

### NRF Study Finds Chinese Production Unlikely to Move If PNTR Revoked, Tariffs Increase

Higher tariffs on some Chinese goods if Congress strips China of its permanent normal trade relations status would not be offset by moving production to other countries, and would instead increase prices for U.S. consumers, hurting low-income households most, according to a [study](#) released last week by the National Retail Federation.

Options to shift sourcing in the event that tariff schedule column 2 tariffs are applied to China “quickly may be limited by past efforts to identify suppliers outside of China in response to Section 301 tariffs, increasing the risk of supply chain disruptions and shortages,” the NRF said.

The report examined the effect of removing PNTR on China and applying column 2 tariffs on toys, household appliances, furniture, footwear and apparel. If that happens, tariffs on most toys would increase from 0.1% to 66.6%; tariffs on most household appliances would go up from about 2.1% to 38%; and tariffs on most furniture would rise from about 0.2% to 42.7%, the report said. Tariffs on most footwear and apparel would rise from 10.4% to 32.3%, and from 16.1% to 75.7%, respectively.

The positive effect on U.S. manufacturers would be minimal, and more than offset by the cost to U.S. consumers, the report said. U.S. toy output would grow 16%, worth \$3.7 billion, but U.S. consumers would pay \$12.3 billion in higher prices. Likewise, while furniture output in the U.S. and Mexico would increase by 2% each, U.S. furniture prices would rise by 4%, and consumers would reduce purchases by almost 8%, the report said.

Cost to consumers would be similarly higher than U.S. production increases for appliances, textiles and apparel, the report said. And the price increases would especially hit low-income consumers hardest for most of the products in the report, because low-income households spend proportionally more of their incomes on each.

“For all of the products reviewed in this research, very little of the production currently sourced from China can be moved to other countries,” including the U.S., the report said. “Sourcing of products subject to Section 301 tariffs (apparel, footwear, furniture) has already moved to the extent possible,” the report said. “For other products not yet subject to those tariffs (household appliances, toys), China accounts for most if not nearly all of the supply from international manufacturers partly because efforts to move production are more challenging.”

“Even though significant efforts have been made in recent years to diversify sourcing, China continues to play an important role in the supply chain of many retailers and other global industries, from sourcing raw materials to manufacturing and production,” NRF Vice President of Supply Chain and Customs Policy Jonathan Gold said in a [news release](#) announcing the report. “It would be impossible for American families to escape the higher costs from dramatic tariff increases on necessities such as apparel, footwear, furniture, appliances and toys.”

“Congress and the administration should proceed deliberately on discussions related to further tariff increases on imports from China, such as revoking PNTR for China and moving to ‘Column 2’ rates, which would impose regressive taxes on American families for consumer staples and harm the U.S. economy,” the report said. “There is simply no way for American families to escape the inevitable pain from tariff increases of up to 75% on necessities like apparel, footwear, furniture, appliances and toys.”

### Reports on Uyghur Forced Labor Aren’t Taken ‘as Bible’ by CBP, Eric Choy Says

RANCHO MIRAGE, Calif.—University and nongovernmental organization reports on forced labor are not necessarily taken at face value, a CBP official said Oct. 27 at the Pacific Coast Council’s Western Cargo Conference., known as [Wesccon](#). With any report, an “import specialist or an an-

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alyst” has to make the “ultimate decision,” Eric Choy, CBP executive director of trade remedy law enforcement, said.

Choy was responding to a question on whether reports about Uyghur forced labor are being vetted. The questioner specifically said that while Sheffield Hallam University reports were well researched and documented, other reports are “far less robust.” The perception is that CBP accepts a report about forced labor as long as it comes from an NGO, the questioner said.

“We don’t leverage those reports as the Bible,” Choy said. “Everything for the agency has to do with a person in the loop, whether it’s an import specialist” or analysts who have “to make that ultimate decision based upon their assessment of what they’ve looked at in the report or to the technology.”

Choy used as an example the Sheffield Hallam report that identified 55,000 to 60,000 entities involved in the Xinjiang Uyghur Autonomous Region (see [ITT 04/20/2023](#)). Choy said there’s no “one-to-one” correlation between what reports are able to identify and CBP’s enforcement capabilities. Under the Uyghur Forced Labor Prevention Act and forced labor statute at 19 U.S.C. 1307, CBP has power only at the border, Choy said. “If any of those entities are then connected to U.S. importation,” then U.S. law applies, he said.

CBP has “not necessarily” gone through all 55,000 or 60,000 entities identified in that report. “There’s a lot that goes into where we view risk,” Choy said.

In general, Choy said CBP is open to hearing from the trade community about ways to address forced labor, including “what evolutions have occurred within due diligence processes, what new solutions have been thought of.” He said CBP is “open to listening to them to see if these are things that would help us to better facilitate trade,” he said.

He said the agency is acquiring tools and technologies to help with forced labor enforcement along with other tools to help suppliers “put these puzzle pieces” together to identify forced labor risks in their own supply chains.

He said the CBP has had discussions about leveraging partnerships with CBP’s “most trusted traders” to provide

“a green lane” for shipments based on the due diligence companies are doing.

While CBP will continue to have a “strong enforcement posture,” it will “work to be more collaborative and try to figure out solutions where we can solve this problem,” Choy said. — *Noah Garfinkel*

### Aluminum Extrusions: New AD/CVD Investigations Deadlines & Scope

Comments are due Nov. 13 to the Commerce Department on the scope of coverage of its newly begun [antidumping](#) duty investigations on aluminum extrusions from China, Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, the United Arab Emirates and Vietnam (A-570-158, A-301-806, A-247-004, A-331-804, A-533-920, A-560-840, A-475-846, A-580-918, A-557-826, A-201-860, A-583-874, A-549-847, A-489-850, A-520-810, A-552-837), and [countervailing](#) duty investigations on aluminum extrusions from China, Indonesia, Mexico and Turkey (C-570-159, C-560-841, C-201-861, C-489-851).

According to the initiation notices, released Oct. 30, the scope already has been revised twice prior to initiation, in response to administrability concerns related to the breadth of the scope as requested in the underlying petition (see [ITT 10/04/2023](#)). Among other things, Commerce asked the petitioners—the U.S. Aluminum Extruders Coalition and the United Steelworkers labor union—to add affirmative language to the scope that clearly defines and describes the specific merchandise that is covered by the China petitions and not the existing orders” on aluminum extrusions in China.

In response, the petitioners added an “exhaustive list” of merchandise that would be covered by the new China orders, including certain heat sinks; “cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments;

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flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles”; and “air duct registers.”

The list also includes: “outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems” and “door threshold and sill assemblies.”

Also on the list are: “highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.”

The International Trade Commission will conduct a concurrent investigation to determine whether imports of dumped and subsidized aluminum extrusions are injuring U.S. industry. If the ITC finds no injury in its preliminary injury determination, due Nov. 20, the investigations will immediately end. If Commerce finds dumping or illegal subsidization in the preliminary determinations of these investigations, due in December for CVD and March for AD, it will set AD and/or CVD cash deposit requirements

for imports of merchandise subject to the investigation. If both Commerce and the ITC reach affirmative final determinations, Commerce will issue an AD and/or CVD order making duties permanent and beginning a process of annual administrative reviews to set final assessments of AD/CVD on importers and potentially change AD/CVD cash deposit rates.

The CVD investigation covers entries for the calendar year 2022. The AD investigations on China and Vietnam cover entries April 1, 2023, through Sept. 30, 2023, and the AD investigations on the other 13 countries cover entries Oct. 1, 2022, through Sept. 30, 2023.

Commerce said it will pick respondents to most of the new AD/CVD investigations based on responses to quantity and value questionnaires it will send to potential respondents, and will base respondent selection on the responses it receives. Exporters that don’t get a quantity and value questionnaire can submit one using the forms provided by Commerce on its [website](#). Responses are due Nov. 7.

For the AD investigations on Colombia and the Dominican Republic, the petitioners identified one Colombian company and two Dominican companies as producers or exporters of aluminum extrusions. “Therefore, unless we receive voluntary responses to the Q&V questionnaire from companies not identified, as described below, we intend to examine the one producer/exporter of aluminum extrusions from Colombia and the two producers/exporters of aluminum extrusions from the Dominican Republic,” Commerce said.

The Commerce Department fact sheet on the initiation of these investigations is ([here](#)). See [ITT 10/04/2023](#) for a summary of the petition requesting these investigations. — *Brian Feito*

### Commerce Begins Review of Vietnam’s Market Economy Status

The Commerce Department will review whether to grant Vietnam market economy status in antidumping duty proceedings, it announced in a [notice](#) released Oct. 27 that begins a changed circumstances review.

The review, which will be carried out as a review on raw honey from Vietnam but will include input from a variety

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of industries, manufacturers and importers, among others, will determine whether Vietnam should be graduated to market economy status, which could result in lower and more predictable AD rates for Vietnamese companies.

Commerce will accept public comments as part of the inquiry, due 30 days from publication of the notice in the *Federal Register* (i.e., Nov. 29 if the notice is published as scheduled Oct. 30).

In its request for market economy status, filed in September (see [ITT 09/15/2023](#)), the Vietnamese government said it has reduced the level of government ownership control over the Vietnamese economy, doesn't set price controls and treats foreign investment equally, among other things. Commerce denied China's request for market economy status in 2017 (see [ITT 10/30/2017](#)).

The final results of the review are due 270 days after the beginning of the review (i.e., in July 2024), though the due date may be extended.

### Vape Manufacturer Seeks General Exclusion of Imported Disposable Vaping Devices

Comments are due to the International Trade Commission by Oct. 27 in a potential Section 337 investigation and general exclusion order on imported disposable vaporizers, the agency said in a *Federal Register* [notice](#).

The request for comments followed an Oct. 13 [complaint](#) by R.J. Reynolds Tobacco Co. and R.J. Reynolds Vapor Co. accusing 20 manufacturers and six distributors of importing and selling vaporizers using false and misleading advertising, in addition to violating regulations on the sale of tobacco products and violating federal customs laws and regulations.

The complainants argued that the limited exclusion order would be insufficient because foreign manufacturers are not required to register with the FDA, which limits the ability to identify the true manufacturers and importers. The economic barriers to entry are low, and manufacturers and importers skirt existing import bans by renaming or reclassifying products, the complaint said. This changing of identity, branding and distribution methods allows products to avoid detection and bans by the FDA, CBP and Bureau

of Alcohol, Tobacco, Firearms and Explosives, R.J. Reynolds said.

The complainants argued that imported disposable vapes are falsely advertised as authorized for sale in the U.S., despite lacking premarket product authorization from the FDA. This skirting of regulations also means that imported vapes are often marketed to youths, R.J. Reynolds said. Flavored disposable vapes have become the most commonly used electronic cigarettes among teenagers. "To protect not only Complainants' interests in a fair market among adult consumers of Complainants' products, but also to protect America's youth, the Commission should institute an investigation into Proposed Respondents and issue a general exclusion order," the complainants said.

### EPA to Require One-Time Reporting of PFAS Use by 2025

The EPA will require importers and manufacturers to report on their use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) for each year since 2011, it said in an Oct. 11 [final rule](#). By May 13, 2025, importers and manufacturers must electronically submit information on uses, production volumes, byproducts, disposal, exposures, and existing information on environmental or health effects for any PFAS importers or manufactured since 2011. Small importers will have six months longer, until Nov. 13, 2025, EPA said.

That's up from the proposed rule's one year after the effective date of the eventual final rule (see [ITT 06/25/2021](#)). Other changes since the proposed rule include an expanded definition of PFAS, streamlined options for importers of R&D substances below 10 kg, and changes to the data elements required in the one-time submissions, EPA said.

"EPA's new PFAS reporting rule will impact companies in a wide range of industries, including companies that import machinery and equipment containing gaskets, tubing, electrical wiring, composite materials, printed circuit boards, membranes and other types of components that are frequently made with fluoropolymers," law firm Crowell said in a [client alert](#) last week.

"To ascertain the information required to be reported under this rule, companies may be required to navigate multi-tiered global supply chains to identify which components

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of a manufactured article contain PFAS compounds, the specific identities those PFAS compounds, and the quantities of those compounds that might be present in an article. This is a highly complicated and time-consuming process, and the obligation to collect this information for every year since 2011 makes this task even more complex,” Crowell said, urging affected companies to “act without delay.”

### FDA Releases New Version of Prior Notice Guidance

The FDA on Oct. 13 [released](#) a [final version](#) of its updated guidance on prior notice for imported food. The agency said it is adopting the draft of Version 4 issued in September 2022 with little change (see [ITT 09/13/2022](#)), including “minor editorial changes to improve clarity, such as replacing the term ‘animal feed’ with ‘animal food.’” The new, final Version 4 replaces a previous version of the guidance issued 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. That includes clarification that FDA systems recognition arrangements and equivalence determinations don’t exempt food imports from prior notice requirements, as well as new language saying that requests for review of a prior notice refusal or hold must be submitted within five calendar days of the refusal or hold, starting at the time notice is provided to the filer of the prior notice.

### Examine Contracts for Chinese Anti-Foreign Sanctions Law Liability, Lawyer Says

Companies should review existing and prospective agreements for potential liability under China’s anti-foreign sanctions law, Evan Chuck of Crowell & Moring advised during a Practising Law Institute [webinar](#) on Sept. 26.

The Chinese law, passed in June of 2021, gives the government broad discretion to penalize companies for obeying U.S. and other countries’ restrictions against China (see [ITT 07/09/2021](#)). Although it generally has been good practice to include a laundry list of laws in a contract to make sure all parties are compliant, companies may need to rethink the practice because the anti-foreign sanctions law could result in penalties or private lawsuits to recoup profits Chinese lose from compliance with certain foreign regulations, Chuck said.

Chuck said he has seen joint venture agreements include a clause about complying with various federal acquisition regulations, which may run afoul of the Chinese law. “There may be other ways to still have all that, but you want to really look at your existing and prospective agreements for anti-foreign sanctions law liability and triggers, particularly for dealing with a large Chinese company,” Chuck said.

Chuck also said companies need to be careful when communicating with Chinese companies, because negotiations or business communications can be “deemed as admissions” under the anti-foreign sanctions law, Chuck said. “We have to be very careful when we advise our clients,” even at the highest levels and early stages of business negotiation, Chuck said.

Some lawyers have advised companies to avoid asking Chinese suppliers if they are in compliance with the Uyghur Forced Labor Prevention Act, which may also violate China’s anti-foreign sanctions law (see [ITT 05/23/2023](#)).

“It would be easy for a U.S. company to trip up on these laws if they’re not paying attention to the laws and understanding as best they can,” Michael Atkinson, a partner at Crowell & Moring, said on the webinar. China has enacted a series of similar laws over the past few years in retaliation for foreign sanctions laws and trade and investment restrictions. Understanding what the law requires and “being able to demonstrate that the company organization took reasonable steps to comply with Chinese laws as best as they understood them” can help avoid a situation such as having an employee detained in China, he said.

“It’s one thing if you were aware of the law, took reasonable steps and you got caught up in some ambiguous definition, but it’s another thing to entirely miss the law,” Atkinson said. “That’s not a position any U.S. or global company wants to be in.” — *Noah Garfinkel*

### House Select Committee Leaders Ask for Trade Action Against Chinese Tuna, Squid

House Select Committee on China Chairman Rep. Mike Gallagher, R-Wis., and ranking member Raja Krishnamoorthi, D-Ill., led a bipartisan [letter](#) signed by a dozen other House members asking National Oceanic and Atmospheric

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Administration (NOAA) Administrator Richard Spinrad to “strongly consider enforcing trade restrictions against the PRC on specific seafood products tainted by forced labor,” such as tuna and squid. China’s government has the right to 90 days of consultations on the issue before the administration imposes trade restrictions.

"Urgent action is needed. Past approaches to combatting [illegal, unreported and unregulated] fishing by the [People’s Republic of China] and efforts to stop forced labor have been insufficient, putting our [fishermen] and seafood producers at a competitive disadvantage, damaging marine ecosystems, and implicating U.S. consumers in forced labor," the letter [said](#).

The letter noted that China is the top exporter of seafood in the world, and one of the top exporters to the U.S.

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