

Washington Tariff & Trade Letter

Vol. 43, No 25

wttlonline.com

June 19, 2023

WTO - No Progress on TRIPS

Geneva (via WTD) The new chair for the World Trade Organization's TRIPS Council says there is little forward movement on extending paragraph eight of the TRIPS Agreement on vaccines to COVID-19 diagnostics and therapeutics due to divergent views, raising serious questions about the credibility of the MC12 agreements, our correspondent writes.

Without naming the countries, India lamented that some countries entered into "protracted and circular discussions that will not make possible an outcome at MC13."

As per paragraph eight of the decision on the TRIPS Agreement reached last July, members are mandated to conclude a decision on extending the TRIPS agreement on vaccines to COVID-19 diagnostics and therapeutics within six months.

At the WTO's TRIPS Council meeting on Wednesday, **Chair Ambassador Pimchanok Pitfield of Thailand** informed members that her consultations failed to yield any progress due to entrenched differences.

In her first formal meeting as the new chair of the TRIPS Council, Ambassador Pitfield apparently indicated that her "consultations did not bear any fruit in terms of bridging differences on how to address the issue of therapeutics and diagnostics." She said that she remains committed to do everything in her hand to advance discussion in the run-up to the WTO's 13th Ministerial Conference to be held in Abu Dhabi in February 2024.

New Chair Plans Draft

Ambassador Pitfield indicated that she will develop a draft program along with the Secretariat that will be circulated for comments. She said that she would take into account Members' preferences for a balanced composition of stakeholders from diverse geographical and organizational backgrounds.

The chair said that a wide variety of views persisted in her recent consultations on paragraph eight concerning the extension to COVID-19 diagnostics and therapeutics. Apparently, members will be able to engage in substantive discussions after they have completed their domestic consultation processes.

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

Meanwhile, the new chair urged members to continue in consultations based on proposals submitted by Taiwan, Mexico and Switzerland respectively.

The views expressed by a large majority of developing and least-developed countries appears to have reinforced the popular perception about the developments in the WTO and how they are invariably held hostage to the views of some powerful members, said TRIPS negotiators who asked not to be quoted.

Otherwise, it is difficult to explain how the demand for a comprehensive TRIPS waiver, which was raised in October 2020, has been successfully scuttled and even a minimalistic outcome of MC12 is now being stonewalled, said TRIPS negotiators who preferred not to be quoted.

Supporters Speak

At the meeting on Wednesday, South Africa reminded members about “the massive unmet global health needs for COVID-19 therapeutics and diagnostics.” South Africa explained how demand for diagnostics and therapeutics has been artificially suppressed for various reasons. The reasons include:

- unaffordability of many patented tools for low- and middle-income countries;
- budget constraints in many of these countries;
- opacity in supply agreements;
- competing health priorities and knowledge gaps regarding the available health technologies; and
- the value of testing and therapeutics.

In this environment, said South Africa, “low- and middle- income countries cannot rely on the goodwill of corporations.” India expressed consternation that it engaged in bilateral consultations with several delegations without success in breaking some new ground. Without naming the countries, it lamented that some members entered into “protracted and circular discussions that will not make possible an outcome at MC13.”

However, both South Africa and India supported the thematic session, emphasizing that such sessions “would have to feature a diverse representation, both geographically and in terms of the diversity of voices and opinions, with the presence of relevant organizations and representatives of civil society.”

Other countries, including Djibouti on behalf of the LDC Group, Bangladesh, Indonesia, Nepal, El Salvador, Peru, Tanzania on behalf of the African Group, Thailand and Cambodia among others endorsed the stand laid out by South Africa and India.

China said “COVID-19 still poses a threat to global health,” adding that “we are witnessing a standstill at the discussion on this topic.” It called on members “to continue promoting consultations and make decisions in accordance with MC12 mandate.”

Noting the wide range of COVID-19 diagnostics and therapeutics and the complex status of related intellectual property rights at the informal meeting held on April 25, China said it “proposed to hold a thematic session on this issue, engaging representatives from government agencies, academic institutions, enterprises and international organizations to share relevant information and experience.”

Brazil drove home the message that as developing countries continue to grapple with the numerous challenges brought by the pandemic, the need for crucial therapeutics and diagnostics to fight infectious diseases has never been more pressing.

Opponents Speak

Major industrialized countries continued to hold skeptical positions on extending the decision on vaccines to diagnostics and therapeutics, said people familiar with the discussions.

Switzerland, which opposed the extension on grounds that there is no need for such a decision, reiterated its position. The United States lent support to the Chinese proposal for a thematic session. Washington reported the current status of the investigation launched by the US International Trade Commission into COVID-19 diagnostics and therapeutics, mentioning that public hearings held over the past few months are publicly available on the ITC website.

BIS Adds 43 Entities in 10 Countries to Blacklist

Bureau of Industry and Security (BIS) announced June 12 the addition of 43 new entities to the Entity List. The 43 entities, located across ten different countries, have been identified by the U.S. Government as acting against the national security or foreign policy interests of the United States.

The majority of the entities, 31 in total, are based in China. The remaining entities are from Kenya, Laos, Malaysia, Pakistan, Singapore, South Africa, Thailand, the United Arab Emirates, and the United Kingdom. In contrast, one entity located in Latvia has been removed from the list.

BIS also stated that multiple entities have been added to the list for recruiting Western pilots to train PLA pilots on Western aircraft maneuvers and tactics, for hypersonic weapons development, hypersonic flight modeling, and weapon lifecycle management using Western software.

"It is imperative that we prevent China from acquiring U.S. technologies and know-how to enable their military modernization programs," **said Matthew S. Axelrod, Assistant Secretary for Export Enforcement.**

The comprehensive list of the additions to and the removal from the Entity List can be found in the Federal Register Notice: [[FR: 2023-12726](#)]

The Commerce Department's action targets the listed entities' ability to access commodities, software, and technology subject to the EAR (Export Administration Regulations). The rule imposes a license requirement for all items subject to the EAR, and the review of the license applications will generally lean towards a presumption of denial.

Among the Chinese entities added to the list are accused of acquiring U.S.-origin items in support of China's military modernization, with ties to hypersonic weapons development, missile design and manufacture, and other activities of concern.

Further entities have been added due to their procurement and distribution of items enabling the Chinese government to carry out human rights abuses against individuals in China, including as part of its campaign of repression against Uyghur Muslims and members of other minority groups in Xinjiang.

Notable adds include **Ninestar**, the maker of Lexmark Printers, and **China Aviation Development Harbin Bearing Co**, a division of one of the leading suppliers of bearings to the Automotive, Aerospace, Rail and precision tooling industries worldwide

Several entities were added due to their contributions to Pakistan's ballistic missile program. Other entities based in Pakistan were added based on information suggesting significant contributions to certain advanced conventional weapons and strategic weapons capabilities in Pakistan.

Bill Would Close *de Minimis* Customs Loophole

Bipartisan, bicameral legislation introduced Thursday would bar non-market economies like China from taking advantage of the \$800 *de minimis* threshold.

Lawmakers have been complaining that China is exploiting the *de minimis* thresholds, which allows imports valued under \$800 to enter the US market without paying duties, taxes, fees or undergoing inspection. The bill also would also require Customs and Border Protection to collect more information on *de minimis* shipments.

Joining together to introduce the measure are **Reps. Earl Blumenauer (D-Ore)** and **Neal Dunn (R-Fla)** and **Sens. Sherrod Brown (D-Ohio)** and **Marco Rubio (R-Fla)**. "The *de minimis* loophole is a threat to American competitiveness, consumer safety, and basic human rights," said Rep. Blumenauer, who is ranking Democrat on the House Ways and Means subcommittee on trade.

"It is used by primarily Chinese companies to ship over two million packages a day into the United States. It puts American businesses at a competitive disadvantage while flooding American consumers with undoubtedly harmful products. There is virtually no way to tell whether packages that come in under the *de minimis* limit contain products made with forced labor, intellectual property theft, or are otherwise dangerous. It is time to close this loophole once and for all."

The Import Security and Fairness Act would:

- **Prohibit Goods from Countries that are Both Non-Market Economies and on the US Trade Representative's Priority Watch List from Using De Minimis:** To address concerns related to US competitiveness, the legislation prohibits goods from non-market economies that are on the Priority Watch List, such as China, from benefitting from *de minimis* treatment. The US government has

found that such countries provide unfair benefits to their companies. This change ensures that shipments from these countries don't benefit further under US law.

- **Require CBP to Collect More Information on All De Minimis Shipments and Prohibit Use by Bad Actors:** To address concerns regarding compliance with US laws, this provision makes common-sense changes that will require CBP to collect more information on de minimis shipments and prohibit importers that have been suspended or debarred from being able to use de minimis. This provision provides statutory support for the ongoing work that multiple administrations at CBP have already started.

Senators Seek Input on Customs Reform

Four members of the Senate Finance Committee are seeking input from the trade community to help inform Congressional efforts to update US customs laws.

Sens. Bill Cassidy (R-La), Marsha Blackburn (R-Tenn), Catherine Cortez Masto (D-Nev) and Maggie Hassan (D-NH) sent out a letter Thursday asking for suggestions on how US customs laws should be updated and reformed, particularly when it comes to trade facilitation.

"There is a need to continue to modernize US customs laws to ensure the US remains a leader in global trade," the senators said in the letter. "As Congress looks to update US customs laws and help advance the US Customs and Border Protection's 21st Century Customs Framework, we welcome input on how to best promote effective trade facilitation."

The senators asked for responses to the following questions:

Improving trade facilitation should help increase the flow of legal goods and services across borders while reducing red-tape and driving down costs. What current barriers and challenges does the trade community face as it relates to trade facilitation?

In detail, can you describe what improvements would be most effective? Also, it would helpful to outline any information or views you have relating to

1. Eliminating redundant data requirements for entry of merchandise;
2. Improving the Automated Commercial Environment to better implement the "single window;"
3. Facilitating data transmission by parties as it develops in the supply chain.

Key security programs not only enhance homeland and global security, they also provide commercial benefits for active partners. Are there ways you believe the following programs could be enhanced to improve trade facilitation and security? the Customs Trade Partnership Against Terrorism; and pre-clearance programs at foreign ports.

As Congress deliberates updates to US customs laws, how can we strike the appropriate balance between security/enforcement and trade facilitation? Please explain what economic benefits you would expect to see from suggested improvements for trade facilitation.

Bill Would Ensure US Tech Manufacture

Sens. Tammy Baldwin (D-Wisc) and JD Vance (R-Ohio) introduced legislation to ensure that taxpayer-funded technologies are manufactured in the United States by making it more difficult to obtain a waiver allowing licensing of the technology to foreign companies in countries like China.

Current law requires federally-funded inventions to be manufactured in the United States, but the requirement is often waived, allowing cutting-edge, taxpayer-funded technologies to be licensed to foreign companies and manufactured in countries like China.

The bill would expand newly enhanced waiver requirements, passed into law last year, to all federal agencies commercializing federal research.

The senators noted that an August 2022 report found that a breakthrough battery technology invented in a federal lab had been licensed to a Chinese company and was being manufactured in China.

The Invent Here, Make Here Act would subject each waiver request to the review process established by the Made in America Office as required by the Infrastructure Investment and Jobs Act. The legislation also would prohibit waivers for license applications that intend to manufacture in a “country of concern” – currently China, Russia, North Korea and Iran.

The measure would require the National Institute of Standards and Technology to improve coordination with other federal agencies to encourage the commercialization of federal research by domestic manufacturers and ensure that projects funded through the Technology, Innovation and Partnerships Directorate at the National Science Foundation prioritize domestic manufacturing.

Tai Defends Biden Trade Policy

US Trade Representative Katherine Tai issued a strong defense Thursday of the Administration’s trade policy from complaints about the lack of free trade agreement negotiations.

Successive Administration’s focus on traditional free trade agreement has created the current situation of unstable supply chains and inequitable distribution of trade benefits, she argued.

“I hear all the time that because we are not doing traditional trade agreements, we are not doing trade at all. But if we look at what those agreements did, we see the ways in which they contributed to the very problems we are now trying to address” Ms. Tai told a program sponsored by the Open Markets Institute.

“Our focus has shifted from liberalization and the pursuit of efficiency and low costs – at any cost – to raising standards, building resiliency, driving sustainability, and fostering more inclusive prosperity at home and abroad,” she continued. “Like other aspects of the Administration’s economic policies, we are using trade to create a race to the top.”

Traditional free trade deal were based on a premise of efficiency and low cost, which allowed significant content to come from countries that are not even parties to the agreement, Ms. Tai said. “That means these rules benefit the very countries that have used unfair competition to become production hubs.”

Vulnerable Supply Chains

The result is that “supply chain rules in these FTAs tend to reinforce existing supply chains that are fragile and make us vulnerable. This does not make sense at a moment in history when we are trying to diversify and make them more resilient.”

What the Administration seeks “is a trade policy that fosters and creates opportunities for good and diversified jobs here in our communities, revitalizes US-based production at high, middle and low ends and puts workers back at the center because they are the foundation for resilience,” Ms. Tai stated.

Traditional trade policy historically focused on providing benefits for the largest companies, on the theory that those benefits would necessarily trickle down to workers, small businesses and communities. “But over time, what we have seen is that these benefits do not trickle very far down,” she said.

The Administration also is forging strong relationship with trade partners that share the same values, including to counter economic coercion by China. As an example, she pointed to the joint declaration with issued last week with Australia, Canada, Japan, New Zealand and the United Kingdom to send a clear message of unity against the use of non-market economic policies to build global market dominance.

Partnerships for Supply Chains

The partnerships being negotiated by the Administration, like the Americas Partnership for Economic Prosperity and the Indo-Pacific Economic Partnership are aimed at developing additional supply chains to prevent over-reliance on countries like China.

She also cited critical minerals agreements – like the one already completed with Japan, and those being negotiated with the European Union and United Kingdom – as another effort to create stable supply chains.

Ms. Tai also emphasized the importance of bringing developing countries into US supply chains. “We are turning the colonial mindset on its head. Instead of supply chains designed to extract from developing economies, our approach is to partner together, where we are all co-owners of different parts of supply chains.”

The chief US trade official concluded her remarks on an upbeat note, saying the Administration is pursuing “an unapologetically positive vision for building a tomorrow where all of us – including the most underserved and vulnerable – are more secure, more prosperous, and more equal.”

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