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Supply Chain Gazette

content by INTERNATIONAL TRADE TODAY

August 2023

DHS Adding 2 Chinese Entities, 1 Subsidiary to UFLPA Entity List

DHS will add a Chinese battery manufacturer along with a Chinese spice manufacturer and its subsidiary to the Uyghur Forced Labor Prevention Act Entity List, the agency said in a notice released Aug. 1. Camel Group Co., a major manufacturer of car batteries, will be added for working with the Xinjiang government to "recruit, transport, transfer, harbor or receive forced labor or Uyghurs" and other persecuted groups. DHS also will add spice and extract maker ChenGuang Biotech Group Co., Ltd., along with subsidiary Chenguang Biotechnology Group Yanqi Co. Ltd., for sourcing material from Xinjiang or from entities in the region that are involved in a "government labor scheme that uses forced labor."

The new listings are effective Aug. 2. The companies will be subject to a rebuttable presumption that any goods they mine, produce or manufacture are made with forced labor and prohibited from importation.

DHS said Camel Group, based in China's Hubei Province, is one of China's "largest lead-acid battery manufacturers" and Chenguang Biotech Group, based in China's Hebei Province, produces plant-based extracts, food additives, natural dyes, pigments and supplements from agricultural goods. Its subsidiary, Chenguang Biotechnology Group Yanqi, is in Xinjiang.

The Forced Labor Enforcement Task Force, which maintains UFLPA's Entity List, "continues to send a strong message to industry that the United States will not tolerate forced labor in our supply chains and that we will always stand up against cruel and inhumane labor practices," said Robert Silvers, task force chair. DHS Secretary Alejandro Mayorkas said the Biden administration will "continue to work with all of our partners" to keep goods made with forced labor out of U.S. commerce "while facilitating the flow of legitimate trade."

With these additions, 24 companies will be on the UFLPA Entity List. Since CBP began enforcing the UFLPA in June 2022, the agency has reviewed more than 4,600 shipments worth more than $1.64 billion under the UFLPA, DHS said.

The additions were announced just weeks after DHS added Xinjiang Zhongtai Chemical Co. Ltd., Ninestar Corp. and eight of Ninestar's Zhuhai-based subsidiaries to the list (see ITT 06/09/2023). Silvers told a congressional commission in July to expect more UFLPA Entity List additions soon (see ITT 07/11/2023). ***— Ian Cohen***

Sheffield Hallam Publishes List of 35,000 Companies Producing in Xinjiang

Sheffield Hallam University issued reports detailing Uyghur forced labor in the cotton, polysilicon, PVC and metals industries presaged withhold release orders and detentions against goods containing those inputs. Now, its Forced Labor Lab is offering the public a massive list of companies that operate in the Uyghur region, whose products are therefore considered to be made with forced labor unless importers can prove otherwise.

The university recently published two spreadsheets, one with more than 35,000 companies, with Chinese and English names and addresses, most likely to be related to mining, farming, manufacturing, technology and export. The companies are grouped by sector. It also published a larger list of more than 50,000 companies, including some unlikely to be relevant to U.S. importers, such as those operating retail establishments, doing construction work, or providing professional services.

The trade community has been asking CBP for a no-go list so it can avoid detentions of its products. If compliance officers are able to trace their supply chains back to the raw material, this could be what they've been asking for.

"This provides an expansive portrait of the corporate environment of the Uyghur Region, though it is not exhaustive," the writers said.

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The lab also recently published a six-page paper on how to exclude products made with forced labor from your supply chains. The guide says a contract should say that you “will provide a full list of all suppliers and sub-suppliers across all tiers of the value chain, including registered company names in local language. You should be able to provide purchase orders, invoices, and receipts upon request at any time."

It also includes 13 questions to ask before contracting with a Chinese supplier. Many of those are designed to get at the problem of forced labor transfers, which also fall under the rebuttable presumption in the Uyghur Forced Labor Prevention Act. In those cases, a factory in Guandong province, 4,000 km from Xinjiang’s capital, could still be subject to the act, because dozens of Uyghur or other Muslim minority workers were transferred to work there under a state-run poverty alleviation scheme.

"If a company can demonstrate that all of their Uyghur Region originated workers were brought onto staff through open recruitment fairs unaffiliated with central, regional, or local government recruitment or transfer programs, this could be an instance of legitimate employment,” the guide said. ***— Mara Lee***

SEC Seeking More Detailed Disclosures From Chinese Companies on UFLPA Compliance

The Securities and Exchange Commission is pressing companies based in China to provide more detailed disclosures on Uyghur Forced Labor Prevention Act compliance and the role of the Chinese government in their operations, according to a sample letter recently posted to the agency’s website.

The SEC’s Division of Corporation Finance has been issuing “comments” to China-based companies asking them to “enhance their compliance with disclosure obligations under the federal securities laws,” it said. The division “continues to believe that companies should provide more prominent, specific, and tailored disclosures about China-specific matters so that investors have the material information they need to make informed investment and voting decisions,” it said.

For UFLPA, the SEC said “companies should evaluate their disclosures with a view towards providing investors with tailored disclosure about the material impacts of the provisions of this statute on their business. These impacts may include material compliance risks or material supply chain disruptions that companies may face if conducting operations in, or relying on counterparties conducting operations in, the Xinjiang Uyghur Autonomous Region.”

A question in the SEC’s sample letter tells the hypothetical China-based company that appears to conduct operations in Xinjiang or relies on a counterparty with operations in Xinjiang to “describe how your business segments, products, lines of service, projects, or operations are impacted by” UFLPA.

Likewise, the SEC is seeking more information on “any material impacts that intervention or control by the [Chinese government] in the operations of these companies has or may have on their business or the value of their securities.”

A question in the sample letter asks China-based companies with “significant oversight and discretion of the government” of China to “describe any material impact that intervention or control by the [Chinese] government has or may have on your business or on the value of your securities.” The letter includes a reminder that, “pursuant to federal securities rules, the term ‘control’ … means ‘the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.’” ***— Brian Feito***

Retailer Groups Tell CAFC USTR Failed to Respond to Comments on China Tariffs

A group of retail trade groups, led by the American Apparel and Footwear Association, said that the Office of the U.S. Trade Representative failed to adequately respond to comments when imposing its lists 3 and 4A Section 301 tariffs on China. Submitting an amicus brief at the U.S. Court of Appeals for the Federal Circuit in the massive case against the duties, the retail representatives argued that USTR illegally relied on the president’s discretion as a response to the comments, violating the Administrative Procedure Act (*HMTX Industries, et al. v. U.S.*, Fed. Cir. # 23-1891).

The amicus brief said that an agency’s response to significant comments cannot rely on post hoc rationalizations nor conclusory statements, adding that USTR’s responses to the amici’s comments on the tariffs’ efficacy and possible

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alternatives "were unreasoned or non-existent." The justification USTR did offer, "that the President told USTR what to do so it didn't need to fully explain itself," violated the APA, the brief said.

USTR "did not meaningfully explain" why it agreed with the president's directive, nor whether or how it weighed the president's order against the interested parties' comments or even what discretion the agency believed it had to deviate from the president's direction, the amici argued. USTR's "apparent position" that the Trade Act of 1930's reference to presidential direction supersedes the APA's requirement to respond to significant comments is legally erroneous, the brief said.

Courts have ruled that later statutes cannot be read to modify the APA's reasoned decision-making requirements "absent a clear statement." The Trade Act has no such clear statement, the brief said. USTR's "conclusory and non-responsive" statements failed to address concerns on the adverse economic impact of the duties, the efficacy of the tariffs and proposed alternatives, the amici said.

The retail groups' comments highlight one track of the arguments being advanced by the lead appellants, led by HMTX Industries and Jasco Products Co. (see ITT 07/19/2023). In their opening remarks, the appellants said that USTR didn't have the authority to set the duties since the statute doesn't let the agency impose tariff modifications on the grounds that it's responding to retaliatory action, adding that the duty modifications must be responding to further practices harmful to U.S. commerce identified by the original Section 301 action. In this case, those practices constituted Chinese theft of intellectual property.

Two other amicus briefs also were filed following the appellants' opening remarks—one by parties led by American Kenda Rubber Industrial Co. and the other led by Acushnet Co. The Acushnet arguments doubled down on the APA claims, telling the appellate court that USTR failed to address issues central to the tariffs both administratively and on remand at the trade court. "The CIT should have stuck to its guns and held USTR to its obligation to provide a thorough and reasonable explanation for its decision to nonetheless impose the List 3 and 4A tariffs, which had extremely harsh consequences for U.S. companies, their customers, and the broader U.S. economy," the brief said.

The Kenda Rubber brief echoed the claims made by the appellants, arguing that USTR did not have clear Congressional authorization under Section 301 to impose the lists 3 and 4A duties, and that USTR failed to follow "other Congressional requirements" for taking Section 301 action.

Kenda Rubber argued that Congress in Section 301 did not allow USTR to double the duties collected on imports. Congress instead meant for the law to be used to "incentivize foreign countries to negotiate removal of its practices that harm U.S. commerce through limited actions that do not have an adverse impact on the United States economy substantially out of proportion to the benefits of such action." The brief added that the Supreme Court of the U.S. has found that an agency's authority to modify its action "must be read to mean to change moderately or in minor fashion"—a characterization that the U.S. cannot champion.

The amici also reiterated the appellants' claim that the imposition of the duties was an example of the agency acting on a major element of the economy without clear authorization from Congress, in violation of the "major questions" doctrine articulated by SCOTUS in *West Virginia v. EPA*. ***— Jacob Kopnick***

Yellen Says Premature to Remove Section 301 Tariffs on Chinese Goods

Treasury Secretary Janet Yellen, who has in the past been a skeptic of the utility of the broad scope of Section 301 tariffs on Chinese imports (see ITT 05/18/2022), rejected the premise of a reporter's question that the U.S. could remove tariffs to "extend an olive branch" to China.

Yellen, who was speaking at a press conference in Gandhinagar, India, July 16, ahead of a G-20 summit for finance ministers, told the questioner that while de-escalating is good, "the tariffs were put in place because we had concern with unfair trade practices on China's side—and our concerns with those practices remain. They really have not been addressed," she said, adding that China imposed retaliatory tariffs in response to the U.S. Section 301 tariffs. "So perhaps over time this is an area where we could make progress, but I would say it's premature to use this as an area for de-escalation, at least at this time."

She added that the tariffs were imposed because of U.S. "concerns about unfair trade practices, particularly those

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affecting intellectual property and technology transfer, and those concerns have not really been addressed."

She said the administration is completing the review that began four years after the tariffs were imposed—the review is required by statute—but she gave little hope to those who wish that the number of products targeted will be reduced.

"We have to see what comes out of the four-year review, but I would emphasize that really the underlying concerns we have have not been addressed and we need to work on that going forward."

Yellen was asked whether a decline in foreign direct investment in China and a sharp decline in Chinese exports are fruits of the American emphasis on de-risking and friendshoring. Yellen said she thinks those effects will be more gradual, and she thinks the weakness in the Chinese economy has more to do with soft domestic demand.

"De-risking and friendshoring is an important priority for the United States, and it is something we are promoting here in India and will be discussing in Vietnam in the next leg of our trip. But I expect that will be something that will take place gradually over time," she said.

In response to a later question from an Indian reporter, Yellen said India is "an indispensible partner" in increasing the resilience of U.S. supply chains through friendshoring, and that there continue to be announcements of U.S. firms using India as an export platform.

"I hope to use this trip to deepen what is already a very significant relationship with concern to friendshoring," she said, noting that bilateral trade hit an all-time high in 2022, and she said the administration is "looking to see it grow even more."

She said she saw in China that leadership is anxious "to communicate that the business environment in China is open and friendly. There is a desire to see foreign investment in China." She added that she met with American businesses that also are eager to invest in China and see an environment where they can grow and prosper.

"I made clear in my discussions, that while we have concerns around national security and human rights, which we certainly will prioritize and not compromise on, there are many areas in which we have trade and investment that are completely uncontroversial and beneficial to both sides," she said.

The Chinese Foreign Ministry did not directly address Yellen's remarks in its regular press conference on July 17, but said, "On China-US relations, we view and develop our relations with the US by following the principle of mutual respect, peaceful coexistence and win-win cooperation. We also hope the US will work with China and bring bilateral relations back to the track of healthy and stable growth," according to a transcript provided in English. — ***Mara Lee***

Blumenauer Says Ending de Minimis for China Could Happen This Year

Rep. Earl Blumenauer, D-Ore., recently said CBP needs to do more to know what's inside packages imported under the de minimis threshold, adding that the agency "has no idea what's coming in."

The congressman, who is the top Democrat on the House Ways and Means Trade Subcommittee, said the majority of packages sent to the U.S. with values under $800 are from China, and if his bill passes, those Chinese packages would be ineligible, thereby reducing the volume of de minimis entries.

"We think if we stop having a gusher of product from China, there's less pressure on Customs and Border Control ... so they can catch up to where they need to be," Blumenauer

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(ISSN 1932-6289)
PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

Warren Communications News, Inc. is publisher of International Trade Today, Export Compliance Daily, Communications Daily, Warren's Washington Internet Daily, Consumer Electronics Daily, and other specialized publications.

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said on a June 29 podcast hosted by Alliance for American Manufacturing CEO Scott Paul.

Blumenauer said Chinese exporters should not be eligible because there are forced labor issues in China, and because its manufacturers are known to "play fast and loose dealing with our intellectual property protections." He also blamed safety defects on the lack of oversight.

"They're exempt from taxes, tariffs, following rules and regulations, product safety, forced labor," he said. "We're having examples of exploding e-bike batteries causing fires in the States. This [provision] has promoted sales of e-bikes that are $799. They don't have to meet any consumer safety regulations."

Blumenauer said building fires that have been caused by battery fires have resulted in fatalities.

He also complained that shippers lie about the value of packages. "In some cases there are packages that weigh 500 pounds that declare a value of a dollar. I mean, it's just ludicrous," he said. "This de minimis provision has turned into a massive loophole."

He also pointed to fast fashion imports from Chinese apps, which he said has become "a major industry," and that having those clothes be subject to the same tariffs as bulk imports would "provide some equity in the marketplace."De minimis "disadvantages American-made products and American businesses," he said.

He expressed optimism that a bill could pass this year, as the Select Committee on China has gotten on board, and a Senate bill restricting de minimis has several Republicans as co-sponsors.

"We're finding the more people pay attention to our legislation and the reasons for it, the more support that we get," he said. "It is an opportunity to protect our values, to have equal enforcement of the law, to make sure we're protecting the American consumer." — ***Mara Lee***

New China Law Targets Foreign 'Restrictive Measures'

China last week issued a new "foreign relations law" that could bolster the country's ability to respond to foreign trade restrictions, including sanctions. The law, adopted by the Standing Committee of the 14th National People's Congress and effective July 1, says that China can take "law enforcement and judicial measures" to protect its national interests and those of its companies against restrictions imposed by other countries, and "has the right to take corresponding countermeasures and restrictive measures," according to an unofficial translation of the document. The law specifically authorizes China to use "legislation, law enforcement, and judicial means to fight against acts of containment, interference, sanctions, and sabotage."

In an interview with Xinhua, a state-controlled media outlet, a government official said the law "stipulates that China has the right to take, as called for, measures to counter or take restrictive measures against acts that endanger its sovereignty, national security and development interests." The state-run *Global Times* said in a June 30 editorial that "Western media and public opinion" feel "nervous" about the law but said that reaction is a "projection of the US' long-standing history of abusing legal actions."

"Now that they see China has enacted such a law, they naturally and subconsciously worry about whether China will use the same means to 'retaliate' against the US," the piece said. "In plain terms, this is their habitual double standard and a manifestation of their guilty conscience due to their extensive history of wrongdoing."

NCBFAA Asks FDA to Push Back Cosmetic Registration Requirement to 2024

The FDA should push back its deadline for implementation of new cosmetics facility registration requirements of the Modernization of Cosmetics Regulation Act of 2022, the National Customs Brokers & Forwarders Association of America said in a July 13 letter.

The current deadline of Dec. 31, 2023, does not allow enough time for facilities to "become informed and educated on their responsibilities, obtain a DUNS number, find an agent and complete the registration process," the NCBFAA said. "The December 31 deadline would be daunting under the best of circumstances. Given the fact that a registration process has not yet been completed, this deadline is unrealistic."

Moving the deadline back a year to Dec. 31, 2024, would provide the agency time to develop, roll out and test a

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registration system, the letter said. An extension also will give overseas cosmetics facilities “time to learn about their obligations, choose an agent, obtain a valid DUNS number and complete the registration process,” the letter said. The extension also will align the cosmetic registration process with the biennial food facility registration, which would help avoid “the confusion resulting from having registration and renewals in opposite years,” the letter said.

The letter urged the FDA to use the food facility registration process as a “template” for the cosmetic facility registration process. As with food facility registration requirements, the agent should have to accept the agency designation in writing. This avoids a situation where “a customs broker or other U.S. party in the supply chain is unwittingly identified as the agent by a foreign facility,” the letter said. While this initially didn’t happen with the food facility registration, FDA now can “confirm by email that the designated agent does indeed agree to serve as the agent,” the letter said. “This email confirmation is essential for the cosmetic facility registration."

The FDA should also recognize that the facility registration agent is not “the responsible party for the shipment” and should not be the “contact person identified on the cosmetics label,” the letter said. “There must be a clear definition of the agent’s role and clear delineation between the ‘registration agent’ and the ‘US contact’ for purposes of labeling,” the letter said. The letter also said that customs brokers, agents and importers should be able to “query the system” to see which facilities have listed them as an agent.

Another request was that the FDA allow for facilities to write “Applied For” instead of the DUNS number if the facility has not received a DUNS number. This should also apply to customs brokers transmitting the import entry. The use of “applied for” would be used instead of a DUNS number, the letter said. Also, NCBFAA hopes the agency will use the FDA Unified Registration and Listing System (FURLS) for the cosmetic registration. FURLS worked well for food facility and medical device registrations, the letter said. “It makes sense that the cosmetic facility registration also be accessed through FURLS.” ***— Noah Garfinkel***

Bill Requiring CTPAT Pilot for Non-Asset Based, Warehousing 3PLs Passes Senate

The Senate recently passed a bill that would set up a pilot program for non-asset-based third-party logistics providers and warehouses to participate in the Customs-Trade Partnership Against Terrorism program. The CTPAT Pilot Program Act of 2023 would require that CBP run the pilot program for 20 3PLs in total, of which 10 will be non-asset-based and 10 others will be entities that manage and execute logistics services with their “own warehousing assets and resources on behalf of its customers.” Both warehousing companies and non-asset-based 3PLs currently aren’t allowed to join CTPAT.

“In order for America to remain competitive in global markets, we must ensure our ports are open, efficient, and secure,” said Sen. John Cornyn, R-Texas, who sponsored the bill, in a July 19 news release. “This legislation would provide ways for trusted trading partners to expedite the transport of cargo important to Texas’ economy while protecting against illegal goods and national security threats, and I urge the House to send it to the President’s desk.”

“I am proud that the bipartisan Customs-Trade Partnership Against Terrorism (C-TPAT) Pilot Program Act passed in the U.S. Senate and I urge my colleagues in the House to quickly do the same,” bill co-sponsor Tom Carper, D-Del., said. “This is a commonsense bill that will improve the efficiency and reliability of our supply chains, and the C-TPAT program has already proven successful in safely expediting the customs clearance process for trusted merchants. By expanding access to this program, we can reduce congestion at ports of entry while strengthening our national security—a win-win!”

CBP Increasing User Fees for Inflation

CBP will increase Consolidated Omnibus Budget Reconciliation Act (COBRA) fees by 26.67% to adjust for inflation in FY 2024 (by comparing the current year to the base year, FY 2014), 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. For example, the Commercial Vessel Arrival Fee for FY 2023 was set at $518.41 last year (see ITT 07/29/2022). This year, it is being set at $553.55 for FY 2024. The Customs Broker Permit User Fee is going from the current $163.71 to $174.80 in FY 2024. The year-over-year increase is about 6.79%, according to the notice. The fees are effective Oct. 1, the start of FY 2024. ***— Noah Garfinkel***

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