



April 1, 2020

### APHIS to Enforce Lacey Act Requirements on 29 Additional Subheadings in October

The Animal and Plant Health Inspection Service will begin enforcing Lacey Act import declaration requirements on 29 new tariff lines on Oct. 1, 2020, it said in a [notice](#). Products newly covered by the Lacey Act requirements include essential oils in chapter 33; trunks, cases and suitcases in chapter 42; oriented strand board and wooden containers and pallets in chapter 44; musical instruments in chapter 92; and monopods, bipods, tripods and similar articles of wood in chapter 96.

The addition of the 29 tariff lines marks the sixth phase of Lacey Act declaration enforcement. Comments on the new additions are due June 1. APHIS began enforcing Lacey Act import declaration requirements on the first set of products on April 1, 2009. The agency has committed to providing six months of advance notice to importers before it begins enforcement on each successive phase. The most recent phase of Lacey Act enforcement, Phase V, began on Aug. 6, 2015.

### No Plans for Tariff Deferrals, White House Adviser Says

The Trump administration won't be going forward with a broad customs duty deferral, White House economic adviser Larry Kudlow said in an April 3 [interview](#) on Bloomberg TV. After considering a limit on such deferrals to most-favored nation duties, Kudlow said the administration determined that such an action was "too complicated" and "might send the wrong signals."

Lobbying on the issue increased in recent days, following reports that a deferral seemed likely. Bloomberg had on March 31 [reported](#) that President Donald Trump had approved a 90-day deferral of MFN tariffs, taxes and fees, though Trump dismissed the report as false. The administration's apparent reversal "is a victory for the domestic industries that lobbied hard to convince the administration that such a deferral would cause more harm than good," said Sidley Austin lawyer Ted Murphy in a blog post. CBP didn't comment.

### Importers Face Pitfalls as Demand for Medical Products Explodes During COVID-19 Pandemic

Importers of medical equipment face pitfalls responding to the explosion in demand for their products as a result of the COVID-19 pandemic, according to Ben England of FDAImports.com, who spoke by phone interview March 25. The requirements of some emergency actions taken by FDA can be difficult or impossible to navigate, and the huge increase in demand for medical products, including protective equipment and ventilators, is a recipe for fraud, potentially creating unwelcome surprises for importers.

England and his consultancy are "swamped," he said, working overtime to match Chinese suppliers, which are again ramping up production as the worst of the pandemic subsides in their country, with importers in the U.S. "We started getting phone calls like crazy from all sorts of companies in China that want to export hand sanitizers, masks, ventilators, gloves, you name it. So we've been in a lot of deal-making, putting foreign suppliers together with U.S. importers who are in need of the products" so they can in turn be distributed to hospitals, clinics and the government.

England says he has already seen examples of fraud by unscrupulous actors trying to get around regulatory requirements for these products. He's aware of more than a dozen examples of companies being registered by third parties as device facilities and then listing the devices in an incorrect classification that does not require a 510k submission, including disposable surgical masks that are being listed as scavenging masks.

That's "going to create problems for the importer because the device listing is not going to match what the device really is," England said. The discrepancy will probably be caught when entry data is transmitted to CBP and the FDA, and the shipments "are probably going to be stopped, because there's no evidence that they are suitable for medical use," he said. While FDA is fine with imports of non-medical masks, which can be useful for the public, it does not allow them to be sold as medical masks, England said.

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## Bipartisan Bill That Puts Burden of Proof Concerning Forced Labor on Importers Introduced

A [bill](#) introduced by House Rules Committee Chairman Jim McGovern, D-Mass., in the House and by Sen. Marco Rubio, R-Fla., in the Senate would create a rebuttable presumption about forced labor in Xinjiang, China, which would mean any companies that import goods made in that region “must demonstrate through ‘clear and convincing’ evidence that there was no forced labor in their supply chains,” according to a [release](#) announcing the [bill's](#) introduction.

Both the House and the Senate bills have bipartisan sponsorship, and one of the co-sponsors in the House is Rep. Mark Meadows, R-N.C., who has been tapped to be the next White House chief of staff. Six Democrats and six Republicans are on the House bill, and they cover the conservative, moderate and liberal spectrum. The Senate bill has six Republican co-sponsors and three Democratic co-sponsors, also across the ideological spectrum.

“Any U.S. or international company with operations in Xinjiang or working with the Xinjiang government to source labor to other parts of China should reconsider whether they want to be producing products in a region where there is evidence ‘crimes against humanity’ are being committed,” McGovern said in the release. Fashion industry players have said they don't want to have forced labor in their supply chains, but they need help in detecting whether they do.

## FDA Temporarily Loosens FSMA On-Site Supplier Audit Requirements for Importers

FDA is temporarily loosening on-site supplier audit requirements for importers under the agency's preventive controls and Foreign Supplier Verification Program regulations, [it said](#). Under both sets of regulations, importers may conduct audits of supplier verification activities, and on-site audits are the preferred verification activity when the supplier controls a hazard that risks serious health consequences or death. But FDA says that travel advisories and restrictions resulting from the COVID-19 pandemic may impact the ability of receiving facilities and FSVP importers to conduct or obtain on-site audits of their suppliers. As a result, FDA will, for the time being, not enforce on-site audit requirements in countries where travel advisories or restrictions due to COVID-19 make it impossible to conduct the on-site audit, as long as an alternative verification activity is selected.

## Coronavirus Highlights Need for FMC to Adopt Rules on Detention, Demurrage Fees, Trade Groups Say

The Federal Maritime Commission should quickly adopt its proposed interpretive rule for addressing detention and demurrage charges, trade associations said in a March 16 [letter to the FMC](#). “With ongoing challenges posed by the coronavirus, there is real concern about these fees being assessed when there are equipment issues beyond the control of the shipper or motor carrier,” the groups said. “Thus, these fees appear to be punitive measures by the ocean carriers, not an incentive to expedite container flow.”

## FDA Guidance Details Enforcement Policies for Face Masks and Respirators During COVID-19 Pandemic

The Food and Drug Administration on March 25 issued a new [guidance document](#) detailing its enforcement policy for face masks and respirators during the COVID-19 public health emergency. The policy is intended to “help expand the availability of general use face masks for the general public and particulate filtering facepiece respirators (including N95 respirators) for health care professionals during this pandemic.” It includes information on enforcement for face masks and respirators not intended for medical purposes, face masks intended for medical purposes but not intended to provide liquid barrier protection, and surgical masks. It also sets out FDA's intended approach for emergency use authorizations for masks and respirators, including for reprocessing of filtering facepiece respirators.

## USTR Issues New Section 301 Tariff Medical Supply Product Exclusions

The Office of the U.S. Trade Representative issued new medical supply [product exclusions](#) from the fourth group of Section 301 tariffs on goods from China. The new exclusions from the tariffs “are reflected in 19 specially prepared product descriptions, which cover 39 separate exclusion requests,” according to the notice. The product exclusions apply retroactively to Sept. 1, 2019, and will remain in effect until Sept. 1, 2020.

The USTR also issued new [product exclusions](#) from the third group of Section 301 tariffs. The new exclusions from the tariffs “are reflected in five 10-digit HTSUS subheadings,” according to the notice. The product exclusions, which are not all medical related, apply retroactively to Sept. 24, 2018, and will remain in effect until Aug. 7, 2020.

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