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## What's Been Happening

**1 — U.S. Retailing Approach to Digital Trade Amid MC13 — 1****[In One Sentence]**

- At the latest round of e-commerce talks at the World Trade Organization (WTO), members expressed strong support and a commitment to concluding the talks soon, ideally by the end of 2023.
- U.S. Trade Representative (USTR) Katherine Tai says she is re-examining the United States' approach to data flows and source codes and will no longer support the relevant proposal in the WTO e-commerce talks.
- U.S. Ambassador to the WTO Maria Pagan told reporters that WTO members have not agreed on delivering on WTO dispute settlement reform by the 13th Ministerial Conference (MC13), to be held in February 2024, adding that the U.S. is "putting in the work" and hopes to "deliver something by next year."

**[Mark the Essentials]**

- According to the co-convenors of the WTO e-commerce talks, the Joint Initiative on e-Commerce talks has "parked" 12 articles, covering such areas as online consumer protection, electronic signatures, spam regulations, open government data, paperless trading, cybersecurity, open internet access and electronic transaction frameworks. The 90 members participating in the talks have also achieved "good progress" on "privacy and telecommunications services disciplines."
- In e-commerce work program meetings held in preparation for MC13, WTO members expressed support for enhancing technical assistance and capacity building and called for more work to extend the moratorium on customs duties on e-commerce.
- In the lead up to MC13, WTO will host a meeting among senior officials to discuss dispute settlement reform, fisheries subsidies, as well as agriculture and trade issues insofar as they relate to bridging development gaps, and thereby lay a strong foundation for the upcoming ministerial conference.
- Biden administration officials have stated that the U.S. remains committed to a "commercially meaningful" deal on data flows and source codes but hopes that the current e-commerce talks can focus on what can be achieved by year-end and to drop proposals that do not have sufficient support among participating members.
- In a statement responding to USTR's withdrawal of support for the data flow and source code proposal at the WTO, Senate Finance Committee Chair Ron Wyden said that USTR was "abandoning our democratic allies" with "virtually zero consultation with Congress." According to Wyden, USTR's position "directly contradicts

its mission as delegated by Congress” and “it may be time to reconsider the degree of that delegation going forward.” Republican lawmakers on the Senate Finance Committee expressed similar sentiments.

### [Keeping an Eye On...]

- Free trade is not an end in and of itself; it is a means to an end. That end is the prosperity and welfare of the consumer. The ultimate purpose of free trade, including free trade in the digital and data flow sphere, is to champion the consumer’s interest. For certain hidebound free trade ideologues, this may be a difficult concept to grasp; for most others, this should not be so difficult to comprehend. In a consequential decision that will resonate for years if not decades, the Biden administration’s Office of the U.S. Trade Representative—a hotbed of the worker’s interest which more often than not does not align with the consumer’s interest in trade policymaking—has let it be known that it will no longer support certain untrammelled provisions in digital trade agreements such as the unrestricted free flow of data across borders, a total ban on data localization requirements, and proscriptions barring the turning over of proprietary source codes. USTR’s decision is part of a larger assessment and reform of digital governance—and in particular the regulatory precepts that govern competition and taxation policy in this sector—by the Biden administration, with a view to modernizing these rules. It was always a long shot to expect, therefore, that international data flow rules could somehow preempt or flout the redrawing of domestic regulation in this sector. That eventuality has now come to pass. Indeed, this decision by USTR to delineate regulatory ‘policy space’ within digital trade agreements is timely, given the dynamism and fluidity of innovation, processes and practices in the sector as well as the fast-paced changes in regulatory best practices. For example, it is now progressively accepted that as internet platforms increasingly rely on artificial intelligence (AI) and machine learning (ML)-based tools for content moderation, ad targeting and delivery, and content ranking and recommendation, it is in the interests of the data-sharing-and-using public that regulations be inscribed that provide vetted researchers access to such platform data so as to ensure accountability around the platforms’ algorithmic systems. Rules demanding such access to algorithmic “black boxes” would have been inconceivable even five years ago. USTR’s decision has come not a day too soon and should be welcomed.

### [Expanded Reading]

- [E-commerce co-convenors: “We must lock in the credible package that we have in our hands.”](#) World Trade Organization, October 27, 2023
- [Exclusive: Reform proposals emerge to fix WTO by early 2024 - document](#), Reuters, October 26, 2023
- [Crapo and Colleagues Condemn Biden Administration’s Decision to Cede U.S. Digital Leadership to China](#), Office of Senator Mike Crapo, October 26, 2023
- [Wyden Statement on Ambassador Tai’s Decision to Abandon Digital Trade Leadership to China at WTO](#), United States Senate Committee on Finance, October 25, 2023
- [US drops digital trade demands at WTO to allow room for stronger tech regulation](#), Reuters, October 25, 2023
- [Facilitator of e-commerce work programme seeks members’ views on way forward](#), World Trade Organization, October 19, 2023

## 2 — Larger Divisions Expected as U.S.-China Derisking Plows Ahead — 2

### [In One Sentence]

- The U.S. Department of Commerce further tightened its export control rules on advanced semiconductor, semiconductor manufacturing equipment, and supercomputing to China.
- Analysts say that the Belt and Road Initiative has adjusted its approach in response to criticism, concerns and the impacts of U.S.-China competition.

- Some researchers have warned that U.S. attempts to exclude China from international standard-setting for critical and emerging technologies could create unintended technical barriers to trade for U.S. firms.

### [Mark the Essentials]

- With some U.S. lawmakers considering ending U.S. permanent normal trade relations with China, a recent study from the National Retail Federation showed that increased U.S. tariffs resulting from the move could cost American consumers \$31 billion in spending power.
- Following reports that Asiaway—a Mexican automobile manufacturer owned by a Chinese company—may have dismissed a worker for joining a labor union, the Office of the United States Trade Representative joined by the U.S. Department of Labor asked Mexico to review the case and “resolve the issues present.”
- The U.S. Court of Appeals for the Federal Circuit has approved, for the second time, an extension request by the U.S. government to file its reply brief in the lawsuit challenging the legality of the Section 301 tariffs on Chinese goods.

### [Keeping an Eye On...]

- On October 17, one year after the Biden administration issued its hard-hitting China-focused export control rule on advanced computing and semiconductors (and ran many a victory lap thereafter), the administration found itself in the uncomfortable position of having to issue yet another rule—this time, one more expansively written—to achieve the original objective. The *2023 Semiconductor Manufacturing Items Rule* and the *2023 Advanced Computing Rule*, 436 pages in total, aims to restrict China’s ability to obtain advanced computing chips, develop and maintain supercomputers, and manufacture advanced semiconductors. In late-October, it became known that the export control order had come with a sting in the tail. As per a letter sent by the U.S. government to Santa Clara-based advanced AI chip design giant, Nvidia, the new restriction on the sale of high-end chips to countries is to take effect immediately. Typically, export control orders introduced by the Bureau of Industry and Security come with a 30-day grace period, enabling rush deliveries of certain prized items in previously placed orders. As a result of the ‘in effect immediately’ injunction, almost \$5 billion of advanced AI chips destined to China’s AI and cloud computing companies, including Alibaba, ByteDance and Baidu, over the next month will likely have to be canceled. Of course, this is a big blow to Nvidia’s bottom line. But this is a bigger blow to the Chinese users of these chips, and they have to settle for training their AI systems with less advanced, lower performance ones. How binding this denial will be on the pace of innovation in the Chinese digital ecosystem in the longer run remains to be seen, however.

### [Expanded Reading]

- [Nvidia’s \\$5 Billion of China Orders in Limbo After Latest U.S. Curbs](#), *The Wall Street Journal*, October 31, 2023 [Paywall]
- [Xi’s keynote speech at 3rd Belt and Road Forum for Int’l Cooperation published](#), *Xinhua*, October 31, 2023
- [United States Seeks Mexico’s Review of Alleged Denial of Workers’ Rights at Asiaway Automotive Components Mexico](#), Office of the United States Trade Representative, October 23, 2023
- [China Section 301 Litigation Update](#), Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP, October 20, 2023
- [Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern](#), U.S. Department of Commerce, October 17, 2023

- [Higher U.S. Tariffs on Chinese Imports Would Cost Consumers \\$31 Billion, NRF Study Says](#), National Retail Federation, October 12, 2023
- [Unpacking the Biden Administration's Strategy for Technical Standards: The Good, the Bad, and Ideas for Improvement](#), Information Technology & Innovation Foundation, October 10, 2023

### 3 — U.S. Making Progress on Trade Negotiations with Partners, Challenges Lie Ahead — 3

#### [In One Sentence]

- Despite a meeting between U.S. and EU leaders at the White House, the U.S. and the EU have yet to reach an agreement on a global steel and aluminum arrangement.
- In a multi-association letter issued ahead of the U.S.-EU Summit, a number of U.S. business groups called on the Biden administration to “push back against protectionist tendencies in Europe” in the digital sector and with regard to corporate sustainability requirements.
- The United States has noted that members of the Indo-Pacific Economic Framework (IPEF) “continued to make progress” on negotiations, but differences remain on digital trade, labor and environment standards.
- An additional in-person negotiating round in San Francisco has been planned ahead of the Asia-Pacific Economic Cooperation (APEC) Leaders’ Summit and the IPEF ministerial meeting that was set to occur on its sidelines.

#### [Mark the Essentials]

- Analysts have cautioned against differing policy and legal approaches between the U.S. and EU in artificial intelligence technologies, arguing that the EU tends to take a broader, top-down “risk-based approach” to AI regulation whereas U.S. efforts have been more bottom-up, targeted, and experimental. This, they argue, could lead to different regulatory frameworks, trade barriers, and additional compliance burden for technology companies.
- The Office of the U.S. Trade Representative (USTR) expressed an inclination to reevaluate its stance on digital sovereignty matters. USTR Katherine Tai observed that certain measures that “may look like they have a discriminatory effect may or may not be advanced with a discriminatory intent,” when answering a question about the European Union’s new digital policies. Criticizing the EU’s “digital sovereignty agenda,” National Foreign Trade Council (NFTC) President Jake Colvin observed that such statements showed USTR’s “troubling deviation” from its responsibility to “stand up for American businesses and workers.”
- At a recent event, the White House’s National Security Council coordinator for the Indo-Pacific Kurt Campbell said that the United States will join the APEC leaders’ summit as “the leading economy” and “the destination of perhaps first resort for a lot of investment in technology.” He went on to argue that “many of” the people who previously looked at China for “investment opportunities” are now turning to the U.S.

#### [Keeping an Eye On...]

- With the mid-month APEC Leaders’ Summit fast approaching, the Indo-Pacific Economic Framework (IPEF) negotiators will be huddling in San Francisco this week to hammer out deals that can be presented by their respective leaders and ministers as a major achievement. The hope is that the negotiations on the (mostly toothless) clean economy (Pillar III) and fair economy (Pillar IV) pillars can be closed out by the time their leaders meet mid-month in San Francisco. Closing out the trade pillar (Pillar I) is an altogether different

matter; negotiators will have difficulty obtaining stakeholder buy-in to close out these negotiations, even in 2024. Nevertheless, with all the attention being showered on the IPEF talks, the U.S.-chaired APEC Leaders' Summit is effectively doubling as an IPEF Leaders' Summit. This is not unfamiliar territory for the United States. In the third year (of the first term) of the previous Democratic administration, the Obama administration too had volunteered as the host country of APEC, and had thereafter commandeered the APEC platform to aggressively push the Trans-Pacific Partnership (TPP) negotiations to a successful conclusion. The smaller TPP membership also comprised states that were members of APEC and like IPEF's membership excluded China. The effect of the Obama administration's role as APEC chair in 2011 was to both suck the oxygen out of APEC's agenda that year as well as make important progress in the TPP negotiations during the year. With a U.S. presidential election year looming in 2012, it was understood that the negotiating clock would effectively run out at the end of the year. In the event, by the time of the APEC Honolulu Summit in November 2011, gaps still remained among the TPP parties—progress notwithstanding. It was not until the third year of the second Obama administration that the gaps on intellectual property, sugar and dairy market access, rules of origin, state-owned enterprises and automotive issues with Japan finally began to close. It is clear that the Biden team has borrowed the Obama administration's APEC playbook to concentrate minds among the IPEF negotiating parties in this pre-election year. And though the substance of the IPEF negotiations bear no similarity or comparison to the depth and richness of the TPP text, it is just as likely that significant gaps will continue to persist among the parties even after the San Francisco APEC Leaders' Summit.

### [Expanded Reading]

- [AI Safety Summit: China, US and EU agree to work together](#), *Reuters*, November 1, 2023
- [U.S. will extend EU metals tariff exemption if needed -envoy](#), *Reuters*, October 25, 2023
- [Joint USTR and U.S. Department of Commerce Readout of Sixth Indo-Pacific Economic Framework Negotiating Round in Malaysia](#), Office of the United States Trade Representative, October 25, 2023
- [Remarks by President Biden, European Council President Charles Michel, and European Commission President Ursula von der Leyen Before Trilateral Meeting](#), The White House, October 20, 2023
- [U.S. extends freeze on EU steel tariffs to create 'breathing room' for talks](#), *Politico Pro*, October 20, 2023 [Paywall]
- [Multi-association letter to President Biden in advance of the 20 U.S.-EU Summit](#), U.S. Chamber of Commerce, October 17, 2023
- [NFTC President Jake Colvin: Will the Biden Administration Stand Up for American Companies and Workers on Trade?](#), National Foreign Trade Council, October 16, 2023
- [AI Regulation is Coming- What is the Likely Outcome?](#), Center for Strategic & International Studies, October 10, 2023
- [President Biden's Worker-Centered Trade Policy: A Conversation With Ambassador Katherine Tai](#), event at Center for American Progress, October 10, 2023
- [US Warns EU's Landmark AI Policy Will Only Benefit Big Tech](#), *Bloomberg*, October 6, 2023 [Paywall]



### [Legislative Developments]

- A bipartisan pair of Senators re-introduced the “True Reciprocity Act” to demand a policy response for the “substantial imbalance” in U.S.-China relations in “diplomacy, trade, media and non-governmental organization activity.”

### [Hearings and Statements]

- Following reports of U.S. venture capital firms separating their main entity from their Chinese operations, the bipartisan leaders of the House China Committee requested more information to investigate the know-how transfers and capital flows that may result from the split.
- House Oversight and Accountability Committee Chair James Comer openly expressed concerns for the “lack of transparency” from the Office of the U.S. Trade Representative (USTR) in the Indo-Pacific Economic Framework (IPEF) negotiations as well as the “unwarranted influence” of the Federal Trade Commission, and requested answers and document disclosure from USTR.
- In an open letter, Senators Todd Young and Tom Carper called on USTR to set international “ground rules” for the global digital economy and “take immediate action” to establish “ambitious and binding obligations.”
- Following reports that USTR had withdrawn support for data localization and source code rules at the World Trade Organization’s e-commerce negotiations, bipartisan leaders of the Senate Finance Committee criticized the move and argued that USTR had failed to sufficiently consult Congress before making its decision.

### [Expanded Reading]

- [Crapo and Colleagues Condemn Biden Administration’s Decision to Cede U.S. Digital Leadership to China](#), Office of Senator Mike Crapo, October 26, 2023
- [Wyden Statement on Ambassador Tai’s Decision to Abandon Digital Trade Leadership to China at WTO](#), United States Senate Committee on Finance, October 25, 2023
- [Sullivan, Van Hollen Seek to Establish Reciprocity in U.S.-China Relationship](#), Office of Senator Dan Sullivan, October 24, 2023
- [Gallagher, Krishnamoorthi Probe Sequoia’s PRC High-Tech Investments, Examine Implications of Announced Split](#), The Select Committee on the CCP, October 18, 2023
- [Young, Carper Urge U.S. Trade Representative to Set the Ground Rules for the Digital Economy](#), Office of Senator Todd Young, October 16, 2023
- [Comer Probes Lack of Transparency from USTR in Indo-Pacific Trade Negotiations](#), House Committee on Oversight and Accountability, October 12, 2023