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Feds to WTO: Drop Dead

The United States says it will not remove its Section 232 tariffs on imported steel and aluminum to comply with a World Trade Organization ruling released today. Final WTO panel reports found against the US Section 232 tariffs imposed under the Trump Administration. The complaints were brought by China, Norway, Switzerland and Turkey.

The Biden Administration is making clear today that it will not remove the tariffs, saying that the decisions are erroneous because national security issues are outside of the WTO's purview and reinforce the need to reform the WTO dispute settlement system. Following is the statement issued today by Assistant US Trade Representative Adam Hodge.

"The United States strongly rejects the flawed interpretation and conclusions in the World Trade Organization (WTO) Panel reports released today regarding challenges to the United States' Section 232 measures on steel and aluminum brought by China and others. The United States has held the clear and unequivocal position, for over 70 years, that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.

"These WTO panel reports only reinforce the need to fundamentally reform the WTO dispute settlement system. The WTO has proven ineffective at stopping severe and persistent non-market excess capacity from the PRC and others that is an existential threat to market-oriented steel and aluminum sectors and a threat to U.S. national security. The WTO now suggests that the United States too must stand idly by. The United States will not cede decision-making over its essential security to WTO panels.

"The Biden Administration is committed to preserving U.S. national security by ensuring the long-term viability of our steel and aluminum industries, and we do not intend to remove the Section 232 duties as a result of these disputes."

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US Readies IPEF Text

The United States will lay down negotiating text on a number of key issues when participants in the Indo-Pacific Economic Framework meet in Brisbane beginning Saturday.

In the trade pillar of the IPEF, the United States is tabling text on agriculture, trade facilitation, good regulatory practices and domestic services, according to a senior Administration official who briefed reporters yesterday on the upcoming negotiating round. Text on digital trade will not be ready until next year. Text also have been prepared for the pillars 2 and 4 on supply chains and anti-corruption, and a concept paper on pillar 3, the clean economy.

The IPEF has moved quickly this year from a concept to a set of texts and proposals, another official said. The United States is pushing for an “aggressive” negotiating pace, the official said, but all participants seem motivated to move quickly. Negotiators expect 2023 to be “very active,” the first official said.

The other countries participating in the IPEF are Japan, India, South Korea, Australia, Indonesia, Thailand, Singapore, Malaysia, the Philippines, Vietnam, New Zealand and Brunei. India is the only participating country that opted not to participate in the trade pillar.

Key Congressional lawmakers recently questioned the Administration’s decision to negotiate IPEF without having Trade Promotion Authority, arguing that the agreement requires Congressional approval. The Administration believes that it has the statutory authority to address the areas covered in the IPEF without Congressional approval, one of the officials said. The Administration is working closely with Congressional lawmakers as it negotiates the IPEF, the official said. The IPEF differs from a traditional US trade agreement because it does not address tariff rates.

CSIS Report Calls for Beefier BIS

“Modern, data-driven digital technologies utilizing AI and machine learning can and should play an integral role in enhancing BIS export control enforcement capabilities,” according to a recent [report](#) from the Center for Strategic and International Studies. But it’s going to cost.

““It is premature for the United States to suggest that its recent export controls on Russia will achieve its intended objectives without additional resources for enforcement. While there is no realistic way to reliably measure how much Russia and China are increasing their investment in export control evasion activity, there is every reason to suspect that both countries are massively increasing such investments,” say the authors, noting real BIS funding has not increased in a decade.

“Current and former BIS staff state that the major government databases that they use to monitor trade flows and identify suspicious activity can perform only a fraction of the needed functionality and crash routinely. Instead of knowledge graph databases and machine learning—capabilities that have revolutionized both the private sector and other federal agencies with similar missions—BIS analysts perform their work primarily using Google searches and Microsoft Excel.

“BIS’s greatest deficiencies are arguably in taking advantage of open-source data and data that is available for purchase from the private sector.

“CSIS analysis of relevant comparable data-driven digital technology modernization efforts by other U.S. government agencies with similar mission requirements suggests that this could be accomplished with an additional appropriation for technology modernization at BIS of roughly \$25 million annually for five years.

“In addition to the \$25 million for technology modernization and analyst staff, Congress should provide \$18.4 million in annual funding for additional enforcement agents. The current criminal investigator cadre is spread too thin to counter threats to U.S. national security. It is routine for a single BIS ECO to be responsible for working with multiple foreign countries or entire regions,” the report recommends. Assistant Secretary Alan Estevez compared the sums required to “a helicopter,” though noting he was still operating under a continuing resolution to last year’s budget.

This would be at odds at odds with incoming House Leadership’s determination to gut BIS. Rep. Jim Banks (R-Indiana), chair of the Republican Study Committee is sponsor of H.R.9241 - Prioritizing National Security in Export Controls Act of 2022, which proposes slashing BIS funding, blacklisting senior personnel, and moving responsibility for export licensing to the Department of Defense.

WTO TRIPS Kicked Down the Road

(Geneva, via Washington Trade Daily) – The much-anticipated outcome to extend the World Trade Organization’s 12th ministerial conference TRIPS decision on COVID-19 diagnostics and therapeutics by December 17 may be deferred to June, raising serious doubts on the credibility and integrity of the MC12 decisions, WTD has learned.

In a restricted Job document (Job/IP/65) issued on December 7, TRIPS Council Chair Ambassador Lansana Gberie of Sierra Leone submitted a draft report to the General Council stating that “there is currently no consensus among Members to take a decision under paragraph 8 of the Decision” of the TRIPS Agreement. Ambassador Gberie says that, due to continued differences on finalizing a decision as per paragraph eight that requires members to conclude a decision to extend the TRIPS Agreement Decision to COVID-19 diagnostics and therapeutics, “members agree to continue discussions in the TRIPS Council and to report to the General Council no later than 30 June 2023.”

Members have not given a nod to the chair’s proposal, and it remains to be seen whether all will agree to the new deadline, said a TRIPS negotiator who preferred not to be identified. In his report, the chair says “since the adoption of the Decision, Members have held discussions in this regard in formal and informal meetings of the TRIPS Council on 6 July, on 19 September, on 3 and 12-13 October, on 2 and 22 November, and on 6 [and 15] December 2022.”

Many developing and least-developed countries proposed a draft decision in IP/C/W/694 of 6 December, stating that the Decision on the TRIPS Agreement adopted on 17 June is “far removed from the comprehensive TRIPS waiver proposal contained in documents IP/C/W/669 and IP/C/W/669/Rev/1 (“original TRIPS waiver proposal”) co-sponsored by 65 WTO members (co-sponsors).”

Some Want Decision Now

The co-sponsors, including Argentina, Bangladesh, Bolivia, Egypt, India, Indonesia, Pakistan, South Africa and Venezuela, maintained that “a more comprehensive waiver decision as envisaged in the original TRIPS waiver proposal would support the efforts to ensure timely, equitable and universal access to safe, affordable and effective therapeutics and diagnostics, ramping up of production and expanding supply options.”

They argued that the “MC12 Ministerial Decision on the TRIPS Agreement is the result of over one and half years of arduous and lengthy discussions on the original TRIPS waiver proposal and intense negotiations heading towards the 12th Ministerial Conference in the midst of a global crisis” and “it is of limited scope covering only vaccines.”

More importantly, they said, “diagnostics and therapeutics are essential tools for a comprehensive approach to fight the pandemic, that it is not over.” Against this backdrop, “omitting these vital tools will deter the effectiveness of the decision that aims timely and affordable access to effective vaccines against the ongoing COVID-19 pandemic,” the co-sponsors said.

“At a minimum,” the co-sponsors emphasized, “the extension of the policy tools provided in document WT/MIN/(22)/30 to therapeutics and diagnostics will result in a holistic approach to enable developing countries to address IP (intellectual property) barriers that prevent the expansion and diversification of production and increase accessibility to crucial life-saving COVID-19 tools.”

Further, “the current outcome represents a narrow-conditioned Decision due to demands of some WTO members, requiring significant compromises on the part of the co-sponsors that had hoped for greater solidarity among WTO members during a public health emergency and consequently a more comprehensive waiver decision as envisaged in the original TRIPS waiver proposal that would support ramping up of production and expanding supply options.”

The co-sponsors called on the General Council, which is scheduled to meet on December 19, “to immediately extend the 17 June TRIPS Decision adopted by the Ministers by consensus after long protracted negotiations, mutatis mutandis to therapeutics and diagnostics.” “WTO Members have an opportunity to show they can act promptly to respond to the ongoing COVID-19 pandemic and the challenge of inequitable access to therapeutics and diagnostics and respond to the criticism that the Decision on vaccines came too little too late,” they said.

US, EU Cite Progress on IRA Concerns

US and European officials said they are making progress on a major trade irritant over subsidies in the US Inflation Reduction Act, but gave no indication what remedies might be under consideration. The IRA was discussed during the third meeting of the US-European Union Trade and Technology Council, held outside of Washington.

Last week’s discussions gave “momentum” to discussions already underway in a bilateral task force created to deal with the IRA, Secretary of State Anthony Blinken told reporters at a press conference closing the TTC meeting. In their joint statement, the US and EU officials noted that they “took stock of the work of the

dedicated US-EU Task Force on the Inflation Reduction Act and noted the preliminary progress made. We acknowledge the EU's concerns and underline our commitment to address them constructively. We underline the TTC's role in achieving this and in supporting a successful and mutually supportive green transition with strong, secure, and diverse supply chains that benefit businesses, workers, and consumers on both sides of the Atlantic."

Despite the conflict over the IRA, it is important that Brussels and Washington are cooperating on climate change, European Executive Vice President Margrethe Vestager told reporters. US Trade Representative Katherine Tai, Commerce Secretary Gina Raimondo and EU Executive Vice President Valdis Dombrovskis also participated in the TTC meeting.

Sustainable Trade

While there was no sign of a resolution to the IRA dispute, the two sides announced a new transatlantic initiative on sustainable trade. The initiative is aimed at supporting the transition to low- carbon economies by identifying actions in key areas of trade and environmental sustainability that support the shared twin goals of a green and sustainable future and to increase transatlantic trade and investment.

"We intend to explore areas of cooperation to support these twin goals, including where there is opportunity to measurably decarbonize our energy intensive industries, and facilitate the deployment of goods and services essential to the transition to more circular, and net-zero economies," according to the joint statement.

Senate Dems Elect Leaders

Senate Majority Leader Chuck Schumer (NY) announced yesterday the Senate Democratic leadership for the 118th Congress. Sen. Schumer will remain majority leader in the next Congress and will hold a larger majority over Senate Republicans following Sen. Raphael Warnock's re-election in Georgia's run off election this week. Arizona Senator Kyrsten Sinema's defection to Independent status this week will give Sen. Sanders a little extra "outreach."

The rest of the Senate leadership for the 118th Congress will be:

Democratic Whip: **Senator Dick Durbin (Ill)**

Chair of Democratic Policy and Communications Committee: **Senator Debbie Stabenow (Mich)**

Chair of Steering Committee: **Senator Amy Klobuchar (Minn)**

Vice Chair of the Conference: **Senator Elizabeth Warren (Mass)**

Vice Chair of the Conference: **Senator Mark Warner (Va)**

Chair of Outreach: **Senator Bernie Sanders (Vt)**

Vice Chair of Democratic Policy and Communications Committee: **Senator Joe Manchin (Wva)**

Senate Democratic Conference Secretary: **Senator Tammy Baldwin (Wisc)**

Vice Chair of Democratic Policy and Communications Committee: **Senator Cory Booker (NJ)**

Vice Chair of Outreach: **Senator Catherine Cortez Masto (Nev)**

Deputy Democratic Conference Secretary: **Senator Brian Schatz (Hawaii)**

New House Select Panel on China

House Republican Leader Kevin McCarthy (Calif) plans to establish a Select Committee on China in the 118th Congress when Republicans will control the House. Mr. McCarthy hopes to be House Speaker, but he faces some challengers when lawmakers vote for Speaker early next year.

“The Chinese Communist Party is the greatest geopolitical threat of our lifetime,” Mr. McCarthy said in a statement. “We need a whole-of-government approach that will build on the efforts of the Republican-led China Task Force and ensure America is prepared to tackle the economic and security challenges posed by the CCP. That is why under a Republican majority, I will establish a Select Committee on China.”

Rep. Mike Gallagher (R-Wisc) will chair the Select Committee, according to Rep. McCarthy. The Green Bay Congressman holds a bachelor’s degree from Princeton, a master’s degree in Security Studies from Georgetown, a second in Strategic Intelligence from National Intelligence University, and a PhD in International Relations from Georgetown.

US Trade Deficit Up in October

The US trade deficit rose to \$78.2 billion in October – a \$4 billion or 5.4 percent increase over the \$74.1 billion recorded the previous month, the Commerce Department reported yesterday. US exports in October were \$256.6 billion, \$1.9 billion less than September exports. Imports were \$334.8 billion, \$2.2 billion more than September imports.

The October increase in the goods and services deficit reflected an increase in the goods deficit of \$6.1 billion to \$99.6 billion and an increase in the services surplus of \$2.1 billion to \$21.4 billion. Year-to-date, the goods and services deficit increased \$136.9 billion, or 19.9 percent, from the same period in 2021.

Exports were up \$415.3 billion or 19.8 percent, while imports rose \$552.2 billion or 19.8 percent. The average goods and services deficit increased \$2.5 billion to \$72.7 billion for the three months ending in October.

Year-over-year, the average goods and services deficit increased less than \$100 million from the three months ending in October 2021. Commerce said that in October, exports of goods decreased \$3.7 billion to \$176 billion in October. Exports of services increased \$1.8 billion to \$80.6 billion in October.

**** Briefs ****

ABB’s \$315 million settlement of charges associated with bribing a South African official for power plant contracts includes a three-year deferred prosecution agreement (DPA), along with two subsidiaries pleading guilty to once count conspiracy to violate the anti-bribery provisions of the FCPA.

“This resolution demonstrates the Criminal Division’s thoughtful approach to appropriately balancing ABB’s extensive remediation, timely and full cooperation, and demonstrated intent to bring the misconduct to the

department's attention promptly upon discovering it, while also accounting for ABB's historical misconduct," Justice said in a [statement](#).

ABB previously plead guilty for contract fraud in Egypt in 2001, an FCPA bribery case in Nigeria in 2004, two deferred prosecution agreements and guilty pleas for Iraq and Mexico FCPA violations in 2010, and other resolutions. There will be no requirement for an independent compliance monitor, as they promised not to do it again. Chief Executive Björn Rosengren told the [Wall Street Journal](#) "We have a clear zero-tolerance approach to non-ethical behavior within our company."

Treasury / G7 Cyber Group (CEG) – which U.S. Department of the Treasury's Office of Cybersecurity and Critical Infrastructure (OCCIP) co-chairs alongside the Bank of England – recently released two reports addressing ransomware and third-party risk within the financial sector. [The Fundamental Elements of Ransomware Resilience for the Financial Sector](#) provides financial entities with high-level building blocks for addressing the ransomware threat. [The Fundamental Elements of Third-Party Risk Management for the Financial Sector](#) updates a previous version published in 2018.

OFAC / Turkish Tycoon Sanctioned. Sitki Ayan, industrialist and school chum of Turkish President Tayyip Erdogan was added to the May 25 designation of trading partners of the Qods Force of Iran's Islamic Revolutionary Guard Corps. Ayan and his ASB Group of companies were named, as well as his son and several business associates. Treasury's [announcement](#) came following aggressive reporting from [Politico](#).

OFAC/ 40 Sanctioned in Rights Sweep. In recognition of International Anti-Corruption Day and Human Rights Day, OFAC is sanctioning over 40 individuals and entities that are connected to corruption or human rights abuse across nine countries. OFAC also designated two individuals and the networks of entities that they control in connection with serious human rights abuse aboard distant water fishing vessels.

Included in the action are European and Indian film producers who engaged The DPRK government-run animation studio, SEK Studio (SEK). SEK has been subcontracted by foreign companies to provide low-cost labor and has utilized its animation workers that are located in the DRRK and the PRC to fulfill these contracts. SEK has also evaded sanctions targeting the DPRK government using front companies.

Also named were officials in El Salvador and Guatemala, the former President of Guinea, the son of the former President of Mali, and a Philippine evangelist and sex trafficker. The roster is completed by Iranian security officials, Russian and Breakaway Ukraine administrators, and Chinese officials of the Tibetan Autonomous Region (TAR) responsible for "stability policies" involving extrajudicial killings, physical abuse, arbitrary arrests, and mass detentions forced sterilization, coerced abortion, restrictions on religious and political freedoms in Tibet.

OFAC / Illegal, unreported, and unregulated (IUU) fishing was targeted as OFAC [sanctioned](#) two Chinese nationals, 157 vessels and their companies, including Pingtan Marine Enterprises, the first time Treasury has designated an entity listed on the NASDAQ stock exchange.

According to the National Oceanic and Atmospheric Administration, “addressing forced labor is particularly challenging within the seafood industry. Vessels sometimes spend months to years at sea, impeding the escape from, or the reporting of, labor abuse. Emotional and physical abuse, sometimes resulting in death; excessive overtime; poor living conditions; deceptive or coercive recruiting; and non-payment or underpayment of wages are some examples of the abuses sustained by fishing sector workers subjected to human trafficking, including forced labor.”

State Inks Quantum Tech Collaboration. State’s Bureau of Arms Control, Verification and Compliance has signed a Memorandum of Understanding to engage in a public-private partnership with the Quantum Technology Center (QTC) at the University of Maryland. The QTC will supply the Department with technical information and input regarding the latest developments in quantum technologies and the related enabling technologies. “The Department will need to understand the convergence of quantum technologies with other emerging technologies and forecast the global impact as the technology develops and is applied,” read a statement. “This partnership will ensure that the Department’s international initiatives are informed by a sound technical understanding of this emerging field.” [\[Release\]](#)

DDTC / ITAR Compliance Guidelines Published. The [guidelines](#) are intended to provide an overview of an effective compliance program and an introduction to defense trade controls, including information on the laws and regulations the U.S. Department of State, Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (DDTC), administers.

The Guidelines provide information on the **elements of an effective ITAR Compliance Program (ICP)** and how to design and implement an ICP for organizations that manufacture, export, broker, or temporarily import defense articles and defense services described on the United States Munitions List (USML).

The elements are specifically focused on assisting organizations developing a program to comply with the ITAR. Many organizations engage in activities that fall under the jurisdiction of multiple U.S. trade laws and regulations. Therefore, organizations should ensure their ICP functions effectively within the context of a holistic export trade compliance program

In the first use of criminal and forfeiture powers targeting the concealment of ownership by senior foreign political officials, passed as part of the National Defense Authorization Act of 2021, a federal court in Brooklyn charged Andrii Derkach, 55, of Ukraine, with conspiracy to violate the International Emergency Economic Powers Acts (IEEPA), bank fraud conspiracy, money laundering conspiracy, and four counts of money laundering in connection with the purchase and maintenance of two condominiums in Beverly Hills, California. Derkach allegedly concealed his interest in the transactions and violated sanctions imposed in 2020 "for attempting to influence the U.S. electoral process." Derkach remains at large. [\[Justice Announcement\]](#)

Commerce adds twenty-four to the Entity List under the destinations of Latvia, Pakistan, Russia, Singapore, Switzerland, and the United Arab Emirates. These companies have supplied and/or attempted to supply items subject to the EAR - to a designated entity in Iran; have involvement in unsafeguarded nuclear activities and missile proliferation-related activities in Pakistan; and significantly contribute to Russia's military and/or defense industrial base. [\[87 FR 75173\]](#)

***** Calendar *****

Australia Hosting First IPEF Round. Australia will be hosting the first round of in-person negotiating round for the Indo-Pacific Economic Framework December 10-15 in Brisbane. This will be the first time that negotiators sit down to hammer out the details of the four pillars that make up IPEF – trade, supply chains, the clean economy and anti-corruption.

Indo-Pacific Business Forum The United States government, in partnership with the Government of Japan, is sponsoring the Fifth Indo-Pacific Business Forum (IPBF) on January 12, 2023. The hybrid event will feature an in-person program in Tokyo and a robust virtual component timed to allow meaningful participation from across the Indo-Pacific region. For further information, please visit the Indo-Pacific Business Forum [website](#).

Kharon Global Sanctions Summit 2023 February 9, London. Speakers to include **Rich Nephew**, State Department Coordinator on Global Corruption, **Brett Freedman**, Justice Department Chief of Staff, **Huw Walters**, UK MoD Director Economic & Investment Security, and **Sam Zell**, Founder and Chairman, Equity Group Investments. Yes, [The Grave Dancer](#). \$895 / £730 [[Registration](#)]

2023 Washington International Trade Conference, sponsored by Washington International Trade Association (WITA) virtually on Zoom, Monday, February 13, and Hybrid, Tuesday, February 14. [[Registration](#)]

Dear Reader,

The Washington Tariff and Trade Letter and her sister publication The Export Practitioner will be getting a makeover after forty years.

We hope you continue to find our material useful for your work, and we thank you for your readership.

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