

March 10, 2023

Volume 3, Issue 5

What's Been Happening

1 — Decouple with China, but at What Cost? — 1

[In One Sentence]

- At the inaugural hearing of the new House Select Committee on China, committee chairman Mike Gallagher described competition with China as an “existential struggle over what life will look like in the 21st century.”
- The Commerce Department’s Bureau of Industry and Security (BIS) continues to limit U.S. firms’ support for China’s military by placing PRC entities involved in the latter’s military-industrial complex on lists that require licenses for exports.
- Since October, the White House has restricted China’s ability to access advanced chips by adding numerous items to its export control list, and it has recently seen success in pushing allied nations like the Netherlands and Japan to follow its lead on selective technologies and critical materials.
- Twelve senators introduced a bipartisan bill with White House backing that would provide new tools to the administration to restrict technology from foreign adversaries that could pose a threat to national security.
- China published a sweeping report in late February entitled ‘U.S. Hegemony and its Perils,’ which took aim at Washington’s supposed “slew of excuses to clamp down on China’s high-tech enterprises” and the “long-arm jurisdiction” underlying its sanctions.

[Mark the Essentials]

- Leading members of the Senate Intelligence Committee recently sent a letter to the Commerce Department requesting that it review critical technologies not yet covered by export controls on China, and that it furthermore exercise its authority under the Defense Production Act to force U.S. firms to disclose their ties to Chinese state-owned enterprises. House lawmakers in the Foreign Affairs Committee have also held Commerce’s feet to the fire by calling into question its coordination with the Treasury Department to limit U.S. investments into Chinese entities that feature on various control lists.
- The Bureau of Industry and Security (BIS) and the Justice Department have jointly launched a ‘Disruptive Technology Strike Force’ to investigate and prosecute global violations of U.S. export controls in concert with allied intelligence and law enforcement agencies. Many of the items in question—AI, quantum computing, and biotechnology—do have security implications but references to these technologies’ “potential to alter the world’s balance of power” during the launch suggests the strike force is wrapped up in the context of general global tensions as well.

- It plays well in Congress to call for economic decoupling with China, but lawmakers and the executive branch have been reluctant thus far to aggressively back up their rhetoric. Fully, 70% of applications to export controlled items to ‘blacklisted’ Chinese firms (down from over 90% at the height of the Trump era ‘trade war’) were granted by BIS last year.

[Keeping an Eye On...]

- What’s up with the anti-TikTok frenzy on Capitol Hill, the United States’ latest “foreign adversary”? In order to counter its supposed enabling of surveillance by the Chinese Communist Party and facilitation of malign election-related influence campaigns, a group of 12 bipartisan senators introduced the *Restricting the Emergence of Security Threats that Risk Information and Communications Technology (RESTRICT) Act*. The Act claims to “better empower the Department of Commerce to review, prevent, and mitigate information communications and technology transactions that pose undue risk to [U.S.] national security.” This is all fine—except that there are already multiple and overlapping authorities aimed at preventing such ICTS risks from China and other foreign adversaries. In May 2019, the Trump administration issued a wide-ranging Information and Communications Technology and Services Executive Order (ICTS E.O.), which the Biden administration has faithfully implemented to address the risks of introduction or prevalence of “untrusted” ICTS products on U.S. soil. In June 2021, the Biden administration corrected the previous administration’s TikTok and WeChat-related Executive Orders and issued its own Connected Software E.O. to protect against digital collection and exploitation of sensitive data of U.S. persons, including by TikTok. Relatedly, the Biden administration’s Committee on Foreign Investment in the United States (CFIUS) appears to have worked out—or is on the verge of working out—a national security mitigation agreement with TikTok that would have the app’s U.S. data stored locally on Oracle servers, its source code and recommendation algorithm monitored by third party audit, and its operations placed under the control of an independent board that reports to CFIUS. Which, then, begs the question: Why is the White House backing the RESTRICT Act on the Hill? Either the White House believes in its heart that CFIUS is not up to the task of mitigating foreign security risks with regard to social media/connected software, or it is its considered view that no successful Chinese app should be allowed to operate on U.S. soil. If it is the latter case, the White House should be upfront and state its intentions plainly. The one-sided Tech Cold War continues inexorably, and the RESTRICT Act is just its latest manifestation.

[Expanded Reading]

- [White House backs bipartisan bill that could be used to ban TikTok](#), *NBC News*, March 7, 2023
- [The US is still approving export licenses for blacklisted firms from China, including Huawei and SMIC](#), *TechWireAsia*, March 7, 2023
- [China says US trying to 'deprive' it of right to develop in tech row](#), *Reuters*, March 6, 2023 [Paywall]
- [The China Consensus: Do Almost Nothing](#), American Enterprise Institute, March 2, 2023
- [US House panel on China cites 'existential struggle' at first hearing](#), *Reuters*, March 1, 2023 [Paywall]
- [Huawei Export Licenses Could Be Revoked by U.S.](#), *The Wall Street Journal*, February 28, 2023 [Paywall]
- [BIS Approved More than \\$23B of Tech Licenses to Blacklisted Companies](#), House Committee on Foreign Affairs, February 28, 2023
- [U.S. House China panel holds first hearing after lawmakers push seven bills targeting Beijing](#), *CNBC*, February 23, 2023
- [United States–China semiconductor standoff: A supply chain under stress](#), Atlantic Council, February 23, 2023
- [McCaul, Lawler Send Letter to Commerce on CCP Trade with SSTs in Violation of U.S. Export Control Laws](#), House Committee on Foreign Affairs, February 17, 2023

- [Justice and Commerce Departments Announce Creation of Disruptive Technology Strike Force](#), U.S. Department of Justice, February 16, 2023
- [Warner & Rubio Urge Biden Admin to Prevent Flow of U.S. Innovation to China's Military Industrial Complex](#), Office of Sen. Mark Warner (D-VA), February 9, 2023

2 — U.S. Calls for Multilateral Trade Reform, Chooses Unilateralist or Bloc-based Pathways— 2

[In One Sentence]

- USTR Katherine Tai spoke at the Munich Security Conference and reaffirmed her statement that the WTO is on “thin ice” following what the U.S. sees as several spurious decisions by the body’s dispute resolution mechanism that deny the U.S.’ right to create trade barriers citing national security reasons.
- Despite Washington’s misgivings with perceived ‘exploitation’ of the WTO’s dispute settlement process, the U.S. says it remains committed to the WTO and is pushing to reform the dispute settlement function in a new round of informal talks that began at the end of February.
- Several WTO members—including the European Union, China, and Japan—are pushing for more formal talks and text-based negotiations to finalize dispute settlement reform in time for the body’s 13th Ministerial Conference next February.

[Mark the Essentials]

- As the U.S. prepares to host the Asia-Pacific Economic Cooperation (APEC) leaders’ summit in San Francisco this November, a first round of preliminary meetings between trade officials has just concluded. In the talks, U.S. officials pushed resilient supply chains and increased transpacific trade volumes as priorities.
- Next week, the second negotiating round of the Indo-Pacific Economic Forum (IPEF) is set to take place in Bali, Indonesia. A ‘special round’ of negotiations on the three pillars of supply chains; clean energy, decarbonization and infrastructure; and tax and anti-corruption was held in New Delhi last month, while the Bali talks are slated to focus on the first pillar: trade. U.S. negotiators are expected to table a digital trade text at the upcoming Bali round.
- A scheduled meeting between EU Trade Commissioner Valdis Dombrovskis and USTR Tai was canceled due to the EU commissioner testing positive for COVID. Calls from civil society and prominent officials, meantime, for a transatlantic ‘truce’ on the subsidy race and a limited trade facilitation agreements for critical minerals are gaining traction however, as both sides aim to lay the groundwork for their TTC meeting in Sweden later this May.
- The U.S. trade agenda is finding a willing audience among its existing treaty and FTA partners in the Indo-Pacific (such as Japan, South Korea, Singapore, and Australia), as well as with many Pacific island nations. IPEF’s ‘buffet style’ structure means that there is relatively less solidarity though among its participating member states. India, for example, has been consistently urging Washington to push for an “early harvest of deliverables” while some Southeast Asian member states (Indonesia, Malaysia, and Vietnam) are willing to move more slowly and engage selectively with U.S. trade and investment initiatives insofar as they improve their economies and enable hedging against Chinese economic influence. U.S.-EU trade relations have also been complicated by the spell of diverging tactics which came in the wake of the Inflation Reduction Act’s passage last August, but the EU’s announcement of an industrial policy overhaul last month and continued engagement in the TTC suggests that transatlantic trade agendas are moving forward in tandem.

[Keeping an Eye On...]

- So, after having lost three successive cases over its interpretation and use of the GATT Article XXI national security exception at the WTO dispute settlement system's panel stage, USTR Tai claims that it is the WTO, and not Washington, who is on "thin ice". Earlier in January, the U.S. Ambassador to the WTO Maria Pagan sought an "authoritative interpretation" of the security exception. The United States' wish should be granted. As per Article IX:2 of the Marrakesh Agreement establishing the WTO, the organization's Ministerial Conference and General Council (its supreme decision-making body) is vested with the authority to adopt an 'authoritative interpretation' of any contested GATT provision, including the national security exception, by a three-fourths majority of the membership. Future WTO panels would be jurisprudentially bound by that interpretation. The cold hard reality of the U.S.' request for an "authoritative interpretation" is that Washington will not be able to muster even a smidgen of the WTO's membership behind its cause—let alone muster a three-fourth majority. As per Washington's view of GATT Article XXI, the security exception is entirely 'self-judging'. Issues of national security, being political matters, are not susceptible to third-party review and, as such, WTO panels lack the authority to review the invocation of Article XXI by a member (in this case the United States). Others—or rather everybody else—would beg to disagree. In its written submission, the European Union observed that a dispute settlement panel was entirely within its right to "review whether the interests at stake can 'reasonably' or 'plausibly' be considered essential security interests." For its part, Japan submitted that the term essential security interest is "not unbounded" and is perfectly justiciable, albeit with appropriate caution. In varying forms, Australia, Canada and other close U.S. allies, too, have hewed to this overwhelmingly wide interpretative consensus while at the same time enjoining WTO panels to accord a "high level of deference" to the invoking member's use of the exception. Truth be told, the U.S. delegate at the time of the drafting of the security exception too had noted that while "some latitude [should be afforded] for security measures," it cannot be the case that the exception is interpreted "so broad[ly] that, under the guise of security, countries will put on measures which really have a commercial [and protectionist] purpose." China's position concurs with the said U.S. delegate—while WTO panels should "exercise extreme caution...in not prejudicing a Member's right to protect its essential security interests," it must also "prevent [bad faith] abuse of Article XXI and evasion of WTO obligations" by the invoking Member. So, perhaps it is indeed time to bring on a WTO General Council session to adopt an "authoritative interpretation" of GATT Article XXI. Far from mustering a three-fourth majority, the United States will find fewer supporters in its corner than even Russia managed at the UN General Assembly on the Ukraine invasion condemnation vote.

[Expanded Reading]

- [APEC First Senior Officials' Meeting Strengthens Multilateral Cooperation](#), U.S. Department of State, March 3, 2023
- [USTR Releases President Biden's 2023 Trade Policy Agenda and 2022 Annual Report](#), Office of the U.S. Trade Representative (USTR), March 1, 2023
- [Readout of the First Senior Officials Meeting of the United States-Pacific Islands Trade and Investment Dialogue](#), Office of the U.S. Trade Representative (USTR), March 1, 2023
- [A fireside conversation with US Ambassador to Vietnam Marc E. Knapper](#), Brookings, March 1, 2023
- [EU Statement at the WTO Formal Trade Negotiating Committee](#), Permanent Mission of the European Union to the World Trade Organization (WTO), February 28, 2023

- [APEC Officials Strengthen Sustainable and Inclusive Growth for All](#), Asia-Pacific Economic Cooperation (APEC), February 28, 2023
- [A green plea for climate trade peace](#), *Politico*, February 27, 2023
- [Letter: U.S. and EU Groups Call for Climate Peace Clause](#), *Public Citizen*, February 27, 2023
- [Yellen says EV battery mineral trade pacts can likely bypass Congress](#), *Reuters*, February 24, 2023 [Paywall]
- [USTR Releases Annual Report on China's WTO Compliance](#), Office of the U.S. Trade Representative (USTR), February 24, 2023
- [United States to Participate in Second Indo-Pacific Economic Framework Negotiating Round in Indonesia](#), Office of the U.S. Trade Representative (USTR), February 24, 2023
- [EU calls for WTO to address current policy challenges through focused deliberation](#), European Commission, February 21, 2023
- [Washington grapples for a post-globalization vision](#), *Politico*, February 21, 2023
- [Readout of Ambassador Katherine Tai's Meeting with European Union Executive Vice President Valdis Dombrovskis](#), Office of the U.S. Trade Representative (USTR), February 17, 2023
- [MSC 2023: Protectonic Shifts - Global Trade Under Pressure](#), *BR24*, February 17, 2023
- [E-commerce negotiations enter final lap](#), World Trade Organization (WTO), February 16, 2023
- [WTO director general: dispute settlement reform a 'priority'](#), *Reuters*, February 13, 2023 [Paywall]
- [IPEF Negotiators Eye Partial Accord by Late May](#), *Jiji Press*, February 12, 2023

On the Hill

[Legislative Developments]

- The House Foreign Affairs Committee approved 11 bills related to China at the end of last month. Notable among these measures is the “PRC is Not a Developing Country Act,” which would instruct the State Department to change China’s status in international organizations. The “Deterring America’s Technological Adversaries Act”—one of the few measures which was not unanimously approved and passed along party lines—would empower the White House to ban TikTok and other applications that pose a threat to national security. The committee also advanced measures which would enable export controls on components for undersea cables, and appropriate US\$325 million to counter China’s ‘malign economic influence.’
- The House Financial Services Committee also endorsed three China-related bills. The “Chinese Currency Accountability Act” would instruct the Treasury secretary to oppose any increases in the weight of the renminbi in the basket of currencies—the U.S. dollar, euro, renminbi, yen, and British pound—that set the rates for International Monetary Fund (IMF) transactions. The “China Exchange Rate Transparency Act” would call on the U.S. IMF executive director to push China to increase transparency in its exchange rates. Finally, the “China Financial Threat Mitigation Act” would require the Treasury to draft a report on the risk China poses to U.S. and global financial stability.
- House lawmakers in the Foreign Affairs Committee also introduced a companion to a Senate bill called the “Countering Economic Coercion Act of 2023.” The Act would empower the President to take measures like waiving certain requirements to facilitate export financing, expediting export licenses, lowering duties on affected countries, and raising duties on coercive ones.

[Hearings and Statements]

- The chair of the new House Select Committee on China, Mike Gallagher (R-WI), thinks that one of the panel's priorities should be to address the "complete absence" on the hill of a trade agenda towards Taiwan. Panel member Darin LaHood (R-IL), also a member of the Ways & Means Committee, was tapped to take the lead on those efforts. Gallagher recently returned from a high profile trip to the island last month.
- The inaugural hearing of the China Select Committee featured discussion of several trade issues including the bilateral trade deficit, China's role in the WTO, expanded U.S. industrial policy, and the prospects of new Trade Promotion Authority (TPA) which could facilitate U.S. entry into the Comprehensive and Progressive Agreement of Trans-Pacific Partnership (CPTPP) free trade area.
- Seven Republican senators introduced a resolution which would overturn a Commerce Department rule that delays any imposition of tariffs on solar manufacturers found to be circumventing U.S. trade remedies until June 2024. The sector is currently under investigation by Commerce and provisional results suggest that several Chinese firms are dodging U.S. anti-dumping and countervailing duties by manufacturing products set for U.S. import in Southeast Asia.
- Senators Richard Blumenthal (D-CT) and Jerry Moran (R-KS) sent a letter to Treasury Secretary Janet Yellen in the waning weeks of February urging the Department to swiftly conclude an interagency probe into TikTok's Chinese parent company Byte Dance, and take steps to cordon off Americans' personal and consumer data. This process may be redundant if the DATA Act passes and TikTok is subsequently banned.
- The Senate Finance Committee launched fresh efforts to address China's unfair trade practices with a hearing on the modernization of U.S. Customs and Border Protection's procedures and enforcement mechanisms.

[Expanded Reading]

- [China Select Committee hearing highlights partisan divide on Beijing-countering strategy](#), *Politico*, March 1, 2023
- [US House Committee Advances a Slew of Sanctions Bills Related to China and Taiwan](#), *Bloomberg*, February 28, 2023 [Paywall]
- [Transcript: Reps. Mike Gallagher and Raja Krishnamoorthi on "Face the Nation"](#), *CBS News*, February 26
- [H.R.1189 - Undersea Cable Control Act](#), *Congress.gov*, February 24, 2023
- [H.R.1157 - Countering the PRC Malign Influence Fund Authorization Act of 2023](#), *Congress.gov*, February 24, 2023
- [H.R.1156 - China Financial Threat Mitigation Act of 2023](#), *Congress.gov*, February 24, 2023
- [H.R.1153 - Deterring America's Technological Adversaries Act](#), *Congress.gov*, February 24, 2023
- [H.R.1107 - PRC is Not a Developing Country Act](#), *Congress.gov*, February 21, 2023
- [S.J.Res.15 - A joint resolution disapproving the rule submitted by the Department of Commerce relating to "Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414"](#), *Congress.gov*, February 16, 2023
- [Sens. Moran, Blumenthal Call for Restrictions of TikTok's Operations Amid Concerns Over National Security and Consumer Privacy](#), Office of Sen. Jerry Moran (R-KS), February 16, 2023
- [Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field](#), Hearing of the U.S. Senate Committee on Finance, February 16, 2023
- [S.295 - Countering Economic Coercion Act of 2023](#), *Congress.gov*, February 7, 2023
- [H.R.839 - China Exchange Rate Transparency Act of 2023](#), *Congress.gov*, February 6, 2023
- [H.R.510 - Chinese Currency Accountability Act of 2023](#), *Congress.gov*, January 25, 2023