

Timing for GSP, MTB Renewal Remain Unclear, Top Ways and Means Republican Says

There have been no productive discussions in the last month between Republican and Democratic trade staffers to find a compromise on renewing the Miscellaneous Tariff Bill and Generalized System of Preferences benefits program, Rep. Kevin Brady, R-Texas, said in response to a question from *International Trade Today* during a telephone press conference. “Regrettably, I see further delays in that because the speaker [of the House] and all her committees are focused on jamming through these tax hikes and welfare expansion,” Brady said, referring to Democrats’ legislative priorities. Brady said that while the Senate’s Trade Act of 2021 is the framework for a bipartisan solution to GSP and MTB renewal, “we need time on task to do that,” and he doesn’t know if there will be conversations working toward that.

“I think a more realistic time table [for renewal] is by the end of the year, but even that requires work now on GSP and MTB that hasn’t been occurring.” He said he doesn’t know if that work will be delayed until after the \$3.5 trillion budget legislation “has been dealt with.”

Brady was also asked about the pro-trade comments Vice President Kamala Harris made while in Singapore. He said he liked her language, but added, “I’m worried the vice president’s words are empty in substance because we’ve seen no interest in the administration continuing trade talks with the U.K., in Europe, a comprehensive trade agreement with Japan” He said the administration also seems to have little interest in renewing fast-track authority. — *Mara Lee*

FMC Investigating 8 Ocean Carriers for Improper Surcharges

The Federal Maritime Commission is investigating the surcharge practices of eight ocean carriers after receiving industry complaints that the carriers have “improperly”

imposed fees, the commission [said](#) Aug. 4. The carriers—CMA CGM, Hapag-Lloyd, HMM, Matson, MSC, OOCL, SM Line and Zim—have until Aug. 13 to respond to questions by the FMC’s Bureau of Enforcement and to “provide details that confirm any surcharges were instituted properly and in accordance with legal and regulatory obligations.”

FMC Chairman Daniel Maffei said the commission is hearing “increasing reports” of carriers “assessing new additional fees, such as ‘congestion surcharges,’ with little notice or explanation,” with some fees being attributed to the high levels of port congestion. “It seems to me that these factors would already have been included into the record high rates charged by the carriers,” Maffei said. “As Chairman, I want to know the carriers’ justifications for additional fees and I strongly support close scrutiny by the FMC’s Bureau of Enforcement aimed at stopping any instance where these add-on fees may not fully comply with the law or regulation.” The investigation was announced less than a week after the commission issued a series of long-awaited recommendations to address problems in the international freight delivery system (see [ITT 07/29/2021](#)).

The investigation into the unfair fees “demonstrates that the FMC will take action to investigate questionable carrier practices that are brought to its attention,” the National Customs Brokers & Forwarders Association of America said in an Aug. 5 email to members. NCBFAA President Jan Fields urged members to “please support this effort by engaging the FMC with the documented cases.”

The NCBFAA said its members have reported “serious and persistent problems in the supply chain,” including a lack of container availability, “severe” strains on air freight capacity, rail yard container overflows, driver shortages, major truck congestion, “exorbitant” demurrage and detention charges and increasingly high ocean freight rates. It said some freight rates have been quoted as high as \$25,000 per container.

The NCBFAA said it has met with the FMC commissioners to report the problems and encouraged members to do the

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same. “Not only do we need the members of the NCBFAA to speak up, but the [beneficial cargo owner’s] voice must be heard,” the association said. “We have raised the awareness to this issue, now we all must present those situations we have experienced to back us up.”

CBP Explains Forced Labor Indicators, Admissibility Phase

The branch chief of the forced labor division at CBP gave importers advice on how to deal with a withhold release order, and what to ask to find out if there are forms of exploitation at your suppliers that qualify as forced labor. When your goods are detained at port, Edward Thurmond said during a webinar Aug. 4, remember you can export the goods instead of paying for their detention. “As of this moment, you can reexport those goods to Canada or Mexico. That option may go away in time. It can go out the next day. It can go out even the same day. You are not forced to wait for the admissibility period.”

If you do want to use the admissibility period to argue that the goods deserve to be entered into commerce, the goods will either have to be in CBP custody, or, if the port director allows, in a bonded warehouse or a foreign-trade zone.

Thurmond said there is confusion among employers on what information CBP wants on goods detained under a WRO. He said this is not the time to argue that the producer doesn’t use forced labor. Instead, importers should provide evidence that the producer is not on the target list. For instance, if the WRO is on Malawi tobacco, you can show the tobacco came from Zambia. Or you could show that the company that produced the goods under detention doesn’t operate in Xinjiang.

Thurmond walked webinar attendees through the indicators of forced labor that CBP investigates in order to issue a WRO. He noted that WROs have a low burden of proof, just reasonable suspicion. The indicators are physical and sexual violence; intimidation and threats; abusive working and living conditions; restriction of movement; retention of identity documents; withholding of wages; deception; excessive overtime; debt bondage; isolation; and abuse of vulnerability.

Thurmond explained that some indicators are broader than people might think. For instance, intimidation doesn’t have

to be a threat of physical violence, it could be a threat that if you quit, you’ll never work in that area again. Restriction of movement doesn’t have to mean you’re literally imprisoned; it could be that someone from the company accompanies workers wherever they go when they leave the facility, or that the factory doors are locked. “This is one of the most common ones we see,” Thurmond said. Withholding of wages isn’t just not paying workers for months. It could also be unfair deductions for uniforms or meals, he said, and can be linked to excessive overtime. If workers have to work overtime to make the local minimum wage, it’s often because of these unfair deductions, he said.

Abuse of vulnerability refers to the decision to hire ethnic or religious minorities for jobs, and isolation means workers are not allowed to communicate with their family or others away from the fields or city where they are working far from home.

Abusive living conditions means overcrowded or unhygienic housing provided by the employer, and abusive working conditions mean that workers are exposed to danger, such as working with chemicals without goggles, or that you are slapped if you don’t meet your production quota. “Sadly they crop up more times than one would think,” he said, referring to these working conditions.

Sometimes employers hold workers’ passports or work permits and won’t give them back if the worker wants to quit. This can be linked to restriction of movement, he explained, because it can be dangerous to walk around outside without these documents in some countries. “In Malaysia, if you’re caught without identification, [officials] might actually beat you and lock you up in a small cage,” Thurmond said.

It’s also frequently linked to the No. 1 forced labor violation that CBP finds during investigations—debt bondage. A recruiter will go to a foreign country and tell people that if they pay \$1,000 or \$3,000, they can get a good-paying job in another country. When they arrive, the job often doesn’t pay as well as they had been told (deception). “It is a small fortune for somebody who lives in India, for somebody who lives in Indonesia,” he said. “Once they acquire that debt bondage, it makes it impossible for them to leave because they need to pay that off, lest the recruiter goes after their family.”

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A manufacturer cannot avoid a WRO by explaining they didn't know how their recruiters were operating, Thurmond said. And American buyers must make sure audits of their suppliers go through all 11 indicators, he said. If the audit says there are risks that one of the indicators could be occurring, firms should follow up and ask what the company has done to change its practices.

One of the webinar attendees asked if one of the largest producers of the good they buy is under a WRO, does that mean they can't buy from that supplier any more?

Thurmond said, yes, you need to find another supplier, but then, if you would like to buy from them in the future, ask the company if they are planning to talk to CBP about modifying the WRO.

"We don't really have modification discussions with importers," he said. "We really need to see the effort coming from the foreign manufacturers."

Thurmond said modification is one of the areas the forced labor division is most proud of. He said there have been many successful modifications at tobacco producers in Malawi.

"It's not about mitigating the risk of forced labor. It's about demonstrating to our operations branch that indeed the forced labor situation that may have been occurring in the past has been resolved and will not happen again," he said.

— *Mara Lee*

CBP Plans to Extend, Expand Section 321 Pilot While Developing Proposed Requirements

CBP is planning to extend the ongoing Section 321 data collection pilot for low-value shipments and expand it to more participants while the agency continues to work on a proposal to require new mandatory data elements (see [ITT 01/29/2021](#)), said Jim Swanson, CBP director-cargo and conveyance security and controls, who was speaking virtually during a CBP Detroit Trade Week [event](#) Aug. 3. "We think we need to expand that out, get more participation in it, get people used to the idea they have to collect this additional information, because the big effort that we're working on is regulations that will mandate that level of information," he said.

Under the proposal, which is still being developed within CBP, "if you want to claim Section 321 and get electronic clearance on your shipments, you will be required to provide us a handful of data elements," Swanson said. Some of those elements were discussed during a CBP event last month (see [ITT 07/21/2021](#)). "If you are unable to be able to segregate out" that information, "you would have to provide a 10-digit [Harmonized Tariff Schedule (HTS)] for every one of those shipments on that transaction," he said. That prefilled Section 321 data will be required to receive electronic manifest clearance and "otherwise it will go the manual path and it may be days or even a week or more before it gets cleared."

This approach would be a "replacement for manifest clearance across the universe," he said. That means "parties who are shipping will have to make sure that information is filed, carriers in order to get electronic clearance upon arrival will have to link it" to their transactions, he said. "It means communication between partners, it means information has to be included in booking information. We recognize it's probably going include changes to contracts, etc., as to what data is moved when and where within the process." There is still a "long regulatory process" that will need to play out before the requirements would take effect, he said.

Within the e-commerce world, "the one party we're probably figuring is least likely" to know the information CBP is seeking, is "the party who actually ordered the merchandise," Swanson said. Those parties, which are often individual consumers, "are not necessarily the educated importer we would expect to deal with in a normal trade universe."

— *Tim Warren*

CBP Working to Make Trade Compliance in CTPAT Official, End ISA Program

CBP plans to issue a *Federal Register* notice in coming months that will officially end the Importer Self-Assessment program and fully launch the Customs-Trade Partnership Against Terrorism Trade Compliance program, said Amy Hatfield, a trade compliance program manager within the CTPAT office. The notice will also end the pilot version of CTPAT Trade Compliance, said Hatfield, speaking virtually Aug. 4 during a CBP Detroit Trade Week [event](#). Currently, the Trade Compliance program

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membership is made up only of former ISA members, she said.

The Office of Regulations and Rulings is working on the notice based on the requirements provided by the CTPAT office, Hatfield said. The notice won't "address the Partner Government Agency piece of the pilot because those discussions are ongoing," but "it will essentially be a CBP-specific announcement that says 'This is an official program' and it will allow us to open up participation to additional participants."

CBP was hoping to have the *Federal Register* notice by the end of the fiscal year, but that seems unlikely now, Hatfield said. The agency is now aiming to have it out by the end of the calendar year. A draft handbook being finalized will likely be posted once the notice is out, she said. The agency last year released some [frequently asked questions](#) on CTPAT Trade Compliance.

CBP also recently began work with the World Customs Organization on updating the "SAFE Framework" standards to secure and facilitate trade for implementation in 2024, Hatfield said. "The program really is going to allow us to add all of the trade requirements to our program," CBP said. The agency will put together a draft within CBP by January and then begin the "socialization process" with the WCO, she said. — *Tim Warren*

USTR Seeks Comments on Extension of COVID-19 Product Section 301 Exclusions Past Sept. 30

The Office of the U.S. Trade Representative [seeks comments](#) on whether it should again extend 99 exclusions for COVID-19 response-related products. USTR most recently extended them in March until Sept. 30 (see [ITT 03/05/2021](#)). USTR will open a docket for comments on its [website](#) Aug. 27, it said. Comments are due by 11:59 p.m. EDT Sept. 27. "Subsequent to USTR's announce-

ment of the extension of the 99 exclusions for COVID-19 response products in March, the spread of COVID-19 in the United States initially declined, and domestic production of certain products covered by these exclusions increased," USTR said. "With the recent spread of the Delta variant, COVID-19 cases in the United States are increasing again. In light of these changing circumstances, including the ability of the United States to obtain certain products domestically or from other sources, USTR is requesting public comments on whether to extend particular exclusions for COVID-19 products for up to six months." The extension could last until March 2022.

AMS to Decrease Value Assigned to Cotton for Import Fees

The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations to decrease the value assigned to imported cotton for the purposes of calculating supplemental assessments on imports collected under the Cotton Research and Promotion Program, it said in a [direct final rule](#) released Aug. 25. The revised value is 1.1136, a decrease of .0426 cent per kilogram. The decrease reflects a fall in the average price of upland cotton received by U.S. farmers during the period January through December 2020. AMS's notice also includes a table of adjusted assessments corresponding to each Harmonized Tariff Schedule subheading for which they are due. The changes take effect Oct. 25, unless adverse comments are received by Sept. 27.

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