TnT

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ICAS Trade N Technology Program

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TnT ICAS Trade 'n Technology Program

The Institute for China-America Studies Trade 'n Technology (TnT) Program chronicles and analyzes the evolving dynamics of U.S.-China trade and technology affairs as they occur.

The goal is of this program is to provide well-rounded, timely products on issues involving U.S.-China trade and technology developments and expand public dialogue surrounding this critical and contentious topic.

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中美研究中心 ICAS
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ICAS TRADE N TECH DISPATCH

April 8, 2022

Volume 2, Issue 7

What's Been Happening

1 — Indo-Pacific Partnership Locked Within an Old Alliance Framework — 1

[In One Sentence]

- Securing regional supply chains is a key focus of the Biden administration's Indo-Pacific Economic Framework (IPEF).
- The Biden administration plans to engage in intensive consultations on the Indo-Pacific Economic Framework through spring and early summer.
- Singapore Prime Minister Lee Hsien Loong called the IPEF "baby steps" towards trade liberalization.
- U.S. lawmakers proposed deeper Quad cooperation on critical minerals supply chains.
- Large group of legislators have called on the administration to prioritize agriculture in the IPEF.

[Mark the Essentials]

- Commerce Secretary Raimondo emphasized supply chains for critical minerals and rare earths, highlighting a recent strategic dialogue with Australia and Australian industrial extractors and processors.
- According to Australian Trade Minister Dan Tehan, current IPEF efforts are aimed at ensuring broad buy-in from Indo-Pacific countries, and elements such as a digital trade pact, infrastructure financing and critical minerals cooperation could attract participation in the framework.
- According to Prime Minister Lee, a TPP-style pact is "ideal" but lacks support from the U.S. Congress, and IEPF's digital economy and sustainability cooperation thus work as alternative "baby steps" towards greater market access.
- A recent bill asks that the U.S. work with Australia, India and Japan to reduce dependence on China for critical mineral supplies, while more than 80 lawmakers said IPEF should ensure that U.S. agricultural exports have greater access to Indo-Pacific markets.

[Keeping an Eye On...]

- As discussed in previous TnT Dispatches, the Biden administration views economic and trade engagement with the Indo-Pacific region as an important component of its Indo-Pacific Strategy, and the Indo-Pacific Economic Framework (IPEF) as the primary pillar of that regional economic and trade engagement strategy. Lacking the will and political capital to push forward with hard-hitting liberalizing reforms however, the administration has plumped for a softer, non-binding approach in the IPEF that essentially amounts to an "optimistic" effort to "send a message" that the United States remains "committed to the region". At a time when its counterparts in Asia enjoy both the will and political capital to make deep trade and investment liberalization-related reforms, it is not quite certain that Ambassador Tai and Secretary Raimondo's effort to send just an optimistic message of commitment to the region will strike a chord. Furthermore, the IPEF is conspicuous so far in its absence of any reference to China, much like the larger Indo-Pacific Strategy within which it is embedded. It is on the surface drafted as if China resides on another continent, if not another planet. This pretense is belied however by the fact that the IPEF's go-to counterparts are the 'usual suspects' - Washington's treaty allies and preferred regional partners with whom "common approaches and common standards to create mutual prosperity" is to be forged. A shallow framework that leaves no place in its midst for the region's most dynamic generator of mutual prosperity (China) is unlikely to leave a lasting impact. Be that as it may, for many Asian capitals, sipping the thin American gruel on offer is better than sipping none at all, as Prime Minister Lee seemed to suggest in his Oval Office meeting with President Biden.

[**Expanded Reading**]

- U.S. pitches 'defensive' Indo-Pacific trade rules in Singapore, *Nikkei Asia*, April 5, 2022 [Paywall]
- U.S. trade chief Tai declines to say if Taiwan will be part of Indo-Pacific pact, *Reuters*, April 1, 2022 [Paywall]
- Singapore PM's talks with Biden show US won't waver from Indo-Pacific focus to counter China amid Russia-Ukraine conflict: analysts, *South China Morning Post*, April 1, 2022 [Paywall]
- PM Lee Hsien Loong at the Dialogue with the Council on Foreign Relations, Prime Minister's Office Singapore, March 31, 2022
- Joint Statement – Inaugural Australia-U.S. Strategic Commercial Dialogue (AUSSCD), U.S. Department of Commerce, March 31, 2022
- Letter from Lawmakers to USTR Tai and Secretary Vilsack, U.S. Congress, March 30, 2022
- Joint Statement – Inaugural Australia-U.S. Strategic Commercial Dialogue (AUSSCD), U.S. Department of Commerce, March 30, 2022
- Australia and United States to hold inaugural Strategic Economic Dialogue, Australian Ministry for Trade, Tourism and Investment, March 26, 2022

2 — U.S.-China Trade Stalemate Risky— 2

[**In One Sentence**]

- Several business groups are opposing the legislative expansion of the Commerce Department's antidumping and countervailing (AD/CVD) tools.
- The Office of the USTR reinstated Section 301 tariff exclusions for 352 categories of goods from China, but provided no updates on future plans for the tariff exclusion process.
- USTR Tai restated that the U.S. will look beyond "only pressing China for change."

[**Mark the Essentials**]

- Business groups argued that the expanded AD/CVD tools would result in higher tariffs on goods from all U.S. trading partners, penalize legitimate trade and exacerbate the inflationary pressures within the U.S. economy.
- The reinstated exclusions apply retroactively from October 12, 2021 and will terminate on December 31, 2022.
- Lawmakers have been pushing for more clarity on future exclusion plans as well as USTR's strategy on China.
- According to a recent think tank analysis, the Section 301 tariffs increased consumer costs by more than $50 billion in 2021.

[**Keeping an Eye On…**]

- Almost fifteen months into her tenure as the United States Trade Representative, Ambassador Katherine Tai has little to show in terms of engaging her Chinese counterpart, let alone delivery from that engagement. The charitable explanation is that she would like to firm up her relationships with regional partners, notably by means of the Indo-Pacific Economic Framework, before engaging Beijing from a position of relative strength. The uncharitable explanation is that she and the administration are deeply divided on not just how to engage China but even on *whether* to engage China at all. For four decades, U.S. policymakers sought to utilize a combination of sticks and carrots to incentivize structural reform and trade liberalization in China. Perhaps they succeeded too well. Seeing bilateral trade and economic ties as the ballast of the U.S.-China political relationship, Chinese policymakers more-or-less delivered on these liberalizing reforms. Even during the Trump administration when an effort to decouple parts of the economic relationship set in, U.S. policymakers from Robert Lighthizer to Steven Mnuchin continued to pursue reform of China's intellectual property protection, forced technology transfer, and industrial subsidies regime. By contrast, the Biden administration and Ambassador Tai have drawn a complete blank in terms of setting out an agenda of structural reform deliverables to be sought from China. Without so much as even a cursory effort, the aim going forward seems to be to "turn the page" on the U.S.' economic relationship with China and focus narrowly on "vigorously defending" U.S. interests through a strategy of trade enforcement, more trade enforcement, and even more trade enforcement. New enforcement tools are sought to be authorized and deployed vis-a-vis China—although even here the administration is divided on the specifics of the trade enforcement tools to be authorized. Understandably, U.S. business is concerned with this "murky" state of affairs. And it should be. If Chinese policymakers no longer see trade and economic engagement as a stabilizing political ballast, what is their incentive—beyond a certain modicum of diversification related benefits—to commit to multi-billion dollar 'managed trade' purchases of agricultural and hydrocarbon products from American commodity exporters?

[**Expanded Reading**]

- Level the Playing Field Act 2.0 is "Exactly in the Spirit of What We Need," USTR Tai Says, Alliance for American Manufacturing, April 1, 2022
- Katherine Tai Hammered in Hearings on Free Market, Market Access, Coalition for a Prosperous America, March 31, 2022
- U.S. Trade Chief Says New Focus Needed as China Hasn't Changed, *Bloomberg*, March 30, 2022 [Paywall]
- Biden Administration's 2022 Trade Policy Agenda, Hearing of the House Ways & Means Committee, March 30, 2022
- Not 'sitting on its hands,' U.S. to up pressure on China, trade czar Tai says, *Reuters*, March 25, 2022 [Paywall]
- The Total Cost of U.S. Tariffs, American Action Forum, March 24, 2022
- Coalition Letter opposing inclusion of the "Eliminating Global Market Distortions to Protect American Jobs Act of 2021" in the Bipartisan Innovation Act, U.S. Chamber of Commerce, March 22, 2022

3 — Brussels Draws Closer to Washington, Also Engages China — 3

[In One Sentence]

- The U.S. and the European Union reached an agreement in principle to replace the Privacy Shield framework.
- European Commission Executive Vice President Margrethe Vestager said that several deliverables are “in the pipeline” for the next U.S.-EU Trade and Technology Council (TTC) meeting in May.
- U.S. officials said the next TTC meeting will focus on “long-term economic challenges” posed by China.
- China and the European Union recently held top-level meetings at a bilateral summit.

[Mark the Essentials]

- An EU official said the finalization of the Privacy Shield successor agreement may take several months, while business groups continue to call for swift action to enable trans-Atlantic data transfer.
- According to Vestager, the next TTC meeting will refocus some of its work on the situation in Ukraine.
- National Security Council’s Peter Harrell said “near-term” supply chain actions are also on the TTC agenda.
- In addition to discussion on the Ukraine crisis, China and the European Union also mandated the High-level Trade and Economic Dialogue to address trade and economic issues between the two sides.

[Keeping an Eye On...]

- The European Union has worked closely with the U.S. to address trade and tech issues over the past year. The upcoming Trade and Tech Council meeting in May is expected to provide more low-hanging fruit, such as further progress towards the formalization of their recent agreement in principle on a successor to the Privacy Shield Framework to enable trans-Atlantic data flows. Joint efforts to address concerns over certain Chinese trade-distorting practices is also expected to be agreed upon. The recent Ukraine crisis has, if anything, galvanized U.S.-EU cooperation on complementary trade enforcement and export control approaches vis-a-vis adversaries. The EU nevertheless continues to strike out on its own too. Its Digital Markets Act, the text of which was recently finalized, is squarely aimed at curbing the monopolistic business models of U.S. Big Tech. The forthcoming Digital Services Act will similarly rein in U.S. Big Tech’s shoddy privacy and personal data practices. Just as importantly, the full range of EU-China dialogue mechanisms spanning trade and investment, development and climate change, digital policy, and people-to-people exchanges are to be restarted after a two year hiatus due to COVID-19. The EU, while understandably drawn closer to Washington because of the moral and geopolitical attack on its core values stemming from Russia’s unprovoked attack on Ukraine, remains deeply committed to its policy of strategic autonomy. It remains deeply in China’s interest, too, to nurture this European geoeconomic ambition for autonomy by making meaningful liberalizations within its domestic investment and industrial subsidies regime as well as by improving its poor human rights record.

[Expanded Reading]

- Transatlantic Trade | US and Europe – Week of March 28, 2022, *The National Law Review*, April 4, 2022
- Economic Watch: China-EU economic cooperation shows strong resilience, vitality, *Xinhua*, April 2, 2022
- EU-China Summit: Restoring peace and stability in Ukraine is a shared responsibility, European Commission, April 1, 2022
- China-EU Summit Highlights Diverging Paths, *The Diplomat*, April 1, 2022
- China-EU - international trade in goods statistics, Eurostat, March 31, 2022
- European agri-food products: exporting quality, safety and sustainability to Chinese consumers, European Commission Directorate-General for Agriculture and Rural Development, March 30-31, 2022

- The U.S. and EU Announce an "Agreement in Principle" to Replace the EU-U.S. Privacy Shield Framework: What Employers Need to Know, Ogletree Deakings, March 30, 2022
- US, EU sign data transfer deal to ease privacy concerns, *The News & Observer*, March 26, 2022 [Paywall]
- Remarks by Executive Vice-President Vestager for the political agreement on the Digital Markets Act, European Commission, March 25, 2022
- Shared values, shared impact: the power of the transatlantic relationship, AmCham EU, March 24, 2022
- Digital Bridge: Ukraine policymaking — New antitrust era — Disinfo hunters, *Politico*, March 24, 2022

ICAS TRADE N TECH DISPATCH

April 25, 2022

Volume 2, Issue 8

What's Been Happening

1 — Implications of Sanctions on Russia for U.S.-China Engagement — 1

[**In One Sentence**]

- The United States has issued export controls on technology items for "all of Russia" under its Foreign Direct Product rule.
- The U.S. also sanctioned several Russian financial institutions and prohibited new investments in Russia.
- Further sanctions were also imposed on the Russian government, certain officials, personnel and their families, as well as several state-owned and private enterprises.
- Current and former U.S. officials generally expect China to violate U.S. sanctions in support of the Russian military and have questioned the United States' ability to detect violations.
- U.S. Secretary of Commerce Gina Raimondo has warned Chinese companies against backfilling sanctions and exporting to Russia.
- China has consistently opposed unilateral sanctions, arguing that they have no basis in international law and tend to only escalate tensions.
- The Foreign Direct Product rule was initially deployed by the Trump administration to punish the Chinese tech company Huawei.
- The number of U.S. sanctions on China, especially those related to trade, has grown significantly since the Trump administration, with several new impositions under the Biden administration.
- China introduced the Anti Foreign Sanctions Law in 2021, allowing the Chinese government and private individuals to counter "discriminatory" foreign sanctions.

[**Mark the Essentials**]

- Under the new Foreign Direct Product rule, Chinese companies are prohibited from exporting any sophisticated (or other controlled) technology items to Russia that include U.S. content or are made with U.S. technology if the item has a military end use or end user. Exports that do not have a military end use or end user require a license which is granted but rarely. "Dual-use items" that can serve both a civilian and a military purpose are also prohibited.
- The United States has imposed property blocking sanctions, i.e., asset freezes, on Alfa Bank, the largest private bank in Russia, and Sberbank, a majority state-owned bank with a significant presence in both Russia and several European countries.

- Highlighting the semiconductor industry, Secretary Raimondo said that Chinese companies "have their own self-interest" to abide by U.S. sanctions. According to her, the U.S. could "essentially shut SMIC down" by denying the Chinese chip manufacturer U.S. equipment and software if it exports to Russia.
- Nazak Nikakhtar, formerly an acting head of the Commerce Department's Bureau of Industry and Security (BIS), cited China's Anti-Foreign Sanctions Law as a legal basis that China can use to reject the U.S.' and the West's unilateral sanctions on Russia.
- Commerce Department officials have expressed concerns over the United States' ability to detect Chinese violation of U.S. sanctions, highlighting the lack of BIS agents on the ground in China and increased difficulty to work with the Chinese government.
- China's Foreign Ministry has repeatedly stated that sanctions are ineffective in addressing the Ukraine situation, hamper attempts to advance peace talks, add to the turmoil of the Ukraine crisis, and will lead to spillover effects in broader regions of the world.
- The China Banking and Insurance Regulatory Commission (CBIRC) has specifically expressed its disapproval for the financial sanctions against Russia, noting that unilateral financial sanctions tend to be ineffective and lack basis in international law. CBIRC said China will not join the financial sanctions and will maintain normal financial and trading relationships with all relevant parties.
- Since the enactment of the Huawei sanctions by the U.S. government, some experts and commentators have speculated that the Foreign Direct Product rule will spill over to other China-related sanctioned entities.

[**Keeping an Eye On…**]

- The Russia-Ukraine war is the first instance in the post-Cold war era of the United States responding against the unlawful actions of a United Nations Security Council peer with its full array of non-military measures, including financial and central bank sanctions, export controls, embargoes, and revocation of trade privileges, among others. Washington and the West have veritably unleashed 'economic warfare' on Moscow, seizing control of the centralized chokepoints of the 21st century's global economic networks to asphyxiate the Russian economy. Moscow's ability to adapt and substitute for the loss of economic, financial and technological access will determine the cost of the imposed sanctions regime. Be that as it may, it has not gone unnoticed in Beijing as well as in other emerging economy capitals that the measures being inflicted on Moscow may one day be imposed, fully or in part, upon them. Indeed, a few of the measures taken by the United States against Russia have been attempted during the U.S.-China trade war and the ongoing trade and technology conflict. Should the various 'economic warfare' measures prove their worth against Moscow, the likelihood of many of them becoming the go-to 'non-military weapons' to be applied against China is high. As such, the measures offer a handy playbook—a proof of concept—of how economic warfare is prosecuted in the 21st century. What are its key nodes and chokepoints? What are the instruments of punishment and levers of control? Just as importantly, where are the carve outs and what do these carve outs signify? And foremost from Beijing's perspective, what policy reforms and actions must it take in order to be deemed to be a state 'too big to fail'—as in, a state that is too systemically important and too economically, financially and technologically interconnected within the global economic architecture to be unilaterally sanctioned by the United States and the West?

[**Expanded Reading**]

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- The New Arms Race: Sanctions, Export Control Policy, and China, Center for Strategic & International Studies, March 25, 2022

- U.S. Government Imposes Expansive, Novel and Plurilateral Export Controls Against Russia and Belarus, *Akin Gump*, March 8, 2022
- Event Recap: "2022 Export Enforcement Priorities," Silverado Policy Accelerator, February 24, 2022

2 — Washington's New Vision of Multilateralism — 2

[In One Sentence]

- U.S. Secretary of the Treasury Janet Yellen has proposed a new vision for global economic cooperation, favoring supply chain friend-shoring with "trusted countries".
- The next U.S.-EU Trade and Technology Council (TTC) meeting will include an increased focus on supply chain resilience.
- Several U.S. lawmakers urged the administration to negotiate market access agreements in the Indo-Pacific region.

[Mark the Essentials]

- Advocating for the "modernization" of the liberal economic order beyond economic efficiency concerns, Yellen argued for reducing reliance on certain countries for critical materials and securely extending market access only to trusted countries.
- Yellen cited the Russia-Ukraine war as the precise reason to address gaps in the international economic and financial system with trusted countries, touting the "multilateral" response among allies sanctioning Russia.
- According to European Commission Executive Vice President Margarethe Vestager, the Russia-Ukraine war has highlighted a number of foci for the TTC, including critical supply chain security and "friend-shoring".
- Referring to the Indo-Pacific Economic Framework, 11 House lawmakers asked the administration to start negotiating market access provisions with ASEAN and other Indo-Pacific countries as swiftly as possible.

[Keeping an Eye On...]

- Beware that 'vision thing'. Politicians usually trundle out their 'vision' statements when they have something extraordinarily ambitious to lay out or alternatively when they have substantively very little to deliver, and choose therefore to mask their lack of content behind an overarching 'vision'. Treasury Secretary Janet Yellen's vision of a reformed international monetary and financial order, coming as it did a few days before the IMF/World Bank spring meetings, falls into the latter category. There was no vision as such of a reformed monetary system—be it reform of solvency, liquidity or even governance processes; just the promise to offer a vision of the reform of the Bretton Woods institutions at an unspecified future date. On the other hand, countries—especially adversary countries—would be well advised to take heed of Secretary Yellen's admonition that the window is closing on the era of globalization wherein economic interdependencies could be separated from national security concerns. For a new era of globalization and multilateralism to prosper durably, it may be essential to limit certain critical sector economic activities to countries that exist within a circle of trust. Ms. Yellen's cautionary observations may be 'more talk than action' at this time but the continuous rhetoric against globalization and multilateralism could leave a lasting impact in shaping America's view of the current world order as well as its assessment of the bilateral relationship with other great powers, especially that with China. Worse, a bloc-based framework of international economic activity could be the precursor to military conflict—hot or cold, as was the case in the 1930s and again during the Cold War.

[Expanded Reading]

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- [Special address by US Treasury Secretary Janet L. Yellen](), Atlantic Council, April 13, 2022
- [Murphy and Miller Lead Bipartisan Letter to USTR Urging Deeper Trade Ties between the U.S. and Indo-Pacific Nations](), U.S. Congresswoman Stephanie Murphy Press Release, April 12, 2022
- [Readout of Ambassador Tai's Meeting with European Commission Executive Vice President for a Europe Fit for the Digital Age Margrethe Vestager](), Office of the United States Trade Representative, April 8, 2022

3 — U.S. Industrial Policy in Motion— 3

[In One Sentence]

- President Biden invoked the Defense Production Act to support domestic production of critical minerals.
- The Senate introduced a bill to counter China's dominance of critical mineral supplies by working with the Quad countries.
- Democratic Senators questioned the feasibility of passing the outbound investment screening provision in the House's America COMPETES Act.

[Mark the Essentials]

- The Department of Defense has been directed to support domestic mining, beneficiation and value-added processing projects as well as the relevant research and studies for critical materials.
- Supported by a bipartisan group of Senators from the Finance Committee, the bill aims to build a more reliable and secure supply chain by partnering and launching discussions with Australia, India and Japan.
- Senate Finance Committee Chair Ron Wyden called the outbound screening mechanism "a very, very good idea" but was concerned whether the provisions would get enough support from Republicans.

[Keeping an Eye On...]

- The Biden administration, to its credit, is 'walking the talk' on recharting a modern 21st century industrial strategy for America. The administration's industrial policy is framed in the context of its "extreme [strategic] competition" approach towards China. It is geared towards utilizing existing statutory authorities to encourage and expand the domestic advanced manufacturing base, especially for critical supply chain items (semiconductors, large-capacity batteries, critical minerals and materials, etc.). Among the existing statutory authorities, none is perhaps more powerful than the Defense Production Act (DPA). Enacted at the time of the Korean War, it confers extraordinarily broad authority to the President to intervene economically as s/he deems fit in order to expedite and expand the supply of resources from the U.S. industrial base to support national security goals. With economic security increasingly becoming an ever-greater facet of national security, the invocation of the DPA to expedite the domestic production of critical minerals is a prime example of the administration's readiness to deploy industrial policy tools to achieve national economic security ends. Beijing would be well-advised to take note too. Smart industrial policy preempts the need for reactive industrial policy investments, as has been the case for China in its basic scientific research and instrumentation as well as semiconductor sectors following the imposition of technology controls by the Trump and Biden administrations.

[**Expanded Reading**]

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- Bill in US Senate to curb US' dependence on China for critical minerals, *Business Standard*, April 1, 2022
- Biden Invokes Cold War Statute to Boost Critical Mineral Supply, *The New York Times*, March 31, 2022 [Paywall]
- King, Colleagues Introduce Bipartisan Bill to Curb US Dependence on China's Minerals, U.S. Senator Angus King Press Release, March 31, 2022
- Memorandum on Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as amended, The White House, March 31, 2022

TnT ICAS TRADE N TECH DISPATCH

May 5, 2022

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What's Been Happening

1 — A Window of Opportunity to (Not) Adjust China Tariffs — 1

[**In One Sentence**]

- China has displayed a visible interest in engaging with the U.S. on trade-related issues.
- U.S. Trade Representative Katherine Tai previously said that the U.S.-China trade relationship is continuing to undergo difficulties.
- The Biden administration is looking to adjust some of the currently active Trump administration-era tariffs against Chinese imports.
- The first Section 301 tariffs on Chinese goods are currently set to expire on July 6, 2022.

[**Mark the Essentials**]

- A Chinese embassy official told reporters that China "stands ready" to engage the U.S. at any time, but noted that the U.S. has not formulated a clear plan for the bilateral economic and trade relationship.
- Tai conceded that the U.S. does not have a vision for the long run of the U.S.-China relationship, adding that the "political" perspective on the issue should not be whether the approach towards China appears tough enough.
- Top U.S. officials said the administration is "looking at" adjusting the tariffs on China from an inflation control perspective.
- The Section 301 tariffs could be extended if a U.S. beneficiary of the tariffs submits a petition between May 7 and July 6 of this year.

[**Keeping an Eye On...**]

- As per the Section 301 statute, tariffs imposed under its authority are due to expire four years after their imposition, absent a request for continuation from domestic industry within the last 60 days prior to their expiration. Thus, the Trump administration's List 1 additional tariffs of 25 percent *ad valorem* on $34 billion of Chinese imports expire on July 6, 2022. If one or more requests for continuation are submitted, USTR is then obliged to publish an additional notice after July 6 announcing the continuation of the tariff action and thereafter proceed with a review of the tariffs. At that time, all interested parties will have an opportunity to provide comments. Because it is highly likely that a domestic beneficiary industry will seek the continuation of the tariffs, it is almost certain that a full review of the tariffs will be conducted later this summer. Cabinet-level officials are already weighing in on the debate, but it is not clear when the final decision on the tariffs will be made. Whenever the decision is made, at that point of time the Biden administration will for better-or-worse 'own' the Section 301 tariffs. For those inclined to get their hopes up of an orderly return to a low tariff order, this TnT Dispatch would gently counsel otherwise. The Biden administration champions itself as a guardian of the rules-bound liberal international order. On trade, the administration is not liberal; it is protectionist. And as for the Section 301 tariffs themselves, they are not rules-bound; a WTO panel has judged them to be illegal.

[**Expanded Reading**]

- China says it wants to resolve trade issues, but is waiting on the U.S., *Inside U.S. Trade*, April 27, 2022 [Paywall]
- The Trade Off: Economics versus the Environment, Hochschule für Politik München, April 26, 2022 [video]
- Yellen Signals Openness to Paring Tariffs on Imports From China, *Bloomberg*, April 22, 2022 [Paywall]
- White House adviser Singh suggests U.S. could lower tariffs on Chinese goods, *Reuters*, April 21, 2022 [Paywall]
- Section 301 Tariff Exclusions on U.S. Imports from China, Congressional Research Service, February 17. 2022

2 — Export Controls and Sanctions: The Shield and Sword— 2

[**In One Sentence**]

- A top EU official said the next Trade and Technology Council (TTC) meeting in mid-May will provide an opportunity for in-depth discussion on export controls.
- Several technology groups have asked the Biden administration to include export controls in the Indo-Pacific Economic Framework (IPEF).
- While China cautioned companies against submitting to coercion to "choose sides" amid unilateral sanctions on Russia, the Bureau of Industry and Security (BIS) has noted that companies operating in China have largely adhered to U.S. export control measures.
- The U.S. and the EU jointly warned China against any support for Russia's aggression against Ukraine.

[**Mark the Essentials**]

- U.S. and EU officials said prior works through the TTC allowed them to better coordinate export control measures against Russia. Meanwhile, European Commission's Valdis Dombrovskis said the U.S. and the EU will discuss how they can continue to align export control measures "even beyond Russia" at the next TTC.
- Technology groups urged IPEF members to work on aligning export controls and coordinate implementation to "the greatest possible" extent.
- BIS said it is working with the Homeland Security Department and the FBI to ensure compliance with the Russia sanctions and will launch an investigation into possible export controls violations based on industry tips and intelligence reports.
- The joint U.S.-EU statement specifically urged China not to "circumvent or undermine sanctions against Russia" and said such actions will have consequences for their respective relationships with China.

[**Keeping an Eye On...**]

- Technology-focused outcomes are expected to be at the forefront of the next Trade and Technology Council (TTC) meeting scheduled for later this May. In Pittsburgh last September, the U.S. and EU established 10 working groups on areas such as export controls, supply chains, technology standards, and artificial intelligence. The export controls working group has been identified as a potential area of early harvest outcomes. Russia's war in Ukraine has, if anything, been an early test of the successful application of coordinated export controls. Whether the possibility exists to align export control measures "even beyond Russia"—i.e., to China—remains to be seen. It bears noting in this regard that, while Huawei has been at the receiving end of stringent U.S. export control measures for some time now, there has been no complementary technology control measure introduced by the Europeans against Huawei or China. And if anything, Russia's savage actions in Ukraine has diverted Euro-Atlantic attention from China back to the old continent—though judging by the strong language emanating from Washington and Brussels against Beijing, one would be forgiven for thinking differently. Topics such as misinformation and disinformation, which were never intended to be priority topics, have now come to the fore within the Council's work amid the war in Ukraine. Nevertheless, as Washington pushes for greater export control coordination with its allies and partners through multiple bilateral and multilateral economic frameworks as well as sharpens its sanctions sword, the scope of minilateral coalitions on trade and technology controls and decoupled supply chains congealing into a hostile bloc-based rivalry should not be discounted.

[**Expanded Reading**]

- Readout of Secretary Raimondo's Meeting with European Commission Executive Vice-President Margrethe Vestager, U.S. Department of Commerce, April 28, 2022
- Dombrovskis: Next TTC meeting a 'good venue' to deepen export controls talks, *Eudebates.tv*, April 25, 2022 [video]
- U.S.-EU: Consultations Between EEAS Secretary General Stefano Sannino and United States Deputy Secretary Wendy Sherman, U.S. Department of State, April 22, 2022
- Readout of Secretary Gina M. Raimondo's Meeting with European Commission Executive Vice President Valdis Dombrovskis, U.S. Department of Commerce, April 21, 2022
- SEMI comments on the Indo-Pacific Economic Framework, Regulations.gov, April 11, 2022
- Intel - DOC Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework, Regulations.gov, April 10, 2022
- SIA Response to DOC-USTR Federal Register Notices regarding IPEF Comments, Regulations.gov, April 10, 2022

3 — The IPEF as a Model of the New Multilateral Economic Order?— 3

[**In One Sentence**]

- U.S. stakeholders have advised the Biden administration to incentivize participation in the Indo-Pacific Economic Framework (IPEF) through market access commitments and infrastructure financing.
- Taiwan and the Philippines have both expressed interest in joining the IPEF.
- South Korea has officially decided to pursue membership in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
- The Office of the USTR said it has been working with "like-minded producing countries" to tackle bottlenecks and chokepoints in the semiconductor supply chain.
- The WTO, IMF, OECD and World Bank jointly called for international cooperation to establish rules for industrial subsidies.

[Mark the Essentials]

- While they have generally agreed that market-access commitments would be ideal, U.S. stakeholders have also proposed alternative approaches including incentives conditional on participation in particular pillar(s), access to infrastructure financing, and assurances that the U.S. will not levy Section 201 or Section 301 tariffs against IPEF participants.
- The Philippines' Trade and Industry Secretary Ramon Lopez said that the Philippines' "offensive interests" are aligned with the objectives of the IPEF, including but not limited to advancing resilience and inclusiveness and competitiveness.
- According to U.S. Trade Representative Katherine Tai, semiconductors will likely touch every pillar of the Framework.
- In a joint report, the heads of the multilateral organizations warned that failure to establish international rules on industrial subsidy could erode public trust on open trade and lead to backpedaling on economic prosperity.
- Beijing has said it is open to discussions on industrial subsidies as long as agricultural subsidies are also on the table for discussion.

[Keeping an Eye On...]

- Within the space of a few days, Treasury Secretary Janet Yellen and US Trade Representative Katherine Tai have both alluded to a vision of a new international economic order where economic efficiency should cease to be the primary concern of economic policymaking and "free but secure trade" featuring "friend-shoring" of critical sectors and working with "trusted countries" should become the norm. Both cabinet officials have paired their respective observations with hawkish statements on China. It bears noting though that the two officials are coming from very different places regarding China. Secretary Yellen is speaking from a position of strength, knowing that the 'shock and awe' financial sanctions imposed on Russia and its central bank have rocked many economic officials back on their heels in emerging markets, including in China. On the other hand, USTR Tai is speaking from a position of weakness, attempting to mask her failure to draw up a minimally intelligible China trade policy with hawkish bluster toward Beijing. This having been said, the soon-to-be-released Indo-Pacific Economic Framework (IPEF) could well be an early prototype of the brave new multilateral economic order that has been envisioned. IPEF features 'like-minded countries', excludes China, elevates non-commercial considerations to the fore, favors an *a la carte* approach towards trade negotiations over the single undertaking approach, and most importantly, is flexibly conceived so as to facilitate both entry and exit. It is fairly clear what the Biden administration is attempting to sell to its allies and partners; only time will tell whether these allies and partners are just as eager to purchase this product—or not.

[Expanded Reading]

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- PHL seeking to join US-led Indo-Pacific Economic Framework, *Business World*, April 19, 2022
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TnT ICAS TRADE N TECH DISPATCH

May 23, 2022

Volume 2, Issue 10

What's Been Happening

1 — Trade and Technology Council Round Two — 1

[**In One Sentence**]

- At the second meeting of the U.S.-EU Trade and Technology Council (TTC), the United States and the European Union lauded prior TTC efforts for fostering an "unprecedented level of cooperation" on export controls and sanctions against Russia.
- The two sides committed to work on Russia-related supply chain disruption and combat Russian disinformation.
- The U.S. and EU also resolved to effectively address trade-distortive non-market policies and practices, including by working trilaterally with Japan.
- Furthermore, the two sides agreed to strengthen collaboration on international standardization activities, research and development in emerging technologies, as well as general supply chain resiliency.

[**Mark the Essentials**]

- The two sides maintain that they share a desire to defend their security through coordinated actions on export controls of critical and dual-use technologies as well as on investment screening tools.
- The U.S. and the EU committed to develop a common analytical framework for identifying foreign information manipulation and interference. The framework will initially focus on ongoing Russian actions to manipulate and censor information.
- According to U.S. Commerce Secretary Gina Raimondo, the U.S. and the EU plan to reach an agreement on the alignment of their export control regimes with regard to key technologies by the third TTC meeting. The deal could include other countries, such as Japan, and will ostensibly focus on semiconductors.
- While recognizing the TTC's commitment on semiconductor supply chains and the green transition, industry representatives called for more clarity and transatlantic coordination on issues such as state subsidies for chips and securing critical materials essential to the green technology transition.

[**Keeping an Eye On...**]

- Logging in at a mammoth 48 pages, the joint statement issued at the conclusion of the second meeting of the TTC must surely be one for the record books. As for the meeting itself, it was not quite as historic, although by all accounts it seems to have been a successful one. The principals shepherded the TTC framework from agenda-setting to the nitty-gritty of policy setting, including on the issue of export controls. A set of roadmaps, mechanisms, cooperation frameworks, and taskforces were also set in motion. The binding glue supplied by Vladimir Putin's brutal and unlawful invasion of Ukraine, while important, was not the overriding reason for the meeting's success. But the spillover effects of the transatlantic measures related to Russia will have significant implications going forward for trade and technology ties between not only Washington and Beijing but also Europe and China. That said, the U.S. and the EU's work within the TTC is just beginning and they would be well advised not to count their chickens before they hatch. More than four years ago, the U.S., the EU and Japan optimistically set in motion a ministerial-level working group to devise updated international rules on industrial subsidies, primarily as a means to call out Chinese practices. Today, the three parties have precious little to jointly show in this regard. At the end of the day, what is important is not how you start but how you finish, and Washington and Brussels should take heed of that dictum as they begin to deepen their engagement within the TTC.

[**Expanded Reading**]

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2 — Indo-Pacific Economic Framework (Finally) on the Table — 2

[**In One Sentence**]

- U.S. President Biden will formally launch the Indo-Pacific Economic Framework (IPEF) in Japan this week.
- The administration has selected Sharon Yuan to lead staff-level work on the IPEF negotiations.
- A majority and bipartisan group of Senators urged the Biden administration to include Taiwan in IPEF.

[**Mark the Essentials**]

- The White House said that President Biden will deliver remarks to launch IPEF on May 23rd. He will be joined by U.S. Commerce Secretary Gina Raimondo and U.S. Trade Representative (USTR) Katherine Tai.
- Before joining the Commerce Department, Yuan was President of the Asia Group. She previously served at the Treasury Department and worked on the Trans-Pacific Partnership.
- Staff-level work at USTR will be led by Dawn Shackleford, Assistant USTR for Southeast Asia and the Pacific.
- Led by Senator Bob Menendez and Senator Jim Risch, 52 Senators argued that including Taiwan in the IPEF has economic and security benefits and helps strengthen "our collective resilience against coercion."

[**Keeping an Eye On...**]

- The much discussed Indo-Pacific Economic Framework (IPEF) will finally see the light of day later this week, when President Biden formally launches the initiative in Tokyo during his visit to Japan to participate in the meeting of the Quad countries. The launch of the Framework will immediately usurp the Quad's economic role in the Indo-Pacific region, given the overlap of issue areas and the larger membership of the Framework. Many questions regarding IPEF will continue to swirl even after its launch—the most notable one perhaps being just how this administration plans to harmonize the Framework as a liberalizing and integrative economic and trade policy endeavor for the Asia-Pacific with the existing complement of conventional trade agreements, such as RCEP and CPTPP. But one question will surely be answered this week: Will Taiwan be included as a founding member of the Framework? A reading of the tea leaves suggests that it will not. And staying with the question of membership, will India be a founding member? New Delhi at this late hour still says it is "examining" the initiative, although with Prime Minister Modi's presence at the IPEF launch event in Tokyo, one must assume that it will be inside the Framework, however marginally attached. Most observers submit that New Delhi is incapable of measuring up to the standards across most (if not all) of the Framework's pillars. And had the substantive content of IPEF not been watered down in its final days before launch, many of the ASEAN states too might have stayed on the sidelines. IPEF will be launched; that is for certain. Whether it will live beyond its infancy, and especially if there is a change of administration, remains to be seen, however.

[**Expanded Reading**]

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- Commerce Secretary Gina Raimondo to Join Economic Cooperation Talks in Asia, Represent Biden Administration at World Economic Forum in Switzerland, U.S. Department of Commerce, May 19, 2022
- US Picks Negotiators for Biden's Indo-Pacific Economic Framework, *Bloomberg*, May 18, 2022 [Paywall]
- Risch, Menendez Lead 50 Colleagues in Letter to POTUS Championing Taiwan's Inclusion in Proposed Indo-Pacific Economic Framework (IPEF), United States Senate Committee on Foreign Relations Press Release, May 18. 2022

3 — China Tariffs in Review: To Keep or Not to Keep?— 3

[**In One Sentence**]

- The Office of the U.S. Trade Representative has initiated its four-year review of the Section 301 tariffs on Chinese goods which could bring changes to the tariffs.
- President Biden said the administration is still "discussing" whether to terminate certain Section 301 tariffs.
- The U.S. International Trade Commission (ITC) has begun to investigate the Section 301 and Section 232 tariffs' impact on U.S. industries.

[**Mark the Essentials**]

- According to U.S. Trade Representative Tai, tariff reduction can be a possible tool to combat inflation, but that doing so will also cede the leverage that Washington enjoys *vis-à-vis* Beijing.
- Acknowledging the administration's internal debate over its China tariff policy, U.S. Treasury Secretary Janet Yellen reiterated that cutting tariffs could be beneficial to lowering inflation for U.S. consumers and firms.
- The ITC's investigation is mandated by Congress and will include a public hearing on July 21, 2022.

[**Keeping an Eye On…**]

- Sixteen months in, the Biden administration is finally grappling with the fate of the Trump-era Section 301 tariffs imposed on China. This internal administration debate should have taken place within the first 90 days of its entry into office. Even at this late hour, the debate is not taking place of the administration's own volition. Rather, it has been occasioned by the language of the Section 301 statute which requires that the tariffs mandatorily sunset after four years unless there is a required need for extension. Understandably, then, there are strong votaries within the administration calling for the extension of some or most of the tariffs. To its lasting shame, this group includes the Office of the United States Trade Representative—an agency that until its capture by protectionist interests during the Trump administration was overwhelmingly pro-trade at home and abroad and in favor of overseas market opening. USTR claims an imaginary leverage in its dealings with Chinese counterparts stemming from the tariffs. Arrayed on the other side are voices, such as Treasury Secretary Yellen, who cite—and exaggerate—the disinflationary appeal of lifting the tariffs at a time of stubbornly-high inflation unseen in decades. Whichever way this debate is internally resolved, and the portents are for a modest drawdown of selective tariffs, one thing is clear: the genie of protectionism has well and truly been unleashed within the Beltway and it is not about to return anytime into the lamp. The implications too are profound, and extend beyond U.S.-China relations and the U.S. business community's interests across the Pacific. It gets to the question whether the sun has begun to set on the role of the United States as a liberalizing force in the global economy. It is not coincidental that the focus of the Indo-Pacific Economic Framework, as well as the conversations within the US-EU TTC, have focused on resilience and security with at best a token bow towards liberalizing and boosting transpacific and transatlantic trade, respectively.

[**Expanded Reading**]

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ICAS TRADE N TECH DISPATCH

June 3, 2022

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What's Been Happening

1 — "New" China Strategy Sheds Little Light on Current Trade Deadlock — 1

[In One Sentence]

- U.S. Secretary of State Anthony Blinken set forth the Biden administration's approach to China in a delayed public speech made at George Washington University.
- The Biden administration remains conflicted on whether or not to remove the China Section 301 tariffs.

[Mark the Essentials]

- In his address, Secretary Blinken said that the United States is not "looking for conflict or a new Cold War" but urged Beijing to refrain from undermining the rules-based international order, listing concerns including the use of mass surveillance, the South China Sea, trade practices and China's relationship with Russia.
- Summarizing the Biden administration's overall strategy as "invest, align, compete", Blinken also called on the congressional leadership to pass the China competition bill as soon as possible.
- After President Biden said that he is considering whether to remove the tariffs, U.S. Trade Representative Katherine Tai argued that the United States must be "strategic" about the final decision. Tai previously said that the tariffs offer Washington leverage in its approach to modify China's trade practices.

[Keeping an Eye On...]

- Invest. Align. Compete. In a long-awaited and wide-ranging policy speech, Secretary of State Antony Blinken laid out the Biden administration's China strategy mantra. The administration has certainly 'invested'. Its effort to forge domestic economy-wide 'industrial policy' outcomes is perhaps the most ambitious and activist of any administration since the end of World War Two. The administration has certainly 'aligned'. It has restored multilateral and regional cooperation with allies and partners after Donald Trump's 'America First' interlude. On the 'compete' front, however, success is questionable. The administration has framed its approach towards China as one of 'extreme competition' (within guardrails). In reality, the approach has been focused not so much on competing as much as selectively tilting the playing field through a series of supply chain decoupling and trade enforcement measures with 'in-group' allies and partners. The protectionist whiff surrounding the Section 301 tariff renewal debate in Washington encapsulates this less-than-forthright commitment by the administration to leveling the playing field. Of course, this state of affairs could change later this summer; particularly if Congress is successful in passing its extensive China competition bill. Be that as it may, Secretary Blinken's speech is worth embracing for its milder tone on China. During the latter years of the Trump administration, just the announcement of a policy speech on China left a foreboding of the depths to which the bilateral relationship would plumb in the weeks and months ahead. This is, thankfully, no longer the case.

[Expanded Reading]

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- US Must Be 'Strategic' on China Tariffs, Trade Chief Says, *Bloomberg*, May 23, 2022 [Paywall]
- Both US, China benefit from bilateral commercial ties: US business leader, *China Daily*, May 19, 2022
- China Market Challenges, International Trade Administration, January 4, 2022
- U.S. Statement on the Trade Policy Review of China, Office of the United States Trade Representative, October 22, 2021

2 — Official Launch of IPEF Casts Doubt on Trade Liberalization — 2

[In One Sentence]

- On a diplomatic trip to East Asia, U.S. President Joe Biden officially launched the Indo-Pacific Economic Framework for Prosperity (IPEF).
- IPEF will focus on four pillars: fair and resilient trade; supply chain resiliency; clean energy, decarbonization and infrastructure; and effective taxation, anti-money laundering and anti-bribery.
- Analysts are uncertain about the extent of India's participation in IPEF, but 12 other nations are listed as initial partners in IPEF, with Fiji also joining soon after its launch.

[Mark the Essentials]

- The initial 12 IPEF partners are: Australia, Brunei, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam. Fiji later joined as the 14th founding member.
- According to U.S. Trade Representative Katherine Tai, IPEF's trade pillar will cover issues such as "the digital economy and emerging technology, labor commitments, the environment, trade facilitation, transparency and good regulatory practices, and corporate accountability."
- U.S. officials later confirmed that IPEF will not include market access, tariff liberalization or exemption from U.S. trade law enforcement, but will instead provide benefits through "incentives and opportunities".
- Commentators have observed that India's stance on data and digital economy makes it difficult to join the trade pillar of IPEF, but the other three pillars could be attractive as India seeks an alternative to China.

[Keeping an Eye On...]

- After many months of exertion, the Biden administration has delivered not a mountain but a molehill. On May 23, the Indo-Pacific Economic Framework for Prosperity (IPEF) was launched in Tokyo, Japan alongside a sparse two-page joint statement. One would be forgiven for thinking that negotiations among the parties on the four pillars will now proceed, but this line of thinking is incorrect. Tokyo marked the launch of "collective discussions [only] towards future negotiations" on the various pillars—hardly a resounding affirmation of will and purpose. At this time, there are more questions than answers regarding the fleshing out of IPEF's bare-boned skeletal pillars, many of which will presumably be answered in the fullness of time. At this stage, IPEF appears to be more as a 'club' for joint standard setting as well as a vehicle for recreating a secure and resilient closed-circle supply chain that strips China out of its midst. For IPEF to leave its mark in the region's economic architecture, it must advance economic liberalization and integration in the Indo-Pacific region. And it must not become the Asian equivalent of the USMCA (U.S.-Mexico-Canada) agreement; the first preferential trade arrangement to actually raise—not lower—cross-border barriers. Time will tell whether IPEF will prove its detractors wrong.

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- FACT SHEET: In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity, The White House, May 23, 2022
- On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework, The White House, May 23, 2022
- Southeast Asia's reliance on China may upend US-EU plan for global tech standards, *South China Morning Post*, May 19, 2022 [Paywall]

On the Hill

[**Legislative Development**]

- House Speaker Nancy Pelosi said that Congress is "confident" about passing the China competition bill, "hopefully" before July 4th, but sources said that negotiators have yet to make progress on a number of key issues in the bill.

[**Hearings and Statements**]

- A majority of the Senate urged the Biden administration to include Taiwan in the Indo-Pacific Economic Framework, citing supply chain needs as well as strategic and security concerns.
- A bipartisan group of Senators urged Biden to maintain the China tariffs in their current form and prioritize the enforcement of Phase One commitments.
- Lawmakers lauded the launch of the Indo-Pacific Economic Framework, but many reiterated the need to include market-access commitments.
- Eight Republican lawmakers called for more "meaningful" consultation with Congress on trade issues, including on the IPEF negotiations.

[**Keeping an Eye On...**]

- The last time Congress adjourned early to enable senators and representatives to return to their districts and dive into midterm electioneering mode, the august body left an important trail of China-related accomplishments. The massive National Defense Authorization Act (NDAA) for fiscal year 2018-2019 barred China from participating in future Rim of the Pacific (RIMPAC) exercises (the 2022 edition of which will start at the end of June) and encouraged the administration to support Taipei's acquisition of asymmetric warfare and undersea warfare capabilities. More importantly, by way of the Foreign Investment Risk Review Modernization Act, tucked away like its counterpart Export Control Reform Act in NDAA 2018-2019, the Treasury-led Committee on Foreign Investment in the United States (CFIUS) was subject to its most comprehensive expansion in order to block Chinese merger, acquisition or takeover of important U.S. companies. In a midterm year when Congress is once again seized of a momentous China-related legislative matter—in this instance, the 'conferencing' of the China competition bills (America COMPETES Act and USICA), it would be useful to remember this recent history. At the time, Republicans held a majority in both the executive and legislative branches but passed the omnibus NDAA legislation on a bipartisan basis. Today, it is the Democrats who hold both the executive and legislative branches. The question going forward is this: can the Democrats make the necessary compromises this time around, particularly in the trade provisions of the COMPETES Act, to enable the 'conferenced' China competition bill to pass on a bipartisan basis? The clock is ticking.

[**Expanded Reading**]

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TnT ICAS TRADE N TECH DISPATCH

June 17, 2022

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What's Been Happening

1 —Solar Panel Row Shows Biden's Commitment to 'Green Transition' — 1

[**Executive**]

- The Commerce Department is investigating whether solar panels from Cambodia, Malaysia, Thailand and Vietnam, using parts and components from China, are circumventing U.S. Anti-Dumping & Countervailing Duty (AD/CVD) orders on Chinese solar cells and modules.
- Two months into the investigation, President Biden has imposed a two-year moratorium on applying tariffs to solar imports from the four Southeast Asian countries.
- Commerce Secretary Gina Raimondo told the Senate that it is "exceedingly unlikely" that the probe could lead to steep tariffs but resisted calls for an expedited preliminary determination.
- Biden has also invoked the Defense Production Act to turbocharge the domestic solar industry.

[**Industry**]

- The Commerce Department's investigation was initiated after a petition from Auxin Solar, which claimed that China was using the four Southeast Asian countries as "export platforms" to evade AD/CVD orders.
- Several industry groups under the Solar Energy Industry Association (SEIA)—which includes some U.S. subsidiaries of Chinese companies subject to the original orders—opposed the Commerce Department probe, arguing that it would hurt U.S. imports.
- U.S. solar panel installations had slowed over the last two months amid possibilities of retroactive tariffs extending from the Commerce Department's probe as well as supply chain disruptions.

[**Legislative**]

- Several Senators urged the Commerce Department to accelerate the solar investigation and avoid imposing retroactive tariffs, arguing that the probe was causing "massive disruption" in the U.S. solar industry.
- Meanwhile, another group of lawmakers, all Democrats, criticized SEIA for lobbying against the probe and questioned its claim that the trade enforcement mechanism was leading to an import slowdown.
- Passed by the House, the America COMPETES Act would allow Commerce to expand existing AD/CVD restrictions to cover "circumventing imports" from third countries through an expedited process.

[**Mark the Essentials**]

- Imports from Malaysia, Vietnam, Thailand and Cambodia account for more than half of total U.S. solar panel supply. 80 percent of the world's solar cells and modules are currently produced in China.

- In 2012, the Commerce Department imposed AD/CVD orders against solar module imports from China after determining that Chinese companies sold imports at less than their fair value and received unfair government subsidies.
- In 2018, the Trump administration imposed additional tariffs on Chinese solar modules, citing China's "unreasonable and discriminatory" practices on technology transfer and intellectual property.
- Highlighting the dependency of U.S. solar companies on panel imports, a bipartisan group of more than 20 Senators argued that expanded tariffs would significantly undercut the growth of the solar industry and raise energy prices for U.S. consumers.
- Arguing that the solar industry is recovering from a similar tariff petition last year, SEIA said that the Commerce Department's decision to launch the circumvention investigation "responds to the self-interests of one company" and will lead to market volatility.
- Meanwhile, lawmakers led by Senate Finance Committee members Sherrod Brown and Bob Casey say that, given China's virtual global monopoly on solar panel production, AD/CVD laws are critical in shielding domestic manufacturers against unfair trade practices. The lawmakers noted national security concerns with China's dominance in the solar market and have called domestic production of solar modules a necessary component of "our burgeoning electrical grid and infrastructure".

[**Keeping an Eye On…**]

- Solar is the classic case of a 21st century industry that is riven by tension between its labor and environmental wings. Labor would much prefer that domestic trade enforcement tools are utilized to the hilt to erect tariff barriers behind which upstream production capacity and good-paying union jobs are created. Conversely, environmentalists (and industry) would much prefer that imported solar modules flow freely, so that the clean energy transition can be accelerated. Typically, the regulatory dice tends to be stacked in favor of defensive interests petitioning for protection—and protectionism. Not this time, however. It is a measure of the Biden administration's overriding commitment to the green transition that it has chosen to not just side with the environmentalist (and industry) camp but also: (a) declare a national emergency pursuant to Section 318(a) of the Tariff Act of 1930 and authorize a moratorium on tariffs on solar cells and modules from four Southeast Asian nations, and (b) issue a determination pursuant to Section 303 of the Defense Production Act and accelerate the domestic rollout of clean energy components and technologies, including solar panel parts. Auxin Solar, the impacted U.S. solar cell producer, has already threatened to challenge the administration's action in court. No matter how the court rules—and courts tend to defer to presidential authority at times of a declared emergency—one thing is clear: activist 'industrial policy' is wisely being put to work.

[**Expanded Reading**]

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2 — Breaking The Impasse At WTO MC12, *If Only Slightly* — 2

[**In One Sentence**]

- After years on hiatus, the World Trade Organization's 12th Ministerial Conference (MC12) was held from June 12-15 in Geneva.
- Key issues discussed included the intellectual property waiver of COVID-19 vaccines, WTO reform, the curbing of harmful fisheries subsidies, and global food security.
- The draft of the "MC12 Outcome Document" calls for a member-driven and open discussion on WTO reform as well as the set-up of a "well-functioning dispute settlement system" by the time of convening of MC13.
- The United States has said it welcomes the trend that WTO members resolve trade disputes at panel level without attempts to appeal.
- Brazil proposed to have annual WTO ministerial meetings in an effort to facilitate negotiation and the delivery of concrete results.

[**Mark the Essentials**]

- The United States and China are divided over whether COVID-19 IP waiver language should explicitly exclude China, while some developing countries criticized the current version of the COVID-19 waiver as significantly more limited than the initial proposal.
- Concerning fishery subsidies, WTO members maintain disagreements over the extent of special and differential treatment for some developing countries, while the United States proposed to specifically target subsidies related to forced labor.
- The Biden administration has called for reform of the WTO to "recognize global developments", "move past the old paradigms" and "look beyond simple dichotomies like liberalization vs. protectionism".
- The United States has criticized the WTO's Appellate Body for allegedly exceeding its mandate when interpreting the WTO agreements, especially concerning subsidies, trade remedies and technical product standards.
- Since the WTO's Appellate Body went into paralysis due to the U.S.' blocking veto, WTO members such as the European Union have set up alternative arrangements for an appeals process that is subject to prior consent by both parties to a dispute.

[**Keeping an Eye On...**]

- Heads-of-delegation of the WTO member states are, at this time of writing, working into the wee hours of the night in Geneva to hash out a last-minute package deal at MC12. Sources suggest that the package will feature a limited pact on fisheries subsidies and a slimmed-down agreement on new intellectual property flexibilities for producing vaccines. For an organization that has been short on delivery, even a limited package is to be welcomed. That said, it is not too early to prognosticate on the WTO's future as a liberalizing rulemaking body, given that there has been little rulemaking and even lesser liberalization of late under its aegis. In important respects, the WTO resembles an institutional exemplification of the Kindleberger Trap. Charles Kindleberger, an economic historian and leading architect of the Marshall Plan, had ascribed the collapse of the international economic and monetary system in the 1930s to the failure of the incumbent great power, Great Britain, and the rising great power, the United States, to furnish the system's public goods requirements. The former was weary and incapable of underwriting the system's requirements; the latter was as yet inward-looking and unwilling to do so. Today, as its power grows, does China have the character and imagination to step forward as an important provider of public goods insofar as the WTO-centered multilateral trade and investment order is concerned—and especially at a time when harsh streaks of economic populism and nationalism is evident in U.S. trade policymaking? For the WTO to survive and prosper in the decades ahead as the crown jewel of global multilateralism, China must commit to its enlightened self-interest today and pursue economic liberalization at home and institutional revitalization abroad.

[**Expanded Reading**]

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- WTO Looks to Reach Trade Deals With its Fate on the Line, *VOA News*, June 11, 2022
- What's Next for the WTO?, Council on Foreign Relations, June 10, 2022
- WTO Crisis: Is There a Way Out?, *Geo-Economy of the Future*, June 8, 2022
- World Trade Organization—Lead, Follow, or Get Out of the Way, Center for Strategic and International Studies, June 6, 2022
- USTR Releases Annual Report on China's WTO Compliance, Office of the United States Trade Representative, February 16, 2022

On the Hill

[**Legislative Development**]

- House Ways & Means trade subcommittee Chair Earl Blumenauer said Congress can finish reconciling the House's America COMPETES Act with the Senate's USICA by July 4, but some Republican lawmakers are less optimistic.
- More than 50 House lawmakers urged congressional leadership to include the Generalized System of Preferences (GPS) reform in the final version of the competition bill.
- Led by Senator Mitt Romney and Senate Majority Whip Dick Durbin, four lawmakers opposed some USICA provisions that would orient research funding to states that have received few NSF funds.
- House Ways & Means Committee member Stephanie Murphy introduced a bill that would require the Treasury department to analyze the impact of Section 301 China tariffs on inflation.
- Biden's nomination for Chief USTR IP negotiator remains unaddressed as Republican Senators maintain their opposition to the WTO IP waiver.

[Hearings and Statements]

- At a U.S.-China Economic and Security Review Commission hearing, experts noted China's deep integration and pervasive presence in global supply chains but also noted the country's consequent vulnerabilities and dependency on the U.S. and its allies.
- In an event at the Cato Institute, Senator Pat Toomey advocated for free trade and criticized what he considered protectionist policies by the Trump and Biden administration.
- With the midterm elections approaching, Democratic lawmakers declared varying positions on China-related tariffs and have sought to score a victory with the wide-ranging competition bill, while Republicans criticized their opponents for not being tough enough on China.

[Keeping an Eye On...]

- With the clock ticking down to the July 4th holiday, congressional conferees charged with reconciling the House's America COMPETES Act with the Senate's U.S. Innovation and Competition (USICA) Act have been busy whittling down their points of difference. The differences are as yet many and a compromise bill is unlikely to be ready by the July 4th break. Given the paramount importance of passage of this China-focused competition bill, a senior congressional leader-led effort is currently underway to pare down the competing bills to their 'must-pass' essentials. Reportedly, House Speaker Pelosi and Senate Majority Leader Schumer have instructed the conference committee chairs to accelerate the talks and cross out that which cannot be reconciled, which presumably pertains to part or many of the trade provisions within the House bill. Politics is the art of the possible, and one should expect political deal-making to deliver the possible in the form of a slimmed-down China competition bill before the 117th Congress adjourns this August.

[Expanded Reading]

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- Hearing on "U.S.-China Competition in Global Supply Chains," U.S.-China Economic and Security Review Commission, June 9, 2022
- Murphy Introduces Bill Requiring Federal Government to Assess Impact of U.S. Tariffs on Inflation, U.S. Congresswoman Stephanie Murphy Press Release, June 8, 2022
- H.R. Repeal Tariffs to Reduce Inflation Act of 2022
- The (Updated) Case for Free Trade, Event by the Cato Institute, June 8, 2022
- The Republicans Could Win the U.S. Midterms. Here's What that Means for the World, *Foreign Policy*, June 2, 2022 [Paywall]
- Romney, Durbin Lead Call for Robust Research Funding in Final Competition Bill, U.S. Senator for Utah Mitt Romney Press Release, May 31, 2022
- Letter from Rep. Stephanie Murphy, Rep. Walorski and Other Members of Congress seeking GSP CNL reform in the Final China Competition Bill, U.S. Congress, May 20, 2022
- Many GOP candidates are bashing each other for ties to China, *Washington Post*, May 11, 2022 [Paywall]
- 'Tough on China' gains traction as electoral test, *Politico*, February 10, 2022

TnT ICAS TRADE N TECH DISPATCH

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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.

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- 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.

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- 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.

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- 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
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