

Importers to Ramp Up First Sale Valuation Compliance Following Trade Court Ruling, KPMG Says

Following a Court of International Trade opinion throwing the future of first sale import valuations from non-market economies (NMEs) into question (see [ITT 03/02/2021](#)), KPMG released recommendations for U.S. importers who use the valuation practice. One recommendation in the tax firm's April 19 [analysis](#) is to establish a "reasonable care" file in which to file commercial documentation and financial statements to demonstrate compliance with first sale requirements. Importers should also determine which party can best represent the firm in the product's supply chain for the "all costs plus a profit" test for first sale valuations. The rationale for that decision should also be filed in the reasonable care folder, KPMG said.

The CIT opinion ruled on cookware imported by Meyer from Thailand and China through a Chinese middleman. Though he stopped short of saying imports originating in NMEs could never receive first sale valuation, Senior Judge Thomas Aquilino called on the U.S. Court of Appeals for the Federal Circuit to clarify.

Anticipating greater scrutiny of first sale valuations stemming from this decision, KPMG also recommended considering obtaining affidavits from vendors in NMEs confirming that government subsidies and assistance is absent from production. If the vendor cannot produce an affidavit, then the importer should consider a supply chain shakeup.

Additional screening of the comparability of NME suppliers should also be employed, KPMG said. Greater screening efforts include identifying comparable companies in market economies, vetting companies with sales to the U.S. that have similar functions, assets and risk profiles, and including public or private companies in the study to align with the company under review. Annual audits of a company's first sale program should also be conducted, KPMG recommended. Proactively addressing seemingly small administrative challenges can spare future headaches, it said.

KPMG said the long-term implications of the Meyer decision are not clear, but importers should be cautious. "If CBP were to start presuming that related-party transactions involving suppliers in NME countries like China are inherently dubious in order to prima facie disqualify [first sale for export] FSFE transactions, it would lead to a slippery slope potentially disqualifying all transactions from NME countries, not just FSFE transactions," the analysis said. — *Jacob Kopnick*

CBP Constrained in Sharing WRO Information Under Xinjiang Cotton WRO

The government is not trying to trip up importers by obscuring which exporters have been targeted under a withhold release order, a former top CBP trade official said, but the Trade Secrets Act prohibits CBP from releasing manufacturer IDs when the seizure was done under a regional WRO, as with Xinjiang cotton.

Brenda Smith, former executive assistant commissioner for trade, was speaking at "Enforcing U.S. Trade Laws in a Contentious Global Market," a [forum](#) hosted by the National Press Foundation and the Hinrich Foundation on April 13. Smith said, "Without additional statutory protection, CBP is really precluded from releasing that information." She said that when a finding is complete, the agency can share who the exporter was, but that takes time. She acknowledged that knowing the manufacturer ID codes for the goods that are stopped under an WRO would be useful, and said that the administration and Congress may examine this issue as they look at "what is the art of the possible" in stopping the import of goods made with forced labor.

A CBP spokesman said that in the case of a broad WRO, releasing a manufacturing ID number of the producer subject to a detention under that order "would be law enforcement sensitive and CBP therefore would not be able to disclose it."

The panel host noted how timely the panel was, as Secretary of State Antony Blinken, on "Meet the Press" two days

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL

earlier, talked about oppression in Xinjiang. “We need to take, actually, concrete actions to make sure, for example, that none of our companies are providing China with things that they can use to repress populations, including the Uyghur population; we need to be looking at products that are made in that part of China to make sure that they’re not coming here,” he [said](#).

But that’s harder to know when goods weren’t manufactured in Xinjiang but instead have prohibited raw material from the Chinese province. The panel, which also included American Apparel and Footwear Association CEO Steve Lamar, was asked how can importers know where the cotton in garments comes from, when those garments are sewn in Vietnam or Bangladesh, far from Xinjiang province.

Smith said “that is one of the most significant challenges, for both Customs and the private sector.” She said CBP is trying to leverage Customs mutual assistance agreements with Vietnam or other countries that could import inputs from China. She also said that the government has used DNA-like testing for years, and it’s possible that the presence of pollen on cotton could identify where it was grown. “There’s two challenges. One is cost. Can you get the cost of testing down to reasonable levels? The other is time,” she said, noting that if a test doesn’t give instant results, a CBP inspector would have to either store the goods or create a backup in port while a shipment waits for clearance.

Lamar agreed that cost is a challenge. “Great technologies are being invented all the time but are they scalable? Cotton is extremely fungible,” he said, and noted that at a cotton gin, cotton from various places could be mixed, so even if you knew the cotton you purchased wasn’t from Xinjiang, the fiber could come back mixed with Xinjiang product. — *Mara Lee*

CBP Detained 371 Shipments Over Forced Labor Since October

CBP detained 371 shipments between Oct. 1, 2020, and March 31, 2021, due to the possible use of forced labor on the goods, the agency said in newly updated forced labor [statistics](#). That marks an increase of 281 stopped shipments from the previous release of statistics, when CBP said it detained 90 shipments between Oct. 1 and Dec. 31, 2020 (see [ITT 01/29/2021](#)).

The statistics now reflect the broad regional Withhold Release Order on cotton and tomato products from China’s Xinjiang region (see [ITT 01/13/2021](#)), which was issued in January. CBP also issued a major WRO on Xinjiang Production and Construction Corps cotton in early December (see [ITT 12/02/2020](#)).

The agency updates the detention statistics quarterly (see [ITT 03/19/2021](#)), but it is generally wary of providing more detailed information about the goods it stops under a WRO. — *Tim Warren*

Tai Optimistic About Airbus/Boeing Resolution in Next 3 Months, Noncommittal on China Policy

U.S. Trade Representative Katherine Tai heard many bipartisan complaints about the pain of both Section 301 tariffs and Europe’s retaliatory tariffs in response to steel tariffs, but stood her ground on both during a hearing in front of a Senate Appropriations subcommittee responsible for funding the Office of the U.S. Trade Representative.

Ostensibly, the April 28 [hearing](#) was about the budget request for USTR, which received \$71 million for the current fiscal year, but Tai did not ask for any particular amount of funding, and the only time funding was discussed, she said that USTR is not on track to spend its budget because of travel restrictions and the difficulty of retaining and recruiting staff during the pandemic.

Ranking Member Jerry Moran, R-Kan., told Tai: “I remain concerned about the harm that tariffs have caused to families, businesses, farms manufacturers and workers.” He also asked her to reopen the exclusion process for the China tariffs, as he did in a letter signed by 40 senators earlier in the month. She did not commit to restoring expired exclusions or allowing new applications, but said in general she agrees that exclusions should be available to tariff actions like these. She said she knows that both the exclusions and the Section 301 tariffs themselves “are very consequential to stakeholders large and small,” and while she wants to evaluate both the tariffs and the exclusions as part of an evaluation of how the U.S. can be more strategic and effective in China trade policy, she also said, “I am keenly aware time is of the essence.”

On retaliatory European tariffs against recreational boats, whiskey and bourbon, which could go up to 50% in June,

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL

Tai assured senators from states that export those goods that she and her negotiators are working to avoid the doubling of the tariffs. But she also reassured Sen. Mike Braun, R-Ind., that she will not lift the Section 232 tariffs on Europe without a strategy from the EU that would prevent unnaturally cheap steel from China from entering the European market. The U.S. industry believes that EU exports of steel go to the U.S. as a result of China's uneconomic steel production beyond what China needs.

"The tools ... have had an impact on steel production here in the United States, a positive one, but they have also carried with them costs," Tai told Braun. She said she and Commerce Secretary Gina Raimondo are trying to address the friction Section 232 tariffs have caused with trading partners, something she called "unintended consequences."

Aside from 25% tariffs on European steel, the Airbus and Boeing subsidy disputes are the biggest friction between the U.S. and the EU, and Moran told Tai he's very encouraged by the four-month pause in tariffs in that dispute. He noted that Kansas is a center of aviation manufacturing, and asked her what the outlook is for reaching a settlement within the next three months.

"I am very serious when I say it is time for us to resolve these disputes," she said, and echoed the European argument that the U.S. and the EU have to resolve their differences over subsidies so they can come together to confront China's aviation subsidies, though she did not call out China directly in her answer. She said she's committed to making the most of the pause. "I am very motivated and hopeful that we will get the traction we need with our trading partners," she said. She said the U.S. needs to seize the opportunity "to show we can move on [from this long dispute], because we have to."

In her opening statement, Tai pointed to this pause and the negotiated settlement between South Korean companies that make electric vehicle batteries in the U.S. as the first victories for American workers.

"The [battery] settlement is the type of trade policy I believe we need: it supports a larger strategy for creating jobs and investing in innovation and manufacturing leadership by bolstering sustainable renewable energy supply chains, leveling the playing field, discouraging regulatory arbitrage," she said.

Green energy was also on the mind of Sen. Chris Van Hollen, D-Md., who complained that safeguard tariffs against imported solar panels have led to job losses in solar panel installation, and are contrary to the administration's climate goals. The safeguard was supposed to step down to 15% this year, but instead, the Trump administration set it at 18%. It is supposed to expire next year. The safeguard was sought by two solar panel companies after antidumping cases against Chinese and Taiwanese solar panel manufacturers were not enough to prevent a sharp decrease in global prices as production ramped up in China (see [ITT 09/29/2017](https://www.shipamerican.com/news/itt-09/29/2017)).

Tai acknowledged that the solar tariffs are a complex issue, given the different industry stakeholders' needs. But, she said, the fact that there's only one domestic producer left, when 10 years ago, it was a strong sector, is "a very sad story."

"The story of the solar panel industry in the United States really gets at a fundamental issue that we need to confront in our competition with China," she said. "It is a pattern that we see over and over again." She said the U.S. needs to get ahead of subsidization of Chinese industry, and named cement as one area that needs attention. "If we don't keep our eye on the ball, we will continue to experience these types of fights over the last scraps of an industry that we have lost to competitors, and in particular to the Chinese."

Tai said she has not yet talked with her counterpart in China, which is supposed to happen twice a year as part of monitoring the phase one agreement with China. She got several questions about whether China is living up to its purchase promises under the agreement, and she responded that the office is evaluating China's compliance, which also covers biotech approvals, intellectual property protection and market access for certain services. "The picture is more nuanced than you might think, just looking at the trade data," she told Moran.

Several senators talked about the high price of lumber right now, and Sen. Susan Collins, R-Maine, specifically said the U.S. should return to the approach it had with Canada from 2006 through 2015, when Canada had unlimited access to U.S. customers without antidumping or countervailing duties once U.S. prices reached a certain threshold (see [ITT 01/24/2012](https://www.shipamerican.com/news/itt-01/24/2012)), and Canada restrained its exports in times of low demand.

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL

Collins said, “When domestic sources can’t meet the demand, as is the case right now, and prices are so high, we desperately need an agreement ... so we are not imposing antidumping and countervailing duties on Canadian softwood lumber.”

Tai did not agree that a return to that approach is needed, but in response to a more general question about the price of lumber and the duties, she said that negotiators are trying to “engage our Canadian counterparts in some out-of-the-box thinking.”

Also on the topic of relations with USMCA neighbors, Tai heard from subcommittee Chair Jeanne Shaheen that exporters in the states are concerned that Mexico is not living up to its promise to increase de minimis levels. Tai said the U.S. has shared a number of concerns about USMCA compliance with Mexico, but also said, “The last year has not been a normal year, and I do want to recognize that COVID-19 has affected all of us. That doesn’t stop us from wanting to make sure that trade is still happening, and promises are fulfilled.”

She said that USMCA has tools for settling disputes, both cooperative, confrontational and in between. “In order to do USMCA justice ... we need to use all of these tools to see if they work, and then improve them and our use of them. That is the point of doing a trade agreement,” she said. “It’s not to put it on a shelf and look at it—it’s to make sure that it works.” — *Mara Lee*

Raimondo Says ‘It’s Fair’ to Expect Changes to China Tariffs

Commerce Department Secretary Gina Raimondo said it’s “fair” to expect changes to U.S. tariffs against China, but the administration hasn’t yet made a final decision. Raimondo, speaking during a meeting of Commerce’s Advisory Committee on Supply Chain Competitiveness, said the

administration is still undergoing its review of China policies and decisions will be made along with other agencies, including the State Department.

“We are right now undergoing a whole-of-government review of our strategy as it relates to China, including tariffs,” Raimondo said during the April 22 meeting. “So I think it’s fair to say there may be changes, but it’s early for me to say what the changes might be.” Regardless of how tariffs change, she said Commerce will continue to hold China accountable for unfair trade actions. “I can tell you this,” Raimondo said. “We believe we need to take a very aggressive posture as it relates to China and do what we need to do in order to counter their anti-competitive actions.”

Although the administration is discussing tariffs, Raimondo stressed it is focusing on gaining support for President Joe Biden’s jobs plan, which includes increased funding for domestic manufacturing of semiconductors and other critical goods to reduce U.S. dependence on China. She also said the administration wants to secure more funding for “port infrastructure” to make trade more efficient. “The president’s plan is bold because we have fallen behind. And we feel that it’s time to catch up,” Raimondo said. “We’re going to be spending a lot of time on this.”

The administration is prioritizing domestic funding but will be open to imposing and enforcing U.S. “defensive tools,” Raimondo said, including tariffs and export controls. She said the U.S. needs to “make sure we have a level playing field so that American companies and small and medium-sized companies in the supply chain have a chance.” — *Ian Cohen*

Bipartisan Letter From 102 House Members Asks for New Round of Section 301 Exclusion Applications

Two Democrats and two Republicans on the House Ways and Means Committee, along with 98 colleagues, are ask-

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
 Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL



The source for trade compliance news

(ISSN 1932-6289)

PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

Warren Communications News, Inc. is publisher of International Trade Today, Export Compliance Daily, Trade Law Daily, Communications Daily, Warren’s Washington Internet Daily, Consumer Electronics Daily, and other specialized publications.

EDITORIAL & BUSINESS HEADQUARTERS
 2115 Ward Court, N.W., Washington, DC 20037

Albert Warren
 Editor & Publisher 1961–2006

Sales

- | | | | |
|---------------------|------------------------|-------------------------|-----------------|
| Paul Warren | Chairman and Publisher | William R. Benton | Sales Director |
| Daniel Warren | President and Editor | Bruce Ryan | Account Manager |
| Tim Warren | Managing Editor | Jim Sharp | Account Manager |
| Brian Feito | Deputy Managing Editor | Lisa Price | Account Manager |
| Mara Lee | Associate Editor | Matt Long | Account Manager |
| Ian Cohen | Associate Editor | Matt Peterson | Account Manager |
| Jacob Kopnick | Associate Editor | | |

Copyright © 2021 by
 Warren Communications News, Inc.

Send news materials to itnews@warren-news.com
 Phone: 202-872-9200 Fax: 202-318-8984
<https://internationaltradetoday.com>
 Email: info@warren-news.com

ing the Office of the U.S. Trade Representative to re-establish an application process for exclusions to Section 301 tariffs. In an April 27 [letter](#), led by Reps. Ron Kind, D-Wis., Jackie Walorski, R-Ind., Suzan DelBene, D-Wash., and Rep. Darin LaHood, R-Ill., they also say they believe companies that had exclusions that have expired should have expedited procedures for getting a new exclusion.

“We appreciate USTR’s recent extension of tariff exclusions for COVID-19-related products. However, we feel that the current exclusions are insufficient to provide the badly needed relief for businesses and workers struggling with the unprecedented economic hardship caused by the pandemic,” they wrote. “We all agree that we need to execute a bold, strategic plan to hold China accountable for its unfair trade practices, while encouraging businesses to manufacture and operate in the United States. However, while we strategically and comprehensively engage with China, including through tough enforcement, we must also support good-paying jobs in the United States. Many U.S. companies are eager to move supply chains out of China for a variety of reasons and began seeking reliable alternative suppliers over the last several years. However, in many instances those efforts were crippled by travel disruptions and global economic turmoil prompted by COVID-19, particularly for smaller U.S. businesses that do not have a global footprint.”

USTR Katherine Tai was pressed on this question during a Senate Appropriations subcommittee hearing on April 28. She did not commit to restoring expired exclusions or allowing new applications, but said in general she agrees that exclusions should be available to tariff actions like these. She said she knows that both the exclusions and the Section 301 tariffs themselves “are very consequential to stakeholders large and small,” and while she wants to evaluate both the tariffs and the exclusions as part of an evaluation of how the U.S. can be more strategic and effective in China trade policy, she also said, “I am keenly aware time is of the essence.” — *Mara Lee*

CIT Chief Judge Orders Stay of New Section 301 Cases

Chief Judge Mark Barnett of the Court of International Trade signed an [administrative order](#) April 28 that will automatically stay any new complaints filed in the massive Section 301 litigation before they are assigned to the three-judge panel he shares with Judges Claire Kelly and Jennifer

Choe-Groves. Any lawyer seeking to lift the stay of a new Section 301 case must first consult with the plaintiffs’ steering committee at least three days before filing a motion and must show “good cause” for the exemption, the order said.

The court expects “to determine the appropriate next steps” for dealing with the new cases after the first-filed HMTX-Jasco sample case is resolved, it said. Barnett told an April 26 status conference (see [ITT 04/29/2021](#)) he has been “monitoring the ongoing trickle of additional 301 cases.” Though the court has continued assigning the new cases to the three-judge panel, and all the cases have been stayed until HMTX-Jasco is resolved, “I do worry about the possibility, at least, of some future case creating a conflict that could require one or more of us to have to recuse,” he said of himself and fellow panel members.

New Section 301 complaints continue coming in at the rate of about one a day. All the roughly 3,700 cases allege the lists 3 and 4A tariffs on Chinese goods are unlawful and should be refunded. The 34-minute status conference was largely procedural and dispatched with a number of what Barnett called “housekeeping items.” It was convened amid the Department of Justice’s opposition to the refund relief importers seek, if they prevail in the litigation, on liquidated customs entries from China with lists 3 and 4A tariff exposure (see [ITT 04/27/2021](#)). HMTX-Jasco attorneys from Akin Gump are seeking a “protective” injunction to freeze unliquidated imports from being liquidated. DOJ’s response to the injunction motion is due May 14. — *Paul Gluckman*

Grassley Says ‘Nothing Conclusive’ on MTB, GSP in Senate Finance Discussions

Sen. Chuck Grassley, R-Iowa, said that Senate Finance Committee members have been seeking a path to renew the Generalized System of Preferences benefits program and the Miscellaneous Tariff Bill, but have not been able to yet. “There was some talk a week ago about some sort of a deal that might include some extension of that, but there was nothing conclusive on it,” he said. He didn’t specify whether he was speaking about MTB, GSP or both, and a trade staffer for the committee and one of his communication staffers did not respond to follow-up questions April 20.

Grassley said now that 100 days have passed in the new administration, he’s going to start asking the U.S. trade rep-

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL

representative when she will turn her attention to a free trade agreement with the United Kingdom, or Japan, and when she might start talks with China. — *Mara Lee*

Vietnam, Taiwan, Switzerland Not Currency Manipulators, Treasury Says

While Vietnam, Taiwan, and Switzerland exceeded thresholds established by the Treasury Department to identify potentially unfair currency practices, a [report](#) from the department released April 16 said there is no evidence that they manipulated their currency to gain unfair trade advantage. The report noted that in early 2021, Treasury offices began “enhanced bilateral engagement with Vietnam and is working with the Vietnamese authorities to develop a plan with specific actions to address the underlying causes of Vietnam’s currency undervaluation.” It was already engaged with Switzerland on the topic, and will continue those discussions. It said similar talks should be done with Taiwan. The report noted that the Taiwanese currency appreciated in 2020, but given the strength of Taiwan’s economy that year, it did not rise as much as would be expected. — *Mara Lee*

OFFICE LOCATIONS

Moonachie, NJ (201-478-4600) * Long Beach, CA (562-435-2327) * Schaumburg, IL (630-860-0782)
Hong Kong • Shenzhen • Guangzhou • Shanghai • Ningbo • Nanjing • Dalian • Tianjin • Qingdao • Xiamen

DOMESTIC CARGO OPERATIONS

Kearny, NJ (201) 941-4990

www.shipamerican.com

3PL LOCATIONS

Kearny, NJ (Central Ops) * California * Joliet, IL