

TRADE COMPLIANCE

HANDBOOK

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INTRODUCTION TO U.S. TRADE COMPLIANCE

This Thompson Coburn LLP Trade Compliance Handbook is intended to provide an overview of international trade regulatory compliance issues and related terms to corporate general counsel, as well as compliance and audit personnel. We provide this as a source of general information only. This is not intended to constitute legal advice. We suggest that you seek international trade counsel to resolve the specific issues that may arise in your business.



A BRIEF SUMMARY OF IMPORT TRADE COMPLIANCE

The customs laws of the United States are codified in Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations. These laws and regulations provide **U.S. Customs and Border Protection (CBP)** with the authority to collect revenue and trade statistics and to enforce the laws governing the importation, and to some degree the exportation, of goods from the United States.

The **importer of record**, using **reasonable care**, must file an **entry** for imported merchandise and accurately declare the classification, value, rate of duty and such other information (e.g., **country of origin**, duty-free treatment pursuant to **special programs** and free trade agreements, and **antidumping duties**) as that will permit **CBP** to properly assess duties, collect accurate statistics, and determine whether applicable legal requirements have been met. Generally, CBP has one year from the **date of entry** to review the entry. After this time the entry is **liquidated** and the statements made therein are final and binding on all parties.

Classification

Every product entered into the U.S. must be classified under the **Harmonized Tariff Schedule of the United States (HTSUS)**. The tariff classification of a product will affect the duty to be paid and is a matter that is often disputed with CBP and in the courts. CBP and other customs authorities regularly publish their classification decisions. Classification has also become an important aspect of export controls, as the U.S., EU, and UK have imparted restrictions on the export of certain products to Russia based on product classifications.

The HTS is divided into 97 Chapters split among 21 Sections, generally organized between organic items (animals and plants) and raw materials to apparel products and more complex assemblies and machinery. Classification determinations are made according to a set of rules, the General Rules of Interpretation ("GRI"), which are considered in numerical order.

Most classifications can be determined using the first three GRI rules:

- GRI 1: in accordance with the terms of the headings and any relative Section or Chapter notes.
- GRI 2a: incomplete articles are to be classified as if it were complete if the unfinished item has the “**essential character**” of the complete or finished article.
- GRI 3: when goods are, *prima facie*, classifiable under two or more headings, the classification analysis should be as follows:
 - GRI 3(a): classification under the heading which provides the most specific description.
 - GRI 3(b): for composite goods consisting of different materials or components, classify as if they consist of the material or component which gives them their “**essential character**.”
 - GRI 3(c): when goods cannot be classified by 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order.

Valuation

Imported merchandise is generally appraised based on **transaction value**. CBP presumes that all payments, whether direct or indirect, made by the buyer, to or for the benefit of the seller, are part of the

transaction value.

If not already included, the declared value of imported merchandise must include:

- packing costs
- any selling commissions
- the value of any “assists”
- certain royalties

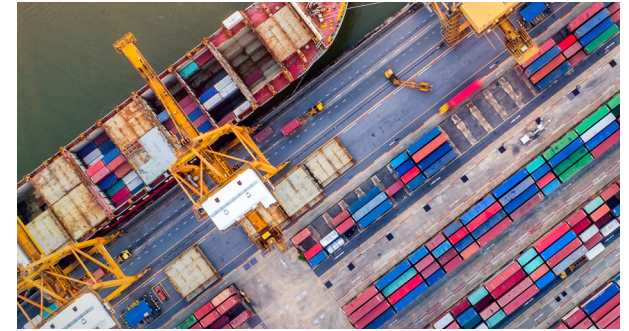
Transaction value may be used between **related parties** if it can be shown that the relationship did not influence the price paid or payable, or if the transaction value closely approximates certain test values. Alternative methods of valuation may be used if transaction value is unavailable.

Origin

All goods imported into the U.S. must be marked in a way that the origin is indicated clearly to the ultimate purchaser in the United States. For marking purposes, the origin of an imported product is the last country in which the good was **substantially transformed**. Separate rules of origin, generally based on changes in tariff classification, may be used to determine origin of goods for purposes of **free trade agreements**.

Forced Labor

Forced labor includes involuntary work or services obtained from an individual through the use of any form or threat of penalty and is an essential consideration



for compliance. Importers should consider their supply chains and conduct adequate due diligence to ensure no forced labor is present at any point in the supply chain. Increased regulation, like the Uyghur Forced Labor Prevention Act, will require importers to document their procedures and compliance to assure agencies that no forced labor is present.

Supply Chain Due Diligence – Imports

Diligence of the identity, ownership, and location of suppliers, once predominately a sanctions and export compliance consideration, should also be undertaken to identify potential forced labor or child labor involvement in supply chains, as these imports could be blocked from entry in to the United States or EU. Knowing your supply chain and origin of materials is important for preventing forced labor at all levels of supply, in addition to verifying products’ country of origin under free-trade agreements, preventing possible

transshipment and evasion of antidumping/ countervailing duties. Importers should engage their suppliers and stakeholders to map their supply chain from the sourcing of raw materials to the finished good, maintain a supplier code of conduct, and include forced labor provisions in contracts for high-risk goods and regions.

Additional Duties

Goods that are unfairly traded with the United States may be subjected to **Antidumping** or **Countervailing Duty** orders. These orders may be used by the U.S. industry as protection against predatory imports. For the importer, ADD, and CVD orders create a contingent liability that may extend beyond the sale or use of the imported merchandise. Although

ADD/CVD orders are implemented by the Department of Commerce, the Enforce and Protect Act allows CBP to investigate the evasion of ADD/CVDs. CBP action against the evasion of antidumping duties has become an important aspect of compliance and should be a consideration for importers.

Duty Savings Opportunities

By carefully selecting suppliers and manufacturing locations, importers may be able to save or recover duties through the use of free trade agreements, special programs, duty drawback, **foreign trade zones**, the category of American Goods Returned or temporary import programs. Additionally, techniques can be used to reduce the value of imported merchandise.

Import Penalties

Importers of record must demonstrate that its met its duty of informed compliance and reasonable care. Import penalties depends on the level of culpability: negligence, gross negligence, or fraud. For violations with a loss of duty, the penalties are: domestic value of the merchandise (fraud), the lesser of the domestic value or four times the loss of duties (gross negligence), or the lesser of the domestic value or two times the loss of duties (negligence). For violations without a loss of duty, the penalties are: the domestic value of the merchandise (fraud), 40% of the domestic value of the merchandise (gross negligence), or 20% of the domestic value of the merchandise (negligence). See 19 U.S.C. § 1592(c).

A. International Traffic in Arms Regulations (ITAR)	B. Export Administration Regulations (EAR)	C. Economic Sanctions
<ul style="list-style-type: none"> • <i>Affects:</i> U.S. <u>Defense Articles</u>, Services and Technical Data • <i>Law:</i> Arms Export Control Act • <i>Product List:</i> U.S. Munitions List • <i>Agency:</i> DDTC, Dept. of State 	<ul style="list-style-type: none"> • <i>Affects:</i> U.S. "<u>Dual Use</u>" goods and technology • <i>Law:</i> Export Administration Act • <i>Product List:</i> Commerce Control List • <i>Agency:</i> BIS, Dept. of Commerce 	<ul style="list-style-type: none"> • <i>Affects:</i> <u>Financial Transactions</u> and dealings with prohibited parties (e.g., Venezuela government), designated nationals (e.g., SDN List) and prohibited locations (e.g., Iran, Syria, Cuba, DPRK, Crimea) • <i>Law:</i> Executive Orders; International Emergency Economic Powers Act; Trading with the Enemy Act • <i>Agency:</i> OFAC, Dept. of Treasury

Penalties

CBP uses **Focused Assessments** to ascertain an importer's level of compliance. Companies and individuals who fail to comply with the customs laws of the U.S. face severe **penalties**, but the benefits of the **prior disclosure** of such violations are statutorily defined. Failure to maintain and produce the necessary records can result in **recordkeeping penalties** apart from any penalty that may be associated with a violation of a substantive customs law.

Intellectual Property Enforcement

CBP is the agency charged with enforcing intellectual property rights at the U.S. border. When informed, CBP will work vigorously with U.S. intellectual property rights owners to assure that infringing goods are not imported.

Cargo Security

CBP is part of the Department of Homeland Security and is charged with securing the borders while facilitating legitimate trade.

The **Importer Security Filing** allows CBP to review shipment information for potential terrorism risks in advance of the loading of the vessel. See also **10+2**. The **Customs-Trade Partnership Against Terrorism (C-TPAT)** encourages importers, carriers and international trade service providers to take steps to assure that their supply chain is secure. Prudent importers reduce their profile for CBP audits by fully complying with these programs.



A BRIEF SUMMARY OF U.S. EXPORT TRADE COMPLIANCE

Generally speaking, the **export** and **reexport** of items (which may include products, technology and/or services) from the United States to a foreign country or to a **foreign person** within the United States (a "**deemed export**") is governed by one of three U.S. government export control regimes. Determining which regime or regimes apply to your export transaction is the most important first step when considering export controls. See **Commodity Jurisdiction**. Additionally, the specifics of the applicable export control depend on the nature of the item being exported, the destination country, the identity of the recipient, and the intended end use of the item.

Department of Commerce – Bureau of Industry and Security – EAR

The U.S. Department of Commerce's **Bureau of Industry and Security (BIS)** maintains jurisdiction and control over the export of purely commercial items and "**dual use**" items, *i.e.*, those items that have a potential military or strategic use and commercial use.¹

Items that are **Subject to the EAR** must be classified under a particular **Export Control**

Classification Number (ECCN) on the **Commerce Control List (CCL)** to determine whether a license may be required to export that item or related technology. The ECCN is formatted as a 5-digit alpha-numeric code.



The first digit indicates the Export Control Category, numbered 0-9 applicable to the item. The next digit relates to the product group (A-E) within the CCL category. The final three digits are the control numbers, which are determined based on the item's features and capabilities.

To determine the correct ECCN, the first inquiry is whether the item is described in a 9x515 ECCN or "600 series" ECCN, and if not, whether the item is instead classified under a ECCN or "600 series" catch-all paragraph.

If an item is not classified in a "600 series" or 9x515 ECCN, then the inquiry turns to an evaluation of the remaining ECCN numbers starting from the beginning of the product group. The terms of each classification should

be evaluated to determine whether any ECCN describes the item and its technical capabilities.

Finally, if the item is not described under any ECCN, then the item is considered **EAR99**.

The actual license requirement depends upon (1) the country to which the item is to be exported, (2) any **General Prohibitions** that may be applicable, (3) the end user of the item, (4) the end use to which the item will be put (see **General Prohibitions** and **Reasons for Control**), and (5) whether any license exceptions are applicable. In some instances, the EAR also controls the provision of services, support or technical assistance. A company may self-classify items or request that BIS make a classification determination.² Additionally, special commodity export controls (*i.e.*, based on a tariff classification number rather than an ECCN) apply to many EAR99 items intended for export, reexport, or transfer to Russia or Belarus. See **EAR Part 746**.

1 Issued under the authority of the Export Controls Act of 2018, as amended (ECA) (P.L. 115-232, Subtitle B, Part 1) and Presidential executive orders under the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. §§ 1701-1706) and implemented by the Export Administration Regulations (EAR) as set out in 15 C.F.R. Parts 730-774.

2 See BIS Form 748P, SNAP-R.

3 AECA, 22 U.S.C. § 2778.

4 22 C.F.R. Parts 120-130.

5 The primary statutory authorities for these programs are the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. §§ 1701-1706) and the Trading With the Enemy Act (TWEA,

50 U.S.C. App. §§ 5, 16; also at 12 U.S.C. § 95a). The specific programs are implemented through various sets of regulations found at 31 C.F.R. Parts 500-598.

6 See Thompson Coburn's [Checklist of Foreign Countries Subject to Sanctions](#).



Department of State – Directorate of Defense Trade Controls – ITAR

The U.S. Department of State's **Directorate of Defense Trade Controls (DDTC)** maintains jurisdiction and control over the **export** and temporary import of **defense articles**, **defense services** and **technical data**. The statutory authority for the control of these defense items is found in Section 38 of the **Arms Export Control Act**,³ which is implemented by the **International Traffic in Arms Regulations (ITAR)**.⁴ Generally, these regulations control the exportation of the following:

Department of Treasury – Office of Foreign Assets Control (OFAC) – Economic Sanctions

The U.S. Department of the Treasury's OFAC administers and enforces economic sanctions programs that can prohibit or greatly limit both imports and exports that relate to targeted countries or to specially designated persons (see Specially Designated Nationals List).⁵ Currently, OFAC administers comprehensive sanctions programs relating to Cuba, North Korea, the Crimea, Donetsk, and Luhansk-occupied regions of Ukraine, Syria, and Iran.⁶ In addition, OFAC maintains a list of

designated persons (both individuals and entities) with which U.S. persons cannot conduct most economic transactions, including trade transactions. The list includes those who either act for or on behalf of the targeted countries or who are deemed to be terrorist organizations, narcotic traffickers, or those engaged in proliferating weapons of mass destruction.

OFAC's economic sanctions programs are typically imposed in order to advance U.S. national security, foreign policy or economic objectives by depriving the target of the benefits of trade, property, and other dealings with the U.S. For this reason, they generally cover all goods, with exceptions for such categories as informational materials and humanitarian donations of items – such as food, clothing and medicine – that are intended to lessen the harmful impact on citizens. Sanctions regulations apply to U.S. persons wherever they are located, including foreign branches of U.S. companies. They generally prohibit activities with the sanctioned country, individual, or entity and facilitation of these activities by U.S. persons. U.S. sanctions against Cuba and Iran apply to foreign subsidiaries of U.S. companies. In some cases, licenses or authorizations to import or export to or from a particular country may have to be sought from OFAC and from either BIS or DDTC.

Export Classification

The Commerce Control List (CCL) classifies items under various Export Control Classification Numbers (ECCN). The ECCN is formatted as a 5-digit alpha-numeric code. The first digit indicates the Export Control Category. Next, determine which product group within the CCL category or categories is applicable to the item. Third (and fourth) determine the reason for control by determining if the item is described in a 9x515 ECCN or "600 series" ECCN, and if it is not determine whether the item is classified under a ECCN or "600 series" catch-all paragraph. Fifth, if an item is not classified by a "600 series" or in a 9x515 ECCN, then start from the beginning of the product group and analyze each ECCN to determine whether any other ECCN in that product group describes the item. Finally, if the item is not described under any ECCN of any category of the CCL, then the item is designated as EAR99.

EU/UK Sanctions

The international response to Russia's invasion of Ukraine has escalated the need for a multi-jurisdictional approach to compliance. The EU and UK have adopted similar sanctions regimes as the U.S. targeting Russia and Belarus, requiring companies with an international presence to check for – and adhere to – multiple regions' controls on products, industries, and financial transactions. Restrictions have been placed on both the import and

export of certain products, along with the provision of services and financial dealings. As referenced in the discussion on Classification, lines have blurred between the different areas of compliance, requiring a more comprehensive approach to potential controls.

Export/Sanctions Supply Chain Diligence

Visibility, transparency, and knowledge are the keys to effective supply chain due diligence. All companies should be aware of the export controls and sanctions laws that are applicable to their business, including, but not limited to, the laws of the country in which they operate and any other export control laws that may apply to goods, software or technology based on their origin or content. More than one export control law may apply to a transaction simultaneously. The most important first step is determining which regime or regimes apply to your export transaction (is the good subject to ITAR or EAR). If the good is controlled under ITAR, companies must determine if a license exception is applicable. Generally, a license is required to export defense articles, related technical data, and defense services. Items that are subject to the EAR must be classified under a particular Export Control Classification Number (ECCN) on the Commerce Control List (CCL) to determine whether a license may be required to export that item or related technology. When exporting, it

is important to be aware of any potential sanctions or restrictions against a country you are exporting to. The U.S. Department of Commerce Bureau of Industry and Security will block exports of commodities and technology to certain companies involved in human rights violations and add companies to the Entity List. For example, in July 2020, BIS added 11 Chinese companies that were implicated in human rights violations and abuses, including forced labor, targeted at Muslim minority groups from China's Xinjiang Uyghur Autonomous Region. As a result, parties on the list are prohibited from receiving exports or transfers of certain items subject to the Export Administration Regulations without a license. Most recently on Oct. 6, 2020, BIS amended its existing licensing policy to consider human rights concerns in licensing determinations of certain items controlled under the EAR. It is also important to continuously check OFAC for information regarding economic sanctions because U.S. persons are prohibited from directly or indirectly engaging in transactions or dealings with such SDNs and any entities owned 50% or more by one or more SDNs, unless an OFAC authorization is available.

A BRIEF SUMMARY OF CONFLICT MINERALS REQUIREMENTS

Pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), securities issuers must disclose whether any tin, tungsten, tantalum or gold (the "Conflict Minerals") that is necessary for the functionality or production of their products originates in the Democratic Republic of the Congo or an

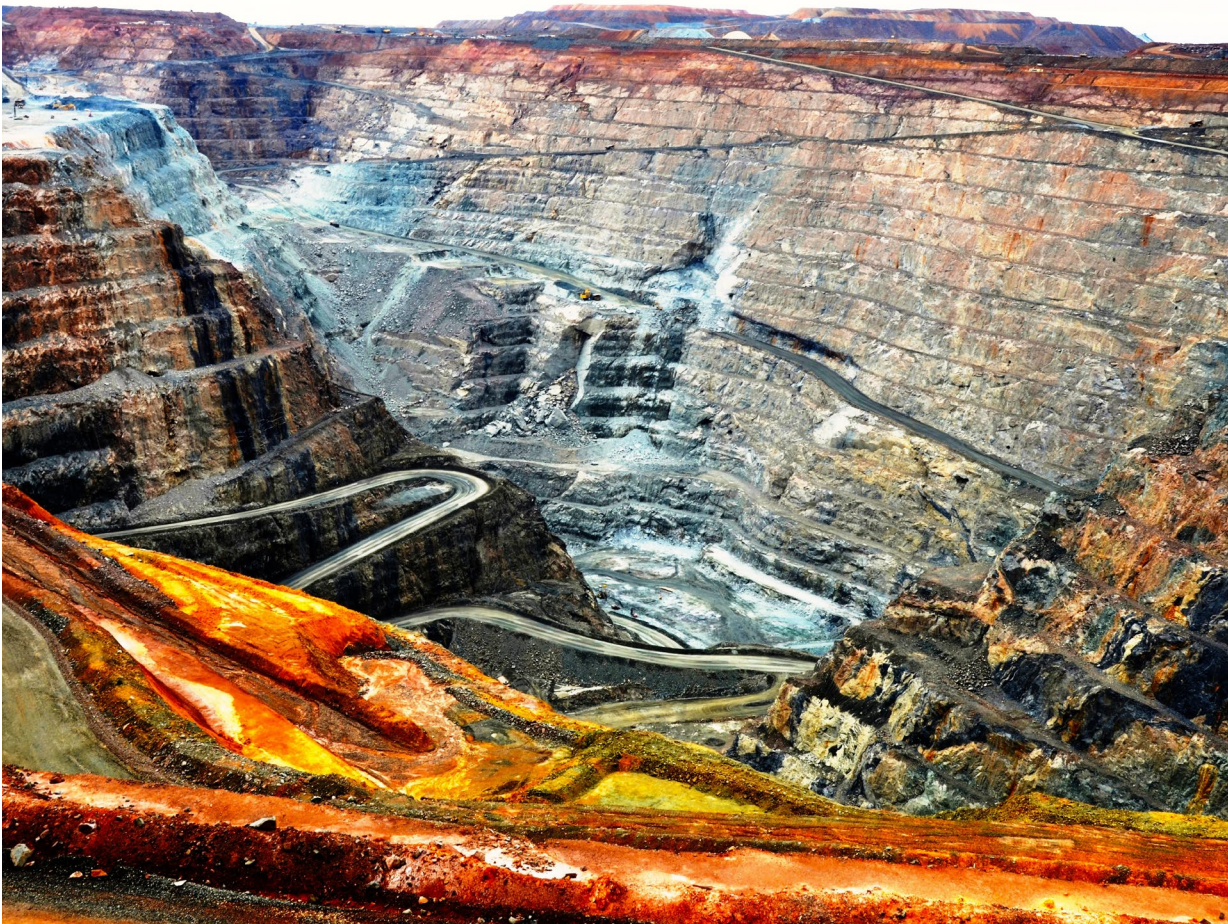
adjacent country (Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, or Zambia) (together, the "Covered Countries"). Because securities issuers must query their supply chains, the need to determine the source of Conflict Minerals extends to companies that are not securities issuers.

Under the Conflict Minerals reporting rules, security issuers must conduct a reasonable country of origin inquiry ("RCOI") designed to determine whether any Conflict Minerals used by the company originated in Covered Countries or are from scrap or recycled sources. The extent of the disclosures will vary depending on the results of the RCOI and any further due diligence as required.

DRC Conflict Free: If through the RCOI the reporting company determines that:

- the company's Conflict Minerals did not originate in the Covered Countries;
- the company's Conflict Minerals came from scrap or recycled sources;
- the company has no reason to believe that its Conflict Minerals originated in the Covered Countries;
- the company has reason to believe that its Conflict Minerals are from scrap or recycled sources; the company must file Form SD with a brief description of the RCOI and its results, and make this description available on its website.

Not DRC Conflict Free: If after the completion of an RCOI, the reporting company knows or has reason to believe that its Conflict Minerals may have originated in Covered Countries, or may not be from scrap or recycled sources, the company must perform additional due diligence and prepare



a Conflict Minerals Report. If the company concludes that its Conflict Minerals are from scrap or recycled sources, or not from the Covered Countries, the company must provide a description of its due diligence efforts, attach the Conflict Minerals Report to the Form SD filing and make the filing and Conflict Minerals Report available on the company's website.

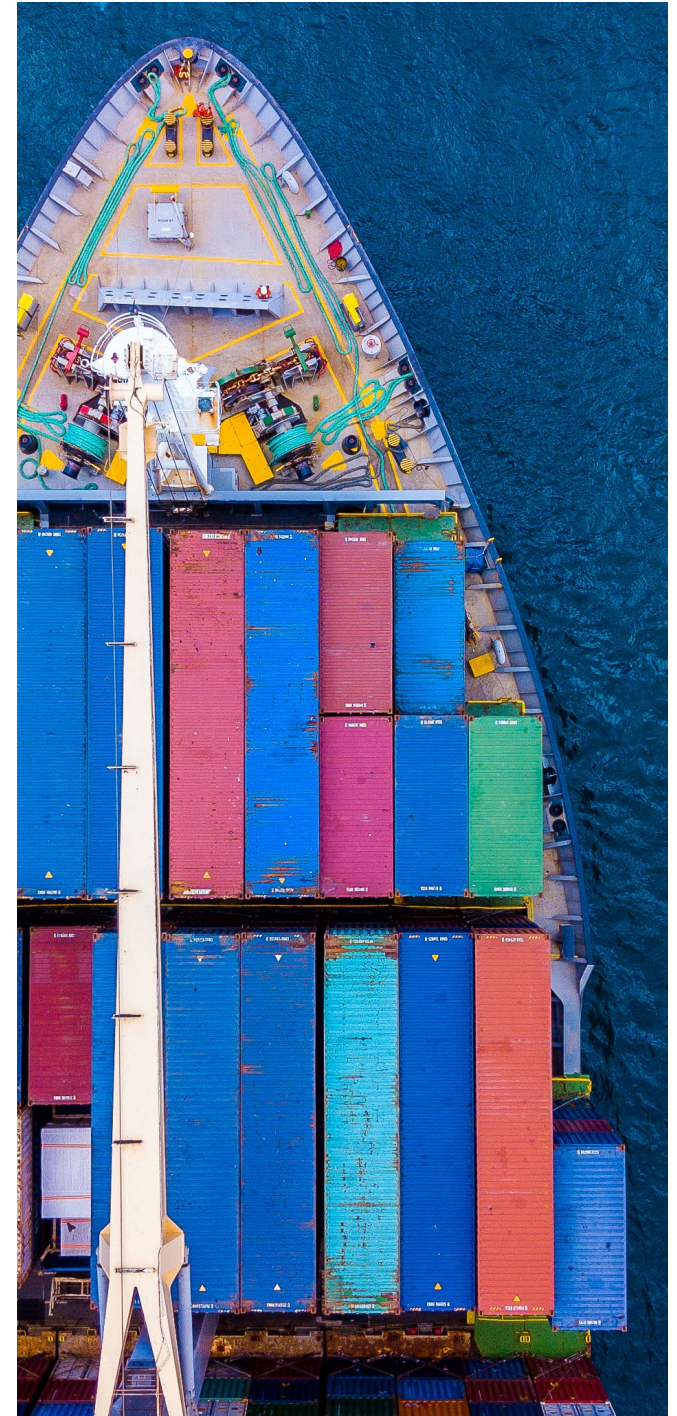
If the company's additional due diligence efforts conclude that its Conflict Minerals originated in Covered Countries, the company must undergo an independent third-party audit of the company's Conflict Minerals Report and due diligence framework.

Companies that are unable to determine the origin of their Conflict Minerals must report that their Conflict Minerals **"have not been found to be DRC conflict free."** Companies that make such a determination are subject to the same disclosure and audit requirements as companies that report that their Conflict Minerals are not DRC conflict free.

Convergence of Trade Compliance:

The USTR has termed the current trade era "Globalization 2.0" and emphasized that trade regulations should encourage companies to make decisions that "pursue sustainability for our people and for our planet" as opposed to merely prioritizing efficiency. This change in priorities drives an all-of-government approach in which sister

agencies coordinate on trade compliance. Compliance professionals must be aware of this evolving regulatory landscape – where skills traditionally used for either export or import compliance are now needed across both compliance environments. For example, the Bureau of Industry and Security is increasingly using harmonized system classifications – customarily an import concept – to place precisely calibrated export controls on items that do not have a dual-use or arms control restriction. Importers must also increasingly use list-based and ownership diligence techniques to trace their supply chains in response to (1) the Russian invasion of Ukraine and subsidiaries possibly captured by the 50% ownership rule, and (2) the increasing focus on forced labor and implementation of the UFLPA. These changes have created a more complex international trade landscape, and companies will benefit by developing a whole-of-trade perspective to ensure ongoing compliance.



DICTIONARY

OF TRADE TERMS

#

50% Rule. For certain sanctions programs, the U.S. Treasury's OFAC considers an entity 50% or more owned by one or more "listed" persons as subject to the restrictions of its owner. This can result in situations where an entity is not explicitly listed by OFAC as sanctioned, but is still subject to sanctions by virtue of a listed entity's 50% or greater ownership interest therein. Accordingly, list-based screening may not be sufficient to rule-out sanctions issues. A full ownership profile of a counterparty is advisable in certain high-risk trade environments.

520(d) Claims. Under 19 U.S.C. § 1520(d), an importer may claim preferential duty treatment under certain Free Trade Agreements within one year of the date of importation if a claim was not made at entry summary. Post-importation duty preference claims may only be made under USMCA, CAFTA-DR, Chile FTA, Columbia TPA, Korea FTA, Oman FTA, Panama TPA and Peru FTA.

"10+2." A CBP regulation that requires importers and vessel operating carriers to provide advance import data to CBP. Under the rules, 24 hours prior to lading,

importers must provide the following 10 data elements: (1) importer of record number; (2) consignee number; (3) seller name/address; (4) buyer name/address; (5) ship to party; (6) manufacturer (supplier) name/address; (7) country of origin; (8) commodity HTS classification; (9) container stuffing location; and (10) consolidator (stuffer) name/address. In addition, carriers are required to transmit: (1) vessel stow plans for arriving vessels with containers; and (2) container status messages for containers arriving via vessel. The ISF-10 filing is a requirement of non-bulk, containerized ocean vessel importers and customs brokers. CBP may assess \$5,000 in liquidated damages, secured by a bond, for each ISF-10 violation (maximum of two violations per filing). Filings will trigger liquidated damages if they are inaccurate, incomplete or tardy. Goods arriving entirely without a filing are also subject to further inspection and may be barred from entry. See [73 FR 71730 \(Nov. 28, 2008\)](#), (codified at [19 C.F.R. Parts 4, 12, 18, 101, 103, 113, 122-23, 141, 143, 149, 178 and 192](#)). See also [Cargo Security](#); [Importer Security Filing](#).

A

ABI. See [Automated Broker Interface](#).

ACE. See [Automated Commercial Environment](#).

ACS. See [Automated Commercial System](#).

ADD. See [Antidumping Duties](#).

Advisory Opinion. An administrative tool used by many trade agencies to render a formal opinion on a specific set of facts. Companies may opt to pursue an Advisory Opinion when it is not clear whether a transaction requires a general or specific license.

AEO. See [Authorized Economic Operator](#).

AES. See [Automated Export System](#).

Anti-Boycott. A [U.S. person](#) may not agree to participate in foreign boycotts that the U.S. does not support. See e.g., the [Arab League Boycott of Israel](#). (1) The principal anti-boycott regulations, [15 C.F.R. Part 760](#), are administered by the [Department of Commerce](#) and apply to exports, imports, financing, forwarding, shipping, and certain other

transactions that may take place in the U.S. or abroad. (2) Other anti-boycott restrictions (see [section 999 of the Internal Revenue Code](#)) may result in the denial of tax benefits for those engaging in certain boycott-related activities. The Department of the Treasury publishes a quarterly list of "boycotting" countries. See also [Anti-Boycott Prohibitions](#); [Anti-Boycott Reporting Requirements](#).

COMPLIANCE ALERT!

ABC. Ltd., a Singapore-based subsidiary of U.S.-based XYZ, Inc., a wholly-owned subsidiary of DEF, agreed to pay a \$3,600 civil penalty for violating the anti-boycott regulations on a single occasion. In 2002, ABC received a Purchase Order from a customer in Bahrain which contained a clause stating "this order is placed subject to the Suppliers being NOT on the Israeli Boycott list." ABC fulfilled the order without deleting, rejecting, amending or otherwise taking exception to the condition, and without notifying BIS of the anti-boycott request.

Anti-Boycott Prohibitions. The following are prohibited by the anti-boycott regulations: (1) Agreements to

refuse or actual refusal to do business with or in Israel or with blacklisted companies. (2) Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality. (3) Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies. (4) Agreements to furnish or actual furnishing of information about the race, religion, sex or national origin of another person. See also [Anti-Boycott](#); [Anti-Boycott Reporting Requirements](#).

Anti-Boycott Reporting Requirements. [BIS](#) and the Treasury Department require U.S. persons to report requests to participate in or cooperate with certain unsanctioned international boycotts. See also [Anti-Boycott](#); [Anti-Boycott Prohibitions](#); [Arab League Boycott of Israel](#).

Antidumping Duties (ADD). Duties imposed to offset the injury caused to the United States industry when foreign goods are sold in the United States at less than fair value. A dumping order is only issued if (1) the Department of Commerce (DOC) determines that goods are being sold in the U.S. at less than

fair value; and (2) the International Trade Commission (ITC) determines that a domestic industry is **materially injured**, or is threatened with material injury as a result of the unfairly traded goods. The DOC then issues an order instructing CBP to collect antidumping duties on the subject merchandise from subject countries at the dumping margin rate. Antidumping duty investigations and orders are often accompanied by countervailing duties (commonly referred to as AD/CVD). See also **Countervailing Duties**.

(1) Dumping. The sale of goods to an export market at a price that is less than their "normal value." See also **Dumping Margin; Antidumping Duty Order**.

(2) Dumping Margin. The difference, expressed in a percentage, between the export price or constructed export price of an item and its normal value. See also **Dumping; Antidumping Duty Order**.

COMPLIANCE ALERT!

In September 2007, CBP recovered more than \$2.2 million in underpaid antidumping duties on shrimp imported from China in 39 shipments between 2004 and 2005. Agents found that while the Indonesian supplier was invoicing shrimp as Indonesian, both Indonesian and Chinese shrimp were included in the shipments. Certain types of shrimp from China are subject to antidumping duties as high as 112.81 percent of the product's value.

Application for Further Review. A request, submitted with a Customs protest, that officials at Customs headquarters review the protest argument and issue a decision rather than officials at the local port. In accordance with [19 C.F.R. Part 174.24](#), the importer must provide justification for further review claiming that the decision being protested is inconsistent with previous Customs rulings or decisions.

Arab League Boycott of Israel. The principal foreign economic boycott with which U.S. companies must be concerned. The Arab League is comprised of the following Middle-Eastern and African countries and entities: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan,

Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen. Eritrea, Venezuela and India are Arab League observers. The italicized countries generally appear on the Department of the Treasury's quarterly list of boycotting countries. See, e.g., [74 Fed. Reg. 15828](#).

Assist. Any of the following if supplied, directly or indirectly, by the buyer of imported merchandise, free of charge or at a reduced cost, for use in the production or sale of merchandise for export to the United States:

- materials, components, parts and similar items incorporated in the imported merchandise;
- tools, dies, molds and similar items used in producing the imported merchandise;
- merchandise consumed in producing the imported merchandise;
- most engineering, development, artwork, design work, and plans and sketches that are undertaken outside the U.S. and are necessary for the production of the imported merchandise.

The value of any assists apportioned as appropriate must be added to the value of the imported merchandise. See [19 U.S.C. § 1401a](#). See also **Valuation of Goods; Transaction Value**.

Authorized Economic Operator (AEO).

The international designation of a party involved in the international movement of goods in whatever function that is to reap the benefits of approved enhanced compliance and cargo security procedures. See [SAFE Framework](#).

Automated Broker Interface (ABI).

A component of CBP's [ACS](#) that permits qualified participants to electronically file required import data with Customs. ABI is a voluntary program available to brokers, importers, carriers, port authorities, and independent service centers.

Automated Commercial Environment (ACE).

CBP's commercial trade processing system designed to automate border processing, enhance border security and foster United States economic security through lawful international trade and travel. ACE has replaced many of the functions of CBP's original import processing system, the [Automated Commercial System \(ACS\)](#). Not only can importers track and run reports on entries through ACE, but importers can also file protests, file post-importation claims, check the liquidation status of entries, respond to CF-28 and CF-29 notices, and more.



Automated Commercial System (ACS). The commercial trade processing system currently being used by CBP. ACS provides tools, primarily the ITRAC report, that importers may use to monitor their compliance levels.

Automated Export System (AES). A nationwide system for reporting export information. See also [Electronic Export Information \(EEI\)](#).



B

Bribery Act 2010. UK law to combat bribery in public or private sectors. The law creates two general offenses: offering, promising or giving of an advantage; and requesting, agreeing to receive or accepting an advantage. While the law creates the offense of bribery of a foreign public official, bribery under this law is not limited to bribing public officials. The law also creates the offense of failure by a commercial organization to prevent a bribe being paid for or on its behalf. The Act applies to companies and persons based in the UK and foreign companies and persons doing business in the UK. Penalties include fine and/or imprisonment of up to 10 years. See <http://www.legislation.gov.uk/ukpga/2010/23/contents>.

Bureau of Industry and Security (BIS). The division of the Department of Commerce that is responsible for export controls affecting “dual use” goods.

BIS-748P. BIS’s “Multipurpose Application Form,” which can be used for requesting authority to export or reexport, or to request BIS to classify your item. Requirements for submitting a license application are detailed in Part 748 of the EAR. Go to <https://www.learnexportcompliance.com/webinar/bis-license-application-748p-how-to-prepare-it-and-how-to-ensure-best-possible-approval-time/>.

Buying Commissions. Commissions paid to the agent of the buyer are not part of the dutiable value of the imported merchandise. If appropriately established and documented, the use of a buying agent may be used to reduce dutiable value in a manner that is similar to the benefit realized under the “**first sale**” rule.



C

CAATSA. See [Countering America's Adversaries Through Sanctions Act](#).

Canada Customs Coding Form (B3-3). A form utilized by Canadian Customs to account for goods imported into Canada and to calculate the applicable duties and fees. Essentially, this is the Canadian Customs entry document.

Cargo Security. Various national and international initiatives to assure that international supply chains and international conveyances are not used for terrorist activities. Cargo security programs include the advanced submission of information; physical security of the goods, containers, facilities and conveyances; personnel security; information security; procedural security; and security training. See also [C-TPAT](#); [Container Security Initiative](#); [Importer Security Filing "10+2"](#); [SAFE Framework](#); [Supply Chain Security](#).

CBP. See [Customs and Border Protection](#).

CBP Form 28 – Request for Information. A form issued to importers of record by a port of entry to solicit

additional information about a shipment after it has been entered into the United States. It may also be used to request a sample of the imported goods or related documentation. Importers must respond within the stated time frame per the forms instructions. Failure to respond may result in Customs taking actions such as changing classification, cargo examinations and denying special duty program claims.

CBP Form 29 – Notice of Action. A form issued to importers of record by a port of entry to advise them of proposed or taken action affecting the classification, duty rate or valuation of imported goods. Importers may respond to proposed actions within the stated time frame per the forms instructions. Failure to respond will result in Customs taking the action stated on the form.

CCL. See [Commerce Control List](#).

CCSP. See [Certified Cargo Screening Program](#).

Centers of Excellence and Expertise (CEE). Centers of Excellence and Expertise (CEEs) are managed from strategic locations around the U.S. to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers. CEEs are organized by industry sectors, which are categorized by **HTSUS** numbers. Importers are assigned to an industry-category administered by a specific CEE based on the tariff classification in the **HTSUS** of the predominant number of goods imported.

Certified Cargo Screening Program (CCSP). A voluntary public/private program administered by the Transportation Security Administration (TSA) that has helped TSA to achieve and maintain its statutory requirement of 100 percent screening of cargo on U.S. passenger planes since August 2010. Under CCSP, TSA certifies third party screening facilities called Certified Cargo Screening Facilities (CCSF). To qualify, facilities must successfully apply for CCSP certification, participate in the program, and adhere to strict security standards. *See also* **Transportation Security Administration.**

CBP Form 3461 (CF3461). The entry document filed to obtain the release of imported merchandise. Generally an entry

summary must be filed within 10 days of the filing of the entry.

CBP Form 7501 (CF7501). The paper document for submission of a "customs entry summary." This document and its electronic equivalent form the formal declaration to CBP for the imported merchandise.

CFIUS. *See* **Committee on Foreign Investment in the United States.**

CFR. "Cost and Freight"
Incoterms® 2020: Seller delivers when the goods are **placed** on board the vessel or procures the goods already so delivered. Seller bears the costs to deliver goods for export. Buyer bears risk of loss or damage to the goods after the time of delivery, *i.e.*, placement on board the vessel. *See also* **Incoterms®.**

Note: CFR is limited to Sea and Inland Waterways transactions.

CIF. "Cost Insurance and Freight"
Incoterms® 2020: Seller delivers when the goods are **placed** on board the vessel or procures the goods already so delivered. Seller bears the costs and insurance to deliver goods for export. Buyer bears risk of loss or damage to the goods after the time of delivery, *i.e.*, placement on board the vessel. *See also* **Incoterms®.**

Note: CIF is limited to Sea and Inland Waterways transactions.

CIP. "Carriage and Insurance Paid To"
Incoterms® 2020: An intermodal term similar to CIF. Seller delivers when the goods are **handed** over to the carrier. Seller bears the costs and insurance to deliver goods to the destination and clears the goods for export. Buyer bears risk of loss or damage to the goods after the time of delivery. *See also* **Incoterms®.**

Classification. Every product entered into the U.S. must be classified under the Harmonized Tariff Schedule of the United States (HTSUS), a ten-digit number organized by section, chapter, heading, and subheading. The tariff classification of a product will affect the duty to be paid and is a matter that is often disputed with CBP and in the courts. CBP and other customs authorities regularly publish their classification decisions. Classification has also become an important aspect of export controls, as the U.S., EU, and UK have imparted restrictions on the export of certain products to Russia based on product classifications. *For classification in the export context please see* **Order of Review, United States Munitions List, Commerce Control List, and Export Control Classification Number.**

(1) [Harmonized Commodity Description and Coding System \(HS\)](#). An international nomenclature for the classification of goods moving across borders in international trade. It allows participating countries to classify traded goods on a common basis for customs purposes. At the international level, the HS for classifying goods is a six-digit code system. The HS is divided into sections and chapters based on the description of the item and the materials from which it is made and comprises roughly 5,000 commodity groups.

(2) [Harmonized Tariff System of the United States \(HTSUS\)](#). The U.S. codification of the Harmonized Tariff System, an international description and coding system for goods in international trade. The HTSUS is divided into sections and chapters based on the description of the item and the materials from which it is made. There are over 35,000 different tariff subheadings within the HTSUS and over 750 pages of legal notes. Importers must use reasonable care to correctly classify goods imported into the U.S. See also [General Rules of Interpretation](#).

(3) [General Rules of Interpretation \(GRI\)](#). Six principles that govern the classification of merchandise under the HTSUS,

intended to be consulted and applied each time merchandise is classified under the HTSUS.

(4) [Explanatory Notes \(EN\)](#). The official interpretation of the Harmonized Tariff System and its provisions by the World Customs Organization. The ENs are not binding or dispositive, but they are considered persuasive authority in interpreting the HTSUS and should be consulted for guidance. See also [HTSUS](#).

(5) [Essential Character](#). When classifying a composite product, CBP will conduct an essential character analysis under GRI 2(a) or 3(b). This analysis varies by product, but it may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the goods.

Commerce Control List (CCL). A list of items subject to the [EAR](#). See [15 C.F.R. Part 774 Supplement No. 1](#); [ECCN](#); [EAR99](#).

Commerce Country Chart. A chart, found in Supplement No. 1 to Part 738 of the EAR, that indicates licensing requirements based on country and reason for control. In combination with the CCL, the Country Chart indicates when a

license is required for any item on the CCL to any country in the world under General Prohibition One (Exports and Reexports in the Form Received), General Prohibition Two (Parts and Components Reexports), and General Prohibition Three (Foreign Produced Direct Product Reexports). See [15 C.F.R. Part 738, Supp. 1](#) and [15 C.F.R. Part 736 of the EAR](#).

Committee on Foreign Investment in the United States (CFIUS). The multi-agency federal entity responsible for reviewing the national security implications of transactions that could result in the acquisition by a foreign company of control over a U.S. business. CFIUS is authorized to refer cases to the President, who may block or suspend a transaction if the President believes that it could threaten U.S. national security. CFIUS is chaired by the Department of the Treasury, and its permanent membership also includes the Departments of State, Defense, Justice, Homeland Security, Commerce, and Energy. CFIUS's statutory authority is Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007. Implementing regulations are found at [31 C.F.R. Part 800, 801, and 802](#). CFIUS was modified in 2018 by FIRRM. As part of the implementation of FIRRM,

CFIUS published Final rules to implement the review of certain non-controlling foreign investment, and certain real estate investment.

Commodity Jurisdiction. A determination of which federal agency has export control jurisdiction over a product or technology. A determination may be made in response to a request submitted by the exporter or manufacturer. Generally, the Department of State, the Department of Commerce, and the Department of Defense participate in the decision-making process. See also [Subject to the EAR](#); [USML](#).

Computed Value. A method for the appraisal of merchandise for customs purposes based on sum of the material and fabrication costs, profit and general expenses, assists and packaging costs. See also [Valuation of Goods](#).

Conflict Minerals. Minerals mined in "conflict" areas, regions prone to violence, oppression, or exploited by armed groups. See [A Brief Summary of Conflict Minerals Requirements](#), *supra*.

Container Security Initiative (CSI). A program intended to increase security for containerized cargo that is shipped to

the U.S. from other countries by placing U.S. Customs personnel at the foreign port of export.

Corporate Compliance Activities. Activities mentioned in the definition of "customs business" performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with CBP using "reasonable care," but not extending to the actual preparation or filing of the documents or their electronic equivalents. See [68 Fed. Reg. 47455, 47456 \(August 11, 2003\)](#).

Countering America's Adversaries Through Sanctions Act (CAATSA). On August 2, 2017, the Countering America's Adversaries Through Sanctions Act (CAATSA) became law ([PL No. 115-44](#)). The law codifies some existing sanctions on sectors of the Russian economy and defense industries, and imposes additional economic sanctions on Russia, Iran, and North Korea. While Russia is not subject to comprehensive sanctions, CAATSA demonstrates Congressional intent to keep many of the economic measures in place that affect the Russian energy, financial, and defense industries for the foreseeable future. Several prominent Russian [Oligarchs](#) were

designated in April 2018 in part based on the authorities codified in CAATSA.

Countervailing Duties (CVD). Duties imposed to offset the injury caused by foreign government subsidization of their exporting industries. Often, countervailing duties are investigated, and imposed, simultaneously with antidumping duties (frequently described as AD/CVD). See also [Antidumping Duties](#).

Country of Origin. The country of manufacture, production, or growth, of an article. A product's country of origin affects its rate of duty, including the application of Section 301 or antidumping/countervailing duties, as well as preferential duty treatment under Free Trade Agreements and under Duty Preference Programs. Additionally, most goods of foreign origin imported into the United States must be marked with their country of origin. See also [Marking](#); [Tariff Shift](#); [Substantial Transformation](#).

(1) [Marking](#). Every article of foreign origin entering the United States must be legibly marked with the English name of the country of origin unless an exception for marking applies. The marking must be located in a conspicuous place, be permanent and in close proximity to, and

utilizing a font equal to, that used for any U.S. designation. See 19 U.S.C. § 1304. See also **Country of Origin; Made in USA. MFN**. See **Most Favored Nation**.

(2) **Substantial Transformation**. The test for determining the Country of Origin of goods that consist in whole or in part of materials from more than one country. An article is said to have been substantially transformed if, as a result of a manufacturing process, it has undergone a change in its name, character or use. See also **Country of Origin**.

(3) **Tariff Shift**. Method of determining country of origin wherein a change in the origin of a product is determined by examining the difference between the HTSUS classification of the input and the HTSUS classification of the item produced. Tariff shifts are used to determine the origin of textile products and origin under certain FTAs. See also **Country of Origin; Substantial Transformation**.

(4) **Wholly Obtained Test**. The test for determining the country of origin of goods wholly grown, produced or manufactured in a particular country. See also **Country of Origin**.

CPT. "Carriage Paid To"

Incoterms® 2020: An intermodal term. Seller delivers when the goods are **handed** over to the carrier. Seller bears costs to deliver goods to destination and clears goods for export. Buyer bears risk of loss or damage to the goods after the time of delivery. See also **Incoterms®**.

CSI. See **Container Security Initiative**.

C-TPAT. See **Customs-Trade Partnership Against Terrorism**.

CVD. See **Countervailing Duties**.

Customs and Border Protection (CBP)

Formerly the United States Customs Service, CBP is part of the Department of Homeland Security and is primarily charged with regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws, export restrictions and prohibitions. CBP enforces dozens of regulations promulgated by other federal agencies that affect import and export transactions.

Customs Broker. A person who is licensed by the Department of Homeland Security to conduct customs business on behalf of others. See [19 C.F.R. Part 111.1](#).

Customs Business. Must be

conducted in the U.S. or U.S. territories. In HQ H326926 (December 19, 2023), CBP, citing 19 C.F.R. § 111.3(a) and the Modernization of the Customs Broker Regulations (87 Fed. Reg. 63,274 (Oct. 18, 2022)), determined that the use of foreign persons to enter information from the various international transactional documents into an Automated Broker Interface (ABI) system constituted unlicensed customs business activities. Additionally, in HQ H290535 (Sept. 29, 2022), CBP determined that a supplier would be unlawfully performing "customs business" if it provided its customers with the tariff classification for its merchandise because CBP previously held that customs business exists if "a possibility exists that the corrected classification information .



.. will end up on the entry." HQ 115248, August 28, 2001. These rulings provide extensive guidance on customs business and emphasize the importance of customs business and conducting customs business lawfully. See 19 C.F.R. § 111.3(a); see also Modernization of the Customs Broker Regulations, 87 Fed. Reg. 63,274 (Oct. 18, 2022).

Customs-Trade Partnership Against Terrorism (C-TPAT). A voluntary government-business initiative to strengthen and improve supply chain security. C-TPAT establishes minimum

security recommendations for importers, carriers, consolidators, licensed customs brokers and manufacturers. CBP offers benefits to C-TPAT participants, including a reduction in inspections and delays at the borders.

Customs Valuation Agreement.

The World Trade Organization (WTO) agreement applicable to all WTO members, which outlines the requirements for the valuation of goods for customs purposes. The agreement was implemented in 1994 as Article VII of the General Agreement on Tariffs and Trade

(GATT). The agreement, which provides a hierarchical list of valuation methods, is intended to provide a single system that is fair, uniform and neutral for the valuation of imported goods for customs purposes, conforming to commercial realities and outlawing the use of arbitrary or fictitious customs values. The agreement, by its positive concept of value, recognizes that customs valuation should, as far as possible, be based on the actual price of the goods to be value





D

DAF. “Delivered at Frontier”

Note: DAF is not included in **Incoterms® 2020**. See also **Incoterms®**.

DAP. “Delivered at Place”

Incoterms® 2020: Seller delivers the goods to the buyer at the named place of destination or agreed point, not cleared for import and not unloaded from the arriving means of transport. The seller bears the costs and risks of bringing the goods to the destination. Buyer must clear the goods for import and pay all formalities, duties, taxes and other import-related charges.

DAT. “Delivered at Terminal”

Incoterms® 2010: Seller delivers when the goods are placed at the disposal of the buyer at the named terminal at the specified port or place of destination. Seller bears the costs and risks of bringing the goods to the port or place of destination and unloading the goods in the terminal. Buyer must clear the goods for import and pay all formalities, duties, taxes and other import-related charges.

Note: DAT did not exist in **Incoterms® 2000**. DAT was included in **Incoterms® 2010**, but has been redacted from

Incoterms® 2020. It was replaced by the DPU term. See also **Incoterms®**.

DDP. “Delivered Duty Paid”

Incoterms® 2020: Seller delivers the goods to the buyer, cleared for import, but not unloaded from the arriving means of transport at the named destination or agreed point. The seller bears all the costs and risks of bringing the goods to the agreed point at the named place of destination, including import duties. See also **Incoterms®**.

DDTC. See **Directorate of Defense Trade Controls**.

DDU. “Delivered Duty Unpaid”

Note: DDU is not included in **Incoterms® 2020**.

Debarred List. A list compiled by the State Department of parties who are barred by §127.7 of the **ITAR** from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or approval is required by the ITAR. Available online at https://www.pmdtdc.state.gov/ddtc_public? See **22 C.F.R. Part 127.7**.

Deductive Value. A method for the appraisal of imported merchandise for customs purposes based on the resale price in the U.S. with deductions for any commissions paid or profit earned; general expenses related to U.S. sales, transportation and insurance costs; customs duties and federal taxes; and the value of any further processing occurring in the United States. See also [Valuation of Goods](#).

Deemed Export. The release of technology or source code to a foreign national in the U.S. or abroad – considered to be an export to that person’s home country.



COMPLIANCE ALERT!

A retired University of Tennessee professor and physics expert, J. Reece Roth, was found guilty of violations of the Arms Export Control Act for passing sensitive information to foreign research assistants from China and Iran, as well as taking sensitive documents to China on his laptop during a lecture tour. The information was from a U.S. Air Force contract and related to plasma-guidance systems for unmanned aircraft. Roth was sentenced to four years in prison for the violations. Professor Roth argued that the item only became a defense article when the technology being developed was actually applied to a military item. The court decided, instead, that a defense article exists based on the purpose of the development project.

Defense Article. Any item or technical data designated on the [USML](#). Additional items may be deemed defense articles if they are specifically designed, developed, configured, adapted or modified for a military application; do not have predominant civil applications; and do not have the performance equivalent of an article or service used for civil applications.

[22 C.F.R. Part 120.3](#). Defense articles include technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated on the USML, but does not include basic marketing information on function or purpose or general system descriptions.

Defense Services. (1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; (2) the furnishing to foreign persons of any technical data controlled under the [ITAR](#) (see [§120.10](#)), whether in the United States or abroad; and (3) military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational or information publications and media of all kinds, training aid, orientation, training exercise and military advice. See [22 C.F.R. Parts 120.9](#) and [124.2](#).

Destination Control Statement.

- For exports of any items on the Commerce Control List, the following statement, required by [Part 758.6](#) of the Export Administration Regulations to be included on commercial invoices and bills of lading or air waybills: *“These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.”*
- For exports of any items on the U.S. Munitions List, the preceding statement, pursuant to [Part 123.9](#) of the ITAR must be included as an integral part of commercial invoices.

Denied Persons List. A list published by [BIS](#) of individuals and entities that have been denied export privileges. Dealings with parties on this list in violation of the denial order are

prohibited. Available online at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>.

COMPLIANCE ALERT!

On April 29, 2021, OFAC announced a settlement with SAP SE (“SAP”), a software company that provides enterprise application software and other cloud-based services. SAP’s apparent violations stemmed from the exportation of software and related services from the United States to Iran via third countries. OFAC found that SAP knew or “had reason to know” the services would be provided to Iran (and persons in Iran) in part because it did not screen customers’ Internet Protocol (“IP”) addresses, which would have revealed that SAP’s software was being downloaded in Iran. Entities that provide software and other products online, including via direct download or cloud portal access, are expected to screen IP address identification and be able to block attempts to procure services from a sanctioned country or territory.

DEQ. “Delivered Ex Quay”

Note: DEQ is not included in [Incoterms®](#)

2020. See also [Incoterms®](#).

DES. “Delivered Ex Ship”

Note: DES is not included in [Incoterms®](#) 2020. See also [Incoterms®](#).

Directorate of Defense Trade Controls (DDTC).

The office at the Department of State responsible for controlling and monitoring various types of military-related items, as well as reviewing applications to export and reexport items on the [USML](#). See also [Commodity Jurisdiction](#).

Disclosure. A means of bringing violations to the attention of the agency with enforcement authority over the activity and/or commodity to mitigate potential penalties. See also [Prior Disclosure](#); [Voluntary Disclosure](#); [Voluntary Self Disclosure](#).

DPU. “Delivered at Place Unloaded”

Incoterms® 2020: Seller delivers when the goods are placed at the disposal of the buyer at a named place. The named place does not have to be a terminal at the specific port or destination. Seller bears the costs and risks of bringing the goods to the place and unloading the goods. Buyer must clear the goods for import and pay all formalities, duties, taxes, and

other import related charges. See also [Incoterms®](#).

Drawback (Amendment). On February 24, 2016, the President signed TFTEA making significant changes to the drawback process. The changes became effective February 24, 2018. The changes include, but are not limited to: 1) allowing substitution of goods sharing an eight-digit HTSUS; 2) allowing for refund of 99 percent of duties, taxes and fees paid on imports for all types of drawback; 3) requiring all drawback claims to be filed electronically; 4) shortening the record

keeping period to three years from date of liquidation; and 5) simplifying and extending the time frame for claiming drawback to five years from date of importation. TFTEA established a one-year transition period ending February 23, 2019, during which importers could file drawback under the old rules. The new Drawback regulations can be found at [19 CFR part 190](#).

Dual Use. While not a term of art under U.S. law, dual use is generally used to refer to items that have both commercial and military or proliferation applications or are

otherwise [subject to the EAR](#). See also [ITAR](#).

Dumping. The sale of goods to an export market at a price that is less than their "normal value." See also [Dumping Margin](#); [Antidumping Duty Order](#).

Dumping Margin. The difference, expressed in a percentage, between the export price or constructed export price of an item and its normal value. See also [Dumping](#); [Antidumping Duty Order](#).

Duty. A charge levied by the government on imported merchandise by virtue of its importation. Duties may be based on the value of the goods (ad valorem), a unit of measure, e.g., weight (specific), or a combination of both (compound). The rate of duty depends on the classification of merchandise under the tariff schedule. See also [HTSUS](#).

Duty Drawback. A refund of all or part of the customs duties paid on imported merchandise when that article, or its substitute, is exported either in the condition as imported or after being used in a manufacturing operation. See [19 C.F.R. § 190](#).



E

EAPA. See [Enforce and Protect Act of 2015](#).

EAR. See [Export Administration Regulations](#).

EAR99. Classification for an item that is subject to the EAR, but not listed with a specific [ECCN](#) on the [CCL](#).

ECCN. See [Export Control Classification Number](#).

Economic Sanctions. Refers to a series of programs administered by the Department of the Treasury's OFAC that impose restrictions on economic transactions by U.S. persons with (1) targeted countries (country-based restrictions), (2) targeted individuals and entities found on the Specially Designated Nationals List (SDN List) (list-based restrictions), and (3) targeted economic sectors (sectoral restrictions). Country-based programs currently include comprehensive restrictions directed at **Cuba**, **North Korea**, **Crimea**, **Syria**, and **Iran** that prohibit most economic dealings, financial transactions and trade (both imports and exports) with

those countries. The second category of sanctions programs is list-based, which means that U.S. persons are prohibited from economic dealings, including all trade transactions, with those on the SDN List. The principal categories of SDNs consist of those deemed to be terrorists or terrorist organizations, narcotic traffickers, or those engaged in proliferating weapons of mass destruction. The Venezuela and Russian programs also feature unique debt and equity related restrictions targeting certain economic sectors in those countries. See *also* [OFAC](#); [Specially Designated Nationals List](#); [Sectoral Sanctions Identifications List](#).

ECR. See [Export Control Reform](#).

EECC. See [Export Enforcement Coordination Center](#).

EEL. See [Electronic Export Information](#).

Electronic Export Information (EEI). Electronic export data that is filed in [AES](#). EEI must be filed for any export shipment valued at \$2,500 or above; any shipment to countries sanctioned by OFAC; any shipment requiring an export license from the Department of Commerce or the Department of State; any item subject to the ITAR, but exempt from licensing; any

item that requires a Drug Enforcement Administration export permit; or items classified as rough cut diamonds.

Emerging Technologies. As part of the Export Control Reform Act of 2018 (ECRA), Congress directed the U.S. Department of Commerce to examine "emerging and foundational technologies" and implement additional controls on the export, reexport, or transfer of these technologies. As part of this process, the Bureau of Industry and Security (BIS) has begun to publish advanced and interim rulemakings to address the control of individual technologies, and the agency is poised to release other rules addressing critical and foundational technologies in the coming months, changing the ways that advanced technologies are controlled.

Empowered Official. A person authorized, in writing, by a business to sign and process export license applications under the [ITAR](#). The empowered official must be a U.S. person, employed by the license applicant, who has authority for policy or management within the applicant organization and who understands the provisions and requirements of the various export control statutes and regulations. In addition, the empowered official must have independent authority to inquire into a

proposed export or temporary import, verify the legality of the transaction and accuracy of information, and refuse to sign any license application without prejudice or adverse recourse. See [22 C.F.R. Part 120.67](#).

EN. See [Explanatory Notes](#).

End-Use. The ultimate operation, installation (including on-site installation), function, or employment (e.g., for maintenance (checking), repair, overhaul or refurbishing, etc.) of an item.

End-user. The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

Enforce and Protect Act of 2015 (EAPA). The Enforce and Protect Act was signed into law on February 24, 2016, and CBP implementing regulations were issued on August 22, 2016. EAPA establishes procedures for an "interested party" to submit an allegation that a U.S. importer is evading its payment of antidumping and countervailing (AD/CV) duties on its entries. CBP has 15 business days from the date of receipt of a properly filed EAPA allegation to determine whether to investigate. CBP will

begin an investigation if 1) the information provided in the allegation reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion. See [19 U.S.C. § 1517\(b\)\(1\)](#); and 2) the allegation contains information that "reasonably suggests" that such entry was made by a material false statement or act, or material omission that resulted in the reduction or avoidance of applicable AD/CVD cash deposits or other security. If CBP initiates an investigation, parties have 230 days to submit written arguments in favor or against the allegation of evasion.

Entity List. A list of parties whose presence in a transaction can trigger a license requirement under the [EAR](#). The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the EAR. Available online at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>. See also [EAR](#).

Entry. The paper or electronic documents filed with CBP, containing sufficient information to enable CBP to determine admissibility of imported merchandise, assess duties, and collect accurate

statistics. This generally includes the entry summary CF7501, commercial invoice, bills of lading, any necessary certificates, or other "(a)(1)(A)" records. See [CF3461](#), [CF7501](#).

COMPLIANCE ALERT!

On July 8, 2020, Amazon.com, Inc. agreed to pay a \$134,523 civil penalty for apparent violations of various OFAC sanctions programs that occurred over a period of approximately seven years. The violations involved, among other things, on-line orders for various goods and services to be provided to persons physically located in Crimea, Iran and Syria, including orders from some persons listed on the Specially Designated Nationals and Blocked Persons List (SDNs). Although the maximum civil monetary penalty for the violations exceeded \$1 billion, OFAC placed emphasis on Amazon's voluntary self-disclosure of the violations, as well as its cooperation and submission of "detailed information in a well-organized manner," to mitigate the penalty to the statutory base penalty amount.

Essential Character

When classifying a composite product, CBP will conduct an essential character analysis under GRI 2(a) or 3(b). This analysis varies by product, but it may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the goods.

Explanatory Notes (EN). The official interpretation of the global Harmonized System of classification and its provisions by the World Customs Organization. The ENs are not binding or dispositive, but they are considered persuasive authority in interpreting the HTSUS and should be consulted for guidance. See *also* [HTSUS](#).

Export. (1) Under the [EAR](#), "export" means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States. See [15 C.F.R. Part 734.13](#). (2) Under the [ITAR](#), "export" means: (a) sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or (b) transferring registration, control or ownership to a foreign person of any

aircraft, vessel or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or (c) disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or (d) disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or (e) performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad. (3) Under [CBP](#) regulations, "exportation" means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. See [19 C.F.R. Part 101.1](#).

COMPLIANCE ALERT!

On December 14, 2018, the former owner and CEO of a Florida package consolidation and shipping service plead guilty to felony smuggling and admitted to 166 administrative violations of the EAR. As part of the plea, the CEO agreed to civil penalties of \$17 million, the largest paid by an individual in BIS history. The CEO's business, Access USA Shipping, had

acted as an intermediary to provide foreign customers a U.S. address used to acquire U.S.-origin items for export without alerting U.S. merchants or authorities. This included items listed on the Commerce Control List (CCL), the descriptions of which were regularly altered by Access USA to conceal their true nature. The case also serves as a warning to merchants and freight forwarders alike to be aware of the end-users and uses of products they handle.

Export Administration Regulations

(EAR). Regulations that define the controls on the export and reexport of "dual use" items. These controls are based on the nature of the item (*i.e.*, how it is listed on the [Commerce Control List](#)), the country to which the goods are to be exported, the end user of the goods, and the end use to which the goods will be put. In some instances, the EAR also controls the provision of services, support or technical assistance. The EAR places legal responsibility on persons who have information, authority or functions relevant to carrying out transactions subject to the EAR, including exporters, freight forwarders, carriers, consignees and any other relevant parties. See *also* [Commerce Control List](#); [Dual Use](#).

Export Control Classification

Number (ECCN). The numbers used in Supplement No. 1 to Part 774 of the EAR and throughout the EAR. The ECCN consists of a set of digits and a letter. Reference [15 C.F.R. Part 738.2\(c\)](#) of the EAR for a complete description of each ECCN's composition.

Export Control Reform (ECR).

Refers to an initiative developed by the Obama Administration to overhaul the nation's export control system. The Departments of Commerce, Defense, Energy, Homeland Security, Justice, State and the Treasury combine to administer and enforce export controls. The goal of the initiative is to rationalize U.S. export control laws and to assure that tighter controls are applied to items that have the greatest national security concerns, while facilitating coordination between the United States and its key allies and strategic partners. As part of ECR, the Department of Commerce has created a "600 Series" of ECCN's to accommodate the items moving from the USML to the CCL as well as items previously covered by the Wassenaar munitions list.

Export Control Reform Act

(ECRA). This Act gave permanent statutory authority to the EAR, codifying existing policies and executive order extensions made over the years. The law also requires the Department of Commerce to identify "emerging" and "foundational" technologies critical to national security in an effort to keep pace with rapid technological changes, and to provide input to the new authorities granted to **CFIUS** under **FIRRTA**. See [50 U.S.C. § 4565 \(2018\)](#).

Export Enforcement Coordination Center (EECC).

Established within the Department of Homeland Security by Executive Order dated November 9, 2010, the EECC shall coordinate on matters relating to export enforcement among the following agencies: DoS, Treasury, DoD, DoJ, Commerce, DoE, DHS and other agencies as so designated. See [Executive Order 13558 – Export Enforcement Coordination Center, dated November 9, 2010](#). The EECC shall: serve as the primary forum within the federal government for executive departments and agencies to coordinate and enhance their export control enforcement efforts and identify and resolve conflicts; serve as a conduit between federal law enforcement agencies and the U.S. Intelligence Community for

the exchange of information related to potential U.S. export control violations; serve as a primary point of contact between enforcement authorities and agencies engaged in export licensing; coordinate law enforcement public outreach activities related to U.S. export controls; and establish government-wide statistical tracking capabilities for U.S. criminal and administrative export control enforcement activities. *Id.*

Exporter. The person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations have a different definition for the term "exporter." Under the FTSR, the "exporter" is the U.S. principal party in interest. See [Foreign Trade Statistics Regulations, 15 C.F.R. Part 30](#).

EXW. "Ex Works"

Incoterms® 2020: Seller delivers when goods are placed at the disposal of the buyer at the agreed point at a named place and time, often seller's premises. The buyer bears responsibility for clearing goods for export and for arranging transportation. This **Incoterms®** imposes the minimum obligation on the seller. See *also* **Incoterms®**.



F

Facilitation. In general, under the U.S. sanctions enforced by **OFAC**, prohibited facilitation refers to U.S. persons, wherever located, approving, brokering, financing or guaranteeing a transaction involving a foreign person, where the transaction would be prohibited if performed by a U.S. person or within the United States.

Facilitation is explicitly prohibited under various sanctions programs. For example, under the Iranian Transactions and Sanctions Regulations (ITSR), facilitation occurs when a U.S. person:

- a) "Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving Iran...without the approval of the [U.S.] person..."
- b) Refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving Iran...to which the [U.S.] person could not directly respond as a result of the [Iranian Transactions and Sanction Regulations]
- c) Changes the operating policies and

procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by [the Iranian Transactions and Sanctions Regulations] if performed by a [U.S.] person or from the [U.S]."

Facilitating or Expediting

Payments. An affirmative defense under the FCPA, facilitating or expediting payments are payments made to further routine government action. A routine government action is one that does not involve a decision or the discretion of the official. An example of a facilitating or expediting payment would be the additional payment made to the Department of State to expedite the processing of a passport application. Other anti-corruption laws, like the U.K. Bribery Act, do not include the facilitating or expediting payment affirmative defense.

FA. See **Focused Assessment**.

FAS. "Free Alongside Ship" Incoterms® 2020: Seller delivers when the goods are placed alongside the vessel at a named loading point at the port of shipment. Buyer bears all costs and risks of loss/damage to the goods from that moment forward. The seller is responsible for clearing the goods for export. See also **Incoterms®**.

Note: FAS is limited to Sea and Inland Waterways transactions.

FAST. See [Free and Secure Trade Program](#).

FAQ, OFAC. The U.S. Treasury, [OFAC](#) publishes on its website a list of Frequently Asked Questions (FAQs), that contains informal answers to common questions pertaining to various sanctions programs, lists, and compliance issues. Although not legally binding on the agency in any particular case or circumstance, the FAQs represent the agency's interpretation of the laws and regulations it administers. It is a valuable compliance resource. See https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx.

FCA. "Free Carrier"

Incoterms® 2020: An intermodal term that is analogous to FOB. Seller delivers the goods, cleared for export, to the carrier designated by the buyer at an agreed point at a named place. Seller is responsible for export clearance. See also [Incoterms®](#).

FCPA. See [Foreign Corrupt Practices Act](#).

First Sale. The sale between a manufacturer and a middleman in a

multi-tiered transaction. The First Sale price constitutes a viable transaction value when the sale between the manufacturer and middleman is a bona fide sale, the goods are destined for export to the United States, and the manufacturer and middleman deal with each other at arm's length. See [Nissho Iwai American Corp. v. United States, 982 F.2d 505 \(Fed. Cir. 1992\)](#). See also [Buying Agency](#).

FOB. "Free On Board"

Incoterms® 2020: Seller delivers when the goods are **placed** on board the named vessel at the loading point at the port of shipment. Buyer bears all costs and risks of loss from that moment forward. Seller is required to clear the goods for export. See also [Incoterms®](#).

Note: FOB is limited to Sea and Inland Waterways transactions.

Focused Assessment (FA). The audit procedure used by CBP to determine the importer's level of compliance. An FA typically begins by evaluating a company's importing policies and procedures to identify weaknesses that indicate a potential risk of non-compliance. Documented compliance procedures that are regularly followed by the importer are vital to successfully completing the FA without the imposition of penalties.

Forced Labor. Forced labor includes involuntary work or services obtained from an individual through the use of any form or threat of penalty. The importation into the United States of any goods produced by forced labor, including forced or indentured child labor, is prohibited. [19 U.S.C. § 1307](#).

The Uyghur Forced Labor Prevention Act (UFLPA), creates a rebuttable presumption, effective June 21, 2022, that two categories of goods are inadmissible into the United States:

- goods produced wholly or in part in the Xinjiang Uyghur Autonomous Region of China (Xinjiang);
- goods produced, wholly or in part, by entities identified by the U.S. government as having links to forced labor in Xinjiang, or involving Uyghurs anywhere in China. The government is required to maintain four lists of entities it considers to warrant the forced labor presumption

Any good produced "wholly or in part" by a listed entity is presumptively inadmissible for importation under Section 1307. More detailed criteria for overcoming the presumption is expected by the effective date.

Foreign Corrupt Practices Act (FCPA). As amended, [15 U.S.C. § 78dd-1 et. Seq.](#), the FCPA is a U.S. law enacted to

make it unlawful for persons and entities to bribe foreign government officials to assist in obtaining or retaining business. The FCPA potentially applies to issuers of securities and any individual, firm, officer, director, employee or agent of a firm and any stockholder acting on behalf of a firm. Amendments expanded the FCPA to assert territorial jurisdiction over foreign companies and nationals. A foreign company or person is subject to the FCPA if it takes any act in furtherance of the corrupt payment while within the territory of the United States. Penalties include fine and/or imprisonment of up to five years. See [FCPA An Overview available at https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act](https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act).

COMPLIANCE ALERT!

Ralph Lauren paid Argentinian customs officials to gain improper release of merchandise. The bribes were disguised as payments to the customs broker when they were actually remitted to customs officials. A total of \$593,000 in bribes were paid. Because Ralph Lauren cooperated with the Department of Justice and engaged in “early and extensive” mediation, the United States agreed to limit the penalty to \$882,000 plus a

disgorgement of more than \$700,000 in illicit profits and interest.

Foreign Direct Product Rule (“FDPR”)

The original Foreign Direct Product Rule is set out in part 734 to the EAR, [15 C.F.R. § 734.9](#), and outlines the manner in which certain foreign-produced items may become subject to the EAR. The original rule, previously set out in General Prohibition 3, imposes license requirements for the reexport of foreign-produced goods that are controlled for national security reasons, and that are the direct product of certain U.S. origin “technology” or “software.” Over time, four components of the FDPR evolved, as described in § 734.9: The original National Security FDPR, the 9x515 FDPR, the “600 series” FDPR, and the Entity List (“Footnote 1”) FDPR.

The most significant expansion of the FDPR occurred in 2020 with the addition of Footnote 1 to Supplement No. 4 to Part 744 of the EAR (the Entity List) (now consolidated in [15 C.F.R. § 734.9](#)). 85 Fed. Reg. 29849 (May 19, 2020); 85 Fed. Reg. 51596 (August 20, 2020). The Footnote 1 addition imposed license requirements for reexports, exports from abroad, or transfers, of certain foreign-produced items classified in specified ECCNs,

when the exporter has “knowledge that either the foreign-produced item will be incorporated into, or that the foreign-produced item will be used in the ‘production’ or ‘development’ of[,] any ‘part,’ ‘component,’ or ‘equipment’ produced, purchased, or ordered by any entity with a footnote 1 designation... or when any entity with a footnote 1 designation...is a party to any transaction involving the foreign-produced item....” Additionally, BIS released additional Foreign Direct Product Rules as part of the agency's response to Russian and Belorussian actions against Ukraine in February 2022, with separate rules for whole-country and narrower military end-user circumstances, see [87 FR 12226](#), and Iran in February 2023, [88 FR 12150](#), [85 Fed. Reg. 51596 \(August 20, 2020\)](#). This restriction impacts a significantly larger number of foreign-produced goods and requires increased diligence both up- and downstream to understand whether Footnote 1 entities and/or triggering technologies are involved in non-U.S. transactions.

Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)

Enacted as part of the 2018 National Defense Authorization Act, FIRRMA significantly broadened the

jurisdiction of the [Committee on Foreign Investment in the United States \(CFIUS\)](#) to review transactions that could provide foreign persons access to certain types of sensitive, technical, or personal information. These include certain investments in businesses involved in fields like critical infrastructure, critical technologies or data, and businesses or real estate near sensitive U.S. facilities. Final regulations to implement significant portions of FIRRTA were announced on January 13, 2020.

Foreign Person. Under the ITAR, the term means any natural person who is not a lawful permanent resident as defined by [8 U.S.C. § 1101\(a\)\(20\)](#) or who is not a protected individual as defined by 8 U.S.C. § 1324b(a)(3). The term also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions). See [22 C.F.R. Part 120.16](#).

Foreign Principal Party in Interest (FPPI). The party abroad who purchases the goods for export or to whom final delivery or end-use of the goods will be

made. This party may be the Ultimate Consignee. See 15 CFR 30.1.

Foreign Trade Zone (FTZ). A site designated by the Foreign-Trade Zones Board considered to be outside the customs territory of the United States. FTZs permit importers to reduce or defer the duties and fees paid on imported merchandise and to accelerate the recovery of duties on exported merchandise.

Four Singularities. A reference to the Obama Administration recommendation under the [National Export Initiative](#) that the U.S. export control system requires a transformation to a: Single Export Control List; Single Primary Enforcement Coordination Agency; Single Information Technology (IT) System; and Single Licensing Agency.

Free and Secure Trade Program (FAST). A Border Accord Initiative between the United States, Mexico and Canada designed to ensure security and safety while enhancing the economic prosperity of each country. The FAST program allows known low-risk participants to receive expedited border processing, enabling CBP to direct security efforts where they are needed most.

Free Trade Agreement (FTA). An arrangement among a group of countries (either bi-lateral or multi-lateral) to reduce or eliminate duties on goods traded between the member countries. Duty free treatment under an FTA generally depends on a determination of the origin of the product. Modern FTAs use tariff shift rules to determine this origin. See, e.g., [NAFTA](#).

FTA. See [Free Trade Agreement](#).

Fundamental Research. Public Domain information that is exempt from [ITAR](#) export licensing requirements. See [22 C.F.R. Part 120.11](#). Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research, the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls. University research will not be considered fundamental research if: the university/its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research apply.

G

General License. U.S. Department of Treasury, (OFAC) regulations often provide “general licenses” authorizing performance of certain activities or categories of transactions without the need to seek specific, case-by-case approval from the agency. The use of general license to “release” persons from compliance with components of sanctions programs is becoming more common.

General License H. As part of the U.S. withdrawal from the JCPOA, General License H was revoked by OFAC on June 27, 2018. See also [Snapback](#).

General Prohibitions.

General Prohibition One: Export and reexport of controlled items to listed countries.

General Prohibition Two: Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content.

General Prohibition Three: Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software.

General Prohibition Four: Engaging in actions prohibited by a denial order.

General Prohibition Five: Export or reexport to prohibited end-uses or end-users.

General Prohibition Six: Export or reexport to embargoed destinations.

General Prohibition Seven: Support of proliferation activities.

General Prohibition Eight: In transit shipments and items to be unladen from vessels or aircraft.

General Prohibition Nine: Violation of any order, terms, and conditions.

General Prohibition Ten: Proceeding with transactions with knowledge that a violation has occurred or is about to occur. See [15 C.F.R. Part 736.2](#).

General Rules of Interpretation (GRI).

Six principles that govern the classification of merchandise under the HTSUS, intended to be consulted and applied each time merchandise is classified under the HTSUS.

Generalized System of

Preferences (GSP). A program designed to promote economic growth in developing countries by providing preferential duty-free entry into the United States for specific goods from designated

beneficiary countries and territories. See [General Note 4 to the HTSUS](#).

General Technology Note. The export of “technology” that is “required” for the “development,” “production,” or “use” of items on the Commerce Control List is controlled according to the provisions in each Category. “Technology” “required” for the “development,” “production,” or “use” of a controlled product remains controlled even when applicable to a product controlled at a lower level. See 15 CFR Appendix Supplement No. 2 to Part 774. A General Technology Note is an annotation to the export control classification number that gives more specific information on the capabilities being described.

Global Magnitsky Sanctions. A sanctions program allowing the President of the United States to impose economic sanctions on foreign persons for involvement in human rights abuses and/or corrupt activities. The program was the result of the Global Magnitsky Human Rights Accountability Act, 22 U.S.C. § 2656. [31 CFR Part 583](#)

GRI. See [General Rules of Interpretation](#).

GSP. See [Generalized System of Preferences](#).



H

HS. See [Harmonized Commodity Description and Coding System](#).

HTSUS. See [Harmonized Tariff Schedule of the United States](#).

Harmonized Commodity Description and Coding System (HS).

An international nomenclature for the classification of goods moving across borders in international trade. It allows participating countries to classify traded goods on a common basis for customs purposes. At the international level, the HS for classifying goods is a six-digit code system. The HS is divided into sections and chapters based on the description of the item and the materials from which it is made and comprises roughly 5,000 commodity groups.

Harmonized Tariff Schedule of the United States (HTSUS).

The U.S. codification of the Harmonized Tariff Schedule, a 6-digit international description and coding system for goods in international trade. The system is divided into sections, chapters, headings, and subheadings based on the description of the item. There are over 35,000 different

tariff subheadings within the HTSUS and over 750 pages of legal notes. Importers must use **reasonable care** to correctly classify goods imported into the U.S. See also [General Rules of Interpretation](#).

HazMat. "Hazardous Materials"

Substances or materials that are considered to have the capability to cause an unreasonable risk to human health or safety or to the environment when transported in commerce, used incorrectly, or if not properly stored or contained. Hazardous Materials are subject to special storage, packaging and transportation regulations administered by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration.



Implementation Day. On January 16, 2016, the U.S. and EU lifted nuclear-related sanctions on Iran, as described in the [JCPOA](#). Following a determination on May 8, 2018 by President Trump, the U.S. has withdrawn from the [JCPOA](#). See [Snapback](#).

Import. The arrival of goods within the Customs territory of the United States.

Importer of Record (IOR). The owner, purchaser of imported goods, or if appropriately designated by the owner, purchaser or consignee, a licensed customs broker. See [19 U.S.C. § 1484](#); [19 C.F.R. Part 141.20](#); [19 C.F.R. Part 101.1](#).

Importer Security Filing (ISF) and Additional Carrier Requirements. Filing of required information by importers and carriers in advance of loading the vessel. See also [Cargo Security](#); [Security Filing "10+2."](#)

Importer Self Assessment (ISA). A voluntary program administered by CBP that provides benefits to importers committed to continuously monitoring their own compliance. Participants in this

program give CBP an advanced review of their compliance program and annually confirm the same. In return, importers receive additional [prior disclosure](#) benefits and a reduction in customs audits.

Incoterms®. Published by the International Chamber of Commerce (ICC), [Incoterms®](#) are a standard series of international sales terms used to allocate transaction costs, responsibilities, and obligations of the buyer and seller. [Incoterms®](#) do not define when title to goods transfers between the parties to the transaction. [Incoterms® 2020](#) was released in late 2019. The seven [Incoterms®](#) for any mode of transport are: EXW, FCA, CPT, CIP, DAP, DPU, and DDP. The four [Incoterms®](#) for sea and inland waterway transport are: FAS, FOB, CFR, and CIF. These terms are defined further in their respective definitions. Please see a [summary of the Incoterms in Table format at 67](#).

International Trade Administration (ITA). The division of the Department of Commerce that administers the Foreign Trade Zones program and oversees the Import Administration unit, which is responsible for enforcing U.S. unfair trade laws (anti-dumping and countervailing duty laws). See also [Countervailing Duties](#); [Dumping](#); [Foreign Trade Zones](#).

International Trade Commission

(ITC). The commission is an independent federal agency that handles a variety of trade-related matters, including determinations as to whether unfairly traded imports that are the subjects of antidumping and countervailing duty investigations injure or threaten to injure U.S. industries. The ITC also conducts investigations under Section 337 to determine whether articles imported into the U.S. infringe U.S. patents, trademarks or copyrights. See also [Countervailing Duties; Dumping; Section 337](#).

International Traffic in Arms Regulations (ITAR).

Regulations, implementing the provisions of the Arms Export Control Act, which control the export and import of defense-related articles and services on the United States Munitions List ([USML](#)). The ITAR is interpreted and enforced by the Department of State. Available at [22 C.F.R. Parts 120-130](#).

Inventory "Exception"

A common, though not formally recognized, interpretation of U.S. Treasury, OFAC guidance that it is permissible for a U.S. person to send goods to a third party country to become part of a company's "general inventory," even if the goods are subsequently sold to a

sanctioned territory, as long as the U.S. person 1) had no actual or constructive knowledge, including any reason to know or believe that the specific order was for a prohibited party or was destined for a sanctioned territory, 2) was not selling to a buyer with business predominantly with a sanctioned territory, and 3) does not export goods that otherwise violate the Export Administration Regulations (EAR). Although the "exception" is based on pieces of OFAC guidance and the "reason to know" standard in portions of the Iranian Transactions and Sanctions Regulations context, the agency has rejected a broad interpretation of it, tangentially addressing it in a recent case ([Epsilon Electronics v. U.S. Treasury, No. 16-5118, 857 F.3d 913 \(D.C. Cir. May 26, 2017\)](#)).

IOR. See [Importer of Record](#).

ISA. See [Importer Self Assessment](#).

ISF. See [Importer Security Filing](#).

ITA. See [International Trade Administration](#).

ITAR. See [International Traffic in Arms Regulations](#).

ITC. See [International Trade Commission](#).



J

Jurisdiction. See [Commodity Jurisdiction](#).

Joint Comprehensive Plan of Action (JCPOA). On July 14, 2015, the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union (EU), and Iran reached a Joint Comprehensive Plan of Action

([JCPOA](#)) to ensure that Iran's nuclear program will be exclusively peaceful. Following a determination on May 8, 2018 by President Trump, the U.S. has withdrawn from the [JCPOA](#). See [Snapback](#).



K

Knowledge. Under the **EAR**, knowledge of a circumstance (the term may be a variant, such as “know,” “reason to know,” or “reason to believe”) includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts. This definition does not apply to Part 760 of the EAR (Restrictive Trade Practices or Boycotts). See [15 C.F.R. § 772.1](#). The definition is similar in the context of the Foreign Corrupt Practices Act (FCPA), under which a person or entity could be held liable for making a payment with the knowledge that it will be used to influence a foreign official for the benefit of the business. Actual knowledge under the FCPA is unnecessary; knowledge can be established by the awareness of a high probability of the existence of a fact, unless a person actually believes that the fact does not exist. [15 U.S.C. 78dd-2\(h\)\(3\)](#).





Labor Value Content (LVC)

(USMCA). The USMCA creates a new Labor Value Content rule that requires a minimum percentage of labor value to go into vehicles produced within North America in order for the vehicles to be considered as originating within the trade region. At least 40% of a passenger vehicle and 45% of pickup trucks and cargo vans must be made by workers who earn an hourly wage of at least USD \$16/hr.



License. Permission to conduct a certain type of export transaction pertaining to a specific product, service or technology. Licenses may be general (appearing in the regulations, with no individual application required) or specific (requiring individual applications). Specific licenses are issued by the appropriate licensing agency (Department of Commerce, Department of State, Department of Treasury) after a review of the facts surrounding the given transaction. Not all exports require a license. Licensing determinations are made on the basis of individual transactions and involve not only a review of the characteristics of the product, service or technology, but also the country of export, the end-use and the end-user. Recently, the Department of Treasury (OFAC) has adopted a system of using more numerous general licenses in its sanctions programs to increase regulatory flexibility.

Liquidated Damages. The assessment of a penalty for customs violations, secured by a bond. In the context of ISF Filings, for example, CBP may assess \$5,000 in liquidated damages, secured by a bond, for each ISF-10 violation (maximum of two violations per filing). Filings may trigger liquidated damages if they are inaccurate, incomplete or tardy. See [19 C.F.R. Part 113.63\(g\)](#).

Liquidation. The fixing of the final value, classification and duties on an entry. Once liquidated, the declarations made on the entry are binding on both the government and the importer. CBP generally liquidates entries 314 days after they are filed. Entries are liquidated by law one year after filing. An importer has 180 days after liquidation to protest the entry. CBP may seek penalties against liquidated entries when they contain materially false statements or omissions resulting from negligence or fraud.

Lists to Check. A series of lists maintained by the Department of Commerce, State Department and OFAC identifying the persons and entities with whom U.S. parties are prohibited from doing business under U.S. export control laws. The Lists to Check are available on the BIS website at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>.

M

Made in USA. A claim that “all or virtually all” of a product is made in the United States. If a product cannot satisfy



this standard, the U.S. marking statute ([19 U.S.C. § 1304](#), further described at [19 CFR § 134.11](#)) requires that, unless an exception applies, foreign origin products must be conspicuously, legibly, indelibly, and permanently marked “in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.” The FTC regulates accusations of deceptive or misleading claims of U.S. origin.

COMPLIANCE ALERT!

In a recent class action lawsuit, New Balance Athletics, Inc. settled allegations of California state false advertising violations related to whether its shoes were made domestically, when as much as 30% of the value of the shoes actually came from foreign parts or labor. *Sheila Dashnaw et al. v. New Balance Athletics Inc.*, 3:17-cv-00159 (S.D. Cal. 2019). In addition to the settlement amount (\$750,000), New Balance agreed to more accurately describe the origin of its shoes. The case, involving state law, is a good reminder to companies that there are sometimes multiple avenues of liability for improperly marketing or advertising products as Made in USA.

Manufacturing License

Agreement. An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates: (a) the export of technical data or defense articles or the performance of a defense service; or (b) the use by the foreign person of technical data or defense articles previously exported by the U.S. person. See [22 C.F.R. Part 124.21](#).

Marking. Every article of foreign origin entering the United States must be legibly marked with the English name of the country of origin unless an exception for marking applies. The marking must be located in a conspicuous place, be permanent and in close proximity to, and utilizing a font equal to, that used for any U.S. designation. See [19 U.S.C. § 1304](#). See also [Country of Origin](#); [Made in USA](#).

MFN. See [Most Favored Nation](#).

Military End Use/End User Rules.

Exporters of goods to China, Myanmar, Russia, or Venezuela, must observe special requirements for customers with military end users or uses. “Military end use” includes direct uses, such as parts or components of weapons, as well as

indirect uses, like those for maintenance or repair. Following changes in 2020, the definition was expanded to include "any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, 'development' or 'production' of military items" and could now capture any item tangentially related to military uses. "Military end user" encompasses not only the military, but also "any person or entity whose actions or functions are intended to support 'military end uses.'" [15 C.F.R. § 744.21\(g\)](#).

Miscellaneous Trade Bill

(MTB). The American Manufacturing Competitiveness Act of 2016 (AMCA)

established a process to be undertaken by the International Trade Commission to accept petitions for the temporary suspension and reduction of duties. The requested suspensions and reductions are published for public comment and for the ITC to submit a report on the petitions to the House Committee on Ways and Means and the Senate Committee on Finance. Congress then has the opportunity to enact the provisions into law. The first MTB review process was initiated on October 15, 2016. The process will open again on October 15, 2019.

Mod Act. A series of statutory revisions to the Tariff Act of 1930, which established

the concept of "**reasonable care**," placed additional responsibility on the importer to assure that goods are entered correctly, and established the basis for CBP to develop and implement revised electronic systems for the preparation and filing of entries. The Mod Act also includes provisions for recordkeeping and audit of customs records.

Most Favored Nation (MFN). A status awarded by one nation to another, granting that nation trade advantages, such as lower tariff rates. All MFN status countries are treated equally, with certain exceptions that allow for preferential treatment of developing countries, customs unions and regional free trade areas. All members of the **WTO** are required to accord MFN status to each other. The MFN tariff rates are contained in column one of the **HTSUS**.



N

NAFTA. North American Free Trade Agreement – an agreement between the United States, Canada and Mexico lifting tariffs on the majority of goods produced by the member nations. NAFTA has special rules for various aspects of the import transaction, including country of origin marking and valuation. On November 30, 2018, the United States, Mexico, and Canada signed the **USMCA**, a NAFTA replacement agreement. The USMCA went into force on July 1, 2020.

National Export Initiative (NEI).

Obama Administration initiative to improve conditions affecting the private sector’s ability to export. NEI seeks to double exports over the next five years by working to remove trade barriers abroad, by helping firms overcome the hurdles to entering new export markets, by assisting with financing and, in general, by pursuing a government-wide approach to export advocacy abroad. See [Executive Order 13534 – National Export Initiative, dated March 11, 2010](#). See also [Three Tiered System](#).

Non-Privileged Foreign Status.

Zone Status of merchandise in a Foreign Trade Zone that is evaluated based on its condition at the time it is shipped from the zone to the U.S. market and entered for consumption by CBP.

Non Vessel Operating Common Carrier (NVOCC).

A common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. See [46 C.F.R. Part 515.2\(m\)\(2\)](#). Non vessel operating common carrier issues its own house bills of lading or equivalent document.





Ocean Freight Forwarder. A person that, in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and prepares and processes the documentation or performs related activities incident to those shipments. See [46 Part C.F.R. 515.2\(m\)\(1\)](#).

Ocean Transportation Intermediaries (OTI). Ocean Freight Forwarders and/or Non-Vessel-Operating Common Carriers, regulated by the FMC pursuant to the Shipping Act of 1984, that provide international ocean shipping services. They typically arrange cargo

transportation, issue bills of lading, and provide other logistics services. See 46 CFR 515.

OFAC. This office of the Department of the Treasury administers and enforces **economic sanctions** programs against targeted countries or persons (both individuals and organizations) in order to advance U.S. national security, foreign policy or economic objectives. The sanctions can be imposed broadly so as to prohibit all types of economy in which case the sanctions are directed at a particular country and its government, or they may be list-based, in which case the sanctions are directed against designated persons. The implementing regulations are found at [31 C.F.R. Parts 500-598](#).

Oligarch. In **OFAC** parlance, a wealthy Russian business person, usually closely connected to Russian President Vladimir Putin or the Russian government. Russian Oligarchs are sometimes the target of OFAC sanctions related to the Russian invasion of Crimea or other malign activities. On January 29, 2018, the U.S. Department of Treasury released a report to Congress pursuant to **CAATSA** identifying senior political figures and oligarchs in the Russian Federation. These individuals are not subject to sanctions merely by virtue of being included in the January 29 report.

Order of Review. [Supplement 4 to Part 774 of the EAR](#) that provides guidance on the steps that are to be taken (*i.e.*, the order of review) when reviewing the CCL, in light of the new “600 series” and the new definition of “specially designed.”



P

Pedimento. A written form utilized by the Mexican Customs Authority to process imports into Mexico and exports from Mexico. Essentially, the Mexican Customs entry document.

COMPLIANCE ALERT!

On December 30, 2022, OFAC announced a settlement with Danfoss A/S (“Danfoss”) in the amount of \$4,379,810 related to allegations it “caused” a U.S. financial institution to facilitate prohibited financial transactions and export financial services to sanctioned jurisdictions, despite Danfoss’s status as a non-U.S. person. A Danfoss subsidiary had sold cooling and eating equipment to customers in Sudan, Syria, and Iran and had involved Danfoss’s U.S. Branch Account at a U.S. Financial Institution. The case represents a clear risk that engaging in multinational commercial activity, even where no U.S. persons or U.S. goods are directly involved, in a way that “causes” a U.S. person to support the transaction is prohibited under the U.S. > primary sanctions.

Penalties. Charges assessed or action taken in response to violations of the relevant law. The following provides general ranges of penalties, as these civil penalties are reassessed on an annual basis to account for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act.

(1) **EAR Penalties.** Administrative penalties for violations of the EAR may include (a) denial of export privileges; (b) exclusion from practice; (c) imposition of a fine up to approximately \$300,000 per violation, or twice the value of the transaction, whichever is greater; or (d) any combination of the above. Criminal penalties for a company involve a fine up to the greater of \$1,000,000 or five times the value of the exports per violation.

(2) **ITAR Penalties.** Civil penalties for ITAR violations include a fine of up to approximately \$1,100,000 per violation. Criminal penalties may include a fine of up to \$1,000,000 per violation, imprisonment for up to 10 years per violation, or both. Additional penalties may include seizure and forfeiture of the merchandise, interim suspension of export privileges and debarment – a prohibition from exporting defense articles. Finally, DDTC regularly

requires the supervised imposition of compliance programs.

(3) **OFAC Penalties.** The following statutes are enforced by OFAC along with their approximate penalties, which are revised annually: International Emergency Economic Powers Act (IEEPA) – greater than ~300,000 or twice the amount of the underlying transaction; Trading with the Enemy Act (TWEA) - ~90,000; Foreign Narcotics Kingpin Designation Act (FNKDA) --\$1,500,000; Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) – greater of ~\$80,000 or twice the amount of which a financial institution was required to retain possession or control; and Clean Diamond Trade Act (CDTA) - ~\$14,000; maximum criminal penalties are fines of up to \$1,000,000 or for an individual, up to 20 years imprisonment.

(4) **FCPA Penalties.** Maximum civil penalties for violations of the anti-bribery provisions are ~\$20,000 per violation; for violations of the accounting provisions, SEC may obtain a civil penalty ranging from ~\$9,000 to \$200,000 for an individual and ~\$96,000 to \$960,000 for a company; maximum criminal penalties of \$2,000,000 per violation of the anti-bribery provisions for corporations and \$250,000 for

individuals; \$25,000,000 for violation of the accounting provisions for corporations and \$5,000,000 for individuals. Criminal penalties include possible imprisonment. In addition to penalties, violations of the FCPA are subject to the disgorgement of profits plus interest.

(5) **Import Penalties.** Penalties levied on an importer of record for failure to meet its duty of informed compliance and reasonable care. The penalty amount depends on culpability: negligence, gross negligence, or fraud. For violations with a loss of duty, the penalties are: domestic value of the merchandise (fraud), the lesser of the domestic value or four times the loss of duties (gross negligence), or the lesser of the domestic value or two times the loss of duties (negligence). For violations without a loss of duty, the maximum penalties are: the domestic value of the merchandise (fraud), 40% of the domestic value of the merchandise (gross negligence), or 20% of the domestic value of the merchandise (negligence). Prior disclosure or other mitigation may reduce these amounts. See 19 U.S.C. § 1592(c); 19 CFR part 171.

CLIENT ALERT!

In 2017, the Department of Justice implemented its FCPA Corporate Enforcement Policy. The FCPA Corporate Enforcement Policy, as revised in 2019, provides considerable incentives to companies that voluntarily self-disclose violations of the Act, have well-established compliance programs, and take remedial actions immediately. Companies following the procedures outlined in the Corporate Enforcement Policy could secure a declination against criminal prosecution, and a significant reduction in penalties.

Post Summary Corrections (PSC).

PSC are the sole method for trade to electronically correct entry summaries prior to liquidation. Generally, PSC must be filed within the earlier of 300 calendar days of the date of entry or 15 days before the liquidation. The initial entry summary for the goods must be in accepted status, in CBP's control, and paid in full. Some data cannot be changed using a PSC, including: port of entry, importer of record, payment type, live entry indicator, statement month, location of goods, cargo release certification, statement client branch identifier, consolidated summary, release details (like entry filer code or entry

number). 19 CFR 101.9(b). A filer would usually submit a PSC because they are legally obligated to correct an entry. See 19 U.S.C 1484 and 1485.

Prior Disclosure. Pursuant to CBP regulations, if a person discloses the circumstances of a negligent or grossly negligent violation before, or without knowledge of, the commencement of a formal investigation of such violations, the monetary penalty is limited to the amount of interest due on the underpaid duties. Additionally, the duties that were not paid must be remitted to CBP. If a person discloses the circumstances of a fraudulent violation under these circumstances, the monetary penalty is limited to an amount equal to 100% of the duties, taxes and fees that were underpaid. See [19 U.S.C. § 1592\(c\)\(4\),\(d\)](#).

Priority Trade Issues. High-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten health and safety. These are used by CBP to drive enforcement and facilitation efforts, including audit and regulatory initiatives. They are subject to change by CBP. The current list of Priority Trade Issues are:

- Agriculture and Quota
- Antidumping and Countervailing Duties



- Import Safety
- Intellectual Property
- Revenue
- Textile/Wearing Apparel
- Trade Agreements

Privileged Foreign Status. Zone Status of merchandise in a Foreign Trade Zone that maintains its status based on its condition when it was admitted to the zone. When the merchandise is shipped from the zone to the U.S. market and entered for consumption by CBP, it is evaluated based on the time-of-admission condition even though it may have undergone a transformation in the zone. See also [Foreign Trade Zone](#); [Zone Status](#).

Protest. An administrative challenge to a CBP decision. Protests can be filed on ACE to correct information on liquidated entry documents, or to file a disagreement with a decision made by CBP. Common protest actions include classification of merchandise, application of antidumping duties, and Section 301 exclusions. Protests must be filed within 180 days of liquidation. See 19 U.S.C. § 1514. See also [Application for Further Review](#); [Void Denial Request](#).

Public Domain. Information that is published and is generally accessible or available to the public via: newsstand, bookstores, subscriptions without restrictions, second class U.S. mail, libraries open to the public, patents available at patent office, distribution at

conferences or trade shows generally accessible to the public in the U.S., through public release by an authorized federal agency, or through fundamental research accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. [ITAR, [22 CFR Part 120.34](#)] Public domain information is exempt from [ITAR](#) licensing requirements.

Published. When unclassified technology or software has been made available to the public without restrictions upon its further dissemination, it has been “published” and is not subject to the EAR. Publishing can be accomplished through many common means of dissemination as listed in [15 C.F.R. Part 734.7](#).

Q

Quick Response Audits (QRA).

Single-issue audits with a narrow focus. These audits are designed to address a specific objective within a short period of time. QRA is a term used to cover a variety of audits that will have limited objectives as opposed to the complete evaluation of

a company's CBP activities in the Focused Assessment program. Generally, QRAs originate from referrals by other CBP and Homeland Security offices utilizing risk management principles to identify specific companies involved in certain types of transactions.

Quota. A trade restriction that sets a limit on the quantity of a good that can be

imported in a given period of time. Quotas may be (1) absolute – setting a limit on the total quantity of that good that may be imported in the designated period of time; or (2) tariff-based – setting an increased rate of duty when the quantity of the specified goods imported during a designated period exceeds a previously established threshold.



R

Reasonable Care. Customs law of the U.S. requires an importer of record to use reasonable care in completing the entry, declaring the proper value, classification, duty rate and such other information or documentation as is necessary for CBP to properly assess duties and collect statistics. With respect to classification, reasonable care involves ensuring that you have accurate details about the products, consulting tariff schedules and possibly consulting with Customs "experts" or obtaining a ruling from CBP. With respect to valuation, reasonable care involves knowing the price actually paid or payable for the merchandise as well as the terms of sale to be able to identify any other payments related to the merchandise. With respect to country of origin marking, reasonable care involves taking reliable measures to ascertain the correct country of origin and verifying that the merchandise is properly marked upon entry. Documented procedures are central to an importer's ability to demonstrate that it has exercised reasonable care.

Reasons for Control. Under the EAR, each ECCN entry lists the reason or reasons for export control of each item in the "Control(s)" section of the CCL. The reasons for control are then mapped to the **Commerce Control List** to determine whether goods controlled for the specified reason are controlled for exportation to the specified country. The following is a list of possible Reasons for Control: AT Anti-Terrorism; CB Chemical & Biological Weapons; CC Crime Control; CW Chemical Weapons Convention; EI Encryption Items; FC Firearms Convention; MT Missile Technology; NS National Security; NP Nuclear Nonproliferation; RS Regional Stability; SS Short Supply; UN United Nations Embargo; SI Significant Items; and SL Surreptitious Listening. See [15 C.F.R. Part 738.2\(d\)\(2\)\(ii\)\(A\)](#) and [15 C.F.R. Part 742](#).

Recordkeeping. Generally, CBP regulations require entry records (which consist of records, including data elements, which are required by law for the entry of merchandise) to be kept for 5 years by the owner, importer, consignee, importer of record, or other designee who imported the merchandise into the U.S. These records are subject to CBP inspection, and failure to maintain or produce entry records may result in

substantial penalties.

Red Flag Indicators. Published by BIS, a checklist of things to look for in export transactions to help identify possible violations of the EAR and export to unauthorized end-users. These include:

- The customer or its address is similar to one of the parties found on the Commerce Department's [BIS's] list of denied persons.
- The customer/purchasing agent is reluctant to offer information about the end-use of the item.
- The product's capabilities do not fit the buyer's line of business (e.g., an order for sophisticated computers for a small bakery).
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics

but still wants the product.

- Routine installation, training or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export or for reexport.

Reexport. (1) Under the EAR, reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States. See [15 C.F.R. Part 734.14\(a\)](#). (2) Under the ITAR, reexport (also referred to as retransfer) means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized. See also [EAR](#); [ITAR](#).

Regional Value Content (RVC) (USMCA). The USMCA creates new Regional Value Content requirements for a minimum percentage of a good that must originate within the trade region. The RVC must be calculated under either the transaction value or net cost method, depending on the product at issue. For motor vehicles, different minimum thresholds exist for light vehicles, core parts, principle parts, complementary parts, and steel/aluminum content.

Related Party. Transactions between related parties may affect the determination of the transaction value. For customs purposes, related parties are defined as persons who are: (a) members of the same family; (b) officer or director of an organization and the organization; (c) officer and director of an organization and an officer and director of another organization, if such individual is also an officer or director of the other organization; (d) partners; (e) employer and employee; (f) any person or organization directly or indirectly owning, controlling or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (g) two or more persons directly or indirectly controlling, controlled by, or under common control

with, any person. See [19 U.S.C. § 1401a\(g\)](#). See also [Valuation of Goods](#).
Routed Export Transaction. An export where the Foreign Principal Party in Interest (FPPI) authorizes a U.S. forwarding agent to facilitate the export of items from the United States. Under a routed export transaction, the U.S. Principal Party in Interest (USPPI) must provide information to assist in the preparation of the export filing and must determine the licensing authority unless the USPPI receives a writing from the FPPI expressly assuming responsibility for determining licensing requirements.

Royalty. License fees or royalties on imported goods, comprising intellectual property rights, compose part of the customs value of goods and may be dutiable, depending on the circumstances.

Ruling. A Ruling is an administrative determination issued by CBP about the application of Customs laws to the specific facts of a particular, prospective transaction. Importers can request a Ruling from CBP with respect to issues such as the classification of goods, the country of origin of a product, valuation of goods, and more. Rulings are published by CBP in the Customs Rulings Online Search System (CROSS) at <http://rulings.cbp.gov>.

S

Sanctions. See [Economic Sanctions](#).

SDN List. See [Specially Designated Nationals List](#).

Section 201. A mechanism under the Section 201 of the Trade Act of 1974 (referred to as “safeguard measures”) to provide relief to a domestic industry when imports are occurring in such increased quantities so as to be a substantial cause of serious injury, or the threat of serious injury. Section 201 remedies have been used to safeguard several industries at different times. In January 2018, President Trump approved tariffs to be implemented on imported solar cells (over four years) and washing machines (over three years), in addition to the normal rate of duty.

Section 232. A mechanism under the Trade Expansion Act of 1962 to evaluate and counter the effects of imports on National Security. Most recently, the Trump Administration imposed additional duties on imported steel and aluminum regardless of the country of origin. Certain countries opted for absolute quotas rather than having their goods subjected to additional duties. The Department of

Commerce has established a process to exclude products that are not produced in the United States in sufficient or reasonably available amounts or of satisfactory quality. On January 24, 2020, the President issued a proclamation expanding the coverage of the 232 remedy for steel and aluminum to cover derivative products, including nails, tacks, drawing pins, staples, and similar derivative products.

Section 301. A mechanism under the Trade Act of 1974 that authorizes the president to take action, including retaliatory tariffs, to counter acts or practices of foreign governments that contravene international trade agreements or are otherwise unreasonable or discriminatory and burden or restrict U.S. commerce. In 2018, the U.S. Trade Representative (USTR) self-initiated several Section 301-related actions against lists of Chinese goods following an investigation of China’s practice of forced technology transfers.

From 2018 to 2020, the USTR granted a large number of exclusions from the Section 301 duties on Chinese goods via an ongoing regulatory process. Most exclusions expired on December 31, 2020. However, in light of the COVID-19

pandemic, the USTR announced a new Section 301 exclusion process in March 2020 and granted a number of exclusions on products to address COVID-19-related concerns, many of which were extended through 2021 and 2022. These included products such as personal protective equipment (PPE), medical devices/ components, other goods for use in hospitals, and more.

In 2019, tariffs on additional lists of Chinese goods brought the total value of goods subject to tariffs to over \$400 million. In January 2020, Beijing and Washington reached a “Phase 1” deal to reduce tariffs on \$120 billion in Chinese products from 15% to 7.5% in exchange for guarantees from China to increase purchases of U.S. goods and other concessions. In May of 2022, the USTR began the statutory four-year review of the Section 301 tariffs on goods from China.

On October 9, 2019, the administration announced the imposition of additional duties on goods from the European Union to address unlawful subsidies to the EU’s large civil aircraft industry.

EU Meat. In December 2019, the USTR initiated a proceeding to reinstate action against the EU to suspend concessions

in connection with its meat products. In light of the successful negotiations with the EU to resolve U.S. concerns, the USTR determined to not reinstate action.

Large Civil Aircraft (“LCA”). In January 2021, the USTR revised the action taken from 2019 on large civil aircraft to mirror the approach taken by the EU in exercising its WTO authorization in the Boeing dispute. The USTR revised the action by adding certain products of certain EU member States to the list of products subject to additional duties. But in June 2021, the United States reached agreements with the EU and UK regarding the LCA dispute, and suspended for five years the actions taken in its Section 301 investigation. 86 FR 36313 (Jul. 9, 2021).

Digital Services Taxes. On January 6, 2021, the additional duties on products of France imposed due to France’s Digital Services Tax were suspended indefinitely. However, On January 21, the USTR found that the Digital Services Taxes of Austria, India, Italy, Turkey, the United Kingdom, and Spain, were unreasonable or discriminatory, burdened or restricted U.S. commerce, and are thus actionable under Section 301. On March 31, the Biden Administration proposed duties of up to 25% on certain goods from those countries as a result.

Vietnam. Also in January of 2021, the USTR determined that Vietnam’s acts, policies, and practices related to currency valuation were unreasonable and

burdened or restrict U.S. commerce and therefore actionable under Section 301.

COMPLIANCE ALERT!

In Headquarters Ruling H300226, dated September 13, 2018, U.S. Customs and Border Protection determined that a traditional “substantial transformation” test is used to determine country of origin (COO) for Section 301 duty purposes, even if the goods qualify as “made in Mexico” for purposes of the NAFTA Marking Rules (19 C.F.R. Part 102). The ruling came in a case where an assembly operation in Mexico was sufficient for NAFTA Marking Rule purposes to require a “product of Mexico” label, but it was not sufficient to require origin as Mexico (versus China) for purposes of antidumping, countervailing, or other safeguard measures, such as Section 301. Customs has yet to rule on the inverse situation – where an item does not qualify under the NAFTA marking rules but is substantially transformed in Mexico. The ruling once again illustrates that under the same facts, the NAFTA marking rules of origin can reach a different result than the substantial transformation test.



Section 337. This section of the Tariff Act of 1930 (19 U.S.C. § 1337) is enforced by the International Trade Commission, which determines whether imported articles infringe U.S. intellectual property rights, such as patents or trademarks. Articles found to be violating the law may be excluded from entry into the U.S. See also **International Trade Commission.**

Sectoral Sanctions. A type of sanction administered by the U.S. Treasury, **OFAC** that targets a subset (or “sector”) of a country’s economy, such as material, finance, energy, or precious metals industries. Sectoral sanctions programs on Russia and Venezuela, for example, list entities within a series of defense, financial, and/or natural resource sectors and limit dealings by U.S. persons in debt, equity, and/or projects related to those entities.

Sectoral Sanctions Identifications List (SSI List). Published by the OFAC, identifies persons operating in sectors of the Russian economy, pursuant to Executive Order 13662. SSI listed entities are subject to specific restrictions under the economic sanctions imposed against Russia and Ukraine. In August 2017, the Countering America’s Adversaries Through Sanctions Act (CAATSA) codified and strengthened the four SSI

“Directive” categories of targeted economic sectors, and required the OFAC to share implementation of aspects of the law with the U.S. State Department.

Selling Commission. Any commission paid to the seller’s agent, who is related to, controlled by, or works for or on behalf of the manufacturer or the seller. Selling commissions must be included in the declared value of the imported merchandise. See also **Valuation of Goods; Transaction Value.**

Shipper’s Export Declaration (SED). A form previously used by the U.S. Census Bureau to compile trade statistics and help prevent illegal exports. This form has now been replaced by the Electronic Export Information (EEI) which is required to be filed electronically through AES. See also **AES; EEI.**

Shipping Advisory. The U.S. Department of Treasury, OFAC, together with the U.S. Department of State and the U.S. Coast Guard, periodically issues advisories to alert members of the global shipping community about illicit shipping practices involving North Korea, Syria, Iran, and other sanctions programs.

Simplified Network Application Process Redesign (SNAP-R).

Department of Commerce’s online network for submitting export and reexport applications and commodity classification requests via the Internet in a secure environment. See <https://snapr.bis.doc.gov/snapr/>.

600 Series. **ECCNs** in which the third digit is a 6. 600 Series items were previously controlled on the U.S. Munitions List or were items covered by the Wassenaar Arrangement Munitions List (WAML). The “6” indicates the entry is a munitions entry on the CCL.

Snapback. On May 8, 2018, President Trump announced his decision to withdraw from the **JCPOA** and to reimpose U.S. nuclear-related sanctions lifted in 2016 to implement the accord. Following two consecutive 90-day wind down periods (ending August 6 and November 4, 2018, respectively), the full reimposition of U.S. pre-**JCPOA** sanctions on Iran occurred.

SNAP-R. See **Simplified Network Application Process Redesign.**

Special Programs. Programs under which special tariff treatment may be provided under the **HTSUS**. All of the

special programs are identified in the HTSUS. Examples: Generalized System of Preferences (GSP), Pharmaceutical Appendix, African Growth and Opportunity Act, Andean Trade Preference Act, United States-Caribbean Basin Trade Partnership Act, Intermediate Chemicals for Dyes.

Specially Designated Nationals List (SDN List).

A list maintained and continually updated by OFAC of individuals, companies and organizations that are subject to severe limitations, including prohibitions and asset blocking, upon transactions involving U.S. persons. In addition, the EAR require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes SDGT, SDT, FTO or IRAQ2. Available online at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>; See also **OFAC**; **EAR**; **50% Rule**.

Specially Designed. Used in the ITAR and the EAR. Definition developed as part of ECR to identify those otherwise not specified parts and components that remain subject to the ITAR or are subject to 600 Series controls, but has implications wherever the term "specially designed" is used in the EAR. An item is specially designed if it is caught by one of

two categories, and is not released by an exemption (a so-called "catch-and-release" approach). See [15 C.F.R. Part 772.1](#). Specially designed items either (1) have properties "peculiarly responsible for achieving or exceeding the performance levels, characteristics, or functions" in pertinent USML or ECCN paragraphs, or (2) are parts, components, accessories, attachments or software for use in or with a commodity or defense article described on the CCL or the USML. See [15 C.F.R. Part 772.1\(a\) 85 FR 4180](#). Even if an item meets the criteria for one of the two categories above, it is not considered to be specially designed if it meets one of six exceptions contained in 772.1(b): (1) Has been identified to be in an ECCN paragraph that does not contain "specially designed" as a control parameter or as an EAR99 item in a commodity jurisdiction (CJ) determination or interagency-cleared commodity classification (CCATS) pursuant to § 748.3(e); (2) Is, regardless of "form" or "fit," a fastener (e.g., screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, solder; (3) Has the same function, performance capabilities, and the same or "equivalent" form and fit, as a commodity or software used in or with an item that: (i) Is or was in "production" (i.e., not in "development"); and (ii) Is either

not "enumerated" on the CCL or USML, or is described in an ECCN controlled only for Anti-Terrorism (AT) reasons; (4) Was or is being developed with "knowledge" that it would be for use in or with commodities or software (i) described in an ECCN and (ii) also commodities or software either not "enumerated" on the CCL or the USML (e.g., EAR99 commodities or software) or commodities or software described in an ECCN controlled only for Anti-Terrorism (AT) reasons; (5) Was or is being developed as a general purpose commodity or software, i.e., with no "knowledge" for use in or with a particular commodity (e.g., an F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool); or (6) Was or is being developed with "knowledge" that it would be for use in or with commodities or software described (i) in an ECCN controlled for AT-only reasons and also EAR99 commodities or software; or (ii) exclusively for use in or with EAR99 commodities or software. See [15 C.F.R. Part 772.1\(b\) 85 FR 4180](#).

SSI List. See **Sectoral Sanctions Identifications List**.

Subject to the EAR. A term used in the **EAR** to describe those items and activities over which BIS exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are not subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by the regulations. The items and activities subject to the EAR are described in [15 C.F.R. Part 734.2-734.5](#). The following items are subject to the EAR: (1) All items in the United States, including in a U.S. Foreign Trade Zone or moving in transit through the United States from one foreign country to another; (2) All U.S.-origin items, wherever located; (3) Foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are “bundled” with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, and foreign-made technology that is commingled with controlled U.S.-origin technology (i) in any quantity, as described in §734.4(a) of this part; or (ii) in quantities exceeding the *de minimis* levels, as described in §734.4(c) or §734.4(d) of this part; (4) Certain foreign-made direct products of U.S.-origin technology or software, as described in §736.2(b)(3) of the EAR. The term “direct product” means the immediate product (including

processes and services) produced directly by the use of technology or software; and (5) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software, as described in §736.2(b)(3) of the EAR. See [15 C.F.R. Part 734.13](#).

Subsidy. Financial assistance from a government to a business or industry, often for the purpose of promoting exports or the use of domestic over imported goods. Countries may apply countervailing duties to counter the effects of certain subsidies in other countries. See also **Countervailing Duties**.

Substantial Transformation. The test for determining the country of origin of goods that consist in whole or in part of materials from more than one country. An article is said to have been substantially transformed if, as a result of a manufacturing process, it has undergone a change in its name, character or use. See also **Country of Origin**.

Successor Liability. A company can be held liable for prior violations of U.S. foreign trade controls – export controls, anti-boycott and economic sanctions – committed by companies it has acquired

if it continues operating in the same manner and engages in similar violations. A thorough due diligence review will allow the acquiror to identify potential undisclosed violations and liabilities and to correct procedures as quickly as possible.

COMPLIANCE ALERT!

On February 7, 2019, OFAC announced a settlement with Kollmorgen Corporation, on behalf of its Turkish affiliate, related to six apparent violations of the Iran Transactions and Sanctions Regulations (ITSR). Despite robust pre- and post-acquisition compliance efforts by Kollmorgen, the violations occurred following acquisition of the Turkish affiliate in 2013. Contributing to the severity of the alleged violations, the Turkish affiliate was determined to have acted willfully, with full knowledge of their prohibitions, warranting a rare individual designation of a terminated Turkish manager responsible for many of the transactions. The case highlights the importance of performing deep due diligence when operating in high-risk areas and implementing proactive controls when acquiring a company with known dealings with a prohibited country.



T

TAA. See [Technical Assistance Agreement](#).

Tariff Shift. Method of determining country of origin wherein a change in the origin of a product is determined by examining the difference between the [HTSUS](#) classification of the input and the [HTSUS](#) classification of the item produced. Tariff shifts are used to determine the origin of textile products and origin under certain [FTAs](#). See also [Country of Origin](#); [Substantial Transformation](#).

Technical Assistance Agreement (TAA). An agreement for the performance of a defense service or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under the TAA, provided production rights or manufacturing know-how are not conveyed. See [22 C.F.R. Part 120.22](#). See also [Manufacturing License Agreement](#).

Technology Control Plan (TCP). A TCP is required when items, information, or technology are export controlled under the ITAR or the EAR and no exemptions

or exclusions are available. A TCP is a customized management plan which outlines the procedures in place to prevent access to export-controlled items, technologies, data, or information by unauthorized individuals.

Technical Data. Under the ITAR, the term means: (1) Information, other than software as defined in §120.10(a)(4), required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes blueprints, drawings, photographs, plans, instructions or documentation; (2) Classified information relating to defense articles and defense services; (3) Information covered by an invention secrecy order; (4) Software as defined in §121.8(f) of this subchapter directly related to defense articles; (5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in §120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles. See [22 C.F.R. Part 120.10](#).

TFTEA. See [Trade Facilitation and Enforcement Act of 2015](#).

Three Tiered System. One of the avenues of achieving NEI's goal is the revision of export control lists into a three tiered system based on a positive description of the items being controlled:

Tier 1 items are those that are almost exclusively available from the United States and that provide a critical military or intelligence advantage.

Tier 2 items are those that are not in Tier 1 and are almost exclusively available from countries that are members of multilateral export control regimes that control such items and (i) provide a substantial military or intelligence advantage; or (ii) make a substantial contribution to the indigenous development, production, use or enhancement of Tier 1 or Tier 2 items.

Tier 3 items are those that provide a significant military or intelligence advantage, or make a significant contribution to the indigenous development, production, use or enhancement of a Tier 1, 2 or 3 item, but may be available from countries outside of those that are members of the multilateral export control regimes. 75

Fed. Reg. 76930. See [National Export Initiative](#).

Toxic Substances Control Act (TSCA). A law administered by the U.S. Environmental Protection Agency that prohibits the manufacture or importation of "new chemicals" defined by TSCA as those chemicals not listed on the TSCA Inventory or covered by an applicable exemption. See *also* [HazMat](#).

Trade Facilitation and Enforcement Act of 2015 (TFTEA). The Trade Facilitation and Enforcement Act of 2015 (TFTEA) (Pub. L. No. 114-125) was passed on February 24, 2016, and made significant reforms to Customs law. Key reforms include the counter AD/CVD evasion measures of Title IV, which established a formal process whereby an interested party can submit an allegation to CBP that a person has imported merchandise covered by an AD/CVD order through evasion. See [Enforce and Protect Act](#); [P.L. 114-125, §401-515](#). The law also changed drawback requirements to permit the substitution of items sharing the same 8-digit classification (or 10-digit classification where the 8-digit classification starts with "other"). See [P.L. 114-125, §906](#). Furthermore, the time frame for claiming drawback was extended

from three years to five years from the time of entry. The law also reduced the de minimis value for duty-free imports from \$800 to \$200. See [P.L. 114-125, §901](#).

Trade Promotion Authority (TPA). Legislation that requires the President to communicate with Congress during trade negotiations. In return, Congress agrees to subject trade agreements to a simple majority vote affirming or declining the trade agreement.

Trans-Pacific Partnership (TPP)/ Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The Trans-Pacific Partnership (TPP) would have created the world's largest free trade zone, including the countries of Brunei, Chile, New Zealand, Singapore, the United States, Australia, Vietnam, Peru, Canada, Japan, Malaysia, and Mexico. After the United States withdrew from the deal in 2017, the remaining 11 parties agreed on a new pact, the CPTPP, keeping most of the original TPP provisions intact. The CPTPP entered into force for those countries that ratified it on December 30, 2018.

Trade Remedy Law Enforcement Division. Established under TFTEA, this division is responsible for 1) developing and administering policies to prevent

evasion; 2) directing enforcement and compliance assessment activities concerning evasion; 3) developing and conducting commercial risk assessment targeting; 4) issuing trade alerts; and 4) developing policies regarding bonds on importations subject to AD/CVD.

Transaction Value. Importers must report the monetary value of merchandise imported into the U.S., the preferred method of appraisal being transaction value, which includes: (1) The price actually paid or payable for the merchandise when sold for exportation to the United States, plus the following additions: (a) packing costs incurred by the buyer; (b) selling commission incurred by the buyer; (c) value of any assist, apportioned as appropriate; (d) royalties or license fees that the buyer is required to pay as a condition of the sale; (e) proceeds of subsequent resale, disposal or use that accrue to the seller. These enumerated additions are only added to the price if they are: (i) not included in the price, and (ii) based on information accurately establishing the amount. (2) The following exclusions are not part of transaction value: (a) costs of transportation, insurance and related services; (b) costs of constructing, assembling, maintaining or providing technical assistance after importation;

(c) costs of transporting goods after importation; (d) customs duties and federal taxes. (3) Transaction value cannot be used when any of the following limitations exist: (a) restrictions on disposition or use of the merchandise; (b) conditions for which value cannot be determined; (c) proceeds of any subsequent resale, disposal or use of the merchandise for which an appropriate adjustment to transaction value cannot be made; (d) related party transactions where the relationship between buyer and seller influenced the price actually paid

or payable (case-by-case determination); and (e) insufficient information as to any element of transaction value. See *also* [Valuation of Goods](#); [Selling Commission](#); [Assist](#); [Royalty](#); [License](#).

Transatlantic Trade and Investment Partnership (TTIP). A proposed free trade agreement between the European Union and the United States. The United States withdrew from TTIP negotiations in 2017.

Transportation Security Administration (TSA). A division of the Department of Homeland Security that is responsible for maintenance of the security of U.S. transportation systems. See *also* [Certified Cargo Screening Program](#).

Transshipment. The shipment of goods to an intermediate destination, and then from there to yet another destination.

TSCA. See [Toxic Substances Control Act](#).



U

United States-Mexico-Canada Agreement (USMCA).

A trade agreement reached between the U. S., Canada, and Mexico resulting from the renegotiation and updating of the [North American Free Trade Agreement \(NAFTA\)](#). The USMCA places an increased emphasis on intellectual property (IP) protection and labor rights. The agreement also raises the percent of auto content that must be produced in the U.S., Mexico, or Canada and imposes a Labor Value Content for automobiles. The USMCA was signed on November 30, 2018 and went into effect on July 1, 2020.

[Labor Value Content \(LVC\) \(USMCA\)](#).

The USMCA creates a new Labor Value Content rule that requires a minimum percentage of labor value to go into vehicles produced within North America

in order for the vehicles to be considered as originating within the trade region. At least 40% of a passenger vehicle and 45% of pickup trucks and cargo vans must be made by workers who earn an hourly wage of at least USD \$16/hr.

U.S. Munitions List (USML). A list of articles, services and related technology designated as defense-related. The USML is part of ITAR, and the articles on the list fall under the export jurisdiction of the Department of State. See [22 C.F.R. Part 121.1](#). See also [ITAR](#).

U.S. (or Domestic) Principal Party in Interest (USPPI). The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. See 15 CFR 30.1.

Uyghur Forced Labor Prevention Act (UFLPA). Signed into law on December 23, 2021, the Act creates a rebuttable presumption (effective June 21, 2022) that any goods mined, produced, or manufactured **in whole or in part** in the Xinjiang Uyghur Autonomous Region of

China have been produced using forced labor and are banned from importation unless the presumption can be overcome. The U.S. government will identify entities inside and outside the Xinjiang region that produce goods with forced labor, entities working with the government to recruit, transport, harbor, or receive forced labor, facilities utilizing forced labor or that work with the Xinjiang government or the XPCC to produce items with forced labor, to which the presumption also applies. Importers must be diligent in monitoring these lists and their supply chains for the possibility that they are importing products from areas outside Xinjiang that may include content produced in the Xinjiang region or from forced labor. For example, [CBP enforcement statistics for the period of June 2022 – Feb. 2024](#) have demonstrated the reach of the UFLPA going beyond China, with approximately 55% of detained shipments being of Malaysian and Vietnamese origin, and accounting for almost 75% of the value of detained goods. Importers can overcome the rebuttable presumption in the Act by complying with due diligence guidance and demonstrating through clear and convincing evidence that the goods were not made with forced labor. <https://www.congress.gov/bill/117th-congress/house-bill/6256>





V

Valuation of Goods. All merchandise imported into the United States must be valued and reported upon entry. The following is a list of acceptable valuation methods, which must be considered in the order presented: (1) Transaction Value; (2) Transaction Value of Identical Merchandise; (3) Transaction Value of Similar Merchandise; (4) Deductive Value; and (5) Computed Value. If none of these values can be used, then the value must be based on a value derived from one of these methods, reasonably adjusted as necessary. See also **Related Party; Assist.**

(1) Transaction Value. (1) The price actually paid or payable for the merchandise when sold for exportation to the United States, plus the following additions: (a) packing costs incurred by the buyer; (b) selling commission incurred by the buyer; (c) value of any assist, apportioned as appropriate; (d) royalties or license fees that the buyer is required to pay as a condition of the sale; (e) proceeds of subsequent resale, disposal or use that accrue to the seller. These enumerated additions are only added to the price if they are: (i) not included in the price, and (ii) based on information accurately

establishing the amount. (2) The following exclusions are not part of transaction value: (a) costs of transportation, insurance and related services; (b) costs of constructing, assembling, maintaining or providing technical assistance after importation; (c) costs of transporting goods after importation; (d) customs duties and federal taxes. (3) Transaction value cannot be used when any of the following limitations exist: (a) restrictions on disposition or use of the merchandise; (b) conditions for which value cannot be determined; (c) proceeds of any subsequent resale, disposal or use of the merchandise for which an appropriate adjustment to transaction value cannot be made; (d) related party transactions where the relationship between buyer and seller influenced the price actually paid or payable (case-by-case determination); and (e) insufficient information as to any element of transaction value. See also **Valuation of Goods; Selling Commission; Assist; Royalty; License.**

(2) Deductive Value. A method for the appraisal of imported merchandise for customs purposes based on the resale price in the U.S. with deductions for any commissions paid or profit earned; general expenses related to U.S. sales, transportation and insurance costs; customs duties and federal taxes; and the

value of any further processing occurring in the United States. See *also* Valuation of Goods.

(3) **Computed Value.** A method for the appraisal of merchandise for customs purposes based on sum of the material and fabrication costs, profit and general expenses, assists and packaging costs. See *also* **Valuation of Goods**.

Void Denial Request. A request to set aside a denial of an application for further review, if the protesting party believes the application was erroneously or improperly denied. The request must be filed with the Commissioner of Customs within 60 days of the date of the notice of denial. If a protest is timely and properly filed, but denied contrary to proper instructions, the

Commissioner can void the denial of the protest. If the Commissioner does not act within 60 days of the request, the request is considered denied. See [19 U.S.C. § 1515\(c\)](#).

Voluntary Disclosure. Under the ITAR, the Department of State's Directorate of Defense Trade Controls encourages a voluntary disclosure by persons who believe they may have committed any ITAR violations. A voluntary disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed. See [22 C.F.R. Part 127.12](#). See *also* **Disclosure**.

Voluntary Self Disclosure. Under the EAR, the Department of Commerce's Bureau of Industry and Security strongly

encourages a voluntary self disclosure by persons who believe they may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought. See [15 C.F.R. Part 764.5](#). Under its "Economic Sanctions Enforcement Guidelines," the Department of the Treasury's OFAC also encourages voluntary self-disclosure of apparent violations. Voluntary self disclosure may result in mitigation of up to 50 percent of the base civil penalty amount in some cases. See [31 C.F.R. Part 501, Appendix A \(74 Fed. Reg. 57593 \(Nov. 9, 2009\)\)](#). See *also* **Disclosure**.



W

Wassenaar Arrangement (WA).

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral export control regime that was established in order to contribute to regional and international security and stability. The WA promotes transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. The WA Control Lists include: the Munitions List containing 22 main entries on items designed for military use and the List of Dual-Use Goods and Technologies. Participating States include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States. See <https://www.nti.org/learn/treaties-and-regimes/wassenaar-arrangement/>.

CLIENT ALERT!

On October 1, 2019, CBP issued five withhold-release orders (WROs) covering certain imported products from producers in five different countries. This move was viewed as a sign of increased enforcement efforts of the forced labor provisions. Under a withhold-release order, any importer of the identified goods must either prove that the goods were not produced with forced labor in order to bring them into the United States, or export the goods. Both options can be costly for importers.

World Customs Organization (WCO).

An intergovernmental organization that is dedicated exclusively to international customs and border control issues. The WCO works to develop global standards on a variety of customs-related topics, including commodity classification, valuation, rules of origin, supply chain security, facilitation of international trade and intellectual property rights protection, among others.

Wholly Obtained Test. The test for determining the country of origin of goods wholly grown, produced or manufactured in a particular country. See also **Country of Origin**.

Withhold Release Order. A formal finding by the CBP which detains or blocks the importation of goods found to have

been made with forced labor. Importers then have three months to affirmatively show with convincing evidence that the goods were not produced with forced labor. The Tariff Act of 1930 (19 U.S.C. § 1307) prohibits the importation of merchandise mined, produced or manufactured, in any foreign country by forced or indentured labor, including prison

labor, forced labor, or indentured child labor. See <https://www.cbp.gov/trade/programs-administration/forced-labor>.

World Trade Organization (WTO).

Formerly known as the General Agreement on Tariffs and Trade (GATT), the WTO was established in 1995 upon completion of the Uruguay Round of trade negotiations. The WTO provides a forum for negotiating agreements aimed at easing the global movement of goods and ensuring a level playing field for all. The WTO also provides the framework for implementation and monitoring of these agreements, as well as for settling disputes. The WTO currently has 153 members and 30 observers.





Z

Zone-Restricted Status. Merchandise in a Foreign Trade Zone that is to be exported or destroyed. Merchandise under this status can only be entered into U.S. customs territory if the FTZ Board finds that the entry would be in the public interest. See also **Zone Status**; **Foreign Trade Zone**.

Zone Status. The status of merchandise admitted to a Foreign Trade Zone can be either domestic or foreign status. Domestic status can include foreign status goods where the duty has been paid and the goods have been entered for consumption. Foreign status includes privileged foreign, non-restricted foreign and zone-restricted status. See also **Foreign Trade Zone**; **Non-Privileged Foreign Status**; **Privileged Foreign Status**; **Zone-Restricted Status**.

STATUTES, REGULATIONS AND WEBSITES

Anti-Boycott Regulations	15 C.F.R. Part 760
Antidumping Duty Orders in Place	https://pubapps2.usitc.gov/sunset/caseProf/list?sort=caseTitle&order=asc
Arms Export Control Act	22 U.S.C. § 2751 et seq.
Automated Commercial Environment (ACE)	https://www.cbp.gov/trade/automated
Bureau of Industry and Security (BIS)	www.bis.doc.gov
BIS: Applying for an Export License	https://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r
Countering America's Adversaries Through Sanctions Act (CAATSA)	PL No. 115-44
Customs and Border Protection (CBP)	https://www.cbp.gov/
Commerce Control List	15 C.F.R. Part 774 Supplement 1
Commerce Country Chart	.15 C.F.R. Part 738 Supplement 1 ; 15 C.F.R. Part 736
Committee on Foreign Investment in the United States (CFIUS)	50 U.S.C. App. § 2170 31 C.F.R. Part 800
Country of Origin Regulations	19 C.F.R. Part 134
Customs Broker Regulations	19 C.F.R. Part 111
Customs Rulings Online Search System (CROSS)	https://rulings.cbp.gov/home
C-TPAT	https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism
Debarred List	22 C.F.R. Part 127.7 https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm
Defense Services Regulations	22 C.F.R. § 120.9 and 124.1
Denied Persons List	https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list
Directorate of Defense Trade Controls (DDTC)	https://www.pmdrtc.state.gov/ddtc_public
Entity List	https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list
Export Administration Regulations (EAR)	15 C.F.R. Part 730 et seq.
Export Control Reform Act (ECRA)	50 U.S.C. § 4801 et seq. (2018)

STATUTES, REGULATIONS AND WEBSITES

Focused Assessment Website	https://www.cbp.gov/trade/programs-administration/audits/focused-assessment
Foreign Investment Risk Review Modernization Act (FIRRMA)	50 U.S.C. § 4565 (2018)
General Prohibitions (Export)	15 C.F.R. Part 736.2
Harmonized Tariff Schedule of the U.S. (HTSUS)	https://www.usitc.gov/glossary/term/harmonized-tariff-schedule-united-states-hts#:~:text=The%20Harmonized%20Tariff%20Schedule%20of,most%20world%20trade%20in%20goods
International Traffic in Arms Regulations (ITAR)	22 C.F.R. Parts 120–130
North American Free Trade Agreement (NAFTA)	19 CFR 181 - NORTH AMERICAN FREE TRADE AGREEMENT - Content Details - CFR-2012-title19-vol2-part181
Office of Foreign Assets Control (OFAC)	31 C.F.R. Parts 500–598 https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx
Office of the United States Trade Representative	www.ustr.gov
Prior Disclosure (CBP)	19 U.S.C. § 1592(c)(4), (d) 19 C.F.R. Part 162.74
Recordkeeping Regulations (CBP)	19 C.F.R. Part 163
Red Flag Indicators	https://www.bis.doc.gov/index.php/enforcement/oe/compliance/23-compliance-a-training/51-red-flag-indicators
Section 301 Exclusions Portal (USTR)	https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions
Specially Designated Nationals List	https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx
Technical Assistance Agreement	22 C.F.R. Part 120.22
United States International Trade Commission	https://www.usitc.gov/
U.S. Munitions List	22 C.F.R. Part 121.1
Uyghur Forced Labor Prevention Act (UFLPA)	https://www.govinfo.gov/app/details/PLAW-117publ78
Valuation	19 U.S.C. § 1401a 19 C.F.R. Parts 152.100–152.108
Voluntary Disclosure (ITAR)	22 C.F.R. Part 127.12
Voluntary Self Disclosure (EAR)	15 C.F.R. Part 764.5
World Trade Organization (WTO)	www.wto.org

INCOTERMS® 2020

Responsibility Matrix – Obligations of Importer (Buyer) and Exporter (Seller)

	Export Packing	Loading at Point of Origin	Inland Freight in Export Country	Export Terminal Charges	Export Clearance	Forwarder Fees	Ocean/Air Freight	Import Terminal Charges	Customs Clearance	Customs Duties	Delivery Charges to Final Destination	Delivery: Where Risk of Loss Generally Passes
"E" Departure												
EXW (Named Place) Ex-works	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Named Place
FCA (Named Place) Free Carrier	Seller			Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Carrier at Named Place
FAS (Port of Shipment) Free Alongside Ship	Sea/Inland Waterway			Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Alongside Vessel Port of Shipment
FOB (Port of Shipment) Free On Board	Sea/Inland Waterway			Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	On Board Vessel Port of Shipment
CFR (Port of Dest.) Cost & Freight	Sea/Inland Waterway					Seller	Buyer	Buyer	Buyer	Buyer	Buyer	On Board Vessel Port of Shipment
CIF (Port of Dest.) Cost of Insurance & Freight	Sea/Inland Waterway					Seller	Buyer	Buyer	Buyer	Buyer	Buyer	On Board Vessel Port of Shipment
CPT (Place of Dest.) Carriage Paid To	Seller					Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Carrier at Named Place
CIP (Place of Dest.) Carriage & Insurance Paid To	Seller					Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Carrier at Named Place
DAP (Place of Dest.) Delivered at Place	Seller							Buyer	Buyer	Seller	Seller	Arrival at Named Place of Dest.
DPU (Place of Dest.) Delivered at Place Unloaded	Seller							Buyer	Buyer	Buyer	Buyer	Unloaded at Named Place of Dest.
DDP (Place of Dest.) Delivered Duty Paid	Seller											Arrival at Named Place of Dest.
"C" Main Carriage Paid												
"F" Main Carriage Unpaid												
"D" Arrival												

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ABOUT THE FIRM



Thompson Coburn LLP's International Commerce attorneys counsel clients in the legal aspects of shipping goods, services and technologies across international borders. We regularly advise clients on customs compliance and export controls, foreign investment, international finance, immigration and the protection of intellectual property rights. Our attorneys regularly represent clients before the related agencies under the U.S. Department of Homeland Security, the U.S. Department of Commerce, the U.S. Department of the Treasury and the U.S. Department of State, as well as the U.S. International Trade Commission, the Office of the U.S. Trade Representative, the U.S. Congress, and international bodies.

Since the firm's founding in 1929, we have represented clients from nearly every industrial and corporate sector including energy, banking, transportation, manufacturing and communications. Now, with more than 400 attorneys and 50 practice areas, we continue to serve clients throughout the United States and beyond.

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