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What's Been Happening

1 — Tale of Two Antagonists: Outlook for U.S.-China Trade & Tech in 2023 — 1

[In One Sentence]

- China has announced plans to challenge the Biden administration's export control measures on semiconductors at the World Trade Organization (WTO), which the U.S. will likely defend via the GATT Article XXI national security exception.
- China has won two recent cases against the U.S. over the national security exception defense, including on the Section 232 tariffs on steel and aluminum and the 2020 prohibition of the "Made in Hong Kong" labelings.
- Tensions between the U.S. and China have increased at the WTO as the two exchanged heated arguments over China's "dumping and subsidization" and the U.S.' trade restrictions that are "destroying" the multilateral trading system.
- The U.S. Trade Representative (USTR) has decided to extend for another nine months 352 product exclusions related to its Section 301 tariffs on China.
- Taiwan has requested to join China's challenge of the U.S.' export controls on semiconductor at the WTO.

[Mark the Essentials]

- Calling for the administration to establish regular, evidence-based and quantitative analysis on U.S.-China trade, retiring Senator Rob Portman argued that the U.S. should rely on "data rather than emotion" to "work strategically towards decreasing or increasing trade integration with China."
- Meanwhile, former U.S. Trade Representative Robert Lighthizer is advocating for an "explicit policy of strategic decoupling" which includes tariffs on all imports from China, the further tightening of export controls, and significant limitation of investment flows between U.S. and China.
- The U.S. and Taiwan conducted the second negotiating round of their 21st-Century Trade Initiative from January 14-17, aiming to deepen the economic and trade relationship and advance mutual trade priorities but will not include market-access provisions.
- Noting that China has a "very dire" economic outlook in the near term, think tank analysts and business consultants are saying that China will be in need of more foreign investment and will have lesser leverage to retaliate against U.S. economic and technology restrictions.
- Emphasizing China's "increasing use of economic coercion" in the recently passed National Defense Authorization Act for 2023, Congress has demanded the administration to establish a task force to oversee and implement an integrated strategy in response to these "coercive economic practices."

- Head of the Commerce Department's Bureau of Industry and Security Alan Estevez has asked for more funding and new technology tools so that the agency can have sufficient "manpower and automated capability" to address the "massively increased" demands for export control administration and enforcement.

[Keeping an Eye On...]

- China (and Hong Kong) enjoyed a good run at the expense of the United States in the WTO's dispute settlement system in December 2022. From the moment that the ink had dried on the filings in their steel and aluminum dispute case and origin marking requirement case, respectively, it was clear as daylight that the constituted panels would strike down the United States' GATT article XXI (national) security exception-based defense. In the space of two weeks in December, the WTO panels did exactly that. In the steel dispute case, the panel ruled that the United States' security exception-based defense of its Section 232 tariffs was indefensible and inconsistent with its GATT obligations. Excess capacity in the steel industry might be a "matter of international attention" but was hardly tantamount to being "an emergency in international relations." Ducking under the WTO's Article XXI security exception was not an acceptable use of the provision. Similarly, in the origin marking requirement dispute case, by compelling Hong Kong exporters to incorrectly label their exports as a product of China, the USTR had conferred a competitive disadvantage on these exporters. Since the U.S. continues to carry on trade with the customs territory of Hong Kong more-or-less just as before—with the exception of the origin marking requirement and some export controls—it was hardly the case that U.S.-Hong Kong international economic relations were at or near a point of breakdown. Washington's justification for an exception based on national security considerations was far-fetched. For those inclined to believe that Beijing will also win its most recent challenge against the Biden administration's export control measures on semiconductors and advanced computing (the U.S. has once again mounted its defense utilizing the Article XXI security exception), they should not count their chickens before they hatch. The regulations are doubtlessly intended to roll back and degrade China's existing civilian semiconductor and computing capabilities, and commercial applications thereof. But the regulations have been artfully written by the Commerce Department to construe that American sales of advanced node semiconductors, semiconductor tools, and advanced computing equipment to China essentially amounts to support for the latter's weapons development program. This includes the development of weapons of mass destruction. Given the inclination of WTO panels to substantially—although not completely—side with the self-judging nature of the Article XXI security exception, it is likely that the panel (which has not yet been constituted) will find the export control measures to be one that could reasonably be "consider[ed] necessary for the protection of the [U.S.]' essential security interests" particularly those "related to fissionable material or the materials from which they are derived." China may not be lucky a third time around at the WTO.

[Expanded Reading]

- [US pressures Asian allies to join crusade against Chinese chipmakers](#), *The Register*, January 9, 2023
- [As G7 Head, Japan Wants Member Countries to Team Up Against China's 'Economic Coercion'](#), *Time*, January 6, 2023 [Paywall]
- [Taiwan Wants to Join WTO Talks on China's Protest Against US Chip Sanctions](#), *Bloomberg*, January 5, 2023 [Paywall]
- [The World Trade Organization's gift to Joe Biden](#), *The Hill*, December 23, 2022
- [US trade chief says new tools needed to counter China's '20-year distortions' affecting global economy](#), *South China Morning Post*, December 20, 2022 [Paywall]
- [The U.S. Needs to Change the Way It Does Business With China](#), *The New York Times*, December 18, 2022 [Paywall]

- [US adds 36 Chinese companies to trade blacklist](#), *Financial Times*, December 15, 2022 [Paywall]
- [The Right Time For Chip Export Controls](#), *Lawfare*, December 13, 2022 [Paywall]

2 — Tale of Three Kingdoms: Outlook for U.S.-EU-China Trade & Tech in 2023— 2

[In One Sentence]

- At the third ministerial meeting of the U.S.-EU Trade and Technology Council (TTC), the two sides agreed to enhance cooperation on regulating emerging technologies, strengthening semiconductor supply chains, and promoting digital connectivity in third countries.
- A senior U.S. State Department official said that he is feeling increasingly “bullish on the prospects of the TTC,” highlighting TTC’s working group on export controls.
- Beijing has blocked the EU’s initial round of requests for the WTO to review China’s punitive trade restriction on Lithuania following the establishment of a “Taiwanese Representative Office in Lithuania.”
- Despite some positive comments following the TTC’s third meeting, the U.S. and EU are yet to reach an agreement over EU concerns regarding the Inflation Reduction Act (IRA) and electric vehicle (EV) tax credits.

[Mark the Essentials]

- The U.S. Treasury Department published a “white paper” to slightly expand the scope of companies that could qualify for the IRA’s EV tax credits and other benefits, drawing criticism from some U.S. lawmakers. Meanwhile, the EU Commission “welcomed” the announcement but said more work and time needs to be taken to “address these issues satisfactorily.”
- According to a senior National Security Council official, the transatlantic collaboration on quantum information technology—which was expanded at TTC—will cover coordination on export controls and accordingly set an example for further cooperation on emerging technologies.
- The U.S. and EU have planned a stakeholder meeting on January 31, 2023 to discuss TTC work on topics such as standardization of emerging technologies, climate and green trade, supply chain resilience, and the promotion of EU and U.S. tech leadership.
- U.S. Senators Bob Menendez and Bill Cassidy jointly re-introduced a bill that would require a 60-day warning period before the administration imposes certain retaliatory tariffs on EU imports that are “in transit,” citing pleas and concerns of U.S. companies and small importers.

[Keeping an Eye On...]

- The discriminatory and WTO-inconsistent local content requirements attached to the renewable energy subsidies in the U.S.’ Inflation Reduction Act (IRA) continue to bedevil US-EU trade and investment ties. On December 29, 2022, the U.S. Treasury Department released its Anticipated Direction of Forthcoming Proposed Guidance with regard to the IRA’s electric vehicle (EV) rules. The white paper foreshadows a modest compromise being teed up by the Biden administration to placate the EU’s grievances. The department plans to “broadly interpret” the term “free trade agreement” in the IRA language on battery and critical minerals-related sourcing requirements to putatively “cover any newly negotiated [arrangements with the EU] during the pendency of the rulemaking process.” Earlier, the Treasury Department had flagged that commercial electric vehicles assembled in Europe would be eligible for the IRA’s US\$7,500 consumer tax credit so long as the EV’s are acquired for use of lease by the customer and were not for resale. The two concessions, while not insignificant, do not amount to a fundamental reframing of the controversial aspects

of the EV tax credits' sourcing rules. As noted in the prior issue of the TnT Dispatch, the U.S. is not about to exchange a mammoth trade deficit with the EU, Japan and South Korea in internal combustion engine-powered automotive vehicles for an emerging series of deficits in electric-powered vehicles. And President 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. EU, Japanese and South Korean lobbies against the local content requirements in the United States' Inflation Reduction Act (IRA) will soon run up against their limits.

[Expanded Reading]

- [Treasury delays new restrictions for electric vehicle tax credits, drawing Manchin's ire](#), *The Hill*, December 29, 2022
- [Biden admin bows slightly to European pressure in trade clash](#), *Politico*, December 29, 2022
- [China blocks EU's efforts to form WTO panels on Lithuania export freeze and hi-tech patents](#), *South China Morning Post*, December 20, 2022 [Paywall]
- [Bringing economics back into EU and U.S. chips policy](#), Brookings, December 20, 2022
- [The Real Reasons Why Europe Is Concerned by the US Inflation Reduction Act](#), Institut Montaigne, December 15, 2022
- [Macron wants European response to U.S. IRA to amount to 2% of GDP](#), *Reuters*, December 15, 2022 [Paywall]
- [Next steps for the TTC: A conversation with Under Secretary of State Jose W. Fernandez](#), Atlantic Council, December 13, 2022
- [U.S.-EU Joint Statement of the Trade and Technology Council](#), The White House, December 5, 2022
- [Menendez, Cassidy Introduce Bipartisan Fair Tariff Act](#), Office of Senator Menendez, December 1, 2022

On the Hill



[House Speaker McCarthy on China]

- Kevin McCarthy was elected the Speaker of the U.S. House of Representatives in the early morning of January 7, 2023, after House lawmakers failed to reach an agreement in 14 prior rounds of voting. Since 1925, the Speaker of the House has traditionally been elected with a single round of voting.
- McCarthy reportedly promised a number of concessions to secure enough votes from holdout Republican lawmakers. These concessions include: the ability for one lawmaker to trigger a vote to decide whether the current Speaker should be removed from office; less closed-door discussion and negotiations that supposedly accelerate the lawmaking process but decrease legislative transparency for members not holding congressional leadership positions; and seats and chairing positions on key committees for members of the conservative Freedom Caucus.
- McCarthy has worked on establishing a Select Committee on China over the past few months. According to him, the Committee will be a bipartisan task force which focuses on plans and actions in response to “challenges” from China such as “bringing supply chains back to America,” “securing intellectual property,” “ending dependency on China” and “protecting national security.”

- In an op-ed published in early December 2022, co-authors Kevin McCarthy and now-China Committee Chair Mike Gallagher describe the U.S.-China relationship as a “new Cold War” and proposed “tough policies” to restore supply chains and end critical economic dependencies on China, “detering aggression...both military and economic” and defending domestic institutions.
- Prior to the midterm election, McCarthy was also outspoken on curbing TikTok’s access to U.S. user data and other “dangerous data practices” of the social media platform which is owned by Chinese company ByteDance. McCarthy alluded back to the point in December when he said that he would “end the theft of Americans’ personal information.”
- In 2020, McCarthy oversaw the work of the Republican China Task Force, which provided recommendations such as securing the national security supply chains, assessing and countering “security risks posed by PRC” concerning 5G, and “harmonizing export control policies” with allies and partners on critical technologies.

[The Outlook for the 118th Congress on China, Trade and Technology]

- On January 10, 2023, the House voted 365-65 to establish a Select Committee on China. According to Select Committee Chair and Republican lawmaker Mike Gallagher, the Committee will “expose” China’s “coordinated whole-of-the-society strategy to undermine American leadership” and “identify long-overdue, commonsense approaches to counter CCP aggression.”
- Both Gallagher and House Speaker McCarthy expect the China Committee to build “an united front” and work on a “bipartisan basis.” Some commentators speculate that the Select Committee will take a leadership role in coordinating measures across different congressional committees.
- Some Democrats have argued that the negotiation of trade agreements with binding commitments—including the Indo-Pacific Economic Framework—requires formal congressional approval. Lawmakers have also urged the Biden administration to work with Congress more closely and increase “transparency” and “accountability” on trade-related negotiations.
- Republican leaders of the House’s Ways & Means Committee are reportedly eyeing “rigorous oversight and investigation” of trade-related negotiations, including USTR’s “lack of sufficient engagement and information” on the WTO negotiation of the COVID vaccine IP waiver.

[Keeping an Eye On...]

- “We spent decades passing policies that welcomed China into the global system. In return, China has exported oppression, aggression, and anti-Americanism.” So says Kevin McCarthy, the new speaker of the U.S. House of Representatives. In one of his first acts as speaker, McCarthy established a bipartisan Select Committee on China, an idea that reportedly dawned on him in 2019 during a visit to Normandy on the 75th anniversary of D-Day. The purpose of the Select Committee will be to conduct hearings and suggest recommendations to the various House committees. This means that the Select Committee is not necessarily intended to possess legislative authority, as some observers have already noted. The Select Committee on China follows in the vein of the China Task Force; a group that then-Minority Leader Kevin McCarthy had announced in May 2020 and, in September 2020, delivered 82 key findings and more than 400-plus recommendations. That China Task Force is better remembered though for the walk out of the then-majority Democrats one day prior to the announcement of the formation of the task force. Despite subsequent invitations to all Members of the House to present ideas or bills for consideration and provide examples of supposedly malign Chinese Communist Party (CCP) activity in their districts, only Republicans responded to the call. Presumably, Speaker McCarthy aspires to do better this time around with the Select Committee on

China. For this to be the case, though, the House Republicans will need to show a degree of prudence and restraint. What are the chances of that? Time will tell if they can summon the necessary wisdom to responsibly champion a bipartisan approach on China in the fractious lower chamber.

[Expanded Reading]

- [House easily passes resolution to create bipartisan China select committee](#), *The Hill*, January 10, 2023
- [McCarthy Floor Remarks on Establishing the China Select Committee](#), Kevin McCarthy Speaker of the House, January 10, 2023
- [What Speaker McCarthy means for Silicon Valley](#), *The Washington Post*, January 9, 2023
- [Will US Speaker McCarthy go to Taiwan?](#), *Asia Times*, January 9, 2023
- [House Speaker Kevin McCarthy Opening Remarks](#), C-SPAN, January 7, 2023 [video]
- [What has Kevin McCarthy given up, and at what price?](#), *BBC*, January 7, 2023
- [What McCarthy has offered his GOP opponents, and what's under discussion](#), *The Hill*, January 6, 2023
- [What the split Congress can actually accomplish in 2023](#), *Vox*, January 3, 2023
- [China and the US are locked in a cold war. We must win it. Here's how we will](#), Reps. Kevin McCarthy & Mike Gallagher, *Fox News*, December 8, 2022
- [House GOP Leaders Demand Action to Curb TikTok's Dangerous Data Practices](#), Kevin McCarthy Speaker of the House, July 14, 2022
- [China Task Force Report](#), China Task Force, U.S. Congress, September 20, 2020