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USTR Faces House, Senate Hearings

US Trade Representative Katherine Tai testified before the House Ways & Means Committee and the Senate Finance Committee this week, facing common concerns on market access from both Chambers.

Committee members deemed the Biden Administration's Indo Pacific Economic Partnership (IPEP) ineffective in countering Chinese initiatives in the region, and calling for more effort to support American farmers. **Agriculture** interests were especially vocal about Administration efforts to open markets. Said Sen. John Thune (R-SD), *"It's a lot of really flowery rhetoric, but I'm trying to see where this does anything to open markets for our farmers and ranchers,"*

Tai emphasized the Administration's focus on worker's rights: *"Our agenda begins with a commitment to putting workers at the center of our trade policy. When we defend the rights of workers – both at home and abroad – labor standards go up, workplaces are safer, and we drive a 'race to the top.'*

"The next major component of our trade agenda is the realignment of the U.S. – China trade relationship and renewed focus on engagement with partners and allies.

Tai's enforcement agenda is *"guided by the principle that our trade agreements are more than just words that appear on pages that compromise the documents that we sign. They are about commitments that we have made to each other in order of achieving prosperity for ourselves and our relationships,"* Several members noted the USTR's recent employment of the USMCA Rapid Response Mechanism in two instances to defend workers' rights in Mexico.

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Publisher: Martin Kalin

Editor: Frank Ruffing 703.283.5220. fruffing@gmail.com

Members called for more substantive efforts to establish Free Trade Agreements

(FTAs), a device Tai dismissed earlier this month as “*a very 20th century tool. It has its place certainly in the toolbox. What I would like to do is to ensure that the conversations and approaches that we bring today, especially with the pressures we are facing, are maximally responsive and we don’t spend years and a lot of blood, sweat and tears working on something that isn’t relevant to the needs of our people and our economies.*”

At the Senate hearing Tai reiterated the Administration’s dissatisfaction with FTAs. ‘*Traditional FTAs have led us to a place where we are facing a considerable backlash that we are listening to from our own people about concerns regarding the offshoring and outsourcing of American jobs and opportunities.*”

Rep.Vern Buchanan (R-Fla) expressed concern about Administration participating in the **World Trade Organization’s TRIPS Agreement**, which permits poor countries access to covid vaccines, describing it as “*giving away a lot of our IP.*” Tai noted the agreement was signed nearly 30 years ago in response to the AIDS epidemic, and “*I hear your concerns.*”

Tai expressed confidence in her team’s ability to satisfy competing interests on trade policy, telling Ways & Means members “*One year into this position, I am more confident than ever that we can walk, chew gum, and play chess at the same time.*”

Trade Budgets set for State, Treasury, Commerce

Having operated seven months under Continuing Resolutions in FY21, trade promotion and enforcement regulators released their budget requests for FY22, which begins September 30 of this year. While few expect timely passage, the requests are a window into the Administration’s focus on Enforcement.

State requests \$1.8 billion for the Department and USAID to support a “*free and open, connected, secure, and resilient Indo-Pacific Region and the Indo-Pacific Strategy,*” and \$400 million for the **Countering Chinese Malign Influence Fund (CCMIF)**. The CCMIF was originally appropriated \$300 million each of fiscal years 2020 through 2024, “*to combat malign Chinese influence and promote transparency and accountability in projects associated with the People’s Republic of China’s debt-trap diplomacy and the Belt and Road Initiative.*” No current information is available on the fund’s activities, though State’s OIG has an audit scheduled for the fund this year. No mention was made of State’s Countering Russian Influence Fund — previously appropriated \$290 million “*to counter Russian influence and its attempts to sow distrust in democratic institutions worldwide.*”

Treasury’s Office of Terrorism and Financial Intelligence (TFI), which includes Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC) requests a 21 percent increase in funding, to \$212 million, up \$37 million from the level of the FY 2021 Operating Plan The request promotes targeted investments in classified systems technology, sanctions efforts, Department-wide counterintelligence efforts, and the legislatively-mandated **Kleptocracy Asset Recovery Rewards Pilot Program**. OFAC requests 13 additional full-time employees to manage increased enforcement, while the

Kleptocracy Rewards Program plans no staffing and budgets \$1.65 million for rewards in the coming year. Roughly the cost to slip and insure a 180 ft. yacht.

Commerce asks for the International Trade Administration (ITA) to receive a 16 percent increase in funding, with an additional \$25 million dedicated to enforcement and compliance. ITA asks for an additional 330 staff, while the Bureau of Industrial Security (BIS) requests 200 more staff and a 20 percent increase. The Export Enforcement line is held to \$82 million, five percent over FY20 levels, though a separate press release from the Commerce cites a \$30 million increase for BIS export control enforcement. The Department's budget includes an \$8 million increase to "strengthen U.S. leadership in international standards development."

Ex-Im FY 2021 Results

Export-Import Bank Chair and President Reta Jo Lewis released the Bank's FY2021 Annual Report March 30, showing that the Bank authorized nearly \$5.8 billion in loan guarantees, up from \$5.4 billion in 2020.

The **China and Transformational Exports Program (CTEP)** financed more than \$140 million in authorizations in its first fiscal year of full operations. CTEP was created is to "directly neutralize" export subsidies for competing goods and services financed by official export credit, tied aid, or blended financing from China or another covered country. The law charges Ex-Im with a goal of reserving "*not less than 20 percent of the agency's total financing authority (i.e. \$27 billion out of a total of \$135 billion) for support made pursuant to the CTEP program.*"

Other highlights include:

- **Long-term loan guarantee** authorizations increased by nearly 75 percent and total guarantee authorizations increased by roughly 15 percent.
- **Direct loan authorizations** grew from \$10 million in 2020 to \$70 million in 2021.
- **Sub-Saharan Africa** received more than \$42 million in support.
- \$361 million to **minority- or women-owned businesses** up from 2020.
- Nearly one-third of total direct export value supported was for **small businesses**.
- The agency's **pandemic relief** offered exporters an estimated \$1 billion in financing

Ex-Im Board Back to Work

The Export-Import Bank of the United States (EXIM) Board of Directors met March 31, its first under President and Chair Reta Jo Lewis. In addition to approving four transactions, the Board also voted to move EXIM "off-cover" in Russia, formalizing the freeze on transactions in effect since the 2014 invasion of Crimea. The Bank "*does not see reasonable assurance of repayment*" of its \$410 million in exposure to Russian aviation sector loan guarantees.

Ex-Im transactions approved include:

- \$48 million loan guarantee to support the sale of 12 U.S.-made **Wabtec** diesel electric locomotives to **Sri Lanka Railways**.
- A preliminary commitment for a nearly \$33 million energy efficiency technology authorization that will rehabilitate the electricity metering capabilities of **Albania's national electricity utility**. The US exporter was not identified. *Because the services in this project will reduce energy loss or consumption, it has qualified as an Energy Efficiency Transformational Export Area through CTEP.*
- Renewal of a \$450 million guarantee authorization to **Citibank, N.A.** under EXIM's Supply Chain Finance Guarantee Program. The Citibank facility allows suppliers of **The Boeing Company** to receive accelerated payments on accounts receivable due from the manufacturer.
- The Board also approved a resolution delegating to certain officers of EXIM Bank the authority to approve, deny, and amend requests for insurance coverage on letters of credit issued by the **Trade Bank of Iraq** up to \$300 million for the purchase of U.S. goods and services.

Commerce Plans Enforcement, Data Integration

Commerce's 2022-2026 Strategic Plan released March 28, outlined more aggressive stance to enforce Trade actions, with the International Trade Administration (ITA) focusing on three areas:

- **Export Controls / Investment Restrictions.** Commerce will continue to expand plurilateral and bilateral cooperation with allies specific to export control policy and information sharing. BIS will also detect and aggressively investigate potential violations by monitoring exports, conducting end-use verifications, reviewing tips and disclosures, and leveraging interagency data fusion and analysis efforts.
- **Antidumping / countervailing duties (AD/CVD) remedies** ITA will “vigorously” defend the results of U.S. AD/CVD determinations before domestic courts and international tribunals.
- **Identify and protect emerging technologies.** ITA research on industry trends, and their Global Markets directorate will collaborate with Census's Center for Economic Studies to integrate their respective databases and Census statistical data.

Rozman Kendler Lauds US-EU Trade Cooperation

Assistant Commerce Secretary for Export Administration Thea Rozman Kendler discussed the effectiveness of allied export controls at the ACI's 12th Annual Advanced Forum on Global Encryption, Cloud, and Cyber Export Controls in San Francisco March 30.

Rozman Kendler applauded The U.S.-EU Trade and Technology Council (TTC), launched last fall to coordinate approaches to key global technology, economic, and trade issues, saying it has provided an opportunity to jointly enhance export controls, as well as establishing a common set of export controls goals and an Export Controls working group with industry participation.

“Unlike financial sanctions, our export controls measures were never expected to have immediate effects,” said the Assistant Secretary, *“The Ukrainian government reports that Russia’s two major tank plants have halted work due to lack of foreign components. Baikal Electronics, a Russian fabless semiconductor company and computer manufacturer, is cut off from the integrated circuits needed to support its domestic communications equipment TSMC’s exit from the Russia market has cut access to Elbrus chips, which are widely used in Russian intelligence and military systems. Even Russian car maker Lada has shut down production as U.S. and partner countries’ export controls have deprived the company of necessary parts and supplies.*

“In terms of export controls, we are closer to our allies than we have been in decades. *For other partners who may still be sorting out their plans, we are talking about adoption. If that isn’t likely for their system, we’re helping them and their industries understand how our foreign direct product rules will work in their countries. In fact, we have jump-started the work of the TTC. I am looking forward to the next TTC meetings in mid-May in France.”*

Briefs

Senate Confirms Estevez as BIS Chief. Nominated last July, Alan F. Estevez was confirmed as Under Secretary of Commerce for Industry and Security March 31. Nominated in July, Estevez served as Principal Deputy Undersecretary of Defense for Acquisition, Technology and Logistics in the Obama Administration. He brings over 30 years Pentagon experience, including overseeing the Defense Advanced Research Projects Agency and DoD’s laboratory infrastructure. He also represented the DoD on the Committee for Foreign Investment in the United States. His nomination had been delayed by Sen. Robert Menendez (D-NJ) in opposition to the transfer of firearms export regulation from State (ITAR) to Commerce (EAR), which took place under the Trump Administration.

Pryor confirmed at Ex-Im Bank. Senate voted March 30 to confirm Judith Del Zoppo Pryor to serve as First Vice President and Vice Chair of the Board of Directors of the Export-Import Bank of the U.S. (Ex-Im). Nominated for the post in July 2021, Pryor had been an appointed member of Ex-Im’s Board of Directors since the agency was reauthorized in 2019. Prior to her roles at Ex-Im she served six years with the Overseas Private Investment Corporation (now DFC), and several satellite communications companies

Senate Passes Ocean Shipping Reform Act. American Farm Bureau Federation President Zippy Duvall applauded the April 1 move. *“AFBF appreciates the unanimous vote in the Senate to pass the Ocean Shipping Reform Act. Farmers have lost out on up to \$4 billion in agricultural exports because of lack of access to export containers, record shipping costs and harmful surcharges.”*

State's International Digital Economy and Telecommunication (IDET) Advisory

Committee will hold its first public meeting in a year via videoconference on Wednesday, April 27 at 1:00 p.m.-3:00 p.m. (ET). The purpose of the meeting is to discuss the committee's next priorities. Since FY2021, the Committee has held no meetings due to the COVID-19 pandemic. Current members represent academic, data science and media interests. To join the videoconference, contact Designated Federal Officer (DFO) Daniel Oates at IDET@state.gov or (202) 647-5205

House and Senate Sound off on Trade. March 30, 87 House members signed a bipartisan letter to USTR Tai and Agriculture Secretary Tom Vilsack urging them to make agriculture a priority in the IPEP. Earlier this month 86 members of congress and 19 senators issued a similar call for removal of the 19% tariff on Phosphate imports from Morocco. *"The conditions surrounding on-farm expenses in the United States have dramatically changed since the U.S. International Trade Commission's (ITC) determinations in the countervailing duty investigation of phosphate fertilizers from Morocco."* said the House letter.

USTR released its National Trade Estimate Report on Foreign Trade Barriers (NTE Report) March 31, a review of foreign barriers to U.S. exports of goods and services, U.S. foreign direct investment, and U.S. electronic commerce in key export markets for the United States. On a country-by-country basis, the NTE Report surveys Agriculture impediments, restrictive data policies, and Industrial policies, as well as technical barriers to trade.

Sanctions now apply to the aerospace, marine, and electronics sectors of the Russian economy, according to a March 31 Treasury determination. This action builds on previous determinations on financial services, technology, and defense and related materiel. The announcement was accompanied by designations of 21 entities and 13 individuals OFAC also included a description of the procurement network used by Moscow to evade export controls, listing companies in Russia, Singapore, Malta, Spain, and the U.K. OFAC also designated the Russian government *"malicious cyber actors."*

EU Parliament calls to include Ukraine in Three Seas Initiative. The March 25 statement by the Foreign Affairs Committee makes the case for admitting Ukraine to the Three Seas Initiative (3SI). The Initiative describes itself as a "politically inspired, commercially driven platform for improving connections among twelve EU Member States located between the Baltic, Adriatic and Black Seas." Latvia will host 3SI summit in June.

Turkish Steel still subject to 50 pct tariffs. The U.S. Supreme Court declined March 28 to hear a challenge by steel companies to former President Trump's 2018 doubling of tariffs on steel imports from Turkey on national security grounds. In 2020, the U.S. Court of International Trade found in favor of repeal. The U.S. Court of Appeals for the Federal Circuit reversed the trade court's decision in 2021, prompting the companies to appeal to the Supreme Court.

Coal Executive Charged with Foreign Bribery, Money Laundering, Wire Fraud. A former coal company executive was arrested March 30 on charges of violating the Foreign Corrupt Practices Act (FCPA), laundering funds, and receiving kickbacks as part of an alleged scheme to pay bribes to government officials in Egypt in connection with contracts with an Egyptian state-owned and state-controlled company.

Charles Hunter Hobson, 46, of Knoxville, Tennessee, was the Vice President of Corsa Coal, controlled at the time by Quintana Capital of Houston. Hobson, allegedly paid bribes to officials in Egypt to obtain approximately \$143 million in coal contracts for Corsa. In December 2021 Quintana Capital liquidated its Corsa position.

Chinese Wood Moulding and Millwork. March 29 the U.S. Court of International Trade sustained the U.S. International Trade Commission's finding that Chinese manufacturers were harming domestic mills. The Coalition of American Millwork Producers filed the antidumping petitions in January 2020. Affected products remain subject to average anti-dumping duties of 45% and average subsidy duties of 20%.

ZTE off probation. A U.S. judge ended the Chinese telecommunication firm's five-year probation for violations of U.S. sanctions on Iran. In addition to supervision, the 2017 settlement called for nearly \$900 million in penalties, with an additional \$300 million due Commerce's Bureau of Industry and Security (BIS) should BIS find the company violates the settlement agreement. The decision was put in jeopardy by allegations of a conspiracy to commit visa fraud.

Microsoft is the subject of new allegations that much of a \$200 million per year "Business Investment Fund" is channeled to Microsoft employees and senior government officials in Ghana, Nigeria, Zimbabwe, Qatar, and Saudi Arabia in violation of the Foreign Corrupt Practices Act (FCPA). The allegations were published March 25 by Yasser Elbad, 20-year veteran of Microsoft and former Director of Public Sector and Emerging Markets for the Middle East and Africa. In 2019 the Microsoft paid a penalty of \$25.3 million for allowing bribery and kickbacks in Hungary, Saudi Arabia, Thailand, and Turkey.

Former Comptroller General of Ecuador Carlos Ramon Polit Faggioni is alleged to have solicited and received over \$10 million in bribes from the Brazilian construction firm Odebrecht S.A, according to a March 24 indictment on conspiracy to commit money laundering and other charges.

Ericsson's CEO under fire, DPA in jeopardy. Following the March 2 disclosure that Justice intended to find it in violation of its 2019 Deferred Prosecution Agreement (DPA), shareholders voted March 29 to hold CEO Börje Ekholm and the Board personally liable for the scandal. Disclosures of protection payments to ISIS in Iraq prompted the actions.

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