

Importers Should Prepare for Major Classification Changes Coming Jan. 1, Broker Says

Importers should be reviewing existing tariff classifications for their products and planning ahead for major changes to the tariff schedule that will take effect Jan. 1 when the U.S. implements 2022 changes to the global Harmonized System, Flexport's Adam Dambrov said during a Sept. 15 webinar. Particularly affected by the changes are goods of chapters 44, 84 and 85, with some changes to chapter notes also resulting in changes for textiles and apparel.

In the pipeline for years (see [ITT 01/22/2021](#)), changes to the Harmonized System will affect classification at the four- and six-digit level for participating countries worldwide. The greatest impact will be on goods of Chapter 85, said Marcus Eeman, customs manager at Flexport. Smartphones will be broken out into their own tariff provision under heading 8517, and classification changes will affect not only smartphones but also their accessories and component parts, Eeman said.

In Chapter 44, almost every four-digit heading has been affected, Eeman said. Not only is the definition of plywood changing, but also the way tropical woods are described, with an eye toward greater transparency. The U.S. currently distinguishes tropical woods at the 10-digit level, he said, so the concept will not be new for U.S. importers, but the tariff classification scheme will be different. The International Trade Commission recently put out a list of its recommended tariff schedule changes to implement with the Jan. 1, 2022, update (see [ITT 05/14/2021](#)).

In Chapter 84, changes will affect classification of three-dimensional printers, which are called additive manufacturing machines in the tariff schedule. Other updates affect heading 8462 for industrial and steel processing machinery, and industrial robots were also given their own breakout in Chapter 84. A new heading in Chapter 88 will be created for drones under new heading 8806. Shiitake

mushrooms will be given their own six-digit breakout, Eeman said.

Changes to chapter notes will have an outside impact for textiles and apparel. Currently, women's woven shirts with pockets at the bottom, such as scrubs, are classified in heading 6211, and receive a lower duty rate, but that is not the case for men's shirts. That will change Jan. 1, with the relevant chapter note making men's woven shirts with pockets at the bottom, currently classifiable in heading 6205, instead classifiable in heading 6211, Eeman said.

Likewise, a change to the chapter note governing classification of coated and laminated fabrics of heading 5903 is changing so that the lamination does not have to be visible to the naked eye to be classified in the heading, said Tom Gould, Flexport vice president-global customs. That means that apparel made from laminated fabrics with an invisible plastic layer will be classifiable in headings 6113 or 6210 for apparel made from fabrics of heading 5903, which in general carry lower duty rates than the relevant headings for apparel made from other fabrics.

The widespread changes to the tariff schedule will cause some uncertainty for importers around the Jan. 1 transition, Dambrov said. It still remains to be seen how the Office of the U.S. Trade Representative will handle the application of Section 301 tariffs and Section 301 exclusions for goods that are affected by the changes. Also affected will be tariff flagging, such as for goods subject to antidumping and countervailing duties. AD/CVD coverage is dictated by the written scope of an order, so whether a good is subject or not will not change, but the importer or broker may not see an AD/CVD flag in the Automated Broker Interface where there used to be one.

Importers should look at customs rulings they rely on to see if they are affected by the classification changes, and if they are importers may want to seek modification of the relevant ruling to make sure it still applies. Importers may also want to consider whether changing classifications could result in

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either duty savings, in which case they may want to wait to import a good until after Jan. 1, or cost them more in duties, in which case they should import more before that date, Dambrov said. — *Brian Feito*

More Phases Planned as Lacey Act Declaration Requirements Take Effect for Pallets Oct. 1

As the sixth implementation phase of Lacey Act declaration requirements for plants and plant products approaches Oct. 1, officials with the Animal and Plant Health Inspection Service reminded importers and exporters that more phases are to come before the agency meets its statutorily required goal of subjecting all plants and plant products to Lacey Act enforcement.

More phases are “absolutely on the horizon, phase seven and beyond,” said Karen Williams, lead compliance specialist for the APHIS Lacey Act Program. Another phase might even be announced “in the relatively near future,” she said, speaking during a Sept. 21 [webinar](#) hosted by the National Wooden Pallet and Container Association. APHIS could even decide that, instead of taking a phased approach to further implementation, as it has done since the relevant Lacey Act amendments in 2009, it will extend declaration requirements to all remaining plants and plant products at the same time, she said.

APHIS has thus far tried to take a “practical approach” in implementing the declaration requirements, Williams said. The agency started over 10 years ago with phases covering products made completely of large pieces of wood, which makes compliance easier and at the same time goes the furthest toward the agency’s goal of stemming the volume of illegal timber trade, she said.

The sixth phase of enforcement had been set to take effect in October 2020 before it was delayed until Oct. 1, 2021, in response to industry implementation concerns related to the COVID-19 pandemic. It covers imports of essential oils under heading 3301, trunks and suitcases of heading 4202, oriented strand board of heading 4410, wood packaging of heading 4415, musical instruments of headings 9205, 9207 and 9209, and monopods, bipods and tripods of heading 9620 (see [ITT 07/01/2021](#)).

Williams stressed that the declaration requirements for wood containers, including pallets, apply only to new wood

containers imported into the U.S. as merchandise. Used wood containers and pallets, as well as containers and pallets imported “under load” as instruments of international traffic, do not require declarations, and are eligible for disclaims in ACE, she said.

APHIS has created two new “special use declarations” for identifying the type of wood in new wood containers not under load on Lacey Act declarations, when the importer cannot ascertain the genus and species of the wood even after exercising due care, Williams said. One covers hem-fir, including amabilis fir and western hemlock, and the other covers larch fir, including western larch and Douglas fir. Canadian pallet manufacturers are seeking the addition of a third special use declaration for hardwoods, though it’s unclear if APHIS will add it before phase six takes effect Oct. 1, said Scott Geffros of the Canadian Wood Pallet and Container Association. — *Brian Feito*

EPA Announces Quota System for HFC Imports; Set for 85% Reduction by 2036

The Environmental Protection Agency on Sept. 23 released a [final rule](#) that sets a quota system for imports of hydrofluorocarbons that will eventually reduce imports of the greenhouse gases by 85 percent by 2036. The new regulations provide for company-specific allocations of allowances to import HFCs in 2022 and 2023, with allowances after that to be set in a future *Federal Register* notice. EPA intends to issue 2022 allowances by Oct. 1, it said in the final rule, which has yet to be scheduled for publication.

“This final rule is the first regulation under the [American Innovation and Manufacturing] Act to address HFCs, which are potent greenhouse gases commonly used in refrigerators, air conditioners, and other applications,” EPA said in a [press release](#). “This final rule sets the HFC production and consumption baseline levels from which reductions will be made, establishes an initial methodology for allocating and trading HFC allowances for 2022 and 2023, and creates a robust, agile, and innovative compliance and enforcement system.”

EPA to Set Company-Specific Import Allowances by Oct. 1 Each Year

Going forward, EPA will by Oct. 1 of each year issue production and consumption allowances for the following

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calendar year. The allowances will be based on a formula provided by the AIM act that considers past HFC, hydrochlorofluorocarbon and chlorofluorocarbon amounts, EPA said in a [fact sheet](#).

For 2022 and 2023, EPA will base company import allocations on the three highest years of production or consumption between 2011 and 2019. “EPA is issuing allowances to active HFC producers and importers operating in 2020 and is giving individualized consideration to circumstances of historical importers that were not active in 2020,” the agency said. “EPA is establishing the allowance allocation framework for two years and intends to undertake a subsequent rulemaking to govern allocations for calendar years 2024 and beyond.”

EPA will also issue “application-specific allowances” to end users in the following six applications: propellants in metered dose inhalers (MDIs), defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, etching of semiconductor material or wafers and the cleaning of chemical vapor deposition (CVD) chambers within the semiconductor manufacturing sector, mission-critical military end uses, and onboard aerospace fire suppression.” These end users will be able to confer their allowances to importers to allow for the import of the HFCs they are allocated.

EPA is also establishing a small pool of “set-aside allowances” for end users in application-specific sectors EPA has not yet identified, importers that otherwise would have qualified for consumption allowances but have not yet been identified, and importers that are new market entrants. “Companies seeking to receive allowances via the set-aside should submit applications by November 30, 2021,” EPA said.

EPA’s final rule establishes a system for holders of allowances to trade and sell them. However, a 5% “offset” of the amount transferred will apply, and is reduced from the transferor’s allowance balance, EPA said.

The final rule creates a process for imports that don’t require the expense of allowances in two situations – virgin HFCs imported for use in a process resulting in their transformation (as feedstocks) or destruction, and HFCs that are imported for the purposes of disposal at a destruction facili-

ty using an approved destruction technology. Importers will need to petition EPA at least 30 working days before the shipment’s arrival at the U.S. port.

Increased Oversight of Imports, Container Tracking and Third-Party Auditing

The final rule includes a “multifaceted approach to deter, identify and penalize illegal activity,” EPA said, noting evidence of evasion of similar European Union standards since those were established. Tools include “administrative consequences for allowance holders, requiring use of refillable cylinders, increased oversight of imports including transshipments and HFCs imported for transformation, comprehensive tracking of containers of HFCs as they are imported, sold and distributed, and third-party auditing,” EPA said.

“EPA has also determined that much of the quarterly production and consumption data provided to the Agency will not be provided confidential treatment and will be affirmatively released without further process. This data transparency will incentivize compliance and allow the public and competing companies to identify and report noncompliance to EPA,” the agency said.

ACE Filing Requirements Mostly the Same; Protests, PSCs May Result in Enforcement

While EPA will set new importer filing requirements in ACE to track imports of HFCs, the agency says most of the data elements it requires are already gathered under CBP regulations. “For ease of implementation and to avoid duplicative electronic reporting, information required to be reported under EPA’s part 84 regulations will be submitted as import filings and collected through a CBP electronic system (e.g., ACE and its successor platforms). CBP will make these import filing data elements available to EPA for review,” EPA said in the final rule.

The data elements must be filed no later than 14 days before importation. “Although EPA acknowledges that CBP allows an importer to correct reported data elements for a certain period of time after the goods clear Customs, data elements reported pursuant to these part 84 regulations must be reported no later than 14 days prior to importation. EPA will make its determination on whether an importer

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has sufficient allowances for the import at the time of review based on the information provided.”

If an importer files a valid post-summary correction (PSC) with CBP or files a protest that CBP approves that would change the number of allowances expended, EPA will adjust the importer’s allowance balance. “If after correction the amount imported exceeds an importer’s available allowances, the importer would be in violation of 40 CFR part 84, subpart A and would be subject to administrative consequences and enforcement action.”

However, EPA will require the submission of new data on the Chemical Abstracts Service (CAS) number of the HFCs being imported “and, for HFCs that are in a mixture with other HFCs or other substances, either the ASHRAE numerical designation of the refrigerant or percentage of the mixture containing each regulated substance,” it said. “EPA is also requiring that non-objection notices issued consistent with section 84.25 and proof that the importer has reported a transshipment to EPA consistent with 84.31(c) (3) be provided to CBP electronically by loading an image of the document to the Document Image System, or successor platform.” — *Brian Feito*

Congestion Inland and at Ports Driving Costs, Delays, Panelists Say

Customs brokers in Washington to lobby for the Customs Business Fairness Act renewal should also talk about the importance of the Ocean Shipping Reform Act of 2021, National Customs Brokers & Forwarders Association of America transportation committee members told the annual government affairs [conference](#) attendees, as a way to fight excessive detention and demurrage fees.

The bill, introduced in August (see [ITT 08/11/2021](#)), would require carriers to certify that every detention or demurrage charge complies with the Federal Maritime Commission’s rule on detention and demurrage fees. It also aims to give exporters more access to return trips to Asia.

Rich Roche, a Mohawk Global Logistics vice president, said during the panel that there are more than 70 ships anchored outside the Los Angeles port, and another 30 inside the port being unloaded. He said the gridlock in ports, in rail yards, in trucking and warehouses is going to take a year to clear.

When containers cannot leave the port, either because there’s not a trucker to move them or because of a government hold, customers are being hit with detention and demurrage fees, the panelists said. Roche said that Mohawk paid \$1.25 million in detention and demurrage fees in 2019, and through June of this year, has already paid \$3 million. “We’re fighting hard to not have to pay a lot of them,” he said.

He said that OSRA of 2021 needs to pass so that the Federal Maritime Commission has more power as it regulates ocean shippers.

Donna Mullins, the NCBFAA airfreight subcommittee chair, told the audience that even as customers shift to air cargo to try to speed up shipments, they’re running into congestion. She said you’d expect air freight to be available eight to 12 hours after the plane lands, but it’s taking eight to 12 days sometimes to get a pallet on a truck. That’s a result of labor shortages in trucking, but she said that the \$25 billion dedicated to airports under the bipartisan infrastructure bill should be put to use to help cargo move faster, too.

Melzie Wilson, a vice president at Dunavant Transportation Group, said, “We know what’s broken, we know what we need—we need to make ourselves heard.” — *Mara Lee*

FMC Approves Recommendations Related to Unfair Port Fees, Shipper Reparations

The Federal Maritime Commission approved some recommendations made by Commissioner Rebecca Dye in July to address ocean freight delivery and port issues (see [ITT 07/29/2021](#)), the commission [said](#) Sept. 25. Under one recommendation, the FMC will issue a “policy statement” to provide guidance to shippers seeking to obtain reparations for violations of the Shipping Act, including unfair detention and demurrage fees. The statement will provide guidance on the “scope of the prohibition against carrier retaliation,” when attorney fees may be imposed on the losing party, and who may file a complaint with the FMC.

The FMC is also preparing to issue a pre-rule to seek comments on whether it should require ocean carriers and terminal operators to include “certain minimum information on or with demurrage and detention billings.” The rule will also seek comments on whether the FMC should require carriers and operators “to adhere to certain prac-

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tices” regarding the timing of billings for detention and demurrage fees.

While those recommendations required formal FMC approval, the commission said it has also moved forward with other recommendations from Dye, including hiring more staff for its Consumer Affairs and Dispute Resolution Services. The FMC will also designate one person as the agency’s “exporter advocate.” The commission will make decisions on the other recommendations “as developments warrant.”

More Than 300 Companies and Trade Groups Ask for GSP Renewal

Importers that used to benefit from the Generalized System of Preferences program have paid about \$750 million in tariffs since the program expired at the end of last year, according to a Sept. 21 letter to the leaders of the Senate Finance Committee and House Ways and Means Committee. The [letter](#), signed by more than 300 trade groups and firms, says the lapse of the GSP benefits program hurts workers at importing companies, which are also dealing with much higher freight costs and pandemic impacts.

The Senate has already passed a GSP renewal, but House Democrats are seeking a GSP renewal with more eligibility requirements. The letter’s writers say they are concerned about this, calling it a punitive approach, especially since there is no assistance to help countries meet the criteria. “Already, GSP’s share of U.S. imports has declined from 1.8% in 2006 to less than 0.7% in 2021. If GSP covers less trade each year, it cannot meet its original development goals, let alone create new leverage in areas such as rule of law, the environment, and women’s rights,” they wrote.

They also say that the “competitive need limitations” rules should be reformed, as they say up to one-third of potential GSP imports are excluded. — *Mara Lee*

Report: More 301 Tariffs Being Considered on China

Citing unnamed sources, Bloomberg [reported](#) that the U.S. feels its leverage has faded from 25% tariffs on hundreds of millions of dollars worth of Chinese goods and 7.5% tariffs on most of the rest. So, the report said, the administration is considering initiating another Section 301 report, which would focus on the impact on American businesses from Chinese subsidization of its industry. The same story said officials are “leaning toward” reinstating tariff exclusions on some of the products already subject to tariffs, but also said no decision has been made.

US, EU, China Discuss Ocean Shipping Issues

The Federal Maritime Commission [met](#) virtually with the European Union and China this week to discuss competition issues affecting the shipping industry, including disruptions stemming from the COVID-19 pandemic. Officials discussed bottlenecks in the ocean-linked supply chain, how they each have responded to those challenges and “possible actions” to help the shipping industry. “Today’s session of the Global Regulatory Summit provided key competition authorities responsible for the oversight of the container shipping industry the opportunity to share information about what their respective monitoring and enforcement regimes are observing in the marketplace and compare conclusions about carrier behavior,” FMC Chairman Daniel Maffei said.

CBP Reaches Mutual Recognition Agreement for Trusted Trader Programs With India

CBP and India’s Central Board of Indirect Taxes and Customs will recognize each other’s trusted trader programs under a new mutual recognition arrangement that was recently signed, Acting CBP Commissioner Troy Miller said in a [tweet](#) Sept. 27. As a result of the MRA, goods exported by Indian Authorized Economic Operators will “enjoy enhanced trade facilitation at all the ports of entry in the USA,” the CBIC [said](#).

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