

MTB, GSP Renewal Now Part of China Package; Counterfeiting Enforcement Also Included

An amendment that will allow expanded information sharing from CBP on counterfeits, and which will renew the Generalized System of Preferences benefits program and the Miscellaneous Tariff Bill, will be part of the China package expected to pass the week of June 8. The amendment, sponsored by Finance Committee ranking member Sen. Mike Crapo, R-Idaho, was modified slightly from its first introduction, when it failed to pass the filibuster threshold of 60 votes. This [version](#), which [passed](#) with 91 votes on May 27, no longer expands a forced labor initiative on seafood to all seafood products.

The amendment also directs the Office of the U.S. Trade Representative to analyze the impact of Section 301 duties on consumers and small businesses before imposing tariffs, “with a goal of mitigating the impact of duties ... including by evaluating alternatives or modifications ...” There are numerous Section 301 tariff lists pending over digital services taxes in Europe and elsewhere.

The amendment also says the USTR must establish an exclusion process under Section 301 “unless [USTR] determines and certifies to the appropriate congressional committees that maintaining an exclusion process—(A) would impair the ability of the United States to maintain effective pressure to remove unreasonable or discriminatory practices... or (B) is impractical due to the low value of the duties imposed.” In Crapo’s remarks, he said the bill would restart and reform the product exclusion process.

Crapo called the revised amendment the Trade Act of 2021, and said in a floor speech that he and Finance Committee Chair Sen. Ron Wyden, D-Ore., worked together for months to formulate it. The amendment “is an example of the bipartisanship that can be achieved if we put in the hard work to work out the details and the differences between us on very critical issues,” Wyden said.

Crapo, in his summary, [said](#), “It strengthens oversight over U.S. trade policy by providing an inspector general to the USTR, and by ensuring the application of section 301 tariffs related to China are calibrated to provide the necessary leverage to support American competition while ensuring U.S. competitiveness in manufacturing.”

He also said it requires USTR to initiate talks with Japan, Australia and India to develop a strategy on critical minerals to counter China’s dominance in the sector.

On counterfeiting, the bill would require an annual report by CBP on seizures of counterfeits, what country they were from, how they arrived, and in what categories. CBP then will be required to increase inspections of imports from the top source countries for counterfeit goods, as identified by the report. The bill also authorizes CBP to share information on suspected violations of intellectual property rights with “any other party with an interest in the merchandise.” Restrictions on sharing information about counterfeits with trademark holders have been a hurdle to stopping counterfeits, CBP has said (see [ITT 04/16/2021](#)).

On seafood, the bill orders CBP to issue regulations on the verification of seafood imports, to ensure none of that seafood is produced with forced labor, and to do so within a year. It also requires CBP’s Forced Labor Division to brief the Senate Finance Committee and the House Ways and Means Committee at least every 90 days on investigations of forced labor, progress made toward issuing withhold release orders, and progress made toward closing those investigations.

The bill aims to improve supply chain resiliency, but relies on a voluntary database from importers who would tell the Commerce Secretary where they import from; what challenges there are to secure inputs if the business is a manufacturer; the business’s sense of vulnerabilities of this sourcing; why the good is imported; and whether the business would be interested in sourcing the good domestically.

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The top Republican on the House Ways and Means Committee, Rep. Kevin Brady of Texas, responded to the amendment's passage by saying he hopes that he and Chairman Richard Neal, D-Mass., can reauthorize the GSP and MTB quickly, because the lapse of those programs in December means "American workers have been kept waiting for too long."

The U.S. Chamber of Commerce [reacted](#) to the changes to the China package—which it supports—and applauded Crapo and Wyden for getting GSP and MTB renewal included in the bill. "We hope that [the bill] will be improved as the legislative process continues. In particular, the Chamber urges elimination of the Country of Origin Labeling requirements, which would impose significant burdens, liability, and costs on American retailers and companies." That COOL requirement applies to sales listings of goods sold online.

Sen. Marco Rubio, R-Fla., was one of the few to vote no on the amendment, which he said could "inadvertently end up benefiting the Chinese Communist Party." Some products on the MTB list are from China. — *Mara Lee*

EU, US Aim to Lift Section 232 Tariffs and Retaliatory Measures by Year's End

After the European Union [announced](#) May 17 that it will not double retaliatory tariffs on U.S. exports on June 1, exporters expressed relief. More significantly, the joint statement between the EU and Office of the U.S Trade Representative said the two sides are aiming for a united approach to global overcapacity distortions that would allow the 25% and 10% tariffs under Section 232 to be removed at the end of the year. Domestic metal producers welcomed that news, but the union that represents steelworkers reacted with some alarm.

Distilled Spirits Council CEO Chris Swonger [said](#), "Distillers across the United States are breathing a huge sigh of relief after bracing for a 50% tariff on American Whiskeys in just a matter of days that would have forced many craft distillers out of the EU market. We recognize there is still work to be done to get EU and U.S. spirits back to zero for zero tariffs. We greatly appreciate the Biden administration's ongoing efforts to resolve these longstanding trade disputes and reduce the economic pain felt by those industries unfairly caught in the middle."

The CEO of Harley-Davidson said the announcement that tariffs affecting its motorcycles will stay at 31% rather than going to 56% is "the first step in the right direction," but [said](#) the company will continue to fight in court a recent Binding Origin Information decision in the EU that said that Thai-made motorcycles deserve the 25% retaliatory tariff, because Harley moved production from Wisconsin to Thailand to avoid the punishing tariff.

The Aluminum Association never supported 10% tariffs on imported aluminum, and its CEO Tom Dobbins [said](#), "We look forward to supporting this process and are hopeful that the ultimate outcome will both address global aluminum overcapacity and help normalize the U.S.-EU trading relationship."

The American Iron and Steel Institute, in contrast, thinks the 25% tariffs are an important protection for its members, but its top official [expressed](#) hope that the European Union could coordinate with the U.S. on "substantive solutions to the global overcapacity crisis in steel while maintaining the necessary trade measures to prevent surges in steel imports that could quickly undermine the U.S. industry and our national security."

But the United Steelworkers responded with a hackles-up statement. They thanked the administration for listening to them, but [added](#), "We cannot support any approaches that do not provide measurable positive results. The EU is an important ally, but in the past, it has been part of the problem, not part of the solution." — *Mara Lee*

Section 301 Protest Volume Seen as Potentially Overwhelming

Lawyers speaking at the Foreign Trade Association's World Trade Week [event](#) said CBP is already drowning because of the consequences of the massive increase in post-importation tariff exclusions, and they're expecting it to get worse. Michael Roll, from Roll & Harris trade law firm, said he's betting that the Office of the U.S. Trade Representative will reopen the exclusion process for Section 301 tariffs before summer's over. But he expects it will take until late 2021 or early 2022 for exclusions to be granted, which means many imports that entered after exclusions expired, or that never had exclusions, will have been liquidated by the time the importers learn they didn't have to pay the tariff.

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He said the volume of protests is going to be impossible for CBP. Already, there were 27,000 protests covering 72,000 entries last year, and so far this year, 7,000 protests covering 33,000 entries.

If you think that's crazy, what if importers win their case that the goods subject to 7.5% tariffs on List 4a and the goods subject to a 25% tariff on List 3 should not have faced these tariffs. There are millions of entries covered by those lists (see [ITT 05/18/2021](#) and [ITT 11/10/2020](#)). So lawyers in that litigation, which includes Roll, say that liquidation should be suspended until the case is decided. He said the government's position seems to be that a ruling that the tariffs were illegal is "only going to apply to tariffs going forward or not liquidated," he said May 20.

Su Ross, who chairs the regulatory practice at Mitchell Silberberg, said that for the first time in her career, she's seen CBP go past the statutes of limitation on rulings. She said a protest needs to be resolved within three months to be commercially useful, and now it's taking two, three or four years.

Panelists talked about congestion for inbound traffic at the ports, and the difficulty for exporters to get spots on ships heading back to Asia, as carriers would prefer to return more quickly with empty containers.

One webinar attendee said, "As an exporter we are not even being asked to pay higher rates for outbound containers. Our bookings are simply being rolled or canceled. It's hard to see how this is purely an economic commercial decision."

Ross said one would hope that the Federal Maritime Commission would step in over this practice and blank sailings. "Realistically, they're not going to," she said.

Ross said the FMC, even if it had the stomach to challenge the practice of sailing back with empty containers, the regulatory process is not a fast solution. She said she thinks a bill will be introduced to "put a stop to the nonsense," and said the National Industrial Transportation League is calling for a wholesale rewrite of the Shipping Act of 1984. "We're going to see some changes, but we're not necessarily going to see anything short term," Ross said.

Foreign Trade Association Vice President Mark Hirzel, who was moderating the panel, asked if, with the recent departure of three senior trade officials at CBP, the agency will be able to manage all these challenges.

Ross said, "I don't want to suggest they can't learn the ropes," referring to new political appointees, but she said that with the loss of the institutional knowledge, it will be hard. "There are a lot of really good people at Customs," she said, "but they're in a tough spot. They've lost a lot of their first, second and third levels."

Roll agreed, and added that they're authorized for 1,200 import specialists, and there are only about 800 on staff. — *Mara Lee*

'Outdated' Shipping Regs Preventing FMC From Addressing Port Issues, FMC Chair Says

Shipping regulations should be revised to allow the Federal Maritime Commission to better address unfair detention and demurrage fees, agricultural export issues and a range of other shipping problems at U.S. ports, FMC Chair Daniel Maffei said. While he didn't propose any concrete changes, he said he is "frustrated" with the situation at the nation's ports and is speaking with Congress about potentially proposing regulatory changes. "I'm not prepared to go into any details now, but I do think that some things clearly need to be clarified," Maffei said during a May 5 National Customs Brokers & Forwarders Association of America conference. "There are many, many areas where the law is vague or so outdated because it simply was written mostly in the time of tariffs, and now it's mostly contracts."

In recent months, hundreds of agricultural groups and lawmakers have urged the FMC and other U.S. agencies to intervene amid reports that carriers are declining shipments of agricultural exports (see [ITT 03/08/2021](#) and [ITT 03/11/2021](#)). Industry groups also have asked the FMC to penalize carriers that impose unfair demurrage and detention fees and that refuse to comply with guidelines issued by the agency last year (see [ITT 04/29/2020](#) and [ITT 11/17/2020](#)).

Maffei said the FMC, led by Commissioner Rebecca Dye, is diligently investigating those reports (see [ITT 02/17/2021](#) and [ITT 11/20/2020](#)). "Commissioner Dye does really want

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to get to the bottom of this,” Maffei said. “She is very well connected and knows what’s going on, and has already gotten many reports.”

But he also said many of the issues—including high container rates—fall outside the FMC’s jurisdiction unless there is a clear violation of the Shipping Act. “I want to be candid with you about the limits of what the FMC can do both immediately and in the long term,” he said. “Congress has given us the capacity to guard against certain anticompetitive behavior. However, rising freight costs, no matter how high or how quickly they might have risen, are not in and of themselves indicators of manipulation of the marketplace.”

He also said it is Congress that should be closely looking at whether ocean carriers are declining to carry U.S. agricultural exports, because the FMC’s laws don’t “have anything in [them] that gives us tools to, per se, protect these exporters in a way other than just making sure that the Shipping Act is observed.” To address the problem, the FMC may need to consider expanded authorities, Maffei said, adding that he and other commissioners are having “private conversations” with lawmakers about those issues.

“I hope you’ve seen that I’m frustrated,” he said. “Rest assured, the investigation, supplemented by the other measures we have taken, is the Federal Maritime Commission’s No. 1 policy priority right now.” — *Ian Cohen*

DHS Announces New WRO on Chinese Ocean Fishing Fleet

CBP [issued](#) a new withhold release order on seafood harvested by vessels owned or operated by the Dalian Ocean Fishing of China, Department of Homeland Security Secretary Alejandro Mayorkas said on a May 28 call with reporters. CBP previously issued WROs on specific vessels, but this one is the first to apply to a full fleet, he said. Dalian’s fleet includes 32 vessels, he said.

Acting CBP Commissioner Troy Miller said the WRO also applies to end products like canned tuna and pet food. While several recent WROs aimed at China involve the suspected forced labor of Uyghur Muslims, that is not the case with this WRO, he said. The ships are “scattered off the coasts of China, Indonesia and Senegal” and the labor concerns mostly involve workers from Indonesia, he said

The fishing company is in bankruptcy and hasn’t sent much seafood to the U.S. recently, Miller said. Last year, there were two entries worth about \$233,000 and none so far this year from Dalian vessels, he said. But, “going back to 2018, there’s about \$21.6 million worth of imports, so as they come out of bankruptcy and we see activity, we wanted to be sure we address it now.”

During fiscal year 2021, CBP detained about 550 shipments containing more than \$71.5 million worth of goods suspected of being made with forced labor, Mayorkas said. But “the detention numbers don’t tell the whole story.” Miller said. “This fiscal year, CBP targeted a total of 1,174 shipments subject to withhold release orders that contain goods worth more than \$735 million. Some importers, recognizing that their merchandise may be subject to detention, chose not to file for entry when their merchandise arrived at the U.S. port of entry. This tells us the withhold release orders act as a deterrent to importers trying to bring in products made by forced labor.”

Some expect CBP to eventually issue a WRO related to solar panel inputs from Xinjiang (see [ITT 04/26/2021](#)), though when asked about that possibility, Miller declined to comment. — *Tim Warren*

More Than 100 Shipments Being Held Under WROs at Port of LA/LB

The Port of Los Angeles/Long Beach is “supporting” 17 withhold release orders and “we currently have well over

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100 shipments on hold pending determination of admissibility” due to suspicion of forced labor, CBP Port Director for the LA/LB Seaport Donald Kusser said while speaking during a Foreign Trade Association World Trade Week [event](#) May 20. Such shipments can remain in CBP custody for “months during the investigatory process,” he said.

The growth in e-commerce has driven an increase in containers filled with consolidated shipments with goods for multiple consignees, he said. “This has been a challenge for us, as some of these are entered as Type 01 consumption entries for a single importer,” he said. “However, when we inspect these shipments we are finding that they contain packages already barcoded with U.S. shipping labels destined for the true importer or consignee.” Such shipments “raise concerns around the issue of right to make entry since the importer of record is not the true owner of the goods,” he said.

Tariffs on Xinjiang Goods, Limitation on GSP Subject of Endless Frontiers Amendment

The Endless Frontiers legislation continues to attract amendments relevant to trade, such as Sen. Josh Hawley’s amendment, [published](#) May 24, that would make countries ineligible for participation in the Generalized System of Preferences benefits program if any product from that country is identified by the Bureau of International Labor Affairs as one made with child labor or forced labor. Hawley, R-Mo., also proposes that, starting 90 days after the bill’s passage, there will be an additional 100% duty on all goods produced in Xinjiang, or goods with components from Xinjiang, for at least one year. At that time, the tariff would only be lifted if the administration “determines beyond a reasonable doubt that no slave labor, forced labor, indentured labor, or child labor exists in the People’s Republic of China; and submits to Congress and makes available to the public a report on that determination.” There have been hundreds of amendments proposed for the China package, and Majority Leader Chuck Schumer will decide which ones deserve floor debate and a vote. He has said he wants a vote to happen this week. — *Mara Lee*

Robust Enforcement, Due Diligence Concerns Among Growing Sanctions Compliance Challenges, Lawyers Say

Sanctions compliance is increasingly presenting challenges to companies around the world as more countries turn to

sanctions as a foreign policy tool, Baker McKenzie lawyers said. Some recent challenges include the growing emphasis on sanctions enforcement and the due diligence issues presented by countries with little publicly available information on ownership chains, the lawyers said.

Since leaving the European Union, the U.K.’s Office of Financial Sanctions Implementation has taken an “increasingly robust approach to enforcement,” said Julian Godfray, a London-based Baker McKenzie lawyer, speaking during a May 25 webinar hosted by the firm. Along with announcing a new OFSI director this year (see [ITT 02/10/2021](#)), the agency has been “busy” updating and discussing a range of guidance documents to illustrate its compliance expectations to industry. OFSI is trying to ensure that its “messages around the U.K. regime and compliance are fully disseminated,” Godfray said.

And although Canada doesn’t publicize its sanctions enforcement work as often as the U.S. does, the country has been active at the border and looking to detain shipments that violate its sanctions and export control laws, said lawyer Brian Cacic, a Toronto-based trade lawyer “Folks often look at Canada’s sanctions program, and they often ask us, where are those headline stories of the companies getting prosecuted under a sanctions legislation?” he said. “I think sometimes that perhaps leads to a perception that our sanctions laws are not being enforced or investigated quite diligently.”

But Cacic warned companies not to “lead yourself into a false sense of security,” adding that he regularly hears about investigations being conducted by the Canada Border Services Agency. “Although we don’t see the big headlines, we certainly know that there’s an active investigations unit looking into these transactions with sanctioned countries,” he said.

Under the Biden administration, the U.S. has continued to target large financial institutions, said U.S. trade lawyer Meghan Hamilton. But recently the Treasury’s Office of Foreign Assets control has focused on digital money transfer companies, including BitPay (see [ITT 02/19/2021](#)) and MoneyGram (see [ITT 05/03/2021](#)), which were fined earlier this year about \$500,000 and \$34,000, respectively. “The biggest penalty cases still remain financial institutions that are processing transactions with some kind of sanc-

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tioned country or sanctioned party that touch in some way U.S. jurisdiction,” Hamilton said. “That’s really where we continually see the bigger enforcement cases.”

She also said industry should expect the relatively slower sanctions pace under the Biden administration to continue, which has been a marked difference from the sometimes unpredictable and unilateral sanctions imposed by the Trump administration. She also said OFAC officials have been “very vocal” about their review of U.S. sanctions regimes that began earlier this year (see [ITT 02/24/2021](#)) and have not rushed to change some regimes that many observers had expected would be quickly revised.

“We were thinking there would be a more immediate change with regard to policy towards Cuba. Haven’t seen that. We were thinking maybe something different with regard to Venezuela right out of the gate. That didn’t happen yet either,” she said. “So it’s just been a different approach certainly from the last administration.”

But Hamilton does expect the U.S. to continue to actively sanction the Belarusian government, which has already faced designations for its contested elections last year and alleged human rights violations. OFAC recently announced that it plans to revoke a general license that authorizes certain transactions with nine sanctioned Belarusian state-owned entities (see [ITT 04/20/2021](#)). “I would say in the future we’re going to see more designations, assuming the political situation stays the same,” she said. “I think that’s fair to say.”

The U.S., along with other countries, has also sanctioned the Myanmar military (see [ITT 04/09/2021](#)) following its coup of the government earlier this year, and complying with those sanctions has been challenging, said Olof Konig, a Stockholm-based trade lawyer. Konig said companies are struggling to conduct due diligence because of the “lack of publicly available information,” in Myanmar, which can cloud ownership chains. “For those companies that are currently relying on the automatic screening programs ... please be aware that that information is quite often not complete,” Konig said. “It’s often required to collect information from your counterparties and other local sources in Myanmar in order to ensure that those partners that you’re dealing with are not owned or controlled by” sanctioned entities.

CBP Announces 2021 TRQ for Tuna in Airtight Containers

CBP [announced](#) the calendar year 2021 tariff rate quota for tuna in airtight containers. It said 18,345,004 kilograms of tuna in air-tight containers may be entered and withdrawn from warehouse for consumption during 2021, at the rate of 6% under HTS subheading 1604.14.22. Any such tuna that is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5% under HTS subheading 1604.14.30. — *Tim Warren*

FDA Creates New FSVP Importer Portal for Remote Record Requests

FDA has created a new online portal for food importers to submit their Foreign Supplier Verification Program records to the agency during remote inspections. The FSVP Importer Portal, which can be accessed with an active account ID on the FDA Unified Registration and Listing System (FURLS) page, serves “as a dedicated, streamlined way for FSVP importers to submit FSVP records electronically to the FDA, if they choose,” CBP said in a CSMS [message](#) May 11.

“FDA typically conducts inspections of FSVP records at an importer’s place of business,” the Cheese Importers Association of America said in a May 11 member [update](#). “However, FDA has significantly increased the use of written requests for documents since the start of the COVID-19 pandemic. If FDA requests documents in writing, the FSVP regulation requires importers to provide FSVP records electronically or through another means that delivers the records promptly.”

“Registration with and use of the FSVP Importer Portal is voluntary, although it may provide a more convenient method of providing documents in response to a Form FDA-482d, “Request for FSVP Records,” the CIAA said. “To use the FSVP Importer Portal, an account must be [created](#) with the FDA Industry Systems,” which is the network used for FURLS, CIAA said. “FDA states that accessing the FSVP Importer Portal is best through either Microsoft Edge or Google Chrome.”

ITC Details Upcoming Changes to 2022 Tariff Schedule

The International Trade Commission published a new [report](#) detailing its recommended changes to the 2022 Har-

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monized Tariff Schedule, mostly to implement upcoming changes in the new year to the World Customs Organization's Harmonized System nomenclature. Changes adopted as a result of these final recommendations will take effect Jan. 1, 2022.

“The recommended HTS amendments relate to a wide range of products and product groups, including, for example: flat panel display modules; 3D printers; unmanned aerial vehicles (i.e., drones); electric vehicles; tobacco products intended for inhalation without combustion; edible insect products; virgin and extra virgin olive oil; cell therapy products; rapid diagnostic test kits for detecting the Zika virus and other mosquito-borne diseases; placebos and double-blinded clinical trial kits; electronic waste (e-waste) and other hazardous waste; amusement park equipment; and cultural articles (i.e., antiquities),” the ITC said in its accompanying [news release](#).

“Following the receipt and consideration of the views of interested federal agencies and the public, the Commission is submitting its recommendations to the President in the form of a report that includes a summary of the information on which the recommendations were based, together with a statement of the probable economic effect of each recommended change on any industry in the United States,” the ITC said in the introduction to the report. “The report includes a copy of the written views of interested parties.”

Before any changes take effect, the Office of the U.S. Trade Representative will submit a report to the relevant committees in Congress—House Ways and Means and Senate Finance—with recommended modifications and the reasons for making them. “Following expiration of a 60-day lay-over period before the Congress, the President is authorized to proclaim the modifications to the HTS,” the ITC said in its news release.

Changes to some 350 products stem from the WCO HS changes set to take effect worldwide at the beginning of the year. The report includes recommended text to implement the changes, as well as a concurrence table showing current tariff subheadings and where they would fall under the new recommendations.

The report also details tariff schedule changes for blanched peanuts. “The modification would implement a recent

WCO classification opinion and thereby conform the HTS with the Harmonized System,” the report said. “The WCO decided that blanching peanuts to remove their skin did not constitute roasting or otherwise cooking,” the report said. “The WCO concluded that the heat treatment of blanching peanuts was mainly designed to remove the skin and ensure better preservation and that it did not alter the character of the peanuts as a raw or natural product. Accordingly, the WCO concluded that blanched peanuts are more properly classifiable as raw or natural products in heading 1202 and should not be classified as prepared or preserved peanuts in heading 2008.” — *Brian Feito*

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