TRADE NEWS WEEKLY

July 12–July 16, 2021

A summary of international business news prepared by the Hawaii Foreign-Trade Zone 9 with the collaboration of the Research and Economic Analysis Division of the Department of Business, Economic Development & Tourism, and based on research and shipment data from Panjiva, Inc. which tracks companies involved in global trade. Other news sources may occasionally be included where indicated.

Section 301 Litigation

On July 6, the U.S. Court of International Trade (CIT) issued a preliminary injunction enjoining U.S. Customs & Border Protection (CBP) from liquidating certain unliquidated entries subject to the China Section 301 List 3/4A litigation. CBP is prohibited from liquidating these entries until August 3, 2021. Counsel and the CIT judges held a status conference on July 15 on the process for plaintiffs to protect unliquidated Customs entries for later disposition in accord with the decision.
Source: Miller & Company P. C.

Section 232 Litigation

The U.S. Court of Appeals for the Federal Circuit (CAFC) has reversed the CIT's decision to invalidate the Section 232 tariff increase on Turkish steel products. The CAFC determined that the President retained authority to adjust Section 232 actions outside the statutory timelines, so the later tariff increases made by President Trump were valid. Transpacific Steel LLC, et. al. v. U.S., et. al., CAFC Slip Op. 20-2157 (July 13, 2021).
Source: Miller & Company P. C.

Chinese Entity Updates

On June 22, the Office of Foreign Assets Control (OFAC) added two companies to the non-Specially Designated Nationals (non-SDN) List of Chinese Military Industrial Complex Companies List. U.S. persons are prohibited from buying or exchanging securities with entities on this list. 86 Fed. Reg. 32714 (June 22, 2021).

On June 24, the Bureau of Industry and Security (BIS) added five Chinese entities to the BIS Entity List. The five entities are believed to be involved in the use of forced labor against Uyghurs, Kazakhs, and other Muslim minority groups in the Xinjiang Uyghur Autonomous Region. 86 Fed. Reg. 33119 (June 24, 2021).

On June 28, the Department of Defense (DOD) removed the "Communist Chinese Military Companies" designation from all entities previously designated and indicated that no companies are currently designated as such. At the same time, it designated 47 telecommunication, aviation, machinery, semiconductor, and electronics companies as "Chinese Military Companies" under different legal authority. 86 Fed. Reg. 33994 (June 28, 2021)

On July 12, BIS added 34 entities to the Entity List and one entity to the Military End User (MEU) List. Most of the new entities are in China, but there are also entities in Canada, Pakistan, Iran, Lebanon, the Netherlands, the United Arab Emirates, Taiwan, Russia, South Korea, Turkey, Singapore, and the United Kingdom. BIS also modified a listing and removed some entities. 86 Fed. Reg. 36496 (July 12, 2021).
Source: Miller & Company P. C.

FDA EUAs

On July 1, the Food and Drug Administration (FDA) announced that it was revoking the Emergency Use Authorizations (EUAs) for non-NIOSH approved disposable respirators and for decontamination and bioburden reduction systems. CSMS #48653470 (July 1, 2021).
Source: Miller & Company P. C.

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Section 321 Filings

CBP officials indicated at the Commercial Customs Operations Advisory Committee (COAC) meeting on June 23 that CBP will exempt some filers from the requirement to provide a 10-digit HTSUS classification, while more data elements will be required on low value Section 321 shipments that do not have PGA requirements. CBP anticipates more than 1 billion Section 321 Type 86 entries in the coming year - an impossible challenge for CBP. Expect potential statutory or regulatory action.
Source: Miller & Company P. C.

Biden's Trade Powers Lapse

On July 1, Trade Promotion Authority, President Biden's authority to fast-track trade deals, lapsed without the Biden Administration requesting new authority. The TPA lapse will complicate potential free trade agreements under negotiation with Kenya and the United Kingdom.
Source: Miller & Company P. C.

Xinjiang Forced Labor

On June 24, CBP issued a Withhold Release Order (WRO) against Hoshine Silicon Industry, Co. Ltd. and its subsidiaries in the Xinjiang region of China. As a result, CBP is now detaining shipments of silica-based products to verify their content.

On July 13, a combination of U.S. government agencies issued an updated Xinjiang supply chain business advisory warning of risks in imports and exports involving the region.
Source: Miller & Company P. C.

FEMA PPE Rule Expires

On July 1, the Federal Emergency Management Agency (FEMA) confirmed that its export restrictions on certain Personal Protective Equipment (PPE), including masks and gowns, have expired. PPE can now be exported without FEMA authorization.
Source: Miller & Company P. C.

Beverage Containers

CBP has revoked four rulings on the classification of insulated stainless steel beverage containers. CBP previously classified double-walled stainless steel beverage containers as table, kitchen, or other household articles of Heading 7323, but now indicates that they are classified as vacuum flasks and other vacuum vessels of Heading 9617. 55 Cust. B. & Dec. 9 (July 7, 2021).
Source: Miller & Company P. C.

Country of Origin Changes

CBP has issued a Proposed Rule to amend the Customs Regulations to apply the tariff-based rules of origin in Part 102 to all products imported from Canada or Mexico, whether or not involving a U.S. – Mexico – Canada Agreement (USMCA) preference claim and including origin determinations for government procurement under 19 C.F.R. Part 177. The Proposed Rule fails to update the tariff-shift rules to the current HTSUS. This is a very controversial subject. 86 Fed. Reg. 35422 (July 6, 2021).
Source: Miller & Company P. C.

Made in USA Penalties

The Federal Trade Commission (FTC) has published a Final Rule on unqualified "Made in USA" claims on product labels and in promotional materials. The new FTC regulations increase the potential civil penalties for improper "Made in the USA" claims to up to $43,280 per violation. Contact Sean Murray with questions. 86 Fed. Reg. 37022 (July 14, 2021).
Source: Miller & Company P. C.

USMCA Thread Requirements

CBP has implemented the USMCA sewing thread requirements, under which sewing threads of Headings 5204, 5401, 5508, and yarn of Heading 5402 used in apparel products of Chapters 61 or 62 are only considered originating if the thread is both formed and finished in the territory of one or more USMCA countries. CSMS #48659796 (July 1, 2021).
Source: Miller & Company P. C.

Inflation Hits 10-Year High as Import Prices, Shipping Costs Soar

U.S. import prices have continued their rapid ascent with inflation, excluding food and fuels, reaching 6.4% year over year in June and 6.1% when comparing to June 2019. Prices of key materials have continued to increase as have shipping costs.

Average U.S.-inbound container shipping rates reached $5,857/FEU in June compared to $4,154/FEU in March. That meant the total cost of importing containers to the U.S., before surcharges, reached $8.32 billion in June, up by 207.4% from a year earlier and rising by 32.2% compared to March.

Companies are likely focusing on short-term, inflation-mitigating strategies rather than long-term, post-pandemic recovery plans. In the three months to July 14, the topic of inflation was mentioned in 56.5% of corporate conference calls tracked by sources. That compared to 48.7% in Q1’21 and was the highest since June 2011.

Discussions of supply chain and logistics issues are also becoming more common and were mentioned by 62.1% and 53.7% of companies, respectively.

INFLATION MENTIONS AT HIGHEST SINCE 2011

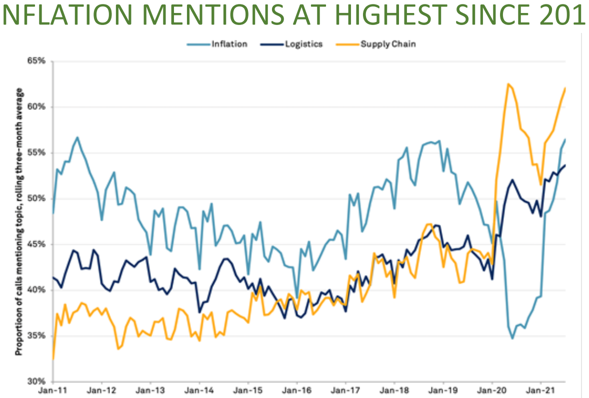

Chart compares proportion of company conference calls referring to a given topic on a trailing three month basis. Source: Panjiva

Container Shipping Surge Hides Electronics, Apparel Slowdown

U.S. seaborne imports remained elevated in June, with an average 94,490 TEUs per day of imports being 30.6% higher than a year earlier and 19.8% above June 2019’s level. With activity just 2.2% below that seen in the prior three months' average, there’s little let up in the pressure on ports and shipping firms.

The Healthcare and Consumer Discretionary sectors are still the main drivers of growth, with imports up by 32.2% and 23.6%, respectively, in June 2021 versus June 2019.

There are some signs of slowdown elsewhere in the consumer sector though with imports of Textiles/Apparel and Consumer Electronics down by 4.9% and 13.8%, respectively. The latter likely reflects the ongoing global shortage of semiconductors.

GROWTH SLOWING IN KEY CONSUMER FOCUSED SECTORS

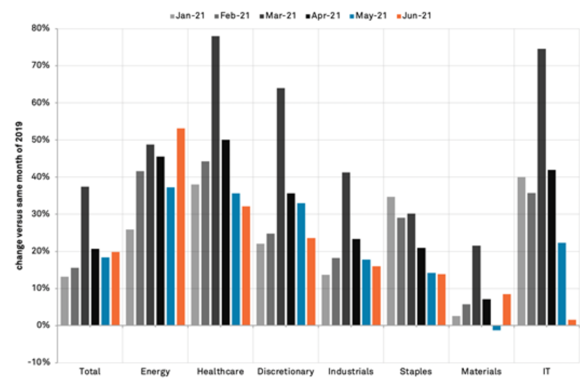

Chart segments U.S. seaborne imports by origin. Source: Panjiva

Samsung SDI May Want Biden’s Cash to Settle on New Battery Factory

U.S. Samsung SDI may spend up to 4 trillion Korean won ($3.48 billion) on building new battery manufacturing facilities in the U.S. for Stellantis and Rivian. That follows the Biden Administration’s critical supply chain review which may lead to incentives for such facilities as well as USMCA rules which have introduced stricter rules-of-origin for automakers.

Samsung SDI’s supplies to the U.S. have surged recently with U.S. seaborne imports linked to the firm up by 34.5% sequentially in Q2’21.

That outpaced total U.S. seaborne imports of lithium ion batteries which fell by 1.6% over the same period. A 12.5% drop in imports linked to Tesla and a 57.1% slide in imports associated with SK Innovation may reflect the knock-on effect of a shortage of semiconductors for the automakers.

Widespread U.S. Ban on Xinjiang Imports Gets Closer

The U.S. Senate unanimously passed the "Uyghur Forced Labor Prevention Act" which could result in a ban of all imports from the Xinjiang region of China. The House of Representatives passed a similar measure last year though the two would need to be reconciled and Presidential approval secured before the measures would come into force.

The Biden Administration has taken a hawkish stance towards the topic and has issued a wide range of Withhold Release Orders and extensions to the Entity List of companies that require licenses to work with U.S. firms. A full ban could also greatly complicate supply chains in covering raw materials and components as well as final products, as Fast Retailing found recently.

Approving the Senate's new act could push relations with China to breaking point and would make an extension of the Phase 1 trade deal very unlikely.

That comes as relations are set to remain frosty after U.S. Treasury Secretary, Janet Yellen, confirmed that there will not be a return to regular Economic Dialog talks which were previously abandoned by the Trump administration.

China May Avoid EU Carbon Fee That Could Capture U.S.

The Chinese government will formally launch a national greenhouse gas emissions trading scheme on July 16. That will come after today's expected release by the EU of its "Fit for 55" GHG emissions reduction strategy. The latter includes a Carbon Border Adjustment Mechanism (CBAM) that will work, in effect, as a tariff on imports of products, particularly metals, from countries that have lower (or no) carbon pricing than the EU.

Depending on the pricing of the Chinese system, that may allow exporters from China to avoid CBAM fees. With no apparent plans for a national trading scheme in the U.S. there's the potential that U.S. firms have to pay the "tariff" while China's do not.

China Tariff Removal May Help but Not Remove Computer Chip Shortage

An ongoing shortage of semiconductors, and specifically integrated circuits (aka computer chips or microchips), is driving supply chain disruptions in a diverse range of industries, particularly in the U.S. Data analysis shows that U.S. imports of computer chips rose by 37.0% in the three months to May 31 versus the same period of 2016, though pricing effects mask growth of just 4.3% in the volume of chips imported.

The Biden Administration's actions after the recent critical supply chain review may help supplies in the long-term. In the short term, removing Section 301 duties of 25% on imports from China that were applied as part of the trade war will at least reduce costs in the near-term.

The volume of chips imported from China fell by 50.3% in the three months to May 31 versus the same period of 2016 – i.e. before Section 301 tariffs were applied. A 52.6% slide in imports of specialist controllers from China was offset by a 40.6% jump in imports from other regions including Taiwan and Malaysia.

A slide in shipments of memory chips, processors and amplifiers from China, meanwhile, came at the same time as a drop in shipments from the rest of the world, too, leaving an overall decline in those chip types and indicating tariffs are far from being the industry's only challenge.