



American Shipping Company Supply Chain Gazette



August 2024

Section 301 Tariff Hikes Delayed: Will Take Effect Two Weeks After Future Announcement

Higher or new Section 301 tariffs on lithium-ion batteries for EVs, lead-acid battery parts, golf-cart like EVs, electric cars, vans and buses, plug-in hybrids, ship-to-shore cranes, solar cells, solar panels, syringes, needles, three categories of disposable masks, 26 critical minerals, more than 100 HTS codes covering iron and steel products, and 31 aluminum HTS codes, all on imports from China, will not go up on Aug. 1, as originally announced two months ago (see ITT 05/22/2024).

The Office of the U.S. Trade Representative said it expects the final determination on tariff changes to come sometime in August. When that announcement is made, the tariffs that are changing this year "will take effect approximately two weeks after it makes the final determination public."

The proposed changes to the Section 301 tariffs, which also included some tariff hikes Jan. 1, 2025 and Jan. 1, 2026, drew more than 1,100 comments, and the Office of the U.S. Trade Representative said July 30 that officials had not had time to respond to all the comments.

The Office of the U.S. Trade Representative's May Federal Register notice asked for comments specifically on:

- the effectiveness of the proposed modification in counteracting or getting China to eliminate its technology transfer and abusive intellectual property practices
- the economic effects of the proposal
- the scope of the product description that covers ship-to-shore cranes under subheading 8426.19.00

- whether tariff rates on face masks, medical gloves, and syringes and needles, should be higher than the 25% or 50% rates
- with respect to face masks, whether additional statistical reporting codes under tariff subheading 6307.90.98 should be included
- whether the tariff subheadings listed are the right ones to comply with the presidential memo.

The scope of the imports covered by the higher tariffs is about \$18 billion annually, the administration said. — Mara Lee

Seafood, Aluminum, PVC Added to UFLPA Priority Sectors

The administration has added seafood, PVC, which is used in vinyl flooring, and aluminum to its priority enforcement sectors under the Uyghur Forced Labor Prevention Act, it announced in its strategy update this week. This is the first time priority sectors have been added since the law went into effect two years ago; the original priority sectors of apparel, cotton products, polysilicon and solar panels made from polysilicon, and tomatoes remain.

In explaining why PVC was chosen, the fact sheet published by DHS July 9 said that UFLPA enforcement has already led to a decline in vinyl flooring imports of 48% in the last 12 months “as U.S. importers shifted away from suppliers that utilized XUAR-sourced PVC in certain flooring products. Industry reports acknowledge these shifts away from PRC supply chains and have resulted in new and expanded PVC and flooring production capacities in the United States, Mexico, India and Vietnam.” The fact sheet said that 10% of PVC is produced in Xinjiang.

The administration noted that the UFLPA Entity List has already had aluminum, PVC and seafood processors added this year, and said that the Forced Labor Enforcement Task Force, which runs the Entity List, “will continue to prioritize review for additional entities in these sectors.”

Domestic shrimpers lauded the addition of seafood, noting that a journalistic investigation by the Outlaw Ocean Project documented how Uyghurs were forced to move to the coast and work in seafood processing plants. The group said they had asked for seafood to be a priority sector in January (see ITT 01/11/2024).

“China’s shrimp processing sector significantly impacts the U.S. shrimp market. A review of bill of lading data indicates that at least 12 million pounds of Argentine red shrimp processed in China were exported to the United States in 2023,” the Southern Shrimp Alliance wrote. Executive Director John Williams added, “With today’s announcement, U.S. importers are made aware that processing seafood in China, while cheap, may come at a tremendous cost.”

The updated strategy went into depth on how FLETF will expand the Entity List, which currently has 68 names. The task force will be adding new companies to the list more rapidly as it improves its process, making it a “more transparent, consistent, and scalable methodology.”

The strategy said that up to this point, the task force focused on finding “entities that egregiously and openly engage in behavior prohibited by the UFLPA” as it built out the list. “However, the FLETF is also initiating reviews of potential candidates for the UFLPA Entity List that involve more complex relationships due to the lack of visibility into PRC supply

chains,” the strategy said—including naming exporters who do not directly employ transferred workers, but distribute goods produced by entities that are on the list for employing transferred Uyghur workers or that operate in Xinjiang’s Autonomous Uyghur Region.

“The FLETF continues to pursue new technology and new methods to identify companies under all relevant sub-lists of the UFLPA Entity List,” the strategy said, and said that any subsidiaries that are identified, as well as additions, removals or technical corrections will be published in the Federal Register.

“FLETF agency analysts may identify entities for potential addition through searches of academic, non-profit, media, and other public reports; private sector and civil society organization (CSO) information sharing; recommendations from Congress; and independent open-source research,” the strategy said.

“The FLETF considers the source’s methodology, prior publications, degree of familiarity and experience with international labor standards, forced labor schemes, and the XUAR, as well as its reputation for accuracy and objectivity. FLETF member agencies conduct independent research to verify and, where possible, expand on any allegations or evidence they receive.”

The fact sheet said that “CBP’s [UFLPA] enforcement has been strong and surgical,” and noted that agents have reviewed more than 9,000 shipments valued at more than \$3.4 billion, including apparel, automotive parts, chemicals, electronics, flooring and solar panels. The press release announcing the strategy updates noted that shipments that did not enter the U.S., either because importers chose to reexport and not challenge the detention, or because companies were unable to prove there was no connection to Uyghur forced labor in the supply chain, were a distinct minority of those reviewed. By value, they were 20%; by numbers, about 40%. However, some of the detained shipments are still under review.

The strategy also informed Congress that the money it has dedicated to UFLPA so far, which has resulted in 338 new CBP positions, isn’t enough.

DHS’s Office of Policy and Plans, whose undersecretary leads the FLETF, said it needs 10 more attorneys, 10 research analysts, five policy analysts, two Mandarin translators as well as operations staffers to support expert contractors and outreach, and money for technology.

The Treasury Department and International Bureau of Labor Affairs (ILAB), which also participate in the FLETF, also said they wanted more staff, but didn’t specify how many. Homeland Security Investigations said it needs \$5.6 million to fund 20 positions to enforce UFLPA.

CBP said the president’s budget request would continue funding for its new UFLPA hires and would pay for country of origin tracing and “forced labor technologies.”

“This continued support is essential to strengthening CBP’s authority to prevent goods made with forced labor from entering U.S. commerce today and for the future,” the strategy said.

“In the coming year, CBP will increase its capabilities to include projects such as UFLPA-specific modifications to the Automated Commercial Environment, the Seized Asset and Case Tracking System, and Advanced Trade Analytics Platform to improve analytical modeling of supply chains and threat indicators of evasion. Additionally, CBP will provide analytical and technical capabilities support to the FLETF to facilitate entity analysis and additions to the UFLPA Entity List. Moreover, CBP will implement system enhancements that will allow CBP to strengthen its UFLPA enforcement mission by broadening targeting and screening across the tariff schedule and in high-risk environments (i.e., de minimis and postal) and increasing audits of potential UFLPA violators to increase identification of illicit actors and illegal transshipment schemes.”

CBP also plans to launch a Forced Labor Case Management portal “to modernize the UFLPA applicability review process.” — Mara Lee

Government: ILAB Will Show Where Forced Labor Gold Goes

The U.S. government, aware that many goods made with forced labor are inputs to finished goods, is working both to identify those inputs and to help importers understand that their goods could be banned from import as traceability becomes more possible.

At a July 29 U.S. Chamber of Commerce panel on forced labor enforcement, Molly McCoy, associate deputy undersecretary for international labor affairs, or ILAB, said that a bureau report to be issued Sept. 5 will talk about specific supply chains, “so you can trace gold from specific mines in Africa, where there’s child or forced labor, all the way to finished jewelry products and where they’re being processed in the world.”

McCoy later told the audience of human rights activists, business people and government officials that while she didn’t want to say what input she is talking about, ILAB is much better able to figure out where that input is used than it was a year ago. “Traceability has improved dramatically,” she said.

Still, McCoy emphasized, as others from the Labor Department and Office of the U.S. Trade Representative have, that unionized workforces are the best insurance against forced labor, more than traceability software or social audits.

“When people do not have any sort of job security, when they do not have any kind of backing, when they’re existing in sort of tenuous jobs, when they’re in danger, or they don’t have any kind of voice, they will not report problems. They don’t feel safe doing it. And a quarterly audit, or a regular audit, especially if it’s on a schedule and a supplier knows it’s coming, is not going to unearth” forced labor or child labor, she said.

Responsible Business Alliance CEO Rob Lederer agreed that effective worker grievance tools matter, but said his group, which represents nine industries that have more than \$9 trillion in sales and that contract with manufacturers in 120 countries, does believe in audits.

“We think it’s a necessary tool, but only a single tool,” he said. “If you do audits in a vacuum, they’re not effective.”

Lederer said standards have been climbing. Where once, companies told suppliers that the labor recruiters they used could charge only “reasonable” fees to would-be workers, now his group says no fee can be charged. Migrant workers must be free to return to their home countries. Lederer said the RBA’s work has resulted in more than \$120 million in recruiting fees being returned to workers over the last few years.

Lederer said that, a few years ago, he had trouble convincing factory managers in Asia to care about worker standards but would argue “you should care because your customers care.”

With the passage of the Uyghur Forced Labor Prevention Act, and the new EU regulation banning the sale of goods made with forced labor, that’s no longer a sales pitch he has to

make: “I will say UFLPA, whether you agree with it or disagree with it, is a major game changer.”

Lederer said he was just in Malaysia, talking about how CBP has enforced UFLPA. “You could have dropped a pin in the room [and heard it.] ... they understood for the first time that wherever they are in the world, that product is going to end up in the international marketplace,” he said—and therefore, “why they should care about a law in the United States or a law in Europe.”

He added that “where there’s ambiguity in a legislation or rule or regulation, and they don’t understand ... what their obligations are, that’s when they become very problematic.”

Although the momentum in the trade remedy law enforcement directorate is still on UFLPA, its leader Eric Choy said, CBP receives allegations of forced labor in countries around the world. He advised businesses to use ILAB’s forced labor report when it’s released in September, investigative media stories and nongovernmental organizations’ reporting on sectors linked to forced labor.

“We are addressing the issue of forced labor globally,” he said. — Mara Lee

Sourcemap: More UFLPA Detentions Possible in Consumer Electronics, Autos

Sourcemap, an international firm that offers supply chain tracing and mapping services, said its government sources are saying that more companies will be added to the Uyghur Forced Labor Prevention Act Entity List before the end of the year—and that automotive companies and consumer electronics are in the Forced Labor Enforcement Task Force’s crosshairs.

Marissa Brock, director of policy and government affairs, said during a Sourcemap webinar last week that the Forced Labor Enforcement Task Force, which names companies for the list, is doing research to add entities in those sectors. “We may see increased detentions in those industries as the summer progresses,” she said. The addition of a Chinese automotive supplier to the list in December led to millions of dollars’ worth of cars being delayed at port after a self-report from Volkswagen; the Senate Finance Committee later learned that Jaguar Land Rover imported spare parts and that BMW imported cars that contained the same component from the listed company. That Chinese company was a third tier supplier to the carmakers. Brock said some industries have believed they are not targets, as detentions of solar panels, apparel, PVC flooring and food items have dominated the news.

Sourcemap CEO Leonardo Bonnani said that enforcement of forced labor laws is accelerating. Brock said there were more UFLPA detentions from January through June than in all of 2023. “Mapping and tracing is definitely changing how those laws are being enforced ... and what makes companies competitive,” Bonnani said. He acknowledged that consumer electronics and car companies have hurdles to tracing, because their products contain so many components—a garment is much simpler. The deeper you go into the supply chain, the less motivated a company may be to provide the information you need for tracing—and the less likely they are to have a compliance staff,

he said. You or your first tier supplier may need to help them with business processes, or with technology.

However, he said, suppliers are more willing and able to share information with their customers regularly. Where mapping might have been done once a year, for a sustainability report, companies are moving toward mapping product by product. "As traceability technology has matured, so has CBP's ability to digest that information," Bonnani said. He said that CBP is doing a series of pilots for ACE 2.0, with an eye to being able to absorb chain of custody information at the shipment level.

"The new European deforestation law very closely mirrors this development," he said. Rather than stopping shipments of cocoa, palm oil or soybeans that regulators suspect were grown on deforested land, companies will have to upload a supply chain map for each container of the commodities covered by the law.

The EU "is not going to allow any in-scope products to enter the economy unless they come with a map," he said, starting on the last day of the year.

Although the Sourcemap officials said they don't see the EU forced labor law as being as strict as the U.S. law, it carries more of a reputational risk, because the EU will maintain a public portal with each investigation, the target company, and the findings of the investigation.

Brock contrasted that with the CBP UFLPA dashboard, which discloses only broad categories, such as "electronics," which covers solar panels, and "industrial and manufacturing materials," which could cover paper, plastics, rubber, wood, stone and glass products that aren't considered consumer goods or automotive or aerospace parts.

Brock warned that importers should not try to guess if there have been many detentions in their industry, and, if not, figure they are at low risk. Moreover, importing directly from China is not an indicator of higher risk—the majority of detentions by value have come from Southeast Asia.

She said that when an importer receives a detention notice because CBP alleges there is Uyghur labor in their goods, they can contest that detention by trying to prove there is no connection to Uyghur labor; they can reexport the goods to the country of origin; or they can abandon the goods. She said that if an importer reexports or abandons the goods, those detentions are not included in the "denied" section of the dashboard.

In April, the director of the Forced Labor Directorate said he didn't have the numbers at his fingertips of how many of the "denied" shipments were failed challenges or voluntary reexports, and CBP didn't clarify after repeated questions (see ITT 04/02/2024).

CBP didn't immediately comment.

DHS Secretary Says Congress Should Restrict de Minimis

Homeland Security Secretary Alejandro Mayorkas called for a "legislative fix" to the de minimis exception "and the exploitation of that exception," the first time the administration

has clearly said it hopes Congress will restrict the program that allows purchasers to import up to \$800 worth of goods per day without paying tariffs. In May, Acting CBP Commissioner Troy Miller said that legislative proposals could bring the number of shipments “down to a manageable level for us,” (see ITT 05/01/2024), but only in response to questions on de minimis.

Mayorkas, in contrast, said near the beginning of his remarks at the Center for Strategic and International Studies July 9 that the department “is working towards and hoping to receive a legislative fix to give us greater authorities to address” the challenge that de minimis presents to forced labor enforcement.

Mayorkas, who was speaking on UFLPA at the CSIS event, said that he didn’t have the capacity to curtail de minimis without legislative action, but said, “we are working without our powers to enhance our regulatory authorities.”

In June, CBP said the proposed rulemaking language was at the Office of Management and Budget (see ITT 06/21/2024)—that proposed rule first began to be drafted two years ago (see ITT 07/20/2022).

The comments are a change from CBP legislative liaison conversations in the House seven months ago, when CBP focused on its 21st Century Customs Framework plans, such as collecting data from new sources, sharing data on intellectual property violations more widely, and reducing bureaucracy when throwing out detained packages. At that time, CBP opposed a proposal by Rep. Earl Blumenauer, D-Ore., to remove Chinese goods from de minimis eligibility, according to a member who was in the meeting.

Mayorkas didn’t say if he supports the bill that moved out of the House Ways and Means Committee, which would restrict de minimis eligibility for goods subject to Section 301 duties, and would require that all de minimis packages include a 10-digit Harmonized Tariff Schedule code. Currently, about 60% of packages have full HTS classifications.

House Speaker Mike Johnson, R-La, said this week that he intends to bring a bill up for a vote this year that includes that provision (see ITT 07/08/2024).

Mayorkas also suggested that the very concept of de minimis—that these imports are insignificant to the government—is flawed.

“De minimis is built on a false premise, that low value means low risk,” he said. He said if the audience could stand beside CBP inspectors and see what the agency discovers—narcotics, ghost guns, “all sorts of contraband”—they would be stunned.

Although most of the tenor of the speech was about the scourge of forced labor, and the administration’s determination to root it out, Mayorkas expressed sympathy for the difficulties companies have in tracing their goods back to raw materials.

“We understand the difficulty in identifying a global supply chain,” he said. “We understand how difficult it is to move a supply chain.”

Mayorkas said that the administration gave “advance warnings” to solar panel importers that their panels contained polysilicon that is forbidden from entering the U.S. “We’ve seen some companies heed our warnings. We’ve seen other companies, frankly, not heed them in a timely fashion. We take a tough stance on that.”

Mayorkas praised solar panel companies that shifted their supply chains, and said as a result, production of polysilicon in India and North America will triple by 2026. He said that he, CBP Executive Assistant Commissioner AnnMarie Highsmith and Eric Choy, who leads the forced labor directorate, “work very, very closely with the solar industry.”

He also talked about close collaboration with domestic textile interests, whom he said taught him “quite a bit about how much the textile industry is suffering by reason of this scourge,” and said that the textile “enforcement strategy was developed in concert with industry.”

The main reason to fight forced labor is a humanitarian one, Mayorkas argued, but he also said: “There are collateral benefits to this work, for example, ensuring that the marketplace is a fair one—that companies that pay substandard wages, that exploit the workers and advantage themselves by being able to reduce their cost” are not allowed to undercut domestic workers.

One of the attendees asked about the presence of forced labor in fast fashion. Mayorkas said he wasn’t really familiar with the term, but understood it refers to clothes that are seen as disposable. “There are a number of concerns that have been raised with that. Not just a risk of forced labor, but also there are environmental concerns, and the like.”

Mayorkas said he didn’t want to say too much, but hinted action could be coming. “We are well aware of those concerns, and we tend not to drive by concerns, but actually address them.” — Mara Lee

CBP Increasing User Fees for Inflation

CBP announced that it’s adjusting for inflation certain customs user fees and corresponding limitations that were established by the Consolidated Omnibus Budget Reconciliation Act for FY 2025.

Affected fees include the merchandise processing fee, vessel and truck arrival fees, and the customs broker permit user fee, among others. The fees are effective Oct. 1, at the start of the 2025 fiscal year.

FMC Drafting Rule for New Charge Complaint Procedures

The Federal Maritime Commission is working on a notice of proposed rulemaking that could put in place a permanent process under which shippers and other companies in the cargo logistics industry can file charge complaints with the FMC. The FMC said it hopes to issue the rule in June 2025.

The commission has been receiving complaints under an “interim procedure” announced in December 2022 as it works to put in place a permanent filing process as required by the Ocean Shipping Reform Act (see ITT 12/01/2022). In its FY 2025 budget request, the FMC said it will likely need more resources for the new charge complaint process, including more employees to process and investigate these complaints (see ITT 03/12/2024).

APHIS Reminds Permit Holders to Switch to eFile Before Legacy System Decommissioned

Crapo Says No Indication of Movement on AGOA or GSP

The Animal and Plant Health Inspection Service reminded APHIS permit holders June 26 that, if their permit was issued in the agency's legacy ePermits system, they must "apply and establish an account in APHIS eFile to continue working with regulated materials" after ePermits is decommissioned in 2024.

"Submit your new application in APHIS eFile as soon as possible to avoid delays," the agency said. Data from ePermits "will not be transferred to APHIS eFile," so the permit holder "will need to apply for a new permit in APHIS eFile." No action is necessary for permits that were issued in APHIS eFile, APHIS said.

The top Republican on the Senate Finance Committee said that while Democrats' insistence that Trade Adjustment Assistance be paired with a renewal of the Generalized System of Preferences benefits program has stalled it so far, he's not convinced that the impasse means GSP has no chance in 2024.

"As of right now, they are saying that, some of them are," Sen. Mike Crapo, R-Idaho, said in a hallway interview at the Capitol. "But ... the Congress is not over yet, so I'm continuing to push. I think we should have done it last year, and the year before and the year before."

Crapo had said he wanted to pass an African Growth and Opportunity Act renewal in July (see ITT 06/05/2024), and said he hasn't heard any pushback on that idea, but the fact that several Democrats also tied AGOA to TAA during that hearing "is not a good sign." He said Chairman Ron Wyden, D-Ore., hasn't ruled out renewing AGOA without a TAA companion, but said, "I haven't had any indication that there's movement yet." — Mara Lee



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2115 Ward Court, N.W., Washington, DC 20037

Albert Warren
Editor & Publisher 1961–2006

Sales

(ISSN 1932-6289)
PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

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and other specialized publications.

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