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What's Been Happening

1 — U.S. Fueling EV Competition and Supply Chain Resilience *vis-a-vis* China — 1

[**In One Sentence**]

- The U.S. Department of Treasury introduced rulemaking regarding the eligibility for tax credits under the Inflation Reduction Act's (IRA) electric vehicles (EVs) provisions, with an eye to the sourcing of battery components (starting 2024) or critical minerals (starting 2025) produced by Chinese firms and other "foreign entities of concern."
- The Biden administration has long expressed concerns over China's presence in EV supply chains, and has repeatedly emphasized the importance of reshoring EV manufacturing and relevant supply chain resilience in batteries and critical minerals.
- Shortly after, a group of Republican Senators introduced a bill to prohibit automakers that receive IRA tax credits from offshoring any of their production over the next 10 years.
- The U.S. Department of Commerce announced that it recently renewed the charter for the Advisory Committee on Supply Chain Competitiveness and that, starting November 2023, the advisory committee has begun to provide advice on a "comprehensive policy approach" to "improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy."

[**Mark the Essentials**]

- As per the U.S. Treasury's guidance, EVs will not be eligible for certain IRA tax credits unless a specific percentage of batteries are manufactured or assembled in North America and unless a specific percentage of critical minerals used are processed in the U.S. or in "a country with which the United States has a free trade agreement." The battery requirement will gradually increase from 50% in 2023 to 100% in 2029, while the critical minerals requirement will increase from 40% in 2023 to 80% in 2027.
- In parallel to Treasury's guidance, the Department of Energy issued its proposed definition of a 'foreign entity of concern', insofar as rules related to critical minerals and battery components are concerned.
- At the inaugural meeting of the Biden administration's cabinet-level Council on Supply Chain Resilience, President Biden announced a number of actions to "strengthen America's supply chains," broadly covering "critical supply chains" on energy, batteries, electric vehicles, agriculture, and pharmaceuticals as well as "whole-of-government" efforts on logistics, transportation and relevant infrastructure and info-collection

frameworks. The announcement also highlighted U.S. engagement with allies and partners on international supply chains.

- Earlier, the Biden administration's Export Council—a cabinet-level interagency panel—recommended the President to leverage institutions and platforms such as the Indo-Pacific Economic Framework, the U.S. Export-Import Bank and the World Trade Organization to bolster U.S. exports of batteries, clean energy and other green technologies and environmental products. The council also highlighted the importance of "public-private partnerships" and proposed to broaden the definition of "environmental products and services" that would receive U.S. government credits and "policy incentives."
- Some analysts have separately argued that the United States' current export control framework continues to have some loopholes on restricting China's access to key technologies—including advanced semiconductor chips and manufacturing equipment as well as equipment integral to artificial intelligence technologies. According to the analysts, the problem lies in the complexity of the rules as well as the constant difficulties of enforcement and monitoring with a limited budget.

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

- Call it a tale of two 'foreign entity of concern' (FEOC) rules, both supply chain decoupling-related. On December 1, the U.S. Energy Department released its proposed 'foreign entity of concern' guidance with regard to critical minerals and battery components, as part of rulemaking for the Inflation Reduction Act's electric vehicle (EV) subsidy provisions. The interpretation was curiously lax, relatively speaking. As per the proposed rule, an American company will be able to enter into a contractual relationship, including an IP licensing relationship, with a 'foreign entity of concern' (read: Chinese entity) so long as the 'foreign entity of concern' does not exert 'effective control' over the U.S. licensee or principal's production of particular critical minerals, battery components or battery materials. The rule lists out a number of rights including unhindered access and use of data critical to production which, if reserved expressly in favor of the U.S. licensee or principal, would be deemed to not confer 'effective control' by the Chinese entity. The provision is a bow to the reality of China's dominant position within EV critical minerals and battery components supply chains. As written, Ford Motors should handily be able now to contractually license Chinese battery giant CATL's technology for its EV plant in Michigan (an arrangement that has drawn anger on Capitol Hill) and at the same time maintain access to IRA subsidy money. Two and a half months earlier, by contrast, the Commerce Department issued its final rule to prevent the improper use of CHIPS Act funding that could directly or indirectly benefit foreign countries as well as foreign entities of concern (the final rule more-or-less tracks the proposed rule, released in March 2023, with minor modifications). As per the rule's guardrails, U.S. and foreign (Japanese, Korean and Taiwanese) chip companies that receive CHIPS Act subsidies are prohibited from engaging in 'significant transactions' involving the 'material expansion' of their semiconductor facilities in 'foreign countries of concern' (China) for ten years as well as are prohibited from any meaningful joint research or technology licensing arrangements with 'foreign entities of concern' (Chinese entities). Reflecting the United States' overwhelming upstream dominance within semiconductor supply chains, the bar for 'significant transactions' (valued at US$100,000) and 'material expansion' (by anything more than 5% for advanced chips and 10% for legacy chips) has deliberately been kept low, and meaningful technology licensing barred altogether. So, there you have it: two 'foreign entity of concern' (FEOC) rules, two generally differing interpretations, but with one element in common—both seek to decouple supply chain dependencies from China or Chinese entities with a discretionary toolkit of sticks and carrots, but which pay attention finely to the workings of the market mechanism and considerations of leverage and power therein.

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[**Expanded Reading**]

- Rubio, Colleagues Introduce Bill Protecting American Auto Jobs, Office of Senator Marco Rubio, December 5, 2023
- Advisory Committee on Supply Chain Competitiveness Renewal, U.S. Department of Commerce, December 4, 2023
- Treasury Releases Proposed Guidance to Continue U.S. Manufacturing Boom in Batteries and Clean Vehicles, Strengthen Energy Security, U.S. Department of the Treasury, December 1, 2023
- Department of Energy Releases Proposed Interpretive Guidance on Foreign Entity of Concern for Public Comment, U.S. Department of Energy, December 1, 2023
- Biden's EV Subsidy Rules Leave Room for Chinese Suppliers, *The Wall Street Journal*, December 1, 2023 [Paywall]
- US moves to choke China's role in electric vehicle supply chain, *Financial Times*, December 1, 2023 [Paywall]
- Meeting of the President's Export Council Fall 2023, The White House, November 29, 2023 [Video]
- FACT SHEET: President Biden Announces New Actions to Strengthen America's Supply Chains, Lower Costs for Families, and Secure Key Sectors, The White House, November 27, 2023
- FACT SHEET: Biden-Harris Administration Announces New Private and Public Sector Investments for Affordable Electric Vehicles, The White House, April 17, 2023
- Remarks by President Biden on the Electric Vehicle Manufacturing Boom in America, The White House, September 14, 2022

2 — The 24th China-EU Summit was Held in Beijing, To Mixed Results — 2

[**In One Sentence**]

- At the 24th EU-China Summit in Beijing, European Council President Charles Michel and European Commission President Ursula von der Leyen met with Chinese President Xi Jinping and Premier Li Qiang during two separate sessions.
- During the meetings, both sides committed to dialogue and cooperation rather than confrontation and decoupling and committed to deepen cooperation on trade and economy, green development, artificial intelligence, intellectual property rights and supply chain partnerships.
- The Chinese side opposed "politicizing economic and trade issues or overstretching the concept of security," while the EU side expressed concerns on the trade deficits and hoped to achieve a "more balanced economic relationship."
- Meanwhile, the U.S.-EU talks on sustainable steel and aluminum remain stalled.
- EU officials note that the U.S. and EU have made "good progress" on negotiating a critical minerals agreement to help EU automakers secure certain EV tax credits under the U.S.' Inflation Reduction Act.

[**Mark the Essentials**]

- During the summit, Chinese President Xi Jinping said China saw EU as "a key partner for economic and trade cooperation, a preferred partner for scientific and technological cooperation" and called on the two sides to "leverage their complementary strengths in terms of market, capital and technology" to "upgrade traditional industries and foster emerging ones, explore new modes of cooperation, foster new areas of growth, and jointly improve industrial and supply chains."
- The EU readout highlighted the EU's 400 billion euro trade deficit with China, called for "a level playing field and reciprocity" and urged China to "take more concrete action to improve market access and the investment environment for EU investors and exporters." The EU side also sought to address "critical dependencies in specific sectors, in full compliance with the World Trade Organization rules."

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- In a recent letter, nine leading U.S. advocacy groups "committed to industrial decarbonization" jointly called on the Biden administration to ensure that the U.S. and EU reach an agreement on sustainable steel and aluminum in 2023 and develop a "firm timeline for implementation" by the end of 2024. The groups expressed "deep concerns" following "recent reports" that note that the talks have "stalled."
- Earlier, top European Commission trade official Valdis Dombrovskis said that the EU sees "no prospect" of agreeing on a sustainable steel and aluminum deal unless the U.S. commits to "permanently" remove tariffs on EU's steel and aluminum exports. Divisions reportedly persist on a number of other key provisions of the deal, such as ways to address non-market excess capacity and decarbonization standards.

[**Keeping an Eye On…**]

- European Commission President Ursula von der Leyen seems none too happy with the size of the European Union's trade deficit with China or the lack of a 'level playing field' for EU businesses in China. During the 24th EU-China summit—the first in-person talks since 2019—she let that be known to President Xi Jinping. President von der Leyen cannot be faulted for her displeasure on the trade deficit front. In the time since the EU labeled China a "systemic rival" (as well as a "partner" and a "competitor") in 2019, the value of goods imports from China, far from declining, has almost doubled. By contrast, the U.S.' share of imports from China dropped from 21% to 16% cent during the same period (although the source of many of these ex-China imports has for the most part simply shifted to other Asia-Pacific economies). Imports of a range of Chinese industrial products in particular have grown noticeably, elbowing out domestic EU competitors in many cases rather than other foreign competitors. The extent of dependency on China for a number of critical raw materials also exceeds the 60% tipping point, judged by the Commission to be excessive. On the other hand, President von der Leyen can be (partly) faulted with regard to her complaint on the business environment and 'level playing field' front. In December 2020, the EU and China concluded in principle a Comprehensive Agreement on Investment (CAI) which contains high-standards rules on industrial subsidies and state-owned enterprises that addresses many of the longstanding 'level playing field' complaints of European businesses in China. A mere six months later, in the ensuing fracas over allegations of supposed 'genocide' in Xinjiang and tit-for-tat countermeasures by both sides, ratification of the agreement was frozen by the European Parliament. If it is indeed President von der Leyen's case that Beijing must abide by a set of higher pro-market, level playing field industrial subsidies standards, then she bears a corresponding obligation, too, to first champion the case for unfreezing the CAI at home. It shouldn't fall upon Beijing to have to buy the same horse twice from the Europeans. There is, after all, an agreed text that already memorializes both sides' obligations in this regard and once ratified, Brussels could simply hold Beijing to these commitments. To be clear, this does not exempt Beijing from improving the fairness, transparency and predictability of its foreign investment regime. One would think that it is in its own interest to do so at a time when the macroeconomy continues to groan. As laid out in the State Council's August 2023 *Opinions on Attracting and Optimizing Foreign Investment*, foreign companies must be provided fair access to procurement opportunities, stringent cross-border data flow rules for legitimate business purposes must be eased, foreign-invested enterprises' IP protected, and fiscal and tax preferences as well as administrative licenses apportioned transparently and non-discriminatorily. The sooner provincial and local governments in China adhere to the State Council's *Opinions*, the better off all sides will be.

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[**Expanded Reading**]

- [Chinese premier co-chairs 24th China-EU Summit with EU leaders], the State Council of the People's Republic of China, December 8, 2023
- [EU Considers Restarting WTO Case Against US Over Steel Tariffs], *Bloomberg*, December 8, 2023 [Paywall]
- [President Xi Jinping Meets European Council President Charles Michel and European Commission President Ursula von der Leyen], Ministry of Foreign Affairs of the People's Republic of China, December 7, 2023
- [Xi urges enhanced China-EU political mutual trust, dialogue, cooperation], *Xinhua*, December 7, 2023
- [EU-China summit, 7 December 2023], Council of the European Union, December 7, 2023
- [Advocacy Groups Tell Biden to Advance EU Deal on Sustainable Steel and Aluminum], Sierra Club, December 5, 2023

On the Hill

[**Legislative Developments**]

- A bipartisan pair of Senators introduced a bill to gather all revenues generated through antidumping and countervailing duties and use the funding to support communities impacted by "import competition."
- A bipartisan pair of lawmakers proposed to establish within the Department of Commerce a program to "create a whole-of-government approach to mapping, monitoring, and proactively strengthening American supply chains" and to promoting reshoring.
- In recent remarks concerning the conferencing process of the National Defense Authorization Act (NDAA), Senate Majority Leader Chuck Schumer openly criticized "a number of House Republicans" for blocking the passage of NDAA's provisions that help "rein in the Chinese government" on U.S. outbound investments in China, fentanyl, and U.S. farmland purchase.
- A bipartisan, bicameral group of lawmakers reintroduced a bill to restrict U.S. imports of commodities "originating from illegally deforested land."

[**Hearings and Statements**]

- A group of House Republicans, including House Foreign Affairs Committee Chairman Michael McCaul and House China Committee Chairman Mike Gallagher, called on the Department of Commerce to tighten U.S. export controls on China "before we agree to work with Secretary Raimondo to provide additional resources to the [Commerce Department's] Bureau of Industry and Security."
- The House Foreign Affairs Committee later released a review report of the BIS, criticizing BIS for prioritizing "business and commerce" over "national security" in granting export controls licenses and calling on BIS to "assume any militarily useful item transferred to China will be diverted to its military."
- Senate Finance Committee Chair Ron Wyden said he met with top White House officials in early November to express his opposition to USTR's decision to no longer support certain data localization and source code proposals at the WTO.

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[**Expanded Reading**]

- McCaul Releases 90-Day Review Report of Commerce Department's BIS, House Foreign Affairs Committee, December 7, 2023
- Resilient Communities Act Introduced to Assist Communities Injured by Unfair Trade, Wiley, December 7, 2023
- Baldwin, Cassidy Introduce Bipartisan Bill to Support Communities Hurt by Chinese Trade Cheating, Office of Senator Tammy Baldwin, December 6, 2023
- McCaul, Stefanik, Gallagher Call On Commerce to Strengthen Export Controls Before Congress Provides More Funding, House Foreign Affairs Committee, December 5, 2023
- Schatz, Blumenauer, Braun, Fitzpatrick Introduce Bipartisan Legislation to Help Stop Illegal Deforestation Around the World, Fight Climate Change, Office of Rep. Earl Blumenauer, December 5, 2023
- Rep. Blunt Rochester Introduces ComprehensiveBipartisan Supply Chains Package, Office of Rep. Blunt Rochester, December 4, 2023
- Majority Leader Schumer Floor Remarks On House Republicans' Efforts To Derail Bipartisan Tough On China Provisions In The NDAA Conference, Senate Democrats, December 4, 2023

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