

Vol. 41, No. 36

September 13, 2021

Dance Card Set for U.S.-EU Trade, Technology Talks

The U.S. and European Union (EU) will hold the first formal meeting of the U.S.-EU Trade and Technology Council (TTC) Sept. 29 in Pittsburgh with an ambitious agenda, the two partners announced Sept. 9. To fulfill its mission, the TTC will comprise ten working groups, including one on supply chains and one on export controls.

The two partners launched the TTC in June, tasked with writing “the rules of the road for the economy of the 21st century,” according to a White House fact sheet in June (see **WTTL**, June 21, page 5). At the time, President Biden delegated Secretary of State Antony Blinken, Commerce Secretary Gina Raimondo, and U.S. Trade Representative (USTR) Katherine Tai as TTC co-chairs.

The supply chain working group will pursue cooperation on advancing supply chain resiliency in key sectors, including semiconductors. Other sectors under consideration include clean energy, pharmaceuticals and critical minerals. The export control group will look to reduce regulatory friction and enhance cooperation on authorities, policies and procedures. Specific topics are still being finalized, but the first meeting of the working group is scheduled for September, before the ministerial-level talks.

The other working groups will tackle: technology standards cooperation; climate and green technology; ICT security and competitiveness; data governance and technology platforms; the misuse of technology threatening security and human rights; investment screening; global trade challenges; and access to, and use of, digital technologies by small and medium enterprises.

BIS Official Defends Multilateral Approach to Export Controls

Testifying at U.S.-China Economic and Security Review Commission (USCC) hearing Sept. 8, acting Bureau of Industry and Security (BIS) Under Secretary Jeremy Pelter

defended his agency's pursuit of multilateral export controls, but stopped short of giving a specific timeline of when to expect final rules on emerging and foundational technology.

A group of Republican lawmakers called on Commerce in June to immediately identify "emerging and foundational technologies" that could define future export controls, as mandated by the 2018 Export Control Reform Act (ECRA) (see **WTTL**, June 21, page 4). Since the passage of that law, the agency has taken just a few bites at the apple, but has generally fallen short of the mark, according to a USCC report published two weeks earlier.

"I'm going to refrain from putting a timeline" on any potential rules. "It's on my radar, it's a blinking red light on my radar," Pelter said in response to commissioners' questions. He also stepped back from giving a specific number of technologies that could be controlled. Any list of emerging technology is "never going to be an exhaustive list," Pelter said.

To date, almost all the implemented controls on emerging technologies have been approved through the multilateral control regimes, in particular the Wassenaar Arrangement. "The most effective controls are those that are multilateral. To that end, we are working through the multilateral regimes to propose and implement new controls on certain items," Pelter said in his opening statement.

"If BIS imposes unilateral controls targeting specific countries or entities and suppliers exist in other countries that can backfill orders to those targets with comparable items, then we will not achieve our national security or foreign policy objectives," he added.

Pelter also cited a surge in enforcement actions related to China. In fiscal year (FY) 2020, BIS investigations related to China resulted in a total of 80 months of prison time and \$60,000 in criminal fines. Thus far in FY2021, BIS investigations related to China have already resulted in 226 months of prison time, \$1,858,000 in criminal fines, and \$4,048,000 in civil penalties, he told the committee.

Administration Wants to Move Beyond USMCA Disputes

During the restarted U.S.-Mexico High-Level Economic Dialogue (HLED) Sept. 9, administration officials hoped to move beyond specific disputes, especially auto rules of origin and labor disputes brought under the U.S.-Mexico-Canada (USMCA) trade agreement. Officials acknowledge that those issues will creep into high-level discussions, whatever the administration's intentions might be.

By restarting the dialogue, the Biden administration hopes to distinguish itself from its predecessor's policies. "There is an important distinction in how we are approaching the relationship with Mexico, and that is that as opposed to threatening or using punitive action, we have sought to engage constructively and collaboratively with them," a senior administration official told reporters the day before the meeting.

“Fundamentally, the HLED is not a dispute resolution mechanism. It’s certainly a space for dialogue engagement and hopefully it helps to stave off any such... issues from getting even bigger,” the official noted. “In our conversations with the Mexicans, we made clear that they could raise any issue of concern and that we would raise issues of concern, and that we would look to find ways to find constructive resolution along these issues,” the official added.

During the meeting, Mexican Economy Secretary Tatiana Clouthier and Commerce Secretary Gina Raimondo “shared their vision of making the HLED into a platform that leads to a post-pandemic economic recovery by promoting specific bilateral priority actions based on areas of agreement that add to the efforts of both governments within the USMCA and the other existing instruments for bilateral collaboration,” a Mexican press release noted.

These priority actions include tackling supply chain issues between the two partners. To that end, Mexico and the U.S. “will create a Bilateral Working Group on Supply Chains to find areas of complementarity in existing and new supply chains to ensure their operation and mitigate possible disruptions, increase competitiveness, attract supply chains from other regions in the world and reduce vulnerabilities in critical sectors, in line with the interests of each country. They also agreed on the importance of modern, efficient and safe border infrastructure and trade facilitation procedures,” the Mexican government noted.

GOP, Dems Clash Over Trade Adjustment Assistance

House Ways and Means Committee members tripped over themselves expressing their support for a renewal of Trade Adjustment Assistance (TAA) during a Sept. 10 committee markup of the budget reconciliation package. The only questions are who the program would cover and how much it would cost.

Without congressional action, TAA reverted to a previous version of the program in July (see **WTTL**, July 5, page 5). The program covers only manufacturing sector workers and “workers who have lost their jobs because their company’s decline in production and/or sales was due to increased imports or to outsourcing to limited countries,” according to a Labor comparison.

Subtitle D of the Budget Reconciliation bill expands the program to communities, farmers and career training programs, which Republicans disapprove. The bill “relaxes the eligibility requirements for the program to such an extent that its relationship to trade is no longer apparent,” Rep. Vern Buchanan (R-Fla.) said in his opening statement to the markup.

“We need a strategy for creating new, high-paying, export-oriented jobs, as well as providing workers displaced by trade with income support and resources to help them return to the workforce quickly,” he added.

Committee Chair Richard Neal (D-Mass.) defended the expansion. “Our proposed investments will increase benefits to meet the specific needs of today’s workers; expand eligibility and restore program flexibility for workers; and streamline and improve the government’s administration of the program,” he said in his opening statement. “It’s extremely important we approve this funding to strengthen and modernize TAA. This funding will allow these programs to be even more effective and better serve beneficiaries who are confronting challenges due to competition overseas,” he added.

U.S.-China Blues Continue in 2021

Seven months after their first telephone conversation, President Biden and Chinese Premier Xi Jinping Sept. 10 had “a broad, strategic discussion” on both divergent and convergent issues, while ensuring that “competition does not veer into conflict,” a White House readout noted. When Biden came to office, he promised to be tough with China on issues that reflected American values. He said it would be a battle between autocracies and democracies, but he also promised to work with the Chinese on issues of mutual interest.

On the other hand, while the U.S. talks about national security, the Chinese have refused to compromise on what they see as issues of sovereignty – Hong Kong, Taiwan and Xinjiang – as well as the South China Sea. In August, Canada joined the U.S. in condemning China for the arrest, trial and imprisonment of the two Michaels in what many experts see as a tit-for-tat for Canada arrest and pending extradition of Huawei’s CFO Meng Wanzhou (see **WTTL**, Aug. 16, page 4).

In fact, the last high-power discussions between the Americans and Chinese in March were acrimonious. Then, China accused the U.S. of conspiring with the Quad to gang up against it and misusing national security to box in Beijing. Today as then, the issues that have stymied relations are not that different than the major ones which confronted the previous administration. They include: democracy and human rights; Hong Kong, Xinjiang and Taiwan; multiple trade disputes on subsidies; and what China sees as U.S. naval encroachment in the South China Sea.

U.S., Allies Strive for Unity on Big Tech, Privacy Concerns

The United Kingdom (UK) is the latest nation to call for new rules to curb the conduct of the big players in the tech industry. The UK’s privacy watchdog, the Information Commission Office (ICO), Sept. 7 called on the G7 to formulate international rules to curtail Big Tech’s continued violation of consumers’ online privacy rights.

A week earlier, South Korea became the first nation to pass legislation to stop both Apple and Google from using their app stores as a monopoly payment system. U.S. and Europe lawmakers applauded the South Korean move, although some have called for unified worldwide action to prevent a global hodgepodge of laws.

Andreas Schwab, the European parliamentarian responsible for the EU's sweeping tech and privacy reform bill, the Digital Markets Act (DMA), argued, "The best would be to have a transatlantic agreement...if the Americans do something and the South Koreans do something ...that makes bureaucracy and that's not what is useful."

Rep. David Cicilline (D-R.I.) a leader and key proponent of tech reform, did not hesitate to add his voice to the South Korean move. "It is clear that momentum is building around the world to rein in abusive and anticompetitive practices by dominant online platforms," Cicilline said in a statement.

His colleagues in the upper chamber, Sens. Richard Blumenthal (D-Conn.) and Amy Klobuchar (D-Minn.), aired similar sentiments. "When you see this same issue arising all over the world, it is even more obvious that we need to take action," Klobuchar observed. "South Korea is taking steps to foster competition in the app economy. The U.S. can't fall behind," Blumenthal warned.

The ICO, led by Elizabeth Denham, has suggested that no matter your nation's own beef with tech companies: surveillance; or their misusing your cookies, location, IP address, and phone number; or unwanted targeted online ads, or storing your personal data without your permission, in far flung servers - whatever they are - nations need to work towards a concerted goal of stopping if not curbing these violations by tech companies.

"I am calling on my G7 colleagues to use our convening power. Together we can engage with technology firms and standards organizations to develop a coordinated approach to this challenge," Denham said. The ICO's beef is with tracking cookies: specifically, tech companies forcing users to reset their cookie preference each time they visit the same website, rather than a "lasting privacy preference."

At the moment, tech companies differ on cookies' operation. For example, Apple software limits them by default, whereas Google is considering a new standard. Companies failing to obey the South Korean law could be fined as much as 3% of their revenue.

* * * Briefs * * *

IRAN SANCTIONS: San Antonio software developer NewTek agreed Sept. 9 to pay OFAC \$189,483 civil penalty to settle 52 charges of violating Iran sanctions. NewTek exported goods, technology, and services "to third-country distributors that it knew or had reason to know were specifically intended for companies and individuals in Iran," agency said. Iranian reseller sold three of exported products to Islamic Republic of Iran Broadcasting (IRIB), entity on OFAC's Specially Designated Nationals (SDN) List. Company voluntarily self-disclosed apparent violations.

EXPORT ENFORCEMENT: Shuren Qin, Chinese national residing in Wellesley, Mass., was sentenced Sept. 8 in Boston U.S. District Court to two years in prison and two years' supervised release for conspiring to illegally export U.S.-origin goods, including 78 hydrophones (devices used to detect and monitor sound underwater), to blocked Chinese military research institute. Qin pleaded guilty in April (see **WTTL**, May 3, page 7). He was arrested in June 2018. Qin allegedly

lied to U.S. supplier and caused false shipping information to be filed, according to Justice sentencing memo.

MORE EXPORT ENFORCEMENT: Rashad Sargeant of College Park, Ga., pleaded guilty Sept. 2 in Atlanta U.S. District Court to exporting at least 30 firearms to Barbados from February through November 2019, “without notifying the common carriers that the shipped packages contained firearms,” indictment said. Items included Glock and Taurus 9mm pistols, and Glock .40 caliber, .45 caliber pistol and .357 caliber pistols. Sentencing is set for Dec. 8. Co-defendant David Johnson of Belleville, Ill., pleaded guilty in same court in July; sentencing is set for Nov. 4. Co-defendant Shunquez Stephens of Flowery Branch, Ga., pleaded guilty in June; sentencing is scheduled for Sept. 22.

TRADE PEOPLE: Economic Policy Institute (EPI) Sept. 7 promoted senior economist and policy director Heidi Shierholz to be president, replacing Thea Lee who joined Labor in May as deputy undersecretary to lead International Labor Affairs Bureau (ILAB) (see **WTTL**, May 17, page 5). Shierholz served in Obama administration from 2014-2017 as chief economist at Labor. “The country is ready for economic policy that serves working people,” she said in statement.

FCPA: Indictment against former Ericsson employee Afework Bereket was unsealed Sept. 8 in Manhattan U.S. District Court on charges of conspiring to violate Foreign Corrupt Practices Act (FCPA) and to commit money laundering in scheme to pay \$2.1 million in bribes to government officials in Djibouti to win contract. Bereket remains at large. Swedish telecom firm Ericsson agreed in December 2019 to pay \$1.1 billion to settle charges related to bribing government officials in Djibouti, China, Vietnam, Indonesia and Kuwait (see **WTTL**, Dec. 9, 2019, page 1).

FORCED LABOR: CBP Sept. 9 lifted ban on imports of disposable gloves produced in Malaysia by Top Glove. “CBP modified a Finding after thoroughly reviewing evidence that Top Glove has addressed all indicators of forced labor identified at its Malaysian facilities,” Acting CBP Commissioner Troy Miller said in statement. In March, agency determined disposable gloves produced in Malaysia by Top Glove using forced labor are being, or are likely to be, imported into U.S. (see **WTTL**, April 5, page 7). Company actions included issuing more than \$30 million in remediation payments to workers and improving labor and living conditions at company’s facilities, Miller added. “Top Glove remains committed to the health, safety and well-being of its people. The Company will continue to work hard and smart towards becoming an industry leader in this area and meeting the growing expectations of its stakeholders,” company said in statement.

PERU: Now-defunct California firm Global Plywood and Lumber Trading LLC pleaded guilty Sept. 3 in D.C. U.S. District Court to importing illegally sourced timber from Peruvian Amazon in 2015. Court sentenced Global Plywood to \$200,000 in restitution to Ministry of Environment of Peru and \$5,000 fine. In October 2020, USTR extended 2017 ban on future timber imports from Peruvian exporter Inversiones La Oroza SRL, “based on illegally harvested timber found in its supply chain” (see **WTTL**, Oct. 26, 2020, page 7).

VENEZUELA: OFAC Sept. 10 issued GL 5H delaying effectiveness until Jan. 21, 2022, of authorization of licenses applicable to holders of Petroleos de Venezuela, S.A. (PdVSA) 2020 8.5% bond.