#) will revise and restate the general CFIUS regulations, 31 C.F.R. Part 800, while the second [proposed rule](#) will provide a separate process, 31 C.F.R. Part 802, for CFIUS review of certain real estate transactions that do not involve acquisition of a U.S. business. Among the key elements of FIRRMA addressed in the proposed rules are:

- Expanded jurisdiction to review non-controlling investments in so-called “TID U.S. businesses”; *i.e.*, companies involved in certain technology, infrastructure or data.
- Extended mandatory review over acquisition of a “substantial interest” in a “TID U.S. business” by a foreign person in which a foreign government has a “substantial interest.”
- Exemption of investments by certain foreign persons from certain foreign states (to be identified separately) from CFIUS jurisdiction over “covered investments.”
- Provision of an option to initiate CFIUS review via a short-form voluntary declaration in lieu of a joint voluntary notice.

The current proposals do not yet seek to implement the statutory authority to impose a fee in connection with CFIUS reviews.

The proposed rules are scheduled to be published in the Federal Register on September 24, 2019, which will trigger a compressed 30-day time frame to submit comments (during which Treasury has suggested it may hold a teleconference with interested participants). The Interim Rule establishing the mandatory declaration under the Critical Technologies Pilot Program

remains in effect and both prior comments and any new comments submitted will be addressed when Treasury publishes its final rule.

For more information, contact: Alan W.H. Gourley, Addie Cliffe, Robert Holleyman

Customs Rulings of the Week

- [Suncycle Vehicle](#)
- [Latex Rubber Boot Saver](#)
- [LARQ Water Bottle System](#)
- [Wireless Charging Station](#)
- [Active5 Portable Fitness Device](#)

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

Crowell & Moring Speaks

Frances Hadfield spoke at the [Sports and Fitness Industry Association \(SFIA\) Industry Leaders Summit](#) in Baltimore on September 26. She discussed U.S. Trade & Tariffs: The Pain...And the Potential for Savings.

[Michelle Linderman](#) and [Dj Wolff](#) spoke at the [Managing Regulatory & Compliance Challenges in Shipping Seminar](#) at Lloyd's Maritime Academy in London on September 27. They were on a panel entitled, "Sanctions: Current Focus and Potential Changes".

[Jeff Snyder](#) will be speaking at [C5's European Forum on U.S. Export Controls](#) on November 19, 2019, in Brussels, Belgium. He will be discussing "Protecting your Company for the Future – Staying Ahead of High Stakes Global Developments".

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