TnT

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Institute for China-America Studies

ICAS Trade N Technology Program

Dispatch

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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.

As one of the primary products of the ICAS TnT Program, the **TnT Dispatch** is a curated biweekly newsletter built to inform readers of notable recent developments in U.S.-China trade and technology ties.

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ICAS TRADE N TECH DISPATCH

January 13, 2022

Volume 2, Issue 1

What's Been Happening

1 — Prospects for U.S.-China Trade and Tech Engagement — 1

[**In One Sentence**]

- While the Phase One Trade Agreement expired at the end of 2021, little is clear about what comes next in terms of trade engagement between Beijing and Washington.
- Washington's concerns over dual-use technology and outbound investment suggest a further tightening of export and investment controls.
- The U.S. has established domestic and international frameworks to address human rights concerns within global supply chains, but details of their implementation might be many months out.

[**Mark the Essentials**]

- China has extended tariff exclusions on 125 U.S. goods subject to Section 301-related retaliatory duties for six months, while simultaneously leaving in place the retaliatory duties that were imposed in response to U.S. Section 232 tariffs on Chinese steel and aluminum.
- The Biden administration recently added 34 Chinese entities to the Entity List, and bipartisan efforts are underway to legislate an outbound investment review mechanism. Meanwhile, China has called for international coordination on export controls and criticized "abuse" through small-group multilateralism.
- The U.S. Congress passed the Uyghur Forced Labor Prevention Act, which ensures that agricultural products and polysilicon, among other goods that are produced in the Xinjiang region, will remain subject to import prohibitions.

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

- U.S.-China trade engagement in 2021 was like no other in the 30-plus year history of intensive U.S.-China trade and economic policy dealings. Apart from a few formulaic conversations, there was no high-level policy engagement between the two sides. Commercial ties have been the bulwark of the bilateral relationship and in any given year over the past three decades, there has typically been forthright engagement on trade and economic policy issues between the two sides. But not in 2021. The Biden administration was slow to get its China trade policy strategy in place and continues to remain reticent on the terms of trade and tech policy engagement with China in 2022. The administration's policy on instituting technology controls *vis-a-vis* China continued apace though, thereby ensuring that the balance sheet of U.S.-China trade and tech engagement in 2021 was a net negative. About the only positive element in 2021 was the expiry of the market purchases element of the Phase One Trade Agreement on December 31—an exercise of 'managed trade' that was a slap in the face of free and fair trade practice. Hopefully, this element of the Phase One Trade Agreement will not be replicated in any form or shape again. That said, it is hard to foresee a positive agenda of engagement emanating from Washington on China trade policy, including on the tariffs front, until it rolls out its Indo-Pacific Economic Framework later in the year. Formulating a concrete framework of engagement and firming up ties with allies and partners across a range of economic policy areas prior to sorting through issues with Beijing appears to be the Biden Administration's plan of action on China, so far.

[**Expanded Reading**]

- U.S. Solar Fends Off Importers; Hopes to Convince Biden to Stick With Them, Coalition for a Prosperous America, January 7, 2022
- U.S. Effort to Combat Forced Labor Targets Corporate China Ties, *The New York Times*, January 5, 2022 [Paywall]
- Full text: China's Export Controls, State Council Information Office, People's Republic of China, December 29, 2021
- Guidance: Suspension of Liquidation in Pending Section 201 Litigation, CIT No. 20-03941, U.S. Customs and Border Protection, December 28, 2021
- Biden's China Dilemma: How to Enforce Trump's Trade Deal, *The New York Times*, December 16, 2021 [Paywall]

2 — Prospects for Trade and Tech Engagement in the Indo-Pacific — 2

[**In One Sentence**]

- The Biden administration has pledged to launch an Indo-Pacific Economic Framework during the first half of 2022 that will focus on issues such as digital trade, resilient supply chains, and workers' rights.
- The Regional Comprehensive Economic Partnership (RCEP), a China-backed Asia-Pacific free trade agreement, came into effect on January 1, 2022.
- While China continues to promote its bid to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Biden administration seems to be in no mood to rejoin the agreement.
- The White House has named engagement with ASEAN one of its most important initiatives for 2022.

[**Mark the Essentials**]

- The administration has trumpeted that the Indo-Pacific Economic Framework will be "even more comprehensive" than traditional trade agreements such as CPTPP and will comprise a series of partnerships. However, many business representatives note that much of the desired economic framework already exists as part of the CPTPP and have questioned the lack of clear substance in the proposed Indo-Pacific framework.
- China says that RCEP will help boost Chinese competitiveness in the technology sector, attract domestic and foreign investment opportunities and improve trade commitments in areas such as services, digital trade and two-way investment. Furthermore, it will promote deeper regional integration of trade and investment flows.
- Kurt Campbell, coordinator for Indo-Pacific affairs at the National Security Council, has observed that China's application to join CPTPP is "deadly serious" and has elicited "anxious calls" from domestic and international counterparts.
- The administration has committed to strengthening economic relations with ASEAN through a Trade and Investment Framework Arrangement (TIFA).

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

- Be it right or wrong, the Biden administration's Indo-Pacific strategy will in large part come to be viewed through the lens of its Indo-Pacific Economic Framework. This framework is currently being devised with allies and partners alike and might even develop into a modern version of CoCom—the Coordinating Committee for Multilateral Export Controls that was established by Western nations in 1949 to prevent the outflow of technologies to the Soviet Union and other communist countries. Selectively decoupled supply chains for decarbonization and clean energy items, as well as additional rulemaking on myriad social policy issues ranging from human rights to workers rights to personal privacy protections, will be appended to this modernized CoCom. The case for a certain degree of controls on inward investment and outbound IP-intensive exports is not in doubt, just as CoCom's case for preventing the leakage of military and industrial technologies to Moscow and its Eastern bloc allies was not in doubt. But in parallel to the establishment of CoCom, the United States also threw open its domestic market to everyone (except Eastern Bloc countries) and generously provided aid and trade financing to these countries—the most notable example of such an initiative being the Marshall Plan. Essentially, in parallel to decoupling from the Eastern Bloc countries, Washington came to the table with a strategy to engender prosperity in the 'free world' via aid and trade liberalization. Which, in turn, begs the question today: What strategy of trade liberalization and better access to the American marketplace does the Biden administration bring to the table? The drawbridge, as far as one can see, is being raised, and not being drawn aside. And if the answer is effectively none, then can other countries be faulted for signing up to trade liberalization initiatives backed by China (RCEP) or featuring potential Chinese participation (CPTPP)? The Biden administration and Capitol Hill have much work to do if the Indo-Pacific Economic Framework is to pass the credibility test in the Indo-Pacific.

[**Expanded Reading**]

- How afraid should the US be of China and the RCEP?, *Tech HQ*, January 6, 2022
- RCEP: China says world's largest trade pact gives it 'powerful leverage' to cope with 2022 challenges, *South China Morning Post*, December 31, 2021 [Paywall]
- U.S. counters China with new Indo-Pacific framework, *Nikkei Asia*, December 19, 2021 [Paywall]
- US comes a-courting in Asean as it pressures Beijing. What will it achieve?, *South China Morning Post*, December 18, 2021 [Paywall]
- The Needle Biden Must Thread: How to Compete in Asia Without a New Trade Deal, *Barrons*, December 16, 2021 [Paywall]
- The U.S. Can't Keep Dodging the Trade Issue in Asia, *Bloomberg*, December 16, 2021 [Paywall]

3 — Prospects for U.S.-EU Trade and Tech Engagement — 3

[**In One Sentence**]

- At the first meeting of the U.S.-EU Trade and Technology Council (TTC), the two sides committed to a renewed and wide-ranging partnership on trade and investment issues, including on emerging technologies.
- Transatlantic differences over issues such as digital privacy, standards, regulation of new technologies, as well as the proposed U.S. subsidy for electric vehicles and initiation of a fresh Section 232 'national security' probe of permanent magnet imports remain points of contention and concern.

- Both the United States and the EU have expressed their indignation at China's de facto unilateral trade sanctions against Lithuania for the latter's opening of a Taiwan representative office in its capital Vilnius under the name Taiwan rather than Taipei.

[**Mark the Essentials**]

- During the first TTC meeting, the U.S. and the EU agreed to jointly work on strengthening export control cooperation, rebalancing the global semiconductor supply chain, exploring ways to collaborate on investment screening, and address distortive non-market practices.
- EU officials have listed export controls as an area ripe for substantive outcomes while U.S. officials expect to reach an agreement on Privacy Shield, a transatlantic data protection compliance mechanism, in the near future.
- EU officials have criticized the Build Back Better electric vehicle tax credits and the enhanced Buy American rules—both proposed and strongly supported by the Biden administration—as discriminatory.
- The EU has extended support to Lithuania for "addressing current trade irritants with China" but also reaffirmed its commitment to a One China Policy.

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

- 2021 was a honeymoon year for U.S.-EU trade ties. From the resolution of the Boeing-Airbus dispute to the deal on the Section 232 metals tariffs to a meeting of minds on digital services taxes to the creation and successful outcomes at the inaugural TTC meeting, the European Union veritably hit it off with the more multilaterally-minded Biden administration. 2022 portends a more troubled relationship on the trade and technology front. The EU's Digital Markets and Digital Services Acts, by aiming to ensure a "level playing field" (hitherto, a term applied only to China) for all digital companies, take direct aim at the large American platform companies—Google, Facebook and Amazon. Privacy Shield continues to be at the heart of an ongoing transatlantic saga, even as Beijing has sped ahead with domestic rulemaking on privacy protections that mimic if not exceed European standards in some aspects. The EU's forthright objection to the Biden administration's proposed discriminatory electric vehicle tax credits as well as its rebuff of the administration's Section 232 investigation on a rare earth element (neodymium magnets) suggests that it is not on the same page with the administration's strategic industrial policy approach. Perhaps, the most consequential difference in 2022 between the two sides might relate to China. The U.S. and the EU are unified in rooting out Beijing's distortive non-market trade and investment practices. Yet, while the EU would much prefer that its trade and investment ties with Beijing is successfully grounded on a fairer and more stable and predictable platform, it is not as clear that this is in fact the American objective or interest. How the EU and the U.S. harmonize their respective positive sum and zero sum approaches on China within the TTC framework in 2022 will provide useful insights on their complementary (or duelling approaches) on that country. The tendency of Beijing to routinely overplay its hand and help forge common cause among the U.S. and EU, as is apparent in its trade actions against Lithuania, should not be discounted.

[**Expanded Reading**]

- U.S. trade chief expresses support for Lithuania amid China 'coercion', *Reuters*, January 7, 2022 [Paywall]
- Companies Face Growing Challenges to Move Personal Data From Europe, *The Wall Street Journal*, December 30, 2021 [Paywall[
- Friends reunited? How the US and EU spent the year reconnecting on tech, *CNET*, December 16, 2021
- Joint Statement on the Export Controls and Human Rights Initiative, White House, December 10, 2021

ICAS TRADE N TECH DISPATCH

January 28, 2022

Volume 2, Issue 2

What's Been Happening

1 —In the Void of a China Trade Strategy — 1

[In One Sentence]

- Biden said he's "uncertain" whether he will be in a position to ease tariffs on China soon, stressing the need to first make sure that China meets its commitments under the Phase One deal.
- USTR Katherine Tai is planning to talk with China and ensure that China makes up for the "deficit" in its Phase-One purchase commitments "over the course of the next several years."
- Criticizing the Biden administration for a lack of action, the U.S. Chamber of Commerce called for the release of a cohesive strategy on trade to compete with China.
- The National Foreign Trade Council suggested that the Biden administration start pursuing "concrete deliverables" for U.S. businesses in trade such as new-market access opportunities and global standards for emerging technologies.

[Mark the Essentials]

- The Department of Agriculture found that retaliatory tariffs from China reduced U.S. agricultural exports by $25.7 billion over the 2018-2019 period, though the Phase One deal did lead to an "impressive" but partial rebound of agricultural exports.
- Criticizing the Biden administration for continuing the Trump-era tariffs, a new *Wall Street Journal* op-ed piece contends that such tariffs increased prices for household goods and fueled inflation.
- In contrast to the conclusions of this op-ed, the United Steelworkers Union argued that the lifting of the Section 301 and Section 232 tariffs would be an "insult" to workers and employers who rely on a level playing field against non-market practices.
- U.S. importers are continuing to challenge the legality of the Trump-era Section 301 tariffs in court.

[Keeping an Eye On...]

- The Biden administration's "build back better" mantra clearly does not seem to extend to the U.S.-China trade relationship, at least thus far. The administration remains tardy in putting out a specific China trade engagement strategy despite multiple calls from both Capitol Hill and the business community. While the majority of the business community has called for the removal of or at least partial exclusions from the Section 301 tariffs, the administration has thus far shown little interest in considering such an option. At this point, the Section 301 tariffs should no longer be viewed exclusively as 'Trump-era tariffs.' The sad reality is that these tariffs appear to be trapped in a bog of political jockeying and economic tensions. Therefore, without a proper resumption of trade talks with China, few positive deliverables can be expected on this front in 2022. It is understandable that the administration would prefer to work in concert with allies and partners first. This, however, seems to be the *only* plan of action so far, raising concerns that its China trade policy strategy essentially amounts to engaging everyone except the Chinese directly. And the unstated fear is that when the administration does, after its exertions, roll out the Indo-Pacific Economic Framework to outcompete China, it will be viewed as a damp squib by partners and adversaries alike—much like USTR Tai's long-awaited China trade policy speech last October.

[**Expanded Reading**]

- Joe Biden says he won't lift tariffs on Chinese imports since Beijing hasn't abided by phase one trade deal, *South China Morning Post*, January 20, 2022 [Paywall]
- U.S. lawmakers urge USTR to expand tariff exclusions on Chinese goods, *Reuters*, January 20, 2022 [Paywall]
- Pharmax Brings Tariff Challenge to Court of International Trade, *Law Street*, January 20, 2022 [Paywall]
- U.S. Chamber calls for new U.S. trade deals, China strategy, *Financial Post*, January 10, 2022 [Paywall]
- U.S. steps up trade pressure in Europe in response to Russia, China, *Politico*, January 10, 2022
- Joe Biden's Inflationary Trade Policy, *Wall Street Journal*, January 4, 2022 [Paywall]

2 — The Visage of the Indo-Pacific Economic Framework— 2

[**In One Sentence**]

- U.S. Trade Representative Katherine Tai said that the Indo-Pacific Economic Framework (IPEF) bears similarities with the U.S.-EU Trade and Technology Council (TTC) in scope and in intent.
- Kurt Campbell, former Assistant Secretary of State for East Asian and Pacific Affairs under President Obama and currently Indo-Pacific Coordinator in the Biden White House, said that the U.S. needs to strengthen digital engagement and standard-setting efforts in the Indo-Pacific.
- USTR Tai met with South Korean trade officials to discuss the IPEF, following parallel discussions with Japan, New Zealand, Australia, Singapore and Malaysia.
- Commenting on the IPEF, the U.S. Chamber of Commerce said that a robust approach to trade in Asia is essential to ensure U.S. leadership and provide a "meaningful alternative to competition from China."

[**Mark the Essentials**]

- According to USTR Tai, the IPEF and the TTC both aim at building partnerships that focus on sustainability, resilience, inclusiveness and competitiveness.
- Having called China's application to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) "deadly serious," Campbell said that the U.S. must work "comprehensively" with allies on not just military advancements but also on technological progress in order to counter China.
- South Korea said its "basic stance" is to expand "regional economic cooperation" through the IPEF, while a Taiwanese official observed the IPEF is only "one component" of the administration's Indo-Pacific strategy.
- The U.S. Chamber of Commerce said that an Indo-Pacific digital agreement is fundamental for U.S. enterprises and should be "front and center" of the IPEF.

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

- The Biden administration has displayed a strong interest in drawing up an Indo-Pacific Economic Framework on lines that are similar to the U.S.-EU Trade and Technology Council's format and work program. Both frameworks are comprehensive. Both frameworks are forward-looking. Both aim to set global rule-making and standards in critical industries and sectors. And both aim to rally like-minded allies and partners to co-address challenges posed to global trade and investment by China. That being said, the successful launch of the TTC does not guarantee an equivalent success on the IPEF front. Not only is China the most important trading partner to almost every Indo-Pacific country but these countries are also tied intimately to China by way of regional value chains in ways that Europe simply isn't connected to China. Truth be told, almost every Indo-Pacific country, give or take one or two such as India, would prefer that the U.S. and China succeed in reestablishing a new and productive economic and trade *modus vivendi* that is fair and equitable to both sides, and beneficial to all. Their prosperity resides in a recoupled and successful relationship—not a decoupled or even selectively decoupled U.S.-China relationship. And if the IPEF is to serve as an exclusive alternative to the other existing regional economic initiatives which China has either spearheaded or applied to join, it will defeat the vision of inclusiveness that these countries have long sought to embed in their region-wide economic practices. That said, one must await the substance and details of the IPEF before passing further judgment. The first tantalizing hints of a template featuring topic-specific modules has been placed in the public domain, and the technical details will be eagerly awaited by ally and adversary alike.

[**Expanded Reading**]

- Japan's role in selling Biden's Indo-Pacific agenda, *Politico*, January 24, 2022
- Taiwan wants to join Biden's Indo-Pacific economic framework, *Nikkei Asia*, January 20, 2022 [Paywall]
- Will South Korea Join the US Effort to Insulate Supply Chains From China?, *The Diplomat*, January 19, 2022 [Paywall]
- In vying for economic preeminence in Asia, openness is essential, Brookings Institution, January 14, 2022
- US and EU will work together to confront China in the aerospace industry, trade official says, *South China Morning Post*, January 13, 2022 [Paywall]
- US will increase economic engagement with Asian nations, White House official says, *South China Morning Post*, January 8, 2022 [Paywall]

3 — East Wind: When Transatlantic Cooperation Meets China— 3

[**In One Sentence**]

- The next meeting of the U.S.-EU Trade and Technology Council is slated to take place in Europe this May.
- Industry sources note that the U.S. and the European Union are aiming for low-hanging fruit and "early victories" at the next TTC meeting.
- The U.S. and the UK have launched talks to resolve their disputes over the Trump-era Section 232 steel and aluminum tariffs.
- EU trade officials are seeking to loop China into a plurilateral negotiation at the WTO on subsidy reform and government trade intervention.

[**Mark the Essentials**]

- The U.S. and the EU are currently negotiating a "Global Sustainable Steel Arrangement," which will discourage trade in high-carbon steel and aluminum that both sides say contribute to global overcapacity from other countries, such as (according to the White House) China.
- Noting their shared national security interests "as democratic market economies," the U.S. and the UK agreed to promote "high standards" to address market-distorting policies in the steel and aluminum industries.

- Business representatives point out that the U.S. and the EU have yet to overcome their differences over the EU Digital Markets Act, the EU Digital Services Act, and the U.S. "Buy America" policy.
- U.S. officials have named the TTC as one of the Biden administration's platforms to counter China while EU officials have stated that the EU did not want the TTC to simply devolve into an "anti-China exercise."

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

- The Biden administration's push to re-engage its European allies and partners will be put to the test again in May when the second TTC meeting takes place. 'Early harvest' deliverables, such as facilitating effective and practical U.S. and EU export controls cooperation, will likely be on the table. On the other hand, grappling with more contentious topics, such as the EU Digital Markets Act and Digital Services Act as well as the proposed electric vehicle tax credits in the Build Back Better bill, will put the U.S.-EU trade, technology and digital policy honeymoon to the test. As the *Dispatch* has also noted on previous occasions, the two sides' less-than-congruent approaches on China will also test their relationship within the TTC. The EU seeks a trade and investment relationship with China that is grounded in fair, predictable and market-based practices. It much prefers that the EU-China relationship succeed on these terms. On the other hand, it is not as clear that this is the American interest or objective - although its willingness to engage China in a 'Phase Two' negotiation, if it was indeed willing, could clear the air significantly in this regard. One way or the other, the TTC will be worth following closely in 2022, and for reasons that reach beyond the two sides' immediate bilateral trade and investment frictions.

[**Expanded Reading**]

- Chips, batteries and other technologies: A US-EU partnership is crucial, *The Hill*, January 25, 2022
- Can the U.S.-EU Trade and Technology Council Counter China?, *The National Interest*, January 23, 2022 [Paywall]
- Will Europe Become a True Digital Power?, *The National Interest*, January 21, 2022 [Paywall]
- How the Transatlantic Relationship Has Evolved, One Year Into the Biden Administration, Carnegie Endowment for International Peace, January 20, 2022
- US, UK Begin Talks on Lifting Trump's Steel Tariffs, *U.S. News*, January 19, 2022
- U.S.-EU trade, technology body to meet in Europe in 2022 - Tai, *Reuters*, January 12, 2022 [Paywall]

On the Hill

[**Legislative Development**]

- House Representative Earl Blumenauer introduced a bill to bar low-value imports from non-market economies from *de minimis* tariff benefits.
- A recently introduced bipartisan bill aims to reduce U.S. reliance on China for rare-earths by creating a strategic reserve and having the USTR investigate "unfair" Chinese trade practices.
- Sree Ramaswamy, senior advisor to Commerce Secretary Raimondo, said the government was capable of establishing various programs to address specific gaps, such as in semiconductors and EV charging, but lacked a clearly defined overall strategy to cohesively implement investments in critical industries and critical supply chains.

- Ramaswamy called for a single decision-making mechanism to strategically coordinate various programs and investments in supply chain resilience and critical industries.

[Hearings and Statements]

- Bipartisan lawmakers urged the Biden administration to swiftly act on the Indo-Pacific Economic Framework (IPEF) as "competitors" continue to shape the rules of the digital economy in the Indo-Pacific.
- Senator Coon said that the IPEF can be a stepping stone to greater climate change cooperation and to a broader trade agreement in the region.
- House Ways & Means ranking member Brady called on the Biden administration to work for authorization of fresh Trade Promotion Authority as well as a "second-phase" deal with China.

[Keeping an Eye On...]

- The push to decouple U.S.-China trade and technology ties continues unabated on Capitol Hill, for the most part. Lawmakers continue to push for newer and wider areas for decoupling, such as authorizing a new outbound investment review mechanism as well as creating a strategic reserve to reduce U.S. reliance on China for rare-earth materials. Lawmakers are also enjoying the rare opportunity to frame the contours of America's global competitiveness strategy for perhaps a generation, if not more. How they proceed with their conferencing work on the United States Innovation and Competition Act (USICA) and the America COMPETES Act will convey a great deal about their aspirations for America's continued dominance in the advanced manufacturing and digital sectors. Of course, most of this cannot come soon enough for U.S. business. But that being said, the Executive Branch deserves credit for its clear-headed and forward-looking thinking through of the coordination and implementation challenges ahead, given the huge sums—and stakes—involved and the inevitable bureaucratic challenges of putting the appropriated monies to their most productive uses.

[Expanded Reading]

- Strategic Importance of Digital Economic Engagement in the Indo-Pacific, Hearing in the House Foreign Affairs Committee, January 19, 2022
- Chairman Blumenauer Unveils New Legislation to Fix Import Loophole, Level Playing Field, and Boost Oversight, U.S. Congressman Earl Blumenauer Press Release, January 18, 2022
- H.R.6412 - Import Security and Fairness Act, 117th Congress (2021-2022)

- Cotton, Kelly Introduce Bill to End Reliance on China for Rare-Earth Elements, Senator for Arkansas Tom Cotton Press Release, January 14, 2022
- S.3530 - REEShore Act of 2022
- Transcript: The Early 202: Rep. Kevin Brady (R-Tex.), *Washington Post*, January 12
- What a National Strategic-Industry Policy Should Look Like, Event by the Information Technology and Innovation Foundation (ITIF), January 11, 2022

ICAS TRADE N TECH DISPATCH

February 10, 2022

Volume 2, Issue 3

What's Been Happening

1 — America COMPETES Act Still in the Wringer — 1

[**In One Sentence**]

- The U.S. House of Representatives passed the 2,900 page America COMPETES Act as a parallel bill to the Senate's U.S. Innovation and Competition Act (USICA).
- Lawmakers expect to start reconciling the two bills soon in a House-Senate conferencing process.
- The America COMPETES Act aims to invest in the American industrial base and in research and development, including through specialized funding for strategic sectors such as the semiconductor industry.
- Additional funding is provided to strengthen supply chain security by preventing shortages of critical goods and reshoring manufacturing back to the United States.
- The Act addresses a broad range of issues related to China, including but not limited to economic independence from China, human rights concerns, and regional security and economic policies.
- House members proposed more than 600 changes to the initial draft and over 200 amendments were officially put to the House floor for discussion.
- House Republicans criticized the bill for not adequately confronting China, while the Chamber of Commerce has opposed the bill for its restrictions on trade and outbound investment.

[**Mark the Essentials**]

- Both the America COMPETES Act and USICA aim to enhance U.S. competitiveness by investing in advanced technologies, improving supply chain resiliency, and strengthening foreign policy efforts to counter China, but they differ in their trade provisions. The America COMPETES Act also has a markedly heavier emphasis on climate and sustainability initiatives compared to the Senate's USICA.
- Similar to USICA, the America COMPETES Act authorizes $52 billion funding for the Creating Helpful Incentives to Produce Semiconductors in America Act (CHIPS Act) and $1.5 billion for the Public Wireless Supply Chain Innovation Fund.
- The America COMPETES Act proposes to establish an outbound investment review mechanism, reauthorize Trade Adjustment Assistance, tighten trade restrictions by depriving Chinese goods of *de minimis* tariff benefits, and reauthorize the Generalized System of Preferences program and the Miscellaneous Tariff Bill.
- The COMPETES Act also seeks to reduce economic and supply chain dependence on China, develop alternatives to China's Belt and Road Initiative, counter Chinese censorship and misinformation, and address human rights concerns through sanctions and other programs.

- Amendments have focused on supply chain issues, changes to the CHIPS Act, and provisions that directly address China, but notably exclude discussion of the exclusions process for Section 301 tariffs.
- House Republicans are critical of the partisan drafting process, arguing that the America COMPETES Act is loaded with progressive-leaning political pork and also creates loopholes that can be exploited by China.
- According to the U.S. Chamber of Commerce, the bill's trade and investment restrictions "significantly" raise costs for businesses, add to supply chain bottlenecks, and imposes a *de facto* tax on U.S. consumers.

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

- On Friday, February 4, the House of Representatives passed the America COMPETES Act. While some advertise this to be positive news, its passing should not be regarded so positively—at least yet. Its provisions are not lining up as well as they could with the Senate's USICA—its companion bill—which was passed in June 2021. USICA's centerpiece component was the Endless Frontier Act that would create a new technology directorate within the National Science Foundation. Rather than fold the "Endless Frontier Act'' provisions into the America COMPETES bill, the House chose to go with its own "National Science Foundation for the Future Act." Similarly, when the Senate passed USICA, its centerpiece foreign policy component was the "Strategic Competition Act." Rather than fold the "Strategic Competition Act" provisions into the America COMPETES bill, the House chose to go with its own "Ensuring American Global Leadership and Engagement (EAGLE) Act." As if the America COMPETES Act's cup hadn't runneth over with partisan House priorities, the House leadership also chose to sprinkle the legislation with numerous 'worker-centered' notes that will do little to boost competitiveness but will surely gladden protectionist constituencies in the Democratic Party and enrage Republicans. Clearly, House and Senate conferees have a difficult job ahead of them as they get down to reconciling their divides across the aisle and between chambers on how to deal with China and reinvigorate U.S. innovation. It will not be easy, especially since USICA passed with a large bipartisan majority while the COMPETES Act was passed on party lines. For the conference bill to clear both chambers, it will need at least 10 Senate Republicans to vote 'yea'—which, in turn, means the House leadership will first have to say 'nay' to some of its loyalists and excise the partisan political pork contained in the COMPETES Act during the conference process. On a more optimistic note, the CHIPS Act funding allocations—a point of agreement across USICA and the COMPETES Act—will finally become settled law if the conference process succeeds and turbocharges an already turbocharged U.S. semiconductor sector.

[**Expanded Reading**]

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- Text of H.R. 2421, The America COMPETES Act of 2022, U.S. House of Representatives, January 25, 2022
- Pelosi Statement on Introduction of America COMPETES Act of 2022, Rep. Nancy Pelosi (Speaker of the House), January 25, 2022
- Results from Semiconductor Supply Chain Request for Information, U.S. Department of Commerce, January 25, 2022
- Rep. Richard Neal, Democrats unveil America Competes Act to boost U.S. trade competitiveness with China, Rep. Richard Neal (Chairman of the Ways and Means Committee), January 26, 2022
- Foreign Censorship Policies and Practices Affecting U.S. Businesses, U.S. International Trade Commission, January 27, 2022
- Ranking Member Cole Hearing Remarks on H.R. 3485, H.R. 4445 and H.R. 4521, Rep. Tom Cole (Ranking Republican Member of the Rules Committee), February 1, 2022
- McCarthy Sounds the Alarm: Democrats' Legislation Concedes America to China, Rep. Kevin McCarthy

(Minority Leader), February 2, 2022

- [U.S. Chamber Letter on H.R. 4521, the "America COMPETES Act,"] U.S. Chamber of Commerce, February 2, 2022
- [Hoyer Statement on House Passage of the America COMPETES Act of 2022], Rep. Steny Hoyer (Majority Leader), February 4, 2022

2 — The IPEF's Selectively Exclusionary Approach to Multilateralism— 2

[**In One Sentence**]

- The Biden Administration plans to release a comprehensive overview of the Indo-Pacific Economic Framework (IPEF) by March 31.
- The Administration has discussed the IPEF with trade officials from Japan, South Korea, Singapore, Malaysia, Indonesia, Australia, and New Zealand as well as with various non-governmental stakeholders, especially from the digital sector.
- Seven areas have been identified as potential "modules" of the Framework: worker-centered trade facilitation, digital economy, supply chain resiliency, infrastructure, environmental sustainability, export controls and investment screening, and anti-corruption.
- Some target countries have welcomed the 'menu approach' of the IPEF while other American politicians and business representatives have urged the administration to ensure that the framework is truly binding and multilateral.

[**Mark the Essentials**]

- The Biden administration has conceptualized the IPEF as a two-part structure: a broad framework of general commitments, and discrete issue-specific "modules" therein that countries can participate in selectively.
- U.S. trade and commerce officials plan to increase their presence and engagements in the region to brief counterparts on the IPEF, while leaving open the possibility for Indonesia and India to participate in the framework.
- The IPEF will not contain new U.S. market-access commitments, but the administration says the framework's trade module will be a "very high-ambition" one, binding upon parties and only open to parties committed to the overall Indo-Pacific framework.
- According to U.S. officials, the IPEF will involve "high-standard rules" to increase interoperability and competitiveness among the parties, while the trade module will address issues such as labor rights, competition, and data localization.
- U.S. lawmakers and businesses have urged the Biden administration to develop an economic agenda in the region to counter China.

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

- As intriguing hints and spicy details leak into the public domain regarding the Biden Administration's vaunted Indo-Pacific Economic Framework, an unsavory truth also appears to be coming into focus: the administration has a lot of positive things to say regarding standards-setting and regional trade liberalization but thus far possesses little or no initiative to actually practice the trade liberalization that it preaches. That the IPEF will not contain new U.S. market-access commitments and, more fundamentally, will not require to be tested on the floor of the U.S. Congress indicates to allies and adversaries alike that this administration is not up to the task of fighting the bruising political battles at home to foster trade liberalization abroad. It is all but certain now that the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

(CPTPP) will remain undisturbed on the sidelines—so far as this administration is concerned. But concerned the administration should be. A strategy of region-wide economic leadership and simple rules-setting may just as cheaply be dispensed with by allies and adversaries alike—in turn, requiring a far more politically expensive effort in the future to recoup region-wide economic policy leadership.

[**Expanded Reading**]

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- Japan's role in selling Biden's Indo-Pacific agenda, *Politico*, January 24, 2022
- USTR Announces the Development of a Focused Trade Strategy to Combat Forced Labor, Office of the USTR, January 25, 2022
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- 2022 Washington International Trade Conference, Washington International Trade Association, January 31, 2022
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3 — Tariffs Remain at the Top of Biden's Trade Tool Kit— 3

[**In One Sentence**]

- The Biden Administration announced a four-year extension of the Trump-era Section 201 solar safeguard tariffs.
- Deputy U.S. Trade Representative Sarah Bianchi said China "clearly" did not meet up to its Phase One purchase commitments and that "ongoing" conversations with China have been unfruitful.
- U.S. trade officials called on China to take "concrete action" to make up for gaps in fulfillment of its Phase One purchase commitments.

[**Mark the Essentials**]

- In a nod to the importance of imports to America's downstream producers, the extended Section 201 safeguard order doubles the remedy's TRQ (tariff-rate quota) on solar cell imports.
- The Court of International Trade questioned whether former President Trump had the authority to increase Section 301 tariffs on Chinese imports, while the Biden government argues that it should have the ability to address increased harm resulting from China's retaliatory actions.
- USTR officials say they have been engaging "robustly" with their Chinese counterparts on the purchase commitments as well as larger concerns related to China's industrial policies.
- USTR is looking to all available tools to hold China accountable to its commitments and other trade practices, and U.S. trade officials furthermore have called for the development of "new tools as needed."
- Admitting the lack of leverage to enforce the purchase commitments, U.S. trade officials say they will continue to press China on its non-market trade and industrial policy practices.

[Keeping an Eye On...]

- Unfortunately, the supposedly 'robust' engagement of USTR officials with their Chinese counterparts is one of the best kept secrets in Washington, D.C. The outright failure of China to hit its Phase One purchase commitment targets is one of the worst kept secrets in Washington, D.C. Thus, this lamentable U.S.-China exercise in 'managed trade' does not reflect well on either side. If an observer understands the current situation correctly, the Biden administration wishes to maintain—and even impose new—tariffs on China, but reconnect with China regarding exports. Most experts would call this trade mercantilism. Also, simultaneously, the administration wishes to decouple in the advanced manufacturing and technology-intensive sectors from China. As for Beijing, even if one sets aside the COVID recession, it was evident from the beginning that, even in the best of economic circumstances, China would fail to meet its targets. It might have gotten a lot closer to meeting its targets without a pandemic but it would still have missed the mark. This, in turn, begs the question: Why append your signature on an agreement which at the time of its signing you know clearly well that you will not be able to fulfill? Intergovernmental agreements, be it the Phase One targets or for the matter the China-Australia Free Trade Agreement, are serious undertakings and need to be treated as such. They are not instruments that can be nullified at one's convenience, no matter how sincere the underlying effort to fulfill them might—or might not—be. Hopefully, the failure to attain the Phase One agreement's purchase commitment targets will also usher in an end of that age when massive Boeing and soybeans purchase orders were proffered by China and utilized as a glue to bind Washington to Beijing. As the latter is probably best aware, the glue no longer holds. And Beijing would be better off by doing two things: letting global market forces dictate outcomes in these goods markets and transforming its domestic industrial structure to a more market-oriented and pro-competition framework.

[Expanded Reading]

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- Rosen Leads Letter to President Biden in Opposition to Extending Job-Killing Solar Tariffs, Office of Rep. Jacky Rosen, January 20, 2022
- Walorski, LaHood Lead Bipartisan Call to Deliver Tariff Relief to U.S. Manufacturers, Reps. Jackie Walorski and Darin LaHood (Ways and Means Committee), January 20, 2022
- Chips, batteries and other technologies: A US-EU partnership is crucial, *The Hill*, January 25, 2022
- Iowa Senators Urge Biden To Forcefully Engage On Trade Issues, Sens. Chuck Grassley and Joni Ernst, January 25, 2022
- Exclusive: U.S. calls for 'concrete action' from China on trade deal, *Reuters*, February 7, 2022 [Paywall]

TnT ICAS TRADE N TECH DISPATCH

February 28, 2022

Volume 2, Issue 4

What's Been Happening

1 —White House Seeks Domestic Tools to Reinforce Trade Strategy— 1

[**In One Sentence**]

- The Office of the U.S. Trade Representative (USTR) told Congress that new strategies are needed to address China's harmful trade practices.
- The Pentagon called for a "whole-of-government response" to counter the impacts of China's government subsidy programs in the microelectronic manufacturing sector.
- The White House considers the Indo-Pacific Economic Framework (IPEF) to be a central pillar of its Indo-Pacific Strategy to counter China.
- The Biden administration is looking beyond traditional free trade agreements in favor of a "bespoke, tailor-made approach" to trade policy.

[**Mark the Essentials**]

- Calling domestic trade tools a "key focus of U.S. trade policy toward China," the Office of the USTR said the administration will "strategically" use such tools, but did not elaborate on the specific choice of those tools.
- According to the Pentagon, U.S. microelectronic manufacturing capabilities must be strengthened to reduce America's reliance on Pacific Rim countries for the supply of critical military technologies.
- Aimed at countering China's influence by bolstering U.S. relations with "allies and partners" in the region, the IPEF, under the Indo-Pacific Strategy, plans to promote "high-standards trade," catalyze investment in "transparent, high-standards infrastructure," and "advance common approaches" to the digital economy and emerging technologies.
- A USTR official said the office is looking into ways to work with allies on "common challenges" from non-market economy practices on inclusiveness, workers rights, and other areas of "common interests."

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

- The Biden administration has a three-pronged approach with regard to its economic and trade strategies towards China. The first prong focuses on bilateral trade. In addition to holding China to its commitments in the Phase One trade deal, the administration presumably will seek to address and tackle fundamental issues, such as non-market industrial subsidy practices in any future trade negotiations with China. The second prong focuses on economically deepening region-wide partnerships with allies and partners in order to shrink China's relative economic footprint in the region. The soon-to-be formally released Indo-Pacific Economic Framework is the key deliverable in this regard. The final prong focuses on enhancing industrial competitiveness at home and shielding domestic firms from the full brunt of Chinese competition, using existing and new trade policy tools. This third prong is frequently referred to as the administration's 'worker centered' trade policies. The three prongs appear fine in theory. It is in their real-life application that the administration has so far found itself wanting. With the exception of the significant investments being made in U.S. industrial competitiveness, a common denominator across each of the three prongs is the administration's lack of purposefulness and unwillingness to grapple with the hard challenges at hand. Top administration trade policy officials can barely sit across the table with China, lest the latter insist on the removal of the self-defeating tariffs. The administration's regional consultation with allies and partners on the IPEF has been shallow, lest the latter insist on reciprocal access to U.S. markets. And the willingness to roll out new trade tools, as part of the worker centered philosophy, has been slow because the trade tools that the administration prefers will inevitably have a protectionist bent—and in some instances might even be WTO-illegal. Besides, not much intellectual or policy work has gone into the framing of these supposed new trade tools with partners, meaning tools like the IPEF and the U.S.-EU TTC will face difficulties delivering actionable blueprints in this regard.

[**Expanded Reading**]

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- Joe Biden's new Indo-Pacific Strategy: A view from Southeast Asia, Lowy Institute, February 16, 2022
- Navigating an Evolving Global Trade Landscape: What's Ahead in 2022, LA Area Chamber of Commerce, February 16, 2022
- FACT SHEET: Indo-Pacific Strategy of the United States, The White House, February 11, 2022

2 — Is U.S.-China Digital Economy Competition Up Next?— 2

[**In One Sentence**]

- The Office of the U.S. Trade Representative (USTR) added two Chinese e-commerce platforms to its "notorious markets" list, alleging that they have facilitated the trade of counterfeit goods.
- The U.S. Chamber of Commerce launched a new campaign to lobby for a "more robust" U.S. agenda on pursuing digital trade deals.
- The Indo-Pacific Economic Framework (IPEF) will emphasize the governance of the digital economy and "a common approach" to emerging and critical technologies.

[**Mark the Essentials**]

- The USTR said that the listed platforms "exemplify counterfeiting and piracy concerns" that can cause "significant harm to U.S. IP owners" and urged China to strengthen its enforcement actions. This year's list also highlights the listed markets' contribution to "exploitative" labor.
- Highlighting that the digital economy accounts for 10 percent of U.S. economic output, the Chamber of Commerce urged for the prioritization of digital trade deals to address the rise of "digital protectionism" and prohibit "forced localization" requirements.

- According to the Biden administration's Indo-Pacific Strategy, the IPEF aims to "govern digital economies and cross-border data flows according to open principles" and promote "consensus-based, values-aligned technology standards."
- The Indo-Pacific Strategy focuses on bonding with U.S. allies and partners such as Australia, Japan, Korea, the Philippines, Thailand, India, Indonesia, Malaysia, New Zealand, Singapore, and Vietnam, while emphasizing U.S. support for ASEAN and APEC.

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

- The framework to govern digital economy trade and cross-border flows is expected to be the centerpiece of the forthcoming Indo-Pacific Economic Framework (IEPF). Digital trade policymaking is a frontier area of policy making, and one where the Biden administration can show appreciable regional leadership in standards-setting without having to be weighed down by protectionist interests at home. The U.S. takes a more-or-less *laissez faire* approach on cross-border data flows, with a strong bent favoring commerce over other considerations, such as privacy and antitrust. Supporting Big Tech's ability to make deep inroads into lucrative markets overseas has been a longstanding policy priority. That said, the digital trade 'module' in IPEF faces a different set of challenges. Dynamic developments in the digital sector have tended to consistently outrun policymaking in their regard. The CPTPP's digital chapter that the U.S. initially helped write is already out of date (with the exception of the U.S.-Japan digital trade agreement). Furthermore, Big Tech's lobbying power within the Beltway has ensured that domestic law and regulation has been even slower to catch up with developments in the sector. This is now changing—for the better—within the Beltway, both from a privacy rights and personal data protection-perspective as well as from an antitrust perspective. Ironically, however, this recent activism in domestic policy making is adding more instability to cross-border data flow rulemaking, as domestic policy preferences run up against existing pro-Big Tech provisions in regional digital trade agreements. Hence, the moral of the story: on the digital front, it is best to get one's regulatory house in order first before championing rules regionally and multilaterally. As an involved player recently noted, "if you are going to include digital trade commitments, you have to be consistent with what Congress is doing domestically. You can't have a mismatch." Ironically, the one party working feverishly to endow fixity to its domestic regulatory regime so that it can participate more actively in region-wide rules-setting for cross-border data flows—that would be China.

[**Expanded Reading**]

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- FACT SHEET: Indo-Pacific Strategy of the United States, White House, February 11, 2022
- America must be the standards setter — especially in the digital sphere, *The Hill*, February 11, 2022
- The Digital Trade Revolution, U.S. Chamber of Commerce, February 9, 2022
- Filling In the Indo-Pacific Economic Framework, CSIS, January 26, 2022

[**Legislative Developments**]

- A bipartisan group of Senators introduced the "Ocean Shipping Reform Act;" a companion to a House-approved bill to better protect U.S. exporters against "unfair practices" by ocean carriers.
- The former U.S. Innovation and Competition Act (USICA) is sought to be rebranded as the "Make it in America" bill by Democrats in the Senate.
- The House's votes on the America COMPETES Act largely adhered to party lines, with one Democrat opposing the bill and one Republican supporting the bill.

[**Hearings and Statements**]

- U.S. Secretary of Commerce Gina Raimondo said that the successful reshoring of semiconductor manufacturing "depends entirely" on a swift passage of CHIPS Act funding.
- Raimondo earlier urged Congress to not let differences in trade provisions bog down the whole House-Senate conference process on USICA and America COMPETES Act.
- A bipartisan group of 41 Senators called for a "more comprehensive" exclusion process for Section 301 tariffs against Chinese goods.
- Senate minority leader Mitch McConnell criticized the House for "far left" attempts in its America COMPETES Act and its dismissal of the delicate bipartisan balance arrived at in the Senate's USICA.
- Lawmakers leading the Congressional-Executive Commission on China called for more funding to implement the Uyghur Forced Labor Act.

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

- With the Build Back Better Act having fallen by the wayside, at least for the time being, the America COMPETES Act and USICA conference process is the only game in town insofar as the China Challenge is concerned on the Hill. There is much ground to bridge as yet, however, on the part of the House-Senate conferees. From CHIPS Act funding to funding for scientific research and development to trade policy and foreign policy, the COMPETES Act and USICA are riddled with a number of divergent priorities. The Biden administration had sought to conclude negotiations in conference before Tuesday's presidential State of the Union address, but it may well be weeks, maybe even months, before agreement is reached among conferees. One thing is certain though: having passed the COMPETES Act on a party line vote, it will be the House that will have to do much of the compromising within the conference process so that at least ten Republican senators (the minimum needed to break a filibuster) can be incentivized to sign on to the final product. Both China and Commerce Secretary Gina Raimondo, who has called for swift passage in order to secure CHIPS Act funding, will be watching eagerly from the sidelines.

[**Expanded Reading**]

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- Portman, Carper Lead Senate Call for Administration to Relaunch a Comprehensive Tariff Exclusion Process, U.S. Senator for Ohio Rob Portman Press Release, February 7, 2022
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- Klobuchar Introduces Legislation to Ease Export Shipping Backlogs, Boost U.S. Exports, U.S. Senator Amy Klobuchar Press Release, February 3, 2022
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ICAS TRADE N TECH DISPATCH

March 11, 2022

Volume 2, Issue 5

What's Been Happening

1 — Fleshing out the IPEF amid Varying Visions— 1

[In One Sentence]

- The Biden administration's Indo-Pacific Economic Framework (IPEF) is increasing its outreach to lawmakers and private sector stakeholders.
- Business groups have called for the administration to pursue enforceable commitments, new market opportunities, and a wide adoption of high standards through IPEF.
- Official text regarding IPEF's digital economy provisions is yet to be released.
- Canada seeks to speak with the U.S. and explore "synergies" with the IPEF on digital trade and the economy.

[Mark the Essentials]

- Despite the administration's briefings to key committees, Congress still lacks clarity on the objective, specific form, and enforcement mechanism of the Indo-Pacific Economic Framework (IPEF).
- Multiple business groups jointly called for the IPEF to be a comprehensive approach to trade, technology and commerce "such as the CPTPP," stressing the importance of new market-access opportunities.
- USTR Tai has said that the Biden administration hopes to resolve agricultural producers' trade woes through exploring novel regulatory approaches and standards in the IPEF.
- On digital trade, business groups prioritized unrestricted cross-border data flows, customs duties on electronic transmission, and the protection of source code while Congress prefers that the administration focus less on "controversial" issues such as intermediary liability.
- The Canadian trade minister Mary Ng expressed interest in developing a digital economy deal within the IPEF that is similar to the Digital Economy Partnership Agreement (DEPA).

[Keeping an Eye On...]

- With President Joe Biden due in East Asia in late-May, the wheels have finally begun to move in earnest on finalizing a comprehensive Indo-Pacific Economic Framework plan. Domestic stakeholder consultations have begun, Request for Comment notices put out, and hearings scheduled on the Hill. The effort to garner buy-in from interested and affected constituencies is commendable. The nagging question, however, is whether these consultations with stakeholders will amount to much or is a more-or-less *pro forma* undertaking that is intended primarily to create an impression of stakeholder engagement. The administration has already let it be known that the IPEF will take the form of an administrative arrangement (meaning that its provisions will not be subject to congressional ratification) and that it does not seek to address tariff barriers at this time (meaning that Indo-Pacific countries should not expect reciprocal and liberalized access to the U.S. market). As best as one can gauge, the administration's IPEF effort is geared towards obtaining "high-standard, worker-centered commitments" from its Asian partners as well as crafting trans-Pacific supply chains in the clean energy and advanced manufacturing sectors that cut China out. State-of-the-art digital trade provisions are also sought to be forged. None of these work streams make for an easy negotiation with Hill representatives, business stakeholders or Asian partners, and it may well be the case that the administration itself sees the IPEF as a placeholder until it can better cover its political flanks at home on trade policy before embarking on a more ambitious liberalizing effort later on. Regardless, the on-going stakeholder outreach has the virtue at this time of helping outside observers piece together the pieces of the administration's IPEF jigsaw. Hopefully, the final product will make for appealing reading.

[**Expanded Reading**]

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- America must be the standards setter — especially in the digital sphere, *The Hill*, February 11, 2022

2 — U.S.-China Supply Chain Partial Decoupling Deepens — 2

[**In One Sentence**]

- The Biden administration released several assessment reports of supply chain vulnerabilities across six key industries.
- On the U.S. information and communications technology (ICT) supply chain, the assessment urges the administration to pursue a "comprehensive strategy" to revitalize domestic ICT manufacturing.
- The Department of Energy assessment argues for an increase in incentives and support for U.S. solar manufacturers to outcompete China and reduce reliance on the country.
- The administration has stated that its proposed tax credits linked to the manufacture of electric vehicles may be open to revision.

[**Mark the Essentials**]

- In its recent official release on critical supply chains, the White House emphasized a "friend-shoring" approach to supply chains while stressing the need to reduce dependence on China.
- The multi-departmental assessment also recommends financial support for "friend- and near-shoring manufacturing" of critical ICT components unlikely to be produced domestically in the near future.
- The Department of Energy assessment report calls for "the highest incentive" to support U.S. ingot and wafer production, which China currently dominates.
- According to Deputy USTR Jayme White, the proposal for electric vehicle tax credits can be "shaped and reshaped" but a Canadian official at the same event said mere talks of the proposal chills investment.

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

- On the same day that the Biden administration sought to have the Chinese government condemn its Russian partner for the latter's invasion of Ukraine, the White House proudly advertised the fruits of its labor with regard to the further decoupling of key supply chains from China. Such are the dilemmas of governing. The occasion was the one-year anniversary of Executive Order 14017, which had directed an all-of-government approach to assessing vulnerabilities in—and strengthening the resilience of—the United States' critical supply chains. More activities are planned in this regard later this year, including domestic summits that aim to align regional economic development strategies with the administration's national supply chain strategy. To the administration's credit, it has done more to integratively think through and reshape U.S. industrial policy using existing statutory authorities in one year than all administrations, put together, had managed over the past 40 years. Overall, the administration's supply chain focus has been to 'reshore', 'near-shore', and 'friend-shore' the production of critical items. From a U.S.-China strategic competition perspective, the desire to decouple key supply chains from China is understandable—even if it may not be the wisest decision. But is the logic of reshoring as compelling from a purely commercial perspective? Emerging research suggests that this may not be the case. Engagement in global value chains helps dampen rather than accentuate exposure to risk and allows unexpected shocks to demand to be better managed than in a world of predominantly reshored or near-shored production. And rather than promote geographic diversification—i.e., friend-shoring—of input sourcing, better inventory management might well be the key to management of more resilient supply chains for critical products.

[**Expanded Reading**]

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- Executive Order on America's Supply Chains: A Year of Action and Progress, The White House, February 7, 2022

3 — Pursuit of Fundamental Issues Stall U.S.-China Trade Negotiations— 3

[**In One Sentence**]

- The Office of the USTR has a new Strategic Plan, its first since 2013.
- House Republicans urged the Biden administration to more strictly enforce the phase-one trade deal and seek "damages" for failed commitments.
- USTR Katherine Tai observed that trade talks with China over Beijing's failed purchase commitments have gotten "more difficult over time."
- Chinese solar suppliers have established separate production lines free from forced labor concerns for U.S.-bound goods.

[**Mark the Essentials**]

- Despite containing multiple mentions of China, the USTR's new Strategic Plan provides little new information about the Office's overall China policy.
- Led by House Minority Leader Kevin McCarthy, Republican lawmakers also asked whether the administration plans to negotiate a new and "fully enforceable" trade deal with China.
- According to USTR Tai, conversations are increasingly focused on building resilience and trust in the global economy, as well as calling China to join these efforts and "play by our rules."

- According to industry analysts, China's domestic demand would be "almost" sufficient to consume all of the polysilicon produced in the Xinjiang region.

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

- U.S.-China trade negotiations are currently stalled, and for good reason: there has simply not been concerted top-level engagement between the two sides. Indeed, at no point in the past 30 years going back to the first Clinton administration has there been as little high-level contact between the USTR and Beijing in the first 14 months of an administration as is the case currently with the Biden administration. Past administrations sat across the table and sought to press Beijing to liberalize its trade regime and implement structural reforms. Not this administration however, for reasons best known to itself. It is somewhat rich, therefore, for USTR Katherine Tai to suggest that conversations with Beijing—and especially conversations with regard to an agreement that has formally expired—have gotten "more difficult over time." The administration appears to be comfortable, in fact, with maintaining the status quo in U.S.-China trade relations and moving ahead with other, more urgent, matters; even at the expense of leaving matters unresolved for U.S. businesses. Witnessing this diffidence and perhaps worse, the continuing unwillingness or (political) inability to remove the Trump-era tariffs, Beijing too has continued to reciprocate the attitude by limiting cooperation on trade policy matters to the lowest common denominator level. However, there is a certain inevitability that the two sides, down-the-line, will engage more forthrightly on trade policy matters, perhaps after the administration's Indo-Pacific Economic Framework (IPEF) is released. It is also becoming increasingly clear that trade policy is no longer the ballast of the bilateral relationship that it used to be in yesteryears. Large market purchases by China, be it of aircraft or corn, no longer elicits the same goodwill across the American political spectrum that it used to. And as for China's leaders, techno-nationalism rather than two-way trade is viewed as the indispensable ingredient that will deliver the economy to a more sophisticated production structure—especially as the U.S. goes about imposing a range of technology controls on the country.

[**Expanded Reading**]

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ICAS TRADE N TECH DISPATCH

March 25, 2022

Volume 2, Issue 6

What's Been Happening

1 — Supply Chain Security Needs Clash with Globalization — 1

[In One Sentence]

- The Biden administration is developing "sustainability standards" for critical materials and minerals within U.S. supply chains.
- A new World Bank report cautioned on global income loss if countries worked to reshore production.
- President Biden raised the domestic content threshold for "Buy America" rules, increasing sequentially to 75% in 2029.
- U.S. lawmakers disagreed about whether or not to support electric vehicle production within the U.S.
- Business groups are calling for an extended transition period before full implementation of the Uyghur Force Labor Prevention Act.

[Mark the Essentials]

- Following initial efforts on microelectronics, the White House plans to adopt comprehensive sustainability standards for essential minerals in strategic industries such as automotive and aerospace, steel and energy.
- According to the Bank's report, countries that benefit the most from increasing global supply chain integration include Thailand, Malaysia, Turkey and Vietnam.
- The White House is also looking at further "Buy America" rulemaking for semiconductors, pharmaceuticals and advanced batteries.
- Republicans argue that an uptick in electric vehicle production increases U.S. dependence on components and materials produced in China.
- Several industry groups recommended a transition period of at least a year to allow companies to refine their due diligence programs, while others called for more clarity and transparency in the evidentiary standard.

[Keeping an Eye On...]

- Under its "Build Back Better" agenda, the Biden administration has sought to chart an ambitious program of "strategic industrial policy" investments in U.S. industrial capabilities. This agenda envisages a range of interventions in American hard and soft infrastructure that can support jobs and employment, sharpen America's competitive edge, and avoid shortages of critical products. The resilience of supply chains is one of five core pillars of the administration's 21st century industrial policy, the other pillars being targeted public investment, public procurement, building climate resilience, and advancing equitable outcomes. The administration has wasted no time in pursuing its supply chain goals, rolling out a number of initiatives in the areas of semiconductors, critical materials and minerals, and large capacity batteries. Federal procurement preferences to pull forward demand in new clean energy products have also been thrown into the mix. More initiatives are planned later this year, including domestic summits that aim to align regional economic development strategies with the administration's national supply chain strategy. There are apprehensions within the business community though that the supply chain resilience agenda—framed as it is in the context of the administration's "extreme [strategic] competition" approach towards China—will accelerate the drift towards decoupling and perhaps even towards protectionism. At minimum, the emphasis on 'reshoring', near-shoring' and 'friend-shoring' of supply chains, it is feared, will begin to reverse the forces of globalization and place many Asia-Pacific nations that have hitherto been staunch advocates of globalization and 'open regionalism' in a dilemma: Do they join Washington's 'friend-shored' but 'Beijing-decoupled' supply chain or should they continue to place their regionally-integrated trade policy eggs in the China basket?

[**Expanded Reading**]

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- Amid record gas prices, lawmakers divided over US energy future, *The Hill*, March 8, 2022
- Hearing: "Charging Forward: Securing American Manufacturing and Our EV Future," Subcommittee on Energy (House of Representatives Committee on Energy and Commerce), March 8, 2022
- Biden announces strengthened Buy American rule to help boost domestic manufacturing as he touts February job numbers, *CNN*, March 4, 2022
- FACT SHEET: Biden-Harris Administration Delivers on Made in America Commitments, The White House, March 4, 2022
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2 — Onboarding Allies and Partners within the IPEF — 2

[**In One Sentence**].

- The Biden administration again confirmed that it has no intention to address tariff barriers through the Indo-Pacific Economic Framework (IPEF).
- The Office of the U.S. Trade Representative (USTR) has solicited comments on the trade pillar of IPEF.
- Several Senate Finance Committee members criticized the lack of market-access commitments in IPEF.
- The U.S. deepened IPEF-related engagement with the United Kingdom and Australia, while a Taiwanese official commented on the island's hopes to be a "full member" of the Framework.

[**Mark the Essentials**]

- IPEF's trade module is to cover labor, environment and climate, digital economy, agriculture, transparency and good regulatory practices, competition and trade facilitation issues, while maintaining a studied distance from market access commitments.

- The USTR seeks comments on the practices of third-country entities that undermine fair market opportunities, among other general issues.
- Senators and analysts warned that a trade pillar focusing exclusively on digital trade, forced labor and trade facilitation might not be sufficient to attract Indo-Pacific partners.
- Senate Finance Committee Chair Ron Wyden and other lawmakers also called for more consultation and engagement with Congress.

[**Keeping an Eye On…**]

- At long last, the Indo-Pacific Economic Framework (IPEF) appears to be entering the final lap of consultations prior to its release. Stakeholder meetings are well under way and a formal document is expected to be released by end-April or soon thereafter. The hope that the IPEF would be released at the end of March to coincide with President Biden's hosting of a special summit with Association of Southeast Asian Nation (ASEAN) leaders was dashed, given that due to scheduling-related difficulties the summit had to be postponed to a later date. The Ukraine crisis has also diverted attention from the rollout of the Framework. That said, ASEAN nations as well as Japan, Australia, and Taiwan have already evinced interest in joining the IPEF. As currently envisaged, IPEF is in all frankness more show than substance. It lacks hard liberalizing commitments, is a mile wide but inch deep in its coverage of issues areas, and is primarily intended to elevate non-trade considerations such as labor and environmental protections rather than integrate trans-Pacific markets. Locking the United States within region-wide economic endeavors is a key priority however for a number of Asia-Pacific nations, especially at a time when Washington has sent mixed messages regarding its economic staying power in Asia. As such, when IPEF does formally see the light of day, it is expected to receive polite applause across the Pacific. Time will tell, however, whether an economic strategy for Asia that has no role for Chinese participation within its processes can prosper in the medium to long term.

[**Expanded Reading**]

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- Indo Pacific strategy faulted in hearing for lack of new market access, *AgriPulse*, March 16, 2022
- Joint Statement on U.S.-UK Consultations on the Indo-Pacific, The White House, March 11, 2022
- Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework, Office of the U.S. Trade Representative, March 10, 2022

On the Hill

[**Legislative Developments**]

- More than 140 lawmakers called for a swift conferencing process on USICA and the America COMPETES Act in order to secure funding for semiconductor incentives.
- A bipartisan group of House lawmakers introduced the "Facilitating American-Built Semiconductors Act" (FABS Act) to create an investment tax credit for the semiconductor industry.
- The Senate Commerce Committee advanced the Ocean Shipping Reform Act by voice vote, a bill to tighten regulation of ocean freight carriers.
- House Ways & Means trade subcommittee Chair Earl Blumenauer said that a conference bill for USICA and America COMPETES can "absolutely" be drafted by Memorial Day (May 30).

[**Hearings and Statements**]

- The House Oversight Committee initiated an investigation into "predatory" ocean carrier practices that impact U.S. imports and exports.
- Senator Tom Cotton demanded an explanation on the Biden administration's decision to delay launching a new Section 301 investigation into Chinese industrial subsidy practices.
- Several lawmakers disagree over whether to launch an investigation on Southeast Asian entities allegedly used by China to circumvent U.S. trade restrictions on Chinese solar panels.

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

- The China competitiveness-related legislation continues to trudge its way through the two chambers of Congress. By the end of March, the hope is to have the procedural arrangements in place to move forward with the conference process to reconcile the differences between the House-passed America COMPETES Act and its Senate counterpart, the U.S. Innovation and Competition Act (USICA). And then to have the final product clear the floor in the two chambers thereafter by Memorial Day. The latter looks like an optimistic timetable. For one, the Ukraine conflict has diverted legislative energies away from the China focus. More importantly, the America COMPETES Act is festooned with a number of partisan giveaways, especially in its trade title, and Republicans are loth to support a package containing numerous indigestible elements. Much negotiating behind closed doors remains to be done. How the two parties—and chambers—'spilt the baby' will be the key element to watch, going forward. Republicans would much prefer that the core competitiveness-related provisions in the final conference product, such as the semiconductor funding provisions, pass as cleanly as possible. Sensing a final opportunity for a legislative victory on domestic policy priorities prior to the midterm elections, the Democrats for their part would much prefer to retain as many of their 'Build Back Better' agenda items in the final conference product. Despite a broad overlap across parties on the key innovation and competition-related elements vis-a-vis China, final passage of this critical legislation in this 117th United States Congress remains as yet a toss-up.

[**Expanded Reading**]

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- Kelly and Bipartisan Members Introduce Facilitating American-Built Semiconductors Act, Office of Rep. Mark Kelley (R-PA), March 17, 2022

- Letter from Sen. Tom Cotton to USTR Katherine Tai, Office of Sen. Tom Cotton (R-AR), March 15, 2022
- Washington Week Ahead: Omnibus done, Congress to-do list includes shipping reform, *AgriPulse*, March 13, 2022
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- Brown, Portman Urge Commerce Secretary to Accept Anti-Circumvention Petition, Support U.S. Solar Manufacturing & Ohio Jobs, Office of Sen. Sherrod Brown (D-OH), March 9, 2022
- Letter from 142 Lawmakers to the Congressional Leadership, Office of Rep. Doris Matsui (D-CA), March 8, 2022
- Letter from SEIA Members to Commerce Secretary Gina Raimundo, Solar Energy Industries Association, March 7, 2022
- Testimony of Chairman Maffei before Congress: "Executive Session and Ocean Shipping Reform Act Hearing," Federal Maritime Commission, March 7, 2022
- Chairs Clyburn and Krishnamoorthi Seek Information from Ocean Freight Carriers About Price Increases for Americans, House Committee on Oversight and Reform, March 2, 2022
- U.S. solar producer asks Biden administration for new tariff probe, *Reuters*, February 9, 2022 [Paywall]
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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**]

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- 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]
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- Joint Statement – Inaugural Australia-U.S. Strategic Commercial Dialogue (AUSSCD), U.S. Department of Commerce, March 31, 2022
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- 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**]

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- 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]

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- Economic Watch: China-EU economic cooperation shows strong resilience, vitality, *Xinhua*, April 2, 2022
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TnT 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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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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- [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
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ICAS TRADE N TECH DISPATCH

May 5, 2022

Volume 2, Issue 9

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]

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- 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]
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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**]

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- 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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- PH, US Dept. of Commerce discuss strengthening strategic economic partnership and cooperation, Republic of the Philippines Department of Trade and Industry, April 21, 2022
- PHL seeking to join US-led Indo-Pacific Economic Framework, *Business World*, April 19, 2022
- South Korea officially decides to join CPTPP to strengthen supply chain, *Business Standard*, April 19, 2022
- Taiwan seeks Indo-Pacific Economic Framework membership with U.S., *Reuters*, April 19, 2022 [Paywall]
- Building Resilient and Secure Supply Chains Through Trade, Office of the United States Trade Representative, April 14, 2022

- [CTA to Commerce: Use Indo-Pacific Framework to Bolster Supply Chains], *Consumer Electronics Daily*, April 14, 2022 [Paywall]
- [ITI Encourages Biden Administration to Prioritize Digital Commitments, Consider Market Access in Indo-Pacific Economic Framework], Information Technology Industry Council, April 11, 2022

ICAS TRADE N TECH DISPATCH
May 23, 2022
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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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- FACT SHEET: U.S.-EU Trade and Technology Council Establishes Economic and Technology Policies & Initiatives, White House, May 16, 2022
- EU-US Trade and Technology Council: strengthening our renewed partnership in turbulent times, European Commission, May 16, 2022
- Joint Statement by President von der Leyen and President Biden on the meeting of the Trade and Technology Council, European Commission, May 16, 2022
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- Russian Invasion Intensifies Role of New U.S.-EU Tech Council, *Wall Street Journal*, May 15, 2022 [Paywall]

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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- USTR Tai says China tariff review will have 'robust' industry consultations, *Reuters*, May 5, 2022 [Paywall]
- USTR Issues Notice Regarding Statutory Four-Year Review of China 301 Tariffs, Office of the United States Trade Representative, May 3, 2022

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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- 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.

[**Expanded Reading**]

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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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- Brady and A. Smith: Indo-Pacific Economic Framework Presents Strong Opportunity, But Isn't Nearly Ambitious Enough, Ways and Means Republicans Press Release, May 23, 2022
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TnT ICAS TRADE N TECH DISPATCH

June 17, 2022

Volume 2, Issue 12

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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- Commerce Department Could Pay Manufacturers to Reshore Critical Production, The American Prospect, May 25, 2022
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- Raimondo fails to reassure a rattled solar industry, *Washington Post*, May 12, 2022 [Paywall]

- [Solar Trade Probe Risks Delaying Duke Renewable Projects to 2024], *Bloomberg*, May 9, 2022 [Paywall]
- [Heinrich, Rosen, Sinema Lead Bipartisan Call On Biden Administration To Expedite Solar Tariff Investigation Decision], United States Senator for New Mexico Martin Heinrich Press Release, May 2, 2022
- [Portman, Brown Introduce Legislation to Strengthen Trade Remedy Laws, Protect American Workers], United States Senator for Ohio Rob Portman Press Release, April 16, 2021
- [Commerce Department Decision Imperils U.S. Clean Energy Progress], Solar Energy Industries Association Press Release, March 28, 2022

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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- 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
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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]
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- 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

ICAS TRADE N TECH DISPATCH

June 30, 2022

Volume 2, Issue 13

What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

- Mark the words "rebuttable presumption". It is an evidentiary standard that has long had standing in international trade law—even if seldom applied. The standard essentially flips the burden of the presumption of innocence on the accused rather than the accuser. In the case of the Uyghur Forced Labor Prevention Act, the Act places the burden on the shoulders of the prospective importer to rebut the presumption that the goods imported from Xinjiang province of China—primarily cotton, apparel, tomatoes, silica-based products—are not mined or produced in whole or part with forced labor. Earlier, the U.S. and the EU at different times have sought to introduce the rebuttable presumption standard within WTO jurisprudence related to the Subsidies and Countervailing Measures (SCM) agreement to challenge China's government-provided industrial subsidies. China would need to prove that an alleged subsidy was compliant with international rules rather than the other way around (i.e., the accusers having to furnish the necessary evidence to support their claim against China). Given the opaqueness of the subsidy handouts and the growing topicality of the issue, expect this standard to increasingly muscle its way to the forefront of international trade law. There is nothing wrong with that; except that by lowering the bar to the presumption of innocence, the rebuttable presumption standard could also open the door to protectionist abuse. That is, in fact, how the standard has been instrumentally utilized so far in the trade policy arena. On the other hand, there is nothing rebuttable or presumptive about the Section 301 tariffs. They have been found by a WTO-constituted panel to be illegal, and the sooner they come off, the better it will be for all. It should not be a matter of "aligning" the Section 301 tariffs to advance economic and national security priorities. Such priorities should be advanced using legal trade instruments—not illegal ones.

[**Expanded Reading**]

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

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

[**Expanded Reading**]

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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.

[**Expanded Reading**]

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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
- Usual Midterm Indicators Very Unfavorable for Democrats, *Gallup*, June 14, 2022
- Lawmakers push new compromise for screening American investments in China, *Politico*, June 13, 2022
- The Republicans Could Win the U.S. Midterms. Here's What that Means for the World, *Foreign Policy*, June 2, 2022 [Paywall]
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ICAS TRADE N TECH DISPATCH

July 15, 2022

Volume 2, Issue 14

What's Been Happening

1 — G7 Touts Collective Approach, Aims at Tech Cooperation Beyond TTC — 1

[In One Sentence]

- From June 26-28, leaders of the Group of Seven (G7) met in Germany to discuss Russia, economic security and stability, digitalization and global infrastructure investment.
- The G7 leaders committed to continue developing "collective approaches" that were "also beyond the G7" to address China's non-market policies.
- The leaders hoped to build on the standards-setting works by other multilateral frameworks, such as the Trade and Technology Council (TTC) and the Quadrilateral Security Dialogue (the Quad).

[Mark the Essentials]

- G7 leaders said they would continue "severe and enduring" sanctions on Russia, address economic stability and security amidst rising costs, support global infrastructure and investment as well as form an international Climate Club by the end of 2022.
- In a joint communique, G7 leaders committed to building a shared understanding of China's "non-transparent and market-distorting intervention" and developing a coordinated action to "foster diversification and resilience to economic coercion, and to reduce strategic dependencies." They also committed to removing forced labor from global supply chains.
- The leaders supported international cooperation "within the G7 and with like-minded partners" to deliver democratic and market-oriented standards in technology, trade and innovation, highlighting existing works of the TTC and the Quad.

[Keeping an Eye On...]

- For a precious few weeks in March and April, the G7 countries showed they were capable of swift and decisive action when they imposed 'shock and awe' financial, trade and export control sanctions on Russia. With the passage of time, though, the G7 has once again reverted to form—as in, being long on talk and short on action. The White House's G7 fact sheet highlighting the membership's supposedly unified approach on confronting China's unfair economic practices is typical in this regard. The talk of a unified approach has been a recurring theme of G7 and trilateral (U.S.-EU-Japan) joint statements going back to the middle years of the Trump administration. Yet, after almost half-a-decade of talking up the issue, there is still no concrete negotiating proposal on industrial subsidies on the table; be it at the WTO in Geneva, within the G7 framework, or within the trilateral framework. A trilateral joint statement in January 2020 is the best that the

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parties have been able to summon so far. On the other hand, detailed disciplines on China's industrial subsidy policies and practices are memorialized in the EU-China Comprehensive Agreement on Investment (CAI) and in the Phase Two U.S.-China draft text. If the U.S. and EU really mean what they say on holding China's feet to the fire on non-market industrial subsidy practices, all they have to do is take the Phase Two draft text and the already-finalized CAI out of the deep freezer and shepherd them to their logical destination points (i.e., a bilateral agreement with China on Phase Two issues and passage of the CAI in the European Parliament). The time has come for less talk and more action.

[**Expanded Reading**]

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- G7 aims to raise $600 billion to counter China's Belt and Road, *Reuters*, June 27, 2022 [Paywall]

2 — Waving the Export Control Stick? — 2

[**In One Sentence**]

- The Bureau of Industry and Security (BIS) plans to prioritize "the most serious" export control violations, increasing penalties in "egregious" cases while putting minor cases on a processing fast track.
- The BIS recently added 36 entities to the Entity List, including 29 Chinese companies and six companies, five of them Chinese, "specifically for their continued support of Russia's military efforts."
- The Department also publicly identified two Chinese entities already on the Entity List as supporting Russia's military.

[**Mark the Essentials**]

- Announcing a new "prioritization strategy," BIS head Matthew Axelrod said the agency will now apply "existing aggravating penalty factors" more uniformly to "properly" identify "egregious" violations of export controls and "escalate penalty amounts where appropriate".
- According to Commerce Secretary Gina Raimondo, the Entity List additions show that the U.S. and its allies and partners will "act swiftly to hold parties accountable who attempt to circumvent our controls." She added that China is "watching our response closely".
- Raimondo previously said that the Biden administration is "constantly" working to identify "bad actors in China" and add them to the Entity List.

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

- The breakdown of U.S.-China economic relations during the Trump administration might have started as a trade and tariff war but it is the technology denial element that added the undeniable sting. Export controls have become the U.S. government's *de facto* number one tool of choice to slow down China's secular climb up the technology ladder. And why not? The controls are proving their worth in ways that the tariffs never could. Russia is providing a further proving ground for the sharpening of this dreaded tool. For the first time, the Foreign-Produced Direct Product (FDP) Rule has been applied to a whole country; previously, the rule was applied to individual entities only, such as Huawei, and the rule is expected to substantially limit the availability of key microeconomic parts and components and degrade Russia's technological base. Back-filling Moscow's chip requirements could invite a heap of trouble on Chinese producers. That said, export controls are not an entirely cost-free tool either. Its excessively unilateral use could lead to the 'designing out' of U.S.

parts and components from certain technology value chains who learn to operate without these U.S. supply chains. And technology embargo decisions, such as the one to curtail critical American technology support for China's homegrown wide-body civil aircraft manufacturing ambitions, has now led three major Chinese airlines to reject Boeing in favor of Airbus from a US$37 billion aircraft order. There are zero unilateral technology denial sanctions imposed by the European Union on China for a reason. Some think this might have had something to do with the choice of Airbus. Using a 'stick' instead of a 'carrot' can lead to unexpected sacrifices if it is left unbalanced and waved for too long.

[**Expanded Reading**]

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- BIS Hammers 36 Russian Military Suppliers; Chinese Military Suppliers Get A Pass, *Forbes*, July 1, 2022 [Paywall]
- Addition of Entities, Revision and Correction of Entries, and Removal of Entities From the Entity List, Bureau of Industry and Security, Federal Registry, June 30, 2022
- US starts sanctioning China for supporting Russia, *Asia Times*, June 30, 2022 [Paywall]
- US Says Five Chinese Companies Support Russia's Military, *Asia Financial*, June 29, 2022 [Paywall]
- Export Controls 'Matter More Than Ever,' US Commerce Chief Raimondo Says, *Bloomberg*, June 29, 2022 [Paywall]
- Remarks by U.S. Secretary of Commerce Gina Raimondo at the Bureau of Industry and Security (BIS) Update Conference, U.S. Department of Commerce, June 29, 2022

3 — A Few Tariffs may Go, but Decoupling Continues— 3

[**In One Sentence**]

- President Biden is yet to make a decision on whether to remove or reduce the Section 301 tariffs on China.
- U.S. Secretary of the Treasury Janet Yellen and China's Vice Premier Liu He discussed economic developments as well as the U.S. tariffs on China during a virtual meeting.
- Senator Tim Kaine urged the Biden administration to reduce tariffs on Chinese goods to combat inflation.
- U.S. intelligence agencies are warning companies and local governments of China's economic influence.

[**Mark the Essentials**]

- According to China's readout of Premier Liu He's meeting with Secretary Yellen, the Chinese side expressed concerns and called for the lifting of additional tariffs on China as well as the U.S.' sanctions, and also called for the fair treatment of Chinese enterprises.
- Calling the Section 301 tariffs on Chinese goods a "Trump tax," the Senator said that removal of the tariffs would allow the administration and Congress to fight inflation and increase U.S. competitiveness through legislation like the Infrastructure Act and the Innovation Act.
- According to the agencies, China is using partnerships and business deals and investments between Chinese and U.S. localities to create dependency and "press its agenda," "including improved U.S. economic cooperation with China and reduced U.S. criticism of China's policies towards Taiwan".

[Keeping an Eye On...]

- The Biden administration's tariff reassessment debate is being guided by three factors. First, the administration is up against a four year statutory deadline, as inscribed in the Section 301 law, to either extend or repeal the tariffs. This is the most important driver of the debate internally within the administration. Had this deadline not been in place, the tariffs would not have been reviewed before the midterm elections. Second is the unexpectedly high inflation print over the past couple of months, which is due to both excess demand and supply chain snafus. The thinking is that the spiraling pocketbook expenses of the average American can be brought down by releasing the tariff valve. This is true up to a point, but there is a tendency to overestimate the degree of price containment that can be achieved through tariff reduction. The tariffs, after all, have already diverted production elsewhere, so the cost reductions that will occur will be muted. Third and final, there are a few committed free traders in the administration, like Janet Yellen, who understand that tariffs are a tax on both consumers as well as domestic producers using imported intermediate inputs. Over the medium and long term, such a tax sidetracks an economy from operating at a level of productivity that is commensurate with its growth potential. Overall, the first two factors are driving the administration's tariff-related decision-making. And given that the first factor and the second factor are essentially at odds with each other, the net result as we see today is a half-hearted measure to remove a subset of the Trump-era tariffs. That said, any removal or reduction should be welcomed. The material impact economically might be limited but from a political standpoint, it will be a salient moment in the bilateral relationship—given that the imposition of the Section 301 tariffs in July 2018 had marked the first major shot of the U.S.-China 'new cold war' of the 21st century.

[Expanded Reading]

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- US Intelligence Warns of Chinese Influence Effort Against States, *Bloomberg*, July 6, 2022 [Paywall]
- Foreign Ministry Spokesperson Zhao Lijian's Regular Press Conference on July 5, 2022, Ministry of Foreign Affairs of the People's Republic of China, July 5, 2022
- READOUT: Secretary of the Treasury Janet L. Yellen's Virtual Meeting with Vice Premier of the People's Republic of China (PRC) Liu He, U.S. Department of the Treasury, July 4, 2022
- Opinion: Roll back the Trump tax on American households, *The Virginian-Pilot*, July 2, 2022 [Paywall]

On the Hill

[Legislative Development]

- Senate Minority Leader Mitch McConnell threatened to block the emerging China competition bill in the conferencing process if Democrats continue pursuing a partisan budget reconciliation bill.
- The White House criticized McConnell and Republican Senator John Cornyn for "holding hostage" the competition bill, but Cornyn said the White House was "confused".
- As Congress continues to reconcile the competition bill, five Republican Senators are calling on support for the House version of the bill's trade provisions while other lawmakers anticipated the trade title to be cut out of the bill.
- A bipartisan group of Senators led by Finance Committee Chair Ron Wyden proposed to restrict the export of personal data of large numbers of users citing China and national security concerns.

- Two Democratic lawmakers proposed to give berthing preference to U.S. exporters at American ports, arguing that it will help reduce trade imbalance with China.
- A bipartisan pair of Senators called on Commerce to initiate anti-dumping and countervailing duty (AD/CVD) investigations into Chinese mask imports.

[**Midterm Election Outlook**]

- Democrat and Republican election hopefuls alike are leaning into rhetoric about U.S. competition with China in an effort to win over voters ahead of the midterm elections this fall.
- Sen. Marco Rubio (R-FL) is staking a course as a leading 'China hawk' within the GOP. In addition to headlining campaign emails with subjects like "Dems <3 China," he recently delivered a fiery speech at the Heritage Foundation titled "Putin's War and the Threat from Communist China'' where he portrayed U.S.-China relations as a battle between liberalism and authoritarianism that the Democrats are not poised to win. He leads his Democratic challenger, Rep. Val Demmings, by nine points in the polls.
- Sen. Raphael Warnock (D-GA), who won his seat in a 2021 special election, is pushing the message that the CHIPS Act could mitigate the ongoing semiconductor shortage and avoid future plant shutdowns like one which hit a KIA factory in his state last year. He is currently leading his Republican challenger, Herschel Walker, by ten points in the polls.
- Sen. Mark Kelly (D-AZ) penned an op-ed in the *Phoenix Business Journal* endorsing the semiconductor provisions of USICA and successfully introduced a motion instructing House and Senate conferees to include the CHIPS Act's domestic semiconductor funding in the final version of the China competition bill. The Republican primary for Sen. Kelly's seat will not take place until August 2, but GOP Super PACs are already latching on to the incumbent's stake in a Chinese tech firm and portraying it as a source of undue influence (which Kelly denies). While no comprehensive polls for the general election have been conducted yet, Sen. Kelly's race is expected to be one of the Democrats' most vulnerable.

[**Keeping an Eye On…**]

- While competition with China is one of the few major areas of bipartisan consensus on the Hill, reconciling the House and Senate bills that tout this competition is turning out to be a much harder lift than anticipated. For this underwhelming state of affairs, much of the blame resides on the shoulders of the House Democrats. Given the Biden administration's mismanagement on the inflation front, fearful of the shellacking that they will receive in the midterms in November, and terrified of the amount of time they might have to sit in the opposition benches, the House Democrats have chosen to harvest partisan near-term legislative gains rather than hammer out a far-sighted consensus on the China competition bill, also known as the Bipartisan Innovation Act. A climate change, prescription drug pricing, and social spending package is sought to be passed by the Democrats on a party-line vote, more-or-less at the expense of the Bipartisan Innovation Act. Red meat, or maybe its vegetarian substitute, for partisan domestic constituencies is being readied for the national interest. As for the Bipartisan Innovation Act, expect it to be stripped down to its bare essentials (i.e., a funded CHIPS Act or a funded CHIPS Act-plus with its $50 billion in semiconductor production-related investment tax credits) and passed on a bipartisan basis. In retrospect, if just the CHIPS Act funding is to be the final end-product in this 117th Congress, its passage on a bipartisan basis could have been achieved as early as Spring 2021. The mountain that was promised on the 'China competition' policy is in danger of delivering a molehill. Congress yet again is proving that in an election year, it is the place where good ideas come to die.

[**Expanded Reading**]

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- As China competition bill takes shape, Georgia lawmakers push for resources, *The Atlanta Journal-Constitution*, July 4, 2022
- The (new) GOP plan to defeat Raphael Warnock and Mark Kelly, *Axios*, July 1, 2022
- McConnell issues major warning to Democrats: GOP will walk away from China competition bill if they push party-line economic plan, *CNN*, June 30, 2022
- Lawmakers Want To Favor Carriers That Prioritize US Exports, *Transport Magazine*, June 29, 2022
- Wyden, Lummis, Whitehouse, Rubio and Hagerty Introduce Bipartisan Legislation to Protect Americans' Private Data from Hostile Foreign Governments, Office of Sen. Ron Wyden, June 23, 2022
- Baldwin, Braun Defend Made in America Mask Manufacturers, Call on Commerce to Investigate Chinese Mask Dumping, Office of Sen. Tammy Baldwin, June 23, 2022
- Is Time Running Out for Compromise on America COMPETES/USICA Act?, *HPC Wire*, June 22, 2022
- How Good Bills Die in Committee, *The Wall Street Journal*, June 14, 2022 [Paywall]
- Sen. Kelly Highlights His Bill to Boost Arizona Microchip Manufacturing in New Column, Office of Sen. Mark Kelly, May 16, 2022
- My View: Bill to help Arizona lead in microchip production a step closer, *Phoenix Business Journal*, May 13, 2022 [Paywall]
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ICAS TRADE N TECH DISPATCH

July 27, 2022

Volume 2, Issue 15

What's Been Happening

1 — Are Export Controls the New Dragon Slayer? — 1

[**In One Sentence**]

- The Bureau of Industry and Security (BIS) is focused on negotiating a fifth multilateral export control regime aimed at the technological threat from China.
- BIS chief Alan Estevez suggested that the agency has "appropriate tools" available to deploy against Chinese technology transfers.
- The European Union is working closely with the U.S. to address export controls targeting China.

[**Mark the Essentials**]

- Estevez suggested that one of the purposes of a new multilateral export control regime would be to better equip the U.S. to handle future geopolitical challenges, including potential Chinese aggression directed at Taiwan.
- On the issue of whether or not the BIS is able to also conduct outbound investment screening on American venture capital firms investing in Chinese technology companies, Estevez contended that a technology transfer would need to be part of the investment deal to be under BIS' jurisdiction.
- Sabine Weyand, the European Commission's director-general for trade, said that the concerns about China's use of technology is focused on critical and emerging technologies that could be used by "authoritarian regimes" to set standards for future technologies.

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

- During the final year of the Trump administration, a gruff diplomat and ex-businessman by the name of Keith Krach made the rounds of East Asia's capitals selling them the idea of a 'Clean Network'—a Clean Carrier, Clean Store, Clean Apps, Clean Cloud, Clean Cable, etc. Essentially, it would be a network cleansed of mainland China's "untrustworthy" digital fingerprints. There was hardly any buy-in with even ally Japan flat-out turning it down. 'America first' was indeed America alone, and a cardinal lesson was re-learnt along the way. If Washington insists on decoupling supply chains, given the sheer size of China's market, such a decoupling strategy must be crafted in a nuanced manner. An expansively drawn economic security perimeter that thwarts allies and partners' advanced technology exchanges with Beijing could well turn out to be the 21st century's geo-economic equivalent of the Maginot Line, leading potentially to the 'designing out' of U.S. parts and components from ensuing value chains. The technology controls to back up these economic security and strategic competition goals should also be designed collaboratively—ideally, multilaterally. This is a lesson that has been well-embraced by the Biden administration as it proceeds bottom-up, not top-down, with the construction of a new (fifth) multilateral export control regime to protect the West's leadership in the foundational technologies that will be key to the Fourth Industrial Revolution (FIR). The path to a fifth export control regime will be a long and complex one, given the size of China's economic footprint in the advanced manufacturing space. That said, the underlying principle that informs the administration's effort is the correct one.

[**Expanded Reading**]

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- US Official Sees Curbs on Exports to Russia as Template for China, *Bloomberg*, July 19, 2022 [Paywall]
- Hearing on Advancing National Security and Foreign Policy Through Export Controls: Oversight of the Bureau of Industry and Security, Senate Committee on Banking, Housing, and Urban Affairs, July 14, 2022
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- Rethinking Trade In a Geopolitical Context: Trends and Transatlantic Cooperation, Center for Strategic International Studies, July 13, 2022

2 — A Shared Understanding (Sans Commitments) Among U.S. & Partners — 2

[**In One Sentence**]

- The U.S. and 17 partnering nations of the Supply Chain Ministerial Forum will increase transparency to strengthen global supply chains.
- A leaked draft joint statement on the trade pillar of the Indo-Pacific Economic Framework (IPEF) outlined only broad trade commitments.
- A ministerial meeting of the Indo-Pacific Economic Framework for Prosperity countries is being held on July 26-27.
- The U.S. and Thailand signed a memorandum of understanding on supply chain resiliency to boost ties in critical areas like electric vehicles and batteries.

[**Mark the Essentials**]

- At the conclusion of the virtual Supply Chain Ministerial Forum meeting, the U.S. and 17 other nations committed to cooperatively pursue four principles in supply chain operations: transparency, diversification, security and sustainability.
- The leaked draft of the forthcoming IPEF ministerial meeting showed that except the U.S., the other 14 participants of the IPEF have not yet agreed to join the four pillars of the framework, which covers supply chain resiliency, clean energy infrastructure as well as tax and anticorruption.
- The U.S. and Thailand will share information on "markets, disruptions, shortages, or restrictions related to critical supply chains" and focus on key areas "such as electronics and their components, medicines, pharmaceuticals, health products, medical devices, safety equipment, telecommunications equipment, energy products, and electric vehicles."

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

- The May 23rd unveiling of the Indo-Pacific Economic Framework (IPEF) in Tokyo was a less-than-stirring moment in the history of regional trade liberalization. The sparse two-page joint statement amounted to a willingness to inaugurate collective discussions towards future negotiations—not actually launch negotiations.

As such, it should come as no surprise that the first post-launch ministerial meeting appears to have little to show by way of firm commitments. It bears remembering though that even after a dozen rounds of the Trans-Pacific Partnership (TPP) negotiations in the early-2010s, there were large gaps within the negotiation text. All of that changed in year two and year three of the second Obama administration as it raced to finalize the text and have it ratified under Trade Promotion Authority (TPA) rules before the clock ran out on its tenure in office. This, in turn, begs the operative question: What will be the forcing mechanism this time around that pushes the IPEF negotiations to the critical landing zone where many of the important reciprocal bargains are memorialized? The Obama administration more-or-less went through the TPP motions during its first term before ratcheting up the pace of negotiations during the second term. Judging by this short backstory, it is hard to see any driver that could instill urgency among the IPEF parties in the short or medium term. Aside from the Biden administration's interest in wrapping up detailed supply chain commitments with a selective list of interested East Asian partners, the rest of the IPEF discussions are likely to muddle along aimlessly for the time being.

[**Expanded Reading**]

- U.S. to host first IPEF ministerial meeting, *Politico*, July 25, 2022
- Joint Statement on Cooperation on Global Supply Chains, Department of State, July 20, 2022
- IPEF draft ministerial text - trade pillar (Jul 2022), ISDS Bilaterals, July, 18, 2022
- United States-Thailand Communiqué on Strategic Alliance and Partnership, U.S. Embassy Bangkok, July 11, 2022

3 — Renewed Attention on U.S.-China Trade and Tariffs — 3

[**In One Sentence**]

- New findings suggest that the Section 301 tariffs hurt U.S. tech jobs and production.
- The Commerce Department self-initiated an anticircumvention case to prevent the avoidance of anti-dumping and countervailing duties on Chinese foil.
- Wang Yi told Blinken that Beijing wants the U.S. to remove tariffs on Chinese goods "as quickly as possible."

[**Mark the Essentials**]

- The Consumer Technology Association released a new report and suggested that the Section 301 Tariffs "have not been effective in dealing with China and are instead hurting U.S. businesses and consumers" while calling for a removal of the tariffs to mitigate rampant and harmful inflation.
- The Department of Commerce will be looking into the level of Chinese investment in South Korea and Thailand, as well as other factors, to determine whether or not Chinese companies have been circumventing the anti-dumping duties placed on over 230 Chinese companies for 26 alleged subsidy programs.
- As part of his four "to-do" lists to improve U.S.-China relations, Chinese Foreign Minister Wang Yi told U.S. Secretary of State Anthony Blinken that the U.S. should cancel additional tariffs on China as well as technology sanctions on China.

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

- One way or the other, the Biden administration's decision on the Section 301 tariffs should be known soon. The deafening silence in the White House on this issue is a sign of its consideration, especially with the president due to sit down for his virtual meeting with President Xi tomorrow. That said, a final decision is not expected by the time of the meeting. As has been pointed out in previous editions of the *TnT Dispatch*, the administration is still having difficulty getting its story straight on this topic, given the vertical split within the administration on the issue. For those inclined to hope for the full removal of the tariffs, disappointment will be on the cards. A (small) subset of the Section 301 tariffs will be removed; i.e., the supposedly "irresponsible" ones, although truth be told all the Section 301 tariffs are "irresponsible" and illegal. And a larger subset of the tariffs might even be reduced. As for the extended Section 301 (and Section 232) tariff probe being conducted by the U.S. International Trade Commission (USITC), one should not be holding one's breath for its findings. The findings are not due until March 2023, although one can be quite certain that even at that late date political jockeying with regard to the Section 301 tariffs will be alive and well.

[**Expanded Reading**]

- Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products, Consumer Technology Association, July 20, 2022
- Importers paid $32 bln in U.S. tariffs on China tech imports-industry report, *Reuters*, July 19, 2022 [Paywall]
- Certain Aluminum Foil From the People's Republic of China: Initiation of Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders, Federal Register, July 18, 2022
- Blinken, China's Wang Yi hold talks covering Ukraine war and trade, *Reuters*, July 9, 2022 [Paywall]

On the Hill

[**Legislative Development**]

- On July 27, the long-debated CHIPS Act, this time as a CHIPS-plus framework, passed the Senate by 64-33. The final bill will not include the trade titles in USICA or the trade provisions in the House's America COMPETES Act.
- The "Countering Economic Coercion Act of 2022" was introduced in the Senate aiming at granting the president the authority to determine whether a U.S. trading partner is being subject to economic coercion, and to take steps to address it.
- Congressional efforts to reconcile the China competition bills are running into difficulties despite industry groups and Biden administration officials urging action.

[**Hearings and Statements**]

- Seven Democratic House members are pressing U.S. Customs and Border Protection to place Chinese solar companies on a new entity list which is linked to forced labor.
- Senate Finance Committee Chair Ron Wyden (D-OR) citing a new ITC report, says the U.S. must combat Chinese censorship.

[**Keeping an Eye On…**]

- A week is a long time in politics. It is an even longer time in CHIPS Act politics. Two weeks ago, the broad Bipartisan Innovation Act appeared to be in jeopardy with Democrats choosing to prioritize a climate change, prescription drug pricing and social spending package on a party-line vote. A week thereafter, the Bipartisan Innovation Act—specifically a skinny CHIPS Act bill—appeared to enjoy a respite with the Democrats' climate change and social spending package falling by the wayside. At this time of writing, a more robust 'CHIPS-plus' bill appears to be on the anvil after clearing the Senate on a bipartisan basis. Contrary to the received wisdom, the most transformative element in the package is not the multi-billion-dollar subsidies to be handed out to American, Korean and Taiwanese chip fabricators. Rather, it is the creation of a technology directorate within the National Science Foundation (NSF) which, by broadening the NSF's remit to applied research and commercialization, could qualitatively accelerate U.S. technology development. The 'CHIPS-plus' bill is not a done deal. It now goes back to the House for a vote stripped of its trade title which initially, at least, had been the magnet that drew many additional Democratic votes to the Bipartisan Innovation Act. How Speaker Pelosi and the Democrats choose to proceed on the fine print of 'CHIPS-plus' will be key to its swift passage—or not. The bill could yet go back to a conference committee to be hashed out in August and September. It ain't over till the fat lady sings. Watch this space.

[**Expanded Reading**]

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- Senate advances more than $50 billion bill to boost U.S. semiconductor production, *CNBC*, July 20, 2022
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- Coons, Young introduce bill to counter economic coercion of allies, Office of Senator Chris Coons, July 13, 2022
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ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — Citing Competition with China, a Slimmer CHIPS Act Plus is Signed — 1

[In One Sentence]

- On August 9, President Joe Biden signed the long-awaited and landmark *CHIPS and Science Act of 2022*.
- On July 27, the Senate passed the CHIPS Plus bill with the House swiftly passing it the following day.
- Ahead of the Senate vote, the White House framed the bill as necessary for national security and economic competitiveness.

[Mark the Essentials]

- The *CHIPS and Science Act of 2022* includes over $52 billion in funding for semiconductor manufacturing incentive programs, other related scientific and technological research as well as workplace development.
- The original scope of the *Bipartisan Innovation Act* (*USICA + America COMPETES Act*) was pared down due to the unresolved differences over several areas such as its trade title, which ultimately led to a revised, slimmer version of the legislation.
- Before the Senate vote, the administration was reported to have repeatedly lobbied for the legislation while referring to both the U.S. competition with China and national security concerns.

[Keeping an Eye On...]

- After a summer-long conference process of twists and turns, but little overall progress, the *CHIPS and Science Act of 2022* passed the Senate and the House in quick succession on July 27 and July 28, respectively. On August 9, President Biden signed the bill into law, adding a new legislative feather to his presidential hat. In short, the *CHIPS and Science Act of 2022* is a slimmed down version of the proposed *Bipartisan Innovation Act* that was under consideration in conference. It is also an improvement over the *Bipartisan Innovation Act*, given that it strips out the protectionist-leaning trade title of the proposed act and as much as US$19 billion of subsidies is now expected to flow into chip production on U.S. soil in FY2022 alone! Now, the international dimension of the *CHIPS and Science Act of 2022* takes center stage. In exchange for multibillion-dollar subsidies, *CHIPS and Science Act* beneficiaries, which are expected to include South Korean and Taiwanese chip producers, are prohibited from expanding their advanced semiconductor manufacturing capabilities in China for the next 10 years. In parallel, the U.S. Department of Commerce is seeking to form a 'CHIP 4' cartel with Japan, South Korea and Taiwan to prevent the leakage of advanced chipmaking knowledge into the Chinese industrial ecosystem. With this, the decoupling game in the semiconductor sector has begun in earnest. How South Korean and Taiwanese manufacturers fare—a few of which might even fail—in this contest given their dependence on sales and revenues earned on the Mainland will be just as important a factor as the extent to which China is elbowed out of the high-end segment of global semiconductor design and manufacturing.

[**Expanded Reading**]

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- Biden signs CHIPS Act, intended to relieve the pandemic-era computer chip shortage, *ABC News*, August 9, 2022
- Here's what's in the bipartisan semiconductor chip manufacturing package, *CNN*, August 9, 2022
- FACT SHEET: CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China, White House, August 9, 2022
- H. R. 4346 The CHIPS and Science Act of 2022, U.S. Senate Committee on Commerce, Science, & Transportation, July 29, 2022
- Biden meets CEOs, labor; backs bill to boost U.S. chips production, *Reuters*, July 25, 2022 [Paywall]

2 — The IPEF is in Need of More Flesh on Bone— 2

[**In One Sentence**]

- Lawmakers called on the Biden administration to boost transparency in the Indo-Pacific Economic Framework (IPEF) via consultation involving both Congress and outside stakeholders.
- Some IPEF members called for transition periods for member countries to meet the high commitment standards at the IPEF ministerial meeting in late July.
- More than 100 civil society and labor groups have also called for transparency in the IPEF talks.
- Secretary of State Antony Blinken said that the U.S.-Japan Economic Policy Consultative Committee will complement the IPEF.

[**Mark the Essentials**]

- Nine lawmakers sent a letter to the top officials in charge of trade policy in the Biden administration to address concerns of the executive branch bypassing the legislative branch on trade agreements and called the announcement of IPEF "abrupt."
- During the virtual ministerial meeting of the 14 IPEF members, Malaysia and multiple other Asian countries sought to establish flexibilities within the IPEF pillars; particularly over transition periods.
- Advocates calling for greater transparency in IPEF have suggested that the Biden administration replace corporate input with an "on-the-record public process" to avoid the problems encountered during the Trans-Pacific Partnership (TPP) negotiations.
- Secretary Blinken joined Commerce Secretary Gina Raimondo and their respective Japanese counterparts at an inaugural "Economic 2+2" meeting where they raised concerns over China, promised cooperation to address barriers on cross-border data flows, and backed joint efforts on export controls for critical technologies and supply chain resilience.

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

- For almost two decades now, U.S. Congressmen and women have shouted themselves hoarse about the Executive Branch's lack of consultation with Congress at the time of negotiating trade agreements. After all, the U.S. Constitution does vest Congress with the authority to regulate foreign commerce, as they correctly argue. More often than not, the loudest voices have emerged from the Democratic side; particularly from protectionist-minded Democrats hoping to torpedo an ongoing trade negotiation by pointing to a supposedly perfidious corporate giveaway or suchlike that was under wraps during the course of a negotiation. How appropriate it is, then, that the shoe is on the other foot now as a protectionist-minded U.S. Trade Representative from the Democratic Party has to answer calls from Congress to be more transparent on the state of the Indo-Pacific Economic Framework (IPEF) consultations. This is a tough ask for USTR Tai for two reasons. IPEF is designed as a trade executive agreement (TEA) that skirts meaningful congressional oversight and, crucially, congressional ratification. The recent spate of TEA's, such as the rules of origin annex in the U.S.-Japan trade agreement, is itself a matter of questionable constitutionality. More embarrassingly, the demand for transparency from the Hill will blow open the specious quality of IPEF's substantive content under negotiation. With no market access on tap, no third-party enforceability, inclusivity prioritized over ambition, and an *a la carte* approach to participation in hand-picked pillars, the IPEF negotiations resemble the ASEAN-led regional trade agreements in Asia that Washington has invariably derided. The 14 countries constituting the current membership of IPEF are expected to launch the negotiation phase of the proposed framework in early-September. For reasons deriving from the framework's substantive hollowness (except perhaps for its supply chain and digital trade commitments), it is understandable that the Biden administration would prefer to conduct negotiations under a veil of relative secrecy. Whether Congress is prepared to accept this remains to be seen. They are probably not. And the extent of its subsequent pushback remains to be seen.

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- GOP senators use McKalip hearing to slam Biden trade agenda, *Agri-Pulse*, July 28, 2022 [Paywall]
- Hearing to Consider the Nomination of Douglas J. McKalip, of the District of Columbia, to be Chief Agricultural Negotiator, Office of the United States Trade Representative, with the Rank of Ambassador, United States Senate Committee on Finance, July 28, 2022
- U.S. to host first IPEF ministerial meeting, *Politico*, July 25, 2022

On the Hill

[**Legislative Development**]

- After a year of impasse, the Senate passed the budget reconciliation deal which includes billions of dollars for clean energy programs.
- Senator Jim Risch introduced the *Economic and Commercial Opportunities and Networks Act*, which would bolster the State Department's effort to combat intellectual property theft and forced technology transfers.
- With the CHIPS Act cleared and signed into law, Senate Majority Leader Chuck Schumer noted that he hopes to reach an agreement in September on the China competition bills still stuck in conference proceedings.

[**Hearings and Statements**]

- During her visit to Taiwan, House Speaker Nancy Pelosi said a trade agreement between the U.S. and the self-governing island might be possible and could be arranged soon.
- The Senate Foreign Relations Committee will hold a business meeting to address the *Taiwan Policy Act of 2022*.
- A bipartisan group of legislators introduced resolutions calling on the Biden administration to negotiate new digital trade rules with "like-minded" countries to uphold democratic values in a digital world that is increasingly under threat from China.
- Lawmakers expressed serious concerns over the "revolving door" between the Commerce Department and big technology companies, citing its impact on global digital trade policy rulemaking.

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

- In his long-awaited China policy speech in late-May, Secretary of State Antony Blinken had summarized the Biden Administration's strategy in three words: invest, align, compete. On August 7, the U.S. Senate delivered a massive down-payment towards realizing the Biden administration's strategy by voting 51-50 to pass the *Inflation Reduction Act.* The Act is soon expected to pass the House in its current form and subsequently be signed into law by President Biden. The Act authorizes the single largest investment in climate and energy policy measures in American history—to the tune of about $370 billion—mostly by way of investment tax credits. These provisions are expected to usher in a new burst of innovation and deployment of clean energy at scale by crowding-in the private sector's immense entrepreneurialism and equally immense financing capabilities. Just as venture capital firms poured their billions into microelectronics (in a style similar to that of what happened in Silicon Valley) and biomedicine and incubated the great 'unicorns' of today only after the Defense Department and the National Institute of Health had invested their billions in the funding of upstream research, development and initial procurement, so also the Energy Department's forthcoming multi-billion investments in upstream research, development and initial procurement is expected to spawn the great climate-focused discoveries and 'unicorns' of tomorrow. The impact of two landmark pieces of legislation in the space of two short weeks—the *CHIPS and Science Act of 2022* and the *Inflation Reduction Act of 2022*—could yet reverberate for years and decades to come. The U.S. has invested, is aligning, and stands ready to compete. Is China ready to put up? Bring on the competition.

[**Expanded Reading**]

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- PELOSI'S VISIT: CHIPS act opens door for deeper ties, Pelosi says, *Taipei Times*, August 4, 2022
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- DelBene, LaHood, Bera, Chabot Introduce Bipartisan Resolution to Promote the U.S. Digital Economy and Digital Trade, U.S. Congresswoman Suzan DelBene Press Release, July 28, 2022
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ICAS TRADE N TECH DISPATCH

August 26, 2022

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What's Been Happening

1 — IPEF Moving Forward with Members Calling for Flexibility— 1

[**In One Sentence**]

- The next Indo-Pacific Economic Framework for Prosperity (IPEF) ministerial meeting could pave the way for additional members.
- Many IPEF member states, including Singapore, are calling for flexibility in the Framework to allow members to adapt.
- The U.S. plans to launch the formal negotiation at the IPEF ministerial meeting set for early September.

[**Mark the Essentials**]

- Earlier in August, Secretary of State Blinken said that he was confident more countries would seek to join IPEF, hinting at South and Southeast Asian countries including Bangladesh, Cambodia, and Laos.
- The Australian Trade Minister Don Farrell said that the next IPEF ministerial meeting will provide a clearer picture and encouraged the U.S. to "be as forward-leaning as they can to re-engage."
- Deputy U.S. Trade Representative Sarah Bianchi met with the vice minister for foreign affairs of Thailand, another vocal IPEF member calling for more flexibility for developing countries, to discuss the ambitious economic framework.

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

- The veritable 'starting gun' to formally launch the Indo-Pacific Economic Framework (IPEF) negotiations will be fired on September 8th in Los Angeles, California. Following a months-long scoping exercise, the expectation at the ministerial meeting is two-fold: first, that the various parties will at least lay out the various pillars in which they will participate; and second, that the Biden administration, the key driver of the initiative, will chart out what it considers to be a high-standards pathway for each of the four pillars. With market access off the table, the bait of private sector financing of clean(er) technologies is being dangled by Washington to gin up the membership—particularly within the supply chain resilience and the infrastructure, clean energy, and decarbonization pillars. Whether actual financing will materialize is another matter. The U.S. International Development Finance Corporation's record of crowding-in private investors is not a promising one. And whether such financing can re-wire supply chains in the Indo-Pacific, except those pertaining to a narrow list of advanced manufacturing products, is even more tenuous. The IPEF negotiations come at a time when the chief structural tension in the Indo-Pacific region is the disconnection between the U.S.-centered hub-and-spokes security system and the regional economic order that is organizing along community lines and in which the United States is ever less a driving force. As Beijing becomes a prodigious exporter of capital to its extended neighborhood as well as the primary final market for the region's production-shared output more gradually, this disconnect will only get starker. Does IPEF have an answer to this inexorable dilemma? We shall have to wait and see in early September.

[**Expanded Reading**]

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- Singapore's trade minister: 'Workable' IPEF designed to be flexible, *Inside U.S. Trade*, August 17, 2022 [Paywall]
- Readout of Ambassador Sarah Bianchi's Meeting with Thailand Vice Minister for Foreign Affairs Vijavat Isarabhakdi, Office of the United States Trade Representative, August 11, 2022
- Readout of Secretary Raimondo's Meeting with Australian Minister for Trade and Tourism Don Farrell, U.S. Department of Commerce, August 10, 2022

2 — Taiwan, Trade, and CHIPS— 2

[**In One Sentence**]

- Representatives from the U.S. and Taiwan have agreed to begin formal negotiations on a trade agreement.
- Secretary of Commerce Gina Raimondo said that the Pelosi visit to Taiwan has "complicated" U.S.-China dialogue.
- House Speaker Pelosi suggested Congress should consider new trade legislation following her trip to the Indo-Pacific.
- The International Trade Administration is seeking public input on the barriers to U.S. exports of artificial intelligence (AI), which could become an issue of future trade negotiations with EU and Asian partners.
- United States Trade Representative (USTR) Katherine Tai suggested that the U.S. should "keep replicating" CHIPS Act efforts for other industries.

[**Mark the Essentials**]

- The issue areas of the U.S.-Taiwan trade negotiations mimic those found in IPEF, although the latter's pillar-based approach has been dropped from the former.
- Secretary Raimondo contended that back-channel communications with China are limited and the House Speaker's visit made these communications "a little more challenging."
- Taiwanese media reported that Pelosi held a separate conversation with giant chipmaker TSMC to discuss the semiconductor industry and the CHIPS Act during her visit to Taiwan.
- While USTR Tai and other Washington officials applaud the CHIPS Act success, analysts cautioned those involved to not "out China" China.

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

- Taiwan originally sought to be a founding member of the Indo-Pacific Economic Framework (IPEF). With other prospective Asian member countries balking at this prospect, given Beijing's exclusion from IPEF, the Biden administration dropped Taiwan's candidature. Instead, the two sides drew up a U.S.-Taiwan Initiative on 21st Century Trade within ten days of the unveiling of IPEF in late-May in Tokyo. In an early sign of how quickly the Washington-Taipei track is expected to proceed, the two sides then released their Negotiating Mandate on August 17th—three weeks prior to the anticipated September 8th launch of the IPEF negotiations in Los Angeles. The U.S.-Taiwan Initiative is not an unmixed blessing for Taipei. At one level, it is obviously a coup for the self-governing island to be part of a preferential economic and trade arrangement in the Indo-Pacific ahead of its cross-strait counterpart. On the other hand, one of key purposes of the Biden administration's trade and economic focus in the Indo-Pacific, including in IPEF, is to lower its "untenable" supply chain exposure to the 'China risk'. Just to be clear, that 'China risk' also extends to the manufacturing of sophisticated parts, components and technologies on the Republic of China's soil. Thus, managed decoupling is sought not just from China but from Taiwan-based production too. On a happier note for Taipei, the Negotiating Mandate contains no reference to—and presumably no disciplines to be imposed on—its exchange rate practices. Both the December 2019 U.S.-Mexico-Canada (USMCA) Agreement and the January 2020 U.S.-China Phase One Agreement contained exchange rate commitments. For context, Taiwan has been Asia's leading currency manipulator, racking up overall current account surpluses in excess of 10% of its GDP annually since 2014. Recently, it has also consistently been featured in the U.S. Treasury Department's monitoring list for currency undervaluation in spite of the criteria to account for undervaluation being gamed in the relevant 2015 Act to quietly give Taipei a pass.

[**Expanded Reading**]

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- US-Taiwan Trade Talks Kick Off in Long-Planned Counter to China, *Bloomberg*, August 17, 2022 [Paywall]
- Pelosi dined with Taiwan computer chip executives during her brief visit, *The Washington Post*, August 3, 2022 [Paywall]
- China Is the Wrong Industrial Policy Model for the United States, Scott Kennedy, Center for Strategic International Studies, August 9, 2022

Midterm Outlook

Given the importance of the upcoming midterm elections this Fall and their potential impact on U.S. trade and technology relations with China, instead of a 'On the Hill' focus section, the next few issues of the ICAS TnT Dispatch will conclude with a 'Midterm Outlook' focus section to highlight the key incumbents and candidates, their views and statements made on China, and their prospects in the midterms.

[**Key Incumbents**]

- Sen. Marco Rubio (R-FL)
  - Marco Rubio is running for re-election this November for a third term in the Senate.
  - Senator Rubio is one of the most outspoken members of Congress on issues concerning China. As a member of the Senate Committee on Foreign Relations, Rubio has centered much of his rhetoric on general appeals against China's rise and the dangers posed by the 'Chinese Communist Party.'
  - Nevertheless, the Senator has perennially introduced amendments that substantially affect trade and technology issues vis-à-vis China. Most recently, Senator Rubio attempted to amend the now-signed CHIPS and Science Act to address an absence of counterespionage provisions on semiconductor research and development and its lack of guardrails to prohibit funding recipients from using federal grants to expand production of older chip types in overseas markets like China. Senator Rubio has

    - also joined calls for the Department of Commerce to expand export controls on critical technologies bound for China, and has consistently voted against easing Section 301 tariffs on Chinese goods.
    - Rubio currently leads his Democratic challenger, Representative Val Demmings, by 9 points in the polls.
- Sen. Ron Johnson (R-WI)
    - Ron Johnson is running for re-election this November for a third term in the Senate.
    - Senator Johnson occupies the classical liberal wing of the GOP, consistently voting in favor of free trade agreements and tax cuts while opposing tariffs and federal subsidies. This means that the Senator has voted against several measures designed to confront China economically, such as the United States Innovation and Competition Act (USICA) and the CHIPS and Science Act, as well as called on the USTR to review the tariff exclusion process and reduce tariffs on China altogether.
    - However, the Senator has responded to claims that he is too 'soft' on China by pointing to his support of measures to counter China in areas other than bilateral trade. For example, in March he introduced the Protect America's Innovation and Economic Security from CCP Act, which would reestablish an office in the Department of Justice to prevent Chinese spying against U.S. intellectual property and academic institutions. Senator Johnson also defended his vote against USICA by saying it did not adequately take China to task for stealing intellectual property and dodging investigations into the origins of the COVID-19 pandemic.
    - Johnson is currently trailing in the polls behind his Democratic challenger, Lieutenant Governor Mandela Barnes, who has contrasted himself with Johnson by specifically addressing the U.S.-China trade relationship. For example, the Barnes campaign unveiled a plan to boost local manufacturing that calls for an end to "bad trade deals and anti-competitive practices" that he believes are stymieing Wisconsin businesses' ability to compete with China.
- Sen. Mark Kelly (D-AZ)
    - Mark Kelly is up for re-election this November after winning a partial term in the 2020 special election.
    - As a member of the Senate Energy Committee, Senator Kelly's main contribution to U.S.-China trade and relations was his introduction of the REEShore Act in January . If passed by the next Congress, the bill would create a strategic reserve of rare earth elements (the global production of which is 97% controlled by China), phase Chinese-sourced materials out of Department of Defense systems, and investigate China's unfair trading practices in the global market.
    - Senator Kelly also offered a motion to instruct conferees to increase semiconductor production incentives in the final China competition bill, which came to fruition in the recently passed CHIPS and Science Act. Arizona is a key state for semiconductor manufacturing with both Intel and TSMC operating chips plants in the Greater Phoenix area, to be joined by TSMC in the near future.
    - Kelly currently is leading his Republican challenger, the Trump-endorsed venture capitalist Blake Masters, by 9 points in the polls.
- Speaker of the House of Representatives Nancy Pelosi (D-CA)
    - Speaker Pelosi is poised to win a 19th term in the House of Representatives this November, holding her firmly-Democratic district.

- Speaker Pelosi has taken a stand against China's human rights record for decades and recently dominated the headlines with a controversial trip to Taiwan. Geopolitically important, her Taiwan visit also has implications for trade with one of her stops being a meeting with TSMC Chairman Mark Liu. The two reportedly discussed the key role of Taiwan in the U.S. semiconductor supply chain given that the island accounts for over two thirds of global semiconductor production.
- Specifically, the two brainstormed possibilities for how the recently-passed CHIPS Act could be implemented to both U.S. government and Taiwanese industry stakeholders' benefit. TSMC's funding of the aforementioned semiconductor foundry in Arizona, dependent on CHIPS Act subsidies, is a business model which Pelosi would like to continue if she remains Speaker.

[**Open Races and their Candidates**]

- Sen. Rob Portman (R-OH)
    - Rob Portman has announced that he will not be running for re-election in 2022, leaving an open race in Ohio this November.
    - The term of Senator Portman's Democratic counterpart in the state of Ohio, Senator Sherrod Brown, will not end with this election cycle.Both Ohio senators, while divided by party lines, have worked together to protect their state's manufacturing sector through measures like introducing legislation to strengthen trade remedy laws last year and, more recently, jointly urging President Biden to maintain Section 301 tariffs on Chinese goods. Brown has not ruled out running for re-election to the Senate come 2024.
    - As a former House Member, U.S. Trade Representative, Director of the Office of Management and Budget—and a Finance, Energy, and Foreign Affairs committee member in the Senate—Rob Portman consistently opposed what he saw as unfair trade practices in Beijing, including a successful WTO suit in 2005 against China's improper duties on auto parts imported from America.
    - The race for Portman's open seat is between Republican author and commentator J.D. Vance and long-time Democratic House member Tim Ryan. Vance is a Trump-style populist who has aligned himself with the former President's rhetoric on China. Representative Ryan, while having deep roots in organized labor, has also positioned himself as a conservative-friendly candidate saying he "agreed" with Trump on trade during his administration while the then-venture capitalist Vance was touting the importance of free-trade agreements at the expense of local manufacturing jobs. The race is currently neck-to-neck with Ryan leading by one point on aggregate in the polls.
- Sen. Pat Toomey (R-PA)
    - Pat Toomey has announced that he will not be running for re-election in 2022, leaving an open race in Pennsylvania this November.
    - Senator Toomey, while serving on the committees of Banking and Finance, consistently sought to prevent trade barriers with China while addressing imbalances in the relationship by other means. For instance, he reached an agreement with Senator Brown on a bipartisan amendment to USICA that would have provided for sanctions on Chinese organizations involved in money laundering and intellectual property theft. However, Toomey ultimately opposed USICA for its government-directed spending that "imitate[s] Chinese central planning." Toomey also repeatedly called for Section 301 tariff relief and for a reform of the exclusion process to feature in the final China competition bill.
    -

- Toomey's departure has given way to a race in Pennsylvania between Republican television personality Dr. Mehmet Oz and Democratic Lieutenant Governor John Fetterman. Both candidates have vowed to 'get tough' on China and preserve the state's critical manufacturing sector. While Oz cultivated his anti-China bona fides during his primary race, he has come under fire in the general from Fetterman over his past partnership with a Chinese healthcare company and conspicuously rapid change in tone. Fetterman began pulling away in the polls this month and currently leads Oz by 10 points on aggregate.

[**Expanded Reading**]

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- Rubio Calls for New Export Control Laws, Office of Senator Marco Rubio, August 18, 2022
- TSMC Chose the US. Now It Must Handle China, *Bloomberg*, August 5, 2022 [Paywall]
- Taking Stock of Pelosi's Taiwan Trip, *The New York Times*, August 3, 2022 [Paywall]
- Democrats Unite on Challenger to Wisconsin GOP Senator Ron Johnson, *Bloomberg*, July 29, 2022 [Paywall]
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- Tim Ryan's Ohio ad play: Run to the right, *Axios*, July 17, 2022
- U.S. midterm elections and China policy, *Sup China*, July 14, 2022
- As chip-making business returns to US, Washington – and Arizona – dangle subsidies in race against China, *South China Morning Post*, June 29, 2022 [Paywall]
- Portman, Bipartisan Group of Senators Urge President Biden to Keep Section 301 Tariffs in Place, Office of Senator Sherrod Brown, May 26, 2022
- Toomey: Section 301 Tariff Reform Critical to Aiding American Manufacturers Competing with China, Office of Senator Pat Toomey, May 4, 2022
- Midwest Democrats go all-in on tough-on-China approach, *The Hill*, April 4, 2022
- Kelly, Cotton Introduce Bill to End Reliance on China for Rare-Earth Elements, Office of Senator Mark Kelly, January 14, 2022
- Senator Johnson and Colleagues Call on President Biden to End Self-Inflicted Harm from Tariffs, Office of Senator Ron Johnson, June 30, 2021

ICAS TRADE N TECH DISPATCH

September 12, 2022

Volume 2, Issue 18

What's Been Happening

1 — The IPEF Ship Sets Sail — 1

[In One Sentence]

- The Indo-Pacific Economic Framework (IPEF) concluded its first in-person ministerial meeting on September 9, 2022.
- 13 of the 14 IPEF countries committed to joining all four pillars of the framework while India chose to opt out of the trade pillar.
- Ministers from the IPEF member states announced negotiating objectives for the four pillars: trade, supply chain, clean energy and fair economy.
- Before the IPEF meeting, U.S. lawmakers again called for more transparency and congressional consultation regarding the negotiations.

[Mark the Essentials]

- Regarding the trade pillar, the ministers said they seek "new and creative approaches to trade and technology policies," underlining priorities on labor, environment, the digital economy, agriculture, transparency and good regulatory practices.
- According to U.S. Trade Representative Katherine Tai, IPEF countries also seek to develop standards on cross-border data flows and data localization.
- U.S. Secretary of Commerce Gina Raimondo, who leads the U.S. negotiations in three of the four pillars, said that "early harvest opportunities" will likely lie in the supply chain pillar.
- Deputy U.S. Trade Representative Sarah Bianchi said that IPEF countries are "supportive" of arranging IPEF as an executive agreement, adding that such an agreement will be "durable and lasting."
- In a letter dated September 6, 44 Democratic lawmakers and one independent criticized the launch of IPEF for the lack of prior "robust stakeholder and congressional consultation" or "a mandate from Congress," echoing similar calls from Republican lawmakers and others.
- Some commentators have questioned the enforceability and endurance of IPEF, while others marked it as an important first step to be followed by further, stronger regional economic efforts.

[Keeping an Eye On...]

- The first in-person ministerial meeting of the member states of the Indo-Pacific Economic Framework (IPEF) appears to have gone off without a hitch. Participation in the four pillars is wide-ranging and the hope is that certain deliverables can be harvested early. While the four-pillar framework might—or might not—be a "new and creative approach" to trade policy liberalization and standards-setting, it does ring the death knell on the single undertaking approach of trade negotiation; at least insofar as the U.S.-led plurilateral trade agreement-related negotiations are concerned. Now, the hard part of IPEF begins in earnest. How the parties reconcile the competing priorities of ambition and inclusivity, liberalization without meaningful market access, enforceability without binding dispute settlement, and transparency without meaningful accountability will go a long way towards determining whether IPEF is truly the "new and creative" approach that it is advertised to be or just a journeyman effort to mark time at a moment when trade liberalization enjoys ever-fewer advocates on either side of the aisle on Capitol Hill. The proof of the pudding will be in its eating. Let the negotiations begin.

[**Expanded Reading**]

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- Biden Administration Outlines Scope of Asian Economic Pact, *The New York Times*, September 9, 2022 [Paywall]
- Commerce Department Launches the Indo-Pacific Economic Framework for Prosperity (IPEF) Upskilling Initiative, U.S. Department of Commerce, September 8, 2022
- Remarks by Ambassador Katherine Tai at the Indo-Pacific Economic Framework Ministerial Welcome Event, Office of the United States Trade Representative, September 8, 2022
- U.S. business leader outlines hopes for IPEF ministerial, *Politico*, September 6, 2022

2 — The Dismal Near-Term U.S.-China Trade Outlook— 2

[**In One Sentence**]

- U.S. Trade Representative Katherine Tai reiterated plans for an "alternative model" of trade policy, particularly with a view to China, and has for the time being extended out the Section 301 tariffs.
- The U.S. International Trade Commission (ITC) has finished seeking public comments on Section 232 and Section 301 tariffs.
- Surveys show that U.S.-China tensions are hurting American business sentiment with regard to China.

[**Mark the Essentials**]

- According to Tai, the USTR Office is working to move beyond "just" trade liberalization and market access. Instead, trade should be a "force for good," such as rebuilding "confidence," "resilience" and sustainable standards in the global economy, countering Chinese economic dominance, and facilitating U.S. innovation.
- Stakeholders hold conflicting views on the impact of the Section 232 and Section 301 tariffs on the U.S. economy. Labor and manufacturing organizations said the tariffs were necessary to "level the playing field" for U.S. industry, while customer-facing industries argue that the tariffs are harming U.S. businesses by raising costs and prices.
- An annual member survey of the U.S.-China Business Council indicates that U.S. companies are suffering from lost sales due to uncertainty in supply and the impact of nationalism on consumer decisions. While a majority of businesses said they will wait and see whether to change their level of commitment to China, China remains vital to American business revenues and business competitiveness.

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

- Beware of the new and alternative approaches to trade. Eleven months ago, US Trade Representative Katherine Tai stood on a podium and unveiled the outlines of a "new approach" on trade policy to China. The approach was neither a "new" one or an "alternative" one; it was similar in substance—although not in tone—to her predecessor's approach. That said, her predecessor, Robert Lighthizer, had the gumption to at least challenge the Chinese bilaterally on trade and further prise open the market by way of the Phase One trade agreement. Truth be told, one way of seeing it is that USTR Tai has failed not only to open the Chinese market by a small margin but has even ducked the challenge of sitting across from her Chinese counterpart. It is as clear as it can be that the Biden administration has little intent to reduce—let alone remove—the illegal Section 301 tariffs before the midterm elections. China's zero-Covid restrictions are not helping the case for business sentiment and commercial exchanges either. The near-term U.S.-China trade outlook is about as bad as it gets. Hopefully, after the completion of the 20th Party Congress and the midterm elections, each side will do the responsible action at their end and the two sides will bilaterally create a pathway thereafter to restarting their trade and commercial policy dialogue.

[**Expanded Reading**]

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- Most Say Sections 301 and 232 Tariffs Hurting America, but ITC Hears From Defenders, Too, *International Trade Today*, August 26, 2022 [Paywall]
- USCBC 2022 Member Survey, U.S.-China Business Council, 2022
- Economic Impact of Section 232 and 301 Tariffs on U.S. Industries, Federal Register, May 10, 2022

3 — Chips 4 Alliance and Rewiring Supply Chains — 3

[**In One Sentence**]

- The United States has proposed a "Chips 4 Alliance" among the U.S., Japan, South Korea and Taiwan.
- China released an "action plan" to improve the nation's innovation capabilities and technological self-reliance.
- House Speaker Nancy Pelosi held an event to laud the passage of the CHIPS and Science Act.

[**Mark the Essentials**]

- The "Chips 4 Alliance" could facilitate discussions and coordination on issues such as industrial policy initiatives, manufacturing incentives, export controls, supply chain diversification and foreign investment practices.
- In a plan published by China's Finance, Science and Technology ministries, provincial and local governments are instructed to strengthen core technology research and scientific innovation by incentivizing and supporting private enterprises, accelerating the reorganization of key national laboratories, and expanding talent recruitment efforts.
- Pelosi said that the bill "turbocharges" U.S. manufacturing, adding that the U.S. has to recommit to its innovative and technological "pre-eminence" in the world.

- Chinese semiconductor groups have criticized the CHIPS and Science Act, arguing that the law will create "chaos in the global semiconductor industry."

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

- Say hello to the newest export controls cartel in the multilateral system: the 'Chips 4 Alliance'. The goal of this Alliance is to strangle the flow of advanced semiconductor inputs and technologies—be it of chip design, chip production, or chip production toolmaking—from entering the Chinese advanced manufacturing ecosystem. In the short-to-medium term, the 'Chips 4 Alliance' will constrict China's semiconductor production capabilities across-the-board. And China is not in a position to assert its chips-related supply chain demands, given that it occupies a lower position in the value chain compared to all the Chips 4 countries. But for Seoul and Taipei, the 'Chips 4 Alliance' is not an unmixed blessing either. Korean semiconductor companies depend on the China market to fatten their revenues and profits, which is recycled back into advanced R&D at home. These bottom lines will shrink as local Chinese competitors gradually rise and elbow their way into the market spaces vacated by the Samsungs and SK Hynixs. As for Taiwan, the 'Chip 4 Alliance' cannot be seen in isolation from Washington's Chips and Science Act, and it bears remembering that the Chips and Science Act was passed with a view to reduce America's exposure to the 'China risk'. That 'China risk' includes the risk of exposure to Taiwanese-based production as well. The logic of the 'Chips 4 Alliance' is therefore likely to lead to some degree of hollowing out of domestic chip production on the island, which will be 'friend-shored' overseas. So, a new era in advanced manufacturing supply chains is upon us. On the ground, all will not go as planned. Be prepared to expect the unexpected.

[**Expanded Reading**]

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- Speaker Pelosi Holds San Francisco Event on the CHIPS and Science Act, Speaker of the House Nancy Pelosi Press Release, August 18, 2022
- Tech war: China semiconductor group slams US Chips and Science Act as violation of fair trade, warns of supply chain chaos, *South China Morning Post*, August 17, 2022 [Paywall]

ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — The Multifaceted Multilateralism Game Again in Full Swing — 1

[**In One Sentence**]

- U.S. Commerce Secretary Gina Raimondo reiterated the goal of advancing sustainability, resilience and standards while negotiating the Indo-Pacific Economic Framework (IPEF).
- Asia-Pacific Economic Cooperation (APEC) is looking to chart out a role as an "incubator of ideas" through capacity building on sustainable and inclusive trade.
- The first U.S.-Pacific Island Country Summit is scheduled to take place for two days in Washington, DC starting September 28.
- The European Union opened an office in San Francisco to support digital policies and work related to the Trade and Technology Council (TTC).
- The U.S.-Japan Partnership on Trade initiated a second round of discussions on the digital economy and trade.

[**Mark the Essentials**]

- U.S. officials have framed IPEF as an "alternative" way—to China's approach—of engaging with Indo-Pacific countries, while simultaneously highlighting the need for a new "paradigm" to address "new" trade issues such as standards setting, a clean economy, supply chain resilience and the digital market.
- India said it refrained from joining IPEF's trade pillar due to concerns over its environment, labor, digital trade and public procurement provisions.
- APEC aims to build on the outcomes from the WTO's 12th ministerial conference this June and advance discussion on issues such as fisheries subsidies, trade facilitation, agriculture, digitalization, sustainability and the customs duties moratorium.
- According to the White House, the upcoming U.S.-Pacific Island Country Summit will reflect the participant parties' deepening cooperation on climate change, pandemic response, economic recovery, maritime security, environmental protection and united efforts to advance a free and open Indo-Pacific.
- The EU's new office in San Francisco aims to promote EU standards and digital policies, strengthen cooperation with U.S. stakeholders, and advance the work of the TTC. American businesses have urged the Biden administration to increase transparency and engagement with industry stakeholders regarding the TTC's agenda.

- Officials from the U.S. and Japan discussed ways to both coordinate a response to "several third-country regulations" of concern regarding the digital economy as well as jointly advance a "robust agenda in trade-related multilateral fora" such as APEC 2023.
- Japan recently hosted a delegation of American executives from the energy, infrastructure, healthcare, finance, technology and semiconductor sectors to discuss trade and investment opportunities.

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

- Compared to his 'America First' predecessor, President Joe Biden cannot be faulted for his commitment to multilateralism, even if that multilateralism is of the 'like-minded countries' variant and seeks to exclude a particular country. (No prizes for guessing which that particular country is.) That said, multilateralism can devolve into process over product, and 20 months into the Biden administration's term, the voluminous statements of intent—the September 2021 U.S.-EU TTC joint statement and annexes, for example, clocks in at almost 6,000 words—have only translated into meager on-the-ground deliverables. The momentum of forward progress appears to be stalling as well. Worse, there is a premonition among allies that, in the Biden administration's view, they are not so much co-equals making economic policy decisions for the greater good as much as they are appendages being leashed to the immediate American domestic manufacturing and supply chain resilience-related self-interest. The Koreans certainly seem to think so with regard to the Chip 4 Alliance and the electric vehicle subsidy provisions in the Inflation Reduction Act, and so too do the Europeans with regard to the latter. Nurturing 'like-minded' multilateralist relationships requires good faith sacrifice. But such sacrifice means little when partners are not mutually supportive. In this regard, the forthcoming negotiations of the Indo-Pacific Economic Framework (IPEF) will be instructive to watch. The extent to which IPEF is a common endeavor to open markets and set standards as opposed to being a one party-driven exercise bent on trade diversion—euphemistically labeled as supply chain resilience—and pluralization of its domestic regulatory prerogatives over genuine liberalization, will go a long way in determining its appeal and durability in the region. It would be helpful, too, if the business community was offered a front row seat during stakeholder consultations. This has not been the case so far. IPEF does, after all, aim to expand cross-border commerce and commercial exchanges.

[**Expanded Reading**]

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- Biden's U.S.-Pacific island summit targets China's growing influence, *Politico*, September 2, 2022
- Statement by Press Secretary Karine Jean-Pierre on the First U.S.-Pacific Island Country Summit, The White House, September 2, 2022
- US/Digital: EU opens new Office in San Francisco to reinforce its Digital Diplomacy, Delegation of the European Union to the United States of America, September 1, 2022
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2 — The Good, the Bad, and the Ugly of U.S.-China Trade and Tech — 2

[**In One Sentence**]

- President Biden has signed an Executive Order on Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States.

- U.S. Trade Representative Katherine Tai observed that the Section 301 tariffs on Chinese goods will remain in place as the office continues its review of the tariffs.
- Analysts say that tariff reduction has a limited effect on controlling inflation.
- USTR Katherine Tai said a new model of globalization and trade will also benefit U.S. partners and allies.
- U.S. lawmakers called for stronger economic and trade ties between the U.S. and Taiwan.

[**Mark the Essentials**]

- As per the September 15 CFIUS-related Executive Order, it is the policy of the United States to ensure that the foreign investment review process remains responsive to evolving national economic security risks arising from investments that fall outside the defense industrial base and involve "a country of special concern."
- According to the USTR, a subset of U.S. industry representatives reported that the Section 301 tariffs have created "leverage" to "induce" China to eliminate "harmful policies and practices that are the target of the tariff action." The representatives also said that the tariffs helped them to compete against Chinese imports and address unfair competition practices.
- According to some analysts, reducing or eliminating the tariffs would have some effect on inflation, but the effect is neither long-term nor substantial. Instead, adjustment of interest rates and taxation are much more effective and would constitute "real" responses to inflation.
- Listing initiatives such as IPEF and the "green" steel negotiation between the U.S. and EU, USTR Tai advocated for a more resilient version of globalization where the U.S. and its allies and partners jointly figure out ways to address climate change and ensure high labor standards.
- At a recent hearing on "the future of U.S.-Taiwan trade," House Ways & Means Committee members supported stronger trade ties between the two, potentially through a trade agreement. Meanwhile, the Senate Foreign Relations Committee approved the Taiwan Policy Act, which contains "sense of Congress" provisions that advocate for resumed meetings under the U.S-Taiwan Trade and Investment Framework Agreement leading to a bilateral free trade agreement.

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

- The Biden administration is getting its trade and technology policies on China both right and wrong. Exactly 40 months to the day that the Trump administration had issued a shockingly broad executive order (EO) on securing the U.S. information and telecommunications supply chain (and thereupon initiated the process of kneecapping Huawei), the Biden administration, on September 15, issued a more precisely-crafted executive order. This EO provides a bird's-eye view of the key national economic security risk factors, sectors, technologies, and types of data that are to effectively be kept beyond the acquisitory reach of Chinese entities. It amounts to an enumeration of sectors, materials and technologies that are shortlisted for 'selective decoupling' including microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy (such as battery storage and hydrogen), climate adaptation technologies, critical materials (such as lithium and rare earth elements), and elements of the agriculture industrial base that have implications for food security. Whatever one's view may be regarding the merits of 'selective decoupling,' there is merit in the EO's conciseness and clarity, especially when compared to the haphazard issuance of sector-by-sector EOs with their laundry list of accompanying risk factors. On the other hand, United States Trade Representative (USTR) Katherine Tai continues to indulge her delusion that the Section 301 tariffs create leverage to induce China to eliminate its harmful policies and practices. Her predecessor, Robert Lighthizer, had in fact leveraged the tariffs to induce China to root out its coercive technology transfer practices, both in law and fact, and qualitatively enhance its intellectual property protections. Both were memorialized in the U.S.-China Phase One agreement and, in exchange, the U.S. dropped its Section 301-based case against Beijing at the World Trade Organization. At this time, the tariffs no longer instill fear or pressure at the Chinese end; rather, they elicit a mix of anger and disgust. They also hurt American consumers and businesses, except those of the protectionist inclination that USTR Tai appears to share. And a WTO panel has found them to be illegal, too. Hopefully, USTR Tai's views on the Section 301 tariffs will evolve once the midterms are done and dusted.

[**Expanded Reading**]

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- U.S.-Taiwan bill sails through Senate panel despite White House misgivings, *Politico*, September 14, 2022
- S.4428 - Taiwan Policy Act of 2022
- Carnegie Connects: The Biden Administration and Trade With Katherine Tai, Event by the Carnegie Endowment for International Peace, September 7, 2022
- USTR Receives Requests for Continuation of China 301 Tariffs, Office of the United States Trade Representative, September 1, 2022
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Midterm Outlook

[**Lay of the Land**]

- As of September 22, the United States is now just 45 days away from the 2022 midterm elections.
- China's unfavorability rating has drastically increased across party lines since the last U.S. midterm elections were held in 2018. Almost 9 in 10 Americans (89%) consider China as an 'enemy' or 'competitor' while 67% feel 'cold' towards China, a sentiment that has expanded from 46% of the polled population in 2018.
- In an otherwise polarized election year, as perceptions of China have shifted in the eyes of voters, both parties are in rare agreement that there is a need to be 'tough on China.'
- In races where China has become an issue, the sincerity of the candidates' anti-China bona fides are debated more so than their substantive contrast in approaches on the underlying issue at stake. For instance, differences have cropped up where Democratic and Republican candidates disagree on how to balance free trade with protectionism, but this spectrum does not necessarily match up on party lines in every case.
- While the Democratic Party is currently favored to hold the Senate, the Republican Party is slightly favored to win the House.

[**Key Races for Technology & Trade Issues**]

- Wisconsin Senate
    - In the last Midterm Outlook edition, incumbent Senator Ron Johnson of the GOP was slightly trailing his Democratic challenger, lieutenant governor Mandela Barnes, in the polls. This trend has largely

continued with both candidates staying within 2 percentage points of each other while Barnes maintains his slight edge.

    - This race, in a state with a large but struggling manufacturing sector, is one of the clearest examples of diverging views on trade with China. Sen. Johnson continues to oppose trade barriers on China and was one of the strongest critics of Presidents' Trump and Biden's trade agendas. In contrast, Barnes is staking much of his campaign on a manufacturing plan which calls for an end to "bad trade deals and anti-competitive practices."
    - While the trade relationship with China has largely taken a backseat to issues like crime and abortion, the Barnes campaign has recently been pushing reports that Johnson's support for free trade across the Pacific could be informed by his personal benefit from business with China rather than concern for local enterprises.
- Ohio Senate
    - The Ohio Senate race has maintained itself as a neck-in-neck contest between the populist candidate J.D. Vance of the GOP and the pro-labor candidate Tim Ryan of the Democratic Party.
    - Unlike Wisconsin, little divides the two candidates substantially on trade with China with both supporting protectionist measures.
    - Ryan took the lead in this charge by centering a revival of manufacturing in the state as a key issue in his campaign, leading Vance to shift his own critiques of China to a more economic direction rather than sticking to traditional GOP rhetoric about national security and COVID-19 origins.

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

- Rather than a strictly partisan divide on trade and technology relations with China in the leadup to the midterm elections, there exist parallel divides within each party between free trade advocates and protectionists. The protectionist views in each party have emerged from similarly perceived issues in the American economy (such as the declining manufacturing sector) but they manifest in different ways due to the diverging voter bases of each party. Democrats who support more protectionist measures tend to have deeper ties to organized labor, while Democratic candidates whose bases come from other voting groups tend to be less adamant about trade barriers. On the Republican side, support for protectionist measures tends to correlate with candidates who rely on support from the Trump base while candidates who rely more on business owners and 'main street' republicans tend to be more classically liberal—favoring free trade while countering China in other areas.

[**Expanded Reading**]

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- Indo-Pacific Economic Framework's fate could hinge on U.S. midterm elections, *Japan Times*, September 10, 2022 [Paywall]
- Biden sets up post-election 'fight' as he drags out China tariffs decision, *The Washington Examiner*, September 10, 2022 [Paywall]
- Yellen Embarks on Economic Victory Tour as Midterm Elections Approach, *The New York Times*, September 8, 2022 [Paywall]

ICAS TRADE N TECH DISPATCH

October 6, 2022

Volume 2, Issue 20

What's Been Happening

1 — Where is IPEF Headed? — 1

[**In One Sentence**]

- Some IPEF countries suggested the possibility of reaching an early agreement on digital trade, but U.S. Trade Representative (USTR) Katherine Tai says talks of IPEF "early harvest" is "premature."
- Although Cambodia, Laos and Myanmar have not been invited to join IPEF, ASEAN's Secretary-General expressed the "hope" that all members become part of IPEF.
- The U.S. and EU have launched a new "Trade and Labor Dialogue" with business and labor representatives to discuss worker concerns, impacts of the digital economy, and the future of work.

[**Mark the Essentials**]

- The Office of the USTR published three broad negotiating goals for IPEF's trade pillar: resilience, particularly of supply chains; inclusion, in terms of pursuing high standards in labor rights and digital economy; and sustainability, described as using trade as a tool to address climate and environment challenges.
- Addressing the topic of agriculture and IPEF, some advocacy groups have urged the administration to not just focus on "20th century" market access and deregulatory practices, but also devote at least as much attention to decarbonization, supply chain resilience and anti-corruption-related considerations.
- The United States recently announced plans to establish a "Trade and Investment Dialogue" with Pacific Island countries by the end of 2023 to "target [their] economic, investment and market-access needs."

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

- The Indo-Pacific Economic Framework (IPEF) has been billed as a new model or type of trade agreement. In one important respect though, IPEF represents continuity with the (supposedly broken) earlier model. From a transparency standpoint, there appears to be few or no plans to discard the secretive negotiating practices of the past. The substantive details of the IPEF negotiations are to be kept strictly under wraps during the course of the negotiations by the parties involved and proposals and materials exchanged are to remain confidential for a period of five years after the agreement enters into force. To be fair, such a confidentiality requirement is fairly standard in trade negotiations; though it is also worth pointing out in this context that in the U.S.-Mexico-Canada (USMCA) agreement Washington specifically inscribed a provision that if either Canada or Mexico were to sign a free trade agreement with China, the USTR must have "an opportunity to review the full text" of the envisaged FTA at least 30 days before its signing. Not much confidentiality, it seems, in that case. The USTR's confidentiality requirement has long been a bone of contention, particularly for protectionist-minded labor and 'civil society' constituencies looking to pick apart an on-going negotiation by pointing to a delicate or controversial pro-business provision. More recently, it has also been a bone of contention on the Hill as Congressmen and women of both parties have rightly pilloried the USTR for a lack of consultation and transparency during trade agreement negotiations with foreign nations. The Commerce Clause of the U.S. Constitution does, after all, give Congress the power "to regulate commerce with foreign nations." And Congress has a right to know about the substantive concessions being exchanged that it will later be called upon to ratify. (Of course, no Congressional ratification is envisaged in the case of IPEF.) This lack of consultation has, if anything, been exacerbated by the Biden administration's 'new model' or type of trade agreement, the structure, purposes and end-goals of which remain fairly abstruse, and which has never received formal congressional assent. Thus, it is instructive that even as USTR touts its new model of trade agreement, it remains wedded nevertheless to some of the least desirable and self-serving practices of the past. On transparency, the old model seems pretty good so far as USTR is concerned.

[**Expanded Reading**]

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- U.S. seeks early results for Indo-Pacific trade initiative, *Nikkei Asia*, September 28. 2022 [Paywall]
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- Remarks by President Biden Before the 77th Session of the United Nations General Assembly, The White House, September 21, 2022
- U.S. Trade Representative and U.S. Department of Labor Host Transatlantic Tripartite Trade and Labor Dialogue with Union and Business Leaders, USTR, September 21, 2022

2 — CHIPS, Tariffs, and Industrial Policy in Action — 2

[**In One Sentence**]

- USTR officials have noted that the Trump-era Section 301 tariffs are no longer only about compelling change in China's practices, but are also part of the effort to promote U.S. domestic supply chain resilience.
- U.S. Secretary of State Antony Blinken told Central and South American countries that the CHIPS and Science Act will build a resilient semiconductor supply chain in the Americas by investing in manufacturing in the Western hemisphere.
- The U.S. Commerce Department is planning to implement guardrails against potential stockpiling practices intended to abuse the two-year moratorium on AD/CVD duties on Southeast Asian solar imports.
- The Court of International Trade ruled to allow the Commerce Department to draw adverse facts inferentially about China's export financing program after the Chinese government "repeatedly stonewalled" U.S. inquiries.

[**Mark the Essentials**]

- The White House has recently named a leadership team tasked with implementing the CHIPS and Science Act. According to the administration, the selected officials are "experienced in large-scale program management, finance and the government's needs for accountability."
- Concluding its Section 232 investigation into neodymium-iron-boron permanent magnets, the Commerce Department found that, while increasing reliance on Chinese and other foreign imports constitutes a national security threat, it advises against imposing tariffs due to the "severe lack of domestic production capability."

- In a separate lawsuit that challenges the legality of the Trump-era Section 301 tariffs on Chinese goods, plaintiffs are again urging the Court of International Trade to order a full removal of the tariffs.

[**Keeping an Eye On…**]

- Kudos to the Biden administration Commerce Department. Unlike the Office of the USTR, it both has the foresight to look beyond tariffs as the solution to every national economic welfare problem and does not feel compelled either to drum-up lame justifications to levy or maintain illegal tariffs. On September 21, 2022, after a year-long Section 232 investigation—the first such probe launched by the Biden administration—the Commerce Department recommended a broad menu of 'industrial policy' measures to lessen the national security threat arising from the import dependence of rare earth neodymium-iron-boron (NdFeB) permanent magnets from China. NdFeb magnets are not only key to numerous defense applications but also essential for critical infrastructure and climate change applications. And China currently holds a lock across the product supply chain. The 'industrial policy' measures that were recommended range from tax credits for domestic manufacturing, allocation of funds from the Bipartisan Infrastructure Law, utilization of authorities under the Defense Production Act to establish production facilities as well as facilitate industry-wide voluntary information sharing agreements, engagement with allies and partners, and minimum domestic and ally content requirements, among others. Crucially missing from the list of recommended measures are Section 232 tariffs of the variety that the Trump administration had imposed on imported steel and aluminum (and which a WTO panel will soon find to have been illegal). It was always clear that developing a domestic magnet value chain and reducing import dependency was better accomplished by rolling out a medium-term domestic transition plan, keeping market conditions predictable and undistorted, and providing policy support for materials sourced from outside China and/or processed into magnets outside China. And that it made particularly little sense to impose unilateral tariffs and disadvantage downstream users, such as U.S. electric vehicle manufacturers, through higher input costs. On industrial policy, the Biden administration has shown thoughtfulness and good judgment. Someday, it will hopefully be capable of bringing a similar level of insight to tariff policy.

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- Frankfurt Forum on US-European GeoEconomics, Atlantic Council, September 28, 2022
- Secretary Antony J. Blinken At the Ministerial Meeting of the Alliance for Development in Democracy, U.S. Department of State, September 20, 2022
- Biden-Harris Administration Announces CHIPS for America Leadership, White House, September 20, 2022
- Wiley Wins International Trade Dispute on Behalf of Coalition of American Millwork Producers, Wiley Law, September 16, 2022
- Commerce Department Punishes U.S. Companies And Subverts Biden's Effort To Fight Inflation, *Forbes*, September 15, 2022 [Paywall]

3 — Outbound Investment Screening to Further U.S.-China Decoupling — 3

[In One Sentence]

- Lawmakers, business stakeholders and experts discussed the potential outlook for outbound investment screening amidst continuous push for relevant legislative actions.
- Senator Pat Toomey said he is willing to legislatively support the creation of an outbound investment screening mechanism if it has a sufficiently narrow focus.
- Congressional leadership has called on President Biden to establish an outbound investment screening mechanism through executive action.

[Mark the Essentials]

- Arguing that legislation on outbound investment screening might not pass in the short-term, Senate Majority Leader Chuck Schumer, House Speaker Nancy Pelosi, and sponsors of the National Critical Capabilities Defense Act called for immediate executive action on outbound investment.
- A vocal opponent of the current outbound investment screening proposal, Senator Toomey argued that the outbound investment review framework should, at most, only apply to direct U.S. investment in Chinese entities and concern technologies that would have already been subject to export controls.
- Senator Toomey also expressed concerns that "a deliberative, open and democratic process" will be lacking if the White House is given authority to determine the scope of the outbound investment screening mechanism.
- At a hearing held in the Senate Banking, Housing and Urban Affairs Committee, Information Technology Industry Council (ITI) Executive Vice President of Policy, Robert Strayer, argued that the U.S. government should clearly define a limited and specific subset of technological capabilities as well as the types of transactions and ownership limitations that would be subject to outbound investment screening.
- Noting the important role global markets and global supply chains play in U.S. technological leadership as well as the private sector's "best" data and understanding of the landscape, Strayer also advocated for an iteration of government-business consultations as the Administration and Congress get down to refining the particulars of the proposed screening mechanism.
- Meanwhile, former Assistant Secretary for Export Administration, Richard Ashooh, suggested that outbound screening be implemented through an interagency coordination mechanism that models the current institutional framework for export controls on emerging and foundational technologies.

[Keeping an Eye On...]

- Welcome to the newest arena of U.S-China decoupling: outbound investment screening and controls. In July 2018, the attempt at trade decoupling was initiated with the Section 301 tariffs. In August 2018, the focus was on Chinese M&A activity and inward investment screening via the Foreign Investment Risk Review Modernization Act. In May 2019, the first round of technology denials began in earnest, with the Chinese telecommunications firm Huawei firmly in the crosshairs. In the time since, episodic efforts at data flow decoupling have also been undertaken. Screening and controls on China-bound investments is now the newest policy kid on the decoupling block; the urgency of which was highlighted by National Security Advisor Jake Sullivan in an important policy speech in July 2021. Fleshing out concrete legislative action is however turning out to be a heavier lift than anticipated, with neither the House introduced version of December 2021 (as part of the America COMPETES Act) nor the revised Senate version of June 2022 seemingly capable of drawing a bipartisan consensus. Questions abound on the particulars: What is a critical national capability? Which of these should be denied to China? How broad should this range of covered investments be? Where should the perimeter of extra-territorial application of jurisdiction reside, etc? At this time, the locus of activity is shifting from the Hill to the White House. With a view to getting the ball rolling, the Biden administration is expected to establish this outbound investment screening framework by way of executive order later this fall. Down the line, the executive order is to be supplemented, and improved, via legislation, which is incidentally how the oversight of inbound foreign investment was also established—an executive order followed by statutory action.

[**Expanded Reading**]

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- Examining Outbound Investment, Hearing at United States Senate Committee on Banking, Housing and Urban Affairs, September 29, 2022
- Closer Scrutiny of US Investments in China Is Sought by Lawmakers, *Bloomberg*, September 29 [Paywall]
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- Outbound Investment Screening Would be a Mistake, Council on Foreign Relations, June 30, 2022

ICAS TRADE N TECH DISPATCH

October 20, 2022

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What's Been Happening

1 — New Export Controls on China: A New Tech 'Cold War' Gathers Steam — 1

[In One Sentence]

- The Commerce Department's Bureau of Industry and Security (BIS) announced a series of "targeted" export control measures to restrict China's ability to purchase and manufacture advanced technologies.
- The measures expand the scope of licensing requirements for 28 existing Chinese entities that were added to the Entity List between 2015 and 2021.
- The White House is reportedly considering an executive order to establish an outbound investment review mechanism.

[Mark the Essentials]

- The new BIS rules expand export control restrictions to cover advanced and high-performance computing chips and computer commodities, advanced computing integrated circuits as well as certain foreign-produced advanced computing items. Semiconductor manufacturing equipment destined to China is subject to license requirements under a presumption of denial.
- Congressional leadership has urged the White House to utilize executive authority and introduce an outbound investment screening mechanism in sectors pertaining to national security, noting the slow legislative movement on this front.
- Highlighting a lack of consensus in Congress, other lawmakers argued that the establishment of an outbound investment review mechanism requires rigorous congressional consideration and that the scope of the review mechanism must be clearly—and potentially narrowly—defined.

[Keeping an Eye On...]

- On October 7, the Biden administration unleashed its hardest hitting export controls yet with regard to China. The Advanced Computing and Semiconductors Rule takes specific aim at the Fourth Industrial Revolution technologies that are blurring the lines between the physical, digital, and biological worlds—although the Rule's ostensible focus is on tech-enabled military capabilities. The controls, which are layered upon each other and thereby interlock together, aim to throttle China's high-performance computing, supercomputing and vibrant AI sector by denying access to high-performance chips. They also throttle China's advanced chip fabrication capability by denying access to U.S.-origin components, throttle China's chip design sector by denying access to U.S.-chip design software, and throttle China's chip manufacturing capability by denying access to U.S.-built semiconductor manufacturing equipment. The controls essentially aim to emasculate China's ecosystem of advanced computing capabilities, and reach far and beyond the chokehold that was placed on Huawei in August 2020. The export control order follows in the wake of a landmark speech delivered by National Security Advisor Jake Sullivan in mid-September, where he had listed computing-related technologies (microelectronics, AI, quantum information systems) as one of "three families of…force multiplier…technologies" that would determine the difference between victory and defeat in the technological and geopolitical landscape of the 21st century. Given the foundational nature of these technologies, "we (the U.S.) must maintain as large a lead as possible," he had added. With this wide-ranging Advanced Computing and Semiconductors Rule, it is becoming increasingly clear that the day has now passed when Washington might have leveraged its upstream prowess in the chips and advanced manufacturing sector to insist that market-based approaches and technology-neutral state aid become the principal basis of China's industrial and innovation policies. U.S. actions have less to do with fair and efficient competition and more with thwarting China's rise, which at the end of the day will leave both parties worse off. For the time being though, the listed technology embargoes will hurt China, and hurt it severely.

[**Expanded Reading**]

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- Commerce Implements New Export Controls on Advanced Computing and Semiconductor Manufacturing Items to the People's Republic of China (PRC), Bureau of Industry and Security, Office of Congressional and Public Affairs, October 7, 2022
- US Senate weighing limits on US investments in Chinese hi-tech businesses, *South China Morning Post*, September 30, 2022
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- Pelosi, Schumer push White House to screen American investments in China, *Politico*, September 27, 2022

2 — Deepen Trade with Allies or Just Sign Pacts? — 2

[**In One Sentence**]

- The Biden administration's new National Security Strategy emphasized "inclusive trade" and growing the "connective tissue" of technology, trade and security between allies and partners.
- U.S. Trade Representative (USTR) Katherine Tai said the IPEF's lack of market access provision is a "feature" to address past mistakes and persistent issues as well as the "growing inequality" caused by globalization.
- A senior White House official called on U.S. agencies to put "real dollars" and effort behind IPEF, G7 and other U.S. trade initiatives to support U.S. exporters and improve the lives of people around the world.
- A leaked European Commission report marked artificial intelligence, semiconductors, infrastructure financing in third countries, digital platforms, human rights and clean technology as potential deliverables for the U.S.-EU Trade and Technology Council (TTC), but warns of a growing mismatch between potential and tangible results.
- The U.S. is conducting a "real conversation" with the European Commission and South Korea over "deep" concerns about the allegedly discriminatory electric vehicle and renewable energy tax credit contained in the Inflation Reduction Act.
- The U.S. and EU are actively discussing U.S. concerns about European policies on data and the digital economy.

[**Mark the Essentials**]

- USTR Tai highlighted that the Biden administration has not "sworn off" market access and trade liberalization efforts, but instead argued that liberalization and tariff elimination cannot happen "at the cost of further weakening our supply chains, exacerbating high-risk reliances, decimating our manufacturing communities, and destroying our planet."
- Contending that initiatives like IPEF is "no substitute" for traditional trade agreements, House Ways & Means Committee Trade Subcommittee ranking member Adrian Smith argued that the administration's lack of a "robust and proactive trade strategy" has exacerbated economic problems such as inflation and high fuel costs.
- Civil, labor and religious groups have criticized the IPEF for its lack of transparency, noting that the confidentiality agreements over IPEF documents are even more extensive than the equivalent ones at the time of the mid-2010s Trans-Pacific Partnership (TPP) negotiations.
- According to a former U.S. trade official, the Biden administration's reluctance to pursue trade liberalization, accompanied with a strong focus on the interests of U.S. workers, will make it difficult to secure buy-ins from allies and partners, especially on broader agenda items concerning climate change, sanctions on Russia, and a common front against China.

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

- Fall is here, which means the season of trade policy conference diplomacy is upon us as well. Over the next two months, there will be ministerial-level meetings of the U.S.-EU Trade and Technology Council (TTC), the Indo-Pacific Economic Framework (IPEF) and the Asia-Pacific Economic Cooperation (APEC) grouping, among others. Substantive progress has been slow to come by so far; particularly within the TTC's five annexed statement areas and 10 working groups (with the exception of export control cooperation vis-à-vis Russia) that were inaugurated with much fanfare in Pittsburgh on September 29, 2021. As for the IPEF trade pillar, the Biden administration released its "negotiating goals" in late-September, which are categorized as 'resilience, inclusion, and sustainability.' They could also be listed as 'decouple, protect(ionism), and regulate,' respectively. About the only common element listed in the ministerial statements across the four pillars of IPEF is the intention to promote labor rights based on the ILO Declaration on Fundamental Principles and Right at Work. This in and of itself is of no issue; nobody is ever going to be against it. But prioritizing labor over (trade) liberalization in the name of "inclusive trade" does not bode well insofar as a trade agreement is concerned. Furthermore, the administration's overly 'worker-centric' focus will soon hit a wall in Asia when the IPEF negotiations begin in earnest. In all fairness, U.S. Trade Representative Tai is likely to face just as much pushback on the domestic front given that the design and contents of IPEF is as cryptic to members on Capitol Hill. IPEF bears only passing resemblance to an economic and trade agreement, at this time. When President Joe Biden addresses the APEC CEO Summit in Bangkok in mid-November on his trade policy philosophy and plans, perhaps more clarity will be available.

[**Expanded Reading**]

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- Squandering an opportunity on trade by Rep. Adrian Smith, *The Hill*, October 5, 2022
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- EU Commission sets member states' expectations for next transatlantic meeting, *Euractiv*, October 3, 2022

Midterm Outlook

[**Off to the Races**]

- The U.S. trade relationship with China and the Indo-Pacific continues to fly far below the radar in midterm voters' minds, overshadowed by hot-button domestic issues like inflation, abortion, crime and immigration.
- Nevertheless, with factions in Congress both pushing against and egging on the President's trade agenda, the outcome of the midterms could have a marked impact on trade policy for the remainder of Biden's term.
- As it stands, it is forecasted that the Democrats will likely hold the Senate but lose the House to the GOP. Incumbent Democrats are favored in several key races, but redistricting and low turnout has left several red districts virtually uncontested.
- In short, the fate of the Senate rests on a few key states: Pennsylvania, Georgia, Ohio, Wisconsin, and Nevada. While Democrats have pulled ahead in Pennsylvania and Georgia after several gaffes and scandals on the other side, the margin in Nevada remains razor-thin while Republicans have pulled ahead in midwest races.
- While trade issues are not at the forefront of this election, Wisconsin's two candidates are diametrically opposed in this regard. Incumbent Republican Ron Johnson is one of the foremost proponents of free trade on the Hill, while his Democratic challenger Mandela Barnes has taken a staunchly protectionist position. This is not a universal divide however, as in Ohio both candidates are trying to outcompete each other for the 'tough on China, pro-American worker' label.

[**On the Hill**]

- Speaking at a virtual town hall event, Rep. Ro Khanna (D-CA) said that 'Big Tech' companies must not be allowed to influence digital trade rules to the extent that they gut labor standards and consumer protections.
- In a letter to the Secretary of Commerce, Sen. Elizabeth Warren (D-MA) and Rep. Pramila Jayapal (D-WA) wrote that they are concerned about the role that former employees of 'Big Tech' companies are playing in digital trade negotiations for IPEF and the U.S.-EU TTC.
- According to Sen. Bob Menendez (D-NJ), USTR has offered up "virtually nothing" in consultative talks with Congress on its ongoing trade negotiations, leading the Senator to stall the confirmation of a key agricultural negotiator until there is "greater oversight and transparency."

- House Republicans introduced their version of the 'Taiwan Policy Act' which would direct Congress to negotiate a bilateral free trade agreement with Taipei "as soon as possible" and call on the Commerce Department to work to ensure Taiwan's participation in IPEF.
- Various Senators have attached trade-related provisions as amendments to the annual defense bill, with measures including lowering tariffs on trading partners targeted by China, bolstering and decoupling strategic supply chains which involve China, as well as strengthening trade ties in the Western hemisphere.

[**Expanded Reading**]

- Silicon Valley's congressman offers a midterm warning, *Axios*, October 17, 2022
- Money Pours Into Senate Races as Midterm Campaign Enters Home Stretch, *The Wall Street Journal*, October 16, 2022 [Paywall]
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- Big Tech's "Digital Trade" Attack on Working People & Labor Rights, American Civil Liberties Project, October 6, 2022
- Path uncertain for US-Taiwan free trade deal despite Hill support, *RollCall*, October 3, 2022
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ICAS TRADE N TECH DISPATCH

November 17, 2022

Volume 2, Issue 22

What's Been Happening

1 — One Asia, Two (or More) Trade and Economic Frameworks — 1

[**In One Sentence**]

- When asked about the lack of market access provisions in the Indo-Pacific Economic Framework (IPEF), a senior U.S. official said that IPEF focuses on trade facilitation and other "backroom" elements that are "just as important as market access."
- The U.S. and Taiwan concluded 2-day meetings under the U.S.-Taiwan Initiative on 21st-Century Trade, which aims to reach agreements on areas such as trade facilitation, regulatory practices, anti-corruption, digital trade, labor, environment, agriculture and state-owned enterprises.
- Singapore's Prime Minister expressed his endorsement of China's application to join the CPTPP.
- Underlining the importance of U.S. engagement in the Indo-Pacific, Japan again urged the United States to "return to" CPTPP "at an early timing."
- Jakarta said that the key factors which attracted Indonesia to IPEF are "empowerment" and "market access" to the American and Indian markets.

[**Mark the Essentials**]

- According to the Office of the USTR, the Biden administration sees IPEF's trade pillar as "an inclusive, holistic approach," combining a "worker-centered trade agenda" and digital trade as well as traditional trade agreement elements and new ways of cooperation, such as sharing best practices.
- Some former U.S. officials have expressed support for IPEF's focus on non-tariff barriers and regulatory obstacles instead of tariff liberalization, and have highlighted the need to strengthen ties with Southeast Asia.
- Australia announced that it will host IPEF's first round of in-person negotiations, set to be held from December 10-15, 2022.
- Taiwanese officials have expressed "hope" for an "early harvest" by the end of 2022, stating that negotiations for some measures are at "a very mature point." In a later announcement, Taiwan's Executive Yuan, the executive branch of Taiwan's government, said that it does not "preset a timetable" but believes that "fruitful results can be soon achieved."
- Commentators have noted significant overlap in the issue areas covered by IPEF and the U.S.-Taiwan Initiative on 21st-Century Trade. Taiwan officials continue to seek membership in IPEF.

- The U.S. plans to host an Asia-Pacific Economic Cooperation (APEC) trade ministers meeting in Detroit in May 2023. U.S. officials see APEC as "an ideal platform" to advance the U.S.' trade agenda and its "new approaches for trade and economic cooperation" in the region.

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

- Mark the month May 2023 on the calendar. That month, in blue-collar Detroit (and swing state Michigan), the Biden administration will host the APEC trade ministers meeting. The ministerial will provide a platform to the administration to lay down important markers with regard to its "new approaches for trade and economic cooperation." Given that the entire membership of IPEF is composed of a subset of APEC member states with the exception of India, the ministerial is likely to double up as an IPEF ministerial meeting. With in-person IPEF negotiations slated to being in Brisbane, Australia this December and with 2024 likely to be a barren year from a negotiations standpoint, given its proximity to the U.S. presidential elections, the U.S. chairpersonship of APEC in 2023 will be critical in terms of putting 'pedal to the metal' and harvesting tangible gains in the IPEF negotiations. By May 2023, it will effectively become clear if USTR's vaunted "new approaches for trade and economic cooperation" has substance to it or, as some suspect, is meritless. Is the Framework the 'real deal'—a meaningful economic and trade liberalization initiative—or is it mostly about telegraphing good intentions of U.S. commitment to the region? Is IPEF fit for purpose as a meaningful regional rules-setting undertaking? Or is it primarily a means to de-emphasize—and decouple—the role of China within existing Asian and trans-Pacific supply chains? At a time when the overwhelming priority in developing Asia is development, it is portentous that the trade and economics section in the Biden administration's October 2022 National Security Strategy was placed next-to-last in the chapter on America's Global Priorities. The administration's moment to 'walk its "new approaches" talk' is fast arriving. It better come prepared. Vice President Kamala Harris' remarks at the APEC Leaders Summit in Bangkok later today will provide an early inkling of the administration's commitment to that cause.

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- United States and Taiwan Conclude Two Days of Productive Meetings Under the U.S.-Taiwan Initiative on 21st-Century Trade, Office of the United States Trade Representative, November 9, 2022
- 「臺美21世紀貿易倡議」將於11月8、9日在美舉行會議 [Taiwan-U.S. Initiative on 21st-Century Trade to hold meeting on November 8 and 9], Executive Yuan, November 3, 2022 [in Chinese]
- Ag Trade and Commodity Outlook for 2023, event by the Farm Foundation, November 1, 2022
- Statement from Ambassador Katherine Tai on the 2023 APEC Trade Ministers Site Announcement, Office of the United States Trade Representative, October 27, 2022
- Asian Architecture Conference 2022, event by Center for Strategic & International Studies, October 26, 2022
- Japan-U.S. Vice-Ministers' Meeting, Ministry of Foregin Affairs of Japan, October 25, 2022
- Indonesia's Economic Priorities: A Conversation with Coordinating Minister Airlangga Hartarto, event by Center for Strategic & International Studies, October 24, 2022
- In skeptical Australia, Singapore PM says China 'good' for CPTPP, *Nikkei Asia*, October 18, 2022 [Paywall]
- No consensus yet on China joining regional trade pact - Singapore PM, *Reuters*, October 18, 2022 [Paywall]
- Taiwan signals US trade talks breakthrough, hopeful of 'early harvest' amid China tensions, *South China Morning Post*, October 18, 2022 [Paywall]
- Representative to Guam urges Taiwan's inclusion in Indo-Pacific Economic Framework, *Taiwan News*, October 17, 2022

2 — Where does the EU Stand Regarding the U.S. and China? — 2

[**In One Sentence**]

- German Chancellor Olaf Scholz visited China, accompanied by top executives of leading German companies.
- While concerned about China's growing "tendency" towards "autonomy and less economic ties," Scholz said Germany "stands ready for closer trade and economic cooperation with China" and opposes decoupling.
- The U.S.-EU Trade and Technology Council (TTC) will hold its third ministerial meeting on December 5.
- The EU said it seeks more TTC focus on "trade-expanding initiatives," climate change and sustainable trade.
- The U.S. and EU launched a task force to address EU complaints over the U.S.'s electric vehicle tax credits.
- The EU has reiterated that the EV tax credits' localization requirements are "clearly discriminatory."
- USTR Katherine Tai said her office is pursuing ways to ensure that U.S. industrial policies are "complementary" to trusted trading partners.

[**Mark the Essentials**]

- Eight CEOs of German companies—including industrial conglomerate Siemens, chemical company BASF, engineering and technology company Bosch, manufacturing company Schaeffler Group, logistics and transportation company Hamburger Hafen und Logistik AG (HHLA)—released an op-ed on German Business' China policy, with the following arguments:
    - Germany and Europe have enjoyed a mutually beneficial relationship with China through economic ties over the past few decades.
    - While the changing dynamics of power balance requires Germany and EU to develop a new approach and strategy to China, the German business community generally rejects the idea of decoupling since it hurts German business interests in China, potentially eliminates further opportunities to deepen its commercial presence and potential in the Chinese market, and fails to elevate Germany and EU leadership in global innovation.
    - A benign and healthy competition between Germany and China could help achieve two major goals in dealing with China: first, it will strengthen German and EU technological leadership which gives Germany and the EU more prestige and status in the world; second, the strengthened German status and prestige will bring more leverage when engaging with an increasingly assertive China over issues such as Taiwan, human rights, climate change and market access.
    - Germany and the EU need to reduce its dependency on critical materials from China but that cannot be achieved simply through decoupling. Innovation, stimulated by competition, is the key to reinvigorate German and EU power.
    - Germany and the EU should continue its engagement policy towards China to facilitate strong channels of communications, manage differences and explore further opportunities for cooperation and thereby continue their mutually beneficial relationship in the future.
- The German op-ed's authors do not include the CEO of Volkswagen or Deutsche Bank, although both joined Scholz's visit to China. Volkswagen and Deutsche Bank are already invested in the China market.
- EU officials see the Trade and Technology Council (TTC) as a way to increase trans-atlantic efforts on supporting and financing digital connectivity in developing countries, adding that "a lot of" developing countries' increasing dependency on China is "not acceptable from a strategic point of view."

- U.S. industry groups recently voiced concerns over the EU's policy on artificial intelligence and relevant standards development, arguing that progress within the TTC "will be rendered moot" if the EU continues to pursue "such exclusionary standards development practices."
- The EU argues that the United States' tax credits for electric vehicles and other climate-related technologies discriminate against products made outside of North America, and has called for a general waiver of these local content and local assembly requirements.
- While U.S. trade officials continue to engage with the EU on the tax credit concerns, U.S. Secretary of the Treasury Janet Yellen has said that the Biden administration has limited ability to twist requirements of what is now public law. Some U.S. lawmakers are proposing a bill that will delay the implementation of the localization requirement until 2026.
- Some of the United States' key Asia-Pacific allies (e.g. Japan and South Korea) are also concerned about the tax credits, while some sources say that the complaints could negatively affect wider negotiations such as the IPEF negotiations.

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

- Chancellor Olof Scholtz's visit to Beijing has put the lie to the contention that China-Europe ties are in the doghouse. In fact, they were never as damaged as its detractors claimed or wished. It is true that COVID-19 delivered a serious setback, both in terms of the bitterness related to the virus' origins as well as in terms of suspending leader-level, senior officials-level, and business-level exchanges. Xi Jinping's close prior association with Vladimir Putin, author of the unjust war of aggression in Ukraine, did not help either. That said, there is much that binds the European Union to China geo-economically—not least the EU's desire for strategic autonomy or least some degree of strategic distancing from an increasingly-fickle United States. Productive business was conducted during Chancellor Scholtz's albeit brief 11-hour stay in Beijing. With Germany's Russia market in tatters, it is understandable that Berlin would prefer to shore up its China equities. More to the point, one should not be surprised if the supposedly shelved Comprehensive Agreement on Investment (CAI) between the EU and China gradually begins to see the light of day again. Important industrial subsidies-related disciplines are memorialized in that agreement, which stand to benefit both parties if implemented conscientiously. On the other hand, United States-European Union ties face a (minor) reckoning heading into the Trade and Technology Council (TTC) meeting in December. Most of the tall promises contained in their September 2021 joint communique have been slow to bear fruit (except vis-à-vis Russia and the revised data privacy framework). There is also an observable diminution of ambition, looking ahead, and a new set of irritants linked to the administration's discriminatory electric vehicles tax credit and other industrial policies that have cropped up. Five years after Washington and Brussels instituted a dedicated dialogue to pressure Beijing to level its tilted industrial subsidies playing field (which, by the way, has yet to deliver an actionable joint proposal), Brussels has now officially accused the Biden administration of "unfairly tilt[ing] the playing field to the advantage of production and investment in the United States at the expense of the European Union and other trading partners." There is much to iron out at the forthcoming TTC meeting and serious reengagement will be required.

[**Expanded Reading**]

- German Business Leaders Warn Against Pulling Out of China, *U.S. News*, November 10, 2022
- Top-Manager zur Globalisierung: „Ein Rückzug aus China schneidet uns ab" [Top manager on globalization: Withdrawal from China cuts us off], *Frankfurter Allgemeine Zeitung*, November 10, 2022 [in German] [Paywall]

- [EU says it has serious concerns about Biden's Inflation Reduction Act], *CNBC*, November 7, 2022
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- [Launch of the US-EU Task Force on the Inflation Reduction Act], European Commission, October 26, 2022
- [Readout of U.S.-EU Trade and Technology Council Co-Chairs Call], Office of the United States Trade Representative, October 24, 2022
- [Virtual Event | Developing a Transatlantic Technology Strategy], event by Center for a New American Security, October 18, 2022
- [Fireside Chat with USTR Amb. Katherine Tai], event by the Bretton Woods Committee, October 13, 2022

3 — America's Mixed Trade and Tech Agenda and its China Pickle — 3

[**In One Sentence**]

- On November 14 in Bali, Indonesia, U.S. President Biden and Chinese President Xi met in-person for three-and-a-half hours, marking the first time the two had met in person in five years.
- The head of the Commerce Department's Bureau of Industry and Security (BIS) Alan Estevez said BIS's export control measures on China are "purely" about national security and not about China's economic destruction.
- Estevez added that impacts on trade will not be considered to balance out national security concerns.
- The U.S. and Korea launched a working group to coordinate dual-use export control policies.
- The Office of the USTR is seeking public comment on whether the Section 301 tariffs on Chinese goods are effective in eliminating discriminatory Chinese practices as well as their impact on the economy and U.S. industries.
- At the WTO, China challenged the U.S.'s new electric vehicle tax credits and semiconductor subsidies for distorting global trade and multilateral norms, while the U.S. questioned China's lack of transparency on state subsidies in several sectors.
- The Biden administration will defend in court the Trump administration's decision to tighten Section 201 import restrictions on bifacial solar panels.

[**Mark the Essentials**]

- House Foreign Affairs Committee ranking member Michael McCaul has been critical of BIS's licensing practices and alleged lack of congressional oversight, demanding greater clarity on whether BIS has effectively implemented export control rules on China after reports that the BIS denied less than 1% of licenses for exporting to Chinese companies Huawei and SMIC.
- Characterizing China as an "adversarial competition" and a "threat," Estevez said that "letting a foreign adversary use U.S. technology or allied technology…just goes against the grain" for him.
- Analysts have noted that BIS has been expanding and using all available tools to broadly freeze China's access to and development of advanced computing and semiconductor manufacturing technologies, noting that a similarly expansive approach can be applied to other technologies.
- CATL, a Chinese company that supplies batteries to automakers including Ford and BMW, is slowing its investment in battery plants in North America, reportedly concerned about recent U.S. laws that favor critical mineral sourcing from U.S. and allies and the consequent increase in production costs.

- A coalition of 30 civil rights groups are asking the U.S. Customs and Border Protection (CBP) to ensure and potentially expand public access to ocean shipping data, arguing that transparency in trade data is essential for the U.S. agency to enforce forced labor laws and for civil rights groups to share evidence of forced labor in U.S. supply chains.

[**Keeping an Eye On…**]

- China may be the United States' "most consequential geopolitical challenge" as per the Biden administration's new National Security Strategy but it is also one of its most consequential economic partners. It is welcome, therefore, that President Biden and President Xi were able to inaugurate a new phase of strategic communications in their bilateral relationship on the sidelines of the G20 Leaders Meeting in Bali, Indonesia. Although it remains to be seen whether the Xi-Biden meeting will set a new direction, establish a framework, and kick off a process that cements a "floor" under their relationship, one important takeaway of the meeting was the restart of dialogue mechanisms related to macroeconomic policies and economic and trade ties. The numerous harsh technology denial orders and embargoes instituted by this administration notwithstanding, the Chinese government would clearly prefer a Biden-led Democratic Party administration in the White House post-2024. The Biden team, facing recessionary headwinds, would presumably prefer an economic lift as well heading into the 2024 election season. Taken together, and with the midterms in the rear-view mirror, the stars appear to be aligning for a purposeful bilateral economic and trade dialogue opportunity that picks up the pieces from the now-defunct Trump-era Phase One agreement and perhaps even the stillborn Phase Two negotiations. For this to be the case, though, the Biden administration must first sort through the existing Section 301 tariffs on Chinese imports. No one expects them to be eliminated in their entirety; the USTR is too protectionist-minded to go down this path. But there is a need to come to a—hopefully positive—point of finality on the Section 301 tariff review process early next year, so that USTR Tai can credibly sit across the table with her as-yet-unknown Chinese counterpart; the government in Beijing is in transition mode as well. On a separate note, and notwithstanding the sweet smiles in Bali, stay tuned for a Biden administration executive order in the weeks ahead establishing an outbound investment screening mechanism that "prevent[s China] from exploiting investments and expertise in ways that threaten [U.S] national security."

[**Expanded Reading**]

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- McCaul Oversight Request Examines Effectiveness of New BIS Rules in Protecting Critical Technology From CCP, Foreign Affairs Committee Republican, November 1, 2022
- A Conversation with Under Secretary of Commerce Alan F. Estevez, event by Center for New America Security, October 27, 2022
- WTO: China shows "mirror" to US on Washington's semiconductor subsidies, *Third World Network*, October 27, 2022
- Exclusive: China's CATL slows battery investment plan for U.S., Mexico, *Reuters*, October 21, 2022 [Paywall]
- Open Letter to CBP on Trade Data Transparency, Uyghur Human Rights Project, October 20, 2022

[Off to the Races and their Results]

- The 'red wave' predicted in the lead-up up to last week's midterm elections failed to materialize. While Republicans narrowly flipped the House of Representatives, they failed to win by the expected margin. Democrats also retained control of the Senate, increasing their lead by at least one seat by flipping Pennsylvania and pushing Georgia to a runoff election that will be held in December.
- Outgoing Senator Pat Toomey (R-PA), Chairman of the Senate Banking Committee, is to be replaced by Lt. Gov. John Fetterman of the Democratic Party after he defeated his Republican opponent Dr. Oz by an over 200,000-vote margin. Oz was favored to win in a close race but the Senator-elect defied the odds - and a near-fatal stroke last May - by winning handedly in this manufacturing state on a pro-labor agenda.
- Florida Republicans vastly outperformed the party at large, with incumbent Governor (and potential 2024 Presidential contender) Ron DeSantis and incumbent Senator Marco Rubio both winning landslide re-election victories. Republicans also fared well in Ohio, with populist Trump-ally J.D. Vance emerging as another one of the GOP's few big winners. Elsewhere in the 'rust belt,' Democrats won a 'trifecta' of offices in Michigan for the first time in decades, while Wisconsin Senator Ron Johnson, a free trade advocate, eked out a victory against his pro-labor Democratic challenger Mandela Barnes.
- Democrats also defied expectations in the Southwest by winning key Senate and House seats in Nevada and Arizona, where they also flipped the Governor's seat. In the wake of the results, these states will likely continue to be key targets of CHIPS and Science Act funding and other semiconductor investment opportunities.

[Keeping an Eye On...]

- Despite President Biden's 41% approval rating and increasing economic insecurity in the U.S., Democrats broke the historical pattern whereby the party of a first-term incumbent President suffers a mid-to-heavy defeat in the midterms. The explanation for this lies in the importance of key domestic issues, such as abortion and election legitimacy, which motivated the base and independent voters to turn out for the Democrats on election day. On abortion, for instance, 76% of voters who cited it as their most important issue voted Democratic. In the wake of the *Dobbs* decision in June which overturned *Roe v. Wade*, fervor on the left to protect abortion rights clearly outpaced conservative enthusiasm over the prospects of restricting abortion access. Many independents were also deterred by the slew of Republican candidates who questioned the results of the 2020 elections, and put pocket book issues aside to cast their votes for Democrats. Several Trump-endorsed GOP candidates were also rejected at the ballot box which left the former President bruised as he announced his 2024 Presidential re-election bid on Tuesday. These results, when viewed in light of the relative success of donor-favorite Governor DeSantis, may increase the viciousness of the 2024 Republican primary election fight.
- The Republican victory in the House, however narrow, is nevertheless a meaningful shift on the Hill which is bound to have implications for Biden's domestic and international agendas. While mudslinging and finger-pointing surrounding the Republicans' lackluster result is abound, Nancy Pelosi's decades-long role at the head of the Democratic House caucus is coming to a close, and her replacement as Speaker is bound to change the pace and tone of work in the south wing of the Capitol. A Republican-led House will do its best to

block Biden's Congressional agenda such that House Democrats may scramble over the mini-'lame duck' period to pass measures—like raising the debt ceiling—before they lose control over fiscal policy. The establishment of a China Select Committee as a bipartisan executive oversight body in Congress has been a long-term goal of the recently re-elected House Republican Leader Kevin McCarthy (R-CA) and it is likely that the House GOP will move forward with these plans when McCarthy assumes the speakership. A Republican Speaker can also be expected to package numerous Republican amendments and provisions which were not included in the CHIPS and Science Act into another expansive China bill, primarily using mechanisms like foreign agent registration, supply chain compliance, and export controls as opposed to the Democrats' emergent industrial policy approach. How the Democrat-led Senate, and the Biden administration's Department of Commerce, will work with the House on this front remains to be seen. Key differences exist between Democrats and Republicans concerning Taiwan relations (with many GOP legislators rhetorically challenging the long-standing policy of strategic ambiguity), export controls oversight, trade barriers, and domestic spending on strategic supply chains. All of these dynamics may force Biden to slow down, compromise, and increase Congressional consultation on his signature trade policy initiative—the Indo-Pacific Economic Framework—for the remainder of his term.

[**Expanded Reading**]

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- McCarthy wins GOP vote for Speakership handily over right-wing challenge, *The Hill*, November 15, 2022
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- Democrats will have to balance rhetoric and reality post-midterms, *Financial Times*, November 14, 2022
- Biden says midterm wins strengthened the U.S. overseas, *The Washington Post*, November 14, 2022
- Will U.S. Midterm Results Affect Washington's Foreign Policy?, *Foreign Policy*, November 11, 2022
- Takeaways from the 2022 midterm elections: Battle for control of the House and Senate still up in the air, *CNN*, November 10, 2022
- The tech sector could face more 'disruptive' policies if Republicans take control of Congress, *CNBC*, November 10, 2022
- Carnegie China Global Dialogue: U.S.-China Relations After the Midterms, event by Carnegie Center for International Peace, November 9, 2022
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- US Midterm Election Outcome Expected to Shape US Policies on China, *Voice of America*, November 9, 2022
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ICAS TRADE N TECH DISPATCH
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What's Been Happening

1 — U.S. and China Resume Economic and Trade Talks, What Now? — 1

[**In One Sentence**]

- U.S. President Biden and Chinese President Xi agreed to resume high-level exchanges, previously put on hold following Speaker Pelosi's visit to Taiwan.
- Commerce Secretary Raimondo said the U.S. is "not seeking the decoupling from China."
- USTR Katherine Tai met with China's Commerce Minister Wang Wentao but neither side revealed much detail of the conversation.
- Analysts have suggested that China will maintain state interventionism while pursuing "high-quality opening" of its economy.
- Over 240 solar companies have urged the U.S. Commerce Department not to expand import restrictions on solar components from Southeast Asia.
- Noting the U.S. as the EU's most important ally and China as the EU's largest trading partner, top EU officials argued for an update on the EU's China policy.
- The U.S. and EU held a joint outreach event with stakeholders on export controls on dual use technologies.

[**Mark the Essentials**]

- The U.S.-China Business Council welcomed the restoration of U.S.-China high-level discussions, noting that "regular and close bilateral contact is indispensable for responsibly managing competition, lowering the temperature of the relationship, and working together to address issues of shared interest."
- According to analysts at the Brookings Institution, China will continue to focus on economic development but make national security and social and political stability top priorities, pursue "high-quality opening" of the Chinese market, and maintain the current trajectory on industrial policies and state-owned enterprises. If such approaches are to be taken, the analysts expect to see more tensions in China's relationship with not only the U.S. but also other trading partners and, thus, a less friendly environment for China's economic development.
- Top EU diplomat Josep Borrell observed that the EU must reduce its dependence on China concerning strategic vulnerabilities by coordinating with allies such as the U.S., highlighting areas of cooperation such as semiconductors and export control. Some EU officials also expressed concerns about China's involvement in critical infrastructure. Others warned against completely aligning with the United States' China policy and cutting ties with China pointing to the volume of China-EU trade.

- A WTO report called on G20 countries to reduce export restrictions on food and fertilizer, warning that existing export restrictions are exacerbating global food insecurity.

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

- The Biden-Xi meeting in Bali achieved its '3R' bottom line—it *reestablished* a baseline of in-person, leader-led communications, it *restarted* senior official level dialogue channels, and it (attempted to) *reassure* the other side of one's strategic intentions and thereby lower the level of mistrust. Following the Biden-Xi meeting, Treasury Secretary Janet Yellen and USTR Katherine Tai held meetings with the People's Bank governor and the Chinese commerce minister, respectively. The restart of the economic working groups holds out the promise of a more engaged relationship in 2023. Of course, the proof of the pudding will be in its eating and we shall have to wait and see if the meetings translate into greater stabilization of the bilateral relationship and its economic component. The problem, after all, is not a lack of comforting intentions (past readouts of Biden-Xi virtual meetings have an abundance of them) but the inability or unwillingness to translate these intentions during the policy implementation process, mostly at the U.S. end. Too often, the Biden administration has diverged from the script, with the President himself—advertently—injecting questionable 'gray zone' tactics when discussing the Taiwan question. In this vein, and looking ahead on the economic front, an executive order establishing an outbound investment screening mechanism is expected to be issued later this month and a decision on the China-specific tariffs is due in Spring 2023. So, we will have to wait and see how the intentions expressed in Bali play out on the economic front over the next few months. That said, there is an evident desire on the part of the administration to draw a line and seek a somewhat more cooperative economic relationship with Beijing. Specifics are vague at this time and will be keenly awaited. For its part, China would be well served by signaling an ambitious commitment to structural reform at its first post-20th Party Congress Central Economic Work Conference (CEWC) later this month. Following President Xi Jinping's successful diplomatic foray in November, it would send an unequivocal signal that China remains committed to an internationally engaged strategy of reform and opening up. That signal has not always been spelt out clearly over the past three COVID-infected years, and implementation in its regard has been even slower to arrive.

[**Expanded Reading**]

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2 — Will 2023 be a Big Year for U.S. Economics and Trade? — 2

[**In One Sentence**]

- USTR Katherine Tai expressed optimism about prospects for U.S. trade in 2023, including in her assessment APEC, WTO reform and IPEF, among other initiatives and partnerships.
- The U.S. and Japan have agreed to push for an "ambitious negotiating schedule" for the upcoming IPEF negotiations.
- Business groups in the U.S. and the European Union are urging the EU to approve the new data privacy framework on transatlantic data flows.
- The U.S. and EU plan to focus on sustainable trade issues during the Trade and Technology Council's next meeting on December 5, 2022.

[**Mark the Essentials**]

- According to USTR Tai, IPEF is gaining "momentum" to deliver "timely results" next year, and members are particularly interested in making new rules and norms for the digital economy. Tai said that IPEF is meant to address current challenges faced by its members while being flexible enough to accommodate new and emerging issues.
- Tai said that the APEC forum, which the United States will host in 2023, is "uniquely positioned" to catalyze cooperation and build a sustainable and resilient global economy. Tai also noted that trade policies should improve access to lower emission goods and services, promote investment in climate-friendly technologies, and help incentivize environmental protection.
- The Biden administration has issued an executive order and regulations to implement commitments related to the political agreement between the U.S. and the EU this March on establishing a new EU-U.S. Data Privacy Framework. The EU is undergoing its internal decision-making process to determine whether to approve the new framework.
- While specific topics related to the U.S.-EU sustainable trade initiative have not been finalized, possible areas of focus include green technology standards, supply chain resilience concerning solar and critical raw materials, and coordination of green subsidies and carbon taxes, especially with an eye on the localization requirements in the Inflation Reduction Act's EV tax credit which has triggered concerns in Brussels.

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

- 2023 needs to be a big year for both the Indo-Pacific Economic Framework (IPEF) negotiations in particular and U.S. trade in general. With the 2024 election cycle likely to kick-in early, the space for smart trade policy decision-making will begin to taper by the latter part of 2023. The first nine months of 2023 will be crucial, as such. If material progress is not made within the IPEF negotiations during this timeframe, expect the can to be kicked down the road beyond the mid-2025 timeframe. The U.S.-chaired Asia-Pacific Economic Cooperation (APEC) ministerial in May 2023 will provide an important platform to firm up an 'early harvest' package, with the digital economy chapter of IPEF's Connected Economy (trade) pillar likely to be a key focus area. By that time, it will also become clear whether or not the EU-U.S. Data Privacy Framework has passed muster at the European Commission's end in terms of sufficiency of safeguards *vis-à-vis* the United States' intelligence operations. That said, it is important to stay realistic about the prospects for ambitious and timely results in the trade policy arena in 2023. In 2011, the Obama administration had played APEC host in order to infuse momentum into the, at-the-time, desultory Trans-Pacific Partnership (TPP) negotiations. By the time of the

APEC Leaders Meeting in Honolulu in November that year, it was clear that the strategy had failed to deliver-and in no small part due to the administration's eye on the electoral calendar and ensuing diffidence in tabling ambitious negotiating proposals. Not until the mid-part of the second Obama administration did the TPP negotiations gather steam under the able leadership of USTR Michael Froman. It is similarly foreseeable that the Biden administration's attempt to utilize its APEC 2023 chairpersonship as a forcing mechanism notwithstanding, substantive progress in the IPEF negotiations may have to wait until after the 2024 presidential election cycle. And for this to be the case furthermore, the Democrats will need to hold the White House.

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On the Hill

[**Highlights of the U.S.-China Economic and Security Review Commission Annual Report**]

- In 2022, the U.S.-China Economic and Security Review Commission (USCC) looked into a number of issues and topics related to U.S.-China economic and trade relations, including:
  - U.S. supply chain vulnerability arising from reliance on China for rare earth elements, casting and forgings, active pharmaceutical ingredients and others;
  - alleged Chinese practices that subvert the global trading system (e.g. subsidies, overcapacity, intellectual property theft, and protectionist non-market policies) as well as possible actions that the U.S. can take to compel changes;
  - China's energy consumption, demand and import needs, as well as relevant carbon footprint; and
  - the decision-making process and internal politics of the Chinese Communist Party.
- Recommendations by the Commission to Congress include:
  - enacting new legislation to suspend China's Permanent Normal Trade Relations (PNTR) treatment if USTR finds that China has failed to comply with its WTO commitments;

- direct the Biden administration to strengthen the U.S. export controls regime, including by demanding regular reports on export control implementation and export license applications and developing a process to self-initiate and expedite the introduction of retaliatory import restrictions on China;
- direct the Biden administration to set up an office that oversees and coordinates cross-agency efforts on U.S. supply chain resilience, including by collecting more data on critical supply chains with a special focus on defense-related supply chain needs;
- direct the Biden administration to ensure that IPEF members are prohibited from using transportation and logistics public information platforms provided by Chinese state-affiliated entities at their ports;
- enact new legislation to establish a permanent agency that will develop plans for sanctions and other economic measures to respond to China's possible hostile action against Taiwan; and
- enact new legislation to improve the collection and translation of open source materials on China and Chinese senior officials.

[**Legislative and Statements**]

- A bipartisan group of House lawmakers introduced a resolution calling for more reshoring and nearshoring of supply chains in the Americas amid China's increasing economic engagement and influence in the Western Hemisphere.
- Senate Finance Committee Chair Ron Wyden (D-OR) warned that outgoing Sen. Rob Portman's (R-OH) hope for a bipartisan 'grand bargain' on trade policy—covering the reinstatement of the Generalized System of Preferences (GSP), the Trade Adjustment Assistance (TAA) program, Trade Promotion Authority (TPA), and a new Miscellaneous Tariff Bill (MTB)—was "a little ambitious for the lame-duck." Instead, he plans to prioritize bringing back 'stand-alone TAA' without tying it to the primarily Republican-backed TPA, though possibly compromising by reauthorizing GSP or passing a new MTB.
- House Ways & Means Committee ranking member Kevin Brady (R-TX), who is retiring in January, commended Switzerland and Mexico for criticizing the White House's flexible approach to vaccine-related intellectual property at the WTO.
- Senate Foreign Relations Committee members Jim Risch (R-ID) and Mitt Romney (R-UT) called on Biden to promptly develop a "grand strategy" towards China as directed by the FY 2022 National Defense Authorization Act. Particularly, they insisted the president establish what the NDAA called an 'Advisory Board on United States Grand Strategy with Respect to China' where outside experts from "the private sector, academia, and think tanks" could provide input.

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

- With the exception of a few China-related amendments that are to be tacked on to the 2023 defense authorization bill, such as a semiconductors-related one and a Taiwan arms sales-related one, the 117th Congress is more-or-less done with legislating on the China front. And Congress has, indeed, been productive on this front, headlined by the passage of landmark bills such as the Chips and Science Act and the climate provisions of the Inflation Reduction Act. With the two chambers now due to be split between the two parties, the 118th Congress is expected to be a very different creature on China policy compared to its predecessor. Like the 116th Congress rather, where the Democrats held the House and the Republicans the Senate and effectively accomplished very little legislatively on China, the 118th Congress will similarly witness a Democrat-led Senate disposing of much that is proposed by a Republican-led House. The gridlock may intuitively appear to be a stabilizing factor. That would not be a correct assessment. The China-related legislative fireworks unleashed by the Republican-led House will reverberate much beyond Capitol Hill and could potentially influence the complexion of the presidential race in 2024. The House Republican leadership has already trained its sights on a plethora of China-related investigations and activities, ranging from enforcement action on export controls and against TikTok's data and privacy practices to questioning Covid's origins, the strict implementation of the Uyghur Forced Labor Prevention Act, the new limits on sale of natural gas to China, restrictions to Chinese access to U.S. capital markets and establishing a Select Committee on China to conduct intensive oversight on all legislative matters that are China-related. The 118th Congress may turn out to be short on legislative achievement on the China front (aside from a mechanism to screen outbound investments on which a loose bipartisan consensus exists), but it will certainly not be lacking in sound and fury. The world must stay tuned.

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ICAS TRADE N TECH DISPATCH

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Volume 2, Issue 24

What's Been Happening

1 — The U.S.-EU Stalemate and (Marginal) Progress at TTC — 1

[In One Sentence]

- The U.S.-EU Trade and Technology Council (TTC) held its third ministerial meeting on December 5, 2022, to enhance transatlantic cooperation on emerging technology, semiconductor and sustainable trade.
- The U.S. and EU remain divided on the United States' allegedly "discriminatory" electric vehicle (EV) subsidy that is only eligible to North American-assembled vehicles.
- The new EU-U.S. Data Privacy Framework is awaiting internal EU approval.
- The U.S. and EU are reportedly considering a carbon emission tariff on steel products from China.

[Mark the Essentials]

- The U.S. and EU issued a Joint Artificial Intelligence (AI) Roadmap to inform their shared approaches to risk management, agreed to strengthen coordination of semiconductor supply chains through information sharing of subsidy programs, and made plans to launch a Transatlantic Initiative for Sustainable Trade.
- After analyzing the existing and prospective policy around AI in the EU, U.S. and China, analysts noted the possibility of increasing transatlantic alignment of regulatory regimes as well as a trajectory of digital fragmentation between EU and U.S. on the one side and China on the other.
- While acknowledging shared transatlantic concerns on China, European External Action Service Secretary General Stefano Sannino cautioned against responding to China in ways that are also "discriminatory" against the EU, alluding to the electric vehicle subsidies.
- A number of EU officials and leaders—including President of France Emmanuel Macron and European Commission President Ursula von der Leyen—have been critical of the EV subsidies, arguing that it could "fragment the West" or begin a transatlantic subsidy war. Meanwhile, European Parliament President Roberta Metsola warned against "the slippery road" towards "the very bottom of the protectionist race."
- The U.S. and EU said they made "preliminary progress" on the EV subsidy during the TTC meeting. European Commission Executive Vice-President for Trade Valdis Dombrovskis said the TTC meeting made him "slightly more optimistic" about the subsidy negotiation, but said there is still "a lot of work to do."
- Trade associations are urging the EU to swiftly approve the new data privacy framework, arguing that it will bring certainty to transatlantic data flows.

- According to an earlier fact sheet that the White House released in October 2021, the U.S. and EU have plans to "work to restrict access to their markets for dirty steels." EU officials have internally looked into the legality of such a carbon tariff as well as the internal carbon pricing in the U.S. and the EU.

[**Keeping an Eye On…**]

- In mid-2013, at the start of the U.S.-EU Transatlantic Trade and Investment Partnership (T-TIP) negotiations during the second Obama administration, the then-USTR Michael Froman had observed that the negotiations would not be allowed to drift on interminably with no end in sight. The trade deal needed to be—and would be—swiftly negotiated on "one tank of gas." In fact, the T-TIP negotiations consumed many a tank of gas, yet ended up in the ditch nevertheless three years later. Judging by its low octane outcomes, the U.S.-EU Trade and Technology Council (TTC) discussions appear to be trending in a similar direction. The most productive trade outcomes so far—on civil aircraft, the U.S.' Section 232 steel and aluminum tariffs, and data flows and successor to Privacy Shield—have all occurred outside the TTC framework. Meanwhile, within the TTC framework, the energies have been diverted to addressing the discriminatory local content requirements attached to the renewable energy subsidies in the U.S.' Inflation Reduction Act (IRA). The EU quite reasonably has taken umbrage to their WTO-inconsistent nature. The electric vehicle (EV) subsidy in particular will be a hard nut to crack. Despite the impression given by some within the administration that creative workarounds could be at hand, the blunt truth of the matter is that the administration has very little political interest in conjuring up the necessary definitional reinterpretations of the IRA language to allow European and East Asian-produced EV's to enjoy the benefits of the subsidy. The U.S. is not about to exchange a mammoth trade deficit in internal combustion engine-powered automotive vehicles for an emerging series of deficits in electric-powered automotive vehicles. And Candidate Biden understands that his failure to sway the votes of non-college educated males (and particularly those with a persuasion for unionization) in the swing states of Michigan, Pennsylvania and Wisconsin could well doom his 2024 election chances *a la* Hillary Clinton-style. The EV subsidies in the IRA have less to do with revitalizing manufacturing in the Rust Belt and more to do with manufacturing employment in these critical swing states, regardless of the consequences for the long-term competitiveness of the industry or the integrity of the rules-based trading order that the U.S. itself did so much to inscribe in the wake of World War II.

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2 — IPEF Gets Down to the Grind in Brisbane— 2

[In One Sentence]

- The first in-person negotiations between the fourteen members of the Indo-Pacific Economic Forum (IPEF) kicked off in Brisbane, Australia on Saturday, December 10 and is set to run until the middle of this week.
- IPEF is the Biden administration's flagship vehicle for economic engagement across the Pacific with an overarching aim of offering an alternative to China's economic statecraft in the region.
- The meeting follows a formal summit in September where member states set out a timeline for negotiating the specifics of IPEF's four 'pillars': trade, supply chains, clean economy, and fair economy.
- Trade ministers of the participating countries have welcomed Canada's proposed announcement of intent to join the framework.
- In a December 1 letter to the White House on IPEF, the chairman and the ranking member of the Senate Finance Committee raised constitutional concerns regarding USTR's procedural bypassing of congressional authority on trade.

[Mark the Essentials]

- The U.S. is co-empowered to set the agenda and approve any agreements reached during the Brisbane round of negotiations. According to senior administration officials, American negotiators intend to get the ball rolling by presenting draft texts covering each pillar. Save for India, which chose not to sign on to the trade pillar, the remaining thirteen IPEF members are involved in all four pillars.
- The draft text of the trade pillar negotiating agenda includes matters of trade facilitation, agriculture, good regulatory practices, and services domestic regulation. "Knock[ing] down barriers" in the trade of agricultural products appears to be the main thrust of this round of negotiations, but administration officials noted that negotiations will "touch on important digital issues" as well.

- Texts are also being tabled covering decarbonization, labor rights, and anti-corruption, though officials noted that these matters are also "embedded" in negotiating aims across all pillars of the framework.
- U.S. negotiators were bolstered by Japan and Australia, both of which issued statements in favor of U.S. negotiating objectives before the meeting began.
- Australia and Singapore intend to use the negotiations to pitch elements of their bilateral Green Energy Agreement (GEA) to the gathered IPEF participants. The pact, signed in October, reduces trade barriers for environmental goods and facilitates carbon emissions trading.

[**Keeping an Eye On…**]

- In the week that senior trade officials from fourteen member states kicked-off their first in-person negotiating round towards an IPEF agreement, it is worth recalling an earlier U.S. trade policy strategy that was wholly welcomed in the region. Twenty years ago, the Bush administration's USTR at the time, Robert Zoellick, unveiled his strategy of 'competitive liberalization.' The logic of 'competitive liberalization' was predicated on the belief that since multilateral liberalization at the WTO was difficult at best, preferential regional and bilateral deals should be adopted as a second-best route to achieve broader liberalization. Uneasiness about the possibilities of trade diversion notwithstanding, these bilateral and regional trading arrangements (in conjunction with negotiations at the WTO) would thereafter create momentum for global trade liberalization. 'Competitive liberalization' spawned thereafter the U.S.-Australia FTA, the KORUS FTA, and culminated in the finalized text of the Trans-Pacific Partnership (TPP) negotiations in the Indo-Pacific region. With the scuttling of the TPP pact by the Trump administration, it has been downhill ever since. Enter, then, the Indo-Pacific Economic Framework (IPEF) which is billed as the new approach to trade and economic engagement in Asia. Much rides now on the (narrow) shoulders of this (questionable) initiative. Like the strategy of 'competitive liberalization', IPEF aims to enhance the U.S.' competitive capability. Unlike 'competitive liberalization', IPEF makes no aspiration to achieve a fundamental premise of competitiveness or liberalization; reciprocal market access. Like the strategy of 'competitive liberalization', IPEF aims to set next-generation standards and entrench the U.S. in trade policy rulemaking in Asia. In contrast to the era of 'competitive liberalization', the U.S. seeks to bind itself to these rules only at its own convenience—and as exemplified last week by its rejection of a WTO dispute settlement panel ruling on the illegality of its Section 232 steel and aluminum tariffs. Prior to the unveiling of his strategy of 'competitive liberalization,' USTR Robert Zoellick fought hard and obtained trade promotion authority (TPA) on a narrow 215-212 vote in the House. By contrast, USTR Katherine Tai plans to disregard Congress' prerogative "to regulate commerce with foreign nations" by using the 'sole executive agreement' mechanism to finalize IPEF and bind the United States on what is frankly a broad matter of international trade. The Biden administration's trade policy approach on IPEF will likely underwhelm for many of the same reasons that the Bush administration's approach to bilateral and regional trade liberalization succeeded in Asia. It is not too late for the Biden team to make the necessary amendments to its trade policy approach to Asia and the world.

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Keywords of the Year: 2022

[Strategic Competition with China]

- The Biden 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.).

[New Vision of Multilateralism]

- The Biden administration's new vision that pushes against traditional gloablism and multilateralism could have 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.

[Decoupling]

- In 2022, the White House has furthered the decoupling of key supply chains from China. Overall, the administration's supply chain focus has been to 'reshore', 'near-shore', and 'friend-shore' the production of critical items. From a U.S.-China strategic competition perspective, the desire to decouple key supply chains from China is understandable—even if it may not be the wisest decision. But is the logic of reshoring as compelling from a purely commercial perspective?

[Supply Chain Resilience]

- The emphasis on 'reshoring', near-shoring' and 'friend-shoring' of supply chains, it is feared, will begin to reverse the forces of globalization and place many Asia-Pacific nations that have hitherto been staunch advocates of globalization and 'open regionalism' in a dilemma: Do they join Washington's 'friend-shored' but 'Beijing-decoupled' supply chain or should they continue to place their regionally-integrated trade policy eggs in the China basket?

[**Tariffs**]

- 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. 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.

[**Chips and CHIPS**]

- The White House pushed hard for strengthening and securing American chip-making capability through both domestic legislation and international cooperation. After a summer-long conference process of twists and turns, but little overall progress, the CHIPS and Science Act of 2022 passed the Senate and the House in quick succession on July 27 and July 28, respectively. On August 9, President Biden signed the bill into law. The U.S. also formed the newest export controls cartel—the "Chip 4" alliance—to constrict China's semiconductor production capabilities across-the-board.

[**Export Control**]

- Export controls have become the U.S. government's de facto number one tool of choice to slow down China's secular climb up the technology ladder. That said, export controls are not an entirely cost-free tool either. Its excessively unilateral use could lead to the 'designing out' of U.S. parts and components from certain technology value chains who learn to operate without these U.S. supply chains. If Washington insists on decoupling supply chains, given the sheer size of China's market, such a decoupling strategy must be crafted in a nuanced manner. U.S. actions have less to do with fair and efficient competition and more with thwarting China's rise, which at the end of the day will leave both parties worse off. For the time being though, the listed technology embargoes will hurt China, and hurt it severely.

[**Midterm Election**]

- The establishment of a China Select Committee as a bipartisan executive oversight body in Congress has been a long-term goal of the recently re-elected House Republican Leader Kevin McCarthy (R-CA) and it is likely that the House GOP will move forward with these plans when McCarthy assumes the speakership. A Republican Speaker can also be expected to package numerous Republican amendments and provisions which were not included in the CHIPS and Science Act into another expansive China bill, primarily using mechanisms like foreign agent registration, supply chain compliance, and export controls as opposed to the Democrats' emergent industrial policy approach.

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