



## American Shipping Company

# Supply Chain Gazette



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### Phase VIII of APHIS' Lacey Act Declaration May Take Place in Stages

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As USDA's Animal and Plant Health Inspection Service prepares for the Dec. 1 enforcement of the seventh phase of Lacey Act import declaration requirements (see ITT 05/30/2024), officials already are eyeing the challenges that may come in implementing Phase VIII.

Phase VIII will cover composites (see ITT 04/16/2024). One challenge for APHIS will be determining just what the definition for composites should be, according to Erin Otto, national policy manager for the Lacey Act. A proposed rulemaking may result to help APHIS create the proper definition.

"Phase VIII is going to require us to really think hard about how to implement it," Otto said. Otto was speaking at an APHIS webinar on Aug. 21 about the Lacey Act, including the upcoming implementation of Phase VII.

"We believe that we're anticipating some rulemaking when it comes to the definition of composites because currently it doesn't indicate liquid, and we need to add that. Once we start working on Phase VIII, we'll be reaching out to industry pretty heavily to ask them about their products, their manufacturing process, and get an idea of how many processes they go through to get to their product."

Because of the complexity of this last phase, Phase VIII might occur in two stages, according to Otto.

"Depending on the magnitude of [Harmonized Tariff Schedule] codes that we're going to have to add, it may be in two phases, maybe 8 and 8.2. Just because you're importing a composite plant material doesn't mean that you won't eventually have to give species and country of harvest," Otto said. "Again, this is going to require us reaching out to industry to

find out what the concerns and questions are and maybe challenges with the declaration filing.”

Another issue will be determining how far back along the manufacturing process APHIS should go when considering whether an item is derived from plant material, Otto said.

“The conundrum with composite products is that there are a ton of different things that are made out of plant and plant products. Everything from inert cellulose in your supplements and drugs to acetate rayon paper. All sorts of things that are composite materials that are made out of plant materials and latex and rubber and things like that,” Otto said. “We’re going to wrestle when we get to Phase VIII. We’re going to wrestle with which HTS codes to choose.”

She continued, “We’re going to have to find that midline because we do not want to add the entire HTS code world for Lacey.”

If importers are uncertain whether their item would need a Lacey Act declaration, Otto urged them to look at their supply chains. One example is whether an item consisting of material derived from bamboo would need Lacey Act treatment. According to Otto, wild bamboo requires a Lacey Act determination, but farmed or cultivated bamboo does not.

If the imported item is made of a product derived from bamboo but the importer can’t tell how the bamboo was cultivated, the importer will have “to check their supply chain” to determine how the bamboo was harvested, Otto said.

Once Dec. 1 rolls around with the implementation of Phase VII, CBP will work on Phase VIII. For Phase VII, importers will have to provide specific information within the PPQ Form 505 to show that it is meeting the requirements of the Lacey Act. That information will include the country where the plant or plant product was harvested, as well as the scientific name of the plant in full binomial nomenclature.

Phase VII is “called the junk drawer of the HTS code world. ... It’s everything from kitchenware to housewares to vehicles to pinball machines to umbrellas to sunglasses,” Otto said.

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## **AMS to Adhere to Sept. 19 Implementation Deadline for Organic Products**

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USDA’s Agricultural Marketing Service is unlikely to extend once more the deadline for filing certificates in ACE on all entries of organic products, an official of the program said Aug. 29 during a webinar on the AMS’ national organic program, hosted by the Los Angeles Customs Brokers & Freight Forwarders Association.

March 19 had been the deadline for organic importers and exporters to get certified with AMS so the organic import certificates could be generated, as provided by regulations that were revised in January 2023 (see ITT 01/18/2023) to address issues related to oversight and fraud (see ITT 03/19/2024).

But USDA extended that time frame to Sept. 19 to accommodate importers and exporters who were still in line in March to be certified (see ITT 02/27/2024).

“We took a close look at where we were at March 19 of this year and said, you know what? We’re not going to delay this rule. It is fully implemented,” said Jennifer Tucker, deputy administrator of the AMS NOP.

“We’re now coming to the end of that regulatory discretion, which I think is going to provide a lot more clarity and will show ... we’re also serious about protecting this market,” Tucker said. “We have done a lot of discussion with our community and in general, we are very, very confident that folks who had applied for organic certification by that March date have either gotten through the certification process or will soon.”

Those who are still having problems may have not submitted complete packages or they were unresponsive when first contacted by certifiers, she continued.

“There are people who have paid expedited fees to get certified, some before that March deadline, and now some before the September deadline. And so it would be unfair to them to further extend at this point,” Tucker said.

USDA has started enforcement to ensure the proper certification (see ITT 04/16/2024), with 966 notifications sent to uncertified importers: “Those were educational, but they were also kind of warning you got to get certified or get out of the market. Now we have seen a lot of those just drop out,” Tucker said.

USDA now is the midst of conducting a second round of warnings, with 80 warning notifications delivered and phone calls made to high-volume importers that continue to bring in produce without a valid import certificate.

“We’re making calls to many, many corporate offices to just make sure they even understand what the requirements are and let them know that there are places in their system where they’re not compliant. We have some cases where folks are certified but still aren’t using import certificates, and we’re trying to figure out why,” Tucker said.

When Sept. 19 rolls around, certifiers will not be able to generate an NOP import certificate without both a certified importer and an exporter listed in USDA’s organic integrity database. In other words, all organic imports must have an import certificate with a certified exporter and importer.

“What does happen after Sept. 19? We’re calling it the end of regulatory discretion,” Tucker said.

Since the rule went into compliance mode, more than 83,000 import certificates have been issued from USDA’s integrity database. This equals roughly a rate of about 3,700 import certificates a week. Of that, more than 37,500 have been submitted in ACE for use on actual entries, according to Tucker.

USDA also is seeking to reduce the number of HTS flags for organic products, including flags that might raise some confusion, such as those related to aquaculture and fish products. Since January, AMS has eliminated over 800 HTS codes flagged in ACE, with more codes being reviewed for removal later this year and early next year.

The agency is also working on shipment and supply chain traceability in which USDA works with CBP to conduct country and regional assessments where the government takes a focused look at specific commodities in certain geographic regions and countries to see what certifiers are doing in those countries. This includes examining whether there needs to be increased testing or unannounced inspections in a particular area.

“Yield studies are important in helping us understand what is the productive capacity of certain regions. And so if we’re starting to see imports that are way above what a country should be able to produce given the expected yields, that’s a good flag for us,” Tucker said.

“That is one of the ways we identified fraud several years ago. It continues to be a tool that we use in a targeted way to tell us what is the range of normal in terms of imports.”

USDA is working with trade partner countries who also have organic certification programs in place: “We support each other’s investigative and enforcement efforts as part of our trade arrangements.”

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## **FDA Proposes to Add Tobacco Products’ Submission Tracking Number to ACE Entry**

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The FDA is proposing to amend its regulations to require entry filers for e-cigarettes and other electronic nicotine delivery systems (ENDS) to submit in ACE a submission tracking number data element at time of entry. The agency is accepting public comments on the proposed rule through Oct. 15, it said in a notice.

The FDA says the proposed rule would facilitate the agency’s automated review process by assisting FDA in making decisions about the admissibility of ENDS products. Though the STN data element is currently optional for tobacco products, “we have found that ACE filers are not submitting the STN for an ENDS product in ACE at the time of entry,” the FDA said.

The STN would give the FDA better visibility into the marketing authorization status of ENDS by allowing the agency to verify it electronically using the FDA’s internal databases, the agency said. It would also increase instances of “May Proceeds” issued by the FDA for imports of ENDS products and decrease the need for manual reviews, “which may involve document requests and communication with ACE filers or importers,” it said.

The agency says it is seeking comment on the following topics: “(1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.”

Should the rule be finalized, its effective date would be 30 days after the final rule is published in the Federal Register.

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## **Sayari Analysts Say NGO Influence on UFLPA Enforcement Will Grow**

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Sayari analysts, who say their company crunches 600 million shipment records, say that the Uyghur Forced Labor Prevention Act has had more impact than British, German, Swiss, Canadian, and French laws aimed at removing human rights abuses from supply chains.

In a webinar held Aug. 27, senior solutions analyst Harry Hayllar said Vietnam, the U.S., and India are the most common destinations for exports that Sayari has linked to China's Xinjiang region, and the most common Harmonized Tariff Schedule codes for those goods were 8708.7, a car wheels category; 6117.8, knitted accessories or parts of garments; 8451.43 and 8541, both electronics related; 8418.99, a refrigeration or heat pump related part; and 8507, which covers storage batteries. For shipments directly to the U.S., they said textiles, electronics, and plastics dominated.

They listed these companies as the top suppliers: Hon Hai Precision Industry (FoxConn); Citic Dicastal Co., which makes automotive aluminum wheels; Changhong Meiling Co., an appliance manufacturer; Smart Shirts Limited; Risen Energy Company; Lu Thai Textile Co.; Contemporary Amperex Technology Limited (CATL), an electric vehicle battery manufacturer; Jiangsu Lianfa Textile Co.; and the KTK Group, which is on the UFLPA Entity List.

Hayllar also noted that the Australian Strategic Policy Institute's report on labor transfers, which identified Hon Hai; Changhong Meiling; AcBel Polytech, an electronics supplier; and Bestway Recreation Corp., which makes sports equipment, accounted for about 50,000 shipments.

Hayllar noted that ASPI and Sheffield Hallam University have directly influenced policy for the Forced Labor Enforcement Task Force (FLETF), and with the former head of the Sheffield Hallam office that put out reports on Uyghur forced labor, Dr. Laura Murphy, now serving as a policy adviser to the FLETF chair, he advised: "expect that trend to continue."

Hayllar and Zach Tvarozna, Sayari's director of analytical services, walked the audience through case studies of how Sayari consults its shipment information—including departure and arrival date, shipper, receiver, origin and destination country, HTS codes and product descriptions—to trace Xinjiang or Russian materials to U.S. imports. Hayllar showed how Cofco Tunhe Tomato Co. ships to Century Pacific Food in the Philippines, a company that combines fish or meat in tomato sauces and then cans them. Century Pacific exported sardines in tomato sauce to Liberty Gold Fruit Co., a California importer, he said.

He also put up a corporate map of Xinjiang Zhongtai Chemical Co., a company on the UFLPA entity list. While it's obvious that Xinjiang Zhongtai Import and Export Trade Co., the company listed on export records, is related to the chemical company of the same name—and the chemical company is a part-owner of the trading company—other times trading companies aren't so clearly named. Hayllar said companies need to map corporate relationships and connect them to shipment records to find out who their sub-tier suppliers buy from.

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## **Trade Guys Predict No GSP, de Minimis Legislation in 2024**

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The Center for Strategic and International Studies "Trade Guys" said that while there is some pressure on Congress to get the Generalized Systems of Preferences benefits program renewed, and restrict de minimis, competing pressures make it unlikely bills will become law this year.

Bill Reinsch, Scholl Chair in International Business at CSIS, said last week that votes on GSP and de minimis won't happen next month, because, he believes, neither bill is



significant enough to be something members up for re-election could brag about at home. However, he did note that the House is supposedly taking up some China-related bills in September.

In the lame-duck session, "there's always pressure to finish stuff," he said, and GSP will have been expired four years by the end of this year. "De minimis has been debated extensively for two [years]," he said.

However, there are competing pressures. If Republican Donald Trump retakes the White House, his staff will tell Congress not to take action but wait until he's in office. If Democrats retake the House majority or the Republicans retake the Senate majority, the party about to take the majority also will want to wait until 2025 to act. Reinsch said it's possible the majority could flip in both chambers.

"That said, this stuff ought not to be controversial," he said. "Most people are for GSP renewal. Most people are for a de minimis fix. Most people are for AGOA [the African Growth and Opportunity Act], but I don't think that's going to play out this year." However, he noted, there are different approaches to restricting de minimis, even though "they're all designed to stick it to China one way or the other."

Although the House Ways and Means Trade Subcommittee's top Democrat, Earl Blumenauer of Oregon, was the first to push to remove Chinese goods from de minimis eligibility, he and his fellow Democrats voted against a bill that would remove about two-thirds of Chinese goods from de minimis, by prohibiting Section 301 covered goods from being able to enter duty free if they are in low-value shipments. They also voted against GSP, because Republicans on the committee did not want to renew Trade Adjustment Assistance.

Reinsch said that because Democratic votes are needed in the Senate to move these bills, "if you're going to try to get all these things through, I think you're going to have to work something out on that [TAA]. And there's no sign of that happening." Scott Miller, CSIS nonresident senior mentor, said that if the Office of the U.S. Trade Representative were negotiating an agreement anywhere in the world to lower tariffs, there could be support for renewing TAA. That there's no such negotiations makes it much more difficult to move forward, he said.

Reinsch said he expects some effort to move at least one of these bills in the lame-duck session. "I will be surprised, though, if it succeeds."

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## **DHS Adds 5 More Entities to UFLPA Entity List**

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Five Chinese companies have been added to the Uyghur Forced Labor Prevention Act (UFLPA) Entity List, according to a notice released Aug. 8.

The entities are: Kashgar Construction Engineering, Xinjiang Habahe Ashele Copper (also known as Ashele Copper), Xinjiang Tengxiang Magnesium Products; Century Sunshine Group Holdings; and Rare Earth Magnesium Technology Group Holdings. 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. The listings take effect Aug. 9.

## USTR Delaying Section 301 Modifications Again

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Higher or new Section 301 action on Chinese goods such as batteries, EVs, plug-in hybrids, ship-to-shore cranes, solar cells and panels, syringes, needles, critical minerals, and some metals will not go up until at least September, as the Office of the U.S. Trade Representative has missed a second self-imposed deadline. The proposed changes, first announced in May, said some tariffs would go up on Aug. 1, but on July 30, the office said it had not finished responding to more than 1,100 comments, and it would make a final determination in August.

On Aug. 30, the office said it was still working on the final modifications, and that they would be announced "in the coming days."

While some of the products were expected to see higher tariffs this summer, others were scheduled for Jan. 1, 2025, and Jan. 1, 2026. For those that will be hiked in 2024, the office said the new rates "will take effect approximately two weeks after it makes the final determination public."

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## Retailers Expedite, Reroute Imports to Dodge Possible Port Strike

### Panama Authorities Equipped to Handle Future Disruptions, FMC Commissioner Says

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A potential labor strike at East Coast and Gulf Coast ports this fall is encouraging many retailers to take precautions, such as bringing in merchandise earlier or shifting cargo to West Coast ports, the National Retail Federation (NRF) said last week.

The expedited shipping is expected to produce a surge in inbound cargo volume at U.S. major container ports, the NRF said. The volume is forecast to jump 19.2% in August from a year earlier, following a projected 22.1% increase in July.

A potential strike looms because the contract between the International Longshoremen's Association (ILA) and the United States Maritime Alliance (USMX) covering East Coast and Gulf Coast ports expires Sept. 30.

Negotiations between the two sides "have broken down" and the ILA has threatened to strike if a new contract is not reached by the time the existing one runs out, the NRF said.

The parties "are very far apart, particularly on the economic issues," ILA leaders said this week. "In fact, we are at an impasse."

USMX said last week it has made several offers since contract talks began in 2022 and that it remains ready to continue discussing a new agreement. It said its latest proposal includes "industry-leading wage increases" and would "continue to provide premier health care coverage."

Federal Maritime Commissioner Louis Sola is “confident” Panama will take needed steps to minimize future disruptions to the Panama Canal after a drought lowered water levels and impacted supply chains in recent months, Sola said in a press release this week. Sola, who recently visited with Panamanian officials alongside FMC Chair Daniel Maffei, said there will “always” be supply chain challenges but that he is “optimistic that continuing collaboration between the FMC and key officials in Panama will result in improving the efficiencies of this critical global trade route,” the release said.


Sola said he met with Panamanian President Jose Raul Mulino, U.S. Ambassador to Panama Mari Carmen Aponte, leaders from the Panama Canal Authority and Panama Maritime Authority, and Panama’s environment minister during the trip. “The FMC remains committed to conversations with key maritime stakeholders to ensure the operations of a reliable maritime transportation system,” the release said.



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