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Trade Laws and Export Controls

# Washington Tariff & Trade Letter®

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## Taiwan Seeks Place at IPEF Table

As President Biden puts Asian economies at the center of trade policy, Taiwan's Chief Trade Negotiator John Deng reportedly pressed U.S. Trade Representative Katherine Tai to include the island in the United States' forthcoming Indo-Pacific Economic Framework (IPEF). USTR's readout of the call made no mention of the framework, or the request from Minister Deng.

There is still uncertainty regarding Taipei's role in the IPEF, with growing calls from Congress inclusion. Over 200 members of Congress signed a letter March 30 urging the USTR and Department of Commerce to have Taiwan participate in at least part of the IPEF, arguing that "Taiwan's inclusion would also send a clear signal that the United States stands with its allies and partners, and will not be bullied by the PRC,"

According to the White House's Indo-Pacific Strategy document, "China's coercion and aggression spans the globe, but it is most acute in the Indo-Pacific." U.S. efforts to strengthen relationships with partners in the region will remain mindful of Chinese sensitivities. "Our objective is not to change the PRC but to shape the strategic environment in which it operates, building a balance of influence in the world that is maximally favorable to the United States, our allies and partners, and the interests and values we share. We will also seek to manage competition with the PRC responsibly."

China, which claims Taiwan as its own territory, has condemned the U.S. Indo-Pacific push, saying Washington is creating "exclusive clubs," and warned of a Ukraine-style "tragedy" for Asia. In a phone conversation last week with his Vietnamese counterpart Bui Thanh Son, Chinese Foreign Minister Wang Yi said the Ukraine issue "has once again made Asian countries realize that maintaining peace and stability is precious and indulging in group confrontation will lead to endless risks", according to the *South China Morning Post*.

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## Global Cross-Border Privacy Forum / New Certification

Commerce Secretary Gina Raimondo and representatives of the Asia Pacific Economic Cooperation (APEC) announced this week an ambitious broadening of scope for the Cross Border Privacy Rules System (CBPRs), to create a Global CPBR certification system intended to include more than the nine current member states of the APEC CBPR.

“The establishment of the Global CBPR Forum reflects the beginning of a new era of multilateral cooperation in promoting trusted global data flows that are critically important to our modern economy. The Global CBPR Forum intends to establish the Global Cross Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) Systems, first-of-their-kind data privacy certifications that help companies demonstrate compliance with internationally recognized data privacy standards”

The CBPR System covers transfer of information from CBPR-certified companies in participating economies. All approved accountability agents and certified companies will automatically be recognized in the new Global CBPR Forum based on the same terms that they are recognized within the APEC CBPR.

## We're All Sanctionists Now

Everyone in Congress, it seems, wants a say in sanctions, trade, and export control policy these days, bogging progress as well as raising concerns the Administration may find it difficult to recalibrate measures as conditions change.

In addition to the Federal Contracting for Peace and Security Act” (H.R. 7185) barring federal contracts to firms with Russian operations, members have proposed an unprecedented volume of legislation on trade. From the “Not a Red Cent from Russia Act (H.R. 7044), the “China Trade Cheating Restitution Act of 2022” (S.3958), the “Prohibit the importation of Uranium from the Russian Federation” (H.R. 7222), to “Amend the Harmonized Tariff Schedule to provide permanent duty-free imports of basketballs” (S.3995), bringing home the bacon this election cycle means getting involved in trade policy.

Substantive Trade legislation, cobbled onto the U.S. Innovation and Competition Act (S.1260) and the America Competes Act (H.R.4521) remains mired in the reconciliation process, with the “core” semiconductor and competitiveness elements held back by arguments over *de minimus* exemptions and partisan parochial interests.

What we have not seen, from the Administration or Congress, has been a deliberate strategy to meaningfully impact the flow of funds to Putin’s war machine. Privileged oligarchs remain untouched but for their yachts, and state-owned entities are selectively sanctioned. To end American imports of Russian fertilizer and nuclear fuel, let alone European imports of oil and gas, calls for political courage unseen since Churchill and Roosevelt. Until the West stops sending \$1 billion a day to Moscow, the people of Ukraine will suffer.

## Helsinki Commission calls for Visa Bans on Putin's Lawyers

Rep. Steve Cohen (D-Tenn) Co-Chairman of the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, last week wrote to Secretary of State Antony Blinken recommending a travel ban on six “foreign enablers” of Russian oligarchs.

“Oligarchs, who hire lawyers to engage in abusive lawsuits against journalists to silence them, cannot exert malign influence in our system and the systems of our democratic allies without their enablers.... One method of deterrence is limiting the privilege of traveling to the United States.”

“Among the worst such enablers have been certain lawyers in the United Kingdom. Despite our close ties with the United Kingdom, the nature of its libel laws and the vast amount of blood money in its financial system make it an ideal place for oligarchs to abuse the law to harass and intimidate. “

Bill Browder, Head of the Global Magnitsky Justice campaign, and CEO of Hermitage Capital Management outlined the initiative earlier this month in testimony to the Helsinki Commission: “I urge the US Congress to take the following steps to ensure that the Russian government and other authoritarian regimes can never use these tactics again:

1. To create and maintain a list of law firms, PR firms and private investigation firms involved in enabling dictatorships and oligarchs to persecute journalists, activists and political opposition figures and to prohibit the US government from doing any business with these firms going forward.
2. Cancel the visas of foreign enablers who are involved in persecuting journalists, activists, and political opposition figures on behalf of dictatorships.
3. The Foreign Agent Registration Act should be properly enforced.
4. The Mutual Legal Assistance Treaty with Russia should be suspended.
5. Anti-SLAPP provisions should apply to all courts to allow publicly important information on corruption and human rights abuses of foreign government officials and their agents to be freely disseminated without fear of reprisal. (*A SLAPP suit — or “strategic lawsuit against public participation” — is typically filed by parties with extensive resources in an effort to bury opponents in expensive litigation*).

Browder further encouraged the U.K. Foreign Office to impose like visa restrictions on U.S. attorneys who represent oligarchs and Russian officials, like John Moscow, who turned 30 years in the Manhattan District Attorney's office into a white-collar defense practice at Baker & Hostetler (he's now with Lewis Baach Kauffman Middlemass). At Baker & Hostetler, Moscow represented Denis Katsiv who benefited from the \$230 million tax scheme which precipitated the death of Browder's attorney, Sergei Magnitski.

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

***Let us know what you'd like to see more of:***

**Frank Ruffing 703.283.5220 fruffing@gmail.com**

## Battery Maker Sells Imports as “Made in USA”

The Federal Trade Commission (FTC) filed a complaint against [Lithionics](#) Battery LLC and its owner for illegally misrepresenting that its lithium ion cells are made in the United States. The FTC’s complaint alleges that, since at least 2018, Lithionics has falsely labeled its battery products with an American flag image surrounded by the words “Made in U.S.A.,” often accompanied by the statement “Proudly Designed and Built in USA,” when these products are primarily made overseas.

Florida-based Lithionics designs and sells battery products for R.V., marine and industrial applications. Despite representing that their battery, battery module, and battery management system products are all or virtually all made in the United States, all Lithionics battery and battery module products incorporate imported lithium-ion cells, and all Lithionics battery management systems incorporate significant imported components.

Under the Made in USA Labeling Rule (16-cfr-part-323) marketers are prohibited from labeling products as “Made in USA” unless the final assembly or processing, and all significant processing that goes into the products occur in the United States; and unless all or virtually all ingredients or components of the products are made and sourced in the United States.

In addition to stopping the bogus claims, the FTC asks for civil penalties “equal to three times Lithionics’ profits attributable to the illegal activity.”

## OFAC Clarifies Humanitarian Exemptions

Treasury’s Office of Foreign Assets Control (OFAC) issued a Fact Sheet to make clear that U.S. sanctions issued in response to Russia’s further invasion of Ukraine do not stand in the way of agricultural and medical exports, nongovernmental organization (NGO) activities, Coronavirus Disease 2019 (COVID-19) relief, the free flow of information, humanitarian assistance, and other support to people impacted by Russia’s war. Details found at: [https://home.treasury.gov/system/files/126/russia\\_fact\\_sheet\\_20220419.pdf](https://home.treasury.gov/system/files/126/russia_fact_sheet_20220419.pdf)

### \*\*\* Calendar\*\*\*

## 16th Annual Defence Exports Conference - London

The 2022 Conference theme is on optimizing global trade compliance efficiency and will be held September 13-14, 2022. Speakers include:

- **Shainila Pradhan**, Director, Export Control Joint Unit, U.K Department for International Trade
- **Robert Hart**, Chief, Regulatory and Multilateral Affairs, U.S. Department of State
- **Thea Kendler**, Assistant Secretary for Export Administration, Bureau of Industry and Security

*Registration: <http://www.defence-exports.com/PR1EIN>*

## CBP Webinar Series

Custom's National Commodity Specialist Division, Office of Trade, and the Office of Trade Relations host trade outreach events via free webinars to provide more timely and up-to-date information to the international trade community on CBP trade policy, as established by the agency. The programs consist of a high-level overview of the initiative, policy, or other topic, and conclude with an opportunity for the trade to ask pertinent questions.

### May webinars:

- Other Electronics of Heading 8517 Tuesday, May 3, 2022 at 1:30 p.m. EDT
- Breaking Down Bags of Heading 4202 Wednesday, May 4, 2022 at 11:00 a.m. EDT
- Classification of Gender-Neutral Garments Thursday, May 5, 2022 at 1:30 p.m. EDT
- Cryptocurrency Miners Tuesday, May 10, 2022 at 1:30 p.m. EDT
- 2022 Changes to HTSUS for Wood, Ch. 44 Thursday, May 12, 2022 at 2:00 p.m. EDT
- Headquarters Rulings on Jewelry Tuesday, May 24, 2022 at 2:00 p.m. EDT
- Earthmovers: Where on Earth Do They Go? Thursday, May 26, 2022 at 11:00 a.m. EDT

Details: <https://www.cbp.gov/trade/stakeholder-engagement/webinars>

## FMC National Shipper Advisory Committee Meeting

The Federal Maritime Commission's National Shipper Advisory Committee (NSAC) will meet April 27, 2022, from 1:00 PM to 4:00 PM (Eastern) The agenda includes a briefing by Commissioner Carl W. Bentzel on the Maritime Transportation Data Initiative he is leading as well as updates from the NSAC Subcommittee on Fees and Surcharges and the Subcommittee on Data. The Committee will consider policy issue proposals from the Subcommittee on Fees and Surcharges it might recommend the Federal Maritime Commission address. The meeting will stream live via a link at <https://www.fmc.gov>

## The "UKCA" Mark and Market Access into the UK

Since the UK officially left the EU and ended its transition period on Dec. 31, 2020, the regulatory landscape is changing. **One new regulatory requirement is the UK Conformity Assessed (UKCA) mark.** Commerce's Commercial Service and speakers from the BSI Group and the British Consulate General in New York host an online discussion of the new certification requirement, when and how to use the UKCA mark, rules for usage, technical documentation and record keeping, alternative options, and compliance mechanisms. Date: May 6 11:00am-12:00pm EDT Cost: \$25

Questions [Anastasia.Xenias@trade.gov](mailto:Anastasia.Xenias@trade.gov) Registration:  
<https://emenuapps.ita.doc.gov/ePublic/event/editWebReg.do?SmartCode=2QH4>

## Foreign Military Sales and Direct Commercial Sales

U.S. Commercial Service hosts a two-part webinar series on how US companies can better position themselves to pursue both Foreign Military Sales and Direct Commercial Sales opportunities. Date: May 2 & 4, 2020 from 3:00-4:00pm EDT.

Info: [Brian.Beams@trade.gov](mailto:Brian.Beams@trade.gov)

**\*\*\*Briefs\*\*\*****Commerce Told to Check Figures**

The U.S. Court of Appeals for the Federal Circuit again remanded a nail-dumping case back to Commerce for justification of their math. In *Mid-Continent Steel & Wire v. U.S.*, Judge Claire Kelly found Commerce again failed to adequately justify the use of simple averaging when comparing prices, contrary to “what the acknowledged literature teaches.” The opinion discusses at length the relative merits of using weighted averages when groups differ in size.

**Vertical Shaft Engines** from the People’s Republic of China. In response to a complaint by Briggs & Stratton, the Wisconsin small engine builder, Commerce announced initiation of a Circumvention Inquiry of the Antidumping and Countervailing Duty Orders. Briggs contends that dual-piston engines constitute merchandise altered in form or appearance in such minor respects that they should be included within the scope of the original AD/CVD orders. In addition, they allege that dual-piston engines are later-developed merchandise and should be included within the scope of the orders.

**Cuban Dynamite** On April 21, OFAC announced an agreement with Newmont Corporation, the Colorado mining concern, to settle potential civil liability for four apparent violations of the Cuban Assets Control Regulations (CACR). During 2016 and 2017, Newmont Suriname, a wholly owned subsidiary, purchased Cuban-origin explosives and explosive accessories from a third-party vendor involving four separate transactions. The settlement noted Newmont had failed to provide compliance training for its in-country personnel.

**Separately**, OFAC announced an agreement with Chisu International Corporation of Florida to settle potential civil liability for the same apparent violations of the Cuban Assets Control Regulations. Between June 2016 and November 2017, Chisu and its affiliates in Suriname and Panama on four occasions procured Cuban-origin explosives and related accessories originating from Cuban entity Unión Latinoamericana de Explosivos (ULAEX) on behalf of a Newmont for the U.S. company’s mining project in Suriname.

**Stericycle Jabbed for FCPA violations.** The medical waste processor entered into a three-year deferred prosecution agreement with Justice and the S.E.C., with fines and disgorgements in excess of \$80 million, related to \$10 million in bribes and kickbacks by its Latin American operations. In addition to enhancing its compliance training, the firm agreed to retain an Independent Monitor for two years.

**First Saltie in Superior marks Spring.** Resko, a 624-foot bulk carrier from the Polsteam fleet, has earned 2022 First Ship honors, completing the season’s first full transit of the St. Lawrence Seaway en route to the Great Lakes’ westernmost port. Arriving last week through the Duluth Ship Canal and under the Aerial Lift Bridge, Resko visited Superior’s Gaviion Grain Connors Point Terminal to load approximately 16,200 short tons of spring wheat and 5,400 short tons of durum wheat destined for Italy, according to the Duluth Seaway Port Authority.