AMERICAN SHIPPING COMPANY

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## Supply Chain Gazette

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### 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.

### MTB, GSP Lapse Decried by House Lawmakers

During a House Ways and Means Committee hearing focused on expanding trade with Taiwan, ranking member Kevin Brady, R-Texas, chose to put in a word for trade preference programs that expired at the end of 2020. "It was a mistake to allow two crucial job-creating programs, GSP and MTB, to have expired. They have now lapsed for almost two years," Brady said, referring to the Generalized System of Preferences benefits program and the Miscellaneous Tariff Bill. "Inaction on these key programs is causing American companies and their workers to lose out to foreign competitors, and additional delay will only increase this impact."

In a hallway interview outside the hearing, Rep. Adrian Smith, R-Neb., said it's unfortunate that the programs'

renewal was not hashed out in the conference committee to bridge the differences between the House and Senate versions. “This should be the lower hanging fruit. It’s bi-partisan,” he said. He said that Democrats’ proposals “kind of loaded it down to the point it’s not going anywhere. We have to keep pushing. Hopefully, there will be something before the end of the year. I hope there is growing urgency by the majority, rather than just kind of accepting the status quo."

Bill Reinsch, a trade expert at the Center for Strategic and International Studies, recently wrote that the differences between House Democrats’ and the Senate compromise renewal are not large “but they have been hard fought, with strong feelings on both sides, and there is no reason to think that anything has changed in the past few months ... ."

Brady told International Trade Today during a phone call with reporters that if the issue was just the differences between the two chambers’ GSP and MTB, that could be resolved. He said the sticking point is the Democrats’ desire to renew Trade Adjustment Assistance, which offers longer-than-normal unemployment benefits and subsidies for health insurance while displaced workers train for new careers. He said that when the administration is not negotiating for any lower tariffs, TAA is something “Republicans simply can’t support."

While Brady acknowledged that there are still workers losing their jobs due to foreign competition, he said that with the option of coverage through the Affordable Care Act, “there’s just no evidence that the program is needed."

"That has been complicating it so far,” he said, but he said he hopes the two parties can focus on what’s doable in the lame duck session.

According to the Coalition for GSP, importers paid $1.8 billion in tariffs that would have been waived if GSP had been in place between January 2021 and June 2022. However, all those payments will be refunded once GSP is renewed, as CBP has processed the entries as GSP-eligible. The National Association of Manufacturers says that MTB would be eliminating $1.3 million in tariffs a day if it were in place. Most of that money will not be recoverable for importers, though the bill would allow refunds for entries up to 120 days before enactment. — ***Mara Lee***

## Bangladeshi Garments, Indian Thread, Yarn and Tea Added to Forced Labor List

The Department of Labor’s annual report on forced labor and child labor describes a global problem, from garments in Bangladesh, Brazil, Vietnam and Malaysia to tea and thread in India to gold from Venezuela, in addition to the sectors already associated with withhold release orders.

There are 32 additions from last year’s report, including garments from Bangladesh and tea and yarn and thread in India. Ten were added because the agency’s International Labor Affairs Bureau believes they have inputs “produced with child labor or forced labor."

Researchers also added Chinese photovoltaic ingots, photovoltaic wafers, solar cells, and solar modules to the list, as they said all are made with polysilicon from Xinjiang.

Cotton from Uzbekistan was removed from the list, as it no longer uses forced labor in its harvest.

Thea Lee, deputy undersecretary for international affairs, wrote, “We are drawing attention to critical supply chains in clean energy—highlighting China’s use of forced labor in polysilicon production (a key input in solar panels) and the use of child labor in the Democratic Republic of the Congo for the mining of cobalt (an input in lithium-ion batteries)."

House Ways and Means Committee Chairman Richard Neal, D-Mass., responded to the report’s release Sept. 28: “Today’s report is another stunning reminder of the pervasive nature of forced labor in the global economy, and a call to action. Putting an end to these egregious abuses and ridding our supply chains of forced labor requires work across many stakeholders, and I commend the Department of Labor for diving deeper than ever before. This look at how entrenched forced labor is in the production of so many of our goods increases transparency, which ultimately, will strengthen our enforcement measures. House Democrats continue to push labor standards higher and higher, and we look forward to working with the Biden Administration to use every available to tool to stop these atrocities.” — ***Mara Lee***

### FMC Issues Proposed Rule on 'Unreasonable' Ocean Carrier Conduct

The Federal Maritime Commission this week issued a notice that seeks public comments on the set of factors it should consider when determining whether an ocean carrier is violating shipping regulations by refusing vessel space to shippers. The FMC also seeks comments on how it should define "unreasonable" conduct by ocean carriers, specifically their "unreasonable refusal to deal or negotiate with respect to vessel space accommodation." Comments on the notice of proposed rulemaking, which the FMC previewed last week (see ITT 09/13/2022), are due Oct. 21.

### 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 Sept. 23. 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 Oct. 21. *— Ian Cohen*

### APHIS Hopes to Begin Phase Seven of Lacey Act Implementation in Late 2023, Official Says

The Animal and Plant Health Inspection Service hopes to begin implementation of its seventh and penultimate phase of Lacey Act declaration requirements toward the end of 2023, the agency's Erin Otto said Sept. 19, speaking at a National Customs Brokers & Forwarders Association of America conference in Washington. Otto said APHIS hopes to complete phase seven implementation in the summer of 2024, at which point the agency will pivot to the final phase eight.

Phase seven will put in place declaration requirements for "all remaining non-composite plant products," including wooden, wicker and rattan furniture of chapter 94 of the tariff schedule; more essential oils of chapter 33; and cork and cork products of chapter 45. APHIS still has to "go through all the lines of HTS codes to figure out which ones will be flagged for phase seven, so that's why I don't have an exact list right now."

APHIS will in October begin 12 months of stakeholder outreach to trade and industry organizations and nongovernmental organizations "to get the word out that this declaration for the remaining non-composite wood products is coming," Otto said. APHIS will be letting industry know "that if they haven't taken up the due care process, this is the perfect time to start, right now, so that they can … be ready for that declaration that's going to be coming down the path," she said.

In the "best case scenario," after about year of outreach, APHIS will publish a list of the covered tariff schedule codes in the *Federal Register* in November or December 2023, Otto said. "And at that point, hopefully within six months, we'll be able to implement that declaration schedule," she said. "So hopefully, fingers crossed, by the summer of 2024, phase seven will be implemented, and we can start talking about what's next."

What is next is the eighth phase of implementation of Lacey Act declaration requirements, which APHIS hopes will be the last and cover "all remaining composite materials," Otto said. That would include articles like particleboard, books, wood pulp and paper. APHIS will begin working toward that final phase immediately after phase seven implementation is complete, and is already engaged in discussions with affected industries, including paper and pulp companies, she said.

APHIS anticipates that it will have to conduct a rulemaking process as part of phase eight to clarify the definition of composite plant products and components. Currently, that's defined as products "where the original plant material is mechanically or chemically broken down and subsequently re-composed or used as an extract in a manufacturing process," Otto said. She said that APHIS has received questions about what it means to be chemically or mechanically broken down.

"It made us think that we want to be fair across all the industries when it comes to composites" with respect to Lacey Act declaration requirements, "so we want to get more input from industry about the definition of composite and we anticipate some more rulemaking around that defi-

nition," Otto said. "We just want to make sure that we get it right before we start asking for that declaration." — ***Brian Feito***

### AMS to Increase Value Assigned to Cotton for Import Fees

The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations to increase the value assigned to imported cotton for the purposes of calculating supplemental assessments on imports collected under the Cotton Research and Promotion Program, it said in a direct final rule released Sept. 27. The revised value is 1.3215 cents, an increase of .2079 cent per kilogram. The increase reflects a rise in the average price of upland cotton received by U.S. farmers during the period January through December 2021. AMS's notice also includes a table of adjusted assessments corresponding to each Harmonized Tariff Schedule subheading for which they are due. The changes take effect Nov. 28, unless adverse comments are received by Oct. 28.

### FDA Releases Draft of New Version of Prior Notice Guidance

FDA released on Sept. 13 a draft of a new version of its draft guidance on prior notice for imported food. Version 4 of the industry guidance would replace the previous version finalized in 2016, adding additional information on the effect of systems recognition or equivalency determinations on prior notice requirements and the timeframe for making requests for FDA review of a refusal or hold for inadequate prior notice. Comments on the draft changes are due Nov. 14.

In one new answer that would be added to the guidance, FDA said systems recognition arrangements and equivalence determinations do not exempt food imports from prior notice requirements. "The existence of an SRA with a given country does not exempt imported foods from that country from FDA prior notice requirements," FDA said. Similarly, "since FDA's prior notice requirements fall outside the scope of an equivalence determination, imported foods covered by a final equivalence determination are not exempt from FDA prior notice requirements," the agency said.

As for the time frame for requesting review of a prior notice refusal or hold, FDA said that such requests "must be submitted within 5 calendar days of the refusal or hold." That five-day clock starts "at the time FDA provides notice of the refusal or hold to the relevant party who submitted the prior notice (i.e., submitter or transmitter) upon arrival of the article," and the clock runs five calendar days, not 120 hours. "For example, if we provide the notice at 10:00am on January 1, you would submit the request no later than 11:59pm on January 6," FDA said.

Other proposed changes to the prior notice guidance include replacing references to the Automated Commercial System with references to ACE, and removing references to requirements that some prior notice submissions be submitted in FDA's Prior Notice Systems Interface, FDA said.

### CPSC Proposes Update to Textile Flammability Testing Requirements

The Consumer Product Safety Commission is proposing to amend its flammability standard for clothing textiles to update testing requirements, it said in a notice. The proposed rule would "clarify existing provisions, expand permissible equipment and materials, and update equipment requirements that are outdated," the CPSC said. Comments are due by Nov. 14.

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