

### APHIS Set to Launch Phase VII of Lacey Act Enforcement

The Animal and Plant Health Inspection Service will begin requiring Lacey Act import declarations for a new set of plant materials and products beginning as early as spring 2024, it said in an emailed [bulletin](#) March 27. The agency is reviewing the tariff schedule to “determine the complete list of materials and products that will be included in Phase VII” of Lacey Act enforcement, and will publish a “complete list” in the fall of “materials and products” that will be newly subject to the import declaration requirement, it said. APHIS “will require declarations for those product codes 6 months” after it publishes the list, it said.

“In Phase VII, Lacey Act declarations will be required for all remaining plant product Harmonized Tariff Schedule (HTS) codes that are not 100-percent composite materials,” APHIS said. “Importers of such items who do not currently file a Lacey Act declaration will likely need to file one once APHIS implements Phase VII. APHIS encourages importers to prepare in advance by becoming familiar with their supply chain and reviewing what information is necessary to file a declaration,” it said.

An APHIS official has said Phase VII will include 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 (see [ITT 09/20/2022](#)). An eighth and potentially final phase will eventually implement Lacey Act requirements for composites.

### Trade Court Upholds Section 301 Tariff Action Over APA Compliance Concerns

The Office of the U.S. Trade Representative complied with Administrative Procedure Act requirements when it set lists 3 and 4A Section 301 tariffs on China, the Court of International Trade held in a much-anticipated [opinion](#) on March 17. After USTR provided more explanation of its tariff decisions on remand, judges Mark Barnett, Claire Kelly

and Jennifer Choe-Groves held that the explanations were not made impermissibly post hoc and cleared APA requirements.

The decision stems from the massive Section 301 litigation involving thousands of litigants, which at this stage is centered on USTR’s lack of initial response to thousands of comments before enacting the Section 301 tariffs covering virtually all trade from China. CIT held that USTR acted within its authority to impose the tariffs, but sent the tariff actions back after finding the lack of responses didn’t satisfy APA requirements (see [ITT 04/01/2022](#)). USTR came back with a 90-page remand decision that mostly addressed comments on specific Harmonized Tariff Schedule sub-headings (see [ITT 08/02/2022](#)).

One of the core claims from the plaintiffs was that USTR’s responses to comments on remand were illegal post hoc rationalizations as established in the 2020 Supreme Court case, *DHS v. Regents of the University of California*. USTR can only use evidence showing it considered these comments at the time the tariff moves were being made, making any responses to these comments issued after the action was taken illegal, the companies said.

CIT disagreed, holding that USTR’s remand results are not illegally post hoc simply because USTR addressed the comments on remand. The court cited a U.S. Court of Appeals for the D.C. Circuit opinion, *Alpharma Inc. v. Leavitt*, which found that an agency can provide an “amplified articulation” of a prior “conclusory” rationale. While USTR’s responses to the comments are more expansive than previous submissions, USTR did not offer any new “determinative reasons” for its decisions, the opinion said.

“USTR further explained the removal or retention of certain tariff subheadings, its decision to set the level of duties on the specified aggregate level of trade notwithstanding the stated concerns, and its decision to proceed despite the proffered alternatives,” the judges said. “In so doing, USTR responded to significant concerns within the context

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of China's actionable conduct and the specific direction of the President." As a result, USTR's responses were a fuller explanation of its analysis at the time of agency action.

The plaintiffs also attacked USTR's responses to the comments as insufficient, arguing that the agency relied too heavily on presidential direction to explain its imposition of tariffs.

But CIT found USTR was not "required to provide additional explanation regarding its reasons for agreeing with the President that the chosen actions were 'appropriate.'" Nothing more was required other than USTR's conclusion that "statutory language linking any modification to the specific direction of the President constrained USTR's ability to depart from that direction and explained USTR's position vis-a-vis the President's direction," the opinion said.

The plaintiffs claimed that while USTR did a "good job" of addressing its decisions under specific HTS subheadings, its responses came up short on comments relating to the harm to the overall U.S. economy, efficacy of the tariffs and alternatives to the duties. However, a disagreement with the conclusions USTR reached is not a basis for the court to overturn its actions, the court said.

(*In Re Section 301 Cases*, Slip Op. 23-35, CIT # 21-00052, dated 03/17/23; Judges: Mark Barnett, Claire Kelly and Jennifer Choe-Groves; Attorneys: Pratik Shah of Akin Gump for plaintiffs, led by HMTX Industries; Elizabeth Speck for defendant U.S. government; Alexander Koff of Venable for amici curiae led by VeriFone; Joseph Palmore of Morrison & Foerster for amici curiae, led by Retail Litigation Center, et al.) — *Jacob Kopnick*

### CBP Delays New Entry Summary Data Requirements for Aluminum

CBP is delaying new entry summary requirements to report the countries of smelt and cast for imports of aluminum and aluminum derivatives by 30 days to "allow additional time for the trade to update their software programming and systems to comply with these new reporting requirements," CBP said in a March 30 CSMS [message](#).

New data elements on the entry summary for primary country of smelt, secondary country of smelt and country of cast for their aluminum products will now take effect May 10.

The requirements had been set to take effect April 10 (see [ITT 03/09/2023](#)), but concerns from developers over their ability to implement the new data requirements in ACE by that deadline prompted a delay (see [ITT 03/17/2023](#)).

The new data elements are intended to help CBP administer new 200% tariffs on aluminum and derivatives from any country that have any Russian aluminum content (see [ITT 02/24/2023](#)). Those tariffs still take effect April 10, regardless of the delay of the entry summary reporting requirements.

"There is no change to the April 10, 2023 effective date of the 200 percent duties on imports of aluminum and derivative aluminum articles that are products of Russia, or where any amount of primary aluminum used in the manufacture of such aluminum articles is smelted in Russia, or where such aluminum articles are cast in Russia," CBP said.

### Choose Words Carefully in Forced Labor Communications With Chinese Suppliers, Lawyer Says

Companies attempting to comply with U.S. laws against importing goods made with forced labor need to choose their words carefully when communicating with Chinese suppliers, said a trade lawyer on a recent [webinar](#). A Chinese law enacted in recent years means using the words Uyghur or Xinjiang, among others, could expose the importer or their Chinese suppliers to legal liability.

The country's recently enacted Anti-Foreign Sanctions Law makes it illegal for Chinese companies to comply with foreign country laws that are deemed discriminatory and restrictive against Chinese citizens' organizations, including U.S. sanctions and the Uyghur Forced Labor Prevention Act, David Stepp, of Crowell & Moring, said.

The words Xinjiang or Uyghur are trigger words that could require a Chinese company to report or record the use of that word to the Chinese government under the AFSL, Stepp said. The use of either of those words also gives private companies a right to sue U.S. multinationals who helped the Chinese company comply with the law, Stepp said on the March 21 webinar.

Penalties include suspension of visas for executives, seizure of assets, and being blacklisted in China, Stepp said.

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Chinese companies also can sue U.S. companies that have made requests that violate the law.

One workaround for U.S. companies is to refer to the International Labor Organization's conventions on forced labor, rather than U.S. forced labor laws, in communications with Chinese companies. No references to U.S. laws and documents should be made with Chinese entities and individuals, Stepp said. "You can talk about forced labor at a high level, but certainly not UFLPA" because "Uyghurs are specifically involved," he said.

"You can mention the ILO conventions on forced labor as well as your requirements of your supplier code of conduct that's on your website and incorporated into your supply agreements," Stepp said.

A company that has a branch within China could also be subject to counter measures from the Chinese government, so companies with employees in China also need to be careful, Stepp said. "We have a Shanghai office. With colleagues there, we are not able to talk about the UFLPA, Xinjiang, and similar forced labor topics connected to those two to the entity and ethnic Uyghurs," Stepp said. "So, bottom line, you've got to be very careful when you're talking to Chinese colleagues and your suppliers on topics that could maybe trigger the AFSL." — *Noah Garfinkel*

### Sheffield Professor Warns Importers to Check Raw Materials for Xinjiang Ties

Importers need to look beyond the products specifically identified under the Uyghur Forced Labor Prevention Act to any products with raw materials processed in China, as the country moves more and more production to the Xinjiang province, said Laura Murphy, a professor at Sheffield Hallam University, speaking at CBP's Forced Labor Technical [Expo](#) on March 15.

The Chinese government intends "to move as much manufacturing" to Xinjiang as it can, particularly raw materials processing, and keeps a list updated every five years on what production they want to move to the region, said Murphy, lead author of recent reports on forced labor in supply chains for auto parts, vinyl flooring and cotton (see [ITT 12/06/2022](#) and [ITT 11/24/2021](#)).

"China has decided that they're going to move the dirty processing of the actual raw materials" to Xinjiang "where they don't care what happens to the environment" and where manufacturing isn't subject to rules that apply to the rest of the world, including elsewhere in China, Murphy said, adding that abundant coal reserves and cheap, dirty power make the region especially attractive for manufacturing.

In her team's research on auto parts, for example, they found that when they started to dig into the 30,000 parts that make up a car, all they had to do was look at the basic materials to see that the automotive industry was "wildly exposed," Murphy said. "But so are any other industries that are making things with aluminum, copper, steel, gold, graphite," she said. In that sense, the cover could be taken off her team's report on auto parts to change it to a report on railway equipment or electronics, she said.

This also includes manufacturing of polysilicon, an important material for making solar panels. "The Chinese government has intentionally held [the renewable energy] market captive by moving polysilicon manufacturing to the Uyghur region, and by moving so much of it they're holding all of us captive," Murphy said.

Chinese companies have now been learning to hide their tracks, including by deleting their websites because of something Murphy put on Twitter, she said. Some companies have deleted the names of their customers from press releases so that their customers can continue to receive the goods, Murphy said.

Other companies change their company name or rearrange the letters in their name on shipping records so they can pose as a seemingly new company, even if they are the same company exporting forced labor-made goods, Murphy said. Another strategy Murphy described is companies bifurcating their supply chains, a process whereby companies initially say they have products that don't use forced labor. "We're seeing all kinds of ways that companies are obscuring their supply chains and trying to fool you into continuing to buy their products," Murphy said.

Murphy recommended that importers check their supply chains and make sure that they do not "have any raw materials [that could] possibly be processed in China." She added that "if we can see it, you can see it."

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"Google it, y'all. We Google it in Chinese. You can use Google translate ... you can be doing this work," Murphy said.

Murphy also announced that her team at Sheffield and Northeastern University are working on a free supply chain tracing tool to help "small and medium enterprises to be able to actually afford" to do some of the tracing work that Murphy and her team do, and help nonprofit advocates and analysts do some of the same tracing work as well. She did say that this product would not be available anytime soon and recommended buying other products available, if you can. — *Noah Garfinkel*

### CBP Releases New CTPAT Alert on Forced Labor

CBP released a new [CTPAT Alert](#) on March 22 with information on what Customs Trade Partnership Against Terrorism members need to do to comply with new forced labor requirements in the trusted trader program that took effect Jan. 1.

"Some of the key elements of a social compliance program are already part of the CTPAT program—they just need to be expanded to include the threat of forced labor," CBP said in the alert. "CTPAT Members need to be proactive and take steps" outlined in the report "to be able to document in their security profile that they have done their due diligence to mitigate the risk of forced labor in their supply chains."

Since Jan. 1, the CTPAT criteria have mandated that members "have a documented social compliance program in place 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 forced labor.

"CTPAT importers, exporters, and foreign manufacturers must include the threat of forced labor—an illegal activity under U.S. and international law—into the company's risk assessment methodology," the alert said. "And, they must also document how they address this threat through a documented social compliance program—also referred to as a social responsibility program (or responsible sourcing)."

Programs should include engaging stakeholders and partners, assessing risks and impacts and engaging in "robust communication," the alert said. Members should "train in-

ternally and across your supply chain to ensure understanding," and require codes of conduct from suppliers. They should allow confidential reporting, include contractual obligations related to forced labor with their first-tier suppliers, monitor compliance by way of targeted audits and proactive worker participation and remediate violations. Optionally, they may also commission independent reviews and report their performance. The alert includes details on each of these aspects of social compliance programs.

### CTPAT Pilot Bill Passes Senate Committee

The Senate Homeland Security Committee passed the Customs Trade Partnership Against Terrorism (CTPAT) Pilot Program Act on an 11-1 vote March 29. The bipartisan [bill](#) would allow CBP to extend CTPAT to up to 20 third-party logistics providers, both asset-based and non-asset based (see [ITT 03/15/2023](#)). Sens. John Cornyn, R-Texas, and Tom Carper, D-Del., are the co-sponsors of the bill.

### NMFS ACE Filing Burden Estimates Well Short of Actual Time Required, NCBFAA Says

The promise of the International Trade Data System "has unfortunately not been matched by reality," with duplicative and repetitive entry requirements for partner government agencies, including the National Marine Fisheries Service, the National Customs Brokers & Forwarders Association of America said in comments on NMFS implementation of ITDS submitted to the Office of Management and Budget.

"The Single Window has instead become a multi-paned window," the NCBFAA said in the comments, dated March 6.

The NMFS estimate that it takes 18 minutes to submit its dataset in ACE "is not a realistic estimate," the NCBFAA told the OMB. "It is true that one simple commodity from one harvest point on a single day can be input into the system in the estimated 18 minutes," the trade group said. "The problem is that seafood supply chains are long and complex, flowing in multiple directions. The seafood in a shipment comes from different vessels harvested at different locations."

For example, a shipment of 20 containers holding 60,000 tins of canned seafood might include products from "10

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or 12 different vessels catching fish from over a hundred different locations,” causing the 15 additional NMFS data elements to “explode into thousands of data elements at entry,” the NCBFAA said.

For some species, the same data must be “entered again and again for multiple NMFS programs,” the NCBFAA said. Some tuna can come in under three different NMFS programs and require entry data for each vessel, catch date and location, adding up to hours of data entry. “The required three different data sets cannot be combined on one entry, but must be entered separately,” the trade group said.

Similarly, because of the way the Harmonized Tariff Schedule is structured, data for shrimp must be entered by size, the NCBFAA said. “This can require multiple duplicate data sets per entry,” it said. Even shipment of shrimp that’s all the same size from four ponds, harvested on four different dates, requires 16 data sets for one entry. “Based on 18 minutes per data set, it would take over 4 hours to do the entry, not even considering there may be different sizes. In the real world, the input is a lot more than the 18 minutes suggested,” the NCBFAA said.

And the process involves “more than just the physical input of data,” the NCBFAA said. “The NMFS estimates fail to account for the substantial amount of pre-entry work in gathering, sorting and compiling the data prior to keying it into the ACE system.” — *Brian Feito*

### Neal Says GSP, MTB Will Have to Be Part of Larger Trade Bill

Rep. Richard Neal, the top Democrat on the House Ways and Means Committee, said “there could be” movement on the Generalized System of Preferences benefits program and the Miscellaneous Tariff Bill, now expired more than two years, “but I think it has to be part of a broader trade agreement.”

Neal spoke during a hallway interview at the Capitol March 24.

He didn’t say what other legislation he would like to see in that broader bill. In the previous Congress, a pair of senators from each party had argued for Trade Adjustment Assistance renewal, GSP, MTB, and a limited Trade Pro-

motion Authority that could cover a deal with Taiwan, the U.K., Kenya or Ecuador (see [ITT 12/05/2022](#)).

“I don’t know about TPA, that is a little bit harder in our caucus for sure. I think there’s interest in Kenya, there’s interest in Taiwan, there’s interest in Japan...,” Neal said.

But he said that members are wary that if they sign off on TPA, it becomes a blanket authorization for FTAs, and Congress would lose leverage. “Once TPA’s in place, a lot of the accountability you seek diminishes, and I think that’s why members have been reluctant to embrace TPA,” he said, though he noted that Democrats were able to get significant changes made to the NAFTA rewrite after it was presented as done by the previous administration.

He added: “The trade agenda, we don’t want to be stalled, we want to have an assertive role in the world.”

Chairman Jason Smith, R-Mo., declined to answer any questions from *International Trade Today*. He has made no public comments on GSP or MTB, though the chairman of the trade subcommittee, Rep. Adrian Smith, R-Neb., has said he wants GSP and MTB to move quickly, and does not support holding off until a larger trade bill can come together (see [ITT 02/08/2023](#)). — *Mara Lee*

### FMC Amends Civil Penalty Regs to Implement OSRA Changes

The Federal Maritime Commission will amend its civil penalty regulations and procedures to align them with changes made by the Ocean Shipping Reform Act of 2022. The [final rule](#), released March 17 and effective April 19, makes changes to the language in the FMC’s regulations that allows the commission to be able to “order a refund of charges” in a charge complaint proceeding, it said. The FMC also said that if a refund of charges is ordered in addition to a civil penalty, the civil penalty must be reduced so that freight carriers do not pay more than the “actual injury” caused. — *Noah Garfinkel*

### Over 200 Trade Groups Urge Biden to Speed Agreement Between ILWU and PMA

The Biden administration should “quickly” help the International Longshore and Warehouse Union and the Pacific

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Maritime Association reach a new labor agreement to “ensure there is no disruption” to the operations of U.S. ports on the West Coast, more than 200 trade groups wrote in a March 24 [letter](#) to the White House. Because Marty Walsh left as secretary of the Department of Labor in February, it’s crucial that a “new administration point person” be designated to help negotiations continue, the groups said.

Many “cargo interests” have shifted their cargo away from West Coast ports “because of the uncertainty” related to the labor talks, said the letter, signed by the U.S. Chamber of Commerce, the National Retail Federation, the American Trucking Associations and others. “The longer there is no ratified contract only increases the probability that some portion of the freight will never return to the West Coast ports,” the letter said.

And even though port workers have “agreed not to engage in a strike or a lockout,” the trade groups said they are “aware of several instances of activities that have impacted terminal operations. We need the administration to ensure these activities do not continue or escalate.” The Biden administration should “provide any and all support to the parties in their negotiations to reach a final agreement.” The White House didn’t immediately respond to a request for comment.

This letter comes after a similar request from trade groups last July that urged the administration to help West Coast ports and their dockworkers’ union extend their current contract until a new one is reached (see [ITT 07/01/2022](#)). One industry official at the time said he was disappointed with the negotiations but would be “stunned” if it caused disruptions on the West Coast (see [ITT 07/14/2022](#)). — *Noah Garfinkel*

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