

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. 20

May 16, 2022

## WTO Pushes for MC-12 Progress

World Trade Organization Deputy Director-General Angela Ellard implored delegates to redouble efforts to deliver substance for the upcoming 12th Ministerial Conference (MC12), which will take place on 12-15 June in Geneva. *“Negotiating and seeking consensus in this geopolitical climate is difficult. But it doesn't mean we can't do it, and it certainly doesn't mean we should stop working,”* Ellard told delegates to the RSIS-WTO Virtual Parliamentarian Workshop May 10. *“If you value the WTO, help us make the case that it is relevant and worth improving. The WTO cannot be taken for granted, or else it won't be the lodestar for the economic rule of law that is so vital.”*

Last month the Chair of the **Agricultural negotiations**, Amb. Gloria Abraham Peralta (Costa Rica) chided members of her working group, warning that the pace of negotiations has been too slow, with no progress made on key topics. Abraham Peralta urged members to take ownership of their task. *“Negotiations can only progress if they take place between members, and not between individual members and me,”* she said.

In an effort to spur his delegates to finalize the draft agreement to address **Fishing subsidies**, on May 12 Ambassador Santiago Willis of Colombia declared “Fish Week.” *“We have set aside the whole week for intensive discussions aimed at closing the remaining issues in the draft agreement that was sent to ministers in November last year, just before MC12 was to have started.”* Last November Willis noted *“We are already one year overdue on the deadline to conclude WTO negotiations...”*

The current fisheries negotiations began at the Doha Ministerial Conference in 2001. The UN Food and Agriculture Organization estimates that one-third of global fish stocks are overfished and most of the rest is fully exploited. This is up from 10% in 1970 and 27% in 2000.

The elephant in the WTO room, **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**, continues to offer new chances for discord (see Senate below). May 10 members released the “outcome document,” or basis for negotiations, on an intellectual property (IP) response to Covid-19 prepared by the Quad (EU, India, South Africa and US).

© Copyright 2022 Gilston-Kalin Communications LLC P.O. Box 5325, Rockville, MD 20848-5325  
All rights reserved. Subscription and corporate site license information 301.460.3060 [www.wttonline.com](http://www.wttonline.com)

**Publisher: Martin Kalin**  
**Editor: Frank Ruffing 703.283.5220. [fruffing@gmail.com](mailto:fruffing@gmail.com)**

While compulsory licensing has been permitted since the emergence of AIDS, the technology transfer involved in vaccine production is not, and remains a sticking point for the owners of the IP. Substantive work on Testing and Therapeutics has been deferred another six months.

## Senators Fit to be Tai'd

Reminding her that Article I, Section 8 of the Constitution accords Congress the authority "to lay and collect . . . duties" and "to regulate commerce with foreign nations," the Chair and Ranking member of the Senate Finance Committee lambasted US Trade Representative Katherine Tai May 10 for her failure to consult and engage with the Committee on recent trade agreements.

In a joint letter Senators Ron Wyden (D-Ore.) and Mike Crapo (R-Idaho) cited the USTR's March release of draft language of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the controversial COVID vaccine proposal. "USTR has shared — as it should — text for other trade proposals at the WTO and elsewhere with relevant Congressional committees in the past. There is no reason to have broken with that tradition here."

*"We want to ensure that this failure to consult properly with Congress will not be replicated in other areas, particularly as the Administration seeks to launch new trade negotiations under the auspices of the Indo-Pacific Economic Framework, pursue multilateral and plurilateral negotiations at the WTO, and engage in bilateral discussions with countries such as the United Kingdom."*

The day before, Crapo and 24 Republican colleagues sent a letter to Tai and Agriculture Secretary Tom Vilsack calling for a renewed focus on market access and enforceable commitments in trade negotiations. Citing the Administration's failure to include such objectives in its proposals for the Indo-Pacific Economic Framework (IPEF), as well as lack of initiative in pursuing comprehensive free trade agreements in the region, the Senators assert China has been given the upper hand.

*"[Inaction] signals to the world that the United States is not committed to fully engaging commercially or strategically in the region. Thus, while some aspects of the IPEF may have potential, it is not a credible counterweight to the market-opening agreements that other countries, including China, are actively advancing."*

In an interview with the CBC aired May 9 after her trip to Ottawa, Tai said that improved dairy market access under the US-Mexico-Canada Agreement (USMCA) remains a "source of great frustration," which, along with the longstanding softwood lumber dispute, represent "fundamental differences" between the Canadian and American approaches. "[We] remain committed to talking and thrashing out the details for how we might be able to make some progress. But it's been a thorny issue for decades, for sure," said Tai.

## **"Enforcement, Enforcement, Enforcement," says Raimondo**

Testifying before the Senate Appropriations Committee May 11, Commerce Secretary Gina Raimondo lauded the impact of the coordinated allied efforts to restrict Russian access to critical industrial technology, citing reports that captured Russian military equipment is *"filled with semiconductors that they took out of dishwashers and refrigerators....I am deadly serious about enforcement, and we have*

*been extremely clear with everyone, especially China, that we won't tolerate any circumvention of these export controls."*

When asked by Sen. Diane Feinstein (D-Cal) how the Administration plans to reduce the burden of tariffs on US consumers, Raimondo noted that the 232 Steel and Aluminum tariffs had already been eliminated for Japan, Europe and the UK. The 301 China Tariffs were not "*strategic*," according to Raimondo, noting that the matter is in the purview of US Trade Representative, and that thoughtful review was underway.

As the conversation turned to solar panel imports from Southeast Asia, Raimondo continued her efforts to talk Committee members from the edge, noting that while the statutes permit tariffs up to 200 percent, "*in the last 150 times or so, the tariffs have been 10 or 12 percent. 200 percent is not fitting with the precedent."*

## **ITC to Study 232 and 301 Tariff Impacts**

The US International Trade Commission announced this week it will conduct a public hearing July 21 as part of a section 332(g) investigation into the impacts on the U.S. industries most affected by the Section 232 and 301 tariffs. Interested parties are invited appear at the hearing, as well as to submit prehearing briefs, oral hearing statements, post hearing briefs and other written submissions.

*For details refer to 87 FR 28035 or Commission's electronic docket at <https://edis.usitc.gov> (Investigation 332-591)*

## **Steel Tariffs Paused for Ukraine**

In related news, Commerce Secretary Raimondo announced May 10 the temporary suspension of Section 232 Tariffs on Ukraine for twelve months. Due to war, the gesture is expected to have minimal impact on steel trade or Ukrainian welfare.

In Ukraine, only one out of six integrated steel plants is producing, and coking has ceased as supplies of Russian coal have dried up. Metinvest's plants in devastated Mariupol accounted for more than a third of Ukraine's metallurgical production, according to the firm.

By-production has suffered as well. Steelmaking is the primary source for oxygen and other industrial gases. Ukraine was once the world's largest supplier of noble gases including neon, krypton, and xenon, reportedly providing up to 90% of the highly purified neon for US semiconductor production. The two major purifiers for Russian and Ukrainian neon, Odessa-based Ingas and Cryoin, suspended production in March.

## **Sanctions Train Rolls On**

President Biden and his G-7 counterparts met with President Zelenskyy of Ukraine May 8 and **announced another raft of sanctions** to support the war effort.

**New initiatives include:**

- Sanctioning three of Russian's state-controlled television stations,
- prohibiting U.S. persons from providing accounting, trust and corporate formation, and management consulting services to any person in the Russian Federation,
- further industrial sanctions, and addition of more individuals subject to visa restrictions.
- The actions also named nine Russian shipping concerns and their vessels, along with companies associated with the Moscow Industrial Bank and executives of Gazprombank.

In support of these actions, **Commerce published revisions to the Export Administration Regulations (EAR)** May 11, amending part 746 of the EAR (Embargoes and Other Special Controls) to broaden the scope of industry sanctions. The Rule adds 205 HTS codes at the 6-digit level and 478 corresponding 10-digit Schedule B numbers to supplement 4 to Part 746. These should be reviewed carefully by those brave souls still seeking to grow their Russian sales.

**The ban on accounting, trust and corporate formation, or management consulting services may prove nettlesome for professional services providers.** In conjunction with the Executive Order, OFAC issued two General Licenses, GL34 and GL35 which provide limited safe haven for the winding down of operations and provision of credit rating and audit services. Both GLs note that transactions otherwise prohibited remain so, including those with blocked individuals and entities.

**European sanctions action this past week included continued debate of a ban of Russian oil imports.** The draft text included a provision barring European shippers or insurers from facilitating the shipment of Russian oil. After vocal protests from Greece and Malta, the language was dropped, although at press time, the impact on maritime insurers is unclear.

**The British Foreign Office announced sanctions on Evraz plc**, the global steelmaker owned by Roman Abramovich. "Evraz PLC produce 28% of all Russian railway wheels and 97% of rail-tracks in Russia. This is of vital significance as Russia uses rail to move key military supplies and troops to the front line in Ukraine," the Foreign Office said. Evraz owns mills in Oregon and Colorado, as well as four plants in Canada. The company's North American operations are exempted by the actions.

While the EU and UK have sanctioned Abramovich, his role as self-styled peace envoy has protected him from US sanctions. *"It's a kind of useful fiction for Abramovich to keep alive,"* Gavin Wilde, who served as director for Russia on the National Security Council staff until 2019 told the *Washington Post* May 5. *"To the extent that his negotiation efforts have staved off U.S. sanctions, I'd say they've definitely been more beneficial to him — and perhaps even Moscow — than to Ukraine."*

**Justice Joins Cyber Protocol in Strasbourg.**

Deputy Assistant A.G. Richard Downing signed the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and cross-border disclosure of electronic evidence May 12 at the headquarters of the Council of Europe.

An expansion of the multilateral international treaty commonly called the Budapest Convention, the Second Additional Protocol helps law enforcement authorities obtain access to electronic evidence, with new tools including direct cooperation with service providers and registrars, expedited means to obtain subscriber information and traffic data associated with criminal activity, and expedited cooperation in obtaining stored computer data in emergencies.

## Exim in Istanbul for Berne Union

Export Credit Agencies (ECAs), multilateral institutions, private banks, and credit insurers gathered last week in Istanbul for the Berne Union Spring Meetings, to discuss trends in risk underwriting and strategic priorities for the industry with respect to climate, energy and pandemic recovery.

Hosted by local Berne Union Member, Turkeximbank the group reviewed the state of export credit. Following a huge -22% drop in new commitments during the peak of the pandemic in 2020, medium-long term business rebounded to USD 117 billion in 2021. Berne Union Members paid just over USD 9 billion in claims in 2021; about half a billion (+6%) more than during peak pandemic in 2020, and 17% higher than pre-pandemic levels in 2019. Claims were concentrated in the transportation sector (\$ 2.2 billion), which accounts for over 50% of total coverage.

There was no public discussion of a coordinated response to the aviation exposure created by the blacklisting of Russian carriers. In an earlier response to the pandemic, the three Airbus financing European ECAs (UK Export Finance, Euler Hermes and Bpifrance) launched the “Common Approach” – allowing airlines to defer aircraft principal repayments from March 2020 to March 2021. It is unclear how ECAs will manage the permanent impairment of their fleets.

**ExIm Bank Chair Reta Jo Lewis attended**, signing a co-financing agreement with France’s export agency, Bpifrance, on May 9. The commitment renews a previous framework originally put in place in 2008 with Bpifrance’s predecessor agency, Coface.

## Finance Committee Targets Russian Tax Credits

Senate Finance Committee Chair Ron Wyden (D-Ore), and Committee Member Rob Portman (R-Ohio), last week introduced legislation to disallow Foreign Tax Credits for companies that pay taxes to the Russian government, and other tax benefits. The *Support Ukraine Through Our Tax Code Act* follows a discussion draft released last month and includes a safe harbor for losses associated with shutting down operations.

*“The tax code already disallows lower tax rates and foreign tax credits for companies paying taxes to countries with rogue regimes. Our commonsense proposal simply adds Russia and Belarus to that list,”* said Wyden in a statement.

## Trade Balance Continues Cliff Dive

Trade data for March shows a widening deficit in goods and services, to a record \$110 billion. Exports of services were \$71 billion, with service imports of nearly \$53 billion offsetting much of that category’s customary contribution to the balance of payments.

The trade deficit is ten times larger than 25 years ago, though as our friends at the Federal Reserve Bank of St. Louis point out, adjusted for nominal GDP, the figure is only five times worse.

Trade with Russia in the first quarter added \$6.3 billion to the Kremlin's coffers. US Exports dropped 80 percent from the prior month, to \$101 million, while US imports from Russia surged to \$2.75 billion, ahead of February's figures and 40 percent more than in January.

### \*\*\* Briefs \*\*\*

#### **BIS Update 2022**

The Bureau of Industry and Security (BIS) will offer a hybrid Update Conference on Export Controls and Policy from Wednesday, June 29-Friday, July 1, 2022. This 35th annual conference will be offered in-person at the Marriott Marquis in Washington, D.C., and also virtually for the first two days.

Use this link <https://events.epl.com/bis2022> to complete registration.

#### **Customs Used Vehicle Exports**

Customs and Border Protection (CBP) plans to conduct a pilot to promote paperless processing of export documentation for used motor vehicles. Exporters are currently required to provide CBP with paper copies of vehicle information and proof of ownership for verification 72 hours prior to export. The proposed pilot is expected to streamline the processing of the average 1.8 million used vehicles exported annually. Participation in the pilot will not alter the requirements for presentation of the vehicle to CBP at time of export.

#### **BIS Extends Call for Supply Chain Comments.**

To support the US – EU Trade and Technology Council (TTC) Secure Supply Chains Working Group the call for comments has been extended to June 23. This extension is being made to allow for commenters to take into account any developments or announcements that may occur as a result of the US-EU TTC second leaders' meeting scheduled for May 15-16, 2022 in France.

#### **AD/CVD Reviews.**

May 9, the International Trade Administration announced the opening of reviews for various antidumping duty (AD) and countervailing duty (CVD) orders with March Anniversary dates. Citation: 87 FR 29280

#### **INDIA welded austenitic stainless pressure pipe**

Sunset review concluded, and continuation of the Orders. CBP will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

#### **Two Factor Authentication is Getting Harder.**

To comply with U.S. regulations, on May 5 authentication provider Duo began blocking authentications from users whose IP address originates in a country or region subject to economic and trade sanctions enforced by the U.S. Office of Foreign Assets Control. Other U.S.-based companies including Microsoft and Zoom, have placed similar restrictions.

**AG Garland Seeks LA Crib.** May 5 Justice announced it is seeking to seize a more than 30,000-square-foot mega-mansion in the Holmby Hills neighborhood of Los Angeles, pursuant to a civil forfeiture complaint that alleges the mansion was purchased with bribes paid by an Armenian businessman to the family of Gagik Khachatryan, a former high-ranking Armenian public official.

**Toothpaste Felon Sentenced.** A 20 year veteran research technician and scientist for Colgate Palmolive was sentenced May 9 to 21 months in prison for wire fraud conspiracy associated with the theft of toothpaste formulas to start a competing enterprise in North Macedonia.

In 2012, Muamer Reci, 58, of Haskell, New Jersey, established a company, Reci & Sons to effect the scheme, not disclosing the business interest to his employer. Reci was found to have transmitted proprietary formulas and processes, as well as a copy of his business plan, from his work e-mail account.

**Ex-Coca Cola Chemist gets 14 Years.** May 9, Dr. Xiaorong You, aka Shannon You, 59, of Lansing, Michigan stole trade secrets related to formulations for bisphenol-A-free (BPA-free) coatings for the inside of beverage cans while working at The Coca-Cola Company and Eastman Chemical Company.

The stolen trade secrets belonged to major chemical and coating companies, including Akzo-Nobel, BASF, Dow Chemical, PPG, Toyochem, Sherwin Williams, and Eastman Chemical Company. You stole the trade secrets to set up a new BPA-free coating company in China with a corporate partner, Weihai Jinhong Group, and millions of dollars in Chinese government grants to support the new company, according to the prosecutors.

### **\*\*\* Appointments \*\*\***

**USTR named Heather Hurlburt**, a conflict-resolution expert and former speechwriter for President Bill Clinton as Chief of Staff. According to her official biography, Hurlburt's previous position with New America "was a hub for analysis and convening around questions of diversity, gender and equity in international affairs."

**ICE – National Intellectual Property Rights Coordination Center.** **James "Jim" Mancuso** has been selected to serve as the director. The IPR Center spearheads the U.S. government's response to investigating and preventing intellectual property rights violations, digital piracy, illicit trade, and customs fraud.

**Since 1981, trade practitioners have relied on WTTL for concise, relevant reporting on Trade Policies, Negotiations, Legislation, Trade Laws and Export Controls.**

**Help us know what's useful to you:**

**Frank Ruffing 703.283.5220 [fruffing@gmail.com](mailto:fruffing@gmail.com)**