

ISSN 0276-8275

WTTLonline.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. 19**

**May 9 2022**

## **METI's Haigiuda Calls on Commerce**

Japan Minister of Economy, Trade, and Industry Hagiuda Koichi and Commerce Secretary Gina Raimondo met last week to assess progress on the Japan-US Commercial and Industrial Partnership (JUCIP), launched in November.

Milestones achieved include adoption of “Basic Principles on Semiconductor Cooperation,” pledging joint efforts to support the semiconductor supply chain, as well as initiatives on Export Controls, further endorsement of the Global Cross-Border Privacy Rules (CBPR) protocol announced last month, and preliminary discussions on collaboration in Artificial Intelligence (AI).

The meeting included a review of Commerce’s cooperation with Japan’s External Trade Organization (JETRO), including business matching and promotion activities in digital and clean energy investment.

## **Thea Kendler Schools Academia**

Assistant Secretary for Export Administration Thea Rozman Kendler reached out to the academic research community, asking for their assistance and cooperation, while making it clear that to ignore export regulation will not make it go away.

## **Her remarks May 5 to the Association of University Export Control Officers at their annual conference included the following:**

“While the U.S. higher education system is the crown jewel of our open society, it is also a front line in protecting our national security...More and more, this link between commercial technology and national security requires us to think about how technological breakthroughs and innovation will operate outside the lab, in the worst-case scenario. There is no distinction between industry and academia for a procurement agent.

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*(Kendler continued)*

“Controlling exports, of course, is not the same as cutting off exports. Export controls on a technology enable us to look at the destination, end use, and end user involved in a collaboration. This gives us insight into whether such exports or collaborators are a U.S. national security concern... Our job – yours and mine – is to make sure that American innovation is protected, and the academic community is a critical partner in our efforts.

“A strong relationship between the Bureau of Industry and Security and the institutions you represent is essential to ensuring U.S. national security, including long-term technological leadership... Given the widespread threats we face, we can’t have our academic institutions, researchers, and faculty stick their heads in the sand and reflexively hold that all controls are bad for innovation.

“The risk of failing to think through the national security concerns of new technologies is real. Developing technologies without considering how they may be applied outside the lab is reckless....

“Last year BIS asked for public comments on a control we were considering on brain computer interface (BCI) technology. We received 18 comments, the general thrust of which was: Don’t regulate or you’ll kill innovation.

“I understand the initial instinct behind the commenters’ responses to our request for comments on BCI technology. But an outright condemnation of export controls is not tenable given the potential for the technology’s nefarious uses.

“Let me be clear. If a technology poses a risk to national security, BIS controls it.”

## **USTR Begins Review of China 301 Tariffs.**

As the four-year expiration of the 2018 China Tariffs nears, US Trade Representative Katherine Tai announced the review and invited comment from domestic industries benefitting from the duties. If a request for continuation is received, USTR will conduct a review of the tariff actions.

The initial tranche of the China Tariffs is set to sunset July 6, with additional tariffs to expire August 23 and September 24. The duties were imposed in three tranches. Tranche 1 covered 818 tariff subheadings, with an approximate annual trade value of \$34 billion.

Tranche 2 covered 279 tariff subheadings, with an approximate annual trade value of \$16 billion. Tranche 3 covered 5,733 tariff subheadings, with an approximate annual trade value of \$200 billion.

China imposed tariffs on approximately \$110 billion worth of U.S. goods in retaliation.

Industry representatives in favor of continuation should submit two separate requests, using the USTR portal at <https://comments.ustr.gov/s/>

## While Congress Seeks 301 Exclusion Legislation.

On May 4, Sen. Pat Toomey (R-Pa.) asked Congress to create an exclusion process for 301 tariffs as the House and Senate come together to reconcile the differences between the United States Innovation and Competition Act (USICA) and the America Creating Opportunities, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act.

*“American manufacturing must be able to effectively compete with everyone, including China. With a Section 301 tariff exclusion process, American manufacturers will be better positioned to obtain the materials they need for production,” said Toomey.*

## Tai Defends Leverage of Tariffs

Acknowledging the pressure to drop the China tariffs to ease price pressure at home, US Trade Representative Katherine Tai used a speech at last week’s Milken Institute Global Conference to encourage more deliberate action, to use the removal of duties to achieve broader negotiating goals:

*“We need to make sure that whatever we do right now, first of all, is effective and, second of all, doesn’t undermine the medium-term design and strategy that we know we need to pursue.”*

## Senate Asks Commerce to call Russia “Non-Market”

Former United States Trade Representative and Senator Rob Portman (R-OH) led a bipartisan group of colleagues in a letter urging Secretary of Commerce Gina Raimondo to reconsider Russia’s status as a market economy within the meaning of the anti-dumping (AD) law of the Tariff Act of 1930.

Although the Commerce Department classified Russia as a market economy in 2002, the senators contend that Russia has backslid in recent years towards less and less of a free market economy. Now after its invasion of Ukraine, Moscow has taken further steps to centralize control over the Russian economy.

The letter notes the state’s share in the Russian economy may be as high as 70 percent. According to the International Monetary Fund, Russia has the third most State-Owned Enterprises per capita in the world. Classifying Russia as a non-market economy would likely increase the anti-dumping duties on Russia in future AD cases.

## Sixth Package of EU sanctions on Russia

President of the European Commission Ursula von der Leyen May 4 announced a 6<sup>th</sup> package of EU sanctions on Russia. The measures include:

- Listing high-ranking military officers and other individuals who committed war crimes in Bucha and who are responsible for the siege of Mariupol.

- “De-SWIFT” Sberbank Russia's largest bank, and two other major banks.
- Ban three Russian state-owned broadcasters from EU airwaves, cable, satellite, on the internet or via smartphone apps.
- The Kremlin relies on accountants, consultants and spin doctors from Europe. And this will now stop. We are banning those services from being provided to Russian companies.
- A ban on Russian oil. This will be a complete import ban on all Russian oil, seaborne and pipeline, crude and refined.

The import of Russian crude oil will be phased out within 6 months and the import of refined products by the end of 2022. The US banned the import of Russian oil in March, and the UK committed to phasing out imports by the end of 2022. *Bloomberg* reports the EU is considering extensions of time for Hungary, Slovakia and the Czech Republic to make the transition.

## EU Dual Use Regs Updated

May 3 the European Commission imposed further restrictions on exports of dual-use goods, technology and on the provision of related services.

Navigation goods and technologies; equipment, technology and services for Russia’s energy industry (excluding nuclear industry and the downstream sector of energy transport) are impacted, as well as imposing additional export restrictions on a range of advanced technologies.

The measure removes Russia from the destination lists of Union general export authorizations EU003, EU004 and EU005, to prevent Russia from gaining access to critical technologies and dual-use items. Text:

[http://data.europa.eu/eli/reg\\_del/2022/699/oj](http://data.europa.eu/eli/reg_del/2022/699/oj)

## WTO TRIPS Outcome Pleases No One.

May 3 WTO announced an “outcome document” from the informal process conducted with the Quad (the European Union, India, South Africa and the United States) intended to clarify how governments can override patent rights, under certain conditions, to enable diversification of production of COVID-19 vaccines. A process for dealing with tests and therapeutics has been deferred for six months.

**The response from the humanitarian community was derisive.** “The text as it stands continues to place pharmaceutical corporate interests over the needs of global health. It adds more unnecessary barriers than existed before negotiations began and failure to act now on treatments and tests is inexcusable,” said Max Lawson, Head of Inequality Policy for Oxfam.

“WTO member states must urgently deliver a genuine intellectual property waiver that will turn the tide on global vaccine, test, and treatment inequality and make a difference to controlling this virus. If WTO negotiations cannot deliver that after two years of a deadly pandemic, then we must admit that the institution is not fit for purpose.”

**Industry advocates shared the scorn.** “Now that the text is open to public scrutiny after its formal proposal by the WTO Director-General, it is clear that what is proposed would do nothing to solve any of the challenges we face in 2022 and will only make it far harder for small companies pioneering in this space to develop future innovative solutions,” said Steve Bates, Chief Executive of the UK’s BioIndustry Association and Chair of the International Council of Biotech Associations.

“Weakening IP rights does nothing to combat stubbornly low vaccination rates in many developing countries, nor will it facilitate the distribution of these products to people around the world who most need them.”

For the proposed language to become effective, all members of the WTO must reach agreement.

### **OFAC General License 31- Patent & Trademark Sanctions**

Treasury’s Office of Foreign Assets Control (OFAC) May 5 issued General License 31, stating that routine patent, trademark, copyright, and other intellectual property protection measures associated with the Russian Federation are permitted.

Filing applications, receipt, and maintenance of intellectual protection is permitted, including prosecution of enforcement proceedings. Transactions with sanctioned financial institutions remain prohibited.

In March the United States Patent and Trademark Office (USPTO) terminated engagement with Russia’s agency in charge of intellectual property, the Federal Service for Intellectual Property (Rospatent), and with the Eurasian Patent Organization.

The USPTO also terminated engagement with officials from the national intellectual property office of Belarus. Questions regarding dealings with Rospatent should be directed to OFAC at [OFAC\\_Feedback@treasury.gov](mailto:OFAC_Feedback@treasury.gov).

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**Aluminum Duties Pay Dividends.** Antidumping and countervailing (AD/CVD) orders imposed on imported aluminum sheet from 16 countries led to a rebound in the fortunes of US Producers, according to a recent report from The Aluminum Association. Import volumes of Common Alloy Aluminum Sheet (CAAS) from the sanctioned countries have dropped by two-thirds since the first duties were imposed in 2019, falling from 62 percent to 25 percent of US imports of CAAS. U.S. producer shipments of CAAS increased by 24.4 percent, from 2.69 billion pounds in 2020 to 3.34 billion pounds in 2021.

**Botulinum Toxin Products and Processes.** The ITC instituted a 337 investigation on behalf of South Korean medical aesthetic company Medytox to determine if Austrian and South Korean competitors stole trade secrets for their own wrinkle cream.

**Garland's Fleet Expands.** At the behest of the FBI and Justice, authorities in Fiji seized the 348 foot motor yacht *Amadea* last week. Owned by sanctioned oligarch Suleiman Kerimov, *Amadea* joins a growing fleet of luxury vessels now under the care and custody of Uncle Sam.

**Marshalls Pleased to Take the Helm.** *"The U.S. Marshals Service will continue to contribute our expertise in support of Task Force efforts to take possession of seized assets of Russian oligarchs during these forfeiture operations,"* said Director Ronald L. Davis of the U.S. Marshals Service. The cost to maintain a 350-foot yacht can exceed \$500,000 per month, according to Luxyachts.com

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

**USPTO Trade Secrets Symposium.** May 11 – 12 PTO's biennial trade secret symposium, featuring an information-packed series of online sessions that delve into the details of trending cross-border issues affecting the protection of trade secrets. The free program is a two-day virtual event, with panels on:

- Balance and tension between patents and trade secrets as forms of IP protection
- Overseas talent recruitment programs and cyber theft risk mitigation strategies
- Cross-border issues and coordination of civil enforcement with criminal prosecutions
- Views from the USPTO's IP attachés posted overseas

Registration: <https://web.cvent.com/event/59716d70-265e-4c3a-84e7-9e2e6fd88320/summary>

Info: [Hollis.Robinson@uspto.gov](mailto:Hollis.Robinson@uspto.gov)

**CFIUS Conference.** June 16th at the U.S. Department of the Treasury. This is a hybrid virtual and in-person event, with limited in-person seating. The event will feature speakers from across the U.S. Government who will provide insights on CFIUS authorities, processes, and practice. **in-person registration will close at 5pm on Friday, May 13** Virtual registration will remain open until a few days prior to the event.