



Overview

Several regulatory and policy developments occurred over the past several weeks that impact the global trade activities of many US importers, including:

- The Office of the United States Trade Representative (“USTR”) announced in November 2021 that the US would end seven Section 301 investigations centered on Digital Services Taxes (“DST”) in several countries;
- The Uyghur Forced Labor Prevention Act (“UFLPA”) was enacted into law in December 2021 and will enter into force as early as 21 June 2022;
- The 2022 Harmonized System (“HS”) updates to the Harmonized Tariff Schedule of the US (“HTSUS”) took effect on 27 January 2022;
- Imports of EU steel and aluminum became subject to a new tariff rate quota system on 1 January 2022;
- The Automated Export System (“AES”), on 13 January 2022, instituted a new response message that automatically flags exports with No License Required (“NLR”) license type that do not meet Export Administration Regulations (“EAR”) requirements; and
- The US reinstated Superfund excise taxes that will impact the import of many chemicals effective 30 June 2022.

Below are further details on each of these developments.

End of Section 301 actions against certain countries with DSTs

In November 2021, the USTR ended the Section 301 actions on DSTs in several countries, including Austria, France, Italy, Spain, the United Kingdom, Turkey, and India.

Since 16 July 2019, the USTR has been investigating DSTs that levy taxes on revenue from digital commercial activity. By January 2021, the USTR completed several investigations, and determined that DSTs disproportionately impact large technology firms, many of which are primarily domiciled in the US. On 7 June 2021, in accordance with Section 301(b) of the Trade Act, the USTR announced additional tariff remedies that would have gone into effect

on 29 November 2021 against each of the aforementioned countries. However, due in part to the entrance of each of the countries into Pillar 1 of the Organization for Economic Cooperation and Development (“OECD”) and the Group of 20 (“G20”) negotiations, the Section 301 actions were terminated in several notices between 18 November 2021 and 26 November 2021.

The USTR cited several key factors contributing to the withdrawal of these measures, including, but not limited to:

- The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, which among other measures discourages international corporate tax avoidance, and binds parties to the removal of DSTs and related taxes; and
- The agreement of each country to a joint statement recognizing that DST liabilities accrued by firms during the period leading up to the implementation of Pillar 1 will be creditable against forthcoming income taxes.

The UFLPA to enter into force as early as 21 June 2022

On 23 December 2021, President Biden signed the UFLPA into law. The law prohibits the importation of goods originating from, or with ties to, the Xinjiang Uyghur Autonomous Region of the People's Republic of China. It is designed to promote accountability for instances of human rights violations and forced labor abuses throughout the province. All imports will be denied unless such violations or abuses are proven otherwise.

Official compliance and enforcement standards have not yet been released by US Customs and Border Protection (“CBP”). Following an initial public comment period of 45 days and a public hearing, the Forced Labor Enforcement Task Force will publish a strategy report for supporting enforcement, with additional guidelines for importers.

The law also stipulates that the President will release a report by June 2022 (within 180 days of enactment) identifying and sanctioning persons and entities, including government officials, that are responsible for forced labor abuses in the region.

Currently, CBP has designated goods such as cotton, tomatoes, and polysilicon in solar-panel manufacturing as “high priority” for enforcement action.

HTSUS amended to incorporate updates from the 2022 HS on 27 January 2022

The 7th edition of the World Customs Organization’s (“WCO”) HS nomenclature became effective on 1 January 2022. The HS nomenclature is usually updated every five years, with the last update in 2017. In the latest update, there are 351 sets of amendments that went into effect in the US on 27 January 2022 through the publication of the 2022 HTSUS by the US International Trade Commission. All signatory countries to the WCO were required to implement the changes as of January 2022.

The WCO has also published classification correlation tables as a resource to facilitate in the transition to the updated nomenclature. Such resources have no legal status, however, and a thorough review of classification changes should be considered by importers.

The impacted HS chapters include:

- Chapter 24: Tobacco
- Chapter 29: Organic Chemicals
- Chapter 30: Pharmaceutical Products
- Chapter 38: Plastics and articles thereof
- Chapter 44: Wood and Articles of Wood
- Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof
- Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles
- Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

Within these chapters, the WCO identified substantial updates to the following product groups:

- Novel tobacco and nicotine products (i.e., electronic cigarettes);
- Unmanned aerial vehicles;
- Smartphones;
- Glass fibers and related articles;
- Flat panel display modules;
- Pharmaceutical clinical trial kits and placebos;
- Cell cultures and cell-therapy products; and
- Specific chemicals controlled under the Chemical Weapons Convention and Rotterdam Convention, and persistent organic pollutants under the Stockholm Convention

New tariff rate quota (“TRQ”) system begins for imports of EU steel and aluminum

On 27 December 2021, President Biden issued two proclamations subjecting imports of steel and aluminum of EU origin to TRQs. The TRQs allow for the importation of a limited quantity of steel and aluminum articles into the US from member countries of the EU.

The TRQs for certain articles of steel and aluminum came into effect on 1 January 2022 and ended the previously established Section 232 additional duties imposed on imports of aluminum and steel derivatives from EU member countries.

With the annual import volume set at 3.3 million metric tons, the TRQs provide for 54 different product categories for steel and 16 product categories for aluminum. Imports of aluminum and steel articles from EU that are subject to the TRQs will enter the US free of any Section 232 duties in the following manner:

- TRQ-eligible entries should be entered under the appropriate chapter 99 heading, as well as the applicable chapters for steel and/or aluminum, as applicable. Importers can also apply for Section 232 TRQ exclusions. Importers that hold TRQ exclusions for a particular HTSUS subheading can enter goods at any time during the quota year, regardless of whether TRQ thresholds have been met.
- Via Presidential Proclamation, all EU Section 232 exclusions utilized in Fiscal Year 2021 (October 1, 2020, through September 30, 2021) have been renewed for a period of two years.

Updated AES response message for NLR exports

Effective 13 January 2022, AES deployed a new response message for exports filed under license type “C33: NLR.” The response message appears if a filer attempts to file its Electronic Export Information with an Export Control Classification Number (“ECCN”) and Country of Destination combination that is prohibited under the EAR to be shipped under NLR.

This response message will be set at a severity level of “Compliance Alert” for six months following the effective date, at which time it will be updated to “Fatal.”

The US Department of Commerce’s Bureau of Industry and Security (“BIS”) has asked that filers receiving the response message review the accuracy of the reported ECCN, Country of Destination, and License Type. If inaccurate, the filer should correct the appropriate fields and resubmit. If all three fields are reported correctly, the exporter should contact BIS to inquire about whether additional licensing authorization may be required.

Further, the US Department of Commerce’s Trade Regulations Branch has clarified that:

- If a filer receives repetitive alerts, the exporter may face an increased likelihood of compliance monitoring or compliance review; and
- The message will not be triggered if the exports are filed without a specified ECCN.

US reinstates Superfund excise taxes

On 15 November 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“Infrastructure Act”). One of the provisions in the Infrastructure Act is the reinstatement and modification of certain expired Hazardous Substance Superfund Trust Fund (“Superfund”) excise taxes on the production or import of certain chemicals and chemical substances through 31 December 2031, effective for periods after 30 June 2022.

Additionally, the excise tax previously applied to substances where the identified taxable chemicals constituted more than 50 percent of the weight or value of the materials used to produce that substance. The Infrastructure Act lowers this percentage to 20 percent (in lieu of 50 percent).

Several exemptions are available for this tax, which include, but are not limited to, specified substances used in the production of fertilizer, used in the production of motor fuel, used during the refining process, or chemicals derived from coal.

How we can help

Deloitte’s Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Preparing comments and other specific inputs to the relevant agencies;
- Assisting in reviewing trade compliance strategies to adapt supply chain management to changing circumstances;
- Conducting forced labor assessments;
- Supporting the process of reviewing, revising, or updating trade processes, and automation solutions in accordance with regulatory updates;
- Examining supply chains and imported products to determine opportunities to manage risks;
- Reviewing product data to identify impacted classifications;
- Managing client communications to brokers; and
- Implementing global updates to the classification database in accordance with the HS nomenclature revisions.

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