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New Surcharges at California Ports Could Be 'Catastrophic,' FMC Advisory Committee Says

Shippers were caught off guard by a new surcharge announced this week by the Los Angeles and Long Beach ports that could exacerbate unfair detention and demurrage fees, members of the Federal Maritime Commission's Shipper Advisory Committee said. The ports announced a surcharge to ocean carriers for containers that dwell at terminals, a fee that will likely be passed on to shippers, members said during the committee's inaugural meeting Oct. 27 (see ITT 09/10/2021).

Beginning Nov. 1, the ports will impose additional charges for containers moving by truck and dwelling for nine days or more and for containers moving by rail and dwelling for six days or more. The ports will charge $100 per container, rising in $100 increments per container per day. "I think it will be catastrophic," Rich Roche, vice president of Mohawk Global Logistics, said during the committee meeting.

The surcharges are aimed at helping to "expedite the movement of cargo through the ports to work down the number of ships at anchor," Port of Los Angeles Executive Director Gene Seroka said in a statement. "If we can clear this idling cargo, we'll have much more space on our terminals to accept empties, handle exports, and improve fluidity for the wide range of cargo owners who utilize our ports."

But Roche said chassis were "already in short supply, and this will artificially suck out the rest of the containers that may be sitting in there that didn't need to be on a chassis and are going to be parked somewhere. So we're going to probably wipe out whatever's left in terms of chassis." He said the advisory committee should look at whether it can help "put the brakes on this."

The surcharges may "cause even more problems than they're going to fix," said Steve Hughes of the Auto Care Association and the Motor & Equipment Manufacturers Association. "I understand the logic behind it, and it makes some sense. But unfortunately, because we don't have that throughput at the front gate, I think this could cause us more troubles than we have already."

Hughes also said the committee should determine whether the FMC was "given notice" about the fee, and whether it followed the "proper" processes. Bob Connor, executive vice president of global transportation at Mallory Alexander International Logistics, said he doesn't think FMC was notified. "From the conversations that we had" with "contacts" at FMC, "it was pretty obvious that they were not forewarned," he said.

U.S. shippers and trade groups have complained for months about the practices of terminals and ocean carriers during the COVID-19 pandemic, including unfair detention and demurrage charges and carriers increasingly declining or canceling export bookings (see ITT 09/14/2021). While FMC Chair Daniel Maffei said earlier in the meeting that it's "always tempting to demonize a particular sector," the port problems won't be fixed by pointing fingers. "I think if we really want to see positive change, we must all be prepared to come to the table to work together and to work with others through the industry," he said. "And that is what I think that this committee can be a great catalyst for."

FMC Commissioner Rebecca Dye said she will recommend to the FMC that it establish an advisory board for terminal operators and ocean carriers and hopes they can work with the shipping committee to help address port issues, including unfair fees (see ITT 10/13/2021). "Right now we need fresh, broader perspectives on the freight delivery system," Dye said.

FMC Commissioner Carl Bentzel said he supports the idea of a separate advisory committee for terminal operators and ocean carriers. "I think this is the template," he said of the Shipping Advisory Committee, which is

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composed equally of industry exporters and importers. “I hope this is the committee that can show us the way ... to come up with a better system of regulating ocean shipping.”

Maffei specifically said he hopes for recommendations from the advisory committee to find “what’s necessary to increase cargo fluidity through technology and data sharing,” and whether the FMC’s actions are helping to address detention and demurrage issues.” Dye issued a series of long-awaited recommendations to the FMC in July aimed at addressing ocean freight delivery issues, including a revision to shipping laws to allow for double reparations for shippers when a carrier violates detention and demurrage rules (see ITT 07/29/2021).

“I'm looking for an honest discussion,” Maffei said. “What’s outrageous? What’s tolerable? What may be important to keep the flow flowing, what the commission can do, and some feedback on where the commission’s actions so far are making a difference.” **— *Ian Cohen***

New TRQs for EU Steel and Aluminum to Take Effect January 1

The U.S. will administer tariff rate quotas starting Jan. 1 on European steel across 54 product categories, with an annual 3.3 metric ton limit, but the products that are currently covered by Section 232 exclusions won’t count against the quotas. Those exclusions will automatically renew through the end of 2023, the Commerce Department announced. For both steel and aluminum, derivative products will no longer be subject to tariffs or quotas.

All products entered under the quota will have to be certified as being melted and poured in the EU. As with South Korea’s quota, the TRQ will be administered quarterly. Up to 4% of unused quota from the first quarter can roll over to the third quarter and up to 4% of unused quota from the second quarter can roll over to the fourth quarter. Unused quota from the third quarter, up to 4%, again, can roll over to the first quarter of the following year.

For aluminum, the U.S. will administer TRQs twice a year, and up to 60% of the annual volume can be imported in the first half of the year. The tariff-free quota is 18,000 metric tons for unwrought aluminum, under two product categories, and 366,000 metric tons for semi-finished aluminum under 14 product categories. **— *Mara Lee***

CBP to Begin Testing of MID Replacements

CBP plans to begin a global business identifier “Evaluative Proof of Concept (EPoC)” meant to explore possible replacements for the manufacturer identification codes, the agency said in a notice. “By testing the identifiers CBP will take its first step in determining whether to amend regulations to mandate the GBI solution,” it said. “Furthermore, CBP will understand the utility of collecting and/or combining the identifiers’ data and will be able to make an informed decision on whether to mandate the use of the GBI solution as an alternative” to the MID code.

The pilot program will test the use of three possible replacements, and participants will be required to obtain the identifiers and provide that information to CBP. “The identifiers provide additional information about trade entities and supply chain locations associated with U.S. imports, to CBP for enrollment into the GBI EPoC and, if selected, during the Entry process,” it said.

The three identifiers being tested are the Global Location Number or GLN, operated by GS1; the Data Universal Numbering System number, or DUNS number, operated by Dun & Bradstreet; and the Legal Entity Identifier, or LEI, managed by the Global Legal Entity Identifier Foundation. The test will require that participants file all three numbers, but CBP has said it expects to use two of those identifiers to replace the MID (see ITT 07/23/2021). Comments on the proposed new information collection related to the pilot are due by Dec. 6. **— *Tim Warren***

USTR to Revive Section 301 Exclusion Applications

The office of the U.S. Trade Representative plans to restart a Section 301 tariff exclusions process, and has no immediate plans to remove any of the Section 301 tariff targets now that its comprehensive China review is over. However, a government official who spoke on background during an Oct. 3 call with reporters said, “We also want to make sure to align existing tariffs to those [Biden-Harris administration] priorities.” **— *Mara Lee***

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About $123B Assessed in Duties Under Sections 301, 232, 201 Trade Remedies, CBP Says

CBP has assessed about $123.5 billion in duties under the major trade remedies started during the Trump administration, as of Oct. 7, according to CBP's trade statistics page. That includes $108 billion in duties from the Section 301 tariffs on goods from China, and $1.1 billion in Section 301 tariffs on goods from the European Union. CBP also has assessed about $8.8 billion under the Section 232 tariffs on steel and $2.7 billion under tariffs on aluminum. The Section 201 trade remedies on washing machines and washing machine parts account for about $277 million and the solar cells tariffs account for $2.7 billion in assessed tariffs.

SIMP in Build Back Better Bill, Tobacco Drawback Limitation Out

The social spending and climate response bill known as Build Back Better has been scaled back to satisfy concerns of two Senate moderate Democrats, and as a result, many of the original pay-fors are gone, including a limitation on tobacco drawback and a plan to tax the nicotine in vaping cartridges.

But importers could still be affected by several provisions of the 1,600-page bill.

The bill would provide an additional $2 million to the National Oceanic and Atmospheric Administration for implementing the Seafood Import Monitoring Program. However, the legislative text is not clear on whether that money is to expand SIMP to apply to all seafood products. The previous version of the bill said that explicitly; this version preserves the additional spending but does not say how SIMP is to be implemented.

The bill provides $600 million for grants, available through Sept. 20, 2026, distributed by the Maritime Administration to support supply chain resilience, reduction in port congestion and the development of offshore wind. This is down from $2.5 billion in the original draft of the bill, but that amount was also to pay for environmental remediation or projects to reduce the impact of ports on the environment. The grants cannot be disbursed after Sept. 30, 2031.

The bill offers $5 billion in spending on "manufacturing supply chain resilience," though there is little detail on how that money will be spent. In the original bill, $10 billion was planned. The Commerce Department can spend the money on mapping and monitoring manufacturing supply chains; supporting the establishment of voluntary standards and best practices; and "identifying, accelerating, promoting, demonstrating and deploying technological advances for manufacturing supply chains" and providing grants, loans or loan guarantees " to maintain and improve manufacturing supply chain resiliency."

However, the bill is likely to continue to change. Senate Finance Committee Chairman Ron Wyden, D-Ore., whose committee has jurisdiction over both tax and healthcare provisions, told reporters in a hallway interview: "The deal isn't done until the Senate acts." ***— Mara Lee***

New Bill Would Require Importers to Show Goods Don't Come From Illegally Deforested Land

Rep. Earl Blumenauer,D-Ore., chairman of the House Ways and Means Trade Subcommittee, Rep. Brian Fitzpatrick, R-Pa., and Sen. Brian Schatz, D-Hawaii, want to pass a law that would require importers of certain commodities to first certify that they exercised reasonable care that the products they are buying were not produced on illegally deforested land. If the goods—such as palm oil, soybeans, cattle, cocoa and rubber—are coming from a country that the government designated as high-risk for illegal deforestation, importers will have to fully document their supply chains and the measures buyers took to ensure it was not produced on deforested land.

The bill, introduced in both chambers Oct. 6, is called the Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act, It has seven Democratic co-sponsors in the Senate, and four Democratic co-sponsors in the House.

The Office of the U.S. Trade Representative would be responsible for identifying the commodities that should be covered, and their Harmonized Tariff Schedule codes. The lists would be updated annually. A year and a half after the bill becomes law, CBP would have to establish a way for outside groups to submit evidence of possible violations of the law.

The legislators say the bill would build on the success of the Lacey Act. "The framework creates a whole-of-gov-

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ernment approach, drawing on expertise from the U.S. Trade Representative, Customs and Border Protection, U.S. Agency for International Development, and the Departments of State, Justice, the Interior, and Agriculture. The bill also creates a standing advisory committee to bring the expertise of companies and civil society into the process," the press release announcing the bill said. — ***Mara Lee***

China-US Call Touches on Tariffs; USTR Official Says Liquidation Issues Prevented Broader Retroactivity

The U.S. summary of a weekend call between U.S. Trade Representative Katherine Tai and China's Vice Premier Liu He, the lead negotiator of the phase one agreement, did not use the word tariffs, though it said the two countries would "consult on certain outstanding issues."

But the Chinese news agency Xinhua wrote, "The Chinese side lodged representations on the lifting of additional tariffs and sanctions and expounded its position on such issues as China's economic development model and industrial policy."

The call, which was on Oct. 9 in China, but the evening of Oct. 8 in the U.S., was preceded by a background call from top Office of the U.S. Trade Representative officials for reporters. In that call, an official said Tai's goal was to tell Liu how China's non-market practices harm American workers, and to commit to forge a trade relationship that is managed responsibly.

International Trade Today asked why Section 301 tariff exclusions that are renewed will only be retroactive to Oct. 12, rather than to the last time they expired. The official said that it's a better process to have a firm deadline that applies to all companies. If you were to allow retroactivity to the last time the tariffs were waived, "some of those entries will have [been] liquidated," she said, which would present an administrative challenge.

Both the Chinese and U.S. summaries talked about how Tai and Liu spoke about implementation of the trade agreement during the Trump administration. The Xinhua report said, " the two sides conducted pragmatic, candid and constructive exchanges" on the Phase I agreement, on how bilateral trade is important to both economies, and "both sides expressed their core concerns and agreed to resolve each other's legitimate concerns through consultation."

Tai said she would follow up with the vice premier in the near future. — ***Mara Lee***

China, USMCA, Digital Trade Top of Mind for Labor Advisory Committee

U.S. Trade Representative Katherine Tai and Labor Secretary Marty Walsh held their first meeting with the Labor Advisory Committee for Trade Negotiations and Trade Policy, and, according to a summary provided of the meeting, held "robust discussions" on USMCA implementation, digital trade, and "how China's non-market policies undermine American workers and domestic sectors. Ambassador Tai reiterated her commitment to re-aligning the U.S.-China bilateral trade relationship in a way that strengthens the American middle class and allows our workers and businesses to compete fairly."

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