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NCBFAA Supports Removing Section 301 Goods From de Minimis Eligibility

The National Customs Brokers & Forwarders Association of America, in a conference session preparing its members for a day lobbying on Capitol Hill, said that the NCBFAA is not arguing for or against a de minimis restriction proposal from Senate Finance Committee Chairman Sen. Ron Wyden, D-Ore. The proposal would require all goods entering in de minimis to be classified with a 10-digit Harmonized Tariff Schedule code and would bar apparel, footwear, and other "import-sensitive" goods from eligibility.

Ned Steiner, a former Democratic Hill staffer, now senior director, international trade and governmental relations, for Sandler Travis, told an audience Sept. 23 that the NCBFAA has been providing input to House and Senate staffers drafting legislation to restrict de minimis so that the laws still facilitate trade. "We are focused on ensuring that the information being requested is reasonable and reflects what Congress intends, but that the same dataset for all entry types—with no waivers—should be required," he said.

The NCBFAA has been arguing that allowing waivers for express shippers but requiring other importers to provide HTS codes is unfair (see ITT 08/09/2024). The House bill to restrict de minimis, which passed the Ways and Means Committee, would remove goods subject to Section 301 (and safeguards and Section 232 tariffs) from de minimis eligibility. The administration said it also intends to promulgate a rule to remove goods subject to Section 301 tariffs from de minimis, if Congress doesn't pass a law doing so first (see ITT 09/13/2024). Steiner said NCBFAA supports excluding goods with special tariffs from de minimis eligibility.

Both the House bill and the Senate proposal would impose a $5,000 fine for a first violation if an exporter claimed a package was eligible for de minimis, but it was not (see 240802003 and ITT 04/16/2024).

An audience member asked who was going to be subject to that fine. Steiner said that was a good question, because it gets at how the law would operate. The buyer of the good might not be aware of what rules apply, he said.

Sandler Travis managing partner Lenny Feldman interjected: "It goes against the people in this room." He said the companies that hire brokers and carriers are outside the U.S., and so the U.S. does not have jurisdiction to levy these fines. The panelists gave a sense of the challenge of lobbying on these bills. Steiner said that when NCBFAA raises questions about how the changes would work in practice,

"Their response is: So, you want fentanyl to come across the border? You want goods made with forced Chinese labor?"

He said the group replies, "No, we want this to work," and points out that they are the ones who actually submit the data the bills are talking about.

CBP Forced Labor Official Says Specific Commodity Special Enforcement Possible

David Hampton, deputy executive director, Trade Remedy Law Enforcement Directorate at CBP, told an audience at the Victims of Communism's annual China

Forum that, over the next two years, CBP will be "reinvigorating our efforts to pursue penalties" with a team that's dedicated to administering penalties related to the Uyghur Forced Labor Prevention Act.

A Hudson Institute senior fellow on the same panel as Hampton had criticized CBP for not imposing any fines as it's implemented UFLPA.

Hampton said the agency is also "broadening our enforcement of UFLPA to make sure we're covering all spectrums, across the Harmonized Tariff Schedule." He said it's "exploring the idea of conducting special enforcement operations on specific commodities," as well.

Olivia Enos, the Hudson Institute panelist, suggested that CBP should not allow re-exports of goods that were subject to detention under UFLPA, even though some of them may not contain inputs made with forced labor.

She also said: "If you are a repeat violator of the UFLPA … you should go on a banned list where you are not eligible to use tariff-free entry."

Hampton said proposed changes to de minimis where exporters will have to supply more information about what's in the package will be useful for UFLPA enforcement, but said the idea of carving out eligibility for de minimis due to past detentions is problematic.

"One thing we consider at CBP is, just because you re-export your goods does not mean that you have [Xinjiang] inputs, it's not an admission of guilt," he said. "What is the definition of a repeat offender?"

While he cautioned that imposing fines requires "a pretty significant evidentiary process," he said CBP is thinking about civil penalties, particularly if they find an importer had a shipment rejected, rerouted it to another country, and tried to bring it back in. "Goods that we have excluded, we don't expect to see them come back, that's clearly illegal," he said.

Hampton noted that of $3.5 billion worth of goods that have been detained under UFLPA, $750 million worth, or about 4,000 shipments, have been determined to have been produced in some measure by forced labor. For shipments that were allowed to enter, importers proved that the supply chains didn't touch Xinjiang or companies named on the entity list. Hampton said no company has succeeded in proving that goods made in Xinjiang were not made with forced labor.

"We are making a financial dent in companies that are trying to send goods to the U.S. made with forced labor," he said.

He said that electronics, apparel, footwear, textiles and industrial materials are the top categories of goods caught in UFLPA, and that CBP has invested $2.8 million to open cotton isotopic testing laboratories. Two are operational, he said, and "at least one more" will be opening.

He declined to say what proportion of the garments tested contain cotton grown in Xinjiang province, but said the testing is being used to validate whether the supply-chain-based screens for cotton-containing goods are on target, "so when we're looking at goods for potential detention, we're looking in the right place."

Hampton praised firms that have invested in their own supply chain tracing and have disentangled from the Xinjiang region. However, he said where companies have created bifurcated supply chains, one for the U.S. market, and one for other markets, he warns them: "Be aware, you're still high risk." He said CBP still needs to examine their supply chain documentation. But, he said, if they show there is no Xinjiang content in that U.S.-bound supply chain, "we're limited in what we can do." — Mara Lee

A 'Record' 37 New Goods Identified for Potentially Involving Labor Exploitation: ILAB

The Department of Labor's Bureau of International Labor Affairs (ILAB) has 72 additions to its list of goods that could potentially be produced by forced labor or child labor, including record 37 new goods that have not previously been identified as involving labor exploitation, ILAB said Sept. 5 in its latest edition of the List of Goods Produced by Child Labor or Forced Labor.

This increase is “the largest number of both additions and removals of goods ever published” for the Trafficking Victims Protection Reauthorization Act (TVPRA) list, ILAB said.

The bureau attributed the increase in part to its funding of 15 projects since 2023 that traced goods across numerous industries and geographies. These projects included two $4 million projects to increase the downstream tracing of goods made by child labor and forced labor: Supply Chain Tracing and Engagement Methodologies (STREAMS) by Verité, which is conducting pilot projects in cotton and garment supply chains in India and developing a web-based Supply Chain Traceability Matrix; and Global Trace Protocol by Elevate, which is piloting open-source traceability technologies and creating reports to map raw materials to the end product for Pakistan’s cotton and the Democratic Republic of the Congo’s cobalt supply chains, ILAB said.

The bureau is also publishing new supply chain research studies linking child labor and forced labor in key commodities to everyday items, ILAB said. “One study links aluminum made with the forced labor of Uyghurs and other mostly Muslim minorities in China’s Xinjiang region to auto parts made in China, while another examines widespread forced labor in the Dominican Republic’s sugarcane supply chain, highlighting the need to address these conditions as large quantities of sugar-based products are imported into the U.S."

Through all these studies and projects, ILAB identified 43 end products or downstream goods that might be tainted by child or forced labor.

Inputs that might have used child or forced labor, such as palm fruit from Malaysia and Indonesia or cobalt ore and copper ore from Congo, may eventually be involved in the production of downstream products, such as infant formula, cooking oils, pet food and cosmetic products for the palm oil, and cell phones, electric vehicles, medical implants and vacuums for the mineral ores.

Meanwhile, the 37 goods that have not been previously identified include jujubes, lead, nickel, polyvinyl chloride and squid. Four new countries were also added: Belarus, the Netherlands, Mauritius and South Korea.

"This year’s update reveals the unsettling geographic span of labor exploitation, highlighting new additions from every region in the world, including 21 from African countries, 10 from the Western Hemisphere, and 8 from Europe,” ILAB said. “Asia stands out with the largest regional concentration with 33 additions from nine countries, underscoring the region’s central role in global supply chains. This includes 12 additions from China, where state-sponsored forced labor linked to the Xinjiang Uyghur Autonomous Region (Xinjiang) continues to impact major supply chains, and two additions from Burma, where workers experience egregious human rights violations under the military regime."

While the additional goods span across a number of industries, the mining and metallurgical sectors are “areas of concern,” particularly because of their role in clean energy and national security, ILAB said.

"For the first time, the TVPRA List includes a good with multiple tainted inputs: lithium-ion batteries made in China are produced with two minerals from the Democratic Republic of the Congo—copper mined with child labor and cobalt produced with child labor and forced labor,” the bureau continued.

The full list includes 204 goods from 82 countries and areas. In addition to publishing the full list, ILAB also published the 23rd edition of the Findings on the Worst Forms of Child Labor.

In addition to publishing these reports, ILAB has updated tools and apps aimed at preventing forced labor and child labor, including a Sweat & Toil app, an online Better Trade Tool and ILAB’s Comply Chain website.

Separately from ILAB’s release of these reports, a Federal Register notice said ILAB is proposing to add garments from Bangladesh to the list of products requiring federal contractor certification that the goods were not produced using forced or child labor. It is also seeking comments on the likelihood that child labor or forced labor was involved in the production of shrimp from India and whether there are forced labor risks in gold supply chain inputs to the United Arab Emirates. ILAB is seeking comments through Dec. 16 on these items.

The bureau had announced Sept. 4 that it was removing two goods from its List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child

Labor: shrimp from Thailand and garments from Vietnam (see ITT 09/04/2024).

Bipartisan Letter Asks for Details on Forced Labor Enforcement in Seafood

The top Democrat on the House Natural Resources Committee, joined by a Republican and two other Democrats, is asking CBP to provide decision memoranda, emails, situation summaries, discussion and evaluation documents and briefing documents on how the agency is identifying seafood imports that were harvested by illegal fishing or processed with forced labor, including how ACE is collecting data.

Rep. Raul Grijalva, D-Ariz., led the letter, which said the International Trade Commission estimated more than 10% of all seafood imports were taken by illegal, unreported or unregulated fishing.

They asked: “What is the frequency of inspections of incoming seafood shipments, including shipments marked as a higher risk for non-compliance for IUU fishing and forced labor?” They also asked: “Has CBP considered issuing new Withhold Release Orders to the vessels and processing facilities implicated by the Outlaw Ocean reporting?"

They thanked the administration for adding seafood as a high-priority sector under the Uyghur Forced Labor Prevention Act, and asked how CBP will keep Uyghur-forced-labor-tainted seafood out of the country.

Connected Vehicle Ban, ICTS Rules Will Be Compliance ‘Challenge,’ Lawyer Says

LONDON—New U.S. import bans on certain connected vehicles and car components from China are just the start of a host of import restrictions the U.S. is likely to impose under its Information and Communication Technology Services-related authorities, said Meredith Rathbone, a trade lawyer with Steptoe. Rathbone also said many companies may not yet realize the extra compliance burdens the new rules will pose, adding that some importers could decide to nix certain transactions because of the challenge of gleaning information about where cars or car parts are sourced.

“I’ve talked to a lot of companies who do not have the ICTS rules on their radar screen,” she said during a defense industry conference this week hosted by SAE Media. “It’s started to change a little bit, I'd say, in the last year or so. But this is really under the radar still for a lot of people.”

The Biden administration earlier this month unveiled the proposed restrictions, which could eventually ban the import and sale of vehicles with hardware or software that facilitates communication to GPS satellites and drivers’ cellphones, or software and hardware that allow driverless operation, if those goods come from China or Russia (see ITT 09/23/2024).

Though the restrictions are unlikely to take effect for several years, Rathbone noted that the government could use the ICTS authorities—under a separate, future action—to impose retroactive restrictions over other types of imports. That could force U.S. companies to “go in and pull this stuff out of” products that have been manufactured or sold in the U.S., even if they contain parts imported years ago.

“What that means is that companies really need to start thinking now of what types of ICTS [devices] they may have that are incorporated into their products that they bring into or use in the United States,” she said. “Because if you don’t get ahead of this, it’s very possible that there will be some costly rules that come into force down the road.”

Rathbone called the ICTS authorities “very, very, very broad” and said there’s an “endless supply of items that can be targeted” for future import bans. “This rule, it’s just going to proliferate,” she said.

Asked specifically about the import compliance challenges companies may face when trying to comply with the upcoming ban on Chinese connected vehicles, she said importers may struggle to generally understand “where things are coming from, what their link is to a foreign party.”

She was also asked whether a Chinese company could try to sell connected vehicles or parts to the U.S. by setting up a front company in a third country that isn't subject to the restrictions. Companies will "of course" try to evade the restrictions, Rathbone said, which will likely call for "additional vigilance" by U.S. importers.

"That goes back to the due diligence discussion," she said. "How much is enough? How do you find out what the ownership is? What is the control of this company? It's a challenge."

She said U.S. importers may soon be asking themselves: "Are the costs of compliance worth the benefits, the perceived benefits that they're going to receive? Or will there be so many workarounds, or so many things that are missed that it's just a huge compliance cost without a commensurate benefit?"

ICTS restrictions are "just one tool in a much broader panoply of policy steps that the U.S. government is taking to try to address supply chain risks," Rathbone said. But "I think it has the potential to be a particularly challenging one."

It could also increase compliance challenges for non-U.S. companies, she said. For example: a German car manufacturer incorporating connected vehicle parts or software into its cars and selling to the U.S. will "need to be on the lookout for potential suppliers who may create problems," Rathbone said. "Probably a significant portion of ICTS from China in particular is going to get designed out of those cars." — Ian Cohen

Former Ways and Means Chair: GSP 'Difficult' in Lame Duck

Former House Ways and Means Committee Chairman Dave Camp, who was a Republican representative from Michigan, told a think tank audience that the lame duck session of the current Congress is likely to be consumed with government funding negotiations, and that leadership is unlikely to put a vote on the Generalized System of Preferences benefits program on the calendar, no matter its logic, unless members of both legislative bodies actively lobby the leaders of his former committee and the Senate Finance Committee.

Camp, who was speaking at the Center for Strategic and International Studies, said the fact that Congress is always going from crisis to crisis “makes it harder for Congress to address things like this."

"It’s going to be difficult in the lame duck but I think there’s an opportunity there,” he added.

The fact that the U.S. has not been negotiating free trade agreements makes GSP “even more important,” Camp said, but ironically, it also makes it more difficult to pass. He noted that Democrats have said they don’t want to vote for GSP unless Trade Adjustment Assistance is attached to it. That retraining program is usually linked to trade promotion authority, but since there are no tariff liberalizing FTAs in motion, there is no TPA, and therefore, no TAA.

"A lot of issues travel in tandem … but there has to be some parity with the issues,” Camp said. “TAA is kind of a big ask to put on that. That’s why you’re seeing that resistance to having it applied."

The forgone revenue from GSP, when importers are claiming it, is approximately $1 billion annually, according to the Coalition to Renew GSP. Before it expired, appropriations for TAA were $597 million in fiscal year 2021, according to the Congressional Research Service.

The panel also included Crayola CEO Pete Ruggiero, who said that GSP is a linchpin of Crayola’s global sourcing strategy. Crayola buys all its colored pencils from Brazil, and those pencils used to qualify for GSP. Colored pencils are 20% of Crayola’s annual sales, and Ruggiero said the hit to profits from the extra tariffs means Crayola can’t invest in expanding marker, paint and crayon manufacturing in Pennsylvania, and the company has had to cut back on advertising and product development that Crayola believes could grow its sales. It also has shaved profit-sharing payments to U.S. workers.

Because GSP has been expired for nearly four years, the price tag for tariff refunds for qualifying products is getting larger, and Sen. Elizabeth Warren, D-Mass., has questioned the need for the refunds to be part of a renewal.

Ruggiero said that receiving a refund for those tariffs is very important to Crayola, and it would use it for manufacturing expansion. If there is no retroactivity, or if GSP never returns, it would “significantly impact our global competitiveness,” he said. Crayola is one of the largest companies to take advantage of GSP; the Coalition to Renew GSP says some companies have closed because of the end of the program.

Camp noted that the sentiment in Congress has shifted from lowering tariffs to raising them, and that makes a program like GSP a little out of step with the times. Perhaps as a result, the renewal legislation that passed the House Ways and Means Committee hikes the rule of origin from 35% to 50%.

Jose Manuel Romualdez, the ambassador from the Philippines, said that change would make it difficult for travel goods manufacturers in his country. He said an increase needs to be gradual.

Romualdez also said Congress needs to consider that rural manufacturing workers in his country cannot have the same labor standards as U.S. workers and still sell products at prices importers are willing to pay, and he asked Congress to be careful not to impose so many conditions on GSP participation that no developing country can qualify.

"These are things we need to thrash out,” he said. — Mara Lee

Increases to APHIS AQI Fees to Begin Taking Effect Oct. 1

The Animal and Plant Health Inspection Service is moving forward with increased user fees for its agricultural quarantine and inspection service, it said. Announced in final rule released by APHIS, the fee increases will begin to apply on Oct. 1.
The largest fee increase will apply to commercial vessels, which will see an increase from the current $825 to $2,903.73 on Oct. 1. That fee will continue to rise, to $2,981.17 on Oct. 1, 2025, then to $3,059.61 on Oct. 1, 2026, and to $3,139.06 on Oct. 1, 2027.

APHIS also is removing a fee exemption for Canadian barges. It’s setting a new fee for commercial vessels on the Great Lakes and in Cascadia of $837.51, gradually rising over the next three years to $875.06 by October 2027.
The fee increases are needed “to allow the AQI program to recover the full costs of carrying out” its activities to safeguard U.S. farms and forests “from the impacts that damaging invasive pests and destructive diseases cause,” APHIS said. “In recent years, the fees collected during AQI inspections have not recovered the full costs of the program.”

“Recent advances in the size and scope of commercial transportation have resulted in the need for APHIS to adjust these fees to account for the corresponding increase in cost of operations. The revisions to user fees will put the AQI program on sound financial footing,” the agency said.

Fees for commercial trucks will rise from the current $7.29 to $12.40 on Oct. 1, and continue rising annually, to $15.55 by October 2027. Fees for commercial rail will increase from $2 to $6.51 on Oct. 1, and up to $8.72 in October 2027. Commercial aircraft fees will increase from $225 to $281.39 on Oct. 1, and continue to increase annually, to $340.90 in October 2027.

APHIS also is “adjusting the caps on prepaid fees associated with commercial trucks and commercial railroad cars,” and “removing certain fee exemptions that are no longer justifiable based upon pathway analyses of risk.”

APHIS said it also will “require monthly rather than quarterly remittances for the commercial aircraft fee, international air passenger fee, and international cruise passenger fee” and “provide for electronic payments and statements.”

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