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“Polycrisis” Agenda at WTO

The 12th World Trade Organization (WTO) Ministerial Conference (MC 12) is scheduled to take place 12- 15 June in Geneva. Meeting after two years of delays, MC 12 is expected to respond to evolving challenges to multilateralism and global trade in the form of intellectual property, food security, fisheries, and digital governance.

In consideration is a compromise proposal that seeks to waive Trade-Related Aspects of Intellectual Property Rights (TRIPS) for COVID-19 vaccines. If approved, a TRIPS waiver would enable generic manufacture of vaccines by any developing country that has exported less than 10 percent of vaccine doses in 2021. Industry groups continue to oppose, suggesting that such a waiver would jeopardize American intellectual property strength and undermine future pharmaceutical innovation, calling upon Western governments to instead subsidize the delivery of vaccines to affected nations with a view to address vaccine inequity.

TRIPS Council chair Ambassador Lansana Gberie of Sierra Leone presented the ministerial document Friday, telling members "We have come to the brink of our endurance, intelligence and creativity and we will give our ministers a chance to also take a shot, the final shot."

Also on table is also the question of extending the moratorium on customs duties on electronic transmissions. Under the present moratorium, drafted in 1998, countries are prohibited from imposing customs duties on cross border e-commerce transactions. Given that many offline products can be easily transferred electronically, many countries fear that customs duties may be bypassed.

MC 12 is also expected to consider the global “polycrisis” in the realm of food security. Given that WTO rules do not allow member nations to export subsidized food grains to the world market, the conference will seek to build some momentum toward maintaining a public food stockpile.

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Finally, concluding an agreement to combat Illegal, Unreported, and Unregulated (IUU) fishing will give WTO a unique opportunity to advance multilateralism. In a recent conversation with the American Security Project, the Assistant Secretary for Oceans and International Environmental and Scientific Affairs called for more transparency for fish catches throughout the supply chain by highlighting the example of Russian fish imports. (GS)

Summit of America Yields “Plan to Assess Progress”

President Biden hosted the Summit of the Americas in Los Angeles, with the declared intention to restore Washington’s role as a global leader in the region. In his address, Biden laid out the contours of the “Americas Partnership for Economic Prosperity,” which is focused on mobilizing investments, making supply chains resilient, pushing for clean energy jobs, and building more inclusive trade relations. Critics have noted the absence of tariff relief in the economic plan.

An analysis of U.N. trade data from 2015- 21 by Reuters demonstrates that China has not only overtaken the US as the principal trade partner everywhere in Latin America except Mexico, but also continues to widen the trade gap. Excluding Mexico, total trade flows between Latin America and China totaled \$247 billion last year, well above the \$174 billion with the US.

On her way to Geneva, USTR Katherine Tai and thirteen summit attendees released a joint declaration on Good Regulation Practices (GRP). The new GRP Declaration identifies actions and practices including providing easy access to regulatory information, conducting public consultations in an open and inclusive manner; engaging all interested persons in the regulatory process; conducting reviews of regulations in effect; and using relevant international standards, guides and recommendations to avoid unnecessary obstacles to trade.

The adhering countries plan to assess progress on actions and practices by the end of 2023. A related accomplishment was the announcement of the formation of a Technical Working Group to Improve Labor Law Enforcement in the Dominican Sugar Sector.

Innovation/Competes Act – Protecting Big Tech

As lawmakers continue to work toward reconciling the Senate-passed United States Innovation and Competition Act (USICA) with the House-passed America COMPETES Act (H.R. 4521), a particular provision on digital governance has drawn attention. In consideration is a proposal to provide USTR the power to impose penalties on countries that have put in place illegal trade barriers in the digital sphere.

While the proposal has been designed with an eye to fight the “tide of digital censorship” in countries such as China, the broad language used therein has raised concerns. Given that many countries have enacted rules to fight disinformation, deceptive advertising, and illegal content, it is believed that the provision may hurt the right of countries to reasonably regulate digital space.

If passed in the present form, the provision against the right to regulate is likely to hit many EU policies such as the Digital Markets Act and Digital Services Act, designed to enable fair tech competition. Many lawmakers have suggested that this may have the effect of benefitting big tech companies that enjoy a near monopoly in the digital realm. (GS)

Shipping Act Gets Under Way

“One of the reasons prices have gone up is because a handful of companies who control the market have raised shipping prices by as much as 1,000%. It’s outrageous — and I’m calling on Congress to crack down on them.” President Biden [via tweet June 9].

Next week the House is set to hold a final vote on The Ocean Shipping Reform Act, which forbids shipping companies from refusing to transport agricultural exports overseas. The Senate version, passed unanimously in March defers to the Federal Maritime Commission. A compromise version is expected to reach the President’s desk shortly after the House Vote.

The Senate’s Ocean Shipping Reform Act would:

- Prohibit ocean carriers from unreasonably declining opportunities for U.S. exports, as determined by the FMC in a new required rulemaking;
- Require ocean common carriers to report to the FMC each calendar quarter on total import/export tonnage and twenty-foot equivalent units (loaded/empty) per vessel that makes port in the United States;
- Authorize the FMC to self-initiate investigations of ocean common carrier’s business practices and apply enforcement measures; and
- Establish new authority for the FMC to register shipping exchanges to improve the negotiation of service contracts.

Neither the House nor Senate bill directly addresses the carriers’ exemption from anti-monopoly prosecution in the 1998 Shipping Act. According to the White House, three groups of ocean carrier companies that work together now control 80% of global container ship capacity and control 95% of the critical East-West trade lines.

FMC Defines Initiatives, Compliance Role

June 8 the Federal Maritime Commission announced three initiatives to implement the recommendations of Fact Finding 29, a two-year study of the shipping supply chain released last month. The Commission will:

- establish a new and permanent International Ocean Shipping Supply Chain Program,
- re-establish the Export Rapid Response Team, and
- take the steps necessary for carriers, marine terminal operators, and operating seaports to employ a designated FMC Compliance Officer.

“Compliance with Commission regulations and the statutes it administers is not voluntary or discretionary,” said an FMC official. “Ocean carriers, marine terminal operators, and operating seaports designating an FMC Compliance Officer who reports directly to the senior-most U.S.-based executive will aid in ensuring industry-wide observance of legal and regulatory requirements.

US Soft on Foreign Direct Product Rule?

While the law on export control enforcement leans toward strict liability standards, undercompliance remains a challenge. As part of an effort to protect the national innovation base of the US, the Department of Commerce’s Bureau of Industry and Security (BIS) adopted new Foreign Produced Direct Product Rules

(FDPR) in 2020, aimed at Chinese government backed Huawei (part of Entity List). However, media reports suggest that many firms have yet to be penalized for non-compliance. As evidenced by the Senate Committee on Commerce, Science, and Transportation's minority committee report in October 2021, at least one American firm continued to ship hard disk drives to Huawei without a license.

The issue of undercompliance remains a concern with the Russia sanctions as well. US Treasury Under-Secretary for Terrorism & Financial Intelligence has recently said that the US Treasury plans to take "enforcement actions against entities that fail to comply with the sanctions issued against Russia". In a similar vein, the White House also released a Fact Sheet on June 2 highlighting further actions to tighten the sanctions regime.

On the other hand, there is continued flexibility with respect to the evolving regime centered on China. Two days before the investment ban on trading stocks linked to the Chinese military took effect, the US Treasury Department's Office of Foreign Assets Control (OFAC) has issued a policy clarification giving US financial institutions some leeway to handle such trades. Investors have been allowed to trade their securities in many companies that were blacklisted in December 2021 for another six months. This comes at a time when investor sentiment in China is under stress in view of the COVID 19- induced lockdowns and Beijing's overall regulatory crackdown on tech companies.

Given the global momentum toward toughening enforcement regimes, it can be reasonably expected that compliance mechanisms will be enforced more strictly, going forward. (GS)

Aerospace Subcontractor Barred for ITAR Violations

BIS has sanctioned a North Carolina prototyping contractor for BAE Systems, Ametek and other precision manufacturers, for illegally exporting satellite, rocket, and defense technology to China.

A Temporary Denial Order was issued June 7 [Case E2723], giving notice to persons and companies in the United States and abroad that they should cease dealing with Quicksilver, Rapid Cut, and US Prototype in export or reexport transactions involving items, including technology or software, subject to the EAR.

Rapid Cut and affiliates received export-controlled drawings from their domestic customers to 3-D-print requested items. Despite instructions to comply with export regulations, and without their customers' advance consent or knowledge, these drawings were sent to shops in China to 3-D-print the items. The items were then imported into the United States to be provided to the ordering customers. A Rapid Cut customer reported the offenses when packaging materials identified their origin as Chinese.

Warhead Contractor Pleads Guilty

The former owner and CEO of Tungsten Heavy Powder & Parts (THPP) pleaded guilty June 9 to conspiring to commit offenses against the United States, including the unlawful exportation of defense articles on the U.S. Munitions List without first obtaining a valid license or approval from the U.S. Department of State, in violation of federal export laws pursuant to the International Traffic in Arms Regulations (ITAR).

On several occasions Joe Sery exported technical drawings from the United States via email messages to his brother in India and the People's Republic of China. An arrest warrant has been issued for the brother, Dror Sery, now believed to be residing in Israel.

THPP was a San Diego-based company that provided tungsten fragments, sub-assemblies, and other weapon grade components for United States military contracts. Some of THPP's projects included the construction of an Advanced Rapid Response Weapon, a 155-millimeter Bi-Modal Warhead, a R9E Warhead, and an 81-millimeter Cowling Cone. Operations appear to have been transferred to a successor entity in Wyoming.

In April 2021 THP paid a \$5.6 million fine to settle false claims act violations relating to US-funded contracts for the Government of Israel. THP falsely certified that tungsten sourced in China had been sourced, instead, in the United States. THP also falsely certified that manufacturing occurred in the United States, when in fact THP contracted with a Mexican maquiladora.

*** Appointments ***

President Biden announced his intent to nominate **Doug McKalip as the USTR Chief Agricultural Negotiator**. McKalip currently serves as senior adviser to U.S. Department Agriculture Secretary Tom Vilsack

Justice appointed Glenn Leon, be the next head of the Fraud Section. Hewlett Packard Enterprise's ethics and compliance chief for the past seven years, Leon previously served as deputy chief of the Fraud Section and worked more than a decade as an assistant U.S. attorney in District of Columbia.

The Senate confirmed **Dr. Chavonda J. Jacobs-Young as Under Secretary of Agriculture for Research, Education, and Economics**. Following a bipartisan vote of 95-4, Jacobs-Young will now serve in the highest scientific post at the Department.

*** Briefs ***

The US Trade Deficit was (\$87 Billion) in April, after spiking to a record (\$109.8) Billion in March. The improvement was driven by a (\$13 Billion) drop in Goods imported and a \$9 Billion increase in Exports. Services volumes grew modestly. The Deficit with China decreased to (\$30.6 Billion) from (\$34 Billion), as both imports and exports declined. Trade with Russia continued to wane; imports dropped 30 percent, returning to January levels. Exports to Russia were \$89 Billion, one seventh the prior year's level. The April goods trade deficit with Russia was nearly (\$2 billion), unchanged from 2021.

Sen. Sheldon Whitehouse, (D-R.I.) is proposing a limited carbon tax on firms that are dirtier than average in about a dozen industries, and a carbon border tax on imports in industries that are also above those benchmarks. This follows on the EU adoption of a Carbon Border Adjustment Mechanism (CBAM) regulation in March [WTTL 3/18]. Shippers in the US and Europe have raised concerns about the shift of the carbon pricing debate, claiming that a carbon tax could turn into "the world's biggest BAF (bunker adjustment factor)," according to *Loadstar*.

UK Adopts Stricter Rules for Sanctions Enforcement The Office of Financial Sanctions Implementation, Government of U.K. has released new Guidance on enforcement and monetary penalties for violations relating to financial sanctions to reflect the changes introduced by the Economic Crime (Transparency and Enforcement) Act 2022. Starting June 15, the agency will no longer have to prove that a company knew or should have known that it was in breach of sanctions. Any breach thereof would be prosecuted on a strict

liability basis, bringing the regime closer to the one in operation in the US. Growing focus on enforcement across jurisdictions highlights the commercial importance of conducting sanctions due diligence. (GS)

Germany has adopted the Sanctions Enforcement Act I (SDG I), governing the country's enforcement of EU sanctions. Asset seizures are facilitated, with amendments to money laundering and transparency protocols, as well as a "penal obligation to notify" with specific consequences for logistics providers. Among provisions, the Act allows the utilization of seized items if their safekeeping, care, or preservation would involve disproportionately high costs. Think yachts and aircraft.

BIS issued a final rule June 2, adding seventy-one entities located in Russia and Belarus to the Entity List. Sixty-six of the entities being added were determined to be 'military end users,' and are receiving a "footnote 3 designation." The footnote 3 designation means entities are subject to a license requirement for the export, reexports, exports from abroad, or transfers (in-country) of all items subject to the EAR, as described under the Russia/Belarus foreign "direct product" (FDP) rule. BIS will review license applications for these entities under a policy of denial..

BIS Soliciting Comments to Evaluate Import Certificate Procedure. [FR 2022-12683]

The Department and allied nations exercise controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country, the importer submits an international import certificate to the U.S. Government to certify that he/she will import commodities into the United States and will not reexport such commodities, except in accordance with the export control regulations of the United States

*** Calendar ***

BIS - Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 14, at 10:00 a.m., EDT, via teleconference.

BIS - Emerging Technology Technical Advisory Committee (ETTAC) will meet on June 16, at 11:00 a.m., EDT via teleconference.

CFIUS Conference June 16, 8:00am-4:00pm. Deputy Treasury Secretary Wally Adeyemo will headline the conference, to be held at in the Cash Room at Treasury and online.

BIS Update 2022 June 29 - July 1 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 virtually for the first two days. Use this link to register: <https://events.eply.com/bis2022>

Advisory Committee on Supply Chain Competitiveness June 29, from 10:00 a.m. to 5:00 p.m. The ASCC provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. The Office of Supply Chain, Professional, and Business Services will post the final detailed agenda on its website, <https://www.trade.gov/acsc>. The transcript of the meeting will also be posted on the Committee website. Inquiries: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration at Email: richard.boll@trade.gov, phone 571-331-0098.

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ITA & ITC Docket Dump

In a cascade of rulings and actions, Commerce and the International Trade Commission cleared their desks for the Summer holiday last week, publishing over thirty trade determinations, rulings and announcements.

Solar Cells and Modules From Southeast Asia; Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation [Presidential Proc. 10414]

Shingled Solar Modules ITC granted a joint motion to terminate section 337 complaint filed by The Solaria Corporation based on a settlement. [87 FR 35247]

Graphics Systems, Components Thereof, and Digital Televisions Containing the Same ITC Institution of 337 Investigation on behalf of Advanced Micro Devices, Inc [87 FR 34718]

Barcode Scanners, Scan Engines, Mobile Computers with Barcode Scanning Functionalities. ITC Institution of 337 Investigation on behalf of Honeywell International and Hand Held Products, Inc. [87 FR 33833]

Electrolyte Containing Beverages and Labeling and Packaging Thereof -ITC Request for Written Submissions on Remedy, the Public Interest, and Bonding. Based on a 337 complaint filed by CAB Enterprises, Inc. of Texas and Sueros y Bebidas Rehidratantes, S.A. de C.V. of Mexico. [87 FR 33831]

Pneumatic Compression Devices and Components Institution of 337 Investigation, on behalf of Precision Holdings USA Inc. and Innovamed Health LLC 87 [FR 34299]

Polyethylene Terephthalate (PET) Resin from the Sultanate of Oman. (Commerce) preliminarily determines that OCTAL SAOC—FZC (OCTAL), did not make sales of subject merchandise at less than normal value during the period of review [87 FR 34643]

Superabsorbent Polymers from the Republic of Korea Preliminary Affirmative Determination of

Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures [87 FR 34647]

Amorphous Silica Fabric from the People's Republic of China - Final Results of the Expedited First Sunset Review of the Antidumping Duty Order - (Commerce) finds that revocation of the antidumping duty (AD) order would be likely to lead to the continuation or recurrence of dumping at the levels indicated.

Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea Scheduling of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations [87 FR 35246]

Steel Nails from Sri Lanka preliminary affirmative determination [87 FR 34645]

Steel Nails from Turkey preliminary affirmative determination [87 FR 34649]

Steel Nails from Oman preliminary affirmative determination [87 FR 34639]

Steel Nails from UAE preliminary affirmative determination [87 FR 34637]

Steel Concrete Reinforcing Bar from Mexico (Commerce) determines that rebar from Mexico was sold in the US at less than normal value during the period of review [87 FR 34848]

Iron Construction Castings from Brazil, Canada, and the People's Republic of China Continuation of Antidumping and Countervailing Duty Orders [87 FR 33710]

Steel Racks and Parts Thereof from the People's Republic of China Amended Final Results of Antidumping Duty Administrative Review (correcting for the ministerial errors). [87 FR 33711]

Large Diameter Welded Pipe from the Republic of Korea Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission [87 FR 33723]

Large Diameter Welded Pipe from Canada Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review The review covers 46 producers or exporters of the subject merchandise including the sole mandatory respondent, Evraz. Commerce preliminarily determines that Evraz made sales of subject merchandise at prices below normal value (NV) during the POR. Rescinding administrative review for 42 companies for which this review was initiated. [87 FR 34249]

Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments Commerce preliminarily determines that the producers/exporters subject to this review made sales of subject merchandise at less than normal value. [87 FR 34242]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan - Preliminary Results of Antidumping Duty Administrative Review Commerce) preliminarily determines that Toyo Kohan Co., Ltd. made sales of diffusion-annealed, nickel-plated flat-rolled steel products at less than normal value (NV) during the period of review. [87 FR 34253]

Carbon and Alloy Steel Cut-to-Length Plate from Italy & Belgium - Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; (Commerce) preliminarily determines that Industeel Belgium S.A. made sales of subject merchandise at less than normal value (NV) during the period of review [87 FR 34244]

Pneumatic Compression Devices and Components Institution of 337 Investigation, on behalf of Precision Holdings USA Inc. and Innovamed Health LLC 87 [FR 34299]

Magnesia Carbon Bricks from the People's Republic of China Preliminary Results of Antidumping Duty Administrative Review (Commerce) preliminarily determines that the 30 companies subject to this administrative review of the antidumping duty (AD) order on certain magnesia carbon bricks (bricks)

from the People's Republic of China (China) are part of the China-wide entity because none filed a separate rate application (SRA) or a separate rate certification (SRC). [87 FR 35161]

Ammonium Sulfate from the People's Republic of China Final Results of the Expedited First Sunset Review of the Countervailing Duty Order (Commerce) finds that revocation of the countervailing duty (CVD) order on ammonium sulfate from the People's Republic of China (China) would likely lead to the continuation or recurrence of countervailing subsidies at the levels indicated in the "Final Results of Review" [87 FR 34848]

Sodium Nitrite From India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation Commerce will issue its preliminary determination no later than August 11, 2022. [87 FR 34851]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Continuation of Antidumping Duty Orders. Specifically excluded from the scope are hammers and sledges with heads 1.5 kg. in weight and under, hoes and rakes, and bars 18 inches in length and under. [87 FR 34846]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part. (Commerce) preliminarily determines that certain producers/exporters from the People's Republic of China (China) received countervailable subsidies during the period of review [87 FR 35158]

Grape Juice Concentrate from Argentina Commerce is postponing the deadline for the preliminary determination to August 29, 2022. [87 FR 35164]

Ripe Olives From Spain: (Commerce) preliminarily finds that producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review 87 [FR 34841]

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