



# Trends in Logistics and International Trade

Monday, November 14, 2022  
2:00pm – 3:15pm

# Speakers



**Jason Tutrone**  
Thompson Hine LLP



**Robert Stang**  
Husch Blackwell LLP

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- Prices (present or future) or other terms and conditions of sale
- Costs, production, markets, capacity, inventory or sales, or plans regarding design, production, distribution, or marketing of specific products.
- Bids or contracts for particular products.
- Territorial restrictions, allocations of customers, restrictions on types of products, or any other kind of market division.
- Matters relating to actual or potential customers or suppliers that might have the effect of excluding them from any market or of influencing the business conduct of any company towards such customers or suppliers.

**If any matter of concern comes up during the meeting, please stop the conversation and inform a SOCMA representative.**



Customs and Trade:  
What's Hot, What's Not and  
What's On The Horizon

# Agenda

## Customs and Trade:

What's Hot, What's Not and What's On The Horizon

- Introduction
- Section 301 Tariffs
- UFLPA
- GSP/MTB
- Proactive Steps
- Questions

# Section 301 Tariffs :

## Summary of Section 301 Litigation

**September 2020:** Complaints filed with the U.S. Court of International Trade challenging the Section 301 duties under List 3 (25%) and List 4A (7.5%).

Currently over **6,000** plaintiffs. (Complaints are continuing to be filed.) Plaintiffs create a steering committee.



# Section 301 Tariffs :

## Summary of Section 301 Litigation

**Oral argument February 1, 2022. April 1, 2022, the CIT issued an opinion remanding the determination back to USTR:**

- Court rejects “justiciability” argument
- Not a political question – statutory interpretation
- Government’s reaction was within scope and thus lawful
- Government violated Administrative Procedures Act in its treatment of comments

Law requires Government to explain “how it resolved any of the significant problems raised by the comments.” Government’s statements “fail to apprise the court how the USTR came to its decision to act and the manner in which it chose to act, taking account ... concerns raised about the impact of the duties on the U.S. economy, and the potential availability of alternative courses of action, within the context of the specific direction provided by the President.”

# Section 301 Tariffs :

## Summary of Section 301 Litigation

**August 01, 2022 | U.S. Trade Representative files “Remand Determination”:**

- Identified materials on which USTR supposedly relied in order to respond to significant comments
- Explained USTR’s determination to remove and retain and certain products in List 3 and List 4A
- Explained why particular duty rates and certain levels of trade under each List were selected
- Explained why USTR disagreed with broader comments concerning anticipated damage to the U.S. economy, the legality of List 3 and List 4A, the efficacy of the tariffs, and alternative courses of action
- **Remand specifically cites to SOCMA testimony**



# Section 301 Tariffs :

## Summary of Section 301 Litigation

**September 14, 2022 | Plaintiffs file comments on USTR's remand redetermination:**

- USTR's Remand Determination addresses immaterial issues (e.g., why certain products were excluded from the tariff lists rather than included)
- The Remand Determination involves rationales that are impermissibly outside of the administrative record or otherwise post hoc (or explanations "after the fact" rather than based on contemporaneous evidence)
- The Remand Determination is reliant on Presidential "direction" as opposed to reasoned explanations concerning the Agency's decisions
- The Remand Determination does not meaningfully respond to comments that raised fundamental objections to the List 3 and List 4 tariff actions

# Section 301 Tariffs :

## Summary of Section 301 Litigation

**Government responded to comments on the remand determination on October 28, 2022.** As expected, the government contends that its remand covered all necessary issues and was squarely within all statutory and evidentiary requirements.

**Plaintiff's reply is due November 14, 2022.**

### Which leaves us where:

- The Court may hear another round of oral arguments
- A final judgment is not expected until Q2 2023 (possibly later)
- Expect an appeal to the Court of Appeals for the Federal Circuit and very likely the Supreme Court

# Section 301 Tariffs :

## Existing Section 301 Exclusions

March 28, 2022, **USTR reinstated 352 Section 301 product exclusions** , some of which apply to chemicals and chemical-related goods.  
*See* Federal Register Notice 87 FR 17380 (March 28, 2022)

The reinstatements were made retroactive to goods that entered the U.S. October 12, 2021. They go forward through December 31, 2022.

# Section 301 Tariffs :

## Existing Section 301 Exclusions

If you imported a product that meets the narrative in one of the 352 reinstated exclusions, and the goods were entered subject to the Section 301 tariffs, and the entry **is not yet liquidated**, then ask your customs broker to file a Post Summary Correction (PSC) with Customs.

If you imported a product that meets the narrative in one of the 352 reinstated exclusions, and the goods were entered subject to the Section 301 tariffs, and the entry **has been liquidated less than 180 days** then file a protest. (Protests filed more than 180 days after the date of liquidation will be automatically denied.)

For protests and PSCs, do not be surprised if Customs asks for more information on the product before accepting the PSC or granting the protest.

# Section 301 Tariffs :

## Existing Section 301 Exclusions

There is no current mechanism available to extend the 301 tariff exclusions, reinstate the exclusions or file for new exclusions beyond December 31, 2022. SOCMA and others are working for those results.

**August 24, 2022, SOCMA filed a submission calling for USTR to:**

- Reopen the exclusion process for previously extended exclusions (already completed by USTR)
- Open the exclusion process for all previously granted, now expired exclusions
- Re-open the exclusion process to all 301 tariffs

# Section 301 Tariffs :

But they persist

## **USTR Website (September 02, 2022):**

The Office of the United States Trade Representative confirmed that representatives of domestic industries benefiting from the tariff actions in the Section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation have requested continuation of the tariffs. Accordingly, as required by statute, the tariffs did not expire on their four-year anniversary dates and USTR will proceed with the next steps as provided in the statute.

## **In other words:**

**Expect the China 301 tariffs to remain in place.**



# Section 301 Tariffs:

But they persist

**October 12, 2022:** USTR announced the next steps in the statutory four-year review of the tariff actions in the China Section 301 investigation.

- USTR is opening a public docket for interested persons to submit comments on the effects of the Section 301 investigation
- The public docket web portal will open on November 15, 2022, and close on January 17, 2023
- **Helpful hint:** Expect the comment system to become overloaded on January 17, 2023. Don't wait until the last minute, but don't file too early to give others time to file comments in opposition
- **For a sample of the expected questionnaire:**  
[Four-Year Review Docket For Posting 103122.pdf \(ustr.gov\)](#)

# Forced Labor Laws Directed at China

## Tariff Act of 1930, 19 U.S.C. 1307

Prohibits imports made with forced labor

## Uyghur Forced Labor Prevention Act (UFLPA)

- [P.L. 11778](#) signed December 23, 2021
- Expands enforcement of sanctions against forced labor
- Addresses goods mined, produced, or manufactured **wholly or in part** with forced labor China, including by Uyghurs, Kazakhs, Kyrgyz, Tibetans, and members of other persecuted groups in China, and especially in the XUAR
- Strengthens prohibition against importing goods made in whole or in part through forced labor in the XUAR



# Enforcement

## If the final determination of admissibility is a decision to exclude the goods:

- Shipments in violation of UFPLA may be excluded
- Importer of Record receives an exclusion notice
- The excluded goods can be reexported
- Importer can file a protest against the exclusion

## If the detention turns into a seizure or forfeiture:

- The case will be referred to a Fines, Penalties, & Forfeitures Officer
- The importer will receive a notice of seizure
- Importer can file petition requesting cancellation of the seizure and/or mitigation of any penalties assessed
- The importer can request permission to reexport the goods

# If You Choose to Contest the Detention Notice

If you believe the goods are out of scope (no connection to the XUAR or an entity on the UFLPA Entity List) and you choose to contest the detention, CBP will request evidence —

## Pertaining to Overall Supply Chain

- Detailed description of supply chain and the roles of the entities in the supply chain, including shippers and exporters
- Is the importer related to any of those entities? See 19 C.F.R. § 152.102(g)
- Suppliers associated with each step of the production process, including names and contact information (addresses, email addresses, and phone number)
- Affidavits from each company or entity involved in the production process (Affidavits should address commingling)



# If You Choose to Contest the Detention Notice

If you believe the goods are out of scope (no connection to the XUAR or an entity on the UFLPA Entity List) and you choose to contest the detention, CBP will request evidence –

## Pertaining to Merchandise or Any Component

- Purchase orders, invoices for all suppliers and sub-suppliers, Packing list, Bill of materials, Certificates of origin
- Payment records
- Seller's and/or Buyer's inventory records, including dock/warehouse receipts
- Shipping records, including manifests, bills of lading (e.g., airway/vessel/trucking)
- Invoices and receipts for all suppliers and sub-suppliers, Import/export records

# China Oriented Enforcement





# GSP & MTB

## Generalized System of Preferences (GSP)

The GSP is the largest and oldest U.S. trade preference program that provides nonreciprocal, duty-free treatment enabling many of the world's developing countries to spur diversity and economic growth through trade. It expired December 31, 2020.

Legislation to renew the GSP has been pending in the House and Senate. Both pieces of legislation contain retroactivity language going back to December 31, 2020. New GSP bill will have stricter labor and environmental standards.

## Miscellaneous Tariff Bill (MTB)

The MTB is temporary legislation providing duty suspensions to qualifying goods. It also expired December 31, 2020. Legislation extending the MTB through 2023 and authorizing two additional cycles through 2027 has been pending in the House and Senate. Both provide for a limited amount of retroactivity (four months or 120 days).

**If there is going to be a new GSP and MTB then we would expect to see serious discussions begin in November. The closer we get to a presidential election the less likely it becomes that we'll see tariff relief.**

# GSP Refunds Only Legislation

[HR 8906](#): Introduced September 19, 2022, by Debbie Wasserman Schultz (FL)

- Has bipartisan support (with three FL Republicans)
- Provides duty-free or preferential treatment to entries that otherwise would have been subject to GSP
- Entries must have been after December 31, 2020, and before September 1, 2022
- Requires a liquidation or reliquidation request within 180 days of the law being enacted to receive refund of duties paid
- U.S. would refund amounts owed without interest no later than 90 days after the date of liquidation or reliquidation
- Coalition for GSP estimates that American companies have paid at least \$1.9 billion in direct tariffs January 1, 2021, through August 2022 (resulting in \$2.6 billion added costs)
- Senate companion bill has not yet been introduced

# Trade Legislation in the Lame Duck

**Rep. Earl Blumenauer (D -OR)** (Chairman of the Ways and Means trade subcommittee) is reportedly working on a comprehensive trade bill to introduce in the lame duck that would include a 7-year renewal of Trade Adjustment Assistance, GSP and MTB.

- Unlikely to have Republican support as GSP and MTB language is similar to some the GOP has previously opposed
- Ways and Means Committee Ranking Member Rep. Adrian Smith (R-NE) doesn't believe TAA should be reauthorized as a standalone bill or with GSP & MTB
- So, passage of this package is dubious

# Proactive Measures for Importers

Politics, Unfair trade practices by trading partners,  
Pressure by the U.S. domestic industry –  
Customs has been more enforcement oriented:  
**UFLPA, Reverse False Claims Act Investigations,  
Risk Assessments.**

We expect high duty rates and trade investigations  
to continue. So, Customs Compliance and  
**Reasonable Care** become especially important.

## **Reasonable Care means:**

- Know your supply chain
- Conduct internal audits and reviews
- Get a CBP ruling (tariff classification, valuation and country of origin determinations)
- If any questions, consult a Customs “expert”

# Thank you!

## Robert Stang

Partner | [Husch Blackwell LLP](#) | Washington, D.C.  
202.378.2334 | [robert.stang@huschblackwell.com](mailto:robert.stang@huschblackwell.com)





# Freight Transportation Challenges

Jason Tutrone

[Jason.Tutrone@ThompsonHine.com](mailto:Jason.Tutrone@ThompsonHine.com)

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HINE**

**Always Innovating**



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# Ocean: Demurrage & Detention





# D&D Prohibitions

Shipping Act prohibits **unjust and unreasonable regulations and practices** involving receiving, handling, storing, or delivering property.



# OSRA '22: D&D Invoices

- (1) Date container is available
- (2) Port of discharge
- (3) Container number(s)
- (4) For exports, earliest return date
- (5) Free time (in days)
- (6) Free time start date
- (7) Free time end date
- (8) Rule providing applicable daily rate(s)
- (9) Applicable rate(s)
- (10) Amount due
- (11) Contact info. (email, phone) for questions and mitigation requests
- (12) Statements that charges are consistent with FMC rules
- (13) Statement that carrier's performance did not cause or contribute to the charges

# FMC Charge Complaints

- Complaints may be submitted via email: [chargecomplaints@fmc.gov](mailto:chargecomplaints@fmc.gov)
- FMC shall investigate.
- VOCC or NVOCC can provide info. in response.



VOCC OR NVOCC BEARS THE BURDEN OF PROOF



FMC SHALL ORDER REFUNDS AND/OR PENALTIES FOR NON-COMPLIANT CHARGES



# Vessel Space Issues





# Prohibitions: Vessel Space

Common carrier shall not:

- “Unreasonably refuse cargo space accommodations **when available**, or resort to other unfair or unjustly discriminatory methods”
- “Unreasonably refuse to deal or negotiate, **including with respect to vessel space accommodations** provided by an ocean common carrier”

# Ocean: Commodity Discrimination

Common carriers shall not, for service pursuant to a service contract:

- “Engage in any unfair or unjustly discriminatory practice **against any commodity group or type of shipment** or in the matter of rates or charges with respect to any port”
- “Give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port”

# Ocean: Relief Mechanisms

- Formal complaint
- Charge compliant
- FMC CADRS
- Report violation





# Trucking Issues

In 2022, trucking companies suffered a record deficit of 78,000 drivers

At current trends, the shortage could surpass 160,000 in 2030.

ATA estimates that over the next decade, the industry will have to recruit nearly 1,000,000 new drivers.

American Trucking Associations, Driver Shortage Update 2021 -

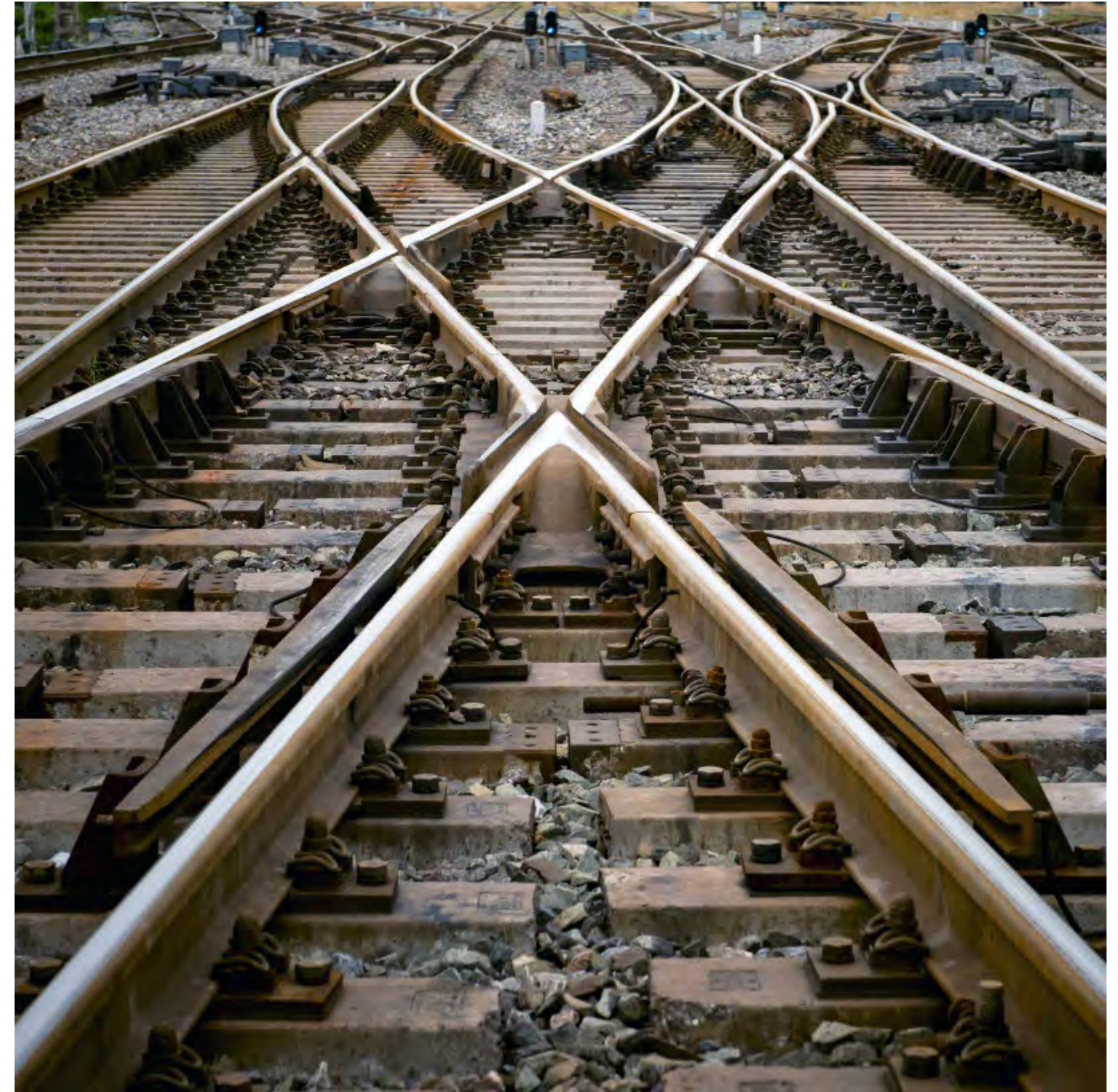
[https://www.trucking.org/sites/default/files/2021-10/ATA%20Driver%20Shortage%20Report%202021%20Executive%20Summary.FINAL\\_.pdf](https://www.trucking.org/sites/default/files/2021-10/ATA%20Driver%20Shortage%20Report%202021%20Executive%20Summary.FINAL_.pdf)





# Widespread Rail Service Issues

- 40 years of consolidation and rationalizing rail network
- Shippers experiencing increased transit times, missed switches, and service reductions
- Lack of resiliency impairs recovery from operational challenges





# Rail: Key Statutory Rights/Remedies

- Common carrier obligation
- Safe and adequate car service
- Rate and service terms on request; no changes without 20 days' notice
- Relief for Service Emergencies
  - 30 days maximum, unless issue lasts longer
  - Applies if: emergency situation that may have **substantial adverse effects** on shippers or rail service in a region of the U.S.; or rail carrier **cannot transport** traffic in a manner that **properly serves the public**