



ICAS
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PROGRAM

DISPATCH

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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.

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What's Been Happening

1 — The EU's Derisking Dilemma — 1

[In One Sentence]

- The European Commission's Executive Vice-President Valdis Dombrovskis said that “the EU has no intention of decoupling with China” but “also needs to protect itself” to ensure open and fair global trade.
- During a visit to China, Dombrovskis said that the EU will be more “assertive” in “de-risking” efforts to ensure “economic resilience” and to create a “level playing field” in trade and economic engagements.
- Meanwhile, the EU agreed to resume regular exchanges with China to discuss macroeconomic issues, continue discussions on a possible transparency mechanism on critical raw materials supply chains, and establish working groups on specific sectoral issues.
- U.S. President Joe Biden will host European Commission President Ursula von der Leyen and European Council President Charles Michel at the White House for the second U.S.-EU Summit on October 20, 2023.
- Former Trade and Technology Council (TTC) working group co-chair Gerard de Graaf has recommended U.S. and EU leaders to discuss past lessons and effective mechanisms to ensure the TTC's “continuity” given upcoming elections on both sides.
- De Graaf also underlined the importance of better associating the stakeholder community to the TTC and ensuring that the TTC is not exclusively a channel confined to the inter-governmental level.

[Mark the Essentials]

- In a speech at China's Tsinghua University ahead of his meeting with Chinese Vice Premier He Lifeng, European Commission Executive Vice-President Valdis Dombrovskis expressed concerns about the “lack of reciprocity” in EU-China economic ties, pointing to the EU's growing trade deficit with China as well as more difficult business and investment environment in China. Dombrovskis said EU companies are struggling to comply with China's new foreign relations law and the updated anti-espionage law and added that EU firms hope to be part of China's “success story.”
- When asked about the European Union's investigation into subsidy practices of the electric vehicle industry in China, Dombrovskis confirmed that non-Chinese carmakers that have operations in China—such as BMW and Tesla—are also subject to scrutiny. Dombrovskis said he tried to reassure Chinese authorities that the investigation has a well-established, fact-based process in compliance with “WTO principles,” but Chinese

officials have voiced concerns about the investigation's short consultation period and inadequate due process with private firms.

[Keeping an Eye On...]

- Following on to Commission President Ursula von der Leyen's September 13 announcement during her State of the European Union (SOTEU) speech, the European Commission formally launched an anti-subsidy investigation at its own initiative on October 4 into the imports of battery electric vehicles (BEV) from China. The probe is expected to deliver two key findings. First, that BEV value chains in China benefit from illegal subsidization, particularly in the form of state-subsidized financing; provision of preferential export insurance; tax reductions, rebates and exemptions; and government provision of goods (such as raw and input materials as well as components) and services for less than adequate remuneration. Second, that the subsidized imports are causing or threatening to cause economic injury to European BEV producers. A provisional countervailing duty (CVD), over and above the EU's 10% tariff on cars, will almost certainly be imposed sometime during the summer of 2024. The more interesting development will be what follows thereafter. In high likelihood, the European Commission will sit down with a group of Chinese BEV exporters and ancillary companies and hash out a (progressively declining) minimum import price and annual import volume undertaking, plus a provisional duty levied on imports above the annual level, to remove the injurious effects of subsidization. Non-cooperating BEV exporters will be slapped with much higher definitive (final) duties later in 2024. The green transition, including in the auto sector, is too important to Europe's interests for it to slouch towards the labyrinth of protectionism. The presence of Chinese BEV's in the market does not constitute a national security risk. On the other hand, the surge of low-priced imports gaining significant market share leading to losses within Europe's auto industry is untenable, especially at a time when sustained domestic investments are required to transition the sector towards full electrification. The European Commission's goal, therefore, will be to reach an amicable solution with China's government first, and thereafter with its auto exporters, to halt the price depression and stabilize prices—given that stabilized prices are important not only for current production but for future investment decisions as well. This will inevitably lead to a slow-down in Chinese car exports to the bloc and incentivize a shift of a certain amount of production to within the bloc—much like Japanese auto manufacturers began doing forty years ago. When the Commission's Executive Vice President and China's Commerce Minister co-chair their 11th High-level Economic and Trade Dialogue next year, they should prepare the stage for initiating this joint undertaking between the Commission and China's BEV exporters. Overall, the anti-subsidy probe is to be welcomed for facilitating, in effect, a tighter trade and investment relationship in the battery electric vehicle sector between Europe and China.

[Expanded Reading]

- [Statement from Press Secretary Karine Jean-Pierre on U.S. – EU Summit](#), The White House, September 28, 2023
- [EV makers such as Tesla could fall under Europe's subsidy probe into China, EU's trade chief says](#), CNBC, September 28, 2023
- [EU, China rein in trade angst, set agenda for further dialogue](#), Reuters, September 25, 2023
- [EU calls for greater market access and fair competition at EU-China High-Level Dialogue](#), European Commission, September 25, 2023
- [Statement by Executive Vice-President Dombrovskis at the press conference following the 10th EU China High-Level Economic and Trade Dialogue](#), European Commission, September 25, 2023

- [EU commissioner calls for more balanced trade with China and warns that Ukraine could divide them](#), *Associated Press*, September 25, 2023
- [China's 'unfairness' warrants a more assertive EU approach, warns trade chief Valdis Dombrovskis](#), *South China Morning Post*, September 25, 2023 [Paywall]
- [EU does not want to decouple from China but must protect itself, says EU trade chief](#), *Reuters*, September 23, 2023

2 — The U.S. and China in a ‘New Era’ of Globalization — 2

[In One Sentence]

- At the United Nations General Assembly, U.S. President Joe Biden said that the U.S. will continue to lead World Trade Organization (WTO) reform and “make global institutions more responsive, more effective, and more inclusive.”
- U.S. Trade Representative Katherine Tai later said the U.S. is “thinking creatively” beyond a traditional negotiation mindset with regard to WTO reform discussions and proposes “alternatives to litigation” like “good offices, conciliation, and mediation.”
- China’s State Council released a White Paper that calls for “a new type of economic globalization” where countries “explicitly oppose” “protectionism” and “unilateral sanctions” and work together to engage in mutually beneficial cooperation.
- The White Paper also notes a “widening gap between developed and developing countries, and that within developed countries” and argues it is a result of the current “zero-sum game,” “winner-takes-all” mindset.
- China previously said that it would appeal the WTO panel report that rejected China’s retaliatory measures against the U.S. Section 232 tariffs on steel and aluminum, advancing the issue to the now-paralyzed Appellate Body.
- Citing the significance of emerging and foundational technologies such as generative AI, U.S. Secretary of State Antony Blinken said the U.S. seeks to “advance our vision for the technological future” and to “shape the rules of the road” through “tech diplomacy.”

[Mark the Essentials]

- According to USTR Tai, the U.S. is “asking” WTO members to engage in “interest-based” conversations and discussions as opposed to traditional “position-based or end-result-based” negotiations. Tai said that the latter process is “positional”, “uncreative” and “constipated” whereas the former is “inclusive” and would reflect interests of all members of the WTO, including the U.S. and its “developing-country partners.”
- Three WTO committees have adopted proposals to improve the “functioning” of its bodies through procedural reforms such as implementing e-Agendas, providing streamlined agendas and providing convening notices further in advance of scheduled meetings.
- According to survey results from the American Chamber of Commerce in Shanghai, American companies in Shanghai have worse business results and a historically low outlook for the China market amidst the U.S.-China bilateral economic tensions and macroeconomic pressures. Although companies say they are delaying or canceling investment decisions in China, only fewer than 6% plan to reshore back to the U.S.
- Former officials and researchers have warned that the current expansion and escalation of export controls between U.S. and China could fuel nationalism and a “me-first” mindset, thereby suppressing multilateralism and threatening the global trade order. Researchers also cautioned that if U.S. companies such as in the
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semiconductor industry are prohibited from selling to China, it could lead to reduced sales, smaller margins, less hiring and less spending on research and development.

- Defending the U.S. proposal for a transatlantic arrangement for global sustainable steel and aluminum, USTR Tai said that the proposal should be compatible with WTO rules but admitted that the arrangement may face challenges at the WTO in the same vein as the EU's carbon border adjustment mechanism.

[Keeping an Eye On...]

- USTR Katherine Tai's approach to reform of the WTO's dispute settlement system appears to be going the same way as her approach to the review and modification of the U.S.' Section 301 tariffs—i.e., lots of seemingly earnest talk of seeking consensual pathways forward backed however by zero intention to actually deliver a workable solution. Fifteen months after the Section 301 tariff review was initiated, the process continues to meander along, with little expected by way of material modification to the tariffs once the review is completed. More to the point, the review was necessitated for statutory reasons and hence had to be conducted. Left to her own devices, the tariffs would not even have been reviewed (although she would never have conceded that), given that the tariffs have become a hot potato within the body politic. In much the same way, USTR Tai's serious-minded talk of creative ways forward on reform of the WTO, including of its dispute settlement system, is pure hot air. There is little-to-no intention of restoring the functioning of the WTO's Appellate Body, and the only reason that she indulged in her seemingly earnest talk is because the vast membership of the WTO would like the matter to be actively dealt with at the forthcoming 13th Ministerial Conference (MC13) in Abu Dhabi in February 2024. Absent this driver, she would not even be mentioning dispute settlement system reform. And why would she? Almost every major U.S. external-facing trade and investment measure in recent times, from the Section 232 and Section 301 tariffs to the Inflation Reduction Act's tax credit provisions to the proposed Global Arrangement for Sustainable Steel and Aluminum, falls afoul of WTO law. If disregarding multilateral trade law is the price to be paid to decouple from China, politely referred to as building supply chain resilience, then so be it. For those inclined to push for forward progress at MC13 in Abu Dhabi, they would be better off turning their attention to the issues of food security, ecommerce/digital trade, and the outstanding matters related to fisheries subsidy disciplines that were unresolved at MC12 (S&DT flexibilities for least developed countries; exceptions for certain subsidies).

[Expanded Reading]

- [Why the Developing World and All of Us Need Trade and the WTO](#), event at the Center for Strategic & International Studies, September 22, 2023
- [Transatlantic Forum on GeoEconomics](#), event at the Atlantic Council, September 22, 2023
- [Full Text: A Global Community of Shared Future: China's Proposals and Actions](#), State Council Information Office of the People's Republic of China, September 2023
- [Remarks by President Biden Before the 78th Session of the United Nations General Assembly | New York, NY](#), The White House, September 19, 2023
- [The costs of export restrictions to the global economy](#), Hinrich Foundation, September 19, 2023
- [U.S. trade and investment restrictions: laudable but costly goals](#), Yeutter Institute International Trade Policy Review, September 19, 2023
- [AmCham Shanghai Releases Report on Business Climate in China](#), AmCham Shanghai, September 18, 2023

[Legislative Developments]

- Democratic lawmakers in both chambers introduced a bill to impose taxes on virgin plastics to reduce plastic waste worldwide.
- House Appropriations Committee member Adriano Espaillat announced support for the Americas Act, giving the bill support in both the House and Senate and across both parties. The Act would strengthen U.S. trade partnerships in the Western Hemisphere to reshore and nearshore manufacturing and tighten the U.S.' *de minimis* rule against imports from China.
- The U.S. Department of Commerce published a final rule to interpret the CHIPS and Science Act's China 'guardrail' rules which more or less hews to the proposed rule issued earlier this March, but expands the rule's application narrowly in certain areas of chip production while at the same time allowing subsidy recipients to share technology with Chinese nationals working in their establishments in the U.S. and allied countries.

[Hearings and Statements]

- Leaders of a number of House committees have urged the Bureau of Industry and Security to revoke and remove all license exceptions for exports to Huawei and Semiconductor Manufacturing International Corp (SMIC). The lawmakers argue that Huawei's development of a 5G smartphone containing 7-nm chips "suggest a blatant violation of U.S. export control regulations."
- At a subcommittee hearing of the House Energy and Commerce Committee, lawmakers disagreed over the institutional and structural approach to make the Commerce Department more involved in strengthening supply chain transparency and resilience.
- House Ways & Means Committee's trade subcommittee Chair Adrian Smith said that committee members are "anxious" to move forward with the reauthorization of the Generalized System of Preferences (GSP).
- At a hearing of the Senate Agriculture Committee, lawmakers advocated for introducing restrictions on Chinese and other foreign ownership of U.S. agricultural land.

[Expanded Reading]

- [Foreign Ownership in U.S. Agriculture](#), hearing in front of the U.S. Senate Committee on Agriculture, Nutrition, & Forestry, September 27, 2023
- [Preventing the Improper Use of CHIPS Act Funding](#), Federal Register, September 25, 2023
- [Cassidy, Bennet, Salazar Announce Espaillat as New Co-Lead for Landmark Americas Act](#), Office of Senator Bill Cassidy, September 21, 2023
- [Innovation, Data, and Commerce Committee Hearing: "Mapping America's Supply Chains: Solutions to Unleash Innovation, Boost Economic Resilience, and Beat China."](#) hearing in front of the U.S. House Energy & Commerce Committee, September 20, 2023
- [Trade Subcommittee Hearing on Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China](#), hearing in front of the U.S. House Ways & Means Committee, September 20, 2023
- [REDUCE Act would levy a fee on production of virgin plastics to incentivize reuse and recycling](#), Office of Rep. Lloyd Doggett, September 19, 2023
- [McCaul Leads House Chairs Urging Action Against Huawei and SMIC](#), House Foreign Affairs Committee, September 14, 2023
- [Cassidy, Salazar Release Draft Legislation to Counter China, Build Stronger Western Hemisphere](#), Office of Senator Bill Cassidy, January 11, 2023

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What's Been Happening

**1 — Schumer Highlights Trade and Economic Issues During China Trip;
Commerce Department Expands Anti-China Chip Rules — 1****[In One Sentence]**

- A bipartisan delegation of U.S. Senators, led by Majority Leader Chuck Schumer, visited China and met with Chinese President Xi Jinping and other top officials.
- According to Sen. Schumer, the delegation “made clear to” President Xi that the United States sought “a leveling playing field” and “responsible competition,” and that neither is present given “huge structural inequalities and serious imbalances” in U.S. economic and trade relationship with China.
- The delegation specifically “raised the need to remove restrictions and open up Chinese markets to U.S. companies, including from the semiconductor, financial services, and aerospace industries.”
- The Biden administration released an updated set of export control rules to restrict China’s access to a broad swathe of advanced chips, including AI chips, as well as chip making tools.
- The new rules come almost exactly one year after the Commerce Department had introduced its *Advanced Computing and Semiconductor Manufacturing Items Rule* to restrict the flow of advanced chips and chip making tools to China.
- U.S. Trade Representative Katherine Tai was appointed as a member to the White House Competition Council, a group created in July 2021 to “identify ways to promote competition in all aspects of the U.S. economy.”

[Mark the Essentials]

- Before and during the China visit, Senator Schumer noted that the United States wanted “reciprocity” in U.S.-China economic competition—namely, that American companies should be “allowed” to “compete as freely in China as Chinese companies are able to compete [in the United States.]”
- Schumer also noted that the United States does not seek a “confrontation” with China but will “prioritize economic and national security, including protecting advanced technologies.”
- The Senate delegation visit occurred months after Senate Majority Leader Chuck Schumer led Senate Committee chairs to launch the “China Competition Bill 2.0” initiative in May. The initiative proposes to “limit the flow of advanced technology,” “curtail the flow of investment to the Chinese government” and

- “secure domestic economic investment,” among others.
- The updated chip and advanced computing rules, which come into effect in 30 days, are a reflection of the U.S.’ struggle to slow the flow of chips and chip making tools into China, despite the wide-ranging and heavy-handed controls imposed in October 2022. Although advertised as intended to deny China access to cutting-edge chips that could strengthen its military, the rules are in fact intended to choke the very existence of an indigenous Chinese capability to design and produce advanced chips at home—be it for military or civilian purposes.
- To this end, two high profile Chinese GPU (graphic processing unit) design firms for AI applications were added to the Commerce Department’s Entity List.

[Keeping an Eye On...]

- What’s good for the ‘goose’ is evidently not good for the ‘gander.’ At his press conference on October 11 at the U.S. Embassy in Beijing, Senate Majority Leader Chuck Schumer demanded that China open up its market to U.S. companies, particularly from the semiconductor, financial services and aerospace industries. He complained furthermore that U.S. companies need to be able to compete as freely in the China market as Chinese companies do in the U.S. market. This, from the same Chuck Schumer who shepherded the CHIPS and Science Act and the Inflation Reduction Act through the Senate to ensure that Chinese semiconductor and battery electric vehicle companies, deemed to be “foreign entities of concern”, would not be allowed to even compete—let alone compete on a level playing field—in the U.S. market. With a trace of amnesia, Schumer even enjoined his Chinese counterparts to address their forced technology transfer policies that coerce American businesses to surrender their IP within the framework of mandatory joint ventures. Well, the forced technology transfer issue was sorted out a number of years ago during the Trump administration in the context of China’s new foreign investment law and the U.S.-China Phase I agreement, which contains a full chapter on technology transfer disciplines. At minimum, it is no longer a pressing issue for U.S. businesses. That said, there is much to commend in the visit by Schumer and his bipartisan Senate colleagues. Congress has been the harshest branch of government insofar as China is concerned, with Schumer having initially led the way as early as the mid-2000’s with a demand for 27.5 per cent tariffs on all imports from China (coincidentally equal to the level of tariffs imposed by the Trump administration). The Congressional Republicans, moreover, are far more anti-China today than at any time since the McCarthy ‘Who Lost China’ witch hunts of the early-1950s (yeah, this would not be a good time to ‘lose’ Taiwan). That the majority leader was nevertheless willing to travel to China and able thereafter to corral three Republican colleagues to join him, and thereby soften the political ground for President Biden’s forthcoming meeting with President Xi in California, must not be overlooked. If China and the United States are able to further stabilize their relationship in the weeks and months ahead, a fair share of the credit should deservedly reside with the Senate majority leader.
- Much like the genie of protectionism is hard to force back once released, the U.S. political establishment is discovering that draconian export controls, once brandished against a determined adversary, only beget more and even more export controls to achieve the said objective. On October 17, one year after the Biden administration issued its unsparing China-focused export controls on advanced computing and semiconductors (and ran many a victory lap thereafter), the administration found itself in the uncomfortable position of having to issue yet more export control rules—this time, even more expansively written—to achieve the same objective. The *2023 Semiconductor Manufacturing Items Rule* and the *2023 Advanced Computing Rule*, 436 pages in total, cover an immense range of activities and measures, including revisions to the commerce control list with regard to semiconductor manufacturing items and advanced chips, expansion

of the advanced computing foreign direct product rule to a host of Middle Eastern and other countries, and adjustments within the export administration regulations' (EAR) destination as well as end-use controls, among others. The rules are intended to achieve the same objective listed in the October 2022 order; in other words, to restrict China's access to advanced computing chips as well as its capability to develop and maintain supercomputers, and manufacture advanced semiconductors. Huawei's 5G Mate 60 Pro phone, released during Secretary Raimondo's visit in late-August, had blown a hole—albeit a small one, through the October 2022 order. The question that will dog the expanded October 2023 order is this: how soon and how large will the hole be when this new order too is breached? For breached it will be, via a combination of circumvention, innovation and workarounds at China's end.

[Expanded Reading]

- [Commerce strengthens restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern](#), Bureau of Industry and Security, U.S. Commerce Department, October 17, 2023
- [Tech war: US sanctions on Biren and Moore Threads strike strong blow to China's GPU champions](#), *South China Morning Post*, October 18, 2023
- [Biden cuts China off from more Nvidia chips, expands curbs to other countries](#), *Reuters*, October 17, 2023
- [Senate Majority Leader Senator Chuck Schumer at a Press Availability](#), U.S. Embassy & Consulates in China, October 11, 2023
- [Majority Leader Schumer Statement Following Meeting With Chinese President Xi Jinping](#), Senate Democrats, October 10, 2023
- [Visiting China, Schumer urges fair treatment of US firms](#), *Reuters*, October 7, 2023
- [Ambassador Katherine Tai to Join White House Competition Council](#), Office of the United States Trade Representative, September 29, 2023

2 — Like-minded Cooperation Advances Despite Festering Difficulties — 2

[In One Sentence]

- U.S. and EU negotiators failed to hammer out deals related to long standing trade and investment irritants at their US-EU Summit, the first such summit meeting in over two years.
- The summit agenda was overshadowed by discussions related to the war between Israel and Hamas, with the situation in Ukraine also dominating the discussions.
- The World Trade Organization (WTO) Chief Economist noted a “recent decline” in U.S. trading with Asian countries and a “recent rise” in trading with “like-minded” partners as the WTO lowered its estimate of 2023 trade growth from the previous 1.7% to 0.8%.
- U.S. Trade Representative Katherine Tai said that members of the Indo-Pacific Economic Framework (IPEF) will “announce some concrete and tangible outcomes” in November when ministers meet on the sidelines of the Asia-Pacific Economic Cooperation (APEC).
- Several business groups urged the Biden administration to ensure multilateral coordination with Europe, Japan and other countries before limiting outbound investment to China.

[Mark the Essentials]

- While useful progress was made by U.S. and EU negotiators on their bilateral trade and investment disputes, fundamental matters of principle still continue to divide the two sides on issues related to critical minerals, energy subsidies and the steel and aluminum market.

- As IPEF negotiators work to finalize the trade “announcements” in November, insiders reportedly claim that the announcement will not include significant progress on digital trade and that deep divisions remain, both, among the parties and within the U.S. side.
- After a ministerial meeting of the Minerals Security Partnership, members of the partnership—including the United States, Australia, Canada, Finland, France, Germany, India, Italy, Japan, the Republic of Korea, Norway, Sweden, the United Kingdom, and the European Union—announced that they would accelerate the development of 17 projects on critical minerals mining, processing and recycling.
- In a panel discussion on U.S. trade negotiations and partnerships, representatives from Hewlett Packard and Samsung lauded the IPEF supply chain agreement as a good first step to set up a “government-to-government model,” but called for more clarification and development to allow for industry buy-in and participation.

[Keeping an Eye On...]

- The United States-European Union Summit of October 20 had been billed as a major meeting of the transatlantic powers—the first such summit meeting since June 2021 and probably the last U.S.-EU summit during this administration’s time in office. Much was riding on its successful outcome, particularly in the area of trade and investment. In the end, the summit turned out to be something of a damp squib, with the two sides releasing an anodyne statement before retiring for the weekend. The U.S.-EU summit of October 20 was also something of a reprieve, given that developments in the Middle East drew attention away from the lack of concrete deliverables on the trade and economics front. Despite having pledged in June 2021 to ensure the long-term viability of their steel and aluminum industries, no agreement on a new sustainable steel and aluminum arrangement was forthcoming despite a self-imposed soft deadline by the two sides. The U.S. would prefer to impose frameworks addressing overcapacity and emissions intensity that either do not hew to international trade law or provide the U.S. an exemption from international trade law-consistent measures. The EU, unsurprisingly, was resistant to going down either path. Unlike that less-than-stalwart law-abiding power, India, with whom the U.S. recently signed an agreement that *de facto* maintains the WTO-illegal Section 232 tariffs, the EU was neither willing to swallow such an arrangement nor provide a blanket exemption to U.S. exporters from its carbon border adjustment mechanism. Of lesser note, the U.S. and EU also failed to finalize a critical minerals agreement that would re-level the playing field that had been tilted by the Inflation Reduction Act’s (IRA) subsidies and would have provided European companies the opportunity to participate within supply chains for the production of EV batteries. Again, it was the issue of multilateral rules and mechanisms that kept the two apart. The U.S. insisted on a “rapid inspection system” (of mines and processing facilities) of its own creation to monitor labor and environmental standards; the EU insisted that any such inspection system must respect global rules and mechanisms, as developed by the International Labor Organization. Both matters—arrangements on sustainable steel and aluminum; a critical minerals agreement—have now been pushed out to the next Trade and Technology Council (TTC) meeting this December. And as for updating the WTO rulebook with more effective disciplines on industrial subsidies—probably the most important agenda item flagged in the June 2021 joint statement, that item seems to have dropped off the discussion table entirely. A bilateral agenda which started with grand statements and towering ambition following the disruptive Trump administration years appears to be limping to the finish line...and not for the first time in U.S.-EU trade and investment relations.

[Expanded Reading]

- [U.S.-EU Summit Joint Statement](#), The White House, October 20, 2023
- [EU, US to keep talking about tariffs as war in Israel and Ukraine overshadow talks](#), Reuters, October 20, 2023
- [US-EU summit yields call for balanced approach to China, urging 'constructive and stable relations'](#), *South China Morning Post*, October 20, 2023
- [U.S. and Europe Clash Over Trump-Era Tariffs](#), *The Wall Street Journal*, October 14, 2023 [Paywall]
- [Tai downplays chances for October steel deal with EU](#), *Politico Pro*, October 10, 2023 [Paywall]
- [Joint Statement on the Minerals Security Partnership Announce Support for Mining, Processing, and Recycling Projects](#), U.S. Department of State, October 10, 2023
- [WTO lowers 2023 trade growth forecast amid global manufacturing slowdown](#), World Trade Organization, October 5, 2023
- [Global Trade Outlook and Statistics](#), World Trade Organization, updated October 2023
- [U.S. Chamber of Commerce submission on "Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern."](#) Regulations.gov, September 28, 2023

On the Hill

[Legislative Development]

- Senator Bill Cassidy called for legislation to impose a “foreign pollution fee” on imports from China that are produced with higher greenhouse gas emissions to counter manufacturing offshoring.
- Senator Todd Young said that the Level the Playing Field 2.0 Act—a bill that aims to reform U.S. trade laws to counter China’s “unfair practices”—could proceed as part of a larger China competition bill package.
- A bill was introduced in both chambers to create a task force within the Office of the U.S. Trade Representative to focus on trade enforcement in the agriculture sector.

[Hearings and Statements]

- In a letter to Under Secretary of Commerce for Oceans and Atmosphere, Richard Spinrad, a bipartisan group of 14 lawmakers called for “urgent” and “immediate action” to “combat” illegal, unreported and unregulated fishing “by the PRC.”
- In a letter to U.S. President Joe Biden, a bipartisan group of eight Senators “requested” immediate meetings and “urgent solutions” to protect U.S. textile and apparel manufacturing “after decades of victimization by Chinese economic and trade predation.”
- In a comment to the Department of Treasury, House Financial Services Committee Chair Patrick McHenry argued that Treasury officials coordinating the Committee on Foreign Investment in the U.S. (CFIUS) are legally “prohibited” from engaging in the Biden administration’s upcoming outbound investment controls regime, and that the Treasury’s Office of Foreign Assets Control (OFAC) should be the authorized administering body.

[Expanded Reading]

- [Gallagher, Bipartisan Lawmakers Urge NOAA to Crackdown on Illegal Chinese Fishing](#), The Select Committee on the CCP, October 11, 2023
- [A Tariff for the Climate](#), *Foreign Affairs* (by Sen. Bill Cassidy), October 5, 2023 [Paywall]
- [Tillis, Brown Call on President Biden to Protect Textile and Apparel Industry from China’s Illegal Practices](#), Office of Sen. Thom Tillis, September 29, 2023

- [Rep. Crawford and Higgins Introduce the Prioritizing Offensive Agriculture Disputes and Enforcement Act](#), Office of Rep. Rick Crawford, September 29, 2023
- [Letter commenting on 88 FR 54961; RIN 1505-AC82: "Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern"](#), Regulations.gov, September 28, 2023
- [Cassidy, Colleagues Introduce Bills to Protect Louisiana Agriculture Against Dumping from China, India](#), Office of Sen. Bill Cassidy, September 28, 2023
- [H.R.5790 - Prioritizing Offensive Agricultural Disputes and Enforcement Act](#), Congress.gov

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What's Been Happening

1 — U.S. Retailing Approach to Digital Trade Amid MC13 — 1

[In One Sentence]

- At the latest round of e-commerce talks at the World Trade Organization (WTO), members expressed strong support and a commitment to concluding the talks soon, ideally by the end of 2023.
- U.S. Trade Representative (USTR) Katherine Tai says she is re-examining the United States' approach to data flows and source codes and will no longer support the relevant proposal in the WTO e-commerce talks.
- U.S. Ambassador to the WTO Maria Pagan told reporters that WTO members have not agreed on delivering on WTO dispute settlement reform by the 13th Ministerial Conference (MC13), to be held in February 2024, adding that the U.S. is “putting in the work” and hopes to “deliver something by next year.”

[Mark the Essentials]

- According to the co-convenors of the WTO e-commerce talks, the Joint Initiative on e-Commerce talks has “parked” 12 articles, covering such areas as online consumer protection, electronic signatures, spam regulations, open government data, paperless trading, cybersecurity, open internet access and electronic transaction frameworks. The 90 members participating in the talks have also achieved “good progress” on “privacy and telecommunications services disciplines.”
- In e-commerce work program meetings held in preparation for MC13, WTO members expressed support for enhancing technical assistance and capacity building and called for more work to extend the moratorium on customs duties on e-commerce.
- In the lead up to MC13, WTO will host a meeting among senior officials to discuss dispute settlement reform, fisheries subsidies, as well as agriculture and trade issues insofar as they relate to bridging development gaps, and thereby lay a strong foundation for the upcoming ministerial conference.
- Biden administration officials have stated that the U.S. remains committed to a “commercially meaningful” deal on data flows and source codes but hopes that the current e-commerce talks can focus on what can be achieved by year-end and to drop proposals that do not have sufficient support among participating members.
- In a statement responding to USTR's withdrawal of support for the data flow and source code proposal at the WTO, Senate Finance Committee Chair Ron Wyden said that USTR was “abandoning our democratic allies” with “virtually zero consultation with Congress.” According to Wyden, USTR's position “directly contradicts

its mission as delegated by Congress” and “it may be time to reconsider the degree of that delegation going forward.” Republican lawmakers on the Senate Finance Committee expressed similar sentiments.

[Keeping an Eye On...]

- Free trade is not an end in and of itself; it is a means to an end. That end is the prosperity and welfare of the consumer. The ultimate purpose of free trade, including free trade in the digital and data flow sphere, is to champion the consumer’s interest. For certain hidebound free trade ideologues, this may be a difficult concept to grasp; for most others, this should not be so difficult to comprehend. In a consequential decision that will resonate for years if not decades, the Biden administration’s Office of the U.S. Trade Representative—a hotbed of the worker’s interest which more often than not does not align with the consumer’s interest in trade policymaking—has let it be known that it will no longer support certain untrammelled provisions in digital trade agreements such as the unrestricted free flow of data across borders, a total ban on data localization requirements, and proscriptions barring the turning over of proprietary source codes. USTR’s decision is part of a larger assessment and reform of digital governance—and in particular the regulatory precepts that govern competition and taxation policy in this sector—by the Biden administration, with a view to modernizing these rules. It was always a long shot to expect, therefore, that international data flow rules could somehow preempt or flout the redrawing of domestic regulation in this sector. That eventuality has now come to pass. Indeed, this decision by USTR to delineate regulatory ‘policy space’ within digital trade agreements is timely, given the dynamism and fluidity of innovation, processes and practices in the sector as well as the fast-paced changes in regulatory best practices. For example, it is now progressively accepted that as internet platforms increasingly rely on artificial intelligence (AI) and machine learning (ML)-based tools for content moderation, ad targeting and delivery, and content ranking and recommendation, it is in the interests of the data-sharing-and-using public that regulations be inscribed that provide vetted researchers access to such platform data so as to ensure accountability around the platforms’ algorithmic systems. Rules demanding such access to algorithmic “black boxes” would have been inconceivable even five years ago. USTR’s decision has come not a day too soon and should be welcomed.

[Expanded Reading]

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- [Exclusive: Reform proposals emerge to fix WTO by early 2024 - document](#), Reuters, October 26, 2023
- [Crapo and Colleagues Condemn Biden Administration’s Decision to Cede U.S. Digital Leadership to China](#), Office of Senator Mike Crapo, October 26, 2023
- [Wyden Statement on Ambassador Tai’s Decision to Abandon Digital Trade Leadership to China at WTO](#), United States Senate Committee on Finance, October 25, 2023
- [US drops digital trade demands at WTO to allow room for stronger tech regulation](#), Reuters, October 25, 2023
- [Facilitator of e-commerce work programme seeks members’ views on way forward](#), World Trade Organization, October 19, 2023

2 — Larger Divisions Expected as U.S.-China Derisking Plows Ahead — 2

[In One Sentence]

- The U.S. Department of Commerce further tightened its export control rules on advanced semiconductor, semiconductor manufacturing equipment, and supercomputing to China.
- Analysts say that the Belt and Road Initiative has adjusted its approach in response to criticism, concerns and the impacts of U.S.-China competition.

- Some researchers have warned that U.S. attempts to exclude China from international standard-setting for critical and emerging technologies could create unintended technical barriers to trade for U.S. firms.

[Mark the Essentials]

- With some U.S. lawmakers considering ending U.S. permanent normal trade relations with China, a recent study from the National Retail Federation showed that increased U.S. tariffs resulting from the move could cost American consumers \$31 billion in spending power.
- Following reports that Asiaway—a Mexican automobile manufacturer owned by a Chinese company—may have dismissed a worker for joining a labor union, the Office of the United States Trade Representative joined by the U.S. Department of Labor asked Mexico to review the case and “resolve the issues present.”
- The U.S. Court of Appeals for the Federal Circuit has approved, for the second time, an extension request by the U.S. government to file its reply brief in the lawsuit challenging the legality of the Section 301 tariffs on Chinese goods.

[Keeping an Eye On...]

- On October 17, one year after the Biden administration issued its hard-hitting China-focused export control rule on advanced computing and semiconductors (and ran many a victory lap thereafter), the administration found itself in the uncomfortable position of having to issue yet another rule—this time, one more expansively written—to achieve the original objective. The *2023 Semiconductor Manufacturing Items Rule* and the *2023 Advanced Computing Rule*, 436 pages in total, aims to restrict China’s ability to obtain advanced computing chips, develop and maintain supercomputers, and manufacture advanced semiconductors. In late-October, it became known that the export control order had come with a sting in the tail. As per a letter sent by the U.S. government to Santa Clara-based advanced AI chip design giant, Nvidia, the new restriction on the sale of high-end chips to countries is to take effect immediately. Typically, export control orders introduced by the Bureau of Industry and Security come with a 30-day grace period, enabling rush deliveries of certain prized items in previously placed orders. As a result of the ‘in effect immediately’ injunction, almost \$5 billion of advanced AI chips destined to China’s AI and cloud computing companies, including Alibaba, ByteDance and Baidu, over the next month will likely have to be canceled. Of course, this is a big blow to Nvidia’s bottom line. But this is a bigger blow to the Chinese users of these chips, and they have to settle for training their AI systems with less advanced, lower performance ones. How binding this denial will be on the pace of innovation in the Chinese digital ecosystem in the longer run remains to be seen, however.

[Expanded Reading]

- [Nvidia’s \\$5 Billion of China Orders in Limbo After Latest U.S. Curbs](#), *The Wall Street Journal*, October 31, 2023 [Paywall]
- [Xi’s keynote speech at 3rd Belt and Road Forum for Int’l Cooperation published](#), *Xinhua*, October 31, 2023
- [United States Seeks Mexico’s Review of Alleged Denial of Workers’ Rights at Asiaway Automotive Components Mexico](#), Office of the United States Trade Representative, October 23, 2023
- [China Section 301 Litigation Update](#), Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP, October 20, 2023
- [Commerce Strengthens Restrictions on Advanced Computing Semiconductors, Semiconductor Manufacturing Equipment, and Supercomputing Items to Countries of Concern](#), U.S. Department of Commerce, October 17, 2023

- [Higher U.S. Tariffs on Chinese Imports Would Cost Consumers \\$31 Billion, NRF Study Says](#), National Retail Federation, October 12, 2023
- [Unpacking the Biden Administration's Strategy for Technical Standards: The Good, the Bad, and Ideas for Improvement](#), Information Technology & Innovation Foundation, October 10, 2023

3 — U.S. Making Progress on Trade Negotiations with Partners, Challenges Lie Ahead — 3

[In One Sentence]

- Despite a meeting between U.S. and EU leaders at the White House, the U.S. and the EU have yet to reach an agreement on a global steel and aluminum arrangement.
- In a multi-association letter issued ahead of the U.S.-EU Summit, a number of U.S. business groups called on the Biden administration to “push back against protectionist tendencies in Europe” in the digital sector and with regard to corporate sustainability requirements.
- The United States has noted that members of the Indo-Pacific Economic Framework (IPEF) “continued to make progress” on negotiations, but differences remain on digital trade, labor and environment standards.
- An additional in-person negotiating round in San Francisco has been planned ahead of the Asia-Pacific Economic Cooperation (APEC) Leaders’ Summit and the IPEF ministerial meeting that was set to occur on its sidelines.

[Mark the Essentials]

- Analysts have cautioned against differing policy and legal approaches between the U.S. and EU in artificial intelligence technologies, arguing that the EU tends to take a broader, top-down “risk-based approach” to AI regulation whereas U.S. efforts have been more bottom-up, targeted, and experimental. This, they argue, could lead to different regulatory frameworks, trade barriers, and additional compliance burden for technology companies.
- The Office of the U.S. Trade Representative (USTR) expressed an inclination to reevaluate its stance on digital sovereignty matters. USTR Katherine Tai observed that certain measures that “may look like they have a discriminatory effect may or may not be advanced with a discriminatory intent,” when answering a question about the European Union’s new digital policies. Criticizing the EU’s “digital sovereignty agenda,” National Foreign Trade Council (NFTC) President Jake Colvin observed that such statements showed USTR’s “troubling deviation” from its responsibility to “stand up for American businesses and workers.”
- At a recent event, the White House’s National Security Council coordinator for the Indo-Pacific Kurt Campbell said that the United States will join the APEC leaders’ summit as “the leading economy” and “the destination of perhaps first resort for a lot of investment in technology.” He went on to argue that “many of” the people who previously looked at China for “investment opportunities” are now turning to the U.S.

[Keeping an Eye On...]

- With the mid-month APEC Leaders’ Summit fast approaching, the Indo-Pacific Economic Framework (IPEF) negotiators will be huddling in San Francisco this week to hammer out deals that can be presented by their respective leaders and ministers as a major achievement. The hope is that the negotiations on the (mostly toothless) clean economy (Pillar III) and fair economy (Pillar IV) pillars can be closed out by the time their leaders meet mid-month in San Francisco. Closing out the trade pillar (Pillar I) is an altogether different

matter; negotiators will have difficulty obtaining stakeholder buy-in to close out these negotiations, even in 2024. Nevertheless, with all the attention being showered on the IPEF talks, the U.S.-chaired APEC Leaders' Summit is effectively doubling as an IPEF Leaders' Summit. This is not unfamiliar territory for the United States. In the third year (of the first term) of the previous Democratic administration, the Obama administration too had volunteered as the host country of APEC, and had thereafter commandeered the APEC platform to aggressively push the Trans-Pacific Partnership (TPP) negotiations to a successful conclusion. The smaller TPP membership also comprised states that were members of APEC and like IPEF's membership excluded China. The effect of the Obama administration's role as APEC chair in 2011 was to both suck the oxygen out of APEC's agenda that year as well as make important progress in the TPP negotiations during the year. With a U.S. presidential election year looming in 2012, it was understood that the negotiating clock would effectively run out at the end of the year. In the event, by the time of the APEC Honolulu Summit in November 2011, gaps still remained among the TPP parties—progress notwithstanding. It was not until the third year of the second Obama administration that the gaps on intellectual property, sugar and dairy market access, rules of origin, state-owned enterprises and automotive issues with Japan finally began to close. It is clear that the Biden team has borrowed the Obama administration's APEC playbook to concentrate minds among the IPEF negotiating parties in this pre-election year. And though the substance of the IPEF negotiations bear no similarity or comparison to the depth and richness of the TPP text, it is just as likely that significant gaps will continue to persist among the parties even after the San Francisco APEC Leaders' Summit.

[Expanded Reading]

- [AI Safety Summit: China, US and EU agree to work together](#), *Reuters*, November 1, 2023
- [U.S. will extend EU metals tariff exemption if needed -envoy](#), *Reuters*, October 25, 2023
- [Joint USTR and U.S. Department of Commerce Readout of Sixth Indo-Pacific Economic Framework Negotiating Round in Malaysia](#), Office of the United States Trade Representative, October 25, 2023
- [Remarks by President Biden, European Council President Charles Michel, and European Commission President Ursula von der Leyen Before Trilateral Meeting](#), The White House, October 20, 2023
- [U.S. extends freeze on EU steel tariffs to create 'breathing room' for talks](#), *Politico Pro*, October 20, 2023 [Paywall]
- [Multi-association letter to President Biden in advance of the 20 U.S.-EU Summit](#), U.S. Chamber of Commerce, October 17, 2023
- [NFTC President Jake Colvin: Will the Biden Administration Stand Up for American Companies and Workers on Trade?](#), National Foreign Trade Council, October 16, 2023
- [AI Regulation is Coming- What is the Likely Outcome?](#), Center for Strategic & International Studies, October 10, 2023
- [President Biden's Worker-Centered Trade Policy: A Conversation With Ambassador Katherine Tai](#), event at Center for American Progress, October 10, 2023
- [US Warns EU's Landmark AI Policy Will Only Benefit Big Tech](#), *Bloomberg*, October 6, 2023 [Paywall]



[Legislative Developments]

- A bipartisan pair of Senators re-introduced the “True Reciprocity Act” to demand a policy response for the “substantial imbalance” in U.S.-China relations in “diplomacy, trade, media and non-governmental organization activity.”

[Hearings and Statements]

- Following reports of U.S. venture capital firms separating their main entity from their Chinese operations, the bipartisan leaders of the House China Committee requested more information to investigate the know-how transfers and capital flows that may result from the split.
- House Oversight and Accountability Committee Chair James Comer openly expressed concerns for the “lack of transparency” from the Office of the U.S. Trade Representative (USTR) in the Indo-Pacific Economic Framework (IPEF) negotiations as well as the “unwarranted influence” of the Federal Trade Commission, and requested answers and document disclosure from USTR.
- In an open letter, Senators Todd Young and Tom Carper called on USTR to set international “ground rules” for the global digital economy and “take immediate action” to establish “ambitious and binding obligations.”
- Following reports that USTR had withdrawn support for data localization and source code rules at the World Trade Organization’s e-commerce negotiations, bipartisan leaders of the Senate Finance Committee criticized the move and argued that USTR had failed to sufficiently consult Congress before making its decision.

[Expanded Reading]

- [Crapo and Colleagues Condemn Biden Administration’s Decision to Cede U.S. Digital Leadership to China](#), Office of Senator Mike Crapo, October 26, 2023
- [Wyden Statement on Ambassador Tai’s Decision to Abandon Digital Trade Leadership to China at WTO](#), United States Senate Committee on Finance, October 25, 2023
- [Sullivan, Van Hollen Seek to Establish Reciprocity in U.S.-China Relationship](#), Office of Senator Dan Sullivan, October 24, 2023
- [Gallagher, Krishnamoorthi Probe Sequoia’s PRC High-Tech Investments, Examine Implications of Announced Split](#), The Select Committee on the CCP, October 18, 2023
- [Young, Carper Urge U.S. Trade Representative to Set the Ground Rules for the Digital Economy](#), Office of Senator Todd Young, October 16, 2023
- [Comer Probes Lack of Transparency from USTR in Indo-Pacific Trade Negotiations](#), House Committee on Oversight and Accountability, October 12, 2023

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What's Been Happening

1 — Push for Multilateral Trade Cooperation at APEC with Focus on Innovation, Inclusion and Resilience — 1**[In One Sentence]**

- The United States hosted the seventh in-person negotiating round for the Indo-Pacific Economic Framework (IPEF) from November 5-12 in San Francisco, California.
- IPEF members thereafter held a ministerial meeting on November 13-14, directly after the negotiating round.
- The Asia-Pacific Economic Cooperation (APEC) held its final 2023 meetings from November 11-17, with a ministerial meeting held on November 14 and the leaders' plenary session on November 16-17.
- APEC leaders capped their meeting by endorsing the *Golden Gate Declaration* which memorializes the efforts of member state economies' on their sustainability and inclusion objectives.
- IPEF member states released their own leaders' statement which noted that negotiations on the clean economy and fair economy pillars had been substantially concluded.
- U.S. trade officials stressed that IPEF and APEC are "two distinct initiatives" although some countries "have chosen to take advantage" of the fact that a number of officials who work on both APEC and IPEF are simultaneously in San Francisco.
- Meanwhile, a number of U.S. lawmakers, agencies and businesses continued to express concerns about the "change" of the "U.S. stance on digital policy," following USTR's earlier move to revoke support for data and source code provisions at the World Trade Organization's e-commerce talks.

[Mark the Essentials]

- The APEC leaders' *Golden Gate Declaration* keeps alive the commitment to advance economic integration through "the work on the Free Trade Area of the Asia-Pacific [FTAAP] agenda", although few believe the U.S. has much interest any longer in that FTAAP agenda.
- IPEF ministers failed to close out negotiations on the trade pillar in San Francisco and the outlook on this front is uncertain. However a ministerial-level IPEF Council was established and is set to meet annually starting in 2024, with leaders' meetings—presuming President Biden secures reelection—slated to be held every two years.

- In a public statement, the co-chairs of the House Digital Trade Caucus—a bipartisan pair—criticized USTR’s “unilateral” decision to “abandon important, longstanding, and bipartisan U.S. digital trade priorities at the WTO.” The statement adds to earlier criticism by the Senate Finance Committee.
- Meanwhile, more than 40 major business groups have jointly signed an open letter to the Biden administration to express their “profound concern and disappointment” and urged the Biden administration to reverse USTR’s “harmful decision” to withdraw support for certain proposed data provisions at the WTO.
- Shortly after USTR’s decision at the WTO, trade ministers from the G7 countries reaffirmed “the importance of facilitating Data Free Flow with Trust” and reiterated support for “open digital markets” and “opposition to digital protectionism.” The ministers also affirmed “the need to establish a set of high-standard rules to govern global digital trade.”

[Keeping an Eye On...]

- When the Biden administration jumped the queue and won the right to chair the 21-member APEC framework in 2023—twelve years after the Obama Administration had done so in 2011—it expected to glide into the presidential election campaign year with a trade policy victory to tout. Instead, the administration has ended the APEC presidency with some egg on its face. The hosting of APEC in 2023 was never meant to be about APEC; rather, the APEC platform was sought to be commandeered to push through the Indo-Pacific Economic Framework (IPEF) agreement which excluded China—much like the Obama Administration had sought to push forward the Trans-Pacific Partnership (TPP) negotiations at the time. The TPP negotiations did in fact make important progress during the United States’ 2011 APEC hosting year. By contrast, the trade pillar of the IPEF negotiations—the only materially significant pillar of IPEF’s four pillars—has descended into a farce, with little expected by way of useful results in 2024. From the get-go, the trade pillar of IPEF was a shambles. It made no aspiration to achieve the fundamental premise of a trade agreement (i.e., market liberalization based on reciprocal market access). Yet, USTR Katherine Tai somehow appears to have thought that other IPEF member states would sign on to U.S.-dictated enforceable labor standard provisions for nothing in exchange. The administration chose to disregard Congress’ prerogative “to regulate commerce with foreign nations” by using the ‘sole executive agreement’ mechanism to finalize IPEF, and in the process let it effectively be known to participating members that it was shooting for a low-quality product that would not be accountable to Congress’ more demanding ratification-related standards. And despite an initial haste to preempt domestic rulemaking on digital policy, the administration ended up having to submit to the immense regulatory churn underway in the sector and pull its digital trade text from the broader negotiations. From anti-monopoly protections to privacy and data protections, fintech-related financial stability risk management, review of liability protection for intermediary service providers, to the development of rules regarding the structure, use, and impacts of AI applications and their underlying algorithms, digital policy regulation domestically and rules to regulate its orderly flow internationally remains a work in progress. In the event, no forward movement was made on market liberalization, little progress was made on labor standards in the trade text, and there is nothing to show on the digital trade front. San Francisco was the venue where delegates from 50 countries had drafted the Charter of the United Nations over fifty-one days of debate and negotiation in 1945. Fast-forward to APEC/IPEF 2023, San Francisco unfortunately may yet come to be remembered as the place where the United States, after a year of flailing and failing, ceded its trade policy leadership at a pivotal moment in the history of the Asia-Pacific’s international economic diplomacy.

[Expanded Reading]

- [2023 APEC Leaders’ Golden Gate Declaration](#), The White House, November 17, 2023

- [U.S. 2023 APEC Outcomes](#), U.S. Department of State, November 17, 2023
- [Leaders' Statement on Indo-Pacific Economic Framework for Prosperity](#), The White House, November 16, 2023
- [APEC Summit 2023: Here's What to Know](#), U.S. Chamber of Commerce, November 15, 2023
- [Asia-Pacific Economic Cooperation \(APEC\) Economic Leaders' Week Kicks-Off in San Francisco](#), U.S. Department of State, November 13, 2023
- [USCIB Co-Signs Letter Condemning Administration Decision to Withdraw Support for Cross-Border Data Flow Proposals at WTO](#), United States Council for International Business, November 13, 2023
- [G7 Trade Ministers' Meeting in OSAKA-SAKAI](#), Ministry of Foreign Affairs of Japan, last updated November 9, 2023
- [U.S. Chamber and Other Associations Letter to NSC/NEC on Digital Trade](#), U.S. Chamber of Commerce, November 7, 2023
- [2023 Asia-Pacific Economic Cooperation \(APEC\) Leaders' Week \(FPC Briefing\)](#), U.S. Department of State, November 6, 2023
- [LaHood, DelBene Statement on USTR Decision to Abandon Digital Trade Leadership at the WTO](#), Office of Rep. Darin LaHood, October 26, 2023

2 — Autos and AI, the New Trade and Tech Chessboard — 2

[In One Sentence]

- Speaking at an auto plant in Illinois, U.S. President Joe Biden accused China of attempting to “dominate the electric-vehicle market by using unfair trade practices.”
- In an effort to ensure U.S. leadership on artificial intelligence (AI), President Biden signed an executive order to establish new standards for AI safety as well as relevant privacy and rights concerns.
- President Biden also committed to “continue to work closely with allies and partners” on AI standards, including through the United Nations and the G7.
- During their meeting in Woodside, California on November 15, U.S. President Joe Biden and Chinese President Xi Jinping affirmed the need to improve AI safety through “U.S.-China government talks.”
- The U.S. trade deficit increased slightly in September, largely due to import growth in auto parts and engines.

[Mark the Essentials]

- While agreeing to establish government-to-government talks on AI, President Xi Jinping also complained about U.S. attempts to curb or suppress China’s “right to development” and called for the U.S.’ unilateral sanctions to be lifted and a “fair and nondiscriminatory environment [provided] for Chinese businesses.”
- According to a Carnegie Endowment for International Peace expert, both the United States and China have begun to acknowledge the need for some level of coordination on artificial intelligence governance, especially to tackle common safety challenges. Nevertheless, competition over AI capacity and technology development will likely persist, as well as the fight for control and influence over standard setting.
- At the recent AI Safety Summit hosted by the UK at Bletchley Park, once the top-secret home of World War II codebreakers, more than 20 countries—including the United States, China and the European Union—jointly acknowledged the “enormous global opportunities” and “significant risks” that AI technology poses. The parties “resolve[d] to support an internationally inclusive network of scientific research on frontier AI safety” and to “sustain an inclusive global dialogue.”
- Meanwhile, the United States and the European Union are seeking public input and suggestions to develop a “list of 65 key AI terms essential to understanding risk-based approaches to AI, along with their EU and U.S. interpretations and shared EU-U.S. definitions.” The move derives from the US-EU Trade and Technology

Council's (TTC) effort on establishing a "Joint Roadmap on Evaluation and Measurement Tools for Trustworthy AI and Risk Management."

- Ahead of President Biden's accusation against China's unfair practices in the EV sector, a bipartisan group of U.S. lawmakers called on U.S. Trade Representative Katherine Tai to impose tariffs on China's automobile imports to prevent U.S. "dependency" and the consequent "hollowing out" of the American auto industry.

[Keeping an Eye On...]

- On November 15, President Joe Biden and President Xi Jinping held a successful summit meeting at the Filoli Estate, a grand country house and garden set on rolling green grounds near the California coast. The meeting was notable on two counts. First, it consolidated the diplomatic process that was initiated by the two leaders in Bali in November 2022 on the sidelines of the G20 Leaders' Summit. This consolidation of ties will come in handy in 2024 to troubleshoot irritants that will almost certainly crop up in what is expected to be a raucous U.S. election year. The consolidation of ties could even serve as a useful jumping-off point to construct a durable architecture of candid but constructive coexistence in the mid-2020s, should President Biden manage to secure reelection. Second, the meeting enabled Washington and Beijing to harvest a number of low-hanging 'deliverables'; namely, on fentanyl precursors, reopening mil-mil communication channels, climate change, and AI. The agreement to establish government-to-government talks on AI, as with the case of the electric vehicles (EVs) sector, speaks to the multilayered complexity of U.S.-China ties. Washington has extensively utilized its strategic trade and technology controls to stanch the flow of high-performance chips to China and stifle technological progress within its AI ecosystem. At the same time, both countries see merit in a bilateral conversation that seeks to limit harms originating from frontier AI systems in areas such as nuclear command and control, so as to ensure that machine-determined algorithms are not allowed to dictate critical decision making. Washington has aggressively sought to decouple EV supply chains from China and labeled it as a "foreign entity of concern" in the context of enjoyment of Inflation Reduction Act (IRA) tax credits. At the same time, the climate envoys of the United States and China issued a joint statement—a notable rarity these days in U.S.-China relations—on climate change, which will enable the two countries to pull together on the road to COP28 and beyond. Electrification of the transportation sector, with EV's at the forefront, is key after all to the green transition. Going forward, it is just as likely that Washington and Beijing will be locked in rivalry and cooperation in other fields too. The world's number one and number two economies are fiercely competitive, yet also too intertwined to be disjointed into neat exclusionary blocs. And at the same time, they are propelled by force of sheer political self-interest to fraternize on the big transnational questions of the day.

[Expanded Reading]

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- [Readout of President Joe Biden's Meeting with President Xi Jinping of the People's Republic of China](#), The White House, November 15, 2023
- [Remarks by President Biden on Delivering for Working Families and Creating Good-Paying Union Jobs | Belvidere IL](#), The White House, November 9, 2023
- [US lawmakers want Biden to hike tariffs on Chinese-made vehicles](#), *Reuters*, November 8, 2023
- [U.S. International Trade in Goods and Services, September 2023](#), U.S. Bureau of Economic Analysis, November 7, 2023
- [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#), The White House, October 30, 2023
- [Input on the First Edition of TTC WG1 EU-U.S. Terminology and Taxonomy for Artificial Intelligence](#), European Commission, October 30, 2023



[Legislative Developments]

- The House Ways and Means Committee advanced a bill that proposes to create a new Global Trade Specialist position at Customs and Border Protection to “stop foreign bad actors from breaking America’s trade laws and harming American workers.”
- A bipartisan pair of Senators proposed a bill to increase transparency in trade data and tighten trade law enforcement by requiring aircraft, truck, and rail shippers of U.S. imports to publicly disclose aggregate data on shipper, destination, type and volume of cargo, etc.
- The Senate voted to approve a resolution that proposes to overturn the Biden administration’s temporary waiver of certain “Buy America” requirements for materials used in electric vehicle chargers, passing the bill to the House. Soonafter, the Biden administration announced that it will veto the resolution should it pass both chambers of Congress.

[Hearings and Statements]

- In a letter to the Biden administration, ten progressive lawmakers led by Senator Elizabeth Warren and Rep. Jan Schakowsky expressed “appreciation” for “suspending negotiations on aspects of the IPEF digital text that can be used to frustrate privacy, AI, civil rights and liberties, anti-monopoly, gig worker and other digital safeguards.”
- The New Democrat Coalition, a center-left coalition of “pragmatic House Democrats,” urged the Biden administration to return to reciprocal bilateral and regional trade agreements, lower barriers to trade and include market access provisions in IPEF negotiations.
- Senate Finance Committee Chair Ron Wyden and ranking member Mike Crapo requested three federal agencies—including the Customs and Border Protection—to provide information on their use of artificial intelligence. The Senators acknowledged the “powerful potential” of AI to “speed legitimate trade” and efficiently “catch trade cheats,” but warned that the agencies must also establish safeguards to manage risks posed by AI.

[Expanded Reading]

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- [Wyden, Crapo Press Federal Agencies on Use of Artificial Intelligence](#), United States Senate Committee on Finance, November 9, 2023
- [US Senate votes to reject 'Buy America' EV charging waiver](#), Reuters, November 8, 2023
- [Statement of Administration Policy, S.J. Res. 38](#), Executive Office of the President, November 8, 2023
- [Schakowsky, Warren Lead 10 Lawmakers Commending Biden administration for Countering Big Tech Influence in Trade Negotiations](#), Office of Rep. Jan Schakowsky, November 7, 2023
- [Ways and Means Advances Real Solutions to Real Problems Faced by Real Americans](#), House Ways and Means Committee, November 3, 2023
- [Whitehouse, Cassidy Introduce Bipartisan Legislation To Increase Transparency Of Shipping Manifests](#), Office of Senator Sheldon Whitehouse, November 2, 2023

November 30, 2023

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What's Been Happening

1 — U.S.-China Division Unfolds as APEC Commits to Sustainability and Green Trade Liberalization — 1

[In One Sentence]

- U.S. President Joe Biden and Chinese President Xi Jinping held a summit meeting in Woodside, California.
- During the meeting, President Biden “emphasized” the competitive nature of the bilateral relationship and raised continued concerns about “the PRC’s unfair trade policies, non-market economic practices and punitive actions against U.S. firms.”
- President Xi warned against attempts to “stiffl[e] China’s technological progress” and asked the U.S. to lift its “unilateral sanctions so as to provide an equal, fair and nondiscriminatory environment for Chinese businesses.”
- Meanwhile, members of the Asia-Pacific Economic Cooperation (APEC) framework committed to increase focus on sustainability, resilience and inclusiveness regarding trade and investment in the region.
- APEC’s business advisory group had previously recommended members to liberalize trade in environmental goods and services to foster “just and affordable transition” towards sustainability and the green economy.
- Shortly after the Xi-Biden meeting, China’s General Administration of Customs lifted restrictions on poultry imports from seven U.S. states, and China’s anti-trust regulator (SAMR) approved the Broadcom-VMware deal with minor conditionalities attached.
- The U.S. Commerce Department announced plans to invest US\$3 billion to expand U.S. advanced packaging capacity as part of the implementation process of the CHIPS and Science Act.
- In its annual report to Congress, the U.S.-China Economic and Security Review Commission recommended a single export licensing system to tighten enforcement of export controls related to China.
- In the inaugural meeting of the cabinet-level Council on Supply Chain Resilience, the Biden administration committed to strengthen U.S. supply chains on critical technology and goods.

[Mark the Essentials]

- According to President Biden, China’s unfair trade policies and non-market practices harmed American workers and families, and the United States will “continue to take necessary actions to prevent advanced U.S. technologies from being used to undermine our own national security.” Meanwhile, President Xi argued that

the export control, investment screening and sanctions “seriously hurt China’s legitimate interests” and “is nothing but a move to contain China’s high-quality development and deprive the Chinese people of their right to development.”

- In a declaration concerning “principles on integrating inclusivity and sustainability into trade and investment policy,” APEC members upheld “policies that support a free, open, fair, non-discriminatory, transparent and predictable trade and investment environment” as well as an increase in focus on trade and investment policies that advance sustainability, resilience and inclusivity. The declaration emphasized that APEC is a “voluntary, non-binding and consensus-based organization” and reflects the position of all APEC members, although the United States previously said China was the only economy that did not support the principles.
- Among concerns regarding Beijing’s “unfair trade practices,” the Biden administration specifically highlighted the electric vehicle (EV) market prior to the Xi-Biden meeting. President Biden argued that the manufacturing offshore had cost the United States “tens of thousands of auto jobs” and vowed to address the challenge and “outcompete China and everyone else in the world.”
- Following China’s announcement that producers have to acquire permits before exporting graphite out of China, representatives of North America’s automotive industry told reporters that restrictions on graphite could impact the manufacturing of EV batteries. According to the industry, the restrictions could be part of China’s attempt to counter U.S. preferential policies that encourage American, European, Japanese, and South Korean companies to ‘friend-shore’ to North America.

[Keeping an Eye On...]

- On November 15, President Joe Biden and President Xi Jinping held a successful summit meeting at the Filoli Estate, 30 miles south of San Francisco. The meeting threw up a number of lower-level ‘deliverables.’ The two sides agreed to: (1) resume their military-to-military dialogue, both at the ministers’ level as well as across their institutionalized defense dialogue mechanisms; (2) jointly tackle the fentanyl crisis, with Beijing pledging to crack down on shipments of fentanyl precursors chemicals to North America in exchange for Washington delisting the Ministry of Public Security’s Institute of Forensic Science from its entity list; (3) convene a U.S.-China working group to address the dangers of AI; and (4) increase direct flights as well as people-to-people contacts between the two countries. A day earlier, the two sides released a joint statement on enhancing cooperation on climate change, including at the on-going COP28 meeting. The breakout of mutual goodwill should not be exaggerated; ‘extreme competition’ and ‘selective decoupling’ remains the ‘new normal’ in ties. Just as an example, on December 1, the Treasury Department is expected to issue tax credit rules that strip out Chinese content to the maximum practicable extent from U.S. electric vehicle (EV) supply chains; China being designated as a “foreign entity of concern.” Just as promptly, on December 1, China’s controls on exports of several categories of natural and synthetic graphite, key materials used in the production of EV batteries and fuel cells, are due to kick-in. High-purity natural and synthetic graphite has vital uses in other clean-tech industries too, and the controls resemble similar curbs imposed in August on the export of germanium and gallium, two minerals critical to the production of semiconductors. The thinking, presumably, at the Chinese end is that if these minerals and materials are to be made available to non-Chinese players in the industry, those players will either have to set up production in China to source these inputs or plead with their national governments to allow Chinese-invested companies to set up production facilities on their home soil. While this strategy will cut no ice in Washington, it could sway outbound and inbound investment decision-making in European capitals. The contest to reshore and ‘friendshore’ and thereby re-wire supply chains has just begun, and there are many more chapters yet to be written.

[Expanded Reading]

- [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
- [China lifts HPAI restrictions for seven US states - GAIN](#), *The Poultry Site*, November 27, 2023
- [CHIPS for America Releases Vision for Approximately \\$3 Billion National Advanced Packaging Manufacturing Program](#), National Institute of Standards and Technology, November 20, 2023
- [San Francisco Principles on Integrating Inclusivity and Sustainability into Trade and Investment Policy](#), Asia-Pacific Economic Cooperation, November 17, 2023
- [President Xi Jinping Meets with U.S. President Joe Biden](#), Ministry of Foreign Affairs of the People’s Republic of China, November 16, 2023
- [Readout of President Joe Biden’s Meeting with President Xi Jinping of the People’s Republic of China](#), The White House, November 15, 2023
- [Business Leaders: Embrace Collaboration to Tackle Global Challenges in Equity, Sustainability and Trade](#), APEC Business Advisory Council, November 14, 2023
- [Remarks by President Biden on Delivering for Working Families and Creating Good-Paying Union Jobs | Belvidere IL](#), The White House, November 9, 2023

2 — IPEF Still Far from Completion While Uncertainties Remain— 2

[In One Sentence]

- Members of the Indo-Pacific Economic Framework (IPEF) signed the IPEF Supply Chain Agreement (Pillar II) and announced the “substantial conclusion” of negotiations on IPEF’s Pillar III (Clean Economy) and Pillar IV (Fair Economy).
- Meanwhile, the White House acknowledged that more work is needed on Pillar I (Trade), while the Office of the U.S. Trade Representative (USTR) reiterated its commitment to “a mutually beneficial Trade Pillar outcome” that advances workers’ rights, “builds trust in the digital economy,” and benefits U.S. agricultural producers.
- IPEF members also intended to spur private-sector investment in green technologies and clean energy, partly through the establishment of an annual IPEF Clean Economy Investor Forum.
- The newly signed Agreement on the Indo-Pacific Economic Framework for Prosperity will create an IPEF Council to coordinate the collective operation of all four IPEF pillars, and a Joint Commission to monitor works under Pillars II-IV.
- In a separate statement by the White House, leaders of IPEF members also announced plans to launch a “critical minerals dialogue” to enhance regional economic competitiveness.
- The United States and Indonesia earlier elevated their relationship to “the highest possible level of cooperation” and acknowledged opportunities such as to achieving “tangible progress” on critical minerals, digital connectivity and investment.

[Mark the Essentials]

- While the United States and other IPEF members remain committed and optimistic about IPEF’s Pillar I on trade, negotiators reportedly believe that (much) more time would be needed to resolve differences on digital trade and labor issues, and that negotiations might be pushed into 2024 and perhaps further beyond. Meanwhile, a White House official told reporters that more efforts and possible progress might be expected “in the weeks and months ahead.”
- The USTR previously withdrew support for an e-commerce proposal addressing source code, the free flow of cross-border data and data localization requirements at the World Trade Organization (WTO), leading to a strong backlash from lawmakers, businesses and stakeholders. In defending the move, Deputy U.S. Trade

Representative and U.S. ambassador to the WTO María Pagán argued that the United States needed time to “rethink” its approach given that it is taking a “different tack on digital issues” during IPEF negotiations.

- Criticizing the USTR’s decision to withdraw support for the WTO data and source code proposal, the U.S. Chamber of Commerce argued that the U.S. digital policy was “a matter of U.S. law” and that USTR’s “change in U.S. policy” was not “well-vetted.” The chamber also questioned whether the administration was “transparent” enough about its policy and whether it remains committed to pursue “high-standard digital trade rules” in forums such as IPEF.
- U.S. officials reportedly revealed that significant progress has been made regarding IPEF Pillar I’s provisions on biotech and sustainable agriculture, and that some issues regarding artificial intelligence were resolved.
- Although the White House stated that it has consulted, and will continue to consult, “extensively” with Congress and stakeholders, House and Senate leadership have repeatedly called on the administration to increase consultation in advance and to improve IPEF negotiation transparency. The Biden administration has maintained that IPEF does not need congressional ratification as long as it does not contain market access and trade liberalization provisions.

[Keeping an Eye On...]

- For as long as the majority of the Asia-Pacific region’s economies favor rules-bound trade and economic liberalization, the Asia-Pacific Economic Cooperation (APEC) framework will remain a prominent feature of the region’s landscape. The institutional edifice envisaged by APEC’s intellectual architects was crafted in the image of the Asia-Pacific region and its colors tied intentionally to the mast of trade multilateralism, to cater to this need for regional trade and investment liberalization. APEC is sensitive to the region’s economic, cultural and ideological diversity and does not seek to outshine other regional forums or lend a platform to the largest participants to dominate proceedings. It seeks, rather, to concertedly push forward with step-by-step, pragmatic and sustained cooperation that complements the open and non-discriminatory multilateral trading system. The same cannot be said about the fly-by-night scheme conjured by the Biden administration, known as the Indo-Pacific Economic Framework for Prosperity (IPEF). It pays little attention to the plurality of social systems in the Asia-Pacific, it does not complement the region’s existing trade liberalization initiatives—the RCEP and the CPTPP, and has intentionally been crafted to discriminate against a regional player, China, particularly insofar as its supply chain pillar is concerned. That the negotiations on its trade pillar are collapsing in a heap, in part due to the thin gruel on offer in terms of market access incentives, should not distract from the fact that IPEF was simply envisioned in the first place as a placeholder to placate the region until the U.S. political establishment could get its story right on trade. Indeed, it might be quite a while before Washington gets its story right on trade, given the drift towards protectionism in both parties. If Donald Trump does return to office in 2025 and tosses the IPEF agreements and negotiations into the dustbin, as he has vowed to do, nobody will be any poorer off (aside from a whole lot of wasted bureaucratic time). In the meantime, APEC will keep humming on. And the United States’ participation within that framework will anchor its trade and investment policy presence in the region.

[Expanded Reading]

- [What’s at Stake for the United States at the 13th WTO Ministerial?](#), event by the Center for Strategic & International Studies, November 20, 2023
- [Joint Statement From Indo-Pacific Economic Framework For Prosperity Partner Nations](#), U.S. Department of Commerce, November 16, 2023
- [Leaders’ Statement on Indo-Pacific Economic Framework for Prosperity](#), The White House, November 16, 2023

- [U.S. Press Statement on Indo-Pacific Economic Framework Pillar I](#), Office of the United States Trade Representative, November 16, 2023
- [Remarks by President Biden at the APEC CEO Summit | San Francisco, CA](#), The White House, November 16, 2023
- [On-the-Record Press Call by NSC Coordinator for Strategic Communications John Kirby and Deputy National Security Advisor for International Economics Mike Pyle to Preview President Biden's Day Ahead at APEC](#), The White House, November 16, 2023
- [Joint Statement of the Leaders of the United States and the Republic of Indonesia: Elevating Relations to a Comprehensive Strategic Partnership](#), Ministry of Foreign Affairs of the Republic of Indonesia, November 14, 2023

On the Hill



[Legislative Developments]

- House Foreign Affairs Committee Chairman Michael McCaul and Ranking Member Gregory W. Meeks introduced a bill to “build on” the Biden administration’s Executive Order on outbound investment controls and enhance restrictions and transparency on outbound investment to China.
- A bipartisan group of nine Senators reintroduced a resolution to call for the Senate ratification of the United Nations Convention on the Law of the Sea (UNCLOS) to “counter countries like Russia and China that continue to exploit our absence from key ocean governance diplomatic forums.”
- The House Financial Committee unanimously advanced the Iran-China Energy Sanctions Act of 2023 to sanction financial accounts enabling Chinese purchases of Iranian oil.

[Hearings and Statements]

- Senators Sherrod Brown and Bob Casey cautioned the Biden administration against reducing Section 301 and Section 232 tariffs on Chinese goods, arguing that the tariffs serve as important means to combat “anti-competitive behaviors by China” and protect American steel and aluminum producers.
- Addressing the State Department’s ambassador at large for cyberspace and digital policy Nathaniel Fick, Senator Todd Young warned that failure to develop international rules on digital trade and data flow may “jeopardize” AI collaboration and cooperation between the United States and allies.
- A bipartisan group of Senators, most of which were from the Senate Finance Committee, called on U.S. Customs and Border Protection to step up oversight and enforcement regarding forced labor laws concerning Chinese companies.

[Expanded Reading]

- [Brown, Casey Urge Biden Administration To Keep Tariffs In Place On Chinese Imports](#), Office of Senator Sherrod Brown, November 21, 2023
- [Van Hollen Joins Hirono, Murkowski, Kaine in Reintroducing Resolution Calling on U.S. Senate to Ratify UN Convention on the Law of the Sea](#), Office of Senator Chris Van Hollen, November 16, 2023
- [Gottheimer & Lawler’s Bipartisan Iran-China Energy Sanctions Act Unanimously Passes House Financial Services Committee](#), Office of Rep. Josh Gottheimer, November 15, 2023
- [U.S. Leadership On Artificial Intelligence In An Era Of Strategic Competition](#), hearing in front of the Senate Foreign Relations Committee, November 15, 2023
- [Bipartisan Senators Urge CBP to Stop Imports of Clothing Made with Forced Labor By Ramping Up Oversight and Enforcement of Supply Chains](#), United States Senate Committee on Finance, November 15, 2023
- [McCaul, Meeks Introduce Bill to Restrict Outbound Investment](#), House Foreign Affairs Committee, November 13, 2023

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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.

[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 overstressing 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.”

- 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.

[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.

[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 Comprehensive Bipartisan 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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