

FMC Issues Recommendations to Address Supply Chain, Port Issues

The Federal Maritime Commission [this week](#) issued a series of long-awaited [recommendations](#) to address issues in the international freight delivery system that have been exacerbated over the past year due to the COVID-19 pandemic. The recommendations, which resulted from Commissioner Rebecca Dye's fact-finding mission that [began](#) in March 2020, aim to minimize barriers to Shipping Act enforcement and better allow the FMC to "facilitate prompt and fair dispute resolution," Dye [said](#) July 28.

The fact-finding mission was sparked by a range of complaints from lawmakers and shippers, including allegations that ocean carriers have been violating regulations on detention and demurrage fees (see [ITT 11/20/2020](#)) and declining to carry certain U.S. exports (see [ITT 03/08/2021](#)). Other industry groups have complained about the severe congestion at U.S. ports, which has led to equipment shortages, labor shortages and increasing container dwell times (see [ITT 02/08/2021](#) and [ITT 02/25/2021](#)). FMC Chair Daniel Maffei suggested in May that the U.S. may need to revise its shipping regulations to fix those problems (see [ITT 05/05/2021](#)).

Three of Dye's recommendations ask Congress to revise shipping statutes, including one request that would allow the FMC to authorize "double reparations" for shippers that successfully show that a carrier or marine terminal operator violated detention and demurrage rules. Without that change, the FMC said shippers will continue to be discouraged from filing a complaint against a carrier, because it doesn't "make sense" for a shipper to "recover hundreds or thousands of dollars of unlawful demurrage or detention if it will cost significantly more to obtain a reparations award."

Congress should also allow the FMC to issue "refunds or restitution" to parties injured by a shipping regulation violation. While the FMC can issue civil penalties to

violators, it can't award a refund to the injured party, Dye said. Not only would these refunds encourage parties to file complaints, but it also may also persuade them to assist the commission's investigation, she said.

The final request to Congress would revise regulations to "better reflect" the types of supply-chain entities that may be subject to retaliation by carriers for complaining to the FMC. While U.S. regulations recognize that "shippers" may be subject to retaliation, they don't list non-shippers, "such as truckers or others working on behalf of shippers," Dye said. "[T]he statute should be aimed at also protecting the ability of shippers and others to complain to the Commission about potentially unlawful conduct free from retaliatory fears."

Other recommendations said the FMC should provide more guidance on the current anti-retaliation prohibition and the standard for recovering attorney fees in private party complaints. The commission should also "reiterate" that any person can file a complaint alleging a Shipping Act violation" and revise the FMC website to "more clearly" explain the differences between private party complaints, the FMC's Bureau of Enforcement investigation and enforcement, and a dispute resolution by the Consumer Affairs and Dispute Resolution Services (CADRS) office. The FMC should hold a webinar to help explain these differences, Dye added.

Dye also recommended that the FMC gather industry feedback on whether it should require carriers and terminal operators to include "certain minimum information" with their detention and demurrage billings and follow "certain practices" regarding the timing of those billings. Dye said the commission should issue an advance notice of proposed rulemaking to solicit public comments on this because of the numerous complaints it has received about detentions and demurrage billing practices.

The last recommendation calls for CADRS to designate dedicated staff to export-related issues, including an "Ex-

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port Expert.” This would help CADRS “better handle” exporter problems and “keep other parts of the Commission apprised of issues particular to exports.”

Dye said she is working on two other related initiatives, including an “exciting” project with the Port of Los Angeles to explore how their collected data can help enforce demurrage and detention. Dye also said she plans to work with ocean carrier executives to revitalize a program from 2010 under which ocean carrier CEOs agreed to “personally intervene in emergency situations involving U.S. exporters.”

CBP Set to Test 3 Potential MID Replacements Beginning Late Spring, Agency Official Says

CBP plans to begin a pilot in late spring 2022 to test potential new global business identifiers to replace its much-maligned manufacturer/shipper identifier (MID) (see [ITT 12/08/2017](#)), said James Byram, executive director of CBP’s Trade Transformation Office, July 22 at CBP’s Virtual [Trade Week](#). In the pilot, the agency will test three potential business identifiers, with the expectation that, should the pilot succeed, it will end up requiring use of two of them as an MID replacement, Byram said.

The three identifiers are the Global Location Number or GLN, operated by GS1 and currently used by more than 2 million companies; the Data Universal Numbering System number, or DUNS number, with over 300 million issued worldwide by Dun & Bradstreet; and the Legal Entity Identifier, or LEI, of which 1.7 million have been issued worldwide by the Global Legal Entity Identifier Foundation (GLEIF).

Pilot participants will have to obtain, and submit in ACE at time of cargo release, all three identifiers for the manufacturer/producer, shipper and seller, Byram said. CBP will also be collecting optional identifiers for the distributor, exporter and packager.

Costs for the identifiers vary. According to Byram, the DUNS number is free, although requests to obtain a DUNS number within 30 days are subject to fees. The LEI is obtained from local operating units that vary in what they charge, so companies can shop around, Byram said. For example, Bloomberg Finance charges \$65 for LEI registration, and \$50 for renewal. GLNs must be obtained from the

local GS1 office in the country where the entity is located, he said. For example, a company located in Mexico would pay a flat inscription fee of \$1,840, and annual renewals cost \$260. Prices for U.S.-based companies vary depending on the number of locations and items that a company needs to identify, from a \$250 initial fee and a \$50 renewal fee for one to two GLNs, up to a \$10,500 initial fee and a \$2,100 renewal fee for 100,000 or more GLNs, Byram said.

Byram said CBP is “actively” working with the entities that issue the identifiers to potentially offer all three at a reduced price to pilot participants. Once the start date for the pilot is determined, the issuers will set up a designated point of contact to answer any questions participants may have, he said.

CBP will evaluate the identifiers based on how well they meet criteria identified by the agency, including that they are globally unique, are location- and function-specific, track supply chain roles and accommodate sharing of data across agencies. Byram said he does not anticipate the pilot will lead to adoption of a single identifier, and thinks it most likely CBP will have to rely on two of the three, though CBP could adopt all three if it’s the only way to meet the criteria, or none if the pilot does not go as expected.

The pilot, which CBP is calling the GLI evaluative proof of concept (EPOC), will initially focus on six product categories—alcohol, medical devices, personal items, seafood, toys and U.S. goods returned—imported from 10 countries: Australia, Canada, New Zealand, the United Kingdom, China, France, Mexico, Vietnam, Italy and Singapore.

Volunteers for the pilot will have to obtain all three identifiers for themselves and submit them prior to the beginning of the pilot, and Byram said CBP will give them plenty of time to do so. Byram anticipates CBP will issue a *Federal Register* notice in November or December detailing program requirements and soliciting participants. A draft CBP and Trade Automated Interface Requirements document or electronic data interface changes to include the GBI was published in April, and CBP is targeting releasing the GBI capability in the ACE certification testing environment in January, and in the live ACE production environment in late spring. — **Brian Feito**

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CBP to Increase User Fees for FY22

CBP will increase Consolidated Omnibus Budget Reconciliation Act fees in fiscal year 2022 by 11.009% to adjust for inflation, the agency said in a [notice](#). Affected fees include the merchandise processing fee, vessel and truck arrival fees and the customs broker permit user fee. The Fixing America's Surface Transportation Act, passed in 2015, required that CBP make inflation adjustments and fee limitations when deemed necessary (see [ITT 12/04/2015](#)). The increases are effective Oct. 1.

FDA Working With CBP on Blockchain Traceability Pilot

FDA is working with CBP to conduct a pilot on the use of blockchain and cloud technologies to trace food supply chains “from farm to importation,” said Dawne Hines, director of the FDA Division of Northeast Imports, July 22 during CBP's Virtual [Trade Week](#). The proof of concept aims to aid “government to government communications,” reduce data duplication and move toward the future elimination of paper, she said.

Fresh blueberries and avocados will be the first foods to be tested under the proof of concept, Hines said. Potential benefits such as pre-import admissibility for trusted traders are being considered. Blockchain data formats will be standardized, “thus aiding traceability,” she said. When FDA has to conduct a trace-back, data could be downloaded from a decentralized database, allowing the agency to achieve “greater efficiency, faster results and cost savings” for FDA and for industry.

FDA has provided CBP contractors developing the blockchain system with key elements for traceability, Hines said. Some of these data elements include lot codes, where the food was received, where the food was sent, dates and key contact information, she said. Data submitted is completely voluntary, and some data may be used only by suppliers or buyers, such as invoice numbers, while others may be used for admissibility. Data elements “are still in development and being considered,” Hines said. — *Brian Feito*

FDA Set to Deprioritize Inspections, Sampling for Imported Foods From SRA Countries

The FDA looks set to deprioritize its sampling and inspection activities for imported foods covered by systems

recognition arrangements (SRA) between the FDA and foreign food safety authorities, according to a [draft guidance](#) document released by the agency July 9. Foreign food facilities would see fewer establishment inspections, and the FDA would adjust its screening and targeting criteria, import sampling and Foreign Supplier Verification Program inspections to account for SRAs, it said.

“Under an SRA, FDA intends to rely on the food safety oversight of the foreign competent authority, which then helps FDA refine its risk-based decisions about the scope and frequency of its oversight activities related to imported products, including foreign facility inspections, import field exams, and import sampling,” the agency said. “Systems recognition allows FDA to avoid duplicating certain food safety-related work in countries with an SRA.”

For foreign establishments located in countries with an SRA, “FDA does not intend to prioritize” inspections, it said in the draft guidance. “Therefore, FDA's routine inspections of foreign food establishments for food products covered by an SRA will be rare, allowing FDA to allocate its risk-based foreign inspection resources more efficiently and effectively.” Inspections would continue apace for foods not covered by the SRA, inspections on a for-cause basis, or inspections requested by a foreign authority, FDA said.

The FDA also “intends to adjust its risk-based screening and targeting criteria for import entries of food products covered by an SRA to reflect FDA's determination of the comparability of the regulatory system covered by an SRA, and to allow for more efficient and effective use of FDA's import investigation and screening resources,” the agency said. However, an SRA would not automatically affect a food's listing on import alert, it said.

The agency would not prioritize samples and field examinations of food products covered by an SRA “generally,” it said. However, the FDA would continue to prioritize sampling of shipments from countries with an SRA if the food is targeted for FDA surveillance, the specific food is not covered by an SRA, or on a for-cause basis.

Finally, the “FDA does not intend to prioritize inspections of importers for [Foreign Supplier Verification Programs (FSVP)] compliance or compliance with juice and seafood [Hazard Analysis Critical Control Point (HACCP)] import-

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er requirements with respect to imported foods covered by an SRA,” the agency said. “However, FDA may periodically verify that importers of food products covered by an SRA are in compliance with FSVP and HACCP importer requirements,” it said. — *Brian Feito*

FDA Sets VQIP Trusted Trader Program Fee for FY22

FDA will set the fiscal year 2022 fee for its Voluntary Qualified Import Program at \$15,938, it said in a [notice](#). The fee, which is down from \$17,000 last year, is required from food importers to begin participation in the VQIP trusted trader program for the period beginning Oct. 1, 2021, FDA said. The fee will remain in effect through Sept. 30, 2022, it said. FDA approved three importers for participation in VQIP for fiscal year 2021 (see [ITT 11/30/2020](#)).

APHIS to Require Lacey Act Declarations on Sixth Set of Products in October

The next phase of Lacey Act implementation by the Animal and Plant Health Inspection Service will begin Oct. 1, APHIS said in a [notice](#) released July 1. Phase VI subjects 27 new tariff lines to Lacey Act declaration requirements. The agency had originally planned the new requirements for October 2020 before delaying due to the COVID-19 pandemic (see [ITT 08/19/2020](#)).

Though pallets are one of the newly covered products in Phase VI, APHIS will require a declaration only for new products in Harmonized Tariff Code 4415 that are formally entering the U.S., as expected (see [ITT 06/29/2021](#)). The declaration requirement will not apply to used, recycled or reclaimed pallets or to pallets, empty or under load, that are used to carry goods imported into the U.S., APHIS said.

APHIS is also removing subheading 3301.29.5150, which covers “other” essential oils, from the list of subheadings covered in Phase VI. Industry has said it’s unclear what the

subheading covers, and “there could be attempts to inaccurately classify products under different codes to avoid the plant import declaration requirement.” APHIS said it agrees “that this code may not provide sufficient specificity and could result in both deliberate and unintentional inaccuracies.”

The 10-digit subheadings newly subject to Lacey Act declaration requirements as of Oct. 1 are as follows:

- 3301.29.5109 - Essential oils of cedarwood
- 3301.29.5121 - Essential oils of linaloe or bois de rose
- 3301.29.5139 - Essential oils of sandalwood
- 4202.29.2000 - Trunks, cases and suitcases of wood
- 4202.99.2000 - Other, of wood, not lined
- 4202.99.3000 - Other, of wood, lined
- 4410.12.0010 - Oriented strand board, unworked or not further worked than sanded
- 4410.12.0020 - Oriented strand board, other
- 4415.10.3000 - Packing boxes and cases with solid sides, lids and bottoms
- 4415.10.6000 - Cases, boxes, crates, drums and similar packings and cable-drums designed for use in the harvesting of fruits and vegetables
- 4415.10.9000 - Other cases, boxes, crates, drums and similar packings; cable-drums
- 4415.20.4000 - Pallets, box-pallets and other load boards and pallet collars designed for use in the harvesting of fruits and vegetables
- 4415.20.8000 - Other pallets, box-pallets and other load boards; pallet collars
- 9205.90.2000 - Wind musical instruments: bagpipes
- 9205.90.4020 - Clarinets
- 9205.90.4080 - Other (woodwind instruments)
- 9205.90.4060 - Flutes and piccolos

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- 9206.00.2000 - Drums
- 9207.90.0040 - Musical instruments (fretted string instruments)
- 9209.92.2000 - Mutes, collapsible musical instrument stands and music holders for attachment to musical instruments
- 9209.92.4000 - Tuning pins
- 9209.92.6000 - Bows, parts of bows, bow hair, chin rests and other parts and accessories for string instruments played with a bow
- 9209.92.8000 - Other parts and accessories for musical instruments of heading 9202
- 9209.99.2000 - Parts and accessories for bagpipes
- 9209.99.4040 - Parts and accessories for other woodwind instruments
- 9209.99.8000 - Other parts and accessories for musical instruments
- 9620.00.5500 - Monopods, bipods, tripods and similar articles of wood.

USTR Officially Suspends Tariffs on EU, UK

The U.S. Trade Representative officially suspended the Section 301 tariffs on the European Union and the United Kingdom that were imposed as part of the dispute over large civil aircraft subsidies, it said in a [notice](#) released July 8. The U.S. reached deals last month with the U.K. (see [ITT 06/17/2021](#)) and the EU (see [ITT 06/15/2021](#)) to suspend the tariffs for five years. “The beginning of the five-year suspension period is July 4, 2021, with respect to tariffs on goods of the UK, and July 11, 2021, with respect to tariffs on goods of EU member States,” the agency said.

CIT Grants Preliminary Injunction in Section 301 Litigation

The Court of International Trade will stop liquidation of unliquidated entries subject to the List 3 or 4A Section 301 China tariffs imported by the thousands of plaintiffs in the Section 301 litigation, a majority of judges on the three-judge CIT panel said in a July 6 [opinion](#) that granted a preliminary injunction. “To give the parties time to implement appropriate procedures, gather pertinent information, and otherwise take necessary action to comply with this

order, the court will temporarily restrain liquidation of any unliquidated entries of merchandise imported from China by any plaintiffs in the Section 301 Cases which are subject to List 3 or List 4A duties,” it said.

Dissenting from the majority of the panel’s decision, Chief Judge Mark Barnett said that the plaintiffs failed to establish a likelihood of irreparable harm in absence of the injunction. Barnett said that there is no likelihood for irreparable harm for the plaintiffs since the court can simply issue reliquidation or a money judgment for the imports assessed the List 3 and 4A tariffs.

Currency Manipulation Agreement Averts Tariffs on Vietnamese Goods

After a joint statement from the Treasury Department and the State Bank of Vietnam [saying](#) the two sides have resolved U.S. concerns over Vietnamese currency policy, U.S. Trade Representative Katherine Tai said she commends Vietnam’s commitment to address U.S. concerns in that matter. Vietnam said it does not manipulate its currency for competitive advantage, but rather manages its exchange rate to control inflation and maintain macroeconomic stability, but it will make its actions more transparent, and will allow the dong to move with market fundamentals as long as macroeconomic stability can continue.

Tai [said](#), “Vietnam can set an important example for the Indo-Pacific region by allowing its exchange rates to move in line with underlying economic fundamentals.” She said that USTR will monitor Vietnam’s implementation of its commitments to ensure that it addresses the currency practices “that were found actionable in the Section 301 investigation.”

The press office at USTR did not respond to questions about the status of the timber investigation for Vietnam, which could also lead to Section 301 tariffs on Vietnamese imports.

John Murphy, senior vice president for international policy at the U.S. Chamber of Commerce, said in an emailed response to a request for comment: “The Chamber applauds this news. Imposing tariffs on goods from Vietnam would have hurt American families, workers, and companies. By contrast, Treasury’s financial diplomacy is well suited to addressing currency issues, which call for a strategy of coherent and consistent engagement with foreign partners.” — *Mara Lee*

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