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Top International Trade Policies Of 2022

By **Jennifer Doherty**

Law360 (December 21, 2022, 10:00 PM EST) -- International trade was dominated by competition with China and conflict wrought by Russia this year, forces that saw Washington work to shore up resources at home, strengthen relationships abroad and reassert the U.S. as a principled economic powerhouse.

Here are Law360's picks for the top trade policy developments of 2022.

Russia Sanctions

The blacklistings and cutoffs the U.S. Department of Commerce, U.S. Treasury Department and U.S. Department of State launched when the Russian Federation invaded Ukraine in February reached a slower pace in the second half of 2022, but the later cuts were also deep.

The Group of Seven, the European Union and Australia enacted a $60 price cap on Russian oil at the start of December, banning companies such as insurance and maritime service providers from dealing with shipments above that price.

Commerce also revoked Russia's market economy status in November, potentially setting up Russian firms for higher anti-dumping duties in future trade investigations and administrative reviews.

Meanwhile, new additions to Treasury's Specially Designated Nationals list and Commerce's Entity List have continued, increasingly striking targets outside Russia identified as supporters and facilitators of its unjustified military campaign and broadening the scope of concern for U.S. firms engaged in business abroad.

The shifting sanctions landscape remains destabilizing as 2022 comes to a close, according to Ashley Craig, the co-chair of Venable LLP's international trade group.

"We're not at a total embargo with Russia yet, but we're getting there very closely, and frankly, until we do, it makes things challenging for U.S. companies that are trying to comply, given the uncertainty," he told Law360.

Further complicating the sanctions issue heading into 2023 are Russian interests themselves, whom Craig described as "being — as we thought they would be — very creative in trying to circumvent the application and enforcement of those rules."

Biden's Industrial Policy Offensive

This year saw President Joe Biden and Congress wield one of China's preferred tools for economic advancement in competition against Beijing, moving the ball forward on issues including supply chain resilience, technological competitiveness and climate change through industrial policy.

The CHIPS and Science Act dedicated more than $50 billion to increase domestic semiconductor design and production, while the Inflation Reduction Act enacted substantial tax benefits for North American-made electric vehicles — a move that riled trading partners in Europe and led France and Germany to push for similar measures across the Atlantic.

Brooks E. Allen, a former official at the U.S. Trade Representative's office, called it "a fascinating moment, historically, for the U.S.," as the Biden administration faces an "awkward" balance between its policy goals and Washington's long-running opposition to centrally planned economies.

"The U.S. government is kind of saying, 'Look, we have to at least take some steps to ensure that there is a sufficient degree of domestic resiliency and autonomy in key areas so that we can meet our objectives, from a national security standpoint, an economic resiliency standpoint and from an environmental standpoint,'" Allen, now of Skadden Arps Slate Meagher & Flom LLP, told Law360.

An 'Era of Engagement'

The Biden administration reentered the Pacific this year with the Indo-Pacific Economic Framework for Prosperity, a forum unveiled in May that now includes 14 economies. The partners have launched negotiations focused on four pillars: trade; supply chains; clean energy, decarbonization and infrastructure; and tax and anti-corruption.

USTR also struck a deal with the United Kingdom to free it from national security tariffs on steel and aluminum, similar to the one reached with the EU last year. The White House continued to engage with Brussels under the U.S.-EU Trade and Technology Council.

As the year came to a close, trade officials touted a constructive first round of negotiations under the U.S.-Taiwan Initiative on 21st-Century Trade and launched a new Digital Transformation with Africa initiative, promising upwards of $700 million to support the African Union's Digital Transformation Strategy, while also leading informal talks on dispute settlement reform at the World Trade Organization.

U.S. Trade Representative Katherine Tai has called this her "era of engagement," and the Biden administration outlined the importance of close ties with like-minded countries to counteract risks posed by China and, to a lesser extent, Russia in this year's national security strategy.

However, the shape of that engagement has so far left little room for Congress to have a say, which lawmakers have noted in increasingly stern letters to Tai and Biden.

With the House of Representatives transitioning to Republican leadership in January, those complaints are likely to grow louder, according to Giovanna Cinelli, the head of Morgan Lewis & Bockius LLP's international trade and national security practice.

"I think we'll see a lot more hearings, and an attempt to clarify that Congress plays a role, but honestly, I don't think the administration is going to be particularly responsive," Cinelli told Law360 ahead of the midterms.

"That frustration, which I've seen in other administrations, is sometimes the impetus Congress needs to put legislation together," she cautioned. "The administration should think carefully about whether they want legislation going up to the president that he might have to veto or may be forced to sign because of circumstances outside of his control."

Forced Labor

Enacted a year ago this month, the Uyghur Forced Labor Prevention Act took effect in June with broad public and bipartisan support, but it left many companies and their counsel — especially those with ties to the textile and solar industries, which have a nexus in China's Xinjiang Uyghur Autonomous Region — somewhat unsure of their responsibilities.

Implementation has also come with a learning curve for U.S. Customs and Border Protection, whose forced labor division only came online in 2018 and was still understaffed as recently as 2020, according to a report from the U.S. Government Accountability Office.

"Right now, you have a big black hole of ambiguity," K&L Gates LLP partner Stacy Ettinger told Law360. "There's no disagreement that forced labor is horrible and we should prohibit imports made with forced labor. But [the UFLPA] did not contain a significant amount of guidance for CBP."

--Editing by Marygrace Anderson and Rich Mills..
