AMERICAN SHIPPING COMPANY

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CTPAT Forced Labor Requirements Get More Stringent

New forced labor requirements for Customs Trade Partnership Against Terrorism (CTPAT) members may change the calculus for determining whether participation is worth it, said Sidley Austin lawyer Ted Murphy, in an Aug. 22 note. He reminded companies that if the shifting requirements become more costly than participation is worth, they can leave the program.

"Companies can be invested in supply chain security, and forced labor prevention, and not participate in this voluntary program," Murphy said. "The question is whether the benefits offered by the program outweigh the costs associated with complying with the requirements. This is a calculus that we recommend all members do periodically, particularly since the program requirements keep evolving."

The supply chain mapping is one of six new requirements on forced labor, which all took effect Aug. 1, but participants have until Aug. 1, 2023, to demonstrate compliance. The other requirements are:

- Providing evidence of implementation, such as "internal training programs for employees on identifying signs of forced labor, and mechanisms taken to show the supply chain is completely free of the use of forced labor."
- Telling their suppliers about their compliance requirements, including training "that identifies the specific risks and helps identify and prevent forced labor in the supply chain. Proof of this training must be available to CBP, upon request." The suppliers must be told specifically that the company "will not partner with any business that uses forced labor."
- Writing a code of conduct prohibiting purchasing goods made with forced labor, which will be publicly posted on the CTPAT page. The CTPAT members must have procedures that make that code more than a statement, "as well as evidence of the implementation of those policies."
- Creating a remediation plan if forced labor is discovered in a supply chain, including how they would disclose that information to CBP.
- Share best practices with other members.

Murphy also noted that the new minimum security criteria for CTPAT members says companies must have a documented social compliance program "that, at a minimum, addresses how the company ensures goods imported into the United States were not mined, produced or manufactured, wholly or in part, with prohibited forms of labor, i.e., forced, imprisoned, indentured, or indentured child labor." In the past, this was something that was said that CTPAT members "should have," but starting Jan. 1, it is something they "must" have.

"Probably not a huge deal for most companies, as they likely have a documented [corporate social responsibility] CSR program that addresses this issue, but worth noting," Murphy wrote.

Previously, the Commercial Customs Operations Advisory Committee expressed concerns that one of the changes, a requirement to "conduct a risk-based mapping of their business with suppliers that outlines their supply chains in their entirety," as CBP says, may not really mean risk-based, and is a comprehensive mapping requirement (see ITT 07/01/2022). The CBP language says: "Importers are required to determine within their organization what imports are considered high risk to their particular business model but should take into consideration information that CBP provides publicly on CBP.gov." But it also says that CBP can ask for unredacted supply chain mapping for any supply chain. — ***Mara Lee***

Supply Chain Visibility Needed for More Products Than Ever, Experts Say

Until recently, unless they were trying to comply with a stringent rule of origin, or they were a producer in an

industry with high safety needs, most buyers did not have visibility deep into their supply chains. But new government requirements and coronavirus-related disruptions have placed newfound importance on supply chain awareness, said speakers during a webinar.

Tom Gould, vice president of global customs and trade at Flexport, said that apparel firms that needed to satisfy yarn-forward rules in free trade agreements or preference programs did have to go back several steps. “Companies needed to know where the yarn was made … but they didn’t necessarily need to know where the rayon was extruded or where the cotton was grown,” he said during an Aug. 24 webinar.

Fellow panelist Amy Morgan, head of trade compliance at Altana AI, said the auto industry and aerospace industry have always had great visibility, whether or not rules of origin are in play, because all suppliers must be certified to get contracts with the original equipment manufacturer. If a piston in a car engine or a casing around a jet engine’s fan fails, the results could be catastrophic, so manufacturers need to know who is making these parts, and under what standards, no matter how many layers down those companies are.

But Gould said many companies really specialize in distribution and sales, and simply procure goods. “They often don’t have any visibility deeper further back into their supply chain,” he said. “They’ve simply never had a need to know in the past."

Now, with the forced labor import ban in the U.S. and Canada and forced labor supply chain mapping disclosures required in Europe, that is changing. Gould predicted that once carbon border adjustment taxes are in place, it won’t be long before they reach into complex manufactured goods, not just primary inputs.

He said in consumer product safety and food safety, there’s always been a lot of regulation, but now there’s a “vast expansion in the number of [imported] products” that governments want more detail about.

However, government informational requirements are the least likely motivator for companies to get more supply chain visibility, according to the survey of attendees. About half said they need to know more about their supply chains because they need to work around pandemic-era interruptions in supply. Another 24% said they want to know more about their suppliers’ suppliers to reduce costs.

The webinar producers asked attendees what is the biggest barrier they have to gaining more supply chain visibility, and 35% said it is that their suppliers don’t want to tell them who they buy from.

"Few suppliers are going to want to share who they do business with, that’s their magic, that’s their secret sauce,” Morgan said.

She also said that she believes supply chain maps are not enough, because maps are snapshots of a moment in time. “Supply chains are dynamic, they’re living organisms, they’re changing,” she said. Her company uses artificial intelligence to make educated guesses about which companies are third-, fourth-, fifth- and sixth-tier suppliers. She said that it both provides data and risk assessment simultaneously.

Gould predicted that if companies are able to know their supply chains down to the raw material, they could either learn the decisions they made in the past were correct decisions, or they'll decide they might need redundancy for certain inputs, or geographical diversification.

When asked by *International Trade Today* if when companies find evidence of forced labor through supply chain investigations, that means they cannot meet obligations to customers and they have a sunk cost, Gordon said companies should try to map a supply chain with a vendor before an order is placed.

"Do it sooner, do it as early as you possibly can,” she said,"before it has to be that sunk cost.” — ***Mara Lee***

CBP to Increase User Fees 18.6% for FY23

CBP will increase Consolidated Omnibus Budget Reconciliation Act (COBRA) fees by 18.629% to adjust for inflation in fiscal year 2023, the agency said in a notice. Affected fees include the merchandise processing fee, vessel and truck arrival fees and the customs broker permit user fee. The Fixing America’s Surface Transportation Act, passed in

2015, required that CBP make inflation adjustments and fee limitations when deemed necessary (see ITT 12/04/2015). The fees are effective Oct. 1, the start of FY23.

NCBFAA Calls for 'Registry' Approach for Seafood Certification of Admissibility Forms

The National Marine Fisheries Service should adopt a "registry" approach similar to that used by other agencies as it develops an electronic Certification of Admissibility form for seafood products in ACE, the National Customs Brokers & Forwarders Association of America said in recent comments to the agency. Duplicative data entry requirements for customs brokers wouldn't be "the best use of automation and would encumber the entry process," given complex seafood supply chains and the vast amount of data associated with each shipment, the NCBFAA said.

"Any discussion of seafood regulation must recognize the complexity of supply chains," the NCBFAA said, responding to an advance notice of proposed rulemaking issued by NMFS in July (see ITT 07/22/2022). For example, a typical tuna shipment can consist of seafood harvested by up to seven vessels, each having made at least six voyages, resulting in "42 sets of Captain's Statements attached to Form 370 totaling nearly 200 pages," the trade group said.

"When 15 additional data elements are required to be transmitted into ACE, we are not inputting 15 data elements per shipment. We are manually entering 15 data elements times the number of vessels times the number of voyages, or in the example above, 588 data elements per shipment," the NCBFAA said. "And, if a shipment has a variety of fish in different HTS categories, the same data must be entered multiple times. So, the 15 data elements per shipment explodes into thousands of keystrokes for one entry." Comments on the ANPRM were due Aug. 24.

The data on the COA is already transmitted to NMFS, so the "automated COA should not become a redundant Message Set layered over the current NOAA Message Set," the NCBFAA said. Instead, the agency should develop an automated certificate registry. One option would be to adopt the approach recently taken by the Consumer Product Safety Commission, where foreign exporters, importers or brokers could upload the COA data in the registry and link to it via a reference number entered into the PGA message at entry, the trade group said.

Other options would be a government-to-government transfer of the certificate, "similar to the E-Phyto Hub used by" USDA, that is then referenced on the entry by the broker. Or, NMFS could "develop a system similar to the" FDA's for food imports, "where approved fisheries could register with FDA and upload COA data into an NMFS system. Customs brokers/filers would provide the registration number of the fishery and the certificate number for the uploaded COA at entry," the NCBFAA said.

The NCBFAA's comments were one of four sets of comments so far posted by the NMFS on regulations.gov. Other comments from trade and environmental advocacy groups largely mirrored the NCBFAA's emphasis on minimizing the burden on importers and brokers from providing the COA data.

The National Fisheries Institute said it's difficult to provide input "at this time because the majority of seafood exporters and importers do not have experience with obtaining and submitting a COA," noting that COA requirements are set to expand "due to the approaching potential import restrictions as necessitated by the Marine Mammal Protection Act (MMPA)" but are currently limited to only certain seafood species from Mexico. The NFI pointed to the NCBFAA's comments as reflective of the "real-life, technical challenges of the" electronic filing process.

"While the requirements of the various trade monitoring programs are the responsibility of the seafood trade community, it is the customs broker community which provides the logistical support and expertise for the import filing process," the NFI said.

The World Wildlife Fund noted there are already "at least six seafood trade monitoring programs managed by NOAA which require different types of data entry filing information into ACE," and urged the agency to develop COA filing requirements in a way that consolidates all of that data into one "consolidated form" in ACE. "This could both lessen entry filing for brokers and importers by eliminating redundancy, and serve as a data warehouse for NOAA, Customs, and other agencies to quickly and easily electronically access information required under various programs," the WWF said.

The Stimson Center, a D.C.-based think tank, echoed these concerns. "Because NMFS requires different information for each trade monitoring program, the current state of implementation when viewed collectively can be seen as inefficient, at times ineffective, resulting in a filing landscape that is time-consuming, confusing, and unfair to industry who are trying to abide by the seafood importation requirements. NMFS should consider addressing the burden on industry of inconsistent filing requirements from program-to-program," it said.

"While a COA is currently required for a relatively small quantity of seafood imports from Mexico, it is anticipated that in the near term this information will also become mandatory for all seafood imports under the [Marine Mammal Protection Act (MMPA)] and Moratorium Protection Act to effectively enforce prohibitions under these regulations," the Stimson Center said. "With COA data included in customs entry filing, the government will be able to implement trade restrictions more effectively and efficiently than ever before." — ***Brian Feito***

FDA Begins Next Phase of Pilot on AI for Seafood Import Screening

FDA is rolling out improvements to its machine learning capabilities in the latest phase of its pilot program to test the use of artificial intelligence for import screening. The agency on Aug. 15 began the third phase of its Artificial Intelligence Imported Seafood Pilot program, during which FDA will implement enhancements to how machine learning algorithms can complement field operations, and incorporate new data from other agency efforts to improve sampling.

"The third phase is designed to improve the agency's ability to quickly identify imported seafood products that may be contaminated by illness-causing pathogens, decomposition, the presence of unapproved antibiotic residues, or other hazards," FDA said in an update on the program posted on Aug. 22.

Phase three "will help to determine the feasibility of deploying in-house AI/ML models using the intelligence that FDA extracts from the data we collect reviewing millions of import entries per year," FDA said. "For example, there have been enhancements made that determine how machine learning algorithms can best complement field operations and improve the agency's ability to identify products posing a threat quickly and efficiently," it said.

FDA also will use lessons learned in a related shrimp pilot, which is now focusing on "areas of increased risk, such as shrimp contaminated by aquaculture drugs, for foreign inspections," FDA said. "This includes increased importer inspections, higher rates of sampling and examination, and use of non-traditional tools, such as third-party audits, specific to this commodity. We incorporated the data from this project into the Third Phase of AI Imported Seafood Pilot Program, allowing for a more robust and larger targeted sampling."

The pilot, launched in 2019 (see ITT 09/01/2020), completed its second phase in July 2021 (see ITT 02/08/2021), FDA said.

House Republican Introduces Bill for More Seafood Import Inspections

A bill that would require 20% of all imported seafood to be tested and also require testing for the first 15 shipments from new seafood exporters was introduced by Rep. Clay Higgins, R-La. The Imported Seafood Safety Standards Act, introduced Aug. 19, has no co-sponsors; it is quite similar to a bill Higgins introduced in February with one Democratic co-sponsor. It is also the same as a bill Higgins introduced in 2018 (see ITT 06/28/2018).

The type of testing is not spelled out in the bill, which says the testing regime is covered under Section 801 of the Food, Drug, and Cosmetic Act.

The bill says that if one shipment fails to meet the testing requirements, the next 15 shipments will be tested, and if they all pass, the enhanced testing can end. However, if more than three shipments fail to meet inspection requirements within a year, no exports from that party will be allowed to enter for a year.

Exports would be allowed to resume only if the U.S. government certifies that the exporter is complying with U.S. standards for seafood manufacturing, processing and holding.

Fees would be increased on seafood exports to cover the cost of this inspection service. Seafood imports would

be limited to ports of entry where the workers have been trained to conduct the testing and inspection of seafood.

USTR Says It Got 434 Requests to Keep Section 301 Tariffs Intact

The lists 1 and 2 Section 301 tariffs on Chinese imports didn't terminate on the fourth anniversaries of their imposition dates, July 6 and Aug. 23, after the Office of the U.S. Trade Representative received "numerous requests" from "domestic industries" to keep the duties intact, according to an agency notice late Sept. 2.

Keeping the tariffs in place was a statutory formality under the Section 307 modification provisions of the 1974 Trade Act; the law was written to say only a single continuation request was required to prevent the duties from expiring automatically at their four-year marks (see ITT 05/03/2022). USTR's outreach to supporters of the List 1 tariffs drew 244 continuation requests from domestic producers and 44 from trade associations, the agency said. Its List 2 outreach drew 114 requests from domestic producers and 32 from trade associations, it said.

The agency didn't name the producers or trade groups that asked for the continuation of the tariffs, nor were their identities made public in the dockets USTR set up in the spring to accept the continuation requests. Critics of the tariffs were not permitted to voice their opposition in the dockets reserved for the continuation requests but will have their chance to post comments in the four-year USTR review that's about to take place.

The continuation notice will trigger USTR's four-year statutory review in which the agency will seek public comment on the effectiveness of the tariffs in curbing China's allegedly unfair trade behavior, plus "other actions that could be taken" and their impact on the U.S. economy and consumers, it said. USTR will describe "further steps" in the review process in a future notice or notices, it said.

"Given how low the bar was here," USTR's announcement on continuation of the tariffs was "not a surprise," Sidley Austin trade attorney Ted Murphy said in a Sept. 2 email. "It is important to remember" that there is "no requirement that the USTR take any action" based on its four-year review, he said.

Some domestic producers that urged continuation typically said the tariffs "allowed them to compete against Chinese imports, invest in new technologies, expand domestic production, and hire additional workers," USTR said. Others said the tariffs "have created more leverage to induce China to eliminate the policies and practices that are the subject of the Section 301 action, and have helped to address unfair competition resulting from China's technology transfer policies and practices and encourage better policies and practices," the agency said.

"There is no winner in a trade war or a tariff war," a Chinese Foreign Affairs Ministry spokesperson said in response to USTR's continuation notice, according to a transcript provided in English of a regular news conference in Beijing. The Section 301 duties were "imposed unilaterally" by the U.S. on China in violation of World Trade Organization rules, she said. The duties "do no good for China, the U.S. or the world," she said.

Changes to Section 301 Duties Seen as Unlikely Due to Tension Over Taiwan

President Joe Biden is less likely to suspend some Section 301 tariffs on goods from China following a recent visit by House Speaker Nancy Pelosi, D-Calif., to Taiwan, Sidley Austin lawyer Ted Murphy said in a blog post. "Before the visit, our view was that the Administration was leaning toward suspending some of the duties," he said. "China's reaction to the Speaker's visit, coupled with the fact that this is an election year, however, makes it hard to see that happening now. In our view, any action on the Section 301 duties will likely be tabled until after the November election."

FMC Publishes OSRA Landing Page

The Federal Maritime Commission announced a new landing page on its website dedicated to the commission's activities related to the Ocean Shipping Reform Act. The page will provide links to OSRA-related rulemakings, industry advisories and news. "Establishing a resource where the public can easily and quickly see all relevant materials related to OSRA implementation is critical to keeping all interested constituencies informed of progress the Commission is making in meeting the mandates established by the Congress and the President," FMC Chairman Daniel Maffei said.

California Ports Again Postpone New Surcharges by 1 Month

The Los Angeles and Long Beach ports again postponed by one month a new surcharge meant to incentivize the movement of dwelling containers (see ITT 10/28/2021), the two ports announced Aug. 26. The ports had planned to begin imposing the fee in November 2021 but postponed it each week until July 29, when the ports announced their first one-month postponement (see ITT 07/29/2022). The latest one-month extension delays the effective date until Sept. 23. — ***Ian Cohen***

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