



ICAS
TRADE N TECHNOLOGY
PROGRAM

DISPATCH

Volume 3 2023

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TnT 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 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

Institute for China-America Studies

January 16, 2023

Volume 3, Issue 1

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

January 26, 2023

Volume 3, Issue 2

What's Been Happening

1 — Closer Ties with Asian Partners Beyond Just Trade — 1

[In One Sentence]

- U.S. officials expect the Indo-Pacific Economic Framework (IPEF) to be “inclusive” and open to new members.
- U.S. President Joe Biden and Japanese Prime Minister Kishida Fumio have committed to “reaffirm our economic leadership” and to “sharpen our shared edge on economic security” during a joint visit in early January.
- The United States expects quick movement and a possible “early harvest agreement” from the U.S.-Taiwan Initiative on 21st-Century Trade negotiations.
- Despite calls from U.S. businesses and some lawmakers, the Biden administration is yet to include market access provisions in IPEF or negotiate new free trade deals.

[Mark the Essentials]

- Deputy U.S. Trade Representative Sarah Bianchi said that the United States plans to pursue “aggressive progress” in IPEF negotiations but has not established any “hard deadline” yet. Noting the “complexity” and amount of work in IPEF’s trade pillar, Bianchi added that “early harvests” might be more available in pillars such as digital trade, supply chain resilience, decarbonization and anti-corruption.
- As part of the bilateral effort to “advance a common trade agenda,” the U.S. and Japan recently launched a new task force to exchange information and promote best practices on human rights and international labor standards, as well as proscribe forced labor, in supply chains.
- According to a readout from the Office of the U.S. Trade Representative, officials from the United States and Taiwan “reached consensus in a number of areas and pledged to maintain an ambitious negotiating schedule.” The initiative plans to cover trade facilitation, small and medium-sized enterprises, good regulatory practices, and services domestic regulation.
- While delivering a speech in Washington, D.C., Japan’s Minister of Economy, Trade and Industry Nishimura Yasutoshi said that “some countries” have used “mutual economic interdependence” as a weapon and called for cooperation among “like-minded countries” to pursue “effective responses to economic coercion.”

[Keeping an Eye On...]

- The IPEF roadshow continues apace. Text-based discussions on the crucial labor, environment, and digital economy chapters of the trade pillar are due to commence at the next round of negotiations. Draft texts for the supply chain, clean economy, and fair economy pillars were earlier tabled at the first round in Brisbane. There is little doubt that one of the Biden administration's key goals going into IPEF is to reconfigure trade and investment flows in the Indo-Pacific region and, thereby, shrink China's relative economic footprint and influence. Reaching for this objective will turn out to be an exercise in futility. Aside from the fact that China is deeply tied to its neighbors economically via conventional trade agreements (i.e. RCEP, CPTPP and DEPA accession talks), trade policy is not the appropriate instrument to reconfigure—let alone decouple—economic flows. Indeed, Washington ought to know better. Almost five years after the Trump administration's slash-and-burn Section 301 tariffs on US\$370 billion worth of U.S. imports from China, the U.S. runs an even larger trade deficit with China today compared to the pre-Section 301 days. On the other hand, the Treasury Department's foreign investment screening rules and the Commerce Department's technology controls against Huawei as well as, more recently, against the broader Chinese semiconductor and advanced computing ecosystem have had an immediate and swinging effect on supply chain reconfiguration. The message is clear: deploy leverage where one enjoys a whip hand and be selective in choice of policy instrument. And with regard to the remaining universe of economic flows, observe the existing rules of the game rather than concoct half-baked initiatives that barely move the needle a tick but end up sully the nation's free trader par excellence credentials that have been laboriously earned over the many decades since the end of World War II.

[Expanded Reading]

- [U.S. to aggressively push for digital trade rules in Asia in 2023](#), *Nikkei Asia*, January 24, 2023 [Paywall]
- [U.S., Taiwan officials pledge ambitious trade negotiating schedule](#), *Reuters*, January 17, 2023 [Paywall]
- [Readout of January Negotiating Round Under the U.S.-Taiwan Initiative on 21st-Century Trade](#), Office of the United States Trade Representative, January 17, 2023
- [Joint Statement of the United States and Japan](#), The White House, January 13, 2023
- [Suzanne Clark's 2023 State of American Business Remarks](#), U.S. Chamber of Commerce, January 12, 2023
- [United States and Japan Launch Task Force to Promote Human Rights and International Labor Standards in Supply Chains](#), Office of the United States Trade Representative, January 6, 2023
- [U.S. and Japan to expand cooperation on key technologies beyond chips](#), *The Japan Times*, January 6, 2023
- [Japan minister calls for new world order to counter rise of authoritarian regimes](#), *Reuters*, January 5, 2023 [Paywall]
- [Japan's 2023 G7 Priorities and the Future Economic Order](#), event by Center for Strategic & International Studies, January 5, 2023

2 — U.S. and China's Duelling Views of Globalization — 2

[In One Sentence]

- Associating Davos with a “specific,” traditional kind of globalization that needs “evolving,” U.S. Trade Representative Katherine Tai argued for a “new economic world order” that is “worker-centric” and focuses on “who we want to benefit from our vision and from the economic opportunity.”
- Meanwhile, China's Vice Premier Liu He discussed China's economic development plans and affirmed China's commitment to “socialist market economy” and “all-round opening-up.”

- In response to China's challenge at the World Trade Organization (WTO), the United States argued that its semiconductor export controls protect U.S. national security and, accordingly, concern non-reviewable "political matters."
- German lawmakers are reportedly calling on the European Union to decrease tariffs between the United States and the EU through the U.S.-EU Trade and Technology Council.
- The U.S. Department of State has established a new office for Critical and Emerging Technology as part of a "wider modernization agenda" in light of "intensifying" "competition to develop and deploy foundational technologies."

[Mark the Essentials]

- At the annual State of American Business event, CEO of the U.S. Chamber of Commerce Suzanne Clark said that the U.S. is on a "downward trend on trade" and called on the Biden administration to resume negotiations on trade agreements, pursue "crucial" market access provisions in IPEF negotiations, and "go back to the negotiating table" with China on trade policy.
- Vice Premier Liu He also argued that the international community should "abandon the cold war mentality" and "uphold the right principles" to preserve an "equitable" and "effective" international economic order while calling for coordination of international macro policy and a global response to climate change.
- Japan is hoping to establish a permanent body on digital governance among "like-minded countries" to coordinate data governance practices, counter China's influence in the Global South, and allow African and Asian companies to more easily enter American, European and Japanese markets, according to Japan's minister for digital transformation Kono Taro.
- In support of the United States' Section 301 tariffs on Chinese goods, some U.S. manufacturers commented that the tariffs "level the playing field," "resuscitate America's industrial base," "counteract unfair competitive advantages" from China, and increase overall employment in the United States.
- When asked about Taiwan's decision to join Beijing's case challenging U.S. semiconductor export controls at the WTO as an interested third party, a senior U.S. trade official said they believe Taiwan supports the United States' position on the matter.

[Keeping an Eye On...]

- Kudos to USTR Katherine Tai for her "worker-centric" vision of a new economic world order. Someday we might even get a glimpse of it in practice, and hopefully it will be an improvement on the 'vision' of Marx and Engels. On the other hand, if the labor chapter of the U.S.-Mexico-Canada agreement (USMCA) is what USTR Tai has in mind, then this does not amount to much of a vision at all. That chapter, with its rapid response enforcement mechanism and rules prohibiting the imports of goods made by forced labor, among others, is an improvement on labor chapters in previous trade agreements. But Mexico's industrial relations and its overall macroeconomy post-USMCA have hardly become more "worker-centric," and neither will that be the case of IPEF member states economies if USTR is indeed successful in importing the USMCA labor provisions in IPEF. On the other hand, in his keynote address in Davos, the departing Chinese Vice Premier Liu He laid out a forceful vision of China's structural reform framework. Five years earlier, Vice Premier Liu had pithily framed China's policy objectives around a Key Necessity (transitioning to high-quality development), a Main Task (excess capacity reductions), and Three Critical Battles (against financial risk, pollution, and poverty) during an earlier Davos address. To varying degrees, these objectives—save the Key Necessity—have been successfully addressed. Going forward, the focus of China's modernization efforts is to center around a

three-pronged approach: high-level opening-up; economic re-balancing based on consumption-led growth pursued in an open economy context; and a new social development goal of achieving common prosperity. The last two will not be easy to come by. The East Asian growth model has been singularly ineffective in re-balancing economies towards a more consumption-led model. For China, a key determinant in this regard further will be the extent to which entrepreneurship is allowed to prevail as a factor for wealth creation in society. In this era of President Xi Jinping's domestic preeminence, this latter attribute can no longer be taken for granted—the effort by Liu He to dispel suspicions to the contrary in Davos, notwithstanding.

[Expanded Reading]

- [The Case for Trade](#), event by the World Economic Forum, January 18, 2023
- [Davos 2023: Special Address by Liu He, Vice-Premier of the People's Republic of China](#), World Economic Forum, January 17, 2023
- [United States - Measures on Certain Semiconductor and Other Products, and Related Services and Technologies - Communication from the United States](#), World Trade Organization, January 12, 2023
- [Suzanne Clark's 2023 State of American Business Remarks](#), U.S. Chamber of Commerce, January 12, 2023
- [Germany's Scholz Backs Joint EU Funding to Counter US Aid](#), *Bloomberg*, January 11, 2023 [Paywall]
- [Leading Japan's Digital Transformation: A Discussion with Kono Taro](#), event by Center for Strategic & International Studies, January 11, 2023
- [Readout of Deputy Secretary Graves' Meeting with Japan's Minister for Digital Transformation Taro Kono](#), U.S. Department of Commerce, January 11, 2023
- [Establishing the Office of the Special Envoy for Critical and Emerging Technology](#), U.S. Department of State, January 3, 2023
- [Public Docket - Request for Comments in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation](#), Executive Office of the President of the U.S., USTR Public Docket

On the Hill

[Legislative Development]

- The House passed a bill (331-97) to prohibit the sale and export of crude oil from the U.S. Strategic Petroleum Reserve to China. Rep. Mike Gallagher, Chairman of the House's Select Committee on China, openly supported the bill and criticized U.S. President Biden's earlier decision to "deplete our reserves to critically low levels" and "[sell] reserve petroleum to Chinese entities."
- U.S. legislators have also introduced bills to protect personal data from "unauthorized transmissions to servers located in China" or to prohibit the purchase of U.S. real estate "by members of the Chinese Communist Party and entities that are under the ownership, control, or influence of the Chinese Communist Party."

[Hearings and Statements]

- The House passed a resolution to establish a Select Committee on China. Republican lawmaker Mike Gallagher, the Chair of the new China Committee, argued that the Committee will "identify long overdue common sense approaches to counter CCP aggression," including on "reclaiming U.S. economic independence."

- The Republican party has picked Rep. Jason Smith to chair the House’s Ways and Means Committee, who subsequently vowed to “examine using both trade policy and our tax code to re-shore and strengthen our supply chains.” The Republican party has added 10 new members to sit on the Ways & Means Committee.
- Rep. Adrian Smith, the former ranking member of the Ways and Means Committee, has previously stated on record that a Republican majority in the House creates a “great opportunity” to renew trade programs such as the Generalized System of Preferences and the Miscellaneous Tariff Bill.
- Republican leaders of the Ways and Means Committee have announced plans to impose “rigorous oversight and investigation” into the Biden administration’s trade negotiations, including the WTO negotiation on intellectual property waiver related to COVID-19 vaccines.
- In a joint letter to U.S. Secretary of Commerce Gina Raimondo, Democratic Senators Sherrod Brown and Bob Casey again called for the Commerce Department to impose tariffs on grain-oriented electrical steel products to prevent the circumvention of existing Section 232 tariffs on steel.

[Expanded Reading]

- [Gallagher Votes to Prevent SPR Sales to China](#), Congressman Mike Gallagher Press Release, January 17, 2023
- [H.R.22 - Protecting America’s Strategic Petroleum Reserve from China Act](#), U.S. Congress
- [H.R.57 - Protecting Personal Data from Foreign Adversaries Act](#), U.S. Congress
- [Brown, Casey Urge Administration to Add Grain-Oriented Electrical Steel Derivative Products to Section 232 Steel Tariffs](#), U.S. Senator for Ohio Sherrod Brown Press Release, January 13, 2023
- [Rep. Roy introduces legislation to protect American land from Chinese Communist Party buyup](#), Representative Chip Roy Press Release, January 12, 2023
- [H.R.344 - Securing America’s Land from Foreign Interference Act](#)
- [Chairman Smith Welcomes New Republican Members of the House Ways and Means Committee for the 118th Congress](#), House Committee on Ways and Means, January 11, 2023
- [House easily passes resolution to create bipartisan China select committee](#), *The Hill*, January 10, 2023
- [Gallagher: Time to Push Back on CCP Aggression in Bipartisan Fashion](#), Congressman Mike Gallagher Press Release, January 10, 2023
- [J. Smith Statement on Selection as Next Chairman of the House Ways and Means Committee](#), House Committee on Ways and Means, January 9, 2023
- [Brady, A. Smith Warn USTR Against Destroying Documents on Biden Admin’s Decision to Surrender Key Medical Technology](#), House Committee on Ways and Means, October 20, 2022

What's Been Happening

1 — When a Rising China and Revisionist (on trade) America Clash — 1

[In One Sentence]

- After the United States rejected two rulings in the World Trade Organization (WTO) against its tariffs on China, citing the national security exception, Washington and Beijing accused each other of undermining the WTO system and disrupting global trade.
- Industry groups are asking the Biden administration to clarify its semiconductor export control measures and say that the “complex,” “novel” and “ambiguous” measures hinder the competitiveness of the U.S. industry.
- The Biden administration is considering prohibiting any U.S. exports to Chinese tech company Huawei.
- The United States concluded an agreement with Japan and the Netherlands to restrict the exports of certain advanced semiconductors and chip-making equipment to China.

[Mark the Essentials]

- The U.S. has also opposed China’s “economic coercion” in cases such as China’s restrictions on Lithuanian goods. China is being hauled to the WTO dispute resolution process by the European Union over the matter but has rejected the U.S.’s request to join the dispute as a third party.
- On the sidelines of the World Economic Forum in Davos, trade ministers from 23 WTO members said they would prioritize the restoration of “a fully functioning dispute settlement mechanism” in future meetings of the WTO.
- Lam Research Corp., a U.S. company specializing in semiconductor manufacturing equipment, reported a shrinkage of revenue by 17% in the fourth quarter of 2022, in part due to declining demand in China and other Asian markets over concerns of Washington’s export control restrictions.
- Criticizing the United States’ “sneering indifference towards trade and in particular the WTO,” former WTO spokesperson Keith Rockwell argued that the United States has left the global multilateral trade system without “leadership” and left U.S. trade partners “unsure about Washington’s strategic vision.”

[Keeping an Eye On...]

- The Trump and the Biden administration’s argument for imposing unilateral, sky-high and now-judged-to-be illegal tariffs on China has not aged well. U.S.-China goods trade reached \$680 billion in 2022, surpassing the prior record of \$663.5 billion in 2018—the year the initial tranche of Sections 232 and Section 301 tariffs was imposed. Meanwhile, the bilateral trade deficit clocked in at \$382.9 billion—the second largest on record after the \$418 billion racked up in 2018. Much like the fate of the Trump-Biden

tariffs, trade ‘friendshoring’ in the name of supply chain resilience may be chic today but it will not age well either. In the currency arena, the U.S. and key allies are capable of maintaining a lock on the plumbing of the global payments and settlement infrastructure. Given the dollar's dominance, currency weaponization is a workable option. In the core technologies area, the U.S. and western partners enjoy significant pockets of advantage. As such, controls can be advantageously deployed—so long as they are restricted to truly ‘core’ technologies and cartelized smartly. In the trade arena, however, the horse has already bolted. China trades more intensively with a larger number of Indo-Pacific countries than the U.S. does, and this gap will only get larger. Indeed, as China transitions from being the world champion in intermediate goods production to also becoming a final consumer of the Indo-Pacific’s regionally produced goods, the siren call to divert trade flows within a ‘friendshored’ circle—beyond that related to a narrow sliver of ‘strategic goods’ with security implications—will be shown up to be what it truly is: an exercise in delusions that pays ever fewer dividends going forward. The blunt truth about populism and protectionism today is that it is essentially about protectionism in one major country. The other key actors are all more-or-less committed to the rules-based trading system and conventional forms of liberalization, and the gravitational market pull of the latter far exceeds the pull of the former.

None of this should breed complacency in Beijing though. ‘Economic coercion’-related policy instruments are being readied on both sides of the Atlantic (the European version is at the penultimate stage). Beijing’s formal and informal bans, boycotts, and trade sanctions against the likes of Australia, Norway, Lithuania, Canada, South Korea, Taiwan, etc. must be eschewed decisively. Like its recent balloon caper, such measures casually and nakedly violate international law. One rogue superpower trader is enough; the multilateral trading system does not need a second such rogue trader. Besides, if Beijing harbors any hope of acceding to the CPTPP and signing the CAI (Comprehensive Agreement on Investment) to anchor its new reform and opening up agenda, elementary sense would dictate that it should not be illegally sanctioning the gatekeepers of those agreements.

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- [Factbox: Chinese chipmakers caught in U.S.-China tech spat](#), *Reuters*, January 31, 2023 [Paywall]
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2 — U.S.' (Re-)Tailored Trade Partnerships: Leadership by Diktat — 2

[In One Sentence]

- The Biden administration is proposing to negotiate new, “tailored” trade deals with the European Union and Japan to prevent the two from being disadvantaged by certain electric vehicle (EV) benefits under the Inflation Reduction Act (IRA).
- EU top officials told Brussels that the United States might be open to resolve some but not all of the EU’s concerns about the IRA, while Japan is yet to publicly comment on the latest updates.
- Reacting to the IRA, the European Commission is drafting and discussing policy approaches to incentivize and advance its own clean technology industry, including through subsidies and state aid.

[Mark the Essentials]

- According to U.S. Treasury Secretary Janet Yellen, critical minerals extracted or processed in the EU and Japan do not help fulfill certain sourcing requirements for EV tax credits under the IRA. To prevent EU and Japanese products from being disadvantaged, Yellen proposed new agreements with the two to establish a “free-trade area” in critical minerals.
- The U.S.-EU Trade and Technology Council (TTC) plans to hold a roundtable discussion on due diligence in global supply chains on March 3, 2023, as part of their efforts to promote stakeholder engagement and share best practices.
- While Japan has agreed to join the United States and restrict its exports of advanced chip manufacturing equipment to China, an influential Japanese lawmaker said that Japan might choose to impose more lenient restrictions, adding that Japan merely shared with the U.S. “a recognition of the concern over the equipment.”
- Mark Gitenstein, Ambassador of the U.S. to EU, told Brussels that “difficult issues” concerning IRA and clean tech industrial policy needs to be resolved “at the leadership level,” proposing a U.S.-EU summit this year.
- Japan’s proposal to establish a permanent international data governance body at the G7 reportedly overlaps with some digital principles under discussion within the Indo-Pacific Economic Framework (IPEF). Industry sources said G7 and IPEF offer “two pathways to the same idea” and will not take momentum away from either.

[Keeping an Eye On...]

- As per Brian Deese, director of the White House National Economic Council, what is good for America is apparently good for its allies and partners. “The United States is now leading [on deploying next-generation energy technologies in the context of the Inflation Reduction Act (IRA)], and other like-minded countries should both recognize that and also seek ... opportunities to partner with us ... we have nothing to apologize for, and frankly everything to be proud about,” he averred. The Europeans would beg to differ. In late-January, the European Commission released a draft (IRA countermeasures) plan titled “A Green Deal Industrial Plan for the Net-Zero Age.” The plan is based on four pillars, its most notable provision being the re-casting of a Temporary Crisis and Transition Framework (TCTF) that is expected to loosen Union-wide state aid rules in order to facilitate enhanced investment support schemes and targeted aid for production of strategic net-zero technologies. The support for new investment in facilities, including via tax credits, is specifically targeted “to those sectors where such delocalization risk has been identified, and [is to be] proportionate in terms of [IRA] aid amounts.” On a related note, France has gone further and asked for the setting up of an emergency “sovereign fund” that would in the short term redirect existing EU funding to

strategic industrial projects. The trans-Atlantic industrial subsidy battle is well-and-truly being joined. Question now is this: will this be a race to the gutter? And in which case, the U.S. and the EU will find a familiar party already entrenched in that uncovered space. No rewards for guessing who that party is. But it does beg a tantalizing question: could these over-the-top industrial subsidies in the largest global economic jurisdictions vitalize a trilateral (U.S.-EU-China) conversation on rationalizing and enforcing disciplines of global subsidies at the multilateral level? The U.S.-EU-Japan conversations on this topic have seemingly gone nowhere, and wisdom would dictate that the largest state provider of distortive industrial subsidies in the world should be brought into the tent than left—to borrow President Lyndon Johnson’s infelicitous quote—“outside the tent pissing in.”

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On the Hill

[Legislative Developments]

- Republican Senators proposed to end China’s permanent normal trade relations status over concerns of alleged human right abuses, reintroducing an idea presented in the previous Congress.
- Republican lawmakers in both chambers introduced a number of bills on Taiwan, covering ideas such as the ending of the United States’ “One China” policy, the calling for a free trade deal with Taiwan, the support of Taiwan’s membership in international organizations, and measures to deter “Chinese aggression towards Taiwan.”
- A bipartisan group of House Ways and Means Committee members introduced a bill to repeal the Commerce Department’s decision to suspend tariffs on solar panel imports from four Southeast Asian countries. The suspension was originally announced in response to anxiety within the industry as the Commerce Department investigated alleged evasion of U.S. tariffs on Chinese solar products.

[Hearings and Statements]

- In anticipation of U.S. Secretary of State Antony Blinken's visit to China—now postponed, Senate and House Republicans urged the administration to hold China accountable for “human rights violation, unfair trade practices, and increasing aggression in the Indo-Pacific region and beyond,” while Senate Foreign Relations Committee Chair Bob Menendez highlighted the importance of establishing effective communication channels with Beijing as well as on key issues such as Taiwan, human rights and economic coercion.
- House Speaker Kevin McCarthy named 12 Republican lawmakers to join the House's China Committee, including several members of the Taiwan Caucus and the former China Task Force. Several members will also serve concurrently on the Ways and Means Committee and the Armed Services Committee.
- Meanwhile, Democrat lawmaker and China Committee member Ro Khanna argued that the committee should focus on building U.S. innovation and manufacturing competitiveness through immigration and economic policy in addition to national security concerns.
- At a hearing on “winning the future versus China,” House Energy and Commerce Committee Chair Cathy McMorris Rodgers and Innovation, Data, and Commerce Subcommittee Ranking Member Jan Schakowsky both advocated for a federal data privacy law to ensure American tech leadership. U.S. President Joe Biden previously called on Congress to find common ground and protect the privacy of Americans from “big tech abuses.”

[Keeping an Eye On...]

- Well, that was quick. In early January, in a fit of bipartisan fervor, the Republican-led House of Representatives voted to establish the Select Committee on the Strategic Competition Between the U.S. and the Chinese Communist Party by a margin of 365-65. Committee chairman, Mike Gallagher, swore that bipartisanship would remain the order of the day. Meaningful intramural disagreements would be hashed out courteously. And then a Chinese spy balloon wafted across the continental U.S.' airspace. An early bipartisan statement notwithstanding, Gallagher's early instinct was to lash out at the Biden administration's supposed (mis)handling of the situation—without so much as even a briefing or full knowledge of the facts. Other Republicans on the committee had even worse things to say about the president and the military which did not thrill their Democratic counterparts on the committee, to say the least. And this at a time when the Select Committee had not even held its first hearing. The balloon saga will soon be a blimp in the collective memory but make no mistake: the rank partisanship that Chairman Gallagher supposedly foreswore is very much present and here to stay. It will be a permanent backdrop to the Select Committee's work in turn, raising questions about the purpose and productivity of the committee. For those in Beijing inclined to revel in this almost instantaneous but predictable breakdown in bipartisanship, take note: the difference on China between the Democrats and the Republicans is between a hardline and thoughtful—or at least thinking—view on China and a hardline and non-thinking view on China. So, pick your poison. Tough views on China are here to stay. And as hysterical as some Republican viewpoints on China might appear to be, they have the power to shape the political narrative entering the 2024 campaign season and hem the Biden administration's space for stabilizing the bilateral relationship during the interim.

[Expanded Reading]

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- [Cotton, Colleagues Introduce Bill to End China's Permanent Normal Trade Status](#), Senator for Arkansas Tom Cotton Press Release, January 26, 2023
- [S.125 - China Trade Relations Act of 2023](#)
- [Rep. Young Kim Leads Bill to Support Taiwan's Participation in the International Monetary Fund](#), Young Kim Press Release, January 26, 2023
- [H.R.540 - To require the Secretary of the Treasury to pursue more equitable treatment of Taiwan at the international financial institutions, and for other purposes.](#)
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February 24, 2023

Volume 3, Issue 4

What's Been Happening

1 — National Economic Security Legislation and Regulation Grinds On — 1

[In One Sentence]

- U.S. Deputy Secretary of State Wendy Sherman said that a conflict in the Taiwan Strait is “a matter of economic security for the entire world,” likening it to the Ukraine crisis.
- The Biden administration is working with Congress to “expand [the] toolbox on economic coercion.”
- The United States’ trade in goods with China reached US\$680.7 billion in 2022—the highest on record.

[Mark the Essentials]

- The U.S. Department of Justice and the Department of Commerce jointly launched a “Disruptive Technology Strike Force” to investigate and prosecute criminal violations of export laws and export controls with an aim to protect U.S. advanced technologies from “nation-state adversaries.”
- In a recent report, the Senate Foreign Relations Committee Democrats urged the Biden administration to allocate more resources to advance U.S. diplomacy and development interests in the Indo-Pacific and counter China’s influence in the region. The report also called on the administration to “actively cultivate Congress as a partner.”
- Senators Todd Young and Chris Coons reintroduced an updated version of the Countering Economic Coercion Act, which would enable the President to increase tariffs against “foreign adversaries” committing economic coercion and support trading partners targeted by coercion through lowered tariffs or aid.
- House Foreign Affairs Committee Chair Michael McCaul and Appropriations Committee ranking member Rosa DeLauro jointly called on President Biden to take “immediate action” and screen outbound investments to China.

[Keeping an Eye On...]

- It is now approaching almost five years since the U.S. Congress enacted the Foreign Investment Risk Review Modernization Act (FIRRMA) and, in the process, inaugurated an active period of legislation and regulation related to national economic security. FIRRMA was followed by the all-encompassing Information and Communications Technology and Services Executive Order (ICTS EO) in May 2019, which provided the basis for the export controls clampdown on Huawei. These controls were dramatically expanded to the entire Chinese advanced computing and semiconductor ecosystem in the Commerce Department’s October 2022 Advanced Computing and Semiconductors Rule. Relatedly, protections against China’s collection and exploitation of sensitive data of U.S. persons was enumerated in the Biden administration’s Connected

Software EO in June 2021, and implemented in November 2021. Mitigation measures against perceived security risks have been presented more recently to TikTok, the viral video app, by the Committee on Foreign Investment in the United States (CFIUS). During these five years, a number of Chinese economic actors, both state-owned and private, have also been dumped into a plethora of lists—ranging from the Entities List, the Unverified List, the Chinese Military-Industrial Complex Companies (CMIC) List, and the Military End User List (although none was dropped into the Treasury Department’s Specially Designated Nationals and Blocked Persons List). This intensified legislative and regulatory focus on national economic security will persist in 2023. The Treasury and Commerce Departments are due to submit their 2023 Omnibus Bill-mandated reports on their respective “role in the establishment of a program to address the national security threats emanating from outbound investments [to the PRC]” by February 27th. Also, the Deputy Attorney General’s recent remarks on “disruptive technologies” suggests that a White House Executive Order on an outbound investment screening mechanism may be in the offing. Meantime, from a trade policy standpoint, bills to expand the toolkit of options to counter China’s ‘economic coercion’ have been introduced in both chambers of Congress. Corresponding European Union-wide legislation is at the ‘trilogue’ stage featuring advanced deliberations between the European Commission, Council and Parliament. The EU’s anti-coercion instrument-related deliberations follow in the wake of its Foreign Direct Investment Regulation, its toolbox of 5G-related mitigation measures, as well as its recently passed Foreign Subsidies Regulation. Clearly, the active spell of legislation and regulation on national economic security on both sides of the Atlantic with a focus on China continues, and will remain an important feature of the international economic landscape in 2023.

[Expanded Reading]

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- [Priorities for Economic Policy Toward China](#), American Enterprise Institute, February 16, 2023
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- [U.S. companies should not continue to fuel China’s strength](#), *The Washington Times*, February 7, 2023 [Paywall]
- [U.S. firms in Taiwan making 'contingency' plans amid China tensions](#), *Reuters*, February 7, 2023 [Paywall]

2 — U.S. Trade and Tech Revamp Chugs Along, Allies Role Uncertain— 2

[In One Sentence]

- A U.S. trade official noted that most existing U.S. trade agreements fail to address supply chain resiliency concerns.
- The White House highlighted the need to build data sharing mechanisms with allies and the private sector while addressing the “supply chain crisis.”
- In defense of its commitment to ensure “robust cross-border data flows,” the Biden administration noted that the approach will also align with a worker-centric trade policy.
- The Office of the U.S. Trade Representative (USTR) aims to ensure that the Indo-Pacific Economic Framework’s (IPEF) sustainability initiative does not create more non-tariff trade barriers.

[Mark the Essentials]

- During the third round of meetings of the U.S.-Japan Partnership on Trade, the two sides discussed plans for a task force on human rights and labor standards, coordination efforts to respond to “third-country regulations” of concern with regard to the digital economy, as well as Japan’s concerns on the Inflation Reduction Act’s electric vehicle tax credit requirements.
- According to former Assistant USTR Dan Mullaney, the United States and the European Union have shared goals and overlapping interests in areas such as addressing non-market economy policies and avoiding inconsistent regulation and standards to facilitate trade, but must get specific on the exact policies and standards if concrete progress is to be made within the US-EU Trade and Technology Council (TTC).
- Both the U.S. and the EU plan to work on shared standards in electric vehicles (EV) and explore ways in which digital technologies can be used to facilitate trade at the next meeting of the Trade and Technology Council (TTC). On February 15th however, the Biden administration independently released its own EV charging standards and mandated that, come July 2024, 55% of the cost of EV charging equipment funded through the Bipartisan Infrastructure Law must feature domestically manufactured components.
- Canadian Ministers Anita Anand and François-Philippe Champagne said that Canada could play a “unique” role as the U.S. strengthens economic and supply chain resiliency, pointing to Canada’s traditional exemption from ‘Buy America’ rules, North America’s coordination with regard to semiconductor manufacturing, and Canada’s abundant critical mineral resources.

[Keeping an Eye On...]

- A U.S. trade official noted that most existing U.S. trade agreements fail to address supply chain resiliency concerns. This official is correct. U.S. trade agreements are meant to facilitate market access-based reciprocal trade liberalization; they are not intended to facilitate trade diversion by way of ‘friendshoring’, be it in the name of supply chain resiliency or ‘worker-centric’ protectionism. More fundamentally, the race to ‘friendshore’ stands in polar contrast to the existing practice of multilateral liberalization. The latter is predicated on the ‘most favored nation’ (MFN) clause, i.e., extending the same trade terms to all trading partners; the latter rests on selective preferences exchanged among friends utilizing skewed rules of origin. And although free trade agreements are an exception to the MFN principle and discriminate between insiders and outsiders, the most recent ‘friendshoring’ pact—the US, Mexico, Canada Agreement (USMCA)—was the first such agreement to actually *raise* barriers. Expect the Indo-Pacific Economic Framework for Prosperity (IPEF) to more-or-less follow in this vein. Is it any surprise, then, that USTR continues to resolutely stand

against constructive reform of the WTO's dispute settlement function? And that the national security exception has been turned into a defense of first and last recourse at the WTO by USTR? A 'friendshored' trading order stands in contrast to—and in violation of—key principles of the postwar-rules based trading system. And in which case, a number of 'friendshoring' provisions will be found to be in violation of these trade rules; the national security defense claim notwithstanding.

- Going forward, the operative question is not so much whether Washington will make an about-face and embrace conventional or MFN means of trade liberalization. Rather, the question is whether, and the extent to which, other countries in Washington's orbit will choose to restrain themselves from partaking in the benefits of 'friendshored' trade and investment policy measures that are clearly inconsistent with WTO rules. Judging by the European Union's oscillating response to the vast sums shoveled out in the Biden administration's WTO non-compliant Inflation Reduction Act (IRA), the pragmatic temptation to cut side deals and enter the charmed circle of subsidized friends is likely to be far more powerful than ideologically standing up in solitary defense of global rules. That said, that which is individually beneficial could yet at the aggregate level come to haunt the trading order systemically. The rules-based international trading system stands at an important inflection moment. And America's allies have an important role to play in helping to preserve that order. Deepening WTO-complaint trading arrangements with all interested parties on a non-bloc basis should remain an essential component of their toolkit.

[Expanded Reading]

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- [US Seeks Critical-Mineral Pacts With Japan, UK to Curb China](#), *Bloomberg*, February 10, 2023 [Paywall]
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[Legislative Development]

- House Homeland Security Committee Chair Mark Green re-introduced a bill that will use revenues from tariffs on Chinese goods to “near-shore” manufacturing from China to the Latin America-Caribbean region.
- Senators Todd Young and Chris Coons reintroduced a bill to “equip the president with new tools” to “counter economic coercion of allies and partners” by “countries like China and Russia.”

[Hearings and Statements]

- Senate Finance Committee Chair Ron Wyden, joined by ranking member Mike Crapo and other committee members, committed to improve U.S. trade laws, modernize trade law enforcement, and expand the U.S. Customs and Border Protection (CBP)’s toolbox to address “trade cheats in China and around the world” that “evade U.S. trade laws.”
- Calling for “bold, impactful trade agreements,” Senate Finance Committee ranking member Mike Crapo said Congress will “step up and in a bipartisan fashion” if the administration continues to “take a timeout on trade.”
- House China Committee member Andy Kim said he would “push” for conversations on the economy, trade and innovation at the China Committee in addition to military, security and deterrence concerns related to Taiwan.
- House China Committee ranking member Raja Krishnamoorthi committed to “counteract the CCP’s escalating aggression,” including “its threats against Taiwan’s democracy, its weaponization of TikTok, and its theft of...American intellectual property.”
- The House China Committee has picked former staff member of the Senate Select Committee on Intelligence David Hanke as the committee’s chief of staff and former chief Republican counsel of the Senate Judiciary Committee’s privacy, technology and the law subcommittee Julissa Walsh as the committee’s general counsel.

[Expanded Reading]

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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]

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- [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 smidgeon 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]

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- [A fireside conversation with US Ambassador to Vietnam Marc E. Knapper](#), Brookings, March 1, 2023
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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]

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- [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
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March 24, 2023

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What's Been Happening

1 — Competition with China Brings New Rules and New Plans— 1

[In One Sentence]

- The Biden administration has demanded that TikTok divest its American business from Bytedance, its China-based parent, in order to address what the U.S. government sees as a potential risk to national security.
- The Commerce Department outlined its proposed “national security guardrails” to ensure that the CHIPS Act incentive program does not in any way flow to or benefit “foreign countries of concern,” including China.
- A new U.S. International Trade Commission report suggests that the U.S. Section 232 tariffs on steel and aluminum succeeded in lowering imports from China.
- The Biden administration’s fiscal year 2023 budget request includes \$50 million to “advance” the Indo-Pacific Economic Framework for Prosperity and billions more to “out-compete” China.

[Mark the Essentials]

- While the idea to divest TikTok may be a better alternative to banning, experts suggest that a new framework is needed for not just Chinese tech companies but how all technology and social media companies operate in the United States.
- The Commerce Department’s proposal would restrict any and all facility expansions in China of leading-edge chips and advanced technologies for a duration of 10 years by award recipients.
- The U.S. International Trade Commission report also suggests that both the Section 232 and 301 tariffs had a “largely negative” impact on downstream production, increasing prices on a “nearly one-to-one” basis.
- While further details of IPEF funding plans still have yet to be released, the White House budget blueprint sets out to target China “through game-changing investments in infrastructure” in the Indo-Pacific.

[Keeping an Eye On...]

- Technology competition with and selective decoupling from China continues apace. On Thursday, March 23, in a spectacle on Capitol Hill, TikTok CEO Shou Zi Chew was raked over the coals on TikTok’s privacy and data security practices as well as its ties to the Chinese Communist Party by House members from both sides of the aisle. Despite TikTok’s efforts to go “above and beyond” in working with the Biden administration to secure the data of its 100 million-plus American users, the app faces potentially a looming ban in the United States. Furthermore, the RESTRICT Act, introduced in the Senate in early March, takes aim at additional Chinese players—Tencent’s WeChat, Alibaba’s Alipay, and the increasingly popular online marketplace Temu—by granting the Commerce Department the authority to block their U.S. operations, if needed. An

anti-economic coercion bill targeting China is also in the works. Earlier in the week, on Monday, March 20, the Commerce Department listed out the proposed national security guardrails for its \$39 billion CHIPS for America incentives program for semiconductor production that is designed to ensure that its benefits do not advertently or inadvertently flow to “malign actors” such as China. The department’s proposed rules foreclose all transactions that expand manufacturing capacity in China, save for legacy semiconductors that are to be used or consumed in that country. The “significant transactions” threshold has deliberately been kept low. On the other hand, the broad “family of technologies” initially sought to be captured by National Security Advisor Jake Sullivan within the proposed outbound investment screening mechanism appears to have given way to a more nuanced and narrower approach proposed by the Treasury Department. This approach is more in keeping with Treasury’s proposed draft bill of mid-2022, the Sensitive Technologies Supply Chain Risk Management Act, that had sought to impose (merely) a reporting requirement for notifiable outbound investment transactions related to sensitive technologies. The objective was—and, again, appears to be—to better inform the U.S. government’s assessment of national security concerns arising from outbound U.S. investments before placing definitive blocks on a subset of these transactions. The technology Cold War that the Trump administration initiated and which the Biden administration has redoubled remains a work in progress. And while it might be easy to criticize some of its overreach, it is just as clear that much deliberative thought and due diligence is going into its planning and execution.

[Expanded Reading]

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2 — (So-called) U.S. Trade Agreements Gather Steam — 2

[In One Sentence]

- According to the Indonesian government, the Office of the U.S. Trade Representative will host an Indo-Pacific Economic Framework for Prosperity ministerial meeting in May; presumably in late-May.
- The U.S. and India are committed to “fast action” within their newly launched Strategic Trade Dialogue.
- In late March, the U.S.-EU Trade and Technology Council will hold a roundtable event with stakeholders to discuss ongoing trans-Atlantic conversations about digital identity.
- The Office of the U.S. Trade Representative outlined its goals for five chapters to forge a “high-ambition” trade agreement with Taiwan.
- The U.S. and the European Union have agreed to launch negotiations on an agreement to provide the bloc’s industry with access to new electric vehicle tax credits in the U.S.

[Mark the Essentials]

- The second round of IPEF negotiations in Bali, which covered all four of the framework’s pillars, ended on March 19. A third round is scheduled for early-May in Singapore.

- Amid growing concerns about the U.S. further decoupling with China, Secretary of Commerce Raimondo said that “the United States does not seek to decouple from China, nor does it seek a technological decoupling from China.”
- The U.S. and Taiwan are aiming to address “red tape” issues, smoothe regulatory practices, promote anti-corruption, support SMEs, and further labor rights protection, while lacking commitments on market access.
- European Commission President Ursula von der Leyen and President Biden also agreed in their joint statement to launch a ‘Clean Energy Incentives Dialogue’ to coordinate their respective incentives programs related to clean technologies.

[Keeping an Eye On...]

- During the week of March 13-19, at the second round of the Indo-Pacific Economic Framework (IPEF) negotiations in Bali, Indonesia, the United States Trade Representative tabled its all-important labor, environment and digital trade texts. The labor and environment texts are more-or-less expected to track their USMCA (U.S.-Mexico-Canada Agreement) predecessor; the digital trade text is being keenly watched on the other hand, given that the blindly pro-business consensus hitherto on provisions favoring Big Tech in digital trade agreements has shifted markedly on the Hill and within the Biden administration. At this time, the text is being closely held...although it is just a matter of time before key provisions get leaked or released. Earlier in the week meantime, on Tuesday, March 21, European Commission Vice-President Dombrovskis shared with EU lawmakers the “first outline, first ideas” proposed by Washington with regard to a U.S.-EU Critical Minerals Pact. The purpose of the pact is to ensure that European businesses can enjoy access to the electric vehicle tax credit incentives contained in the U.S. Inflation Reduction Act—specifically the critical minerals sourcing requirements that favor the U.S.’ FTA partners. The Critical Minerals Pact could yet be months in the making. A common thread ties the proposed IPEF agreement and the U.S.-EU Critical Minerals Pact together. Both are being packaged by USTR as an ‘FTA-type’ agreement even though neither is an FTA or FTA-equivalent, and the Biden administration plans to pass both agreements as sole executive agreements. Congress will not get an up-or-down vote on either agreement. Plainly stated, this amounts to an end-run—if not outright abuse—of Congress’ foreign commerce-related delegated powers, given that Congress enjoys the right not just to ratify trade agreements but also (presumably) the right to choose the instrument(s) through which it delegates trade authority to the executive branch and thus constitutionally regulate trade. The Biden administration is not the first administration to play faster-and-loose on trade agreement authority; the rules of origin in the Trump-era U.S.-Japan trade agreement skirted Congress’ delegated authority. Be that as it may, one facet of the executive branch’s trade policy making is becoming increasingly clearer by the day: as USTR strains to get its story straight on international trade liberalization, the violation of norms, rules and statute—both domestic and international—to jam through its alternative view of the role of trade policy is becoming a commonplace occurrence.

[Expanded Reading]

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On the Hill



[Legislative Development]

- The Senate pushed four new bipartisan China bills, including the “Fighting Trade Cheats Acts,” the “Customs-Trade Partnership Against Terrorism Pilot Program Act,” the “American Innovation and Jobs Act,” as well as a currently unnamed bill that would create a ‘China Grand Strategy Commission’.
- The White House backed the bipartisan Senate “Restricting the Emergence of Security Threats that Risk Information and Communications Technology (RESTRICT) Act” and urged lawmakers to quickly send it to the President’s desk for his signing into law.

[Hearings and Statements]

- Sen. Bob Casey and Sen. Sherrod Brown urged the Biden administration to impose tariffs on solar panel component imports from countries found by the Commerce Department to be circumventing U.S. antidumping and countervailing duties on Chinese imports.
- Rep. Adrian Smith, chairman of the House Ways & Means trade subcommittee, urged his colleagues not to shy away from authorizing Trade Promotion Authority (TPA), which he regards as an important factor that provides the U.S. a stronger strategic position related to China and the ability to compete more effectively.

[Expanded Reading]

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