

ISSN 0276-8275

WTTOnline.com

A Weekly Report for Business Executives on
U.S. Trade Policies, Negotiations, Legislation,
Trade Laws and Export Controls

Washington Tariff & Trade Letter®

Vol. 42, No 42

October 24, 2022

CFIUS Gets Serious

For the first time, the Treasury Department has released **enforcement and penalty guidelines** for use by the inter-agency Committee on Foreign Investment in the United States. Treasury leads CFIUS, which is tasked with identifying and mitigating possible national security risks raised by foreign investments in the United States.

At the same time, CFIUS is expected to maintain US openness to foreign investment, which often requires the Committee to enter into agreements or impose conditions on transaction parties to mitigate risks to national security that arise from a transaction. The new guidelines will provide the public with information about how the Committee assesses violations of the laws and regulations that govern transaction parties, including potential breaches of CFIUS mitigation agreements.

They also offer important information about how CFIUS will assess whether and in what amount to impose a penalty or take some other enforcement action for a violation of a party's obligation, and factors that CFIUS may consider in making such a determination, including aggravating and mitigating factors, according to Treasury. The Guidelines are available here: [CFIUS Enforcement and Penalty Guidelines](#).

"Today's announcement sends a clear message: Compliance with CFIUS mitigation agreements is not optional, and the Committee will not hesitate to use all of its tools and take enforcement action to ensure prompt compliance and remediation, including through the use of civil monetary penalties and other remedies," Treasury Assistant Secretary for Investment Security Paul Rosen said.

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Forbes reports that Tik-Tok is reportedly close to signing a contract with CFIUS, which has been investigating whether the company's Chinese ownership could enable the Chinese government to access personal information about U.S. TikTok users. TikTok material [reviewed](#) by *Forbes* indicates that ByteDance's Internal Audit team was planning to use location information to surveil individual American citizens.

Portman Eyes 'Grand Bargain' Trade Bill

Sen. Rob Portman (R-Ohio) is hoping for a "grand bargain" on a trade package when Congress returns for a post-election "lame duck" session. Mr. Portman – who is also a former US Trade Representative – said he was disappointed that lawmakers were unable to agree on inclusion of a trade title in the CHIPS Act. He spoke at a program with other former USTR's sponsored by the Center for Strategic and International Studies.

Lawmakers tried to at least include renewal of the expired Generalized System of Preference program and the Trade Adjustment Assistance program for workers dislocated by trade in the CHIPS Act, but failed to reach agreement on final language. There are differences between Democrats and Republicans and the House and Senate on the two programs. Some lawmakers also pushed to include various measures aimed at China.

Sen. Portman suggested one possible measure for the "lame duck" trade package would be his bill to provide Trade Promotion Authority for negotiations to complete the US-United Kingdom free trade agreement begun under the previous Administration. The bill (S 4450), introduced with fellow Senate Finance Committee member Sen. Chris Coons (D-Del), would authorize President Biden to negotiate the US-UK FTA – as opposed to a broad grant of negotiating authority. He did not specify whether the goal would be a stand-alone trade package or something that would be attached to "must-pass" legislation.

The Senate is slated to resume consideration of the National Defense Authorization Act when it returns in November. Senate Majority Leader Chuck Schumer (D-NY) has said he expects that bill to be the vehicle for a number of China-related measures. *[Reporting by WTD]*

CBP Publishes two Final Rules: Regulations and Fees

The October 18 action updates provisions in 19 CFR 111: **Modernization of the Customs Broker Regulations** [\[87 FR 63267\]](#) and **Elimination of Customs Broker District Permit Fee** [\[87 FR 63262\]](#). Final Rule effective date is December 19, 2022.

The new Final Rules modernize operations by including changes to broker fees and an expansion of the forms of accepted payment to include electronic options. In order to recoup a portion of the costs associated with licensing, CBP is raising customs broker license application fees for all applicants. CBP will also update and modernize broker reporting and the Automated Commercial Environment capabilities in the broker account portal to align with the new regulations.

Key changes in the Final Rules include:

- Transitioning to a national permit framework
- Changing broker fees and expanding forms of payment
- Transitioning broker reporting capabilities from Legacy ACE Portal to the Modernized ACE Portal
- Establishing that customs business is conducted within the U.S. customs territory and requiring brokers to designate a knowledgeable point of contact
- Revising the broker/client relationship requirements
- Updating responsible supervision and control oversight requirements
- Strengthening cyber security and records requirements

To ensure a smooth transition and to socialize changes in the new regulations, CBP created a dedicated [webpage](#) with information and resources on the changes to 19 CFR 111. The Office of Trade Broker Management Branch will be hosting public webinars in the coming weeks to discuss the changes and allow participants to ask questions. Read the full text of the Modernization of the Customs Broker Regulations Final Rule [here](#) and the Elimination of Customs Broker District Permit Fee Final Rule [here](#).

WTO Discussions on Services - Next Steps

Geneva [via WTD] – World Trade Organization Council for Trade in Services Chair Ambassador Kemvichet Long of Cambodia said last week that delegations need to “reach out to each other on possible next steps” for advancing 12th ministerial conference mandates with a bearing on trade in services.

In his restricted report issued October 17, the chair provided an account of his consultations with members on four major mandates stemming from the WTO’s 12th ministerial conference held in June. They include “(1) the LDC services waiver; (2) the e-commerce Work Programme and Moratorium; (3) the pandemic response; and (4) WTO reform.”

Progress on the services waiver for least-developed countries, mandated by the WTO’s eighth ministerial meeting in Geneva in 2011, has been limited due to the stonewalling tactics adopted by industrialized countries, including the United States, said a services trade negotiator who asked not to be quoted.

Members “highlighted the importance of hearing from LDCs about their needs and expectations, and how they saw the work of the Council unfolding with regard to the Waiver,” and “calls were made for concrete and specific proposals from the LDC Group, to be submitted ideally in writing. Delegations indicated their openness to consider the LDCs’ suggestions.”

“One key takeaway from the deliberations held thus far was the existence of data gaps with regard to LDC services trade.” Ambassador Long said, “these delegations indicated their readiness to undertake follow-up work in this regard, including with the assistance of the Secretariat, but wished to hear from

the LDCs about their specific necessities and priorities,” including “the possibility of complementing statistical information with anecdotal evidence was also mentioned.”

Work Program on Electronic Commerce and Moratorium. The chair said “many delegations welcomed the reinvigoration of the Work Programme, including its development dimension, and the extension of the Moratorium on customs duties on electronic transmissions.” The United States and the members of the Group of 7 industrialized countries have recently called for making the moratorium permanent. Ambassador Long noted that these countries want “the Chairman of the General Council to organise dedicated discussions on e-commerce in the General Council, which they saw as the appropriate locus for engagement.”

According to the chair, “several delegations underlined that it was for the General Council to address cross-cutting issues related to electronic commerce, and notably the Moratorium, and that the Council for Trade in Services was not the place to do so and should not duplicate discussions.” These delegations added that “the CTS (Committee on Trade in Services) could play a complementary role by focusing on any services-specific issues that might not be adequately addressed in the General Council's deliberations; these Members indicated their openness to engaging in such discussions.” *[Washington Trade Daily]*.

TRIPS Waiver – Senate Calls for Information

A bipartisan group of senators is urging the Administration to consult with Congress before engaging in World Trade Organization negotiations on whether to expand the TRIPS waiver for COVID-19 vaccines to diagnostics and therapeutics. The senators said they are concerned that US innovation be protecting as WTO members attempt to reach a decision in December on waiving intellectual property rights for COVID testing and drugs.

“We urge you to consider the range of variables impacting global access to these products before developing a position that could undermine healthcare innovation and accessibility of treatments,” the senators wrote in a letter to US Trade Representative Katherine Tai.

The Administration has not provided much information on the impact the waiver approved by WTO members at the 12th ministerial conference earlier this year has had on COVID-19 vaccine accessibility worldwide, the senators wrote. USTR must consult with Congress, according to the letter, led by Senate Finance Committee members Sens. Tom Carper (D-Del) and Pat Toomey (R-Pa)

The Senators’ letter requested the following information from the Administration:

- What economic analysis USTR has conducted regarding the impact of the COVID-19 vaccine waiver on global vaccine supply, and how this information may inform a US position on a possible waiver expansion?
- How the WTO will define a “diagnostic” and a “therapeutic”?
- Has USTR produced any analysis on the effect that waiving additional IP protections will have on R&D?
- How is USTR meeting its legal requirement to consult transparently with Congress prior to December’s decision deadline at the WTO?

Top Republicans on the House trade panel have warned the U.S. Trade Representative against destroying documents on a controversial decision to conform “surrender key medical technology to foreign competitors.” Congressional Republicans have repeatedly voiced opposition to the TRIPS waiver, warning that it leaves the door open for broader waivers in the future – setting a dangerous precedent that could have a chilling effect on future innovative vaccines and therapies.

“By agreeing to the TRIPS waiver, the Biden Administration has effectively waived IP rights on vaccines for five years, with the possibility of an extension. This decision undermines American innovation and exposes American firms to those who have been trying to steal U.S. vaccine research,” the members wrote.

Negotiated during the 1986-94 Uruguay Round, TRIPS introduced intellectual property rules into the multilateral trading system for the first time. The Covid-19 Pandemic prompted the June 17, 2022 Ministerial Decision on the TRIPS Agreement ([WT/MIN\(22\)/W/15/Rev.2](#)), described at the time as a “narrow and temporary exception to an export restriction, not a waiver.” The controversy focuses on one part of the agreement, the 20 word paragraph 31.f which limits exports made under a non-voluntary authorization, often referred to as a compulsory license. The text reads:

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

Article 31.f of the TRIPS is considered an embarrassment to the WTO, because it is designed to limit the economies of scale for products manufactured under a compulsory license. It is considered a victory for pharmaceutical firms seeking to limit the viability of competing vaccine makers.

**** Briefs *****

Canada - US Cooperation on Supply & Standards. Leaving the heavy work of dairymaid and lumberjack to USTR Tai, Secretary of Commerce Gina Raimondo hosted Canada’s Minister of Innovation, Science, and Industry François-Philippe Champagne in Washington last week. The two reiterated their commitment to work together to address challenging bilateral, multilateral, and global issues.

The readout highlighted collaboration on critical minerals processing, battery manufacturing, and recycling to reduce supply risks, joint economic security, and strategic industrial sectors that rely on critical mineral supply chains. The National Institute of Standards and Technology (NIST) and the Standards Council of Canada (SCC) signed a memorandum of understanding to coordinate and collaborate on standards, and to increase influence in international standards development.

US, UK Team on Sanctions Implementation The United States and United Kingdom announced yesterday a new cooperation partnership on sanctions. Treasury Department Office of Foreign Assets Control Director Andrea Gacki and UK Treasury Office of Financial Sanctions Implementation Director Giles Thompson said they have decided to deepen their agencies’ cooperation “to enhance both our own capabilities and the support we provide to those at the forefront of effective sanctions implementation.”

The two officials said that financial sanctions have the most impact when they are multilateral. Taking a multilateral approach also reduces unintended consequences and eases the burden of compliance for business, they said.

“But we also recognize that the growing scale of sanctions has increased the complexities of their implementation,” the two officials said. “We will of course continue, in close co-ordination with one another, to assist stakeholders via our outreach, by maintaining and updating sanctions-related products to provide useful information and guidance, and by making timely decisions regarding licenses. “

Case for Congress to Act on RCEP Congress may want to take a look at how the Regional Comprehensive Economic Partnership is impacting US commercial and strategic interests, and the relevance of the United States in shaping trade rules and economic integration in Asia and globally, according to a new *Congressional Research Service* [report](#).

RCEP originated with the Association of Southeast Asian Nations, but China actively shaped the negotiations, the report notes. Consequently, RCEP could lessen US trade and influence in the region. “RCEP could shift regional trade in ways that affect US economic interests and reduce US commercial activity if members shift trade to US competitors, and supply chains reorient to capitalize on RCEP tariff reductions and rules of origin,” according to the report.

Australia Pushes Back on China in CPTPP. *Reuter's* reports Singapore's Prime Minister Lee Hsien Loong said on Tuesday there is no consensus yet for China to join a trans-Pacific trade pact, although Singapore believed it would be possible for Beijing to meet the trade bloc's conditions.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) trade pact removes 95% of tariffs between its 11 members – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Another five nations have applied to join - Britain, China, Taiwan, Ecuador and Costa Rica. Members agreed in February that Britain can proceed with its application, as it looks for new trading relationships after leaving the European Union.

Australia has expressed reservations about China, its largest trading partner, meeting the pact's requirements on free trade, and has urged Beijing to lift sanctions imposed on a raft of Australian products during a diplomatic dispute.

Australia Boosts Missile Industry. “The lessons from the Ukraine war are that we use missile stocks or all munitions, but particularly guided weapons, very fast in a conflict. And quite frankly we need more missiles in Australia, both as a stock and also the ability to maintain, repair and upgrade those missiles,” Australian Defense Industry Minister Pat Conroy said at the G'Day USA Defence Industry Dialogue in Washington DC October 13th.

The goal is to “supplement (not supplant) US industrial capacity; to expand our alliance beyond the battlefield and into the factories”. **Lockheed Martin and Raytheon Australia are “working with Defence to identify initial options to manufacture guided weapons and their critical components in**

Australia". The firms are strategic partners on the federal government's \$1 billion Sovereign Guided Weapons and Explosive Ordnance Enterprise, notes [The Financial Review](#)

Poland - US have relaunched their bilateral economic and commercial dialogue, according to the Commerce Department. The dialogue was established in 2002, but until Monday's meeting in Warsaw, had not been convened since 2016. The goal of the dialogue is to strengthen economic and commercial ties and provide a forum to agree on concrete actions that will increase two-way trade and investment. Last week's meeting focused on supporting the energy transition; partnering on infrastructure projects and research and development and fostering digital policies that support trade and inclusion, Commerce said. Discussion also focused on ways in which US industry can continue to support Poland and its assistance to the Ukrainian people.

India – US Trade Policy Forum (TPF) is to take place in Washington November 8th, according to reports in the Indian press. Expectations are modest, given domestic and geopolitical considerations. Last year's TPF, the first in four years, led to progress on stonefruit trade (Indian Mangoes / American Cherries). On the Indian side, the requests are expected to focus on the services sector, while for the U.S. side goods market access and the policy environment – such as data laws and pending changes to India's competition law- are of keen interest.

India has opted out of the trade pillar of the administration's Indo Pacific Economic Framework (IPEF), joining instead the pillars on fair economy, supply chains and clean economy. "Honestly it's the right position for India," a US official told [The Hindu](#), as these aren't issues India has traditionally included in trade agreements. "Let's build confidence bilaterally via the TPF and we can consider the IPEF trade pillar later," the official said.

FATF - Money Laundering Standards Move Forward. The Financial Action Task Force the international anti-money laundering and countering the financing of terrorism (AML/CFT) standard-setting body concluded its plenary with a commitment to:

- Full public consultation for draft guidance on Recommendation 24, which concerns beneficial ownership transparency for legal persons;
- An assessment of Citizenship by Investment and Residency by Investment schemes, often known as "golden passports";
- Reviewing members' implementation of the UN Convention on Corruption; and
- Evaluating members' compliance with the FATF Recommendations related to nonfinancial gatekeepers and professionals.

The FATF adopted a report on money laundering associated with the financing of the **illicit trafficking of fentanyl and other synthetic opioids** around the world. This is the first FATF report on illicit finance associated with the global drug market since 2014. The group is also working to finalize a report on money laundering and terrorist financing risks related to **the trade in high-value arts, antiquities, and cultural objects**. [[Outcomes Document](#)].

Justice Pinches Oil, Military and Dual-Use Trade Scheme

“Criminal enablers for oligarchs, orchestrating a complex scheme to unlawfully obtain U.S. military technology and Venezuelan sanctioned oil through a myriad of transactions involving shell companies and cryptocurrency,” is how US Attorney Breon Peace of the Eastern District of New York described NDA GmbH, an industrial equipment and commodity trading company located in Hamburg, Germany and its principals, Yury Orekhov, and Artem Uss, both Russian Nationals.

Orekhov and associates sourced and purchased sensitive military and dual-use technologies from U.S. manufacturers, including advanced semiconductors and microprocessors used in fighter aircraft, missile systems, smart munitions, radar, satellites, and other space-based military applications. These items were shipped to Russian end users, including sanctioned companies that serviced Russia’s military. Some of the types of electronic components obtained through the criminal scheme have been found in Russian weapons platforms seized on the battlefield in Ukraine. As alleged, in 2019, Orekhov travelled to the United States to source parts used in the Russian-made Sukhoi fighter aircraft and the American-made F-22 Raptor stealth fighter aircraft.

Also charged are Juan Fernando Serrano Ponce, and Juan Carlos Soto, who allegedly brokered illicit oil deals for Petroleos de Venezuela S.A. (PDVSA), the Venezuelan state-owned oil company, as part of the scheme.

Orekhov and Uss also allegedly used NDA GmbH as a front to smuggle hundreds of millions of barrels of oil from Venezuela to Russian and Chinese purchasers, including a Russian aluminum company controlled by a sanctioned oligarch and the world’s largest oil refining, gas and petrochemical conglomerate based in Beijing.

Serrano Ponce and Soto brokered deals worth millions of dollars between PDVSA and NDA GmbH, which were routed through a complex group of shell companies and bank accounts to disguise the transactions. In one communication with Serrano Ponce, Orekhov openly admitted that he was acting on behalf of a sanctioned Russian oligarch, saying “He [the oligarch] is under sanctions as well. That’s why we [are] acting from this company [NDA GmbH]. As fronting.” The scheme also involved falsified shipping documents and supertankers that deactivated their GPS navigation systems to obscure the Venezuelan origin of their oil.

Payment for NDA GmbH’s illicit activities was often consummated in U.S. dollars routed through U.S. financial institutions and correspondent bank accounts. To facilitate these transactions, Orekhov and his co-conspirators used fictitious companies, falsified “know your customer” documentation and bank accounts in high-risk jurisdictions, causing U.S. banks to process tens of millions of dollars in violation of U.S. sanctions and other criminal laws. In one conversation with Soto, Orekhov bragged that “there were no worries...this is the shittiest bank in the Emirates...they pay to everything.” The scheme also utilized bulk cash drops with couriers in Russia and Latin America, as well as cryptocurrency transfers worth millions of dollars, to effectuate these transactions and launder the proceeds.

The defendants are charged with conspiracy to defraud the United States; with conspiracy to violate the International Emergency Economic Powers Act (IEEPA); bank fraud conspiracy for the oil smuggling scheme; and money laundering conspiracy for the oil smuggling and IEEPA scheme.

*** Appointments ***

Finance Committee Staff Changes. Senate Finance Committee Chair Ron Wyden, D-Ore., today announced key committee staff changes. **Tiffany Smith** will now serve as the committee's General Counsel, having served as Chief Tax Counsel since 2016 and on the committee since 2007. **Bobby Andres** will now lead the tax team as Chief Tax Advisor, having served on the committee since 2013. **Ashley Schapitl** will now serve as Senior Policy Advisor, having served on the committee since 2019. **Chris Arneson** will now serve as Chief Budget and Economic Advisor, having served on the committee since 2011.

The Nomination of Douglas J. McKalip to be Chief Agricultural Negotiator, Office of the United States Trade Representative, continues to hang fire as Sen. Bob Menendez applies pressure on the USTR "to establish greater transparency and oversight of US trade policy." Despite voting in the Finance Committee to advance the nomination September 7th, Senator from the Garden State has been infuriating farm interests, who've been kicking the stall for representation in trade negotiations since Trump appointee **Gregg Doud** left in January 2021.

*** Calendar ***

Forced Labor - New CTPAT Requirements. Tuesday, October 25, 1:00PM. CBP's expanding focus on Uyghur Forced Labor Prevention Act monitoring and enforcement, which includes new guidance and compliance requirements for members of the Customs Trade Partnership Against Terrorism (CTPAT) program. Presented by Kharon and Miller & Chevalier. No cost. [[Registration](#)]

Undersecretary of Commerce Alan Estevez Thursday, October 27, 11:00AM Center for a New American Security will host Alan F. Estevez, Under Secretary of Commerce for Industry and Security, for a moderated discussion and a question and answer session. [[Registration](#)]

Trade, Climate and Electric Vehicles. Thursday, October 27, 11:00AM. Panelists discuss provisions requiring U.S. content and U.S. manufacturing to qualify for certain of these incentives; what that means for inbound investors, and America's trading relationships; and whether the new provisions will help America achieve its near-term and long-term climate objectives. Sponsored by Washington International Trade Association (WITA). [[Registration](#)]

Information Systems Technical Advisory Committee (ISTAC) will hold open session (teleconference) on Wednesday, November 2, 2022, at 9 a.m Registration: e-mail Ms. Yvette Springer Yvette.Springer@bis.doc.gov [[87 FR 63032](#)]

Defense Trade Advisory Group (DTAG) will meet in open session from 1:00 p.m. until 5:00 p.m. on Wednesday, November 9, 2022. The virtual forum will open at 12:00 p.m. Requests for access to include: Name and contact information, including an email address and phone number to DTAG@state.gov by COB Monday, November 7.

Global Year-End Review of Import/Export & Trade Compliance

Developments. November 15 through 17. **Baker McKenzie**'s trade compliance lawyers from around the world will review the major global legislative, judicial and administrative activities and trends in export controls, trade sanctions, customs compliance, and import requirements. [\[Agenda & Registration\]](#)

WSJ Risk & Compliance Forum on Nov. 16 Speakers to include **Brian Nelson** from the U.S. Treasury Department and **Robert Silvers** from the Department of Homeland Security, along with multiple experts on corporate risk and compliance. Sign up [\[here\]](#) for discussions on economic sanctions, forced labor, climate change regulation, whistleblowers and cybersecurity.

EU Export Control Forum on Dec. 6. The European Commission and the Czech Presidency of the Council will hold the 2022 Annual Export Control Forum, an opportunity for experts from EU Member States and the European Parliament, industry, academia and civil society to review and discuss the latest export control developments in the EU and globally. The Forum will convene selected panels of experts, to be followed by dialogue with stakeholders. [\[Registration\]](#)

**** ITA/ITC – AD/CVD Blotter *****

Hot-Rolled Steel – Sunset Review. As a result of the Commission's affirmative determinations, the existing countervailing duty order on imports of hot-rolled steel from Australia, Japan, Netherlands, Russia, South Korea, Turkey, and the United Kingdom will remain in place. The Commission having reached a negative determination, the existing orders on imports of this product from Brazil will be revoked.

Tin- and Chromium-Coated Steel Sheet from Japan. Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of a review. Following the third five-year reviews by Commerce and the Commission, effective July 11, 2018, Commerce issued a continuation of the antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan (83 FR 32074). On August 5, 2022, the Commission received a request to review its affirmative determination in investigation No. 731-TA-860 (Final) pursuant to section 751(b) of the Act (19 U.S.C. § 1675(b)). The Requestors allege that a reduction in domestic production capacity of tin- and chromium-coated steel sheet has resulted in supply shortages, which they argue "will only worsen as more domestic supply is taken off line by the end of 2023" with the complete closure of USS-POSCO Industries, a major source of tin- and chromium-coated steel sheet to West Coast companies which supply the agricultural industry in California. [\[notice\]](#)