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APHIS Set to Begin Phase 7 Lacey Act Import Declaration Enforcement on Dec. 1

The Animal and Plant Health Inspection Service plans to begin its seventh phase of enforcement of Lacey Act import declaration requirements on Dec. 1, it said in a notice that includes a list of tariff provisions included under phase seven and seeks comments on product coverage. Comments are due July 30. If APHIS makes changes based on those comments, it will publish those changes in the Federal Register and give “industries affected by those changes” at least six months' notice “to facilitate compliance with the new requirements.”

“In this phase, declarations will be required for all remaining plant product Harmonized Tariff Schedule (HTS) codes that are not 100-percent composite materials,” APHIS said in a news release. Composite materials will be included in the next, eighth phase of Lacey Act enforcement.

“If an importer imports items that contain plant products, but do not currently file a Lacey Act declaration, they likely will need to file under Phase VII,” APHIS said in the release. “Phase VII includes the broadest range of items, items as varied as industrial or medicinal plants, handbags, plywood, laminated wood, tools, matches

with natural wood stems, products of natural cork, products of bamboo and rattan, footwear and more. Plant and wood products included in past phases include timber, some furniture, essential oils, wood cases and trunks, and woodwind instruments and their parts and accessories."

About 60% of Section 301 Exclusions Will Expire June 14

The Office of the U.S. Trade Representative decided to extend 164 Section 301 tariff exclusions through May 31, and the other 265 exclusions will expire June 14. The list of extended exclusions is diverse, covering apparel, industrial components, industrial machinery, medical equipment, polymer films, certain mopeds, binoculars, sewing machines, robots, safety glass, and more.

Both the exclusions initially granted during the Trump administration and restored during the Biden administration, and the exclusions related to the pandemic, were extended. The notice, which was written in the form of a Federal Register notice but not posted on that site before the long holiday weekend, said that no one asked for 102 of the 429 exclusions to continue. The others that were rejected will be terminated for a variety of reasons, such as if the request didn't describe plans or efforts to move sourcing out of China, or if the buyer said it needed to stay in China because it was the lowest cost source. The agency said it also rejected extension requests if there was a domestic producer saying it could supply the good, or if other importers objected, saying they used to be covered by that exclusion, and now source from another country. The agency said continuing those exclusions would put those companies at a disadvantage.

The notice said: "Many comments asserted that a product was unavailable outside of China due to costs associated with finding alternative sources or based on the limited availability of certain product specifications or comparable quality outside of China. Without additional explanation of efforts undertaken or how further extending the exclusion would aid efforts to shift sourcing, the U.S. Trade Representative declined to extend these exclusions."
For those it did extend, the agency said exempting the imports from the Section 301 tariffs will support efforts to shift sourcing, or, in some cases, the agency judged there were credible efforts to source elsewhere but there was not adequate availability.

The agency considered public comments submitted both on the exclusions and in connection with its four-year review.

For specific questions on customs classification or implementation of the product exclusions, contact traderemedy@cbp.dhs.gov. — Mara Lee

Ways and Means Leaders Say Section 301 Review Dawdling Shows Passivity
House Ways and Means Committee Chairman Rep. Jason Smith and Trade Subcommittee Chairman Rep. Adrian Smith called out U.S. Trade Representative Katherine Tai for the lengthy wait for the Section 301 tariffs review, which officially started in July 2022 after a round of comments that year in May in favor of extending the action. The two Republicans asked the administration in a letter to quickly conclude the review and release its findings. Their letter didn't say what they think should happen to the tariffs, but said Tai's guiding principle should be that the U.S. must remain the world's economic, technology, and military leader.
Adrian Smith, in a hallway interview at the Capitol, quipped, "Is it a six-year report, or is it a four-year report two years delayed?"

He didn't say what he and Jason Smith would view as "significant and substantive," which is what they wrote should be the result after such a long process. "Gosh, it's so late! You would think there would be big stuff in it, but I'm not holding my breath," Adrian Smith said.

The letter said, "It took President [Donald] Trump only about eight months to conclude the extensive original Section 301 investigation into China's unfair trade practices, and only about another four months to impose the resulting tariffs. In contrast, the Biden administration has taken two years to study the effectiveness of the tariffs President Trump imposed and their connection to the U.S. relationship with China going forward."

Adrian Smith said, "I'd love to see a vision for how our policies can ultimately benefit American consumers and American manufacturing," adding that he still hears from manufacturers that they are burdened by the cost of inputs. "Let's focus on what we can do to reverse inflation, and ultimately help U.S. consumers." He said he would like to see a new exclusion process. "It allows a thoughtful process to take place, and it deals with realities that exist."

Although he did not take a position on hiking tariffs on some products or rolling them back on non-strategic goods, the letter suggested there should be higher tariffs on some categories.

"From electric vehicles to petrochemicals to steel to aluminum to a host of sundry manufactured goods, the free market economies of the world are in for an overcapacity shock," the letter said. "But instead of bracing for impact against China's extreme overcapacity, the administration seems to still be debating various styles of seatbelts.

"Combined with failure to enforce China's violations of the Phase One Agreement, two years of waiting on the results of the four-year review represents a passive approach to China trade challenges that lacks strategic focus."
A USTR spokesperson said the office received the letter and had no other comment.
— Mara Lee

Division Over TAA Continues to Block GSP Progress, May Threaten AGOA
Although Sen. John Cornyn, R-Texas, happily described a trade preferences hearing as a "pro-trade love fest," comments from the panel's top Republican and its chair revealed why the Generalized System of Preferences benefits program, which has broad support, has spent years stalled in Congress.

Sen. Mike Crapo, R-Idaho, said in his opening statement, "GSP's passage has been stalled by attempts to achieve unrelated partisan items, with the most recent demand being reauthorization of Trade Adjustment Assistance, or TAA, a program that has never been tied to GSP or any other preference program. As many of my colleagues know, TAA is traditionally a tradeoff for Trade Promotion Authority.
"If folks support preference programs, then they should let them move forward as soon as possible and without any unnecessary linkages."

Democrats' insistence that GSP travel with TAA—and Republicans' insistence that TAA not be renewed unless TPA moved—was what prevented a GSP renewal at the end of 2022.

During the hearing, Sen. Sherrod Brown of Ohio, the most imperiled Democratic incumbent on the ballot this year, Sen. Elizabeth Warren, D-Mass., and Sen.

Sheldon Whitehouse, D-R.I., all said they would not vote for trade preferences programs unless TAA is part of the package.

Brown said 115,000 workers around the country have asked the Labor Department to certify that their jobs were lost either from import competition or because their employer moved the work to another country, but their petitions are in limbo because the program has been lapsed in full since 2021. He noted 5,700 of those workers are in Oregon, and 800 in Idaho.

"So-called free trade agreements crafted by corporate lobbyists and Washington insiders and presidents of both parties have sold out workers time and time again," he said. "Our country owes these workers who Washington and corporate America have cast aside," he said. Brown sponsored a TAA renewal bill that would renew the program through 2030.

Immediately after Brown spoke, Sen. Ron Wyden, D-Ore., said Brown's work is important, and he is coming up with ideas to get those folks back in the winner's circle.

In a later hallway interview, when asked if GSP will continue to be stalled over the disagreement between Republicans and Democrats on TAA, Wyden said, "I'm going to do everything I can to find common ground. But as I said [in the hearing], when workers are laid off through no fault of their own, I think it's important to find a way to get them back in the winner's circle. And that's what Sen. Brown is committed to, and that's what I'm committed to."

Witnesses at the hearing represented an importer who used to rely on GSP for backpacks and who imports apparel from African countries; a nonprofit that advocates for investment in Africa; a nonprofit that advocates for workers' rights abroad and asks the government to threaten the withdrawal of GSP in countries where it identified violations; and a think tank advocate for free trade.
Scott Lincicome, a vice president at the Cato Institute's trade policy center, cited the Coalition for GSP's estimate that, between the beginning of 2021 and the end of 2023, importers who sourced goods that had been eligible for GSP benefits before the program ended paid $3.4 billion in tariffs. He said that the African Growth and Opportunity Act, or AGOA, saves importers about $300 million in tariffs. He said that while that's a rounding error for the U.S. economy as a whole, it's important to the

small businesses that use GSP. He said the typical GSP importer only employs about 20 people, and for a company that size, saving $150,000 a year in tariffs is significant.

SanMar Corporation, which imports blank T-shirts, polos, backpacks and other items that are screen printed or embroidered in the U.S., is much larger—it employs 5,000 people in nine states, and nearly 1,300 of the jobs are professional positions such as logistics, product design, marketing and IT.

SanMar General Counsel Melissa Nelson testified that a manufacturer the company had worked with in Asia said it was going to start operations in Tanzania and Madagascar, and asked if SanMar would like to purchase from those locations. At the time, Madagascar had lost AGOA eligibility, so SanMar only chose Tanzania. She said the workers in Tanzania had never worked in factories before and needed a lot of training, but over the years, were able to progress from polyester T-shirts to sweatshirts and polos.

"The process has been longer and more difficult than we anticipated. And that's why AGOA needs a long renewal period right now," she said. She later said that her company's top sourcing officials were visiting Africa now and were talking to companies considering additional investments in producing fabric in Africa. (Clothing imported under AGOA can use third-party fabric; Nelson said that's critical, as Africa doesn't produce synthetic blends). "But they are waiting to give it the green light until AGOA is renewed," she said.

AGOA expires at the end of September 2025, and apparel importers are already planning for products that would enter the U.S. after that date. Crapo said in his opening statement he wants to renew AGOA in the next six weeks.
Corporate Council on Africa CEO Florizelle Liser talked about changes to the AGOA text that would be welcome—accumulation permitted between Morocco, which has an FTA with the U.S., and AGOA countries; a modification to graduation criteria; and country reviews every three years, instead of annually, so businesses can have more certainty that a country will still be covered.

But the most important priority her group has is swift renewal for at least 10 years. She said after the hearing that she was struck by the fact that several senators said they wouldn't support the renewal of AGOA or GSP without the passage of TAA.

She said that concerns her, and makes her question if AGOA could lapse. However, she noted that, even though GSP has lapsed before, AGOA never has. “Prayerfully, hopefully, members of Congress will do what they've done before and they will support the renewal of AGOA."

In Nelson’s written testimony, she said SanMar imported more than 58 million pieces of apparel from sub-Saharan Africa, including Ethiopia, which has been suspended from the program over human rights concerns during the government’s response to a violent uprising. The company buys from factories in Tanzania, Madagascar, and Ghana, and intends to buy more from Kenya if AGOA is renewed.

Sen. Michael Bennet, D-Colo., told Nelson that he and Sen. Bill Cassidy, R-La., introduced the Americas Act, which would give Ecuador trade preferences that are available to Caribbean countries while it negotiated a full free trade agreement, and asked Nelson if that would lead her company to buy clothing from Ecuador.

"SanMar follows where the government tells us to go” through its elimination of tariffs on either apparel or travel goods that SanMar imports, she said. (In her written testimony, she said because of the violence in Haiti, it stopped sourcing under those trade preferences). While she said she doesn’t know if Ecuador has the capacity to make backpacks, baseball hats, or shirts, she added: “Would we be happy to have additional options? Absolutely."

In 2010, 40% of SanMar’s imports were from China, and now it’s 6%, she said, and it’s because of the addition of travel goods to GSP and trade preferences and FTAs that cover apparel.

After the hearing, Nelson said SanMar has not left Ethiopia and hopes that it returns to AGOA eligibility. If Ethiopia was still in the program, the company would have expanded its sourcing there. She said that if Ethiopia is still not back in AGOA in five years, SanMar would “absolutely” think about leaving, but for now, “we're trying not to."

Sen. Todd Young, R-Ind., asked Nelson about Competitive Need Limitations, a feature of the GSP. He said he was glad that the House Ways and Means GSP renewal made some changes to CNLs but said he'd like to see even more loosening. He asked Nelson if higher limits in CNL would help her business.

"The main issue is speed of renewal," she said. She said SanMar moved backpack production to the Philippines, Myanmar, and Indonesia because of the tariff breaks. "Just renew it, please," she said.

Lincicome said he wishes there was no CNL at all. "A CNL limit effectively says to a country: you've gotten too good at making stuff, so we're going to cut you off. It makes no sense." — Mara Lee

GSP Bill Includes Petition Process That Could Expand Eligibility to Apparel Products
An element of the Generalized System of Preferences benefits package that has passed the House Ways and Means Committee next month could result in some apparel items being added to the eligibility list for the first time, something sponsor Rep. Carol Miller, R-W.Va., has pushed for since 2023.

Importers may petition for an 8-digit Harmonized Tariff Schedule product to be added to the preference program, saying how it would benefit if it is added. Domestic producers and unions may petition for a product currently in the GSP benefits program to be removed, and how they would benefit from that change. Those petitions to the International Trade Commission would be published on the ITC website, and there would be a public comment period. A year after the bill became law, the ITC would report to the Ways and Means and Finance committees whether the product is an input for U.S. manufacturers; how much domestic production there is of the good; where imports of the goods come from, and with what market share and value; and a summary of objections to the petition. Congress still would have the opportunity to vote to change the list of eligible products, Miller said—just as happens with the Miscellaneous Tariff Bill, which also is shaped by an ITC report.

If more goods are covered by GSP, "it'll be wonderful for trade. We'll help the countries we want to trade with. It bolsters their economy as well as ours," Miller said in an interview at her office. She said she also wants to lower costs for American shoppers. "It's mutually beneficial," she said.

GSP covers more than 3,500 products for all 119 countries, plus an additional 1,500 products for least-developed beneficiaries. GSP covered less than 1% of imports in the last year it was in effect; it also only covered 11% of the exports to the U.S. from GSP countries.

Miller hopes that apparel goods get coverage under GSP as a result of this provision. She said some GSP countries have developed strong textile sectors and haven't had as much market share in the U.S. market as they could if their goods entered duty-free.

A senior aide to Miller who sat in on the interview noted that China is dominating in the sweaters category, for instance, and said Miller would like to move that business to countries that are friendlier to the U.S.

He noted that when travel goods were added to GSP, brands quickly moved their sourcing out of China and into GSP beneficiary countries. According to a Congressional Research Service report on GSP late last year, the top imports that will claim retroactive refunds of duties from 2022 were travel bags of manmade fibers, and plastic handbags; plastic suitcases and leather handbags valued at more than $20 were also in the top five. Duties on these categories are 17.6%, 16%, 20%, and 9%.

Because domestic interests could tell the ITC that including a particular good would hurt their exports to a factory in Haiti or Central America, the staffer said they didn't expect the addition of apparel for GSP would harm Dominican Republic-Central America Free Trade Agreement production or the African Growth and Opportunity Act countries. However, he said, they would have to show injury and wouldn't be able to make a "slippery slope" argument.

Miller said she is hopeful that the bill that came out of the committee could pass both chambers and become law. However, 17 Democrats opposed the bill during the markup because Trade Adjustment Assistance has expired, and the committee didn't agree to allow the GSP and TAA to travel together. That issue is what prevented a vote on the bill in 2022.

When asked if that wouldn't prevent the two-thirds vote needed to move a bill under suspension of the rules—the way nearly all legislation has moved this Congress—Miller said, "I'm hopeful that those that really understand will get over themselves and vote for it." She said she doesn't think TAA needs to travel with GSP, but acknowledged, "Things change here hourly." — Mara Lee

USTR Seeks Comments on AGOA Eligibility

The Office of the U.S. Trade Representative is seeking comments, requests to testify, and written testimony on which countries should be included in the African Growth and Opportunity Act. Comments are due June 6, ahead of a June 27 hearing, at regulations.gov, docket number USTR-2024-0006. Parties may ask for the removal of any of the 32 countries currently covered by the AGOA trade preference, or argue for the reinstatement of countries that have been removed from the program, or have never been part of it, such as Ethiopia, Burkina Faso, Burundi, Cameroon, the Central African Republic, Equatorial Guinea, Eritrea, Gabon, Guinea, Mali, Niger, Seychelles, Somalia, South Sudan, Sudan, Uganda or Zimbabwe.

FMC Clarifies That D&D Rule Applies Only on Through Bill of Lading

The Federal Maritime Commission has jurisdiction on cargo moved inland only under a through bill of lading, and contracts between a vessel-operating common carrier and a motor carrier not based on the through bill of lading would "likely be" outside the scope of the commission's new detention and demurrage rule released in February, the commission said. The FMC, in a correction to that rule set to be published in the May 9 Federal Register, stressed that a vessel-operating common carrier must comply with the new detention and demurrage requirements when issuing an invoice if FMC's jurisdiction applies.

The commission in the preamble of its February rule initially responded to a comment asking that it amend the definition of "billed party" to address situations of vessel-operating common carriers entering into written contracts with motor carriers that use containers in transporting goods. The FMC declined to adopt the proposed change, and in the correction issued this week, it reiterated that decision to decline, saying that demurrage and detention should be billed to either the person for "whose account the billing party provided ocean transportation or storage of cargo and who contracted with the billing party for the ocean transportation or storage of cargo" or to the consignee.

While this was intended to explain that the rule only addresses "carrier-trucker relationships on through bills of lading," that statement was "meant to be understood in the context" that the FMC likely doesn't have authority if a contract between a

VOCC and a motor carrier isn't based on a through bill of lading. The commission said it realized that the "inadvertent inclusion of certain language" makes this comment ambiguous and is clarifying its intention. — Noah Garfinkel

DHS Adds 26 Companies to UFLPA Entity List for Sourcing Xinjiang Cotton

DHS is adding 26 Chinese companies to the Uyghur Forced Labor Prevention Act Entity List because they allegedly source cotton from China's Xinjiang region, it said in a notice released May 16. The companies, which are cotton traders and warehouse facilities, will be added to the list effective upon the notice's scheduled May 17 publication in the Federal Register. Under UFLPA, CBP applies a rebuttable presumption that goods mined, produced, or manufactured by entities on the UFLPA Entity List are made with forced labor and prohibited from importation.

Commerce to Require AD Duties on Aluminum Extrusions From 13 Countries and China

The Commerce Department will soon suspend liquidation and impose antidumping duty cash deposit requirements on imports of aluminum extrusions from Colombia, Ecuador, India, Italy, Malaysia, South Korea, Taiwan, Thailand, the United Arab Emirates and Vietnam, and will also require AD cash deposits on aluminum extrusions from Indonesia, Mexico and Turkey, as well as on additional types of aluminum extrusions from China, it said in a fact sheet issued May 2 announcing its preliminary determinations in the AD investigations.

Commerce set AD rates ranging from 4.91% to 376.85% for China (zero to 365.19% as adjusted for cash deposit purposes); 8.85% to 34.47% for Colombian exporters; 17.23% to 51.2% for Ecuadorian exporters; 3.44% to 39.05% for Indian exporters; 5.66% to 112.21% for Indonesian exporters (5.65% to 112.21% as adjusted for cash deposit purposes); zero to 41.67% for Italian exporters; zero to 27.51% for Malaysian exporters; 9.18% to 82.03% for Mexican exporters; zero to 43.56% for Korean exporters; zero to 67.86% for Taiwanese exporters; 2.02% to 4.04% for Thai exporters; 45.41% to 605.72% for Turkish exporters (45.41% to 594.55% as adjusted for cash deposit purposes); 9.13% to 42.29% for Emirati exporters; and 2.85% to 41.84% for Vietnamese exporters.

AD suspension of liquidation and cash deposit requirements will take effect for entries on or after the date of publication of the preliminary determinations in the Federal Register, which should occur in the coming days. Liquidation for China, Indonesia, Mexico, and Turkey is already suspended and countervailing duty cash

deposit requirements are in effect under a preliminary CVD determination issued in March. International Trade Today will have more details when Commerce publishes its preliminary determination.

Final Rule on Destroying Refused Medical Devices and Counterfeit Drugs Issued
A final rule that will allow the FDA to dispose of low-value medical devices and medicines more easily will take effect June 30. Currently, importers of medical devices valued at $2,500 or less have the option of re-exporting the device if it is barred from entering the U.S. In the case of drug shipments under that dollar threshold, the FDA has to prove the medicines are counterfeit, misbranded, adulterated, or not approved in the U.S.; with the change, the agency will be allowed to destroy the drugs if it appears they are counterfeit, etc., unless the owner or consignee asks to testify on the medicines' admissibility.

The change is part of implementing the Safeguarding Therapeutics Act, which was enacted in January 2021. Having administrative destruction would prevent devices that were refused admission from being re-imported "by unscrupulous sellers who attempt to circumvent U.S. import regulatory systems," the agency explained. It also hopes that more shipments being destroyed, rather than re-exported, will increase deterrence for senders of violative shipments.

The agency received 10 comments on its proposed rule, most of which supported the agency's approach. The FDA is not making any changes to the text of that proposed regulation. The agency said a foreign government that submitted a comment asked the FDA to clarify whether the $2,500 applies to the value of the shipment, or one device within a shipment. The FDA said it applies to a singular device's value, but also said it does not expect the implementation of the rule to affect containerized imports. It said express couriers and international mail are the pathways these devices are entering. It gave examples of the type of products it has encountered in the mail or express shipments: ineffective N95 masks, COVID tests, substandard contact lenses and blood sugar test strips.

In estimating the costs and benefits of the rule, the FDA estimated that it will destroy 65% of refused devices, and that the benefits might be worth about $317,000, including lower costs to the post offices and express couriers that don't have to send the goods back. The cost of holding and destroying the goods might be about $475,000; however, these benefits do not include avoided illnesses or injuries by

consumers who would have received counterfeit pills or substandard medical items. — Mara Lee

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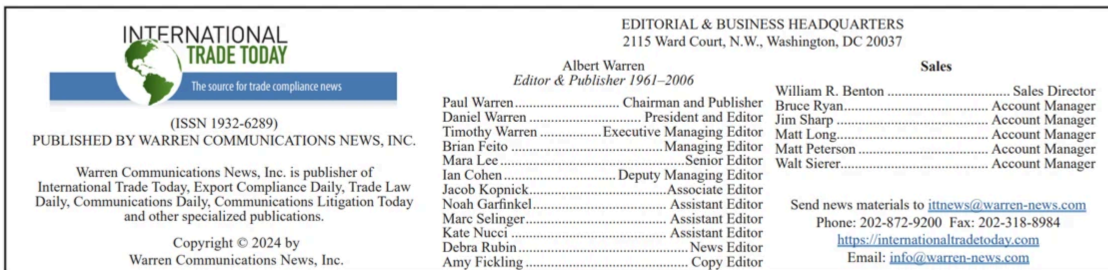
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