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## What's Been Happening

### 1 — U.S. Aims to Take a Full Bite of ByteDance's TikTok — 1

#### [In One Sentence]

- On March 13, the House of Representatives overwhelmingly passed a bill (352-65) that would lead to a nationwide ban on TikTok if its Chinese owner ByteDance does not divest the U.S. assets of the app within six months.
- The bill now moves to the Senate where a counterpart text does not exist and where the bill's future remains uncertain.
- House Select Committee on the Chinese Communist Party Chair Mike Gallagher (R-WI), one of the bill's authors, said ByteDance's full divestiture of TikTok is the "only path" for its continued operations in the U.S.
- After the bill passed the House, the White House reiterated its own support for the bill, telegraphing its desire to see TikTok split from its China-based parent company.
- Former Treasury Secretary Steven Mnuchin has announced plans to build an investor group to acquire TikTok should it become available on the market.

#### [Mark the Essentials]

- Senate Democratic leader Chuck Schumer (D-NY) has not yet committed to bringing the bill up for a vote, while some senators fear that a slower committee-based process could allow TikTok's lobbying to neutralize the push for the ban in the upper chamber.
- TikTok, a Singapore-based company with over 170 million American users, is the full subsidiary of the Chinese technology firm ByteDance, which has frequently come under scrutiny since the Trump administration for its connections to the Chinese Communist Party.
- Rep. Mike Gallagher contended that the bill is not a ban on TikTok while noting that the forced sale of TikTok "absolutely could" happen before the United States' presidential election this November.
- Speaking on behalf of the Biden administration, White House national security communications advisor John Kirby said "we don't want to see a ban on TikTok" and suggested that the purpose of divestiture was to address the concerns about "data security and what ByteDance and what the Chinese Communist Party can do with the information they can glean off of Americas' use of the application." President Biden had earlier said that he would sign the bill in its current form if it arrives on his desk.

- In response, China’s Ministry of Commerce asked the U.S. to “respect the principles of a market economy and fair competition [and] stop unjustly suppressing foreign companies” while describing the U.S.’ actions as “the logic of a bandit.”
- The Chinese government is reported to have signaled to ByteDance that it will not allow a forced sale of TikTok and would rather have the app be banned in the United States.

### [Keeping an Eye On...]

- We’ve seen this movie before. On August 14, 2020, President Trump issued an Executive Order instructing ByteDance to divest all interests and rights in the U.S. operations of its video-sharing app TikTok within 90 days and, upon divestment, destroy all user data wheresoever located. ByteDance shot back in court that the order violated TikTok’s First Amendment expressive rights, its Fifth Amendment due process protections as well as the Fifth Amendment’s ‘Takings Clause’, and amounted to an overbroad and unjustified claim of authority. The court sided with ByteDance. By restricting the transmission of personal communications and informational materials, items covered under the International Emergency Economic Powers Act’s (IEEPA) Berman Amendment, President Trump had exceeded his authority under the IEEPA and violated the First Amendment rights of TikTok and its users. Relatedly, on August 28, 2020, China’s Commerce Ministry updated its list of “forbidden and restricted technology exports” to include “personalized information recommendation services based on data analysis”—in effect, meaning that ByteDance would need government approval (which would not be forthcoming) to effectuate a divestiture. For added measure, China enacted a new Export Control Law two months later on October 19, 2020, which permitted recourse to “reciprocal measures” if another country abuses export controls to endanger national security or national interests. In sum, the White House’s divestiture order was nullified and the app in any case was not allowed to go on sale. The upshot of this failure though was the spawning of a creative localized data stewardship arrangement that ensured that practically all of TikTok’s U.S. data was walled off and would reside within the U.S. tech company Oracle’s cloud, and that Oracle would serve as TikTok’s local data controller and—in addition to a CFIUS-vetted oversight board—its auditor for verifying its recommendation algorithm. Three-and-a-half years on, the players have changed this time around but the storyline remains the same. Instead of the White House, it is Congress taking the lead via the *Protecting Americans from Adversary Controlled Applications Act*, which passed the House by a 352-65 margin and is now under consideration in the Senate. And rather than depend on the President’s IEEPA authority in the service of national security (which the courts ruled he did not enjoy on informational materials), a legislative workaround is sought to be effected that would authorize the Justice Department to enforce a ban on the app, failing its divestiture. Relatedly, the *RESTRICT Act* of March 2023 had also sought to sidestep IEEPA’s informational materials exception and modernize the president’s international economic authorities for the digital era by granting the Commerce Department the authority to block ICT apps from ‘untrusted’ vendors in the name of national security. Neither bill, however, engages the essential legal crux of the matter—that being, that courts across the land and all the way up to the Supreme Court have ruled that mere invocation of a national security threat based on supposition or guesswork is insufficient to justify the squelching of First Amendment rights. The threat must be real, and a proposed ban an unavoidable option to address this threat. TikTok must be shown to have aligned its algorithm with Beijing’s disinformation efforts at the latter’s behest or coercion and be likely to do so again, if such a ban is to be sustained. Neither the White House in 2020 nor the congressional bills today can mount this evidentiary threshold. Ultimately, TikTok will win the day in court (if the Senate follows through and sends the House bill to the President’s desk) but the true failure here is not one of legislation or law; rather, it is one of America’s lack of self-confidence. At the

height of the Cold War in the mid-1960s, the Supreme Court ruled in *Lamont v. Postmaster General* that U.S. citizens enjoyed a right to receive foreign information, even if it was “communist political propaganda.” In the mid-1980s, it was the policy of the Reagan administration that despite Soviet bloc intelligence gathering efforts, the products of federally-funded fundamental science and engineering research should remain unrestricted—subject, of course, to relevant national security classification. Today, that self-confidence seems to have evaporated in the face of the China Challenge. TikTok is supposedly that propaganda organ that will, on cue, utilize subliminal techniques to convert America’s youth into card-carrying red communists. Yeah. About the only commonality that links the two is that neither bothers too hard about the mere inconvenience of voting!

### [Expanded Reading]

- [House passes a bill that could lead to a TikTok ban if Chinese owner refuses to sell](#), *AP News*, March 13, 2024
- [House Passes Bill to Force TikTok Sale From Chinese Owner or Ban the App](#), *The New York Times*, March 13, 2024
- [US House passes bill to force ByteDance to divest TikTok or face ban](#), *Reuters*, March 14, 2024
- [Former Treasury Secretary Mnuchin is putting together an investor group to buy TikTok](#), *CNBC*, March 14, 2024
- [TikTok’s lobbying firms may be next target of blacklist by lawmakers](#), *Politico*, March 15, 2024
- [How TikTok and its parent company spent over \\$13 million on struggling lobbying campaign](#), *CNBC*, March 31, 2023
- [China Signals Opposition to Forced Sale of TikTok in the U.S.](#), *The Wall Street Journal*, March 15, 2024
- [Forced sale of TikTok “absolutely could” happen before Election Day, Rep. Mike Gallagher says](#), *CBS News*, March 17, 2024
- [After TikTok bill sails through House, senators pump the brakes](#), *The Washington Post*, March 15, 2024

## 2 — Intensifying Measures and Calls in EV and Shipping Supply Chains — 2

### [In One Sentence]

- Following his State of the Union address, President Joe Biden asked Congress for more funding to boost innovation and focus on the “strategic competition with the People’s Republic of China.”
- A group of major unions led by the United Steelworkers have petitioned the Office of the U.S. Trade Representative to open a Section 301 probe of China’s shipbuilding practices.
- A Congressional probe into ship-to-shore cranes at U.S. ports concluded that some Chinese-made cranes used at these ports contained communications equipment that was superfluous and not essential to supporting normal operations.
- The Commerce Department has initiated a probe, as part of the regulatory rulemaking process, to evaluate the potential national security threat posed by smart vehicles that incorporate technology and software from countries of concern such as China.
- China has stated it will prioritize policies aimed at making the country more scientifically and technologically self-reliant in 2024.

### [Mark the Essentials]

- The unions claim that the biggest obstacle to the recovery of the American commercial shipbuilding industry is the “unfair trade practices of the world’s largest shipbuilding nation: China.”
- The Biden administration had previously warned about the “overreliance” of Chinese manufactured products, including cranes, in critical U.S. port operations.

- The Biden administration is concerned that Chinese electric vehicle (EV) companies could use technology such as vehicle cameras to not only obtain American driver's personal data or capture information on U.S. infrastructure but also to disable vehicles remotely.
- In addition to its policies of building self-reliance, the Chinese government also called for "an equal and orderly multipolar world and universally beneficial and inclusive economic globalization" in its 2024 government work report and its national economic and social development plan during the "Two Sessions" meeting.

### [Keeping an Eye On...]

- Election season is upon us. Can clarion calls for protectionism dressed-up as high-minded defense of economic security be far away? And especially at a time when the political pendulum is swinging back once again towards blue collar interests? Incredible as it might be, though, the petitioner pleading for protection this time is the U.S. shipbuilding industry. It is incredible, because there is no more cosseted industry perhaps in America than the U.S. maritime industry—purveyors of the most aggressive form of protectionism for over a century. On March 12, 2024, five national labor unions filed a Section 301 petition alleging that China's practices in the maritime, logistics and shipbuilding sector are unreasonable and discriminatory and have conspired to reduce the "American commercial shipbuilding industry [to] a shell of its former self." To obtain the elimination of China's practices, a port fee on Chinese-built ships that dock at U.S. ports should be assessed, which would be plowed into a Shipbuilding Revitalization Fund to revive the domestic industry. Outwardly, the unions are correct on both counts. Chinese shipbuilders have benefitted from large government subsidies which has led to a reallocation of global production in their favor (mostly at the expense of the Japanese). And it is equally true that American shipyards are a shell of their former selves. U.S. shipyards produce less than 1% of the world's commercial vessels today; in the mid-20<sup>th</sup> century, before the rise of the Japanese, South Korean and Chinese shipbuilders, U.S. shipyards used to churn out the largest number of vessels. That's where the accuracy in the unions' Section 301 petition ends. China is not the cause of the slow demise of U.S. shipbuilding. That dubious honor belongs closer to home—and, more specifically, in the aggressive protectionism sought by and handed down to the U.S. shipbuilding industry for over a century and counting. The most notorious of these laws is the *Jones Act* of 1920, which restricts all domestic seaborne transportation of goods to ships built, owned, and operated by U.S. nationals. And for as long as the U.S. has signed free trade agreements with other countries dating back to the mid-1980s, the shipbuilding sector and related cabotage laws have been carved out from the purview of reciprocal trade concessions. Feather-bedded behind tall protectionist walls and having chosen to subsist on a captive domestic market, the competitiveness of U.S. shipbuilding has eroded interminably, to the point that U.S.-built vessels today cost an estimated four to five times that of vessels built in foreign shipyards. And domestic point-to-point shipping rates are even higher. The Biden administration may at many levels be protectionist by inclination, but it is not stupid. A bit of tokenism aside, it is not about to throw good money after bad. It will likely indulge the shipbuilding unions by initiating a Section 301 probe. But if it is returned to office in 2025, it will not shovel significant sums of money to an industry that is more-or-less dead-in-the-water. Or gratuitously irritate Beijing with port fees (China after all owns the whip hand in this industry) at a time when there are much bigger (trade and technology policy) fish to fry.

### [Expanded Reading]

- [FACT SHEET: The President's Budget Confronts Global Challenges and Defends Democracy](#), The White House, March 11, 2024

- [President Biden's Fiscal Year 2025 Budget Would Strengthen Commerce Department's Mission to Boost American Innovation and Competitiveness](#), Department of Commerce, March 11, 2024
- [US unions ask Biden administration to probe Chinese shipbuilding](#), Reuters, March 12, 2024
- [Congressional probe finds communications gear in Chinese cranes, raising spying concerns](#), CNN, March 8, 2024
- [Shipbuilding: the new battleground in the US-China trade war](#), Financial Times, March 12, 2024
- [Citing National Security Concerns, Biden-Harris Administration Announces Inquiry into Connected Vehicles | U.S. Department of Commerce](#), Bureau of Industry and Security, February 29, 2024
- [China releases full text of government work report](#), Xinhua, March 12, 2024

## On the Hill



### [Legislative Developments]

- Sen. Marco Rubio (R-FL) introduced three new bills aimed at preventing Chinese automobiles from “flooding” the U.S. market.
- A group of House Republicans have introduced a “Countering Communist China Act,” which aims to strip China of its permanent normal trade relations (PNTR) status, impose restrictions on outbound investment to China, and pursue free trade deals with allies.
- Senate Finance Committee members Mark Warner (D-VA) and Marsha Blackburn (R-TN) introduced the “Promoting United States Leadership in Standards Act of 2024” to restore U.S. leadership in technology standards setting.

### [Hearings and Statements]

- At a Senate Finance Committee hearing, industry and labor representatives warned about the threat of subsidized Chinese imports to U.S.-based manufacturers and called for policy reforms to strengthen trade enforcement.
- Three Democratic senators, Sen. Sherrod Brown (D-OH), Sen. Debbie Stabenow (D-MI) and Sen. Gary Peters (D-MI), have urged the Biden administration to impose higher tariffs on Chinese EVs in a letter to U.S. Trade Representative Katherine Tai and Commerce Secretary Gina Raimondo.
- The Senate failed to overturn President Biden’s veto on the attempt to undo the administration’s EV charging station requirements.

### [Expanded Reading]

- [Hearing: American Made: Growing U.S. Manufacturing Through the Tax Code](#), Senate Committee on Finance, March 12, 2024
- [Senators Peters, Stabenow, and Brown ... | Senator Gary Peters](#), U.S. Senate, March 7, 2024
- [RSC introduces historic anti-CCP bill](#), The Republican Study Committee, February 29, 2024
- [H.R.7476 - To counter the malign influence and theft perpetuated by the People's Republic of China and the Chinese Communist Party](#), U.S. Congress, February 29, 2024
- [Warner, Blackburn Introduce Legislation to Reestablish U.S. Leadership in International Standards-Setting for Emerging Tech - Press Releases - Mark R. Warner](#), U.S. Senate, February 29, 2024