

Washington Tariff & Trade Letter

Vol. 43, No 22

wttlonline.com

May 29, 2023

Detroit Trade Talks Wrap

The two-day meeting of Asia Pacific Economic Cooperation ministers responsible for trade concluded in Detroit this afternoon without agreement on a joint statement. Support was unanimous among the 21 APEC ministers on the bulk of the language contained in the statement, but **China and Russia refused to sign on to a paragraph condemning Russia's war in Ukraine.**

US Trade Representative Katherine Tai – who hosted the meeting – told reporters following the meeting that it is possible a joint statement could be agreed to at the APEC leaders meeting this November in San Francisco.

Today, on the sidelines of the APEC meeting, Ms. Tai had a bilateral sit down with **Chinese Commerce Minister Wang Wentao**. At that meeting, Ms. Tai “highlighted the need to address the critical imbalances caused by China’s state-led, non-market approach to the economy and trade policy,” according to a readout from her office. “She also raised concerns about PRC actions taken against US companies operating there.”

At her closing press conference, Ms. Tai declined to elaborate on the meeting beyond the readout. But she stressed the need for continued open lines of communication between Washington and Beijing. The MRT meeting was chaired by Ambassador Tai, and was attended by representatives from *World Trade Organization (WTO)*, *APEC Business Advisory Council (ABAC)*, *Pacific Economic Cooperation Council (PECC)*, and the *Association of Southeast Asian Nations (ASEAN)*.

The attendees affirmed their **commitment to the APEC 2023 theme of “Creating a Resilient and Sustainable Future for All,”** and discussed the vital role APEC plays in advancing sustainable and inclusive trade in the Asia-Pacific region. They pledged to strengthen the rules-based multilateral trading system, with the WTO at its core, and to address supply chain disruptions.

A key concern discussed was the ongoing war in Ukraine and its adverse effects on the global economy, including increased inflation, supply chain disruptions, energy and food insecurity, and financial stability risks. **Russia and China refused to endorse a statement** upholding positions previously expressed in the UN Security Council and the UN General Assembly.

The ministers agreed to **continue their support for necessary reform to improve all of WTO’s functions.** They underscored their commitment to promoting sustainable agricultural production, food systems, and minimizing disruptions to address food insecurity and climate challenges.

The meeting highlighted the role of digital technology and innovation in advancing inclusive and sustainable growth. The ministers reaffirmed their **call to accelerate the implementation of the APEC Internet and Digital Economy Roadmap** and to facilitate e-commerce and digital trade.

Inclusivity was a recurring theme, with the ministers committed to ensuring that the benefits of trade and investment extend to all, including women, Indigenous Peoples, persons with disabilities, and people from rural and remote areas. They also stressed the importance of stakeholder engagement in developing trade policies and agreements.

The meeting affirmed the **need for economic integration in the region**, backed by the work on the Free Trade Area of the Asia-Pacific (FTAAP) agenda. They also acknowledged the benefits of Good Regulatory Practices (GRP) in creating a more transparent and predictable regulatory environment.

China Trade Dialogue Resumes

On Thursday, **Secretary of Commerce Gina Raimondo** met with **Chinese Minister of Commerce Wang Wentao** in Washington, DC. Their discussion encompassed several aspects of the U.S.-China trade relationship, including potential areas of cooperation and the overall trading environment.

Secretary Raimondo expressed concerns about recent actions taken by the People's Republic of China (PRC) against U.S. companies operating within its jurisdiction. "Recent actions" includes Beijing's ban on U.S. firm **Micron Technology** from selling memory chips to significant domestic industries.

The largest U.S. memory chip manufacturer, Micron, was declared to have failed a network security review by China's cyberspace regulator late Sunday. The regulator announced plans to prevent key infrastructure operators from purchasing from Micron, although no specifics about the identified risks or affected products were provided.

The following day, **U.S. Trade Representative Katherine Tai** met with Minister Wang on the sidelines of the APEC (Asia-Pacific Economic Cooperation) Ministers Responsible for Trade Meeting.

In both meetings, the U.S. officials reiterated their commitment to maintaining open lines of communication and building on the engagement initiated between President Biden and President Xi during their meeting in Bali, Indonesia, in November 2022.

© Copyright 2023 Gilston-Kalin Communications LLC P.O. Box 7592, Arlington, VA 22207
All rights reserved. Subscription and corporate site license information 301.460.3060

www.wttonline.com

Editor: Frank Ruffing +1.703.283.5220. fruffing@traderegs.com

U.S.- Australia Strategic Commercial Dialogue

Friday, the U.S. Secretary of Commerce, Gina Raimondo, and the Australian Minister for Trade and Tourism, Don Farrell, held the second Ministerial meeting of the U.S.-Australia Strategic Commercial Dialogue (SCD). The meeting was held in Detroit, Michigan, and focused on discussing economic, foreign, and national security policy.

Both leaders emphasized the importance of the U.S.-Australia commercial relationship and the role of the SCD in coordinating and addressing global economic and commercial challenges. A significant part of their discussion focused on the U.S.-Australia Climate, Critical Minerals and Clean Energy Transformation Compact. This initiative, agreed upon earlier this month by Prime Minister Albanese and President Biden, seeks to promote a clean energy transition and secure the supply of critical minerals.

One of the key aspects of the meeting was the mutual priority of demonstrating progress under the Indo-Pacific Economic Framework for Prosperity (IPEF). The Minister and Secretary expressed their commitment to the IPEF and are scheduled to meet again on May 27 to discuss this further.

In a joint statement released after the meeting, both the Secretary and the Minister reaffirmed their commitment to an open, stable, and prosperous Indo-Pacific region. The pair also stated that they are keen to unlock green trade and investment to support the clean energy transition and strengthen anti-corruption efforts in the region.

A key development from the meeting is the establishment of an Australia-U.S. Taskforce on Critical Minerals. This taskforce aims to deepen cooperation on securing the supply of these vital inputs for the clean energy transition. The Secretary and Minister agreed to convene Australian and U.S. companies from across the critical minerals supply chain later in 2023.

The topic of economic security also came up during the discussions. The leaders agreed to continue working on economic security measures and building economic resilience. They also shared concerns about the impact of coercive trade and economic measures on workers and businesses. The duo committed to working bilaterally and with other partners to counter such measures against the private sector.

The Strategic Commercial Dialogue is slated to continue in 2024, with the third meeting to be held in Australia. The event is seen as a critical step towards strengthening the economic and strategic ties between the United States and Australia.

US - Kenya Trade Partnership Documents Tabled

As part of the ongoing *US-Kenya Strategic Trade and Investment Partnership (STIP)*, the United States has presented several texts concerning agriculture, anti-corruption, micro-, small- and medium-sized enterprises (MSMEs), and domestic services regulation.

These proposals were delivered during the first round of negotiations last month and were made public by the US Trade Representative's Office (USTR) on Wednesday.

"These texts follow through on the two sides' shared goal to pursue enhanced engagement leading to high standard commitments in a wide range of areas in order to achieve economically meaningful outcomes," the USTR said in a statement.

The agriculture text focuses on broadening access for agricultural producers to markets while also promoting food security. Key objectives include improving transparency, regulatory certainty, collaboration, and innovation. The proposal also aims to facilitate trade, enhance food safety, and preserve the role of regulatory authorities to ensure domestic food supply safety.

The anti-corruption text includes a total of nine articles. This proposal aims to establish robust anti-corruption standards to combat bribery and other corrupt practices. It emphasizes prevention and addressing bribery and corruption in labor law enforcement, recruitment of migrant workers, and environmental governance. It also calls for the establishment of measures to criminalize bribery of public officials, embezzlement, and money laundering.

For MSMEs, the proposed text recognizes their critical role in both the American and Kenyan economies. It promotes cooperation to enhance MSME trade and investment opportunities, including improving access to capital and credit, training programs, and trade education. The text also proposes to improve cooperation among MSME support centers and encourage MSME participation in digital trade.

On services domestic regulation, the proposed text is designed to ensure fair and transparent procedures for service suppliers seeking operating licenses. This is particularly crucial for small companies, including professional services firms such as architects, engineers, accountants, and lawyers. The proposal also safeguards regulators' rights to apply domestic standards to protect interests such as safety, health, environment, worker, and consumer welfare.

The negotiations will continue with the next round of talks scheduled for later this year. [\[Texts\]](#)

USMCA Maquiladora Labor Review, Again

The United States is once again using the rapid response labor mechanism under the US-Mexico- Canada Agreement to protect workers' rights at a Mexican facility.

Washington is asking Mexico to review whether workers at a **Goodyear SLP facility in the state of San Luis Potosi** are being denied the rights to freedom of association and collective bargaining.

This marks the eighth time the Administration has turned to the rapid response labor mechanism and the third time this year.

The latest action was triggered by a petition received from the independent Mexican union La Liga Sindical Obrera Mexicana. The petition alleged that Goodyear SLP, which specializes in converting rubber into car tires,

has not abided by the provisions in the sectoral collective bargaining agreement covering the rubber industry and instead signed a singular CBA with benefits inferior to those in the agreement.

In 2019 US lawmakers threatened to hold up ratification of the USMCA over pay and conditions at the Goodyear plant. Reporting by *Reuters* at the time suggested wages at the facility are range from \$2 to \$6 an hour. By comparison Goodyear workers in the US reportedly receive a basic wage of \$23 per hour.

Since the petition was filed, a legitimization vote at the facility was canceled by the government of Mexico due to significant irregularities. A new vote took place on May 7-8, 2023, which resulted in the singular CBA being voted down. At the time of this request, the company and government of Mexico were pursuing legal action against the perpetrators of the criminal activities intended to influence the outcome of the first vote.

"Once again, the use of the Rapid Response Labor Mechanism underscores our commitment to safeguarding workers' rights and enforcing the USMCA," US Trade Representative Katherine Tai said. In connection with the US request, Ms. Tai directed the Secretary of the Treasury to suspend the liquidation for all unliquidated entries of goods from the Goodyear SLP facility.

Mexico has ten days to agree to conduct a review and, if it agrees, 45 days from yesterday to complete the review.

Gallagher Committee Makes Uyghur Recommendations:

The Select Committee on the Chinese Communist Party voted in favor of policy proposals designed to combat the ongoing Uyghur genocide and enhance Taiwan's deterrence.

The Wednesday adoption of these policy proposals comes on the heels of a March hearing featuring a survivor and witness to the ongoing Uyghur genocide by the CCP. The committee also held an April wargame highlighting the severe consequences of a deterrence failure in the Indo-Pacific.

Select Committee Chairman Mike Gallagher (R-Wisc) and **Ranking Member Raja Krishnamoorthi** (D-III) issued a joint statement following the bipartisan adoption of these policy recommendations.

"The competition with the CCP requires us working together across the aisle," they said. "We are proud that today we voted overwhelmingly to adopt the Select Committee's first policy recommendations regarding the Uyghur genocide and Taiwan. This is only a first step... We are committed to deterrence in the Taiwan Strait and that we won't turn a blind eye as the CCP commits genocide, 'the crime above all crimes,' against the Uyghur people."

The Committee's proposed policies to end the Uyghur genocide include sanctions on CCP officials responsible for the atrocities, ensuring that American companies are not complicit in these acts, and closing the de minimis loophole to curb profits derived from Uyghur forced labor.

Chairman Gallagher described the atrocities against the Uyghur people as meeting "any reasonable definition of genocide, the 'crime above all crimes.'"

In addition to the proposals addressing the Uyghur genocide, the Committee also put forth recommendations to strengthen deterrence in the Indo-Pacific, in light of simulated wargames indicating potential disaster if deterrence measures fail.

"80,000 PLA troops on Taiwan. U.S. warplanes vaporized. Global trade frozen," Chairman Gallagher cited from the wargame outcomes. "To ensure this scenario remains fictional, today Select Committee members voted to overwhelmingly adopt 10 policy recommendations... which will surge hard power across the international dateline and strengthen deterrence in the Taiwan Strait."

Uyghur Findings & Recommendations

The Select Committee on the Chinese Communist Party (CCP) has identified six key findings and associated recommendations concerning the ongoing genocide of the Uyghur people.

1. CCP officials involved in the genocide have yet to be held sufficiently accountable. The Committee recommends **ensuring such officials face consequences for their actions, including sanctioning responsible CCP officials, isolating sanctioned entities further, and creating a public archive documenting the Uyghur genocide.**
2. Other countries have lagged in fulfilling their treaty commitments to prevent or halt genocide and to protect victims. The Committee recommends **strengthening U.S. diplomatic efforts to coordinate policy and action against the CCP, including the creation of a Special Coordinator for Uyghur issues within the State Department.**
3. Products made with Uyghur forced labor continue to enter global supply chains. The Committee recommends **strengthening enforcement of U.S. prohibitions on the importation of goods made with Uyghur forced labor, providing additional resources to the Department of Homeland Security, and reducing the de minimis threshold for duty-free shipments into the United States.**
4. U.S. and international investment in the PRC contributed to the development and deployment of advanced technology that enables the surveillance and control apparatus in the XUAR. The Committee recommends **restricting U.S. capital flows to problematic PRC companies and critical technology sectors in the PRC that have enabled the CCP's atrocities.**
5. Existing statutes to hold the perpetrators accountable and deter further atrocities have not been fully implemented. The Committee recommends the **application of sanctions as required by the Uyghur Human Rights Policy Act and the Uyghur Forced Labor Prevention Act.**
6. Uyghurs who escape CCP repression continue to face harassment and intimidation in the U.S. and internationally. The Committee recommends working with allies and partners **to protect Uyghurs in third countries and provide refugee status and asylum for eligible Uyghurs.**

De Minimis Customs Threshold Dominates Customs Hearing

The *Subcommittee on Trade of the House Ways and Means Committee* met Thursday to begin the "first review of customs operations and regulation in 30 years," though mostly to address the ongoing debate surrounding *de minimis*, the "Amazon Loophole" where low value imports receive duty free treatment.

The hearing on "*Modernizing Customs Policies to Protect American Workers and Secure Supply Chains*," provided a platform for lawmakers to discuss concerns related to the tariff exemption, the Generalized System of Preferences (GSP) program, and to emphasize the importance of adequate funding for effective customs administration.

“This is not the time to obliterate the CBP Budget,” **Ranking Member Earl Blumenauer** (D-Ore) reminded his colleagues, noting their calls for broad spending freezes and cuts.

De Minimis Exemption:

Section 321 shipments enter under *de minimis* procedures which allow small packages valued at \$800 or less to enter the United States tax and duty-free. **CBP estimates that 85% of all shipments entering the United States meet this exemption, the highest in the world.** China, the largest beneficiary of the waiver, enforces a *de minimis* of 50 yuan (\$7.90).

While importers can only take advantage of the Section 321 benefit on one single transaction per day, **shipments direct to consumers permit entire retail ecosystems to flourish duty-free.**

With Fulfilled by Amazon sales exceeding \$100 billion last year, the total while not measured can be presumed material. These “agency” transactions are not “imports by Amazon,” and the program encourages participating merchants to ship in smaller lots, to conserve warehouse space and avoid customs clearance delays. The Coalition for a Prosperous America has estimated duty-free imports under section 321 well over \$100 billion per year.

The Commercials Customs Operations Advisory Committee reported that CBP successfully cleared over 685 million *de minimis* shipments during this period. These shipments included approximately 161 million filings through the Section 321 Data Pilot and 333 million voluntary filings under Entry Type 86.

Blumenauer's Bill to Eliminate China Eligibility:

Rep. Blumenauer announced before the hearing that he intends to reintroduce legislation to address what he referred to as the “Amazon Loophole” created by the current \$800 *de minimis* threshold.

Blumenauer emphasized that Customs and Border Protection is currently “overwhelmed” by the volume of products falling under the *de minimis* threshold entering the U.S. market. His proposed bill aims to deny duty-free market access to products from non-market economies on the U.S. Trade Representative's (USTR) watchlist, specifically targeting China and Russia.

The Import Security and Fairness Act:

The Import Security and Fairness Act encompasses several provisions designed to address concerns related to the treatment of goods under the *de minimis* exemption and ensure fairness, compliance, and national security. The key components of the act include:

1. **Prohibition on De Minimis for Goods from Non-Market Economies on USTR Watch List:** This provision aims to prevent goods from non-market economies, such as China, that are both non-market economies and listed on the USTR Watch List from benefiting from *de minimis* treatment.
2. **Prohibition on De Minimis for Goods Subject to Enforcement Actions:** Currently, *de minimis* shipments are exempt from paying enforcement-related duties, which has been criticized for

undermining the effectiveness of enforcement actions. The legislation seeks to rectify this by prohibiting de minimis treatment for goods subject to enforcement actions, including those under Section 301 and 232, which address unfair trade practices that harm U.S. workers and firms. However, de minimis shipments subject to other enforcement actions, such as antidumping and countervailing duty orders, will still be required to pay the applicable duties.

3. **Closure of De Minimis Loophole for Offshore Distribution or Processing Facilities:** This provision aims to close a loophole that allows de minimis shipments to benefit from offshore distribution or processing facilities.
4. **Enhanced Information Collection and Prohibition for Bad Actors:** To enhance compliance with U.S. laws, this provision requires CBP to collect more information on de minimis shipments. It also prohibits importers who have been suspended or debarred from utilizing de minimis treatment.

Free Trade Zone Operators Seek Parity:

Operators of Free Trade Zones (FTZs) have raised concerns about the disparity they face compared to shippers under de minimis thresholds. While the use of de minimis has seen significant growth, FTZ operators have found themselves at a disadvantage, losing business to bonded warehouse operators in Canada and Mexico who can originate de minimis shipments into the United States.

The issue arises when merchandise from China is sent to Canadian or Mexican warehouses, where it is stored in bond, allowing it to bypass formal entry into these countries. Subsequently, when an e-commerce order is placed, the merchandise can be swiftly shipped to U.S. consumers, exploiting the de minimis provision. This loophole has put FTZ operators at a significant disadvantage and prompted them to demand equal treatment.

Public Access to Import Data Bills of Lading:

During the hearing, witnesses called for improved public access to bills of lading and shipping manifests, highlighting the challenges of striking a balance between transparency and confidentiality in trade regulations.

“We’re flying blind on Air Cargo data,” said Michael Kanko, CEO of trade data provider ImportGenius. “All we can see now is ocean.”

Third-party providers such as ImportGenius, Panjiva, and Jungle Scout currently offer access to import data, including bill of lading information, for a fee. However, concerns have been raised about the potential exposure of sensitive supplier information and the disruption of fair competition. Critics argue that such access could enable eCommerce owners to gain insights into their competitors' supply chains, jeopardizing the protection of product lines.

Calls for GSP Reauthorization:

The hearing also featured repeated calls for the reauthorization of the GSP program, which expired on December 31, 2020, resulting in eligible goods being subject to U.S. tariffs since January 1, 2021. The GSP program provides duty-free treatment for imports from over 100 developing nations. Reauthorization requires action from Congress, but lawmakers have struggled to reach a consensus on potential reforms.

There are varying opinions on modifying eligibility requirements, adding or removing beneficiary countries, and adjusting the list of covered products.

The GSP program was initially established by Congress in the 1970s to stimulate economic development in impoverished nations through trade. However, the program has experienced lapses in the past, occurring in 10 out of the 14 times it was extended. Congress typically retroactively extends the program from the original expiration date, resulting in importers being refunded (without interest) for the duties paid during the lapse.

*** Briefs ***

Justice Sees Corporate Self-Reporting on the Rise Assistant Attorney General Kenneth Polite Jr., head of the Department of Justice's (DOJ) criminal division, reports an increase in corporate disclosures following the implementation of new incentives for self-reporting earlier this year. [10494](#)

OECD Reciprocal Tax Bill House Ways and Means Committee Chairman Jason Smith (R-Mo) – along with every Republican member on the panel, have introduced legislation that would impose a reciprocal tax on any foreign country that imposes unfair taxes on US businesses and workers under the Organization for Economic Cooperation and Development's global tax agreement. [10489](#)

Move to Ban Russian Nuclear Fuel Advances The House Energy and Commerce Committee, under the leadership of Chair Cathy McMorris Rodgers (R-WA), advanced H.R. 1042, the *Prohibiting Russian Uranium Imports Act*, in a markup session on Thursday. The Bill seeks to ban fuel imports from Russia in a bid to decrease America's dependence on Russian nuclear fuels. [10492](#)

WTO Argentina Opens Tube Dispute with US Argentina has initiated a dispute with the United States through the World Trade Organization (WTO), challenging the U.S. anti-dumping measures on oil country tubular goods (OCTG) originating from Argentina and specific parts of the U.S. Tariff Act of 1930. [10483](#)

DDTC Calls for Comment on Advisory Opinion Process The Directorate of Defense Trade Controls (DDTC), has invited public comments on the process whereby individuals or firms may seek advisory opinions or guidance from the DDTC under Sections 120.22 and 129.9 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). [10496](#)

China Financial Threat Bill Passes House By an overwhelming margin of 400 to 5, the House Monday approved legislation (HR 1156) requiring the Treasury Department to report on the exposure of the United States to China's financial sector of China. [10501](#)

Gartner Settles FCPA Global research and advisory firm **Gartner Inc.** has agreed to a settlement with the Securities and Exchange Commission (SEC) over charges alleging violations of the Foreign Corrupt Practices Act of 1977 (FCPA). The charges pertained to Gartner's business dealings with the South Africa Revenue Service (SARS), which allegedly involved corrupt practices to secure multi-million dollar contracts. [10506](#)

US Sanctions North Korea Cyber Acts. The Treasury Department's Office of Foreign Assets Control has sanctioned four entities and one individual involved in obfuscated revenue generation and malicious cyber activities that support the North Korean government. [10504](#)

Interpol Marks 100 Years Deputy Attorney General Lisa O. Monaco delivered remarks at the celebration of the International Criminal Police Organization's (INTERPOL) 100th anniversary, praising its "century of transnational police cooperation." [10479](#)

Get the Full Story on the New Website. www.wttonline.com