

July 2021

Reports on:

# U.S. Export Controls; Trade Remedies; Customs Enforcement

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# Clark Hill. Simply Smarter.

At Clark Hill, our value proposition is simple. We offer our clients an exceptional team, dedicated to the delivery of outstanding service. We recruit and develop talented individuals and empower them to contribute to our rich diversity of legal and industry experience. With locations spanning across the United States, Ireland, and Mexico, we work in agile, collaborative teams, partnering with our clients to help them reach and exceed their business goals.

## Why Clark Hill?

With more than 650 attorneys worldwide, we offer innovative, full-service legal solutions to our clients across a wide range of industries by focusing our energies on client needs and our key differentiators.



**Client-Service Excellence.** We commit to providing the advice and counsel our clients need to move their business forward. Our team focuses on client goals and needs at every turn, understanding when a 30-page memo is needed, or when a short email will do. We share our relationship-driven culture with our clients, guided by our core values—our DNA.



**Diverse Legal and Industry Experience.** Our team has the appropriate resources to address just about any concern facing our clients. Our multidisciplinary practice areas, industry teams, and product offerings ensure that our counsel addresses not only the legal and regulatory issues inherent in a matter, but also the best practices specific to our clients' industries.



**Business Partners.** We develop strategic partnerships and trusted relationships with our clients. Our attorneys and professionals develop and maintain a thorough understanding of our clients' businesses, strategies, objectives, risk tolerances, cost concerns, and other factors of importance.



**Agile, Collaborative Teams.** Our attorneys provide responsive, dynamic, and flexible service prioritizing our clients' needs. We guarantee a seamless, "one team" approach and provide clients consistent counsel across our practices and locations.



**Expansive Geographic Coverage.** With 26 offices in the United States, Ireland, and Mexico, we counsel clients where they operate. We have offices in 11 U.S. states and the District of Columbia and attorneys admitted to practice across the country. Our clients benefit from our knowledge of national, state, and local policies, regulations, customs, and venues. With international offices in Dublin and Mexico City, our team is familiar with legal and regulatory landscapes in Europe and Latin America.

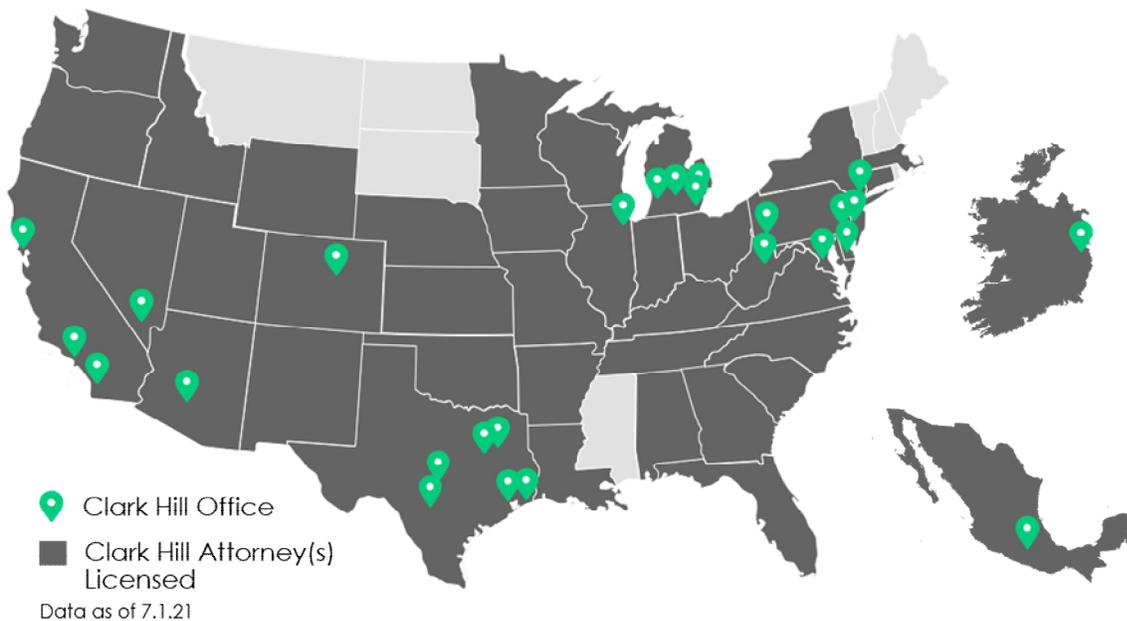


## Honors and Awards

Clark Hill has built a reputation for providing sophisticated counsel to our clients. Firmwide honors include:

- 77 practices rated Tier 1 in the 2021 edition of *US News and World Report Best Lawyers* "Best Law Firms"
- 172 attorneys recognized in 2021 *Best Lawyers in America*
- Firm recognized for excellence in client service by *BTI Client Service A-Team 2020: Survey of Law Firm Client Service Performance*
- 11 attorneys named "Leaders in their Field" in the 2020 edition of *Chambers USA: America's Leading Lawyers for Business*
- Firm ranked 112th law firm in the United States by gross revenue in *The American Lawyer's 2020 Am Law 200* ranking

## Geographic Footprint



# International Trade Group

Clark Hill's attorneys have represented clients in international trade and customs matters for nearly 50 years. Our International Trade Group has a successful track record in defending governments, foreign producers, and importers in antidumping (AD) and countervailing (CVD) duty cases and tariff matters and have a deep knowledge of the issues surrounding these proceedings. Our attorneys are further experienced in assisting clients with transactions subject to U.S. export controls, sanctions, and restrictions on foreign direct investment. Below is a summary of our experience and accomplishments:

- Clark Hill's attorneys draw on many years of experience gained from representing companies in export controls, sanctions, AD/CVD, and customs matters across all major industry sectors including: metals, wood, furniture, rubber, agricultural, chemicals, electronics, high tech, computers and software, cosmetics, medical devices, automotive, textiles and apparel, footwear, pharmaceuticals, heavy industry, telecommunications, defense, and aviation and aerospace.
- Clark Hill attorneys have represented more than 350 exporters and U.S. importers in both market and non-market (China, Vietnam) AD/CVD cases. In many of those cases we have represented both coalitions of importers and/or exporters, as well as individual companies seeking independent advice of counsel.
- Our attorneys include former Department of Commerce (DOC) and International Trade Commission (ITC) officials (including an ITC Commissioner) responsible for administering AD and CVD cases. Our attorneys have also served as in-house counsel for multinational corporations.
- Members of the International Trade Group are respected and recognized within the international trade and customs community. They serve in senior positions on the board of the U.S. Customs and International Trade Bar Association (CITBA) and as subject matter experts to the U.S. Trade Representative's (USTR) Advisory Committee on Trade Policy and Negotiations, U.S. Department of State Defense Trade Advisory Group, and the U.S. Department of Commerce Materials Technical Advisory Committee.
- Our attorneys have defended numerous foreign exporters and U.S. importers in AD/CVD cases and customs matters before the DOC, the ITC, and U.S. Customs and Border Protection (CBP).
- We regularly practice before the U.S. Court of International Trade (CIT), U.S. Court of Appeals for the Federal Circuit (CAFC), and state and other federal courts. We have



litigated more than 250 international trade cases before the CIT and CAFC alone, and we litigate legal challenges to agency actions under U.S. export controls.

- In addition to AD/CVD, we also counsel clients in other types of trade actions, including: Section 301 unfair trade practices; Section 201 global safeguard ("escape clause") proceedings; Section 337 intellectual property infringement cases involving unfair trade competition; and Section 232 investigations involving threats to national security.

Our attorneys are further experienced in advising U.S. and foreign companies on U.S. export control jurisdiction over foreign manufactured products that incorporate U.S.-origin hardware, software, and technology or that are foreign direct products of U.S.-origin software or technology. Some of our results include:

- In 2021, termination based on lack of injury at the ITC of Section 201 safeguard investigation on Fresh, Chilled, or Frozen Blueberries.
- In 2020, exclusion from Section 301 tariffs on imports of Chinese display racks and tables resulting in savings of several hundred thousand dollars for importer client.
- In 2019, exclusion of Chinese producer (mandatory respondent) from the scope of the AD/CVD investigation on *Steel Racks from China*.
- In 2018, exclusion from Section 301 tariffs on imports of Chinese fleece fabric and yarn saving the largest U.S. retailer/importer client more than \$10 million dollars.
- In 2017, in *Off-the-Road Tires from Sri Lanka*, the first CVD investigation against that country in more than 30 years, securing a nominal CVD margin of 2.18% (only .18% over *de minimis*) for the Government of Sri Lanka.
- In 2017, securing the lowest AD rate (0.0%) in the decade-long history of the case in *Off-the-Road Tires from China* for Chinese producer (mandatory respondent).
- In 2017, dismissal of petitioners' court appeal of the 4<sup>th</sup> DOC annual AD review in *Multilayered Wood Flooring from China*, securing more than \$7 million in AD refunds for the largest U.S. wood flooring retailer client.
- In 2015, termination of the AD/CVD investigation of *53-Foot Domestic Dry Containers from China* at the ITC, eliminating millions of dollars in potential AD/CVD duties for U.S. shipping container importer clients.
- In 2015, exclusion of importer client's product from the scope of the AD case on *Hand Trucks from China* resulting in a contract worth more than \$100 million with U.S. home improvement retailer.



- In 2014, securing a 0% AD rate and exclusion from the AD order for Chinese producer client (mandatory respondent) in *Multilayered Wood Flooring from China*.
- In 2012, termination of the AD/CVD investigation on *Steel Wheels from China* at the ITC, eliminating millions of dollars in potential AD/CVD duties for U.S. importer clients.
- In 2011, saving an importer client more than \$100 million in AD duties resulting from a CBP audit of imports of *Wooden Bedroom Furniture from China*. This result also rescued this major U.S. furniture conglomerate from potential bankruptcy.

Certain international trade matters involve policy issues and require collaboration with officials at the highest levels of U.S. government. For such matters, we have reliably involved our nationally recognized government affairs professionals who have served in senior executive positions in federal government; national, state, and local political campaigns; former local and state elected offices; and have been state legislative and congressional chiefs of staff, senior gubernatorial staff, and statewide elected officials.

Clark Hill's political law team has represented U.S. presidents and presidential candidates, U.S. senators, U.S. representatives, governors, state treasurers, and political candidates at all levels of government. In addition, our Government and Regulatory Affairs practice has well-established connections to senior officials, which has served our clients well in international trade matters recently involving Section 301 and Section 232 tariff exclusions, as well as AD and CVD cases on Aluminum Foil from China, Aluminum Sheet from China, Multilayered Wood Flooring from China, and Softwood Lumber from Canada.



# International Trade Practice

## Trade Remedies

Clark Hill's trade remedies practice represents domestic and foreign clients in antidumping (AD) and countervailing duty (CVD) cases, and safeguard proceedings before the DOC and the ITC.

Our attorneys have a successful track record in defending governments, producers, and importers through the full range of administrative and appellate actions under which tariff and other import restrictions may be imposed.

We advise clients on administrative and litigation strategy, compliance, sourcing, and risk management solutions in all areas of trade regulation, including:

- AD/CVD investigations and reviews before the DOC and ITC.
- Safeguard investigations, including Section 201 cases, administered by the ITC.
- Tariffs and import restrictions in support of national security interests under Section 232 of the Trade Expansion Act of 1962.
- Import-related actions administered by the Office of the U.S. Trade Representative (USTR), including tariffs and quantitative restrictions imposed under Section 301 of the Trade Act of 1974. Appeals of agency decisions to the CIT, the CAFC, and binational panels convened under the United-States-Mexico-Canada Agreement (USMCA).
- Actions under the Enforce and Protect Act of 2015 (EAPA) administered by CBP to investigate evasion of AD/CVD duties. Penalty and other enforcement measures administered by CBP.

Trade remedies can cross into related areas—including intellectual property, energy and environmental, government and regulatory affairs—and we collaborate with colleagues in those practices to offer integrated solutions for our clients.

- Exclusion from Section 301 tariffs on client's imported flooring products, resulting in refunds of \$25 million and quarterly savings of \$11 million.
- Secured product exclusions and more than \$2 million in tariff refunds in Section 232 and 301 proceedings for client aluminum foil importer.
- Exclusion from Section 301 tariffs on client's imported fleece and yarn products, resulting in multimillion-dollar savings.
- Secured multi-million dollar refunds of AD duties for the largest U.S. flooring retailer through several appeals of DOC's annual reviews in Multilayered Wood Flooring from China



- Exclusion of all products exported by client Chinese “mandatory respondent” from the scope of the AD/CVD investigation on Steel Racks from China.
- Saving a US importer client more than \$100 million in AD duties resulting from a CBP audit of imports of Wooden Bedroom Furniture from China. This result also rescued this major US furniture conglomerate from potential bankruptcy.
- Securing a 0 percent AD rate for first-time participant and mandatory respondent in the first DOC annual review of Multilayered Wood Flooring from China.
- Eliminating millions of dollars in potential AD/CVD duties for U.S. shipping container importers through termination of the 2012 AD/CVD investigation of 53-Foot Domestic Dry Containers from China at the ITC.
- Saved the client more than \$1 million per month in AD duties and to help secure long-term contracts with major US home improvement retail customers as a result of exclusion from the scope of the AD case on Hand Trucks from China.
- Securing in the 8th DOC annual review the lowest AD rate (4.54%) in the decade-long history of the Off-the-Road (“OTR”) Tires from China case for Chinese mandatory respondent, and first-time participant in the case, Weihai Zhongwei Rubber Co., Ltd.
- Represented Government of Sri-Lanka in, the first U.S. CVD investigation against that country in more than 30 years, securing a nominal CVD margin of 2.18% (only .18% over de minimis) in OTR Tires from Sri Lanka.
- Securing a 0 percent AD rate for Argentine honey producer in its first DOC annual review of Honey from Argentina.
- Termination at the ITC preliminary phase of the AD investigations on Desktop Note Counters and Scanners from China, Korea and the UK on behalf of importers clients China.
- Through litigation at the CIT and CAFC, securing a 0 percent AD rate and exclusion from the AD order on Polyester Staple Fiber from Korea for Korean exporters.
- Termination at the ITC preliminary phase of the AD investigation on Anhydrous Sodium Sulfate from Canada for U.S. Fortune 500 importer client.
- Represented Government of Latvia in securing the exclusion for its steel industry from the Section 201 Global Safeguards Investigation on Steel.

## Customs Law

Clark Hill helps domestic and international companies with all aspects of the laws and regulations governing international commerce.

We represent a variety of companies in the international trade community, including importers, exporters, customs brokers, freight forwarders, sureties, insurance companies, and



transportation companies. Our diverse client base affords us a broad perspective that enables us to develop creative and effective solutions to our clients' issues.

We regularly deal with matters involving:

- Tariff classification of imported merchandise
- Customs valuation, including related party concerns, dutiability of royalties, and applicability of the first sale concept
- Eligibility of products for tariff treatment under the USMCA and other special regimes and agreements (Generalized System of Preferences, African Growth and Opportunity Act, Central America Free Trade Agreement, US-Israel Free Trade Agreement, etc.)
- Designing and implementing compliance programs for importers and customs brokers
- Customs audits
- Customs recordkeeping requirements
- Customs penalties
- Customs broker issues, including licensing, compliance, penalties, defense of claims, and related matters
- Copyright and trademark issues
- Country of origin determinations and marking questions
- C-TPAT enrollment and advice
- Special tariff provisions such as American goods assembled abroad and articles exported for repairs or alterations
- Bonded warehouses/Foreign-Trade Zones
- Quotas and visas
- Drawback
- Import compliance matters and penalty cases involving other partner government agencies such as Food and Drug Administration, Environmental Protection Agency, Department of Transportation, and Transportation Security Administration

## Export Controls & Sanctions

U.S. export control and sanctions laws impose strict government authorization, record keeping, and other requirements. Violations of these laws can result in harsh fines, debarment from exports, criminal prosecution, and other penalties.



Our attorneys help multinational corporations, investors, and Chinese domestic enterprises comply with U.S. export laws, sanctions laws, and laws on Chinese investments in U.S. companies with restricted technology.

Our experience in these areas includes the U.S. Department of Commerce Export Administration Regulations ("EAR") and the U.S. Department of Treasury Committee on Foreign Investment in the United States ("CFIUS").

Our attorneys help clients sort out these complicated U.S. laws and regulations to achieve successful export.

The relevant business scope includes:

- Export license
- Export management and compliance programs
- Export compliance assessments and audits
- Export compliance training
- Sanctions and restricted trade party screening
- Chinese investments in U.S. business with restricted technology

## Foreign Direct Investment

Certain non-U.S. investments in U.S. businesses are subject to national security reviews by the Committee on Foreign Investment in the United States ("CFIUS"), an interagency committee chaired by the U.S. Department of Treasury.

CFIUS has the power to suspend, modify, prohibit, and unwind mergers, acquisitions, and divestitures of U.S. businesses by non-U.S. persons. It focuses on non-U.S. investments in U.S. businesses involved in certain technologies and critical infrastructure, and that handle sensitive personal data. CFIUS also has the power to review covered real estate transactions that implicate national security concerns. In many cases, a declaration or notice to CFIUS is mandatory or otherwise advisable.

Our attorneys regularly assist clients in addressing CFIUS requirements. We are also experienced in export controls and sanctions, government contracts, corporate governance, and other issues that are intertwined with the CFIUS process. We know national security controls on technology, are familiar with the various types of transaction structures used to invest in U.S. businesses, and are experienced in dealings with bankers, investment advisors, accountants, and others typically involved in these types of transactions.



# REPORT: Addressing the Risk of U.S. Export Controls

## 报告：应对美国出口管制风险

Chinese companies doing business with U.S. partners need to consider the risk of U.S. export controls. These laws can complicate transactions and disrupt supply chains. Violations by Chinese companies can result in severe fines, exclusion from the U.S. marketplace, and criminal prosecutions by the U.S. government. In one case, a Chinese company paid the U.S. government over a billion dollars to resolve alleged violations of U.S. export controls.

中国公司与它的美国商业伙伴做生意需要考虑美国出口管制的风险。相关法律使得交易复杂化，对供应链造成干扰。中国公司违反出口管制相关规定将可能招致巨额罚金、被逐出美国市场、美国政府司法起诉等风险。曾有中国公司因涉嫌违反美国出口管制被美国政府罚款十亿美元之巨。

### The U.S. Export Control System

#### 美国出口管制体系

U.S. export controls impose strict license requirements on international transactions involving hardware, software, and technology (collectively, "items"), and certain services. These laws can apply to products manufactured in China and other countries ("non-U.S.-made items").

美国出口管制实施严格的国际交易许可制度，涉及硬件、软件、技术（统称为“物项”）和某些服务。相关法律适用于中国和其他国家制造产品（统称为“非美国制造物项”）。

The three primary U.S. export controls regulations are:

美国三个主要出口管制条例如下：

- **International Traffic in Arms Regulations ("ITAR").** The ITAR are administered by the U.S. Department of State. These regulations control exports, re-exports, and temporary imports of military items, certain services, and arms brokering.

**国际武器贸易条例("ITAR")。** 该条例由美国国务院实施。条例涉及军用物项的出口、再出口、临时进口、某些服务、军火经纪活动。

- **Export Administration Regulations ("EAR").** The EAR are administered by the U.S. Department of Commerce. These regulations control exports, re-exports, and transfers of certain military items and items with military and commercial uses.

**出口管理条例("EAR")。** 该条例由美国商务部实施。条例涉及某些军用物项、军商两用物项的出口、再出口、转运管制。



There are also the Office of Foreign Assets Control ("OFAC") regulations, which further block and freeze assets and prohibit transactions with sanctions targets.

此外，还有海外资产控制办公室("OFAC")条例，该条例进一步封锁和冻结资产，禁止与受制裁对象进行交易。

Each set of regulations imposes prohibitions, government license, recordkeeping, and other requirements. Many items, particularly military items and commercial items that can be used for military purposes, often require a license to export from the United States.

上述规定强制实施禁令、政府许可、记录保存和其他要求。许多物项，特别是军用物项和可用于军事用途的商用物项，经常被要求从美国获得出口许可。

The definition of "export" under the regulations is broad. It includes physical shipments of products and electronic transmissions of export-controlled information outside the United States. The definition also includes disclosures of technology to any non-U.S. person in any manner.

条例对“出口”的定义是宽泛的，包括产品实体运输、受到出口管制的信息以电子方式传送至美国境外。“出口”的定义也包括以任何方式向任何非美国人披露技术。

The definition of "re-export" is also broad and can include non-U.S.-made items that contain certain U.S.-origin items or that are a direct product of certain U.S.-origin technology and software.

“再出口”的定义也是宽泛的，既包括含有某些美国原产物项的非美国制造物项，也包括属于美国原产技术和软件直接产品的非美国制造物项。

## **Items Subject to Control**

### **受管制物项**

U.S. export controls apply to:

下列物项受美国出口管制：

- Any item in the United States;  
位于美国境内的任何物项；
- Any U.S.-origin item, anywhere in the world;  
任何美国原产物项，无论位于世界何地；
- Any non-U.S.-made item, manufactured outside of the United States, that contains more than a certain amount of controlled U.S.-origin controlled items;  
and,  
所含受管制美国原产物项超过一定量的任何非美国制造物项； 以及



- A non-U.S.-made direct product of certain U.S.-origin technology or software.

非美国制造但属于某些美国原产技术或软件直接产品的物项。

Exports of U.S.-origin items to China are most often governed the EAR and OFAC regulations. The EAR require licenses for exports, re-exports, and transfers based on the destination, end user, end use, and characteristics of items for export. The EAR contain a list describing many items subject to export controls on the Commerce Control List (“CCL”), which is organized under the following categories:

美国原产物项对中国出口，是最常被美国出口管理条例 EAR 和海外资产控制条例 OFAC 管制的物项。EAR 要求基于目的地、最终用户、最终用途以及出口物项规格参数，针对出口、再出口、转移申请许可。EAR 包括一个清单——商业管制清单(“CCL”)。该清单列出并描述受到出口管制的诸多物项。这些物项包括以下类别：

- Nuclear Materials, Facilities and Equipment, and Miscellaneous  
核材料、设施、设备及其他
- Materials, Chemicals, Micro-organisms, and Toxins  
材料、化学品、微生物、毒素
- Materials Processing  
材料加工
- Electronics  
电子产品
- Computers  
计算机
- Telecommunications and Information Security  
电信和信息安全
- Sensors and Lasers  
传感器、激光
- Navigation and Avionics  
导航和航空电子设备
- Marine  
海事
- Propulsion Systems, Space Vehicles and Related Equipment  
推进系统、航天器、相关设备



## De Minimis Rule

### 最低限度规则

Under the De Minimis Rule, U.S. export controls apply to non-U.S.-made items manufactured in China and other countries that incorporate more than a certain percentage (0%, 10%, or 25%) of controlled U.S.-origin content, by value.

在最低限度规则下，美国出口管制适用于在中国和其他国家制造但含有超过一定比例（0%、10%或25%）美国原产受管制成分的非美国制造物项。这一含量比例依照价值来衡量。

The percentage of U.S.-origin content that applies to a particular transaction depends on the type of U.S.-origin content, its relative value, and the specific destination involved. No person can export non-U.S.-made items with U.S.-origin content that exceeds an applicable percentage for a destination without a U.S. government license.

对于具体交易来说，美国原产成分百分比设定取决于美国原产成分的类型、相对价值、特定目的地。没有美国政府许可，没有人可以出口所含美国原产成分超过相关目的地适用百分比的非美国制造产品。

The de minimis percentage calculation rules are complex and calculations involving technology require submission of a one-time report to the Department of Commerce. A company must wait 30 days after submitting the one-time report before it can rely on a calculation.

最低百分比计算规则很复杂。对于涉及技术的计算，要求向美国商务部提交“一次性”报告。在提交该报告后 30 天，提交该报告的公司方可将计算结果作为依据。

## Foreign-Produced Direct Product Rule

### 外国制造直接产品规则

Under the **Foreign-Produced Direct Product Rule (“FDPR”)**, the U.S. government controls re-exports and transfers of non-U.S.-made items that are the direct products of certain U.S.-origin software or technology controlled by the United States for national security reasons. The FDPR also applies to non-U.S.-made items that are the direct product of a manufacturing plant or a major component of a manufacturing plant made with certain U.S.-origin software or technology. Chinese companies with products caught by the FDPR cannot export their products to certain destinations without a U.S. government license.

在**外国制造直接产品规则(“FDPR”)**下，美国政府对于使用因国家安全原因受到美国管制的某些美国原产软件或技术直接生产的非美国制造产品，控制其再出口和转移。该规则也适用于由某些美国原产软件和技术搭建的工厂或工厂主要组成部分直接生产的非美国制造物项。没有美国政府许可，受到该规则管制的中国公司不能将其产品出口到某些目的地。

## Sanctions Programs

### 制裁项目

The OFAC regulations implement comprehensive and targeted sanctions programs.



## 海外资产控制条例(OFAC)实施全面和定向制裁项目

- **Comprehensive sanctions** include U.S. embargoes on Cuba, Iran, North Korea, and Syria. These sanctions restrict all exports, services, and other activities involving U.S. persons, the U.S. financial system, and U.S.-origin goods with a sanctions target, unless licensed by OFAC.

**全面制裁**包括美国对古巴、伊朗、朝鲜和叙利亚实施的禁运。除非获得 OFAC 许可，否则全面制裁限制与受制裁对象的所有涉及美国人、美国金融系统和美国原产货物的出口、服务和其他活动。

- **Targeted sanctions** programs restrict activities with an individual or entity sanctions target.

**定向制裁**项目限制与列为受制裁对象的个人、实体之间的活动。

Each OFAC sanctions program has its own requirements, which include provisions that designate countries and parties subject to restriction. These restrictions can block and freeze assets and prohibit exports, re-exports, and transfers of U.S.-origin items, and other transactions with embargoed countries and sanctions targets.

OFAC 的每一个制裁项目都有自己的要求，包括指定受限制国家、受限制方。限制措施包括封锁和冻结资产，禁止美国原产物项出口、再出口、转移，禁止与禁运国家和受制裁对象之间的其他交易。

OFAC further administers restrictions that prohibit U.S. persons from purchasing publicly traded securities of certain Chinese companies on a U.S. government list of "Communist Chinese Military Companies".

OFAC 条例进一步实施限制，禁止美国人购买被美国政府列入“中共涉军企业”清单的某些中国公司的公开交易证券。

OFAC also serves as the lead agency on the Committee on Foreign Investment in the United States ("CFIUS"). CFIUS has the power to block and unwind mergers, acquisitions, and divestitures of U.S. businesses by Chinese companies and other non-U.S. persons. CFIUS focuses on investments in U.S. businesses involved in certain technologies and critical infrastructure, businesses that handle sensitive personal data, and U.S. real estate that implicates national security concerns.

OFAC 也是美国海外投资委员会("CFIUS")的牵头机构。CFIUS 有权阻止和解除中国公司和其他非美国人对美国企业的兼并、收购和资产剥离。CFIUS 重点关注的国外投资领域是涉及某些技术和关键基础设施的美国企业、处理敏感个人数据的企业、涉及国家安全问题的美国不动产。

## Restricted Party Lists

### 受限方清单

The U.S. government maintains restricted party lists that identify individuals and entities that are prohibited or otherwise restricted from dealings with U.S. persons and U.S.-origin items. These restricted party lists include the following:



美国政府制定了一系列的受限方清单，识别被禁止、被限制与美国人、美国原产物项交易的个人和实体，这些受限方清单包括：

- The **Entity List** identifies individuals and entities that the Department of Commerce determined are involved in activities contrary to U.S. national security or foreign policy interests. The EAR prohibit most exports, re-exports, and transfers of EAR-controlled items to any party on the Entity List.

**实体清单**识别违反美国国家安全或外交政策利益的个人和实体，由美国商务部来确定。出口管理条例 EAR 禁止向该清单所列的个人和实体出口、再出口、转移受 EAR 管制的物项。

- The **Denied Persons List** identifies individuals and entities subject to a Department of Commerce “denial order” suspending their ability to export. The EAR prohibit exports, re-exports, and transfers of EAR-controlled items to any party subject to a denial order suspending their ability to export.

**拒绝交易对象清单**识别被美国商务部施加“拒绝令”、暂停出口权限的个人和实体。出口管理条例 EAR 禁止向被施加拒绝令、暂停出口权限的个人和实体出口、再出口、转移受 EAR 管制的物项。

- The **EAR Military End User List (“MEU List”)** identifies entities that the U.S. government has determined are military users and represent an unacceptable risk of use in or diversion to a military end use or military end user in Burma, China, Russia, or Venezuela.

**EAR 军事最终用户清单 (“MEU 清单”)** 识别被美国确定为军事用户的实体，这些实体存在将受管制物项用于或转用于缅甸、中国、俄罗斯、委内瑞拉军事最终用途或军事最终用户的不可接受的风险。

- The U.S. Department of State **Nonproliferation Sanctions List** identifies parties sanctioned under various U.S. laws intended to stop the proliferation of weapons of mass destruction.

美国国务院**防扩散制裁清单**识别各种美国法律下的被制裁方，旨在阻止大规模杀伤性武器扩散。

- The **OFAC Specially Designated Nationals List (“SDN List”)** and OFAC program-specific lists identify parties sanctioned under OFAC sanctions programs.

**OFAC 特别指定国民清单 (“SDN 清单”)** 和 OFAC 专项计划清单识别 OFAC 制裁计划项下的被制裁方。



# Special Rules for Chinese Companies

## 对中国公司的专门规定

In addition to the general EAR and OFAC requirements above, the U.S. government imposes special license requirements on exports to China.

除了上述的出口管理条例 EAR 和海外资产控制条例 OFAC 的一般要求外，美国政府对向中国出口实施特别许可要求。

### Licensing Policy for China

#### 对中国的许可政策

China is one of the United States' largest trading partners. However, the United States maintains an arms embargo against China, which makes it illegal to export ITAR-controlled articles to China. As a result, exports of U.S.-origin items to China are most often governed the EAR and OFAC regulations. Exports to China under these regulations are subject to much more stringent export controls than exports to Australia, Canada, the United Kingdom, and other countries. This means that the regulations frequently require licenses to export, re-export, or transfer export-controlled items to Chinese companies and other end users in China.

中国是美国最大的贸易伙伴。然而，美国一直保持对中国的武器禁运，对中国出口受 ITAR 管制的物品属非法行为。由此，对中国出口美国原产物项经常受到出口管理条例 EAR 和海外资产控制条例 OFAC 的管制。在这些条例下对中国出口受到的出口管制比对加拿大、英国、其他国家出口更加严格。这意味着条例下对中国企业和中国最终用户出口、再出口、以及转移出口管制物项往往需要获得许可。

The U.S. government's licensing policy for China is to approve most applications to export commercial items to civil end users for civil end uses. However, applications for licenses to export controlled items to a military end user or for a military end use are subject to a presumption of denial. Similarly, applications for licenses to export controlled items that would make a direct and significant contribution to China's military capabilities are subject to a presumption of denial.

美国政府对中国的许可政策是，对于向民用最终用户出口商用物项用于民用最终用途，绝大多数申请给予批准。然而，对于向军事最终用户出口受管控物项或者将受管控物项用于军事最终用途，许可申请适用推定拒绝原则。同样，对中国军事能力有直接和重大贡献的受管控物项，其出口许可申请也适用推定拒绝原则。

Chinese companies may apply for and receive preferential treatment for exports under the EAR as a Validated End User ("VEU"). The VEU application process is complicated and exports made under VEU authorizations are subject to end use, re-export, and transfer restrictions, and they require certification, recordkeeping, reporting, and on-site reviews by U.S. government agents. If successful in its VEU application, a company is placed on the EAR VEU list and its VEU status allows exports of certain items to the company. At present, there are approximately 50 Chinese companies on the EAR VEU List.



作为经验证最终用户 (“VEU”), 中国公司可以申请并享受出口管理条例 EAR 下的出口优惠待遇。经验证最终用户申请程序很复杂。根据经验证最终用户授权制度进行的出口受到最终用途、再出口、转移的限制, 并且需要认证、保存记录、提交报告并由美国政府人员现场核查。如果成功通过 VEU 申请, 公司将被列入 VEU 清单。允许向获得 VEU 地位的公司出口某些物项。当前, 有大约 50 家中国公司被列入 EAR VEU 清单。

## Huawei Restrictions

### 对华为限制

The Department of Commerce designated Huawei Technologies Co., Ltd. and over 150 Huawei affiliated non-U.S. entities (referred to collectively as “Huawei”) on the Entity List. The Entity List designation for Huawei prohibits any export, re-export, or transfer of any item subject to the EAR when Huawei is a party to the transaction.

美国商务部把华为技术有限公司及其 150 家非美国关联公司 (统称为“华为”) 列入实体清单。由于华为被列入实体清单, 当华为作为交易一方时, 禁止出口、再出口、转移任何受 EAR 管制的物项。

In addition, the Department of Commerce enforces a special FDPR for Huawei, known as the “**Huawei FDPR**”. The primary purpose of the Huawei FDPR is to prevent Huawei from acquiring non-U.S.-made semiconductors that are the direct product of certain U.S. software and technology.

此外, 美国商务部对华为实施了专门的 FDPR, 被称作“**华为 FDPR**”, 目的主要是阻止华为获得非美国制造但使用某些美国软件和技术直接生产的半导体产品。

The Huawei FDPR applies to:

华为 FDPR 适用于:

- non-U.S.-made items that are the direct products of certain U.S.-origin software or technology for electronics, computers, and telecommunications; and

非美国制造但使用某些美国原产电子、计算机、电信软件或技术直接生产的物项;

- non-U.S.-made items produced by any manufacturing plant located outside the United States or a major component of a manufacturing plant outside the United States if the plant or major component is a direct product of certain U.S.-origin technology and software.

由位于美国境外的工厂或者工厂主要组成部分生产的非美国制造物项, 该工厂或者工厂主要组成部分是美国原产技术和软件的直接产品。

Under the Huawei FDPR, the Department of Commerce prohibits exports, re-exports or transfers of items subject to the rule where a company engaging in a transaction knows or has a reason to know that non-U.S.-made items will be incorporated into or will be used in the development or production of any part, component or equipment produced, purchased or ordered by Huawei. The prohibitions of the Huawei FDPR also apply where



Huawei will be a party, in any capacity, to any transaction involving the non-U.S.-made items.

根据华为 FDPR，如果参与交易的公司知道或者有理由知道非美国制造物项将被纳入或被用于华为生产、采购或订购的零部件、组件或设备的开发和生产，商务部禁止出口、再出口、转移这些受管制物项。华为 FDPR 禁令也适用于华为以任何身份成为涉及非美国制造物项的任何交易的一方的情况。

There are two license exceptions to the Huawei FDPR that allow exports, re-exports, and transfers of specific EAR-controlled technology to Huawei in certain situations involving standards organizations and security vulnerability reporting for certain systems. These exceptions are very narrow and should not be used without the advice of a competent attorney. The export, re-export or transfer of the technology being provided under these exceptions may still require a license under other EAR provisions, such as under license requirements for exports of items specified on the CCL.

华为 FDPR 规定了两项许可例外，在涉及标准组织和某些系统的安全漏洞报告的某些情况下，可以向华为出口、再出口、转移受 EAR 管制的特定技术。这些例外的适用范围非常窄，如果没有专业的法律顾问提供建议，不要轻易使用。例外下的技术出口、再出口、转移仍然需要根据 EAR 的其他规定申请许可，例如 CCL 清单上指定物项的出口许可要求。

Sophistication and capabilities of technology is a factor in Department of Commerce license application reviews. The Department of Commerce will consider license applications on a case-by-case basis for non-U.S.-made items capable of supporting the development or production of telecom systems, equipment, and devices below the 5G level (e.g., 4G, 3G, etc.). Other applications for licenses to export to Huawei are subject to a presumption of denial.

技术复杂性和性能是商务部许可申请复审的一个考虑因素。对于支持低于 5G 级别（例如 4G、3G 等）电信系统、设备和器件的非美国制造物项，美国商务部基于个案考虑许可申请。对华为出口的其他许可申请适用推定拒绝原则。

## **Military and Military-Intelligence End Use or End User Rules**

### **军事和军事情报最终用途或最终用户规则**

Under the **Military End Use or End User Rule (“MEU Rule”)**, no person can export, re-export, or transfer certain items subject to the EAR to China and certain other countries without a license if they have knowledge that the item is intended for a military end use or for a military end user in the country of destination.

在**军事最终用途或最终用户规则 (“MEU 规则”)**下，如果已经知道某些受 EAR 管制的物项拟在目的国（中国或某些其他国家）用于军事最终用途或军事最终用户，在没有获得许可的情况下，任何人不能出口、再出口、转移这些物项到该国家。

- The list of items subject to the MEU Rule includes hardware, software, and technology for many commercial items, to include certain laptops, smartphones, and commercial aircraft parts.

适用 MEU 规则的物项清单包括许多商用物项的硬件、软件、技术（包括某些笔记本电脑、智能手机、商用飞机部件）。



- “Military end use” means incorporation into a military item described on the Department of State U.S. Munitions List (“USML”) and certain military items described on the CCL. It also includes any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items described on the USML and certain military items described on the CCL.

“军事最终用途”指纳入国务院制定的美国军品管制清单(“USML”)上描述的军事物项和 CCL 清单上描述的某些军事物项。军事最终用途也包括支持或有助于在 USML 清单上描述的军事物项和 CCL 清单上描述的某些军事物项的运行、安装、维护、修理、翻修、翻新、开发或生产的任何物项。

- “Military end user” means national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations. It also includes any person or entity whose actions or functions are intended to support military end uses.

“军事最终用户”指国家武装部队（陆军、海军、海军陆战队、空军或海岸警卫队）、国民警卫队和国家警察、政府情报或侦察组织，以及其行动或职能旨在支持军事最终用途的任何人士或实体

The Department of Commerce identifies many military end users in the EAR (the “MEU List”). This is not an exhaustive list of military end users and companies are responsible for determining whether transactions with parties not on the MEU List are subject to a license requirement.

商务部在 EAR 中识别认定了许多军事最终用户（“MEU 清单”）。这并非详尽无遗的军事最终用户清单。即使不在 MEU 清单上，公司有责任确定它和对方的交易是否需要申请许可。

Under the **Military Intelligence End Use or End User Rule (“MIEU Rule”)**, no person can export, re-export, or transfer any item subject to the EAR without a license if the person has knowledge that the item is intended, entirely or in part, for a military-intelligence end use or a military-intelligence end user in China or certain other countries.

根据**军事情报最终用途或最终用户规则（“MIEU 规则”）**，如果知道任何受 EAR 管制的物项全部或部分拟在中国或某些其他国家用于军事情报最终用途或军事情报最终用户，在没有获得许可的情况下，任何人不能出口、再出口、转移这些物项。

- “Military-intelligence end use” means the development, production, operation, installation, maintenance, repair, overhaul, or refurbishing of, or incorporation into, items described on the USML and certain items described by the CCL, which are intended to support a military-intelligence end user.

“军事情报最终用途”指开发、生产、运行、安装、维护、修理、翻修、翻新 USML 和 CCL 清单上的物项，或纳入这些物项，旨在支持军事情报最终用户。

- “Military-intelligence end user” means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard) or national guard.



“军事情报最终用户”指国家武装部队（陆军、海军、海军陆战队、空军或海岸警卫队）或国民警卫队的任何情报或侦察组织。

The Department of Commerce provides a list of some military-intelligence end users in the EAR (the “MIEU List”). This is not an exhaustive list of military-intelligence end users and companies are responsible for determining whether transactions with parties not on the MIEU List are subject to a license requirement.

商务部在 EAR 中列出了一些军事情报最终用户（“MIEU 清单”）。这并非详尽无遗的军事情报最终用户清单。即使不在 MIEU 清单上，公司有责任确定它和对方的交易是否需要申请许可。

The MIEU controls also prohibit U.S. persons from engaging in a broad range of activities related to foreign military intelligence services. The prohibited activities include brokering, financing, and repairs that support a military-intelligence end use or a military-intelligence end user in China and certain other countries.

MIEU 管制还禁止美国人从事与国外军事情报服务有关的活动。被禁止的活动范围很宽泛，包括在中国和某些其他国家支持军事情报最终用途或军事情报最终用户的中介活动、资助、维修。

Restrictions under the MEU Rule and the MIEU Rule apply in addition to other license requirements for items specified on the CCL.

除了对 CCL 清单上指定的物项的其他许可要求外，MEU 规则和 MIEU 规则下的限制同样适用。

## Addressing U.S. Export Control Risks

### 应对美国出口管制风险

In addition to U.S. export control risks, Chinese companies must also address any conflicts between Chinese and United States laws. In particular, the Chinese government maintains laws to limit the impact of foreign export controls and sanctions on Chinese companies. Companies must maintain awareness of these blocking laws and avoid conflicts with United States and Chinese laws implicated by U.S. export controls. At times, this may involve employing mechanisms to exclude U.S.-origin hardware, software, technology and production equipment subject to the EAR from supply chains and operations.

除了美国出口管制风险外，中国公司还必须应对中美两国法律之间的任何冲突。具体而言，中国政府通过施行法律限制外国出口管制和制裁对中国公司的影响。各公司必须保持对这些阻断法律的认识，避免与美国出口管制所涉及的中国和美国法律产生冲突。有时，这可能涉及到运用一些机制将受 EAR 管制的美国原产硬件、软件、技术和生产设备排除在供应链和业务之外。

## Conclusion

### 结论

The core EAR restrictions on U.S. exports to China are unlikely to change under the Biden presidency. Chinese companies should address this risk and avoid any conflict of laws that may impact operations.



拜登时代，美国对华出口的核心出口管理条例 EAR 限制不太可能改变。中国公司应该应对这一风险，避免任何可能影响运营的法律冲突。

# # #

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# REPORT: Key U.S. Trade Remedies Against Import Competition

## 报告：美国针对进口竞争的贸易救济措施

This report describes the key trade remedies available under U.S. law when imports are a cause of disruption in domestic markets. Our purpose is to provide a basic understanding of these remedies and the administrative procedures that are involved.

本报告描述了当进口贸易扰乱国内市场时，根据美国法律可采取的主要贸易救济措施。我们的目的是介绍这些救济措施和相关行政程序的基本情况。

The remedies covered in this presentation include:

本简报涉及的补救措施包括：

- Antidumping (AD) and Countervailing Duty (CVD) Cases

反倾销(AD)和反补贴税(CVD)案

- Section 301

301 条款

- Section 201 Safeguards

201 条款保障措施

- Section 421 Safeguards

421 条款保障措施

### I. **Antidumping & Countervailing Duties**

#### **反倾销和反补贴税**

Antidumping (AD)

反倾销(AD)

**Statute:** Section 731 of the Tariff Act of 1930

**适用法规**：1930 年关税法第 731 条



Focus: Imports sold below cost of production or below foreign market price

重点：进口产品售价低于生产成本或低于国外市场价格

Criteria for Action: Material injury or threat of material injury

采取措施的标准：实质性损害或实质性损害威胁

Response: Duties

应对措施：关税

Responsibility: ITC injury determination and DOC dumping determination

负责人：美国国际贸易委员会(ITC)进行损害裁定，美国商务部(DOC)进行倾销裁定

Duration of Proceeding: 287-427 days

法律程序持续时间：287-427 天

- Relief to remedy the adverse price impact of imports sold on the U.S. market at “less than fair value.” The relief is in the form of extra duties on the dumped imports

采取救济措施，对在美国市场上以“低于公允价值”的价格出售的进口产品造成的不利价格影响进行补救。救济措施的形式是对倾销的进口产品征收额外的关税

Countervailing Duty (CVD)

反补贴税(CVD)

Statute: Section 701 of the Tariff Act of 1930

适用法规：1930 年关税法第 701 条

Focus: Imports sold using unfair foreign manufacturing, production or export subsidies

重点：利用不公平的外国制造、生产或出口补贴出售进口产品



Criteria for Action: Material injury or threat of material injury

采取措施的标准：实质性损害或实质性损害威胁

Response: Duties

应对措施：关税

Responsibility: ITC injury determination and DOC subsidy determination

负责人：美国国际贸易委员会(ITC)进行损害裁定，美国商务部(DOC)进行补贴裁定

Duration of Proceeding: 212 to 307 days

法律程序持续时间：212-307 天

- Relief to remedy the adverse price impact of imports that receive foreign government subsidies. The relief is in the form of extra duties on those imports

采取救济措施，对接受外国政府补贴的进口产品造成的不利价格影响进行补救。救济措施的形式是对这些进口产品征收额外的关税

Background on AD/CVD Cases

反倾销/反补贴税（简称“双反”）案背景

- AD and CVD cases are possibly the most powerful trade remedy available to U.S. companies and associations. The DOC is also able to self-initiate an AD or CVD investigation

双反立案调查可能是美国企业和协会可采取的最有力的贸易补救措施。美国商务部也可自行发起双反调查

- The power of AD and CVD actions lies in the fact that duties levied by the U.S. government can range anywhere from the single digits to as high as 400 percent or more, which can close foreign companies out of the U.S. market

双反调查的力量在于，美国政府征收的关税税率从个位数乃至 400% 以上不等，这可以将外国公司排除在美国市场之外



- AD and CVD orders can last for 5 to 20 years or longer, effectively excluding most targeted products from the U.S. market

双反征税令有效期为 5 至 20 年乃至更长时间，有效地将大多数目标产品排除在美国市场之外

- The AD and CVD law is administered by two federal agencies, the ITC and the DOC

双反相关法律由两个联邦机构（即美国国际贸易委员会和美国商务部）负责实施

- The ITC, a six-member independent federal agency, determines whether dumped imports are causing economic injury to the U.S. industry

美国国际贸易委员会是一个由六名成员组成的独立联邦机构，负责裁定倾销的进口产品是否对美国产业造成经济损害

- The DOC is charged with determining whether imported products are dumped or subsidized

美国商务部负责裁定进口产品是否存在倾销或补贴

### **Cases Have Been Filed Targeting Wide Range of Products**

#### **已针对各种产品立案**

- Numerous AD and CVD cases have been brought on behalf of a wide variety of industries. Examples include:

已代表各个行业提起多起双反诉讼，例如：

- Industries engaged in producing basic industrial products (cement, steel, aluminum, and pipes and tubes)

从事基本工业产品（水泥、钢铁、铝、管道和管材）生产的行业



- Agricultural commodities, and processed foods (honey, garlic, shrimp, pasta, salmon)  
农产品和加工食品（蜂蜜、大蒜、虾、意大利面、鲑鱼）
- Chemicals and pharmaceuticals (sulfanilic acid, aspirin, creatine)  
化学品和药品（磺胺酸、阿司匹林、肌酸）
- Renewable energy products (solar cells, wind turbines)  
可再生能源产品（太阳能电池、风力涡轮机）
- Advanced technology products (semiconductors)  
先进技术产品（半导体）
- Appliances (refrigerators, washing machines, televisions); and  
家电（冰箱、洗衣机、电视）；以及
- A variety of other types of goods (plywood, flooring, tires, furniture, aluminum foil)  
各种其他类型的商品（胶合板、地板、轮胎、家具、铝箔）

### What is Dumping?

#### 什么是倾销？

- Merchandise is “dumped” when it is sold by foreign producers to the U.S. at prices lower than which they sell the same merchandise in their foreign home market. For example, the same Japanese TV sold in Tokyo for \$100 and in New York for \$90 is dumped by \$10



当外国生产商以低于他们在外国本土市场销售同一商品的价格向美国出售商品时，即构成“倾销”。例如，同一款日本电视机，在日本卖 100 美元，在纽约卖 90 美元，倾销额就是 10 美元

- This pricing below “fair value” and/or the selling of goods below the cost of production often leads to the U.S. imposing a dumping duty to offset the effect of this pricing. (Indeed, the DOC has found dumping in nearly 90% of cases)

这种低于“公允价值”的定价和/或商品售价低于生产成本，往往导致美国征收反倾销税，以抵销这种定价的影响。（事实上，美国商务部在近 90% 的案件中认定存在倾销）

- Chinese cases are unique and often produce very high dumping margins due to special rules applied by the DOC. Since China is considered an NME, in which the government controls most of its industries, the DOC treats all Chinese exporters as a single enterprise for dumping purposes

中国案件具有独特性，由于美国商务部施行的特殊规则，往往产生极高的倾销幅度。由于中国被视为非市场经济体，政府对大多数行业进行管制，因此，在征收反倾销税时，美国商务部将所有中国出口商视为单一企业

## What are Countervailing Duties?

什么是反补贴税？

- Countervailing duties are offsetting duties similar to AD duties, except these duties seek to counter subsidies conferred by foreign governments on their producers/exporters by way of illegal loans or grants which can include preferential financing, tax credits, or other benefits

反补贴税是与反倾销税类似的抵销性关税，但此类关税旨在抵制外国政府以非法贷款或补助的方式给予其生产商/出口商的补贴，其中包括优惠融资、税收减免或其他利益

- A "subsidy" is a financial contribution provided directly or indirectly by a foreign government, that confers a benefit to its recipient (such as preferential financing or tax credits). To be countervailable, the subsidy must also be specific to an enterprise or industry. The DOC also may determine that a countervailable



subsidy is being provided to the producer of an input used in manufacturing the subject merchandise – which is considered an "upstream subsidy."

“补贴”指外国政府直接或间接提供的财政捐助，给予接受者利益（如优惠融资或税收抵免）。补贴还必须专门针对某家企业或某个行业，才可采取反补贴措施。商务部还可能裁定可采取反补贴措施的补贴是提供给用于制造目标商品的投入品的生产商——这属于“上游补贴”。

## What Can Chinese Companies Do to Minimize AD/CVD Risk?

中国公司如何将双反风险降至最低？

- Companies that are pro-active—that is, those who take an active role in the process—and that aggressively participate in the process, can end up in the most competitive position—even if others are stuck with bad AD or CVD margins.

积极主动的公司——也就是在调查过程中发挥积极作用、主动参与到调查过程中的公司，最终会处于最有竞争力的地位，即使其他公司因反倾销或反补贴税额度的不良影响而无法抽身。

- It is important for Chinese companies to work with their U.S. importer customers since the importers will have to pay any AD/CVD duties. Keeping those customers happy means avoiding surprises and preparing together.

对中国公司来说，由于美国进口商必须缴纳任何反倾销税/反补贴税，与进口商客户合作非常重要。让这些客户满意意味着要避免意外情况，并共同做好准备。

## II. Section 301

### 301 条款

- Section 301 of the Trade Act of 1974 allows the USTR, at the direction of the President, to suspend trade agreement concessions or impose import restrictions if it determines an act, policy, or practice of a foreign country violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under any trade agreement or is unjustifiable and burdens or restricts U.S. commerce (19 U.S.C. §§2411-2420).

1974 年贸易法第 301 条规定，如果美国贸易代表办公室裁定他国的某项行动、政策或做法违反或不符合任何贸易协定的规定，或以其他方式否定美



国根据任何贸易协定享有的利益，或不正当并对美国商业造成负担或限制，则可根据总统的指示，中止贸易协定所规定的减让或实施进口限制（美国法典第 19 编第 2411-2420 条）。

- The most recent Section 301 involved tariffs starting on July 6, 2018 ranging from 7.5% to 25% on over \$277 billion of Chinese goods exported to the United States. These tariffs are still in effect and have been appealed to the CIT.

最新的 301 条款涉及自 2018 年 7 月 6 日起，对中国出口到美国的超过 2,770 亿美元的商品征收 7.5% 到 25% 不等的关税。301 关税目前仍然有效，许多公司已就此向美国国际贸易法院提出上诉。

- On Dec. 13, 2019, the United States and China agreed to a Phase One trade deal. Under the agreement, the United States withdrew 15% tariffs on another \$162 billion of imports. These tariffs would have targeted imports of toys, consumer electronics, and other goods. In exchange, China agreed to make substantial purchases of U.S. goods and services and committed to structural reforms in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange.

2019 年 12 月 13 日，美国和中国达成了第一阶段贸易协议。根据该协议，美国撤销对另外 1,620 亿美元的进口产品征收 15% 的关税。这些关税针对的是玩具、消费电子产品和其他商品的进口。作为交换条件，中国同意大量采购美国商品和服务，并承诺在知识产权、技术转让、农业、金融服务、货币和外汇领域进行结构性改革。

- The Trump Administration invoked Section 301 in an effort to address China's trade and investment practices of concern, including policies and practices that it determined included forced or required foreign technology transfer and violations of U.S. intellectual property protections.

特朗普政府援引 301 条款，努力处理中国令人关切的贸易和投资做法，包括其裁定存在迫使或要求进行外国技术转让和违反美国知识产权保护的行为的政策和做法。



## What is Section 301?

### 什么是 301 条款？

- Section 301 of the Trade Act of 1974 is the principal statutory authority under which the United States may enforce trade agreements, resolve trade disputes and open foreign markets to U.S. goods and services

1974 年贸易法第 301 条是美国执行贸易协定、解决贸易争端、使美国商品和服务进入外国市场所依据的主要法定授权条款

- Under President Trump, the United States used Section 301 to impose tariffs up to 25% on nearly every product imported from China

在特朗普总统任期内，美国利用 301 条款对从中国进口的几乎所有产品征收最高 25% 的关税

- When a Section 301 investigation involves an alleged violation of a trade agreement, the United States Trade Representative (USTR) must follow the consultation and dispute settlement procedures set out in that agreement

当 301 调查涉及违反某项贸易协定的指控时，美国贸易代表(USTR)必须遵循该协定中规定的协商和争端解决程序

- If consultations fail, Section 301 gives the USTR numerous weapons, such as denying trade concessions, imposing tariffs, and entering into agreements to eliminate the disputed policy or retaliation

如果协商失败，301 条款为美国贸易代表提供了许多武器，如撤回贸易减让、征收关税、签订协议以剔除有争议的政策或实施报复措施

## How is a Section 301 Case Initiated?

### 如何发起 301 调查？

- A Section 301 investigation may be commenced in one of two ways:

可通过以下两种方式之一发起 301 调查：

- An interested party – typically, an enterprise, trade association, union or group of workers – petitions the USTR to investigate a particular practice of a foreign



country (and USTR determines within 45 days that an investigation is appropriate); or

利益相关方（通常是企业、行业协会、工会或工人团体）向美国贸易代表申请对他国的特定做法进行调查（并且美国贸易代表在 45 天内确定调查是适当的）；或

- USTR self-initiates an investigation

美国贸易代表自行发起调查

## Section 301 Investigation Procedures

### 301 调查程序

- Consultation with Foreign Government: Upon initiation of an investigation, USTR must request consultations with the foreign government. The primary aim of the consultations is to encourage the foreign government to remove the offending practice

与外国政府磋商：在发起调查时，美国贸易代表必须要求与外国政府进行磋商。磋商的主要目的是鼓励外国政府消除违规做法。

- In practice, most Section 301 cases are resolved by government-to-government negotiations. Two factors may explain this fact. First from the perspective of foreign governments, the immense retaliatory powers available to the President under Section 301 are significant leverage for the United States in negotiations. Second, from the perspective of the U.S. Government, a reputation as a trade bully is undesirable. In most cases (President Trump being a recent exception), the President would prefer not to have to carry out on the threat of unilateral Section 301 remedy and would rather hope to obtain a politically acceptable compromise

在实践中，大多数 301 调查是通过政府与政府的谈判解决的。有两个因素可以解释这一事实。首先，从外国政府的角度来看，301 条款赋予总统采取报复措施的巨大权力是美国在谈判中的重要筹码。其次，从美国政府的角度来看，作为贸易霸主的名声并不受欢迎。在大多数情况下（特朗普总统是近期的一个例外），总统宁愿不必执行 301 条款的单边救济威胁，而是希望达成政治上可接受的妥协



- **Formal Dispute Settlement:** Where an investigation involves an alleged violation of a trade agreement, USTR must follow the dispute settlement provisions set out in that agreement

正式争端解决：当调查涉及违反某项贸易协定的指控时，美国贸易代表必须遵循该协定中规定的争端解决条款

- **Conclusion of Investigation:** USTR must conclude its investigation and make a determination of whether the foreign practice is actionable under Section 301 within 18 months after initiation of an investigation involving a trade agreement that includes a dispute settlement mechanism, or 30 days after conclusion of dispute settlement procedures, whichever comes first (or 12 months after initiation of an investigation in all other cases)

调查结束：美国贸易代表必须在发起涉及包含争端解决机制的贸易协定的调查后 18 个月内，或在争端解决程序结束后 30 天内（以较早发生者为准）（所有其他情况则为发起调查后 12 个月内），结束其调查并裁定该外国做法是否可根据 301 条款起诉

## Section 301 Action

### 301 措施

- **Mandatory Action:** Where USTR determines that a foreign government is violating or denying *U.S. rights under a trade agreement*, or its acts, policies or practices are *unjustifiable* and burden or restrict U.S. commerce, Section 301 *requires* retaliation unless an exception applies (e.g., USTR finds that retaliatory action would adversely impact the U.S. economy)

强制性措施：如果美国贸易代表裁定外国政府正在侵犯或否定美国根据贸易协定享有的权利，或其行为、政策或做法不正当并对美国商业造成负担或限制，301 条款要求采取报复措施，除非出现例外情况（例如，美国贸易代表裁定报复措施会对美国经济造成不利影响）

- **Discretionary Action:** Where USTR determines that a particular act, policy or practice of a foreign country is *unreasonable or discriminatory* and burdens or restricts U.S. commerce, it has discretion as to whether to take *retaliatory* action



自由裁量措施：如果美国贸易代表裁定外国政府的某项特定行动、政策或做法不合理或具有歧视性并对美国商业造成负担或限制，其具有自由裁量权，可决定是否采取报复措施

- An act, policy or practice is considered to be unreasonable if it is unfair and inequitable, even if it does not violate the international legal rights of the United States

一项行为、政策或做法，即使没有侵犯美国的国际法律权利，但只要是不公平且不公正的，即是不合理的

- Practices considered unreasonable include:

被视为不合理的做法包括：

- Denial of fair and equitable opportunities for the establishment of enterprises

拒绝为设立企业提供公平和公正的机会

- Denial of adequate and effective protection of intellectual property rights, even if the foreign country is in compliance with the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS);

即使他国符合世界贸易组织(WTO)与贸易有关的知识产权协定(TRIPS)，仍然拒绝对知识产权给予充分有效的保护；

- Denial of fair and equitable market opportunities, including a foreign government's toleration of systematic anticompetitive activities by or among enterprises in the foreign country;

拒绝提供公平公正的市场准入机会，包括外国政府容忍外国企业或企业之间的系统性反竞争活动

- Export targeting; and

出口定向；以及

- Denial of worker rights

剥夺工人权利



- USTR must generally implement the retaliatory action within 30 days of its determination. Any action taken pursuant to Section 301 terminates automatically after four years unless the petitioner or other representative of domestic industry requests continuation.

美国贸易代表一般必须在作出裁定后 30 天内实施报复措施。根据 301 条款采取的任何措施在 4 年后自动终止，除非申请人或国内产业的其他代表申请继续执行。

### III. Section 201 (Global Safeguard Investigations)

#### 201 条款（全球保障措施调查）

- Section 201 of the Trade Act of 1974 allows the President to impose temporary duties and other trade measures if the ITC determines a surge in imports is a substantial cause or threat of serious injury to the U.S. industry (19 U.S.C. §§2251-2255).

1974 年贸易法第 201 条规定，如果美国国际贸易委员会裁定进口数量激增是造成美国产业遭受严重损害或严重损害威胁的实质性原因，总统可实施临时关税和其他贸易措施（美国法典第 19 编第 2251-2255 条）。

- Section 201 or “safeguard” actions are designed to provide temporary relief for a U.S. industry (for example, additional tariffs or quotas, or both) in order to facilitate positive adjustment for U.S. industry to import competition. “Positive adjustment” under the law means the ability of the industry to compete successfully with imports after termination of the safeguard measure, or the industry’s orderly transfer of resources to other productive pursuits; and the ability of dislocated workers to transition productively. Section 201 actions are generally deemed consistent with U.S. international obligations provided that they conform to the WTO Agreement on Safeguards.

201 条款或“保障”措施旨在为美国产业提供临时救济（例如，实施额外关税或配额，或实施关税配额），以促进美国产业对进口竞争的积极调整。法律规定的“积极调整”是指在保障措施终止后，该产业能够成功地与进口产品竞争，或该产业将资源有序转移到其他富有成效的产业中；以及未安置的工人能够实现富有成效的转型。201 措施通常被认为符合美国的国际义务，只要它们符合世界贸易组织的保障措施协定。

- A recent Section 201 action involved 4-year tariffs on imports of Solar Modules from China beginning in February 2018 starting at a rate of 30%, then declining



by 5% each year until reaching a rate of 15% for the last year. Also, 4-year tariff-rate-quotas (tariffs in combination with quotas - TRQs), were imposed on Solar Cells with a tariff of 30% above quota, descending 5% annually. These Section 201 tariffs and TRQs are currently set to expire in Feb. 2022. This case affected approximately \$4.3 billion of imports in 2019.

最近的 201 保障措施涉及对从中国进口的太阳能组件实施为期 4 年的关税，从 2018 年 2 月开始，税率为 30%，随后每年降低 5%，直到最后一年达到 15% 的税率。此外，对太阳能电池实施为期 4 年的关税-配额（关税配额相结合-TRQ），对超过配额部分征收 30% 关税，每年递减 5%。201 条款的这些关税和关税配额目前将于 2022 年 2 月到期。此案对 2019 年约 43 亿美元的进口产品产生影响。

- Also, in Jan. 2018 another Section 201 action targeted Large Residential Washers with a 3-year TRQ, 20% in quota tariff descending 2% annually. The action also imposed a 3-year TRQ on Washer Parts, 50% above quota tariff, descending 5% annually. This case affected approximately \$1.3 billion of imports in 2019.

此外，在 2018 年 1 月，另一项 201 保障措施针对大型家用洗衣机实施为期 3 年的关税配额，征收 20% 的配额关税，每年递减 2%。该项保障措施还对洗衣机零部件实施为期 3 年的关税配额，对超过配额部分征收 50% 的关税，每年递减 5%。此案对 2019 年约 13 亿美元的进口产品产生影响。

## Basics of Section 201

### 201 条款的要素

- **Statute:** Section 201: Fair Trade (escape clause) of the Trade Act of 1974 (19 U.S.C §§2251-2255)

适用法规：201 条款：1974 年贸易法的公平贸易（逃避条款）（美国法典第 19 编第 2251-2255 条）

- **Focus:** Increasing imports

重点：进口数量增加

- **Criteria for Action:** Increasing imports are a “substantial” cause of “serious” injury



采取措施的标准：进口数量增加是造成“严重”损害的“实质性”原因

- Response: Duties, quotas, tariff-rate quotas

应对措施：关税、配额、关税配额

- Responsibility: President (based on ITC recommendation)

负责人：总统（以美国国际贸易委员会的建议作为依据）

- Duration of Proceeding: 240 days

法律程序持续时间：240 天

- Section 201 is sometimes referred to as a “safeguard” or “escape clause” because it permits a country to “escape” temporarily from its obligations under the WTO with respect to a particular product if a domestic industry is suffering serious injury substantially caused by rapidly increasing imports. The explicit purpose is to allow the domestic industry time to restructure

201 条款有时被称为“保障措施”或“逃避条款”，因为该条款允许一个国家在进口数量快速增长实质性造成国内产业遭受严重损害的情况下暂时“逃避”其对某一特定产品的世贸组织义务。其明确的目的是让国内产业有时间调整结构

- Accordingly, under Section 201, no one is being accused of breaking laws; rather, the domestic industry argues that a surge in imports is the source of the industry’s crisis

因此，根据 201 条款，没有人被指控违法；相反，国内产业认为，进口数量的激增是该产业发生危机的根源

- Section 201 does not require a finding of an unfair trade practice, as do the AD and CVD cases. However, the injury requirement under Section 201 is considered to be more difficult since the injury must be “serious” and increased imports must be a “substantial cause” of that injury

201 条款不同于双反案，不要求裁定存在不公平贸易行为。然而，201 条款规定的损害要求被认为更难达到，因为损害必须是“严重的”，而且进口数量增加必须是造成该损害的“实质性原因”



## How is a Section 201 Conducted?

### 如何启动 201 条款？

- A request for Section 201 relief can be made to the ITC by the President, the Senate, or a petition to the ITC by domestic industry

可由总统、参议院向美国国际贸易委员会提出 201 条款救济请求，或由国内产业向美国国际贸易委员会提出申请

- The ultimate decision on whether to grant relief rests with the President alone. The President is allowed, (but not required) to impose safeguard measures if certain statutory requirements are met

是否给予救济的最终决定权在总统一人手中。如果符合某些法定要求，总统可以（但并非必须）实施保障措施

- First the ITC must within 120 days (150 in more complicated cases) determine whether the domestic industry is suffering serious injury that is substantially caused by domestic imports. If the ITC finding is affirmative, it then makes a recommendation to the President regarding appropriate measures

首先，美国国际贸易委员会必须在 120 天内（如情况较为复杂，则为 150 天内）确定国内产业是否遭受由国内进口产品实质性造成的严重损害。如果美国国际贸易委员会作出肯定性裁定，就会向总统提出关于适当措施的建议

- However, the President can accept, reject, or modify the ITC's recommendations. If the potential benefits of action on behalf of the industry appear to be outweighed by broader considerations of national policy, the President may apply no trade restriction even if the ITC has found serious injury due to increased imports

但是，总统可以接受、拒绝或修改美国国际贸易委员会的建议。如果更广泛的国家政策考量似乎超过了代表该行业采取行动的潜在利益，即使美国国际贸易委员会裁定由于进口数量增加造成严重损害，总统也可以不实施贸易限制



- The President’s advisers are inherently political and keep the President alert to implications of any choice he might make with respect to competing domestic and international interests in Congress, with foreign governments (including retaliation on other pending trade issues), and among U.S. producers and consumers

总统的顾问具有内在的政治性，这使总统对其可能作出的任何选择对于国会与外国政府（包括对其他未决贸易问题的报复措施）之间的国内和国际利益冲突以及美国生产者和消费者之间的利益冲突产生的影响保持警惕

- If the President chooses to act, the menu of available relief includes the imposition of a higher duty, a tariff-rate quota, a quantitative restriction, trade adjustment assistance to the affected U.S. industry (or any combination of these measures)

如果总统选择采取行动，可采取的救济措施包括实施更高的关税、关税配额、数量限制、对受影响的美国产业提供贸易调整援助（或同时采取以上多项措施）

- Relief may be granted for up to eight years. If relief is granted for more than three years, the need for relief must be evaluated by the middle of the relief period

救济措施的有效期最长可达八年。如果救济措施的有效期超过三年，必须在救济期中期评估救济的必要性

## Record of Section 201 Actions

### 201 保障措施记录

- Section 201 has never been a frequently used trade statute, with the recent exception of actions under the Trump Administration (above)

201 条款从来不是常用的贸易法规，特朗普政府采取的行动（见上文）属于近期的例外情况

- Section 201 cases were fairly common from the mid-1970s through the mid-1980s, but only a handful of petitions have been filed in more recent years.



从 20 世纪 70 年代中期到 80 年代中期，201 调查相当普遍，但在最近几年，只提交了少数申请。

- In five of the six times the United States has adopted Section 201 measures over the past decade, they have been successfully challenged by affected countries (the exception being the Section 201 case on steel wire rod).

在过去十年美国采取的六次 201 措施中，有五次被受影响国家成功推翻（关于钢线材的 201 调查除外）

- The Section 201 decision imposing tariff relief on steel imports filed in 2002 marked the fourth year in a row in which the United States has had to abandon the relief measures approved by the President.

2002 年提出的对进口钢铁实施关税减免的 201 条款决定标志着美国连续第四年不得不放弃总统批准的救济措施。

- This action on steel, as well as others on lamb meat and line pipe have all met a similar fate at the WTO which found them invalid. Section 201 relief on wheat gluten from the European Union was allowed to expire at the three-year mark, resisting industry calls to extend the safeguard for an extra year. A broom corn safeguard was successfully challenged by Mexico under NAFTA.

对采取钢铁实施的这一措施以及对羊肉和线管实施的其他措施都在世贸组织遭遇类似的命运，世贸组织认为这些措施均属无效。对欧盟进口的小麦麩皮实施的 201 救济措施被允许在三年期满后失效，抵制了业内要求将保障措施延长一年的呼声。墨西哥根据北美自由贸易协定成功推翻了对高粱的保障措施。

- As this record demonstrates, the complexity of Section 201 proceedings and their political nature produce opportunities for affected countries to challenge them at the World Trade Organization (successful WTO challenges included Section 201 cases on steel, lamb meat, and line pipe)

正如上述记录所表明的，201 调查程序的复杂性及其政治性质为受影响国家提供了在世界贸易组织提出异议的机会（向世贸组织申诉成功的案例包括关于钢铁、羊肉和线管的 201 调查）

- When consideration protective action under Section 201, the President must also consider public interest Despite the public interest concerns, and potential WTO challenges, the President's powers are generally flexible and expansive.



Remedies can drastically reduce imports and there is nothing foreign companies or countries can do to change outcomes for at least three years. By contrast AD and CVD orders are subject to annual reviews and other duty-minimizing options

在考虑根据 201 条款采取保护措施时，总统还必须考虑公共利益。尽管有公共利益方面的疑虑，并且世贸组织可能存在异议，但总统的权力通常是灵活而广泛的。补救措施可以大幅减少进口数量，外国企业或国家至少在三年内无力改变结果。相比之下，双反征税令则需要接受年度审查，并受其他减税方案影响

#### IV. Section 232 (National Security Investigations)

##### 232 条款（国家安全调查）

Section 232 of the Trade Expansion Act of 1962 allows the President to adjust imports if the DOC finds certain products are imported in such quantities or under such circumstances as to threaten to impair U.S. national security (19 U.S.C. § 1862).

1962 年贸易扩展法第 232 条规定，如果美国商务部认定某些产品的进口数量或情况有可能损害美国国家安全，总统可对该产品的进口作出调整（美国法典第 19 编第 1862 条）。

Section 232 was created during the Cold War and has been infrequently used over several decades. Prior to the Trump Administration there were 26 Section 232 investigations resulting in nine affirmative findings by the DOC. In six of those cases, the President imposed a trade action.

232 条款是在冷战时期制定的，数十年来都不常用到。在特朗普执政之前，共有 26 项 232 调查，商务部就其中九项作出肯定性裁定。在其中的六个案例中，总统采取了贸易措施。

Using Section 232, President Trump imposed global tariffs of 10% on aluminum and 25% on steel. These cases affected \$9.0 billion (aluminium) and \$11.6 billion (steel) of imports in 2019.

根据 232 条款，特朗普总统对铝材和钢铁分别征收 10% 和 25% 的全球关税，这些案例对 2019 年 90 亿美元（铝材）和 116 亿美元（钢铁）的进口产生影响。

For aluminum, Australia, Canada, and Mexico were exempted. Argentina was subject to quotas instead of tariffs. All other countries are subject to tariffs.

在铝材方面，澳大利亚、加拿大和墨西哥获得豁免。对阿根廷实施配额而非关税。对所有其他国家征收关税。

For steel, Australia, Canada, and Mexico were exempted. Argentina, Brazil and South Korea were subject to quotas instead of tariffs. All other countries are subject to tariffs.



在钢铁方面，澳大利亚、加拿大和墨西哥获得豁免。对阿根廷、巴西和韩国实施配额而非关税。对所有其他国家征收关税。

The current Section 232 restrictions on aluminum and steel are in place indefinitely.

目前对铝材和钢铁实施的 232 条款限制无限期执行。

Prior to the aluminum and steel investigations, a President arguably last acted under Section 232 in 1986. In that case, Commerce determined that imports of metal-cutting and metal-forming machine tools threatened to impair national security. In this case, the President sought voluntary export restraint agreements with leading foreign exporters and developed domestic programs to revitalize the U.S. industry. These agreements predate the founding of the WTO, which established multilateral rules prohibiting voluntary export restraints. The most recent 232 investigation prior to the Trump Administration took place in 2001 with regard to iron ore and finished steel, but it resulted in a negative finding by the DOC and no further action.

在对铝材和钢铁发起调查之前，可以说，总统最后一次根据 232 条款采取行动是在 1986 年。在该案中，商务部裁定进口的金属切削和金属成型机床有可能损害国家安全，而总统寻求与主要的外国出口商达成自愿出口限制协议，并制定了振兴美国产业的国内计划。这些协议的达成早于世贸组织的成立，后者制定了禁止自愿出口限制的多边规则。特朗普执政之前的最近一次 232 调查是在 2001 年针对铁矿石和成品钢进行的，调查结果是商务部作出否定性裁定，没有采取进一步行动。

For more information about U.S. Trade Remedies or about Clark Hill PLC, please visit [www.clarkhill.com](http://www.clarkhill.com)

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# REPORT: U.S Customs Enforcement

## 报告：美国海关执行措施

### Enforce and Protect Act (EAPA)

#### 执行及保护法(EAPA)

- The Enforce and Protect Act of 2015 (EAPA), allows Customs and Border Protection (CBP) to investigate whether a company or other entity has evaded antidumping and countervailing (AD/CVD) duties in an on the record investigation

2015年执行及保护法(EAPA)规定，海关和边境保护局(CBP)可在记录在案的调查中调查某公司或其他实体是否存在逃避反倾销和反补贴(AD/CVD)税的行为

- As of Oct. 1, 2020, EAPA has led to 131 investigations, more than 30 foreign on-site visits or verifications and identification of more than \$600 million in AD/CVD duties owed

截至 2020 年 10 月 1 日，已根据执行及保护法启动了 131 项调查，进行了 30 多次外国现场考察或核查，并查明欠缴反倾销/反补贴税逾 6 亿美元

- The EAPA has led to the expansion of CBP authority and signaled a desire to expand EAPA authority into other areas beyond potential evasion of AD/CVD duties

执行及保护法使海关和边境保护局的权力得到扩张，并表明希望将执行及保护法的权力扩大到潜在的逃避反倾销/反补贴税的行为以外的其他领域

- AD/CVD duties are imposed to provide relief to U.S. industries injured by unfair import competition. AD duties are imposed on imported goods sold at less than fair value, and CVD duties are imposed on imported goods subsidized by a foreign government. The Department of Commerce (DOC) determines whether dumping and subsidies are occurring, while the U.S. International Trade Commission (ITC) determines whether the U.S. domestic industry is injured because of the dumped and subsidized imports

征收反倾销/反补贴税是为了向因不公平进口竞争而受到损害的美国产业提供救济。反倾销税是对以低于公允价值的价格出售的进口商品征收的，而反补贴税则是对享受外国政府补贴的进口商品征收的。美国商务部(DOC)负责裁定是否发生倾销和补贴，而美国国际贸易委员会(ITC)则负责裁定美国国内产业是否因倾销和补贴进口产品而受到损害

- EAPA action includes implementing Interim Measures within 90 days of beginning an investigation to ensure CBP can bill for the correct duties owed to the U.S. Government. Interim measures allow CBP to require the importer(s) to pay cash deposits for AD/CVD duties on any future imports until conclusion of the investigation and to pause the final processing of payment to CBP for entries up to one year prior to the initiation of the investigation so that CBP can determine if additional duties are owed



执行及保护法措施包括在开始调查后 90 天内实施临时措施，以确保海关和边境保护局能够按应向美国政府缴纳的正确关税税额征税。临时措施允许海关和边境保护局要求进口商为任何未来的进口产品支付反倾销/反补贴税的现金保证金，直到调查结束，并暂停对海关和边境保护局就调查开始前一年内的入境货物收取的款项进行最终处理，以便海关和边境保护局能够裁定是否应缴纳额外关税

- Use of EAPA has been rising. Since its beginnings in 2016, CBP has investigated claims of evasion involving multiple products, including wire hangers, pipe and tube, wooden bedroom furniture, diamond sawblades, glycine, oil-country-tubular-goods, hardwood plywood, aluminum extrusions, cabinets, and tires

利用执行及保护法启动调查的情况越来越多。自 2016 年开始，海关和边境保护局已经调查了涉及多种产品的逃税索赔，包括衣架、管道和管材、木制卧室家具、金刚石锯片、甘氨酸、石油管材、硬木胶合板、铝型材、橱柜和轮胎

### **CBP has launched has:**

**海关和边境保护局已根据执行及保护法开展以下工作:**

- Launched over 130 investigations.  
启动了 130 多项调查。
- Conducted over 30 distinct foreign on-site visits or verifications  
进行了 30 多次不同的外国现场考察或核查
- Identified over \$600 million in AD/CVD duties owed to the U.S. Government  
查明对美国政府欠缴逾 6 亿美元的反倾销/反补贴税

### **Increased EAPA Enforcement**

**加大执行及保护法执行力度**

- In fiscal year (FY) 2020 alone, EAPA resulted in 64 investigations and the prevention of duty evasion estimated at \$287 million — a 500% increase since the EAPA program began in fiscal year 2017  
仅在 2020 财政年度(FY)，就根据执行及保护法启动了 64 项调查，防止了估计数额达 2.87 亿美元的逃税行为——自 2017 财政年度 EAPA 计划开始实施以来，增长了 500%
- According to CBP, the majority of its EAPA investigations in FY2020 involved Chinese goods transhipped through third countries, including Cambodia, the Dominican Republic, India, Malaysia, Laos, Taiwan, Turkey, Thailand or Vietnam



根据海关和边境保护局的数据，2020 财政年度根据执行及保护法展开的调查大多涉及通过第三国转运的中国货物，包括柬埔寨、多米尼加共和国、印度、马来西亚、老挝、台湾、土耳其、泰国或越南

## What Does an EAPA Proceeding Look Like?

### 执行及保护法程序介绍

- EAPA established concrete administrative deadlines for the purpose of promoting speed and efficiency. However, this process places a significant burden on the U.S. importer under investigation, especially when CBP decides to apply interim measures

为了促进速度和效率，执行及保护法规定了具体的行政期限。然而，这一流程给接受调查的美国进口商造成了巨大的负担，海关和边境保护局决定采取临时措施时更是如此

- Also, the investigated party is often at a disadvantage because confidential information is redacted from the administrative record and EAPA does not have a mechanism for accessing these details during the investigation. In other words, the accused evader may be unable to see (and respond to) the specific facts that support the determination of evasion

此外，被调查方往往处于不利地位，因为行政记录对机密信息进行编辑处理，而执行及保护法并没有在调查期间获取这些细节的机制。换言之，被指控的逃税者可能无法看到（和回应）支持逃税裁定的具体事实

- The primary stages of an EAPA proceeding are summarized below (see 19 CFR Part 165 for details):

执行及保护法程序的主要阶段概括如下（详见联邦法规汇编第 19 编第 165 部分）：

1. **Initiation:** An “interested party” (e.g., U.S. manufacturer, producer or wholesaler) may submit an “e-Allegation” to CBP through an online portal when the interested party believes that a U.S. importer is evading the payment of AD/CVD duties. Upon receipt of a properly filed EAPA allegation, CBP, through its Trade Remedy Law Enforcement Directorate (TRLED), has 15 business days to determine whether to investigate. CBP will initiate an investigation if the allegation “reasonably suggests” there is evasion

**启动：**当“利益相关方”（如美国制造商、生产商或批发商）认为美国进口商逃避缴纳反倾销/反补贴税时，可通过在线门户网站向海关和边境保护局提交“电子指控”。在收到妥善提交的执行及保护法指控后，海关和边境保护局通过其贸易救济执法理事会(TRLED)，在 15 个工作日内决定是否进行调查。如果指控“合理地表明”存在逃税行为，海关和边境保护局将启动调查

2. **Interim Measures:** Within 90 calendar days after initiating an investigation, CBP will implement interim measures if it determines there is a “reasonable suspicion”



of evasion. Interim measures may include suspension of liquidation, collection of AD/CVD deposits, intensive examination of import shipments and “such additional measures as CBP determines necessary to protect the revenue of the United States.” Interim measures will remain in place during the course of the investigation

**临时措施:** 在启动调查后 90 个日历日内, 如果海关和边境保护局确定“有理由怀疑”存在逃税行为, 则将实施临时措施。临时措施可能包括暂停清算、收取反倾销/反补贴税保证金、加强对进口货物的检查以及“海关和边境保护局确定的保护美国税收所需的其他措施”。在调查过程中, 将继续实施临时措施

3. **Investigation:** CBP will gather information through requests for information, site visits and voluntary submissions. This review can be quite burdensome and include requests for import documents, production records and corporate/financial information. An adverse inference may be applied to a party that fails to cooperate or comply with the investigation (to the best of its ability)

**调查:** 海关和边境保护局将通过要求提供信息、现场考察和自愿提交等方式收集信息。此类审查可能相当繁琐, 包括要求提供进口单据、生产记录和公司/财务信息。对于未能(尽最大努力)配合或遵守调查的一方, 可能适用不利推定

4. **Final Determination:** Within 300 calendar days (unless extended), CBP will decide whether an affirmative determination of evasion is supported by “substantial evidence.” If CBP makes an affirmative determination, the agency must: continue to enforce interim measures; seek a determination of the applicable AD/CVD assessment rate or cash deposit rate from DOC; and assess AD/CVD duties consistent with DOC instructions

**最终裁定:** 在 300 个日历日内(除非延长), 海关和边境保护局将决定对于逃税的肯定性裁定是否有“实质性证据”支持。如果海关和边境保护局作出肯定性裁定, 该机构必须: 继续执行临时措施; 向商务部寻求确定适用的反倾销/反补贴税率或现金保证金比率; 并根据商务部的指示征收反倾销/反补贴税

5. **Administrative Review/Appeal:** Within 30 days after CBP's Final Determination, any party to the investigation may request a *de novo* administrative review, which must be completed within 60 days. Subsequently, the losing party may seek judicial review in the U.S. Court of International Trade (CIT) within 30 days of the completion of the administrative review

**行政复议/上诉:** 在海关和边境保护局作出最终裁定后 30 天内, 参与调查的任何一方均可申请从头行政复议, 行政复议必须在 60 天内完成。随后, 败诉方可在行政复议结束后 30 天内向美国国际贸易法院(CIT)寻求司法复审。



## **Withhold Release Orders (WROs)**

### **暂扣令(WRO)**

The United States is taking increasingly aggressive actions to prohibit imports from China that may have been produced by forced labor. Since September 2020, CBP has issued multiple enforcement actions against imports of products into the United States by certain entities that operate in the Xinjiang Uyghur Autonomous Region (Xinjiang or XUAR). These have already covered imports of cotton, tomatoes and seafood, and another is under consideration against imports of polysilicon products used in solar panels.

美国采取日益激进的行动，禁止从中国进口可能使用强迫劳动生产的产品。自 2020 年 9 月以来，海关和边境保护局针对在新疆维吾尔自治区（新疆或 XUAR）经营的某些实体进口到美国的产品采取了多项执法行动。这些行动涵盖了棉花、番茄和海鲜的进口，另一项针对用于太阳能电池板的多晶硅产品的进口的行动正在审议中。

Through those actions, known as withhold release orders (WROs), CBP can withhold release of such goods when information “reasonably but not conclusively” indicates that the merchandise was produced using forced labor. Forced labor is defined as “all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” as well as forced child labor or indentured child labor.

通过这些被称为暂扣令(WRO)的行动，海关和边境保护局可在相关信息“有理由但并非决定性地”地表明商品是使用强迫劳动生产的情况下扣留这些商品。强迫劳动被定义为“任何人并非出于自愿，在不履行即可能遭受处罚的威胁下，被强制要求提供的所有劳动或服务”，还包括强迫童工或契约童工。

19 U.S.C § 1307 prohibits the importation of merchandise made using forced labor. While this is not a new law, CBP has increased its enforcement powers in this area through WROs and has interpreted the law to prohibit importation of merchandise even if only parts of the merchandise are produced by forced labor, which can include downstream products made in third countries that incorporate XUAR inputs.

美国法典第 19 编第 1307 条禁止进口使用强迫劳动制造的商品。虽然这并非新出台的法律，但海关和边境保护局通过暂扣令加强了其在这一领域的执法权力，并将该项法律解释为禁止进口使用强迫劳动生产的商品，即使该商品只有部分使用强迫劳动生产，这可能包括在第三国制造的、包含新疆维吾尔自治区投入物的下游产品。

The WROs not only impact the designated entities and their products, but more broadly companies within the supply chain that rely on those goods (including third country processors and U.S. importers). The WROs are unique in that they do not ban specific products, but rather focus on the labor used to make those products, and bans all products made with that labor. Such products can be detained by CBP at the U.S. port of entry.

暂扣令不仅影响到被指定实体及其产品，而且更广泛地影响到供应链中依赖这些产品的公司（包括第三国加工商和美国进口商）。暂扣令的独特之处在于，它们并非禁止进口特定产品，而是将重点放在用于制造这些产品的劳动上，并禁止进口使用此类劳动力制造的所有产品。海关和边境保护局可在美国入境口岸扣留此类产品。



WROs prohibit the subject goods from entering the United States. The WROs also apply to goods entered into a foreign trade zone (FTZ) or bonded warehouse. Importers of these products can: 1) export the shipments out of the United States, or 2) submit information showing that the goods were not made with forced labor.

暂扣令禁止目标货物进入美国境内。暂扣令也适用于进入对外贸易区(FTZ)或保税仓库的货物。这些产品的进口商可以：1)将货物出口到美国境外，或2)提交资料证明货物并不是使用强迫劳动制造的。

For the latter option, the importer must provide evidence within 3 months of importation and submit a certificate of origin signed by the foreign seller, as well as a detailed statement by the importer demonstrating that the subject merchandise was not produced with forced labor (for example, a supply chain audit). The supporting documentation should trace the supply chain from the point of origin of the goods, to the production and processing of downstream products, to the merchandise imported into the United States. The documentation can include affidavits from entities within the supply chain on the point of origin of the inputs.

选择后一种方案的进口商必须在进口后3个月内提供证据，并提交由外国卖家签署的原产地证书，以及进口商证明目标商品并非使用强迫劳动生产的详细说明（例如供应链审计）。证明文件应对从商品的原产地到下游产品的生产和加工再到商品进口到美国的整条供应链进行跟踪。这些文件可以包括供应链内的实体就投入物原产地提供的宣誓书。

For more information about U.S. Customs Enforcement or about Clark Hill PLC, please visit [www.clarkhill.com](http://www.clarkhill.com)

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**Locations:**

Austin, TX  
Beaumont, TX  
Birmingham, MI  
Chicago, IL  
Collin County, TX  
Dallas, TX  
Denver, CO  
Detroit, MI  
Grand Rapids, MI  
Houston, TX  
Lansing, MI  
Las Vegas, NV  
Los Angeles, CA  
Morgantown, WV  
New York, NY  
Philadelphia, PA  
Phoenix, AZ  
Pittsburgh, PA  
Princeton, NJ  
San Antonio, TX  
San Diego, CA  
San Francisco, CA  
Washington, DC  
Wilmington, DE  
Dublin, Ireland  
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