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CBP to Begin Rejecting Filings That Don't Comply With Organic Import Regs

CBP will soon begin rejecting ACE filings for products that fail to comply with certain organic import filing requirements under the USDA's Strengthening Organic Enforcement final rule, which requires electronic National Organic Program import certificates for organic agricultural products (see ITT 03/19/2024 and ITT 01/18/2023). CBP has been issuing warnings for those filings since new USDA organic enforcement regulations became effective March 19, but the agency said in a June 24 CSMS message that the warning will change to a reject in ACE's certification environment on June 28 and in ACE's production environment on Sept. 19.

CBP said it will reject filings with the USDA Agricultural Marketing Service AM8 tariff flag, which signals that the Harmonized Tariff Schedule code entered is for an organic product and the filer must file an NOP Import Certificate in the system, according to USDA. AM7 flags, which signal that HTS code entered may be subject to the AMS organic import certificate filing, "will continue to be enforced with a warning severity," CBP said.

DHS Adds Companies Manufacturing Footwear, Seafood and Aluminum to UFLPA List

DHS has added three more companies to the list of companies cited for using forced labor from the Xinjiang Uyghur Autonomous Region (XUAR), according to a notice. The companies placed on the Uygur Forced Labor Prevention Act (UFLPA) Entity List are the Shandong Meijia Group (also known as Rizhao Meijia Group) in Shandong Province, China, which processes, sells and exports frozen seafood products, vegetables, quick-frozen convenience food and other aquatic foods; Xinjiang Shenhuo Coal and Electricity in the XUAR, which produces electrolytic aluminum, graphite carbon and prebaked anodes; and Dongguan Oasis Shoes in Guangdong Province, which produces and manufactures shoes and shoe material products. The company also is known as Dongguan Oasis Shoe Industry, Dongguan Luzhou Shoes and Dongguan Lvzhou Shoes.

Each of these companies satisfies the criteria to be on the list as described in Section 2(d)(2)(B)(ii) of UFLPA, which covers entities working with the government of the XUAR to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the XUAR, the notice said. Their inclusion to the UFLPA Entity List is effective June 12.

“Today’s action, which includes entities from within and outside Xinjiang, and from three different industry sectors—footwear, seafood, and aluminum—reaffirms our commitment to robust enforcement of the UFLPA,” DHS Undersecretary for Policy Robert Silvers said in a Monday news release. Silvers also serves as chair of the Forced Labor Enforcement Task Force (FLETF).

“It is imperative for companies to conduct due diligence and know where their products are coming from. The Forced Labor Enforcement Task Force will continue to designate entities that meet the UFLPA’s criteria for inclusion on the Entity List, and U.S. Customs and Border Protection will continue its vigilant enforcement at our ports,” Silvers continued.

The Southern Shrimp Alliance, which had petitioned FLETF to consider adding eight Chinese seafood processing plants (see ITT 01/29/2024), praised the inclusion of Shandong Meijia Group to the list. The company’s subsidiaries are active exporters of Argentine red shrimp to customers in the U.S. and Canada, according to the alliance.

“Shrimp supply chains have a disturbing pattern of profiting off of the globe’s most vulnerable populations. Argentinian red shrimp packed by Uyghurs in Chinese seafood processing plants should not be competing with wholesome products in American grocery stores,” the alliance’s executive director, John Williams, said in DHS’ release. “The Forced Labor Enforcement Task Force’s initiative to counter forced labor in seafood supply chains sends a strong message to U.S. seafood importers that chasing lower costs and higher margins cannot replace ethical and legal obligations.”

The alliance estimates that at least 12 million pounds of Argentine red shrimp processed in China were exported to the U.S. in 2023, with much of that sold in grocery stores and in restaurants as sushi. The group, which requested DHS to add the Chinese seafood processors to the entity list following an investigation by The Outlaw Ocean Project (see ITT 01/11/2024), said it will continue to press the task force to give seafood in UFLPA enforcement a “priority sector” designation.

Austin Brush, an editor with Outlaw Ocean Project, noted in a Substack post that DHS is still reviewing whether other Chinese seafood processing companies should be included on the list. He urged readers to find updates on his group’s investigations on Outlaw Ocean Project’s website.

The products of Shendong Meijia Group have appeared on the shelves of H-Mart grocery stores in the U.S. and Loblaw stores in Canada. "The federal action is one of the most aggressive and consequential moves that U.S. government officials can take against a company,” Brush said. “Seafood products tied to Meijia can only be imported into the U.S. in the future if Customs and Border Protection (CBP) determines that the goods were not produced with forced labor."

Shengong Meijia’s products aren’t the only ones that have been widely available in North American stores. The Congressional-Executive Commission on China urged the brands Skechers, K-Swiss and Brooks Running in a Tweet June 11 to pull shoes supplied by Dongguan Oasis from U.S. inventories.

So far, 68 entities have been added to the UFLPA Entity List since President Joe Biden signed the UFLPA into law in December 2021, according to DHS. Companies on the list reflect the following sectors: agriculture, apparel, batteries, chemicals, electronics, food additives, household appliances, nonferrous metals, polysilicon and plastics.

In response to the ruling, customs attorney Ted Murphy of Sidley Austin noted that DHS' action was "not a surprise," as the agency has recently been increasing the size of the UFLPA Entity List.

"We expect that FLETF will continue to add entities to the list throughout the rest of the year. Given the way DHS/FLETF adds companies to the UFLPA Entity List (i.e., almost no advance notice, almost no explanation as to why an entity is added, etc.), it can be quite disruptive (and very hard to predict)," Murphy's note said. "As recent news reports about the auto industry demonstrate, all companies need to have a game plan in place for how they will respond to this type of development." — Joanna Marsh

DHS Leader: Companies That Aren't Proactive on UFLPA May Face Sudden Enforcement

The head of the Forced Labor Enforcement Task Force told an audience convened by the Consumer Technology Association that Volkswagen "did the right thing" when it self-reported it had a tiny component made by a company recently added to the Uyghur Forced Labor Prevention Act Entity List. The task force is responsible for adding companies to the list.

"Companies that don't take that approach, a proactive approach, may find that they are very suddenly subject to enforcement," said Robert Silvers, DHS undersecretary-policy, plans and strategy. He said the supply chains they were relying on will become suddenly unavailable. "And there can be business and reputation consequences that ensue," he added.

In VW's case, the part that was banned for entry came from a third-tier supplier; the company that subcontracted with the Chinese manufacturer let its customer, Lear

Corp., know, and Lear notified VW, BMW and Jaguar Land Rover that they had bought parts that weren't allowed to enter the U.S. However, BMW and Jaguar Land Rover didn't stop importing the parts for months.

The CTA released a white paper this month based on a survey of 50 supply chain executives and lawyers at companies that import consumer technology products from either China, Malaysia or Vietnam. According to CBP's UFLPA enforcement dashboard, close to 8,500 shipments in the "electronics" category from one of those three countries have been stopped under suspicion of links to Uyghur forced labor. The number of those shipments that were solar panels isn't known. Polysilicon, an input for solar cells, is processed in Xinjiang and is one of the priority sectors in the law.

The white paper showed that 75% of the surveyed companies know all their Tier 1, or direct, suppliers, but only 23% have mapped Tier 2, and only 2% tracked to Tier 3.

If goods are detained, the only way to clear them is to show CBP a complete map of the supply chain from raw material to finished goods.

The white paper said none of those surveyed said they had had a detention. "While this percentage may be an accurate snapshot of seizures and detentions in the consumer technology industry, it could reflect heightened sensitivity to the potential repercussions of self-reporting or discussing seizures," the paper said.

Silvers told the audience that the priority sectors don't limit what's detained. Naming PVC, an input for flooring, seafood and shoes, he said, "We've done a lot of enforcement of categories outside of those three sectors." Enforcement "is going to widen significantly in the coming months," he added.

Silvers had said earlier in the week that more priority sectors would be announced "in coming months," but on June 13, he said: "We're going to be adding new prioritized sectors soon."

VW learned that it had an input from a company on the Entity List about a month after it was announced, as the news traveled from the second tier to the first tier to the carmakers. The CTA survey showed that 34% of the firms it surveyed check the entity list twice a year, 30% check it quarterly, 17% check it annually, 17% check it monthly, and 6% have never checked it. The trade group suggested that companies set up alerts for changes to the Entity List.

Ninety-four percent of companies said they check the Entity List as they vet new suppliers, and 75% said they had adjusted their supply chains because of the Entity List.

Silvers said federal agencies “are super avid consumers of technologies that help us in this work, which is, in some respects, a needle in a haystack type of business.” He said AI-powered tools are helping.

The survey found that 22% of the firms are using software, such as Assent or Source Intelligence, in their due diligence. Silvers said he talked recently with a company that sells compliance solutions, and an executive told him that forced labor is the No. 1 growth area. “That’s fantastic,” he said. — 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 (see ITT 11/16/2022).

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 has 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 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 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 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 Letter Asks for India, Turkey Restoration, Broader CNL Reforms

Importers have paid more than $160 million in tariffs that would not have existed if the Generalized System of Preferences benefits program were in place just since the House passed its version of GSP renewal in April, according to the Renew GSP Coalition. The group, joined by more than 30 trade groups and nearly 300 firms that import goods subject to GSP, said the House bill and the Senate GSP renewal that was part of a trade package that didn't make it into the Chips Act "are a strong starting point for negotiations."

The recent letter from the groups to the Senate Finance Committee leadership said that while they liked the 10-year extension, refunds and updates to competitive need limitations, they'd like to see the CNL changes go further. They endorsed the CNL Update Act (see ITT 12/10/2021).

The groups cautioned that if eligibility criteria are more stringent, it could "reduce GSP's effectiveness by making long-term investments too risky. Ultimately, any changes that make GSP harder to use, or easier to lose, make GSP countries less attractive, thereby benefiting non-beneficiaries such as China."

India, which had been the biggest exporter covered by GSP, was removed from the program over market access eligibility issues for American agriculture and medical devices. The groups said restoring India (and Turkey, which the previous administration said was now too rich to deserve the benefit) would “greatly revitalize” the program. They said almost $1.7 billion of tariffs on Indian products have been paid from January 2021 through April 2024 that wouldn’t have been paid if India were in the program (and GSP was in effect). They said importers paid $500 million in tariffs in that same period on Turkish goods that once were covered by GSP.

The groups noted that GSP has been expired almost twice as long as any other expiration since the program was first authorized 50 years ago. “Refunds are not a new, corporate giveaway: they follow decades of precedent and ensure those that continued to use GSP in good faith are not punished for Congress’ failure to renew it in a timely manner,” they wrote.

Coalition of New England Companies for Trade (CONECT)’s Counsel Peter Friedmann, in a note to members accompanying the letter, wrote: “There remain some partisan hurdles around Trade Adjustment Assistance, before Congress actually, finally, enacts GSP renewal. Yet even in the partisan environment that permeates DC, I think it will be renewed before Congress finally adjourns at the end of the year.” — Mara Lee

Tai Says WTO Needs ‘Tough Love’ to Reform Dispute Settlement

U.S. Trade Representative Katherine Tai, when asked about the U.S. views on reviving dispute settlement at the World Trade Organization, said that countries need to reflect on how the previous system provided incentives for the U.S. and EU to “continue fighting for almost 20 years about state support for Boeing and Airbus, caused us to fight with each other, and pick at each other while the PRC [People’s Republic of China] built up its own large civil aircraft industry under our noses."

Tai, who was speaking at an Atlantic Council event on U.S.-EU trade relations, said, “We are entirely committed to the reform and the tough love it’s going to take to reinforce the WTO, and its role in the world economy.” But, she said, the U.S. wants to make sure that the new dispute settlement system “doesn’t just become a giant litigation forum that you throw money and lawyers at to make a point against each other, to levy tariffs on each other, but how it can be a dispute settlement function that actually helps you resolve disputes with your friends and your competitors.”

She said the system needs to “prevent this ossification and political retrenchment that we have seen with our friends in the EU.” She said there have been many disputes between the U.S. and the EU “that have prevented us from coming together and working on the things that really matter."

Both Tai and U.S. Ambassador to the EU Mark Gitenstein argued that the old model of globalization led to the rise of populists, and that populists in many countries have an authoritarian streak that endangers democracy. Gitenstein said that he hears in both Brussels and Washington that the old orthodoxy about free trade must change. Tai said that unfettered globalization created a “very unsustainable pathway on a geopolitical, geostrategic level as well as on a human and a planetary level."

Tai quoted her counterpart in the EU, Valdis Dombrovskis, who said what was at stake in cooperation between the U.S. and the EU was the fate of the free world. “It’s really so important to find a way to turn down the temperature between the United States and the EU … and really focus on the fact that we have shared challenges, and we have a lot of shared and common values and principles,” she added. — Mara Lee

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