

House Version of China Package Out; De Minimis, AD/CVD Changes Included

The trade provisions of the [America COMPETES Act](#) of 2022, the House's answer to the Senate U.S. Innovation and Opportunity Act, propose dramatic changes to antidumping and countervailing laws, a restriction on future Miscellaneous Tariff Bill lists, and would bar Chinese goods from entering under the de minimis statute. The House Rules Committee also released a section by section [summary](#).

The trade chapter proposes renewing the Generalized System of Preferences retroactively back to Jan. 1, 2021 and through the end of 2024. Its renewal of the Miscellaneous Tariff Bill would authorize duty suspensions and reductions of the current list through the end of 2023, retroactive to four months before enactment.

The changes to AD/CVD law would apply CVD to subsidies outside the home government's territory and make it easier for petitioners to bring new cases when production of a good already under an AD or CVD case moves to a new country. It also would not allow the International Trade Commission to consider a return to profitability or increase in sales as a result of an existing AD/CVD order when it is considering a case from another party for the same industry. It would accelerate decisions for successive investigations, as well.

The bill would also provide "CBP with authority to establish an Administrative Protective Order (APO) process for evasion proceedings," according to the summary.

House China Bill Proposes Major Changes to ADD/CVD; Pivotal Republican Senator Supports Them

The House Majority Leader Steny Hoyer, D-Md., said he will bring the massive America COMPETES bill up for a vote soon. While it may not need to attract any Republican votes to pass there, a bipartisan compromise will be necessary in conference. House Ways and Means Committee

Chairman Richard Neal, D-Mass., said that the Senate's U.S. Innovation and Competition Act (USICA) was not adequate, aside from the issue that revenue measures, such as the Miscellaneous Tariff Bill, must start in the House. "This legislation is the boldest, best option we have to stand up to China's harmful actions and support American workers, and I look forward to discussing these proposals further during our conference on the package with the Senate," he said.

His Republican counterpart on the committee, Rep. Kevin Brady of Texas, slammed the bill, issuing a statement that said: "Democrats in Congress aren't serious about confronting China, holding them accountable for their trade commitments, or insisting China stop cheating America and other countries. ... I'm convinced there is a smart, bipartisan path forward on trade and on China, but this isn't it."

Sen. Todd Young, R-Ind., was one of the prime movers behind USICA, and before the [text](#) of House bill, with longer name America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act of 2022, was released, he said during a video [interview](#) that the House and Senate have had "some substantive, and I think, principled, disagreements as it relates to trade. I'd remind my House Democratic colleagues that the trade title of the Senate version of the legislation passed with 91 votes for, four opposing."

The main differences between the House and the Senate China packages on trade center on the following topics:

- More eligibility criteria for the Generalized System of Preferences benefits program and a shorter renewal
- Making it so that future Miscellaneous Tariff Bill lists could not include consumer products
- Adding trade adjustment assistance
- Barring Chinese packages from qualifying for tariff-free entry under the de minimis statute

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- Numerous changes to antidumping duty and countervailing duty laws to make them more favorable to domestic petitioners.

The Coalition for GSP [complained](#) that the House version of the China package only reauthorizes GSP through Dec. 31, 2024, rather than through Jan. 1, 2027, and it doesn't require public comment before punitive actions can be taken against beneficiary countries. It said that is "a basic good governance issue to prevent abuse of the (current and proposed) eligibility criteria by some unknown future Administration."

The ADD/CVD section draws on a bipartisan bill from the Senate led by Ohio's two senators, but co-sponsored by Young, colloquially known as the Level the Playing Field 2. Young will be a major player on the conference committee, so that suggests that the ADD/CVD changes could well end up in the final package.

The ADD/CVD changes include allowing cases to consider government subsidies to a country's companies with factories abroad. It would also allow subsidies from one country to be considered in an antidumping duty case in another country, if the company in the second country incorporated dumped or subsidized inputs. The Rules Committee's [summary](#) of this provision gave this example: "For example, DOC may determine whether there is a 'particular market situation' if a Turkish pipe and tube sector is using subsidized Chinese steel slab to manufacture pipe and tube products that are dumped in the U.S. market."

This section of the bill would also create a "successive investigation" framework, aimed at stopping hopscotching low-cost imports after an ADD/CVD case stops imports from one country. For instance, if washers from China faced high duties, so Chinese companies opened factories in Malaysia, U.S. washing machine producers could file a case against Malaysian washers. That case would have an expedited timeline—Commerce would have to issue a preliminary determination within 85 days, with an extension only permitted if the petitioner asks for it. Final determinations would have to follow in 75 days. It also would be easier to prove than those sorts of cases are now, because any recovery of profitability or sales after levying ADD/CVDs would be disregarded; the volume of imports from the second country would not have to result in a global increase in imports, as long as the flow from the second country

was expected to be as large as the flow used to be from the first country. Also, Commerce would consider whether the remedy provided for in the first case would be undermined by the imports being challenged in the second case.

These rules could apply to a case going on at the same time, or any time within two years of the first case.

The same section of the law changes how duty evasion and circumvention are handled. Commerce would have to respond to any circumvention inquiry request within 30 days, and if it rejects the request, it would have to explain why. Preliminary determinations of circumvention would have to be made within 135 days, and final determination within 180 days, at most, with extensions. "Currently there are no statutory process or timelines for circumvention inquiries," the summary says.

It also specifies that Commerce may need to clarify if the imported good is within the scope of an ADD or CVD order, and that it would need to do so within 335 days of the inquiry request. The section directs Commerce to order liquidation suspension and posting of a cash deposit when a circumvention inquiry begins on a product. "The section also clarifies that DOC shall apply a circumvention determination on a country-wide basis, unless it is more appropriate to apply the determination to particular producers or exporters," the summary says.

All the new rules would not only apply to cases initiated after the bill became law, but also to cases that already have a preliminary determination, as long as those preliminary determinations were no more than 45 days before the law's enactment.

This section also requires that nonresident importers have U.S. assets and customs bonds. And it wouldn't allow protests of liquidation from an importer when CBP has determined there's evasion.

On de minimis, the changes would be almost immediate, with the change coming 15 days after enactment. The bill currently only applies to China, as it is the only country that is both on the priority watch list for intellectual property and a non-market economy. However, it says that Treasury could add other exceptions to de minimis if it is consistent with the purpose of the bill, "or is necessary for any reason to protect the revenue or to prevent unlawful importations."

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Young said he hopes the conference committee won't drag on for months and months. "I would certainly hope we could get this done by Memorial Day," he said. — *Mara Lee*

America Competes Act Amendments Could Make Changes to GSP, Lacey Act, ACE

Mandating a broad [exclusion process](#) for importers of goods subject to Section 301 tariffs, extending the period of the Generalized System of Preferences benefits program renewal, [reforming](#) the GSP competitive needs limitations, a [ban](#) on importing sodium cyanide briquettes, and changes to the Lacey Act are all among hundreds of amendments to the America Competes Act that have been submitted to the Rules Committee, which has the responsibility for shaping the bill that will get a vote on the House floor (see [ITT 01/31/2022](#)).

Most of the hundreds of amendments will not make it into the House's China package. Even the text that passes the House will be different by the time a compromise is worked out with the Senate, which passed its own China package last year.

The Senate version already directs the Office of the U.S. Trade Representative to reopen the exclusion process, but both it and the House amendment, proposed by Rep. Stephanie Murphy, D-Fla., give her wiggle room to explain why she cannot.

The [amendment](#) extending the House GSP renewal date from the end of 2024 to the first day of 2027 also matches the Senate's trade chapter.

Murphy is the sponsor of the competitive needs limitation amendment, which is based on a bill she introduced last year with Rep. Jackie Walorski, R-Ind. (see [ITT 12/10/2021](#)). That same amendment also contains non-binding language that says the administration should consider if a partial removal or a removal of a country from eligibility would advance the change in policy the administration is seeking, and that says the administration should consider if it would be feasible to allow certain companies to continue to import a good under the benefit program from a beneficiary country if the GSP no longer covered that export.

Several members of Congress proposed changes to the Lacey Act. House Appropriations Committee Chair Rosa DeLauro, D-Conn., led a bipartisan amendment that would [ban](#) trade in captive minks, dead or alive. Rep. Mike Quigley, D-Ill., proposed a ban on imports or exports of any live wild mammal, bird, reptile or amphibian, even if it was born in captivity, with the exception of ruminants, such as bison, if the animal is meant for human consumption.

Rep. John Garamendi, D-Calif., introduced an [amendment](#) that would put palm oil and goods made with palm oil under the Lacey Act unless that palm oil is certified to be sustainable. Those certifications would need to consider human rights of workers and plantation neighbors, preventing deforestation or peatlands degradation, and cultivation that doesn't increase greenhouse gas emissions as much as past cultivation did.

A bipartisan [amendment](#) from Murphy and Rep. Mike Waltz, R-Fla., was introduced to extend the customs waters boundary from 12 to 24 nautical miles, to give CBP's air and marine operations the ability to enforce U.S. customs laws, stop human traffickers and interdict drugs further from ports of entry. Rep. Marilyn Strickland, D-Wash., introduced an [amendment](#) that would temporarily ban "large-scale" importation of sodium cyanide briquettes unless they are headed for Alaska, or transported in portable tanks or railcars certified for transporting the chemical briquettes.

Rep. Adrian Smith, R-Neb., the new ranking member on the trade subcommittee, submitted an [amendment](#) that would renew the Trade Adjustment Assistance program in concert with renewing trade promotion authority.

Rep. Stacey Plaskett, D-Virgin Islands, submitted an [amendment](#) that would appropriate \$8.5 million to CBP to develop and implement ACE in the Virgin Islands. Rep. Scott Perry, R-Pa., submitted two trade-related amendments. One would [rescind](#) the permanent normal trade relations with China, and the other would [specify](#) that none of the money in the Green Climate fund could be used to buy goods reasonably believed to be made with forced labor. However, the Uyghur Forced Labor Prevention Act, which creates a presumption that goods with a connection to Xinjiang are made with forced labor, would seem to cover that, given that there is already a withhold release order for Xinjiang-connection in solar panels. — *Mara Lee*

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Biden Says He'd Like to Lift Some China Tariffs

President Joe Biden, during a [news conference](#) at the end of his first year in office, said he hopes to eventually end the tariffs on goods from China, but it remains unclear when that might happen. Asked about his tools to fight inflation and whether it's time to end the tariffs on goods from China, Biden said he knows that business groups are asking for them to be removed, at least in part. "That's why my trade rep is working on that right now," he said Jan. 19. "The answer is uncertain. It's uncertain. I'd like to be able to be in a position where I can say they're meeting the commitments, or more of their commitments, and be able to lift some of it. But we're not there yet."

U.S. Trade Representative Katherine Tai has said that asking China to meet phase one commitments it has not yet fulfilled is an important part of her engagement. Biden also asked China to fulfill its phase one trade commitments during a call with President Xi Jinping in November, but there were no breakthroughs (see [ITT 11/16/2021](#)). — *Mara Lee*

NRF: Omicron 'Wild Card' That Drives Import Growth

Imports through the major U.S. retail ports are expected to return to normal growth rates in 2022, but volumes will remain high after a year of "unprecedented increases," the National Retail Federation [reported](#) Jan. 7. In November, U.S. ports handled 2.1 million 20-foot-long cargo containers, 4.5% fewer than in October but up 0.5% year over year, the association said. Supply chain challenges continue, even with the holiday selling season in rearview mirrors, said Jonathan Gold, NRF vice president-supply chain and customs policy. "The huge increases in imports we've seen have leveled out, but volume is still at high levels. We hope the system will find a way to catch up, but there is much that remains to be done to clear out port backlogs and increase capacity throughout the supply chain." NRF sees the COVID-19 omicron variant as the "wild card" that could drive more imports "if consumers stay home and spend their money on retail goods rather than going out," Gold said.

Agencies List Plans for Food Cert, Seafood Permit, Other Changes in Regulatory Agenda

FDA, the National Oceanic and Atmospheric Administration and other agencies with a hand in regulating trade in-

cluded several new import-related rules on their regulatory agendas for fall 2021. FDA finally hopes to issue a proposal on certifications for high-risk imports, while NOAA lists two rules amending its regulations on seafood import permits and certifications of admissibility.

FDA's fall regulatory agenda for the first time lists a [proposal](#) to require, "as a condition of importation of food with known safety risk, a certification or such other assurances as the Agency determines appropriate, that imported food complies with U.S. food safety requirements." The agency said in the agenda that it hopes to issue the proposed rule, mandated by Section 801(a) of the Food Safety Modernization Act, in September.

FDA also lists a new [proposed rule](#) that would extend compliance dates for produce other than sprouts for agricultural water provisions of the agency's FSMA produce safety regulations. A newly listed FDA direct final rule would exempt manufacturers, repackers, relabelers or salvagers of certain medicated feeds from drug establishment registration requirements.

NOAA's National Marine Fisheries Service for the first time lists on its agenda a [proposal](#) to amend its regulations on its seafood import permits. The proposed rule would amend "what qualifies as the U.S. resident business address of the International Fisheries Trade Permit holder and the permit holder's obligation to ensure timely access to and production of the required supply chain records in the event of an audit," NMFS said. It would also "clarify the role of the permit holder as the importer of record and to specify when and how the permit can be used and by whom," it said.

Seafood importers would likely be affected by the proposed regulatory changes "through increased reporting and recordkeeping requirements," though the impact would be minor because the required documentation is already transmitted. Permit status would be verified electronically in ACE, and "supply chain records to support import audits could be stored, retrieved and submitted to NMFS electronically, thereby reducing the burden on NMFS and the trade community."

Another NMFS [proposal](#) would strengthen the agency's authority to impose targeted import restrictions on specific

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countries and their flag vessels, and require a certification of admissibility for such imports. “NMFS is amending the import permitting requirements, the reporting and record-keeping requirements, and entry filing requirements,” and could under the proposal “revoke the Certification of Admissibility if exporting nation officials do not exercise due diligence in documenting the origin of fishery products shipped to the United States,” NMFS said.

A newly listed interim rule and [proposed rule](#) that would be concurrently issued by the Treasury Department’s Alcohol and Tobacco Tax and Trade Bureau would implement the transfer of Craft Beverage Modernization Act tax benefit authority from CBP to TTB. Under the proposal, “importers will no longer be eligible for the lower CBMA tax rates at the time of entry. Rather, importers will be required to pay the full tax rate at entry and submit refund claims to Treasury to receive the lower rates,” TTB said.

Other newly listed rules in the Fall 2021 Unified Agenda include a Fish and Wildlife Service [proposal](#) to revise requirements for importing eiderdown; an EPA [proposal](#) to set restrictions on hydrofluorocarbon (HFC) imports by the refrigeration, air conditioning, aerosol and foam sectors, and establishing recordkeeping and reporting requirements; and a Food Safety and Inspection Service [proposal](#) that would update the agency’s criteria for evaluating whether a foreign country is eligible to export meat, catfish, poultry or egg products to the U.S. — *Brian Feito*

Supply Chain Tracing for Forced Labor Compliance May Hit Obstacles in China

Many companies may not have insight into where their raw materials come from, said Wiley lawyers while speaking on a [webinar](#) about preparing for the enforcement of the Uyghur Forced Labor Prevention Act. But doing the best they can to eradicate any links to the Xinjiang province in China is needed to lower the risk that goods could be detained under suspicion of forced labor, given that imports with links to Xinjiang will be assumed to be made with forced labor, starting in June.

And, Nazak Nikakhtar, former acting director of the Bureau of Industry and Security, said that if companies don’t have visibility in their supply chains past certain vendors, there is a lot of data that can fill in the gaps. “Folks who have

been living, eating and breathing this for decades can find extensive data about goods, sources and trade flows for your sector, which could be adequate to establish there isn’t a link to Xinjiang,” said Nikakhtar, now a partner at Wiley.

She said that although the law requires the government to give guidance to importers on effective supply chain tracing, “given that supply chains are highly specific to individual companies ... it is not going to be specific enough for companies to essentially have a road map on what to do.”

Partner Maureen Thorson said, “CBP has moved beyond focused withhold release orders that are aimed at one specific company or one specific product. The new law really builds on this trend. This is a really broad-based law with potential effects that ripple across industry.”

Partner Timothy Brightbill said the solar industry has already been significantly affected by a withhold release order on metallurgical grade silicon produced by Hoshine, a company in Xinjiang. He said that industry analysts have said that the solar grade silicon manufacturers were unable to provide the level of traceability needed for CBP. “The solar industry has been trying to rapidly implement traceability practices, to show even if polysilicon is coming from China, it is not from Xinjiang,” he said during the Jan. 13 webinar.

He noted that since the Uyghur Forced Labor Prevention Act makes it even more necessary that importers avoid ties to Xinjiang, solar industry observers are asking: Will Chinese companies cooperate with traceability requests, particularly given the Chinese laws that prohibit them from doing so?

“I think companies have to assume their suppliers in China may not cooperate with these enforcement efforts and may have to plan accordingly,” Brightbill said. He said that companies should submit comments to the government during the public comment process about how the law should be implemented, “but they should prepare for the worst.”

Thorson said companies whose goods are stopped under a WRO now often reexport the goods rather than challenge the detention. “Obviously, proving a negative is inherently difficult,” she said. Few companies have been able to convince

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CBP that their goods did not contain any inputs tainted by forced labor. Under the new law, importers will be able to rebut the presumption that goods linked to Xinjiang were made with forced labor through “clear and convincing evidence.”

“Clear and convincing evidence, that’s a very high threshold for an importer to show,” Thorson said. “Unless you have a good basis to show that your products are not in fact made with supplies made with forced labor, you could dig yourself into a hole by trying to make the showing, it could backfire on you.”

She said the “billions of dollars question” is: How will the law be enforced? “That’s sort of an open question,” she said. The administration will have to put together a list of factories that employ Uyghurs who were transferred there under poverty alleviation programs and other coercive labor arrangements. “It’s highly likely, I think, that Customs is going to capitalize on that list when it comes to enforcing the law. But you also shouldn’t assume that’s going to be the end of it,” she said.

Brightbill said to prepare for the effective date of the law, coming in June, companies should not only do a thorough supply chain review, they should also read their contracts to see who carries the risk in terms of bonds, or letters of credit. He advised that compliance officers should “gather whatever contemporaneous documents there are demonstrating compliance in sourcing.”

Nikakhtar said, “Even if you don’t think your supply chain is going to link to China, somebody could allege it and you’re going to be on the hook to prove it, so you should trace your supply chain, and keep the documentation.” Thorson said that trying to trace back your supply chain may seem daunting. “If you have to eat an elephant, do it one bite at a time,” she said.

She said in this process, you might find that your suppliers are linked to a supplier who uses Uyghur workers who were transferred to the factory under a coercive program. “If there was forced labor in your supply chain and it escaped your compliance efforts, that’s a reason to redouble your compliance efforts,” she said. Ultimately, Brightbill said, he thinks companies should “think about and assess their ability to make supply chains more domestic and certainly more regional where they can.” — *Mara Lee*

DHS Seeks Input on Implementation of Forced Labor Law

The public comment period for input on how to implement the Uyghur Forced Labor Prevention Act will begin Jan. 24, DHS said in a [notice](#). Within the notice, DHS offers 18 questions that commenters may want to address as part of the process. Comments on the implementation will be due March 10. Effective June 21, the law will impose a new rebuttable presumption that goods linked to Xinjiang province are made with forced labor and are prohibited from being imported (see [ITT 01/11/2022](#)).

DHS seeks input on a broad swath of issues, including some basic questions on what goods are coming out of the region and which sectors should “be high-priority for enforcement.” Other questions ask about ways and technologies CBP should use to trace the goods and how the U.S. can identify more entities exporting the violative goods. It also asks how to uncover companies that are using Muslim minority workers transferred outside Xinjiang through coercive government programs.

The questions seem “very open-ended and suggest” that the government “may be starting from a low baseline of knowledge,” Sidley Austin lawyer Ted Murphy said in a [blog post](#). While “this process needs to start somewhere,” with “the government’s experience imposing Withhold Release Orders, identifying shipments to detain and making admissibility determinations over the past couple of years, it may have been more helpful if they explained how they are doing those things now, so people could react and then build from there,” he said.

Following the comment period, DHS will hold public hearings to discuss the law. The comments and the hearings will help inform a report to Congress about enforcement that is due 180 days after the law was enacted, or June 21. That report is required to include some guidance for importers about due diligence expectations and what is needed to rebut the presumption. — *Tim Warren*

CBP Detained Goods Worth \$486 Million Due to Forced Labor in FY21

CBP detained a total of 1,469 shipments during fiscal year 2021, due to the possible use of forced labor on the goods, the agency [said](#) in an update on FY21 statistics. The agency

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also “processed approximately \$2.8 trillion of imports, an increase of nearly 17 percent compared to the same period in Fiscal Year 2020,” it said. “Overall, CBP collected approximately \$93.8 billion in duties, taxes, and other fees on behalf of the U.S. government in FY2021, representing a 133% increase over a five-year period.” CBP collected \$74.4 billion in FY20.

It also “seized more than 83,000 shipments for trade violations in the current fiscal year,” CBP said in the report. “In September 2021 alone, CBP processed more than 3 million entry summaries valued at more than \$259 billion, identifying estimated duties of nearly \$8.4 billion to be collected by the U.S. government.” — *Tim Warren*

FDA Says Food Exporter Info Provided to China, but Still Working on Self-Filing Exemption

FDA has provided China’s General Administration of Customs of China with a list of U.S. food exporter establishments that sought to be recommended for registration in China under upcoming requirements that take effect Jan. 1, it [said](#). The agency had been collecting facility information to avoid a disruption in trade when China’s Decree 248 takes effect (See [2112060045](#)). The decree requires that exporting countries recommend registration of establishments involved in export to China of foods in 18 categories.

FDA says it continues to engage with China on whether U.S. exporters should be bound by the requirement to go through the agency at all, or whether they should be allowed to self-register. “Given the ongoing lack of clarity, the United States is continuing to press China for a delay in implementation of these Decrees by at least 18 months,” it said. FDA has said U.S. firms should be allowed to self-register under the phase one deal.

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