

Washington Tariff & Trade Letter

Vol. 43, No 17

wttonline.com

April 24, 2023

Hill China Bashing at Fever Pitch

Capitol Hill was alive with the sound of smashing China this week. The *Congressional Executive Commission on China* held an update on repression in the Uyghur region, and members of the *House Committee on Ways and Means* shifted their focus from Tax Day to the Red Menace. Not to be left behind, the *House Select Committee on the CCP*, led by Wisconsin Rep. **Mike Gallagher** war-gamed the invasion of Taiwan.

Trade Promotion Authority Sought

Ways and Means Committee members are eying various legislative proposals to crack down on China's predatory trade practices – an effort they expect will be bipartisan. Members from both sides of the political aisle raised the need for a legislative response to China at a *Ways and Means Trade Subcommittee* hearing on China Tuesday.

"Across the board, China seeks to dominate global trade and supply chains. They are using all tools at their disposal to advance their 'Made in China 2025' initiative, **subcommittee chairman Adrian Smith (R-Neb)** said at the outset of the hearing.

"Today, we will hear why the United States must lead from a position of strength," he continued. "We can do this by addressing the CCP's practices directly while simultaneously using trade programs, agreements, and other tools to show we are a reliable and attractive alternative for nations around the world."

Lawmakers should craft a Trade Promotion Authority bill "to put Congress in the driver's seat," reauthorize critical trade programs aimed at increasing US competitiveness and continue efforts to impose consequences for China's trade practices, he said.

Full committee chairman Jason Smith (R-Mo) agreed that the committee should develop a bipartisan bill "to use our authority over trade, and to use our leverage as a nation to strengthen critical supply chains and reduce dependence on adversarial nations like China and Russia."

Smith criticized the Administration for excluding Congress from trade policy, saying it "only emboldens China and ignores the voices of the American people. Frameworks and dialogues are no substitute for congressionally binding action on trade."

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Trade subcommittee ranking Democrat Earl Blumenauer (Ore) said he is ready to work across the aisle on China-related legislation. Closing the loophole of the US *de minimis* rule, which is being exploited by China to evade oversight and avoid duties, is one step Congress should take, he said.

“Because of this loophole, there is no way to tell how many of the more than two million packages per day contain products made through forced labor, intellectual property theft or are otherwise dangerous,” he stated.

The *de minimis* loophole can allow evasion of the Uyghur Forced Labor Prevention Act, Mr. Blumenauer said. “This subcommittee must send a clear message to China that the United States will unequivocally protect worker and human rights.”

De minimis rules permit vendors to send materials without paying customs duties or reporting basic data if the value is under \$800. CBP is conducting a voluntary test of a *de minimis* commercial entry process through the creation of the new Entry Type 86, which provides additional information to CBP that can be useful for enforcement purposes.

Mr. Blumenauer has led past efforts to close the loophole, facing stiff resistance from Amazon and the package delivery industry.

China Commission Hearing

The *de minimis* exemption also came up at a hearing yesterday by the *Congressional-Executive Commission on China* focusing on implementation of the UFLPA. The commission issued a brief last week that raised concerns about Customs and Border Protection’s implementation of the law. Commission member **Rep. Jim McGovern** (D-Mass) suggested that Congress may need to make some tweaks to the UFLPA as implementation progresses and issue emerge.

The hearing opened with **Rep Christopher Smith** calling on CBP to redouble its efforts to prevent slave labor-produced goods from entering the U.S, saying. “We have questions as to why the robust Entity List of bad actors that UFLPA requires remains so spartan.”

Mr. Smith cited reports that work gloves sold under the *Milwaukee Tool* label in venues such as **Home Depot** are produced by prison labor, and the role of **Thermo Fisher Scientific** in genetic data collection for forced organ harvesting.

China has been accused of using incarcerated prisoners of conscience as an organ donor pool, executing them and harvesting their organs against their will. China's transplant program expanded rapidly in the early 2000s without a corresponding increase in voluntary organ donors, raising questions about the source of the organs.

Testimony from **Anasuya Syam, Human Rights and Trade Policy Director, The Human Trafficking Legal Center** acknowledged the progress to date, noting “While we still have a long way to go to achieve FCPA anti-bribery levels of compliance, forced labor is now getting more traction from senior management, as well as from investors.

“The message from the top is clear - forced labor is a “top tier” compliance issue. It is no longer the provenance of weak Codes of Conduct or Corporate Social Responsibility (CSR) measures.”

A familiar face to followers of the topic, **Dr. Laura Murphy**, a human rights expert at Sheffield Hallam University, testified before the Commission. Murphy noted that since the UFLPA's implementation, there has been swift enforcement and targeted funding allocations.

However, she highlighted that many U.S. corporations lobbied against the law and its enforcement, with some companies still avoiding scrutiny by shifting the burden of due diligence onto their suppliers. Murphy described how companies in China have been using various tactics to evade regulations, such as changing subsidiaries' names, shipping products through other countries, and bifurcating their supply chains. She called for the U.S. government to prioritize expanding the entity list and urged Congress to presume that all state-sponsored labor transfers in the Uyghur region constitute forced labor.

Dr. Murphy stressed that the UFLPA is a human rights policy, not a measure to advance geopolitical or economic interests, and urged the U.S. government to encourage allies to align their laws to prohibit the import of forced labor-made goods.

Solar Panel Spat Continues

Ways and Means also held a markup of *H.J.Res 39, Disapproving the Solar Panel AD/CVD waiver by the Department of Commerce "Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414."* The measure was favorably reported to the House of Representatives by a roll call vote margin of 2:1. The rule is not expected to survive a presidential veto.

The full Committee on Ways and Means also held a hearing Wednesday on *the U.S. Tax Code Subsidizing Green Corporate Handouts and the Chinese Communist Party*, affording members and invited guests an opportunity to air grievances.

Gallagher Committee Tabletops War

Chairman Mike Gallagher (R-WI) and the *House Select Committee on the CCP*, not to be outdone, spent Wednesday evening wargaming a Taiwan Invasion at the Center for a New American Security, a Washington think tank. Mr. Gallagher, a former marine with a PhD in International Relations from Georgetown, has been a leading voice for military preparedness for a Chinese invasion of Taiwan.

African Growth Act has Little Influence – USITC Report

The United States International Trade Commission (USITC) has released a report analyzing the African Growth and Opportunity Act (AGOA) program's usage and impact in sub-Saharan Africa (SSA). While the program's influence throughout SSA has been minimal overall, there is evidence that AGOA may have positively impacted poverty reduction and job growth in some countries.

The investigation focused on the program's influence on regional integration, workers, underserved communities, economic development, job growth, and poverty reduction. The report included case studies on four industries: apparel, cotton, cocoa, and certain chemicals.

According to the report, the AGOA program's impact on beneficiary countries can be substantial, depending on the sector, particularly in the apparel industry. The program's effect was found to be significant among underserved groups, such as women. Losing AGOA eligibility due to non-compliance with program requirements was found to negatively impact beneficiary economies and regional integration.

Key findings from the report include:

- **AGOA benefits are concentrated in a subset of countries and sectors within SSA.** From 2014-2021, over 75% of non-crude petroleum imports under AGOA came from South Africa, Kenya, Lesotho, Madagascar, and Ethiopia.
- **The SSA apparel sector has greatly benefited from AGOA.** Textile and apparel imports account for the largest share of non-petroleum imports under AGOA. Duty savings of up to 30% and the third-country fabric provision have enabled several countries to expand their manufacturing capacity, providing employment opportunities for women.
- **Agricultural products such as cotton and cocoa offer low income and are not reliable pathways for poverty reduction.** Child work and child labor persist in these sectors, especially on family farms.
- **The chemical industry's potential impact in the SSA region is limited due to infrastructure weaknesses.** South Africa is the only AGOA beneficiary or SSA country with a diversified chemical industry.

AGOA is a trade preference program for 49 countries in the SSA region, with 36 beneficiaries in 2022. To qualify, a country must be eligible for the U.S. Generalized System of Preferences (GSP) program. Imports from AGOA beneficiaries represent less than 1% of total U.S. imports, with crude petroleum dominating trade under AGOA. The U.S., being the third-largest global cotton producer and top exporter, imports negligible amounts of cotton from AGOA beneficiaries and SSA. The SSA apparel industry also uses a negligible amount of SSA cotton due to limited mills in the region.

SSA countries have diversified their export destinations, with the U.S. now ranking as the fourth export destination after China, India, and South Africa. U.S. imports under AGOA and GSP are concentrated in medium-low and low-technological intensity manufactured goods.

Last Fall, **CBP's John Leonard** reportedly got laughs and applause from an audience of importing officials with the joke: "China has a free-trade agreement with the U.S. -- it's called *de minimis*."

More Yellen About China

Treasury Secretary Janet Yellen outlined the United States' economic approach to China, emphasizing the importance of protecting national security interests, fostering healthy economic competition, and seeking cooperation on global challenges.

In a speech at John Hopkins Thursday, Yellen acknowledged China's impressive economic rise and the potential for both countries to benefit from fair economic competition.

"The US will assert ourselves when our vital interests are at stake, but we do not seek to 'decouple' our economy from China's," said Ms. Yellen. "A full separation of our economies would be disastrous for both countries. It would be destabilizing for the rest of the world."

However, she stressed that the US will not hesitate to defend its vital interests, even when doing so may impact the economy.

She indicated the White House is "**considering a program to restrict certain U.S. outbound investments in specific sensitive technologies with significant national security implications**," the "reverse CFIUS" regime Washington has been anticipating.

Ms. Yellen outlined three principal objectives for the US's economic approach to China:

1. **Secure national security interests and protect human rights:** Yellen emphasized that the US will not compromise on these concerns and will use a range of tools, including targeted actions and close coordination with allies and partners, to address issues.
2. **Foster a healthy economic relationship with China:** Yellen stated that both countries can benefit from healthy competition, as long as it is fair. The US will continue to invest in itself and partner with allies to respond to China's unfair economic practices.
3. **Seek cooperation on urgent global challenges:** Yellen called on China to follow through on its promise to work with the US on issues such as climate change and debt distress. She highlighted the need for both countries to lead the way in tackling these challenges, emphasizing the importance of their joint responsibility.

Ms. Yellen also addressed concerns about the US economy's decline, arguing that America's ability to adapt and reinvent has always proven naysayers wrong. She further stated that the US has no reason to fear healthy economic competition with any country, including China.

On national security, the Secretary mentioned the importance of safeguarding specific technologies from China's military and security apparatus. She emphasized that these actions are driven by national security considerations and not intended to gain a competitive economic advantage.

On the subject of human rights, Ms. Yellen expressed the US's concerns about China's abuses in Xinjiang, Hong Kong, Tibet, and other regions.

She discussed the importance of addressing global challenges such as debt overhang and climate change. She stressed that both countries must work together on these issues, with China taking on the same responsibilities as other official bilateral creditors.

The world is big enough for both the US and China and that they can find a way to coexist and share in global prosperity, said Ms. Yellen. She announced plans to travel to China "at an appropriate time" to engage in substantive dialogue on economic issues with her Chinese counterpart.

WTO / Road to MC 13 Paved with Contention

As the World Trade Organization's (WTO) 13th ministerial meeting in Abu Dhabi approaches, members remain divided on key deliverables. The United States is seeking informal discussions on the contentious issue of dispute settlement body (DSB) reform instead of text-based negotiations. Meanwhile, countries such as China, the European Union, Indonesia, and others are pressing for text-based negotiations after July, sources familiar with the discussions said.

The US proposals on DSB reform introduce new ideas for a single-tier dispute settlement body without the Appellate Body, which Washington argues has deviated from the dispute settlement understanding. Members have differing priorities in agriculture, with some countries focusing on mandated issues and others on food security or insecurity.

Indonesia, the coordinator for the G-33 group, delivered a strong statement on agriculture and special and differential treatment, urging the resolution of mandated outcomes contained in the Doha Development Agenda. Several members also called for resolving the impasse on Trade-Related Aspects of Intellectual Property Rights (TRIPS) involving the 12th ministerial conference decision to extend the decision on vaccines to diagnostics and therapeutics.

Countries like South Africa and India have suggested terminating the e-commerce moratorium, while least-developed countries (LDCs) have pressed for a decision on extending specific flexibilities currently granted to LDCs for graduating members for a considerable period.

On fisheries subsidies, members have adopted different views on how to proceed in the next eight months leading up to the 13th ministerial meeting. Director-General Ngozi Okonjo-Iweala has called for countries to submit their letters of acceptance for the protocol attached to the partial fisheries subsidies agreement involving disciplines for illegal, unreported, and unregulated fishing and addressing the depletion of fish stocks.

Okonjo-Iweala also highlighted the deceleration in global trade growth and its long-term impact on living standards and opportunities worldwide. Emphasizing the need for global cooperation, she said, "As the multilateral organization providing the framework for trade relations among 164 members, it is our responsibility to contribute solutions to economic challenges the world is confronting."

The Director-General warned against continuing technical work indefinitely and urged members to genuinely start negotiating on substance for the 13th ministerial meeting. She asserted, "The onus is on you to deliver."

Axelrod Clarifies Self Disclosure Policy

Assistant Secretary of Commerce for Export Enforcement Matt Axelrod issued an update to prior guidance on voluntary self-disclosure of possible violations of Export Administration Regulations (EAR) and disclosures about possible EAR violations by others.

The most significant change is that while self-disclosure continues to be considered a mitigating factor, the policy now clarifies that **deliberate non-disclosure of significant violations will be considered an aggravating factor, increasing potential penalties.**

Last June, a dual-track system for VSDs was implemented, resolving most minor infractions within 60 days. The policy update focuses on incentivizing submission of VSDs for significant violations. Since the change, BIS has not seen a material change up or down in the number of VSDs received.

Today's policy announcement is different from last June's. **We specifically want to further incentivize the submission of VSDs** when industry or academia uncovers significant possible violations of the EAR.

Note the modifier "significant" before "possible violations of the EAR." We're not focused on increasing the number of minor or technical VSDs we receive. In fact, we want to let VSD filers know that when they identify multiple minor technical violations close in time, they can submit one overarching submission (as opposed to in multiple separate VSDs) to help streamline the process on their end and conserve resources on ours.

Instead, we're interested in increasing the number of VSDs we receive that disclose significant possible violations - the types of violations that reflect potential national security harm.

To do that, **we want everyone to understand the risk calculus.** Under the existing BIS settlement guidelines, a VSD that is timely, comprehensive, and involves full cooperation substantially reduces the applicable civil penalty under the base penalty matrix. It may also entitle the filer to additional mitigation, including the possibility of a fully suspended penalty in certain cases.

Companies and universities should carefully consider the consequences of not disclosing significant possible violations. Disclosing results in reduced penalties, while not disclosing risks increased penalties. So, whatever the situation, a voluntary self-disclosure entitles the reporting entity to a steep and concrete reduction in potential monetary liability.

What we're clarifying, effective immediately, is how we apply the existing guidelines in situations where there is a deliberate non-disclosure of significant possible violations. **When someone chooses to file a VSD, they get concrete benefits; when someone affirmatively chooses not to file a VSD, however, we want them to know that they risk incurring concrete costs.**

Because this factor is a "General Factor," it is designed to be "either mitigating or aggravating." In the past, we have consistently applied it as a mitigating factor when a VSD has been filed after a potential violation was uncovered.

Going forward, we will also consistently apply this factor as an aggravating factor when a significant possible violation has been uncovered by a party's export compliance program but no VSD has been submitted.

In other words, when someone submits a VSD, they receive concrete and identifiable benefits under our guidelines. By the same token, however, when someone uncovers a significant possible violation but then

affirmatively chooses not to file a VSD, they are running a substantial risk - because if it does come to our attention, the decision not to disclose will be considered an aggravating factor under our existing guidelines.

Encouraging strong compliance programs and compliance with rules also involves incentivizing reporting of potential EAR violations by others. Disclosing another party's possible violation can be considered a mitigating factor in future enforcement actions.

If a potential export control violation also involves sanctions violation, monetary rewards may be available through the Financial Crimes Enforcement Network (FinCEN) whistleblower program.

[\[copy of memo\]](#)

Freshman Dems Support IPEF

First-year Democrats are supporting the Administration's decision to negotiate trade deals that are not focused on cutting tariffs, like the Indo-Pacific Economic Framework. In a letter to President Biden, the freshmen Democrats endorsed the Administration's "focus on setting the rules of commerce rather than cutting the few remaining US tariffs."

That stance puts them at odds with many Congressional Democrats and Republicans on the House Ways and Means and Senate Finance Committees, who have been critical of the IPEF.

The letter was led by **Reps. Nikki Budzinski (Ill)** and **Chris Deluzio (Pa)**.

The freshmen lawmakers said they expect the IPEF and other trade deals under negotiation to include strong worker rights and environmental protections and digital provisions that protect consumers and foster fair competition.

"As new Members of Congress representing diverse districts across the United States, we look forward to working with you to ensure US trade policy delivers for working people, helps to build a more resilient and fair economy, safeguards the environment, public health, and civil rights, and ensures independent farms, small businesses, and innovators can succeed," they wrote.

They also called on the Administration to "work with us and our constituents in a transparent and inclusive manner."

Using USMCA as a Model

The IPEF and other new agreements should improve on the US-Mexico-Canada Agreement's labor and environment protections and include "facility-specific enforcement of both," they wrote.

"Any new pacts should only go into effect after our trade partners implement these obligations in their law and practice," they continued. "The right rules and enforcement measures are key to ensuring any new agreements truly are worker-centered."

They also called for a US digital trade policy that “prioritizes Congress’ role to regulate digital firms’ compliance with domestic labor, anti-trust and civil rights laws. Strong digital trade rules should ensure data privacy and security for workers and consumers, while discouraging outsourcing and preventing racial and other forms of discrimination.

Digital trade rules should also support fair competition by encouraging diverse marketplaces, promoting cyber-security for small and medium sized businesses, and limiting unhealthy market concentration and anti-competitive behavior by existing large firms.”

*** Briefs ***

Citizenship Status Discrimination The U.S. Justice Department has reached a settlement with General Motors (GM) over alleged discrimination against non-U.S. citizens in violation of the Immigration and Nationality Act (INA). The department's investigation determined that GM's export compliance assessments improperly required lawful permanent residents to provide an unexpired foreign passport as a condition of employment, creating a discriminatory barrier in the hiring process. [10325](#)

Foreign Sovereign Immunities Act The U.S. Supreme Court has rejected Turkey's state-owned Halkbank's claim that it is protected under the 1976 Foreign Sovereign Immunities Act (FSIA), which limits the jurisdiction of American courts over lawsuits against foreign countries. The court ruled that the FSIA does not provide foreign states and their instrumentalities with immunity from criminal proceedings, according to conservative Justice Brett Kavanaugh. [10332](#)

WTO / Indian Tech Tariffs A World Trade Organization (WTO) panel ruled in favor of the European Union, Japan, and Taiwan on Monday, rejecting India's tech tariffs after a trade dispute. The panel determined that India failed to implement its scheduled tariff commitments on certain electronic products under the General Agreement on Tariffs and Trade (GATT) 1994. [10342](#)

Avoid Unnecessary De-risking Treasury Under Secretary Brian Nelson addressed a group of business leaders at the American Chamber of Commerce Austria Roundtable today, highlighting the success of the sanctions and export controls. He assured the audience that business considerations were taken into the sanctions regime. [10341](#)

Section 1758 Technology Export Controls The Bureau of Industry and Security (BIS) is soliciting further comment on control measures for automated peptide synthesizers. Peptides and polypeptides are chains of amino acids, and proteins are composed of one or more large chains of polypeptides. [10329](#)

Melt & Pour Reporting. US Customs and Border Protection (CBP) is proposing to revise CBP Form 7501, Entry Summary, by adding new required data fields for certain Harmonized Tariff Schedule (HTS) classifications of steel and aluminum imports. [10330](#)

Russian Tech Supply Lines A paper issued by CSIS, a Washington think tank, details progress to date of the Putin regime in maintaining advanced technology supply lines in the face of Allied sanctions. [10326](#)

Compliance Pleas to Frontline States Top Treasury Department officials are embarking on a two-week journey through Central Europe and Central Asia to garner support for measures countering Russia's evasion of sanctions imposed due to the ongoing war in Ukraine. [10317](#)

Dirty Russian Oil Sales Treasury's Office of Foreign Assets Control (OFAC) has issued a warning to shipowners, protection and indemnity clubs, and flagging registries about deceptive practices involving Russian oil exports. [10321](#)

Art & Diamonds Money Laundering Network In a coordinated action, Treasury's Office of Foreign Assets Control (OFAC) has designated an extensive international money laundering and sanctions evasion network, consisting of 52 individuals and entities across nine countries. [10328](#)

Florida Steel Trader Arrested Orlando-based Metalhouse LLC's President John Can Unsalan, 41, has been indicted and arrested for engaging in a \$150 million scheme to violate U.S. sanctions against Russian oligarch Sergey Kurchenko and his two companies. [10322](#)

Russian Political Interference and University Initiatives Four US citizens and three Russian nationals have been charged with conspiracy to use US citizens as illegal agents of the Russian government, including a conspiracy to recruit US citizens from academic and research institutions to participate in a public diplomacy program. [10324](#)

Guilty Plea in Missile Tech Scheme Two Iran-controlled trading firms pleaded guilty to sanctions evasion in support of Iran's ballistic missile program. Punishment included a small fine and "corporate probation." [10331](#)

"Laundromat" Countries Boost Russian Revenues The European Union (EU) imposed a ban on seaborne imports of Russian crude oil in response to the invasion of Ukraine, setting a price cap of USD60 for Russian crude oil. The effectiveness of these sanctions is being undermined by five "laundromat" countries: China, India, Turkey, United Arab Emirates (UAE), and Singapore, according to a recent report by Helsinki-based Centre for Research on Energy and Clean Air. [10338](#)

Iran Avionics Traders Named The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has imposed sanctions on one individual and six entities involved in a sanctions evasion network. This network facilitated Iran's procurement of electronic components for its military programs, including those used in unmanned aerial vehicles (UAVs) [10339](#)

FDP Rule Scofflaw Seagate Fined Commerce's Bureau of Industry and Security (BIS) has imposed a \$300 million civil penalty on Seagate Technology LLC and its Singapore subsidiary for alleged violations of U.S. export controls related to selling hard disk drives (HDDs) to Huawei Technologies Co. Ltd. [10336](#)