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What's Been Happening

1 — 301 Tariff Removal: A Step Forward? UFLPA: A Step Backward? — 1

[In One Sentence]

- The Uyghur Forced Labor Prevention Act (UFLPA), signed into law by President Biden in December 2021, officially went into effect on June 21, 2022, prohibiting imports linked to China's Xinjiang region.
- The Biden administration says it is actively considering adjusting some tariffs on Chinese goods.
- Stakeholders remain divided on whether to suspend, reduce or eliminate the Section 301 tariffs.
- Meanwhile, some legislators are pushing to counter China's dominance and "unfair" practices in the rare earth materials sector.

[Mark the Essentials]

- As described by the Department of Homeland Security, the bill prohibits the importation of any goods to the United States that are produced wholly or in part in Xinjiang unless the importers can prove by clear and convincing evidence that the goods were not produced with forced labor.
- China has committed to taking "forceful measures to firmly defend its own interests and dignity" against the Xinjiang-related import ban, arguing that the import prohibition will "seriously disrupt" normal business cooperation.
- The White House said that "some Trump tariffs were irresponsible" and that the administration is working to "align these haphazard tariffs" with economic and national security priorities.
- Agriculture stakeholders have called on the administration to pare down some tariffs in exchange for the suspension of retaliatory tariffs on U.S. agriculture, while labor groups urged the continuation of all tariffs to protect American workers.
- Similarly, while some lawmakers are calling for reductions in tariffs to address inflation, others have urged the administration to leverage the tariffs and enforce China's Phase One commitments.

[Keeping an Eye On...]

- Mark the words "rebuttable presumption". It is an evidentiary standard that has long had standing in international trade law—even if seldom applied. The standard essentially flips the burden of the presumption of innocence on the accused rather than the accuser. In the case of the Uyghur Forced Labor Prevention Act, the Act places the burden on the shoulders of the prospective importer to rebut the presumption that the goods imported from Xinjiang province of China—primarily cotton, apparel, tomatoes, silica-based products—are not mined or produced in whole or part with forced labor. Earlier, the U.S. and the EU at

different times have sought to introduce the rebuttable presumption standard within WTO jurisprudence related to the Subsidies and Countervailing Measures (SCM) agreement to challenge China's government-provided industrial subsidies. China would need to prove that an alleged subsidy was compliant with international rules rather than the other way around (i.e., the accusers having to furnish the necessary evidence to support their claim against China). Given the opaqueness of the subsidy handouts and the growing topicality of the issue, expect this standard to increasingly muscle its way to the forefront of international trade law. There is nothing wrong with that; except that by lowering the bar to the presumption of innocence, the rebuttable presumption standard could also open the door to protectionist abuse. That is, in fact, how the standard has been instrumentally utilized so far in the trade policy arena. On the other hand, there is nothing rebuttable or presumptive about the Section 301 tariffs. They have been found by a WTO-constituted panel to be illegal, and the sooner they come off, the better it will be for all. It should not be a matter of "aligning" the Section 301 tariffs to advance economic and national security priorities. Such priorities should be advanced using legal trade instruments—not illegal ones.

[Expanded Reading]

- [Companies Brace for Impact of New Forced Labor Law](#), *The New York Times*, June 22, 2022 [Paywall]
- [Implementation of the Uyghur Forced Labor Prevention Act](#), Anthony Blinken, U.S. Department of State Press Statement, June 21, 2022
- [DHS Releases Uyghur Forced Labor Prevention Act Strategy](#), Department of Homeland Security, June 17, 2022
- [Congress wants to double rare earth mineral fund to free defense supply chain from China](#), *Defense News*, June 17, 2022
- [White House says discussing 'irresponsible' tariffs imposed by Trump](#), *Reuters*, June 14, 2022 [Paywall]
- [UFLPA Operational Guidance for Importers](#), U.S. Customs and Border Protection, June 13, 2022

2 — America's Executive Branch-led Version of Trade Multilateralism — 2

[In One Sentence]

- The Biden administration expects to set the next ministerial meeting for the Indo-Pacific Economic Framework (IPEF) "later this summer".
- The administration envisions IPEF to "evolve" away from the "traditional" dispute settlement mechanism.
- Stakeholders are uncertain about how the IPEF negotiations will proceed.
- The WTO's 12th Ministerial Conference (MC12) concluded with agreements on a vaccine IP waiver, fisheries subsidies, and food security as well as a joint statement on WTO reform.

[Mark the Essentials]

- U.S. Trade Representative Katherine Tai has already held an informal ministerial meeting with all IPEF participants, where she shared her "vision" for IPEF's trade pillar.
- Tai advocated for an "evolution" of the dispute resolution mechanism that "goes into more cooperative modes" instead of "very unwieldy and expensive mechanism for litigation".
- Given IPEF's unconventional structure, stakeholders have observed that they are uncertain about how the private sector would participate in the negotiation. They also hope to know more about the Biden administration's negotiating objectives as well as IPEF's negotiating schedules and agenda.
- The declaration on the vaccine waiver reflects an agreement between the United States and China on the language of the eligibility footnote.

- The WTO members officially committed to work towards “necessary reform” of the WTO and towards “having a fully and well-functioning dispute settlement system accessible to all Members by 2024”.

[Keeping an Eye On...]

- Trade multilateralism has enjoyed small, but welcome, victories these past two months. In May, the (hollow) shell of the Indo-Pacific Economic Framework (IPEF) was launched. In mid-June, a third-order agreement on second-order issues was consummated at the WTO MC12 in Geneva. China was part of the latter and conspicuously missing from—or rather kept out of—the former. China aside, a more pertinent feature that ties IPEF to WTO MC12 is that neither agreement requires, or forces, a change of U.S. law. Change in U.S. law has typically been a key accelerant in the context of the bicycle theory of trade liberalization, which posits that unless continuous steps are taken to keep removing trade barriers, there will be backsliding and regression. If you stop pedaling the (trade liberalization) bicycle, you will fall over; or so goes the thinking. Congress’ holding of U.S. trade negotiators’ feet to the fire to deliver reciprocally beneficial market opening arrangements had the virtuous effect of delivering meaningful liberalization at the systemic level. With Congress more or less relegated to the sidelines now, given that neither the MC12 agreement nor the Framework engages Congress’ ratification power, the question that needs to be asked is whether deep and meaningful U.S.-led trade liberalization at the multilateral or regional level is even possible anymore? For over a decade now, U.S. negotiators in Geneva have returned home with a smattering of insignificant executive-led agreements. For its part, the Biden administration promises to steer IPEF as far clear as possible of Congress’ prerogative ‘to regulate commerce with foreign nations’, given the fraught nature of trade politics on Capitol Hill. With accountability on trade policy decision-making increasingly lacking (as a matter of executive branch choice), can mediocrity in trade policy outcomes be far behind? Perhaps IPEF will dispel this pessimism. Or perhaps it will not.

[Expanded Reading]

- [IPEF Negotiations Expected to Start in August](#), *Business Korea*, June 28, 2022
- [WTO members secure unprecedented package of trade outcomes at MC12](#), World Trade Organization, June 17, 2022
- [Readout of Ambassador Katherine Tai's Informal Meeting with Indo-Pacific Economic Framework Partners](#), Office of the United States Trade Representative, June 11, 2022
- [U.S. Trade Representative Tai on Indo-Pacific Economic Framework](#), C-SPAN, June 6, 2022

[Legislative Development]

- As the conference committee continues to work on reconciling the House-passed America COMPETES Act and the Senate-passed USICA, congressional leaders have reportedly requested the conference committee to “slim down” the bill and remove provisions that cannot be reconciled to speed up the process.
- Speaking on behalf of House and Senate Democrats, House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer said there is “no reason” that Congress would not pass the competition bill in July.
- On June 16, President Biden signed into law the Ocean Shipping Reform Act, which expands the authority of the Federal Maritime Commission to address unfair charges and practices conducted by international ocean carriers.
- A group of bipartisan, bicameral lawmakers are aiming to pass a “refined” version of the outbound investment review legislation as part of the competition bill.

[Midterm Election Outlook]

- With inflation polling as the top issue for voters as the midterm elections approach, electoral prospects appear grim for a Congressional Democratic caucus split on economic issues concerning China.
- Free-trade minded Democratic lawmakers like Rosen, Heinrich, and Sinema are hoping to gain political ammunition in their reelection bids by pressing President Biden for tariff relief for the solar industry.
- Meanwhile, Democratic allies of organized labor hope to win by standing up to China through retaining tariffs and scoring a victory with the sweeping competition bill which is now in the conferencing process.
- The Republican party is relatively united in outflanking the Democrats by taking a hardline on China, which is demonstrated by the diverse range of GOP signatories on recent letters urging Biden to overtly include Taiwan in U.S.-led regional security and economic partnerships.

[Keeping an Eye On...]

- The Bipartisan Innovation Act, also known as the China competition bill, continues to shed fat on a weekly basis as House and Senate conferees race to get a consensus bill that will make generational investments in domestic innovation and advanced manufacturing to the president’s desk before the August recess. Of late, another legislative candidate has emerged that, too, is in need of an intense weight-reduction regimen. In mid-June, a bipartisan group of lawmakers released a “refined” draft of an outbound investment review proposal that would authorize the mandatory screening of certain covered outbound investments to China and other countries of concern—a reverse CFIUS as it were. The concept of an outbound investment review process is itself controversial. In the two centuries-old legislative and commercial history of the United States, there has been nothing quite like it. A foreign inward investment review process, yes. Export controls on outbound technologies, yes. But an outbound investment review process, no. Compounding the anxiety in the American business sector is the broad sectoral reach and unworkable compliance-related concerns in the “refined” draft. In important respects, the draft is in fact broader in reach than its initial January 2022 iteration in terms of business activities and transaction parties that would be swept up in the review process, and which could include foreign entities conducting business worldwide that have no direct nexus to U.S. interstate commerce. The draft, as written, simply will not fly. Like the Bipartisan Innovation Act, the outbound investment review draft—technically called the revised National Critical Capabilities Defense Act

(NCCDA) of 2022—will also need to lose the extra fat if it wishes to see the light of day, going forward. Here is a suggestion for its backers: whittle down and explicitly pair the list of high-tech sectors subject to outbound review to those that will be taxpayer backed in the Bipartisan Innovation Act and Chips for America Act and, suddenly, the re-revised NCCDA might yet sail through the 117th Congress and formally become law.

[Expanded Reading]

- [Pelosi, Schumer Statement on Bipartisan, Bicameral Leadership Meeting on COMPETES/USICA Conference](#), Speaker of the House Nancy Pelosi Press Release, June 21, 2022
- [Slew of tech proposals face Congress logjam](#), *Axios*, June 17, 2022
- [President Biden Signs Cantwell-Championed Ocean Shipping Reform Act](#), U.S. Senate Committee on Commerce, Science and Transportation Press Release, June 16, 2022
- [S.3580 - Ocean Shipping Reform Act of 2022](#)
- [Usual Midterm Indicators Very Unfavorable for Democrats](#), *Gallup*, June 14, 2022
- [Lawmakers push new compromise for screening American investments in China](#), *Politico*, June 13, 2022
- [The Republicans Could Win the U.S. Midterms. Here's What that Means for the World](#), *Foreign Policy*, June 2, 2022 [Paywall]
- ['Tough on China' gains traction as electoral test](#), *Politico*, February 10, 2022