



ICAS  
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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.

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## What's Been Happening

### 1 — Desultory Progress on the U.S. Preferential Trade Negotiations Front — 1

#### [In One Sentence]

- Both the United States and the European Union have decided to extend the suspension of tariffs related to their steel and aluminum dispute in order to take a breather and push out the finalization of their Global Arrangement on Steel and Aluminum (GSA) to 2025.
- Analysts argued that U.S.-EU negotiations leading into the next Trade and Technology Council meeting have much to address including a transatlantic approach on China and initiatives on sustainable trade, while business groups on both sides remain concerned about digital regulations and EV-linked subsidies.
- U.S. Trade Representative Katherine Tai said “significant progress to achieving consensus” was made in more than five of the ten issue areas under the Indo-Pacific Economic Framework (IPEF)’s trade pillar but the trade pillar’s 2024 negotiation agenda is nevertheless “very full.”
- On the other hand, analysts and former officials maintain that negotiations of IPEF’s trade pillar likely will not conclude or make much or any progress in 2024, given the upcoming U.S. elections.
- Tai also stated that U.S. and Taiwanese negotiators have made “excellent progress” in concluding a broader trade agreement under the U.S.-Taiwan Initiative on 21st-Century Trade.

#### [Mark the Essentials]

- Following an earlier EU statement that it would suspend “rebalancing tariffs” related to the steel and aluminum dispute until March 31, 2025, the Biden administration announced that it would suspend tariffs on EU steel and aluminum imports through December 31, 2025. In a follow-up statement, USTR said that the U.S. suspension will “give both sides additional time to negotiate a global arrangement that addresses carbon intensity and non-market capacity in the steel and aluminum industries.”
- While recommending policies to promote U.S. manufacturing exports, U.S. President Biden’s Export Council argued that the United States should conclude critical minerals agreements with the European Union and the United Kingdom and pursue similar such agreements with other allies and partners. According to the Export Council, such agreements “harness the power” of the United States’ Inflation Reduction Act (IRA) to secure commitments from allies and partners on labor and environment “in pursuit of [the U.S.] global clean energy agenda,” while “expanding opportunities for U.S. exporters.”

## [Keeping an Eye On...]

- With the veritable ring of the ‘ode of joy’ in the Pittsburgh backdrop, the Biden administration and the EU kicked-off their much anticipated Trade and Technology Council (TTC) framework in September 2021. In the annex to their joint statement, they set out an ambitious set of trade policy goals, including on policy cooperation towards non-market economies (NMEs), on trade and labor cooperation, on new arrangements related to trade and environmental sustainability, and on avoiding a subsidy race, among others. Almost two-and-a-half years later, as the two sides gear up for their next TTC meeting at month-end (and perhaps the final one of this administration), that ‘ode to joy’ has given way to groans of frustration. On NMEs, on trade and labor, on trade and environment, on state subsidies, the standout feature has been the inability of the two sides to translate goals into outcomes or, for that matter, even make meaningful progress on these fronts. On non-market practices—forced technology transfer; market-distorting industrial subsidies; the establishment of domestic and international market share targets; and anti-competitive and non-market actions of SOEs—the two sides have failed to formulate a joint plan of action, much less binding multilateral or Euro-Atlantic rules. To the contrary, both sides have legislated their own—and not necessarily WTO-rules compliant—subsidy packages, which has in turn derailed their joint aspiration to avoid a subsidy race. On the trade and sustainable environment front, the two sides failed to close out their Global Arrangement on Sustainable Steel and Aluminum (GSA) by their self-imposed end-year deadline and have kicked this can out to 2025. The GSA was prompted by the need for the two sides to work out a successor trading arrangement following the United States’ Section 232 tariffs. On the trade and labor front, the two sides remain at odds over provisions related to labor violations-related investigations in third countries linked to a Critical Minerals Agreement (CMA) intended to enable European companies to benefit from the U.S.’ IRA electric vehicle-related sourcing requirements. One common thread ties together the inability of the U.S. and the EU to close out negotiations. Washington insists on expedient, self-serving solutions which more often than not violate multilateral rules and mechanisms, be it the subsidy rules in the Inflation Reduction Act (IRA) or provisions within the GSA and CMA. Brussels, on the other hand, is willing to partake of the commercial benefits flowing from these non-conforming executive and legislative measures in Washington, but is unwilling to jointly author new protocols in frontier areas of rulemaking (trade and environment sustainability; industrial subsidies; national economic security) that clearly digress from international principles and practices. In the course of discarding the multilateral rulebook to facilitate its ‘extreme competition’ with China, the Biden administration has also made it harder to draft ‘like-minded’ international rules-based coalitions against China. The desultory progress in negotiations with the EU is a prime example.

## [Expanded Reading]

- [A Proclamation on Adjusting Imports of Steel Into the United States](#), The White House, December 28, 2023
- [Statement from Ambassador Katherine Tai on Steel and Aluminum Tariff Rate Quota Extension](#), Office of the U.S. Trade Representative, December 28, 2023
- [EU prolongs tariff suspension for US products related to the steel and aluminum dispute](#), European Commission, December 19, 2023
- [Fireside Chat with Katherine Tai](#), event by Aspen Institute, December 7, 2023
- [U.S. International Trade in Goods and Services, October 2023](#), U.S. Bureau of Economic Analysis, December 6, 2023
- [PEC Letter Manufacturing - November 29, 2023](#), President’s Export Council, November 29, 2023

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## 2 — Moribund Outlook for Trade in 2024— 2

### [In One Sentence]

- The Office of the U.S. Trade Representative (USTR) once again extended COVID-related exclusions linked to the Section 301 tariffs on Chinese imports “to allow for...alignment” with the tariffs’ four-year review.
- In the leadup to the World Trade Organization’s (WTO) 13th ministerial meeting in February, senior officials debated whether to maintain low barriers on digital trade flows and the effect of e-commerce flows on developing economies.
- Following the Biden administration’s decision to withdraw support for a WTO proposal that would prohibit data localization and source code disclosure requirements, many analysts have argued that the decision has led to much uncertainty on global digital trade policy rulemaking since the United States is itself undecided and divided in this regard.
- Meanwhile, USTR Katherine Tai argued that it would be “massive malpractice” to finalize the U.S. position on e-commerce at the WTO when the United States is still “struggling” to have a “very robust regulatory system” for technology and data flows at home.
- While global trade has an increasingly integral role to play in addressing the climate crisis, analysts worry that progress will slow or even pause as the upcoming U.S. elections near.

### [Mark the Essentials]

- On December 26, 2023, USTR stated that it would extend the Section 301 tariff exclusions—which were originally set to expire on December 31, 2023—through May 31, 2024. USTR argued that the extension would make time for another round of public comments in early 2024 and “facilitate the alignment” of the exclusion decisions with the ongoing four-year review.
- Australia, Japan and Singapore (the three co-convenors of the WTO Joint Initiative on E-commerce) recently announced the substantial conclusion of negotiations on a number of issues including on electronic transactions framework, consumer protection and cybersecurity. Negotiations related to telecommunications, e-payments and certain information and communication technology remain to be finalized, while proposals on cross-border data flows, data localization and source code will not be included in the current round. The e-commerce joint statement initiative (JSI) at the WTO has more than 90 participants, including the United States, the European Union, and China.
- While the U.S. Congress is seen as unlikely to pass or advance controversial trade bills in 2024 given the funding fight and the upcoming elections, lawmakers and analysts argued that progress can still be made to reauthorize the Generalized System of Preferences, reform the *de minimis* system to limit access to the duty-free rule, and advance the Leveling the Playing Field 2.0 Act to provide the U.S. government more policy tools on trade remedy enforcement.

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

- On entering office, it took USTR Katherine Tai eight months to unveil the Biden administration’s “new approach” on trade policy towards China. When that approach was laid out, it was, for the most part, hollow and to the extent that there was some substance to it, this substantive element appeared similar to that of the Trump administration’s trade policy approach towards China. There were apprehensions at the time—borne out to be correct now—that some or many of the United States’ Section 301 tariffs, judged to be illegal by a WTO panel, would also become permanent. That unveiling of the administration’s “new approach” was nevertheless the high point of USTR’s China policy. In eight months, a policy—however incomplete—had at

least been tabled. Today, the speed of that China policy unveiling looks almost breakneck by comparison. On May 3, 2022, USTR initiated a review of the Section 301 tariffs on Chinese imports, one that was statutorily mandated. As per Ms. Tai, the review even after multiple extensions was set to be completed by Fall 2023. Come late-December, and with people's attention turned to festive matters elsewhere, the completion of that review was once again kicked out to sometime in 2024 (USTR will not give a 2024 final date of completion). As matters now stand, one should not rule out the possibility that there might never be a date of completion of the Section 301 tariff review in 2024. And if completed, that the review's findings will be kept under wraps through 2024, given that the administration would be disinclined to touch these tariffs with a bargepole in a combusive election year. Or maybe, on the other hand, the administration will openly embrace the tariffs after the review to underscore its protectionist credentials on the campaign trail and out-trump Trump's economic nationalist agenda. Regardless, it bears remembering that the first tranche of the Section 301 tariffs took less than one month to finalize and a little over three months to implement in the spring and summer of 2018. Now, it takes an eternity to review them, with USTR effectively kicking the review into the long grass. One way or the other, the outlook for the removal or significant reduction of the Section 301 tariffs looks bleak in 2024. And, truth be told, their substantive removal looks just as bleak even beyond 2024.

### [Expanded Reading]

- [USTR Extends Exclusions from China Section 301 Tariffs to Allow for Comments on a Review of the Exclusions and Alignment with Four-Year Review](#), Office of the U.S. Trade Representative, December 26, 2023
- [WTO Joint Statement Initiative on E-commerce: Co-Convenor Statement by Australia, Japan and Singapore](#), Ministry of Foreign Affairs of Japan, December 20, 2023
- [USTR Tai's Justification to Take a Time-out on Digital Trade Does Not Hold Up](#), Information Technology & Innovation Foundation, December 13, 2023
- [Remarks by Ambassador María L. Pagán at Virtual World Trade Organization mini-Ministerial](#), Office of the U.S. Trade Representative, December 11, 2023
- [After USTR's Move, Global Governance of Digital Trade Is Fraught with Unknowns](#), Centre for International Governance Innovation, December 11, 2023
- [Fireside Chat with Katherine Tai](#), event by Aspen Institute, December 7, 2023

## On the Hill



### [Legislative Developments]

- The House's Foreign Affairs Committee voted 35-8 to advance a bill that seeks to give the President more tools to address and alleviate the impact of "economic coercion" of U.S. allies and partners. The bill will now be sent to the House floor for further discussion and voting.
- A bipartisan pair of Senators introduced a bill to "modernize U.S. customs laws" by bolstering U.S. Customs and Border Protection's data collection and increasing inter-agency data sharing practices.
- The House's Foreign Affairs Committee advanced four bills that propose reforms to the existing export control system, including by facilitating inter-agency coordination and expanding transparency and disclosure requirements.
- U.S. Senator Marco Rubio introduced a bill that would prevent automakers from receiving federal tax credits, grants, and loans if they offshore manufacturing from the United States.

## [Hearings and Statements]

- A group of progressive Democratic lawmakers, including Sens. Elizabeth Warren, Amy Klobuchar, Bernie Sanders and Rep. Mary Gay Scanlon, called on the Biden administration to support the European Union's Digital Markets Act and continue efforts to "rein in the Big Tech."
- An opposing bipartisan group of more than 20 lawmakers urged the President to "immediately investigate Europe's 'digital sovereignty' agenda" and protect American firms and consumers from "E.U. overreach."
- In a report on how to "win America's economic competition with the Chinese Communist Party," the House Select Committee on China supported a number of existing bills and proposals, including the renewal of the Generalized System of Preferences, congressional authorization to facilitate and encourage negotiations of digital trade deals and measures to promote the free flow of cross-border data.
- The House China Committee also called for the establishment of a new tariff framework for Chinese imports, for *de minimis* reform, and for finding alternative markets for U.S. exports, e.g. agricultural products, to "offset the adverse effects of PRC retaliation."
- Senate Energy and Natural Resources Committee Chair Joe Manchin has asked the General Accountability Office for a legal opinion on whether the Treasury Department should have sought congressional review before releasing its guidance on the new electric vehicle tax credits. Sen. Manchin argued that the interpretive guidance plainly "violates" the written provisions of the Inflation Reduction Act.
- In a joint letter, Sens. Bob Casey, John Fetterman and Rep. Chris Deluzio urged the Committee on Foreign Investment in the United States (CFIUS) to block Nippon Steel's proposed acquisition of U.S. Steel, arguing that the deal to acquire the renowned steelmaker poses a national security threat to the United States.
- Several Republican lawmakers criticized the Biden administration's decision to remove China's Institute for Forensic Studies from the Entity List, a move seen as a quid-pro-quo for China's commitment to help the United States fight the infiltration of fentanyl chemical precursors into North America.

## [Expanded Reading]

- [Casey, Fetterman, Deluzio Urge Secretary Yellen to Block U.S. Steel Acquisition](#), Sen. Bob Casey, December 19, 2023
- [Exclusive: US lawmakers warn Biden to probe EU targeting of tech firms -letter](#), Reuters, December 18, 2023
- [Correa Leads Bipartisan Call On Biden Administration To Protect American Firms, Consumers From E.U. Overreach](#), Office of Rep. Lou Correa, December 18, 2023
- [Manchin Requests GAO Legal Opinion on Administration's Ability to Issue Temporary IRS Guidance That Violates the Inflation Reduction Act](#), Office of Sen. Joe Manchin, December 18, 2023
- [Bera-Led Countering Economic Coercion Bill Advances in House Foreign Affairs Committee](#), Office of Rep. Ami Bera, December 14, 2023
- [Warren, Klobuchar, Scanlon, Lawmakers Urge President Biden to Continue Supporting Efforts to Rein in Big Tech, Reject Lobbying](#), Office of Sen. Elizabeth Warren, December 13, 2023
- [House Foreign Affairs Committee Chair Seeks Major Reform of U.S. Export Control Regime](#), HKTDC Research, December 13, 2023
- [Reviewing the Bureau of Industry and Security, Part II: U.S. Export Controls in an Era of Strategic Competition](#), hearing by the House Foreign Affairs Committee, December 12, 2023
- [House committee calls for reset on China-U.S. economic relations](#), *The Washington Post*, December 12, 2023
- [Select Committee Adopts Proposal to Reset Economic Relationship with The People's Republic of China](#), The Select Committee on the CCP, December 12, 2023
- [Cassidy, White House Introduces Bill To Bring U.S. Customs Laws Into The 21st Century, Stop Illicit Trade](#), Office of Sen. Bill Cassidy, December 8, 2023
- [Rubio, Colleagues Introduce Bill Protecting American Auto Jobs](#), Office of Sen. Marco Rubio, December 5, 2023



# ICAS TRADE N TECH DISPATCH

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## What's Been Happening

### 1 — Tech and Trade Competition Rolls On, Congress Demands More — 1

#### [In One Sentence]

- U.S. Trade Representative Katherine Tai remarked that the U.S. needs to “identify and deploy” a number of additional measures to “overcome China’s state-directed industrial targeting” in the electric vehicle sector.
- A bipartisan group of U.S. Senators criticized the Biden administration for having “defied” the purposes of the Inflation Reduction Act by delaying the proposed deadlines to exclude Chinese companies from the U.S. electric vehicle battery and critical minerals supply chains.
- The U.S. Department of Commerce vowed to launch new efforts to keep “building and maintaining critical and emerging tech leadership” through its export controls policy, including by implementing controls on high-end chip exports to China.
- The Department of Commerce has announced the re-establishment of an export administration subcommittee under the President’s Export Council to ensure the effectiveness of export controls and protect U.S. commercial trade.

#### [Mark the Essentials]

- In a call with U.S. Secretary of Commerce Gina Raimondo, China’s Minister of Commerce Wang Wentao expressed “solemn concern” about U.S. sanctions on semiconductor manufacturing equipment and “sanctions against and suppression of Chinese enterprises.” In a follow-up press conference, China’s Minister of Commerce reiterated concerns about “the direct interference of the US with Dutch companies’ export of lithography machines to China” and expressed “firm opposition” to “US attempt to use export control as a tool and weapon to disrupt the normal trade between companies from other countries.”
- According to Chinese officials, the banning of Chinese telecommunication companies from the U.S. market constitutes a violation of Washington’s WTO obligations. The sanctions and export controls on chips and chip manufacturing equipment too violate the WTO principles and represent economic coercion that is unrelated to legitimate national security concerns.
- The House Committee on China has called on the Biden administration to use “all existing trade authorities” and establish “component tariffs” on “PRC legacy chips within finished products” to “stem U.S. reliance” on



foundational semiconductors produced in China. The House Committee also called on the administration to work closely with “key trading partners” and make the sanctions multilateral.

- The National Foreign Trade Council (NFTC) noted that trade compliance needs have added a “tremendously” increasing burden on the private sector as companies grapple with export controls, sanctions, cross-border investment reviews as well as new policies and standards on supply chain resilience and emerging and critical technologies. As per the NFTC, trade compliance is now “deeply integrated with the entire business from R&D forward,” and businesses must take a more “proactive” and “holistic” approach to help identify products and technologies that the government “maybe” would like to control.

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

- Decoupling electric vehicle (EV) supply chains, it turns out, is harder than initially thought, given China’s dominant position within the battery and critical minerals marketplace. On December 1, 2023, the Biden administration released its proposed ‘foreign entity of concern’ (FEOC) rules with regard to critical minerals and battery components, as part of rulemaking for the Inflation Reduction Act’s (IRA) EV tax credit provisions. As per the rule, beginning Jan 1, 2024, an eligible clean vehicle must not contain any battery components that are manufactured in China and, beginning in 2025, an eligible clean vehicle must not contain any critical minerals that were extracted, processed, or recycled in China. Barely seven weeks in, the ground under this rule has already begun to crack. On January 18, Hyundai Motor Group (HMG), the second largest EV seller in the U.S., requested the Treasury Department to temporarily exclude a limited number of critical materials sourced from China—spherical graphite and synthetic graphite most prominently—so as to enable HMG to comply with the FEOC rule. In 2022, China refined and produced 100% of the spherical graphite and 69% of the synthetic graphite worldwide and just this past December, China’s Ministry of Commerce, not coincidentally, imposed controls on the export of several categories of high-purity natural and synthetic graphite materials vital to EV battery manufacturing. Exports of graphite and related products to Japan and the U.S. are currently down by 42% and 20%, respectively, as per December trade data. By contrast, in early January, China approved the export of synthetic graphite as well as finished products containing graphite to a number of major South Korean EV battery companies. These South Korean EV battery companies also happen to be the largest committed foreign investors in the U.S. battery manufacturing sector. They have collectively called for a three-to-four year exclusion from the IRA’s non-FEOC battery and mineral component requirements in order to establish supply chains independent of Chinese input. Clearly, something or someone will have to give here. Either the Korean companies will have to substantially renege on their U.S. investment commitments or, alternatively, the FEOC proposed rule’s timelines with regard to certain critical materials will have to be substantially revised. It bears noting in this regard that the licensing provisions in the proposed rule had already been flexibly written to enable U.S.-based EV and battery companies to enter into IP licensing relationships with FEOC (Chinese) entities, so long as the latter does not exert ‘effective control’ over their operations. Even this baseline of ‘effective control’ now seems likely to shift as Chinese companies become significant players within the battery sector of select U.S. FTA partner countries—South Korea and Morocco most notably. When the final FEOC rules on the IRA clean vehicles’ critical minerals and battery component requirements are written, it will have to bow substantially to the reality of China’s dominant position within these supply chains. Which will, in turn, inflame opinion on the Hill which had hoped to use these rules to elbow out Chinese competition under the guise of supply chain resilience. Decoupling EV supply chains is turning out to be a lot harder than has been the case with chips, at least so far.

## [Expanded Reading]

- [ASML's China Sales Surged Despite Secret Dutch Deal With US](#), *Bloomberg*, January 25, 2024 [Paywall]
- [Flush With Investment, New U.S. Factories Face a Familiar Challenge](#), *New York Times*, January 15, 2024 [Paywall]
- [US-China chip war may extend to legacy chips](#), *Asia Times*, January 13, 2024
- [Readout of Secretary Raimondo's Meeting with Minister of Commerce of China Wang Wentao](#), The U.S. Department of Commerce, January 11, 2024
- [Chinese commerce minister, U.S. commerce secretary hold phone talks](#), *Xinhua News*, January 11, 2024
- [MOFCOM Regular Press Conference](#), Ministry of Commerce People's Republic of China, January 11, 2024
- [Notice of Reestablishment of the President's Export Council Subcommittee on Export Administration and Solicitation of Nominations for Membership](#), Federal Register, January 9, 2024
- [Krishnamoorthi, Gallagher Call for Urgent Action to Reduce U.S. Dependence on PRC Foundational Chips](#), The Select Committee on the Chinese Communist Party, January 8, 2024
- [Letter to the Secretary Raimondo and Ambassador Tai](#), The Select Committee on the Chinese Communist Party, January 5, 2024
- [China's electric vehicle dominance presents a challenge to the west](#), *Financial Times*, January 5, 2024 [Paywall]
- [Letter to Secretary Austin and Secretary Yellen](#), Select Committee On The Chinese Communist Party, January 3, 2024
- [U.S. export controls need to 'change constantly' even if it's tough for businesses, Secretary Raimondo says](#), *CNBC*, December 5, 2023
- [Letter to the ambassador Tai](#), The Select Committee on the Chinese Communist Party, November 7, 2023

## 2 — The U.S. and EU Continue Pursuit of Trade and Investment Agenda on Multiple Fronts — 2

### [In One Sentence]

- The European Commission set out plans to bolster the bloc's economic security through closer scrutiny of foreign investments and more coordinated controls on exports and outflows of technologies to countries like China.
- U.S. Secretary of Commerce Gina Raimondo will lead a "Presidential Trade and Investment Mission" to the Philippines in March 2024 to deepen ties with the Philippines' innovation economy and its clean energy transition and critical minerals sectors, among others.
- The United States and the European Union are negotiating an agreement to recognize mutual standards in the area of Internet of Things.
- The fifth U.S.-EU Trade and Technology Council (TTC) ministerial meeting will be held on January 30, 2024 in Washington, D.C.
- The United States has formally accepted the Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience.

### [Mark the Essentials]

- The executive package proposed by the European Commission consists of five initiatives and is a follow-on measure in line with the bloc's June 2023 European Economic Security Strategy.
- According to EU officials, the next TTC ministerial meeting will coincide with a green trade stakeholder event to help gather stakeholder input on the current progress and future plans of the Trans-Atlantic Initiative on Sustainable Trade (TISS). Industry representatives have reportedly expressed hope that the event could lead towards a "more integrated and resilient transatlantic marketplace."
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- According to a phone call transcript published by the White House, a “senior administration official” confirmed that the U.S.-Taiwan trade talks under the U.S.-Taiwan Initiative on 21st Century Trade will not “slow down dependent on the results of the election” in Taiwan. Instead, the official noted that there is bipartisan support for the talks both in Washington and Taipei.

### [Expanded Reading]

- [Commission publishes new Guidelines for the annual report on dual use export controls](#), European Commission, January 25, 2024
- [Commission proposes new initiatives to strengthen economic security](#), European Commission, January 24, 2024
- [Japan's role in selling Biden's Indo-Pacific agenda](#), *Politico*, January 24, 2022
- [U.S. trade deputy Sarah Bianchi to leave Biden administration](#), *Axios*, January 17, 2024
- [Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience](#), U.S. Department of State, January 12, 2024
- [Statement from NSC Spokesperson Adrienne Watson on Secretary Gina Raimondo's Participation in the Presidential Trade and Investment Mission to the Philippines](#), The White House, January 12, 2024
- [Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience](#), U.S. Department of State, January 12, 2024
- [Background Press Call by a Senior Administration Official on Taiwan Elections](#), The White House, January 11, 2024
- [2023 Brings in Record Investments and Funding Opportunities to Support American Competitiveness and Create Good-Paying Jobs](#), U.S. Department of Commerce, January 5, 2024

## On the Hill



### [Legislative Developments]

- The House has passed a bill that would provide the U.S. Customs and Border Protection (CBP) with more flexibility in staffing its team and create a new “global trade specialist” position within CBP.
- House Digital Trade Caucus co-chair Darin LaHood reintroduced the Digital Trade for Development Act; a bill that would allow the U.S. to prevent developing countries from receiving benefits under the Generalized System of Preferences (GSP) if they restrict access to digital trade “to the detriment of U.S. strategic interests.”

### [Hearings and Statements]

- The National Association of Manufacturers called on the House Ways and Means Committee to approve a new Miscellaneous Tariff Bill (MTB) at the committee’s next markup.
- U.S. President Biden’s new nominee for deputy USTR, Nelson Cunningham, is reportedly facing skepticism in Congress for Cunningham’s previous work experience advising multinational corporations and his support for the now-defunct Trans-Pacific Trade Partnership (TPP) agreement.
- During a congressional hearing, Acting Assistant Secretary of Homeland Security for Trade and Economic Security Policy Christa Brzozowski said that the department is “absolutely committed” to expand trade and supply chain restrictions under the Uyghur Forced Labor Prevention Act (UFLPA).
- In an open letter to U.S. Trade Representative Katherine Tai, a bipartisan group of 32 lawmakers called on the Biden administration to prioritize renewing the World Trade Organization (WTO) Moratorium on Customs Duties on Electronic Transmissions.

- House Ways and Means Committee's trade subcommittee ranking member Earl Blumenauer expressed optimism on making progress on trade issues before the end of his term, including on *de minimis* reform.
- Rep. Jan Schakowsky, ranking member of the House Energy and Commerce Committee's Innovation, Data and Commerce subcommittee, said the Biden administration made the right choice to withdraw support for certain data flows, data localization and source code rules internationally as they could hinder domestic efforts to regulate big tech companies on antitrust matters.

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

Having failed to pass any substantial China competition legislation during this 118th Congress, legislators appear resigned now to playing 'small ball' on trade. The 118th Congress had kicked off with Senate Majority Leader Chuck Schumer vowing to introduce a China Competition Bill 2.0. The flow of advanced technology and investment to the Chinese government would be curtailed, China's economic coercion of U.S. allies and partners would be countered, and further domestic economic investment on the lines of the landmark CHIPS and Science Act would be secured in other critical sectors like biotech and bio-manufacturing. None of the legislative work streams in their regard has borne fruit so far—although an Executive Order on outbound investment controls was issued in August. In its place rather, a new round of trade policy priorities has been making the rounds on the Hill. These include renewal of the Generalized System of Preferences (GSP), passage of a Miscellaneous Tariff Bill (MTB), legislating changes to the *de minimis* rule, and expanding the Commerce Department's trade remedy enforcement capabilities. The changes to the *de minimis* rule, in particular, bears watching. Import transactions valued at less than \$800 are currently eligible for admission pursuant to informal entry procedures, and importers are also exempt from paying certain duties and from classifying sub-\$800 merchandise under the U.S. Harmonized Tariff Schedule. With low value but ultra-competitive Chinese shipments being the largest beneficiary of this rule at the expense of local businesses, a number of *de minimis* 'reform' ideas have been floated. These range from lowering the \$800 threshold (the original threshold was \$200), to barring goods from countries that are non-market economies and on USTR's IPR watchlist, to denying exemptions narrowly for textile shipments and retail ecommerce shipments, to broadly banning all Chinese (and Russian) *de minimis* shipments outright. With both sides of the aisle finding common cause in protectionism and on China, the likelihood of passage of *de minimis* 'reform' appears reasonably bright during this Congress.

### [Expanded Reading]

- [House Passes Steel, Panetta Bill to Strengthen Trade Enforcement](#), Office of Rep. Michelle Steel, January 18, 2024
- [H.R.5862 - Global Trade Specialist Act](#), Congress.gov
- [LaHood, DelBene, Smith, Blumenauer Lead Bipartisan Effort to Protect American Workers and Businesses from New Tariffs at WTO Conference](#), Office of Rep. Darin LaHood, January 18, 2024
- [Rep. LaHood introduces bill to update, enhance digital trade](#), *Financial Regulation News*, January 17, 2024
- [H.R.6990 - Digital Trade for Development Act](#), Congress.gov
- [Wyden Statement on Nominee for Deputy U.S. Trade Representative](#), United States Senate Committee on Finance, January 11, 2024
- [President Biden Announces Key Nominees](#), The White House, January 11, 2024
- [Blumenauer: De minimis reform could be a 'signature achievement.'](#) *Inside U.S. Trade*, January 11, 2024
- [Exploitation and Enforcement Part II: Improving Enforcement in Countering Uyghur Forced Labor](#), hearing in front of the House Homeland Security Committee, Oversight, Investigations, and Accountability Subcommittee, January 11, 2024
- [Press Briefing on "Digital Trade" Attack w/ Rep. Schakowsky, Rethink Trade, and Biz Groups](#), *Rethink Trade*, January 10, 2024 [Video]

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## What's Been Happening

### 1 — U.S. & EU Prepare Deliverables for Next TTC Meeting in April — 1

#### [In One Sentence]

- The fifth U.S.-EU Trade and Technology Council (TTC) meeting concluded on January 30 in Washington, DC.
- The two sides, for the first time, did not issue a joint statement following the TTC meeting but instead noted that “progress” was made towards delivering outcomes at the next TTC “capstone” meeting scheduled for “early April.”
- At the meeting, the U.S. and EU “showed a strong, shared desire to continue to increase bilateral trade and investment, co-operate on economic security and emerging technologies and to advance joint interests in the digital environment.”
- From January 31 to February 2, right after the fifth U.S.- EU TTC meeting, the U.S. Trade Representative Katherine Tai traveled to Brussels to meet with her European Commission counterparts.

#### [Mark the Essentials]

- During events directly following the U.S.-EU Trade and Technology Council (TTC) meeting, U.S. Secretary of Commerce Gina Raimondo and U.S. Secretary of State Antony Blinken emphasized the importance of the TTC in setting global standards for artificial intelligence and other cutting-edge and emerging technologies. Citing China’s role in international standards setting for telecom and digital infrastructure, Raimondo argued that U.S. and European absence in AI standards setting will allow China to continue to “eat our lunch.”
- Meanwhile, European Commission Executive Vice President Margrethe Vestager said that U.S. and EU businesses would benefit from a “very much aligned approach” to AI standards, but also noted that security concerns over new technologies have impeded international cooperation on relevant research.
- EU officials told a U.S. audience that the TTC should prioritize, among others, the expansion of mutual recognition agreements to cover conformity assessment for machinery and electrical equipment. EU officials argued that such agreements would “affect positively more trade value than all the five or six [free trade agreements] we have been struggling to conclude.”
- Noting upcoming elections in both the U.S. and EU, Raimondo stressed that both sides must be “realistic” on what the TTC can achieve in the next few months, but argued that the “successful” and “robust” stakeholder engagement might help continue the momentum of the TTC’s work. Vestager agreed on the importance of stakeholders and that regardless of the TTC’s future, both the U.S. and EU will benefit from the experience

gained from the framework. According to Vestager, the “ambition” from the European Union’s side is to try and maintain a positive trans-Atlantic relationship to facilitate alignment in economic security, supply chains, and technologies.

- Before the TTC meeting, the European Commission introduced a series of initiatives to increase bloc-wide and multilateral coordination on export controls, especially on emerging and advanced sensitive technologies, “against the backdrop of a geopolitical race for technology leadership.” They also launched a public consultation process on the potential establishment of an outbound investment monitoring and review mechanism.

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

- From Bill Clinton’s New Transatlantic Agenda to George W. Bush’s Transatlantic Economic Council (TEC) to Barack Obama’s Transatlantic Trade and Investment Partnership (TTIP), U.S.-EU trade and investment frameworks have promised much and delivered little. The Biden administration’s Trade and Technology Council (TTC) appears to be following in a similar vein. Inaugurated with much fanfare and a 6,000-word joint statement, annexes included, in Pittsburgh in September 2021, the two sides could barely muster separate 600-word readouts following their fifth ministerial meeting in late January in Washington, D.C. There was no joint statement and no concrete outcomes. The notable highlight was two stakeholder events—on legacy semiconductors and on sustainable trade—which will quickly be forgotten. A sixth “capstone” TTC ministerial meeting is slated to be held later this spring, after which the TTC like much else will be drowned out by the Biden-Trump electoral pow-wow. The Spring ministerial provides a last opportunity for Washington and Brussels to produce something tangible, with a bilateral Critical Minerals Agreement (CMA) that would enable European companies to benefit from the sourcing requirements linked to the United States’ IRA-backed electric vehicle tax credits being the most likely candidate. Even this is not a given; the two sides have very different views on how the labor provisions in a CMA should be enforced. It is hard to exaggerate the extent to which the TTC has been a failure so far. On non-market economy practices, on trade and labor, on trade and environment, on state subsidies, the TTC has delivered nothing tangible. Indeed, the materially important deliverables that have been realized in U.S.-EU trade and investment ties during the past three years, such as the coordinated Russia sanctions, the Boeing-Airbus dispute settlement, and hitting the pause button on the Section 232 steel and aluminum tariffs, have all occurred outside the framework of the TTC. And while the TTC has provided a forum to exchange notes on domestic laws and rulemaking on such matters (investment screening, transatlantic CHIPS Act subsidies, critical technologies lists, AI norms, etc.) it is not obvious that the creation of the TTC was essential for exchanging these notes. It would have happened in any case and did not require a dedicated forum as such. Little wonder then that Commerce Secretary Raimondo was left musing plaintively that industry and stakeholders should see value in protecting the TTC’s survival, post-2024. Truth be told, the TTC looks set to go the way of its TEC and TTIP predecessors.

### [Expanded Reading]

- [EU and US take stock of trade and technology cooperation](#), European Commission, January 30, 2024
- [European Commission EVP Calls for Closer Transatlantic Cooperation in 2024](#), U.S. Chamber of Commerce, January 30, 2024
- [Secretary Antony J. Blinken And European Commission Executive Vice President Margrethe Vestager At the Fifth U.S.-EU Trade and Technology Council Ministerial Meeting](#), U.S. Department of State, January 30, 2024
- [Joe Biden says he won’t lift tariffs on Chinese imports since Beijing hasn’t abided by phase one trade deal](#), South China Morning Post, January 20, 2022 [Paywall]
- [Commission proposes new initiatives to strengthen economic security](#), European Commission, January 24, 2024
- [EU AI Act: First Regulation on Artificial Intelligence](#), European Parliament, June 8, 2023

## 2 — U.S. Derisks Trade with China, Advances Trade Ties with Taiwan— 2

### [In One Sentence]

- On January 19, the U.S. and China revived their joint Committee on Cooperation in Agriculture, which was their first dedicated meeting on agricultural trade issues since 2015.
- In its *2023 Review of Notorious Markets for Counterfeiting and Piracy*, the Office of the U.S. Trade Representative warned against “substantial trademark counterfeiting or copyright piracy” from China-based e-commerce, social commerce, and physical markets.
- Industry representatives from the chip industry and beyond have urged the Bureau of Industry and Security to modify its export controls review procedures to address compliance burdens and disclosure difficulties.

### [Mark the Essentials]

- At the International Dairy Foods Association’s (IDFA’s) annual Dairy Forum, Doug McKalip, chief agricultural negotiator at USTR, said that the team is making great efforts to “keep trade moving” and avoid future trade disruptions in Asia. Specifically, McKalip noted that USTR was looking forward to “wrap[ing] up” the U.S.-Taiwan Initiative on 21st-Century Trade’s agriculture chapter “in the near future” and was urging Beijing to offer more “certainty” and “reliable policies on import licensing.”
- According to a survey conducted by the American Chamber of Commerce in Taiwan, a majority of respondent companies in Taiwan named the U.S.-Taiwan Initiative on 21st-Century Trade as important to their businesses, highlighting the initiative’s contribution to reduce bureaucracy and regulations in Taiwan. According to the respondent companies, the U.S.-China trade tensions have continued to impact their businesses, but more companies have started to feel a positive economic impact compared with last year when the economic impact was primarily negative.
- During a recent event on the prospect of the United States’ automobile industry, both industry representatives and analysts agreed that the Biden administration should think “a little more strategically,” avoid a fully protected market and bring in “friends” to ensure that the U.S. electric vehicle industry remains globally competitive in the long run. Specifically, the analysts and representatives argued that instead of “keep[ing] China out entirely” and thus “fractur[ing] the U.S. industry from the rest of the world” while raising production costs, the Biden administration should develop a clear strategy on China to identify and expand “friends” and avoid losing existing partners.

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

- For the first two-and-a-half years of the Biden administration, the U.S. and China could barely find time to sit across a table and converse with each other. Now, they can barely spend a week without chatting each other up. In the first 40 days of 2024, the two sides have already chalked up an impressive list of engagements. From January 8-9, the two sides held their first Defense Policy Coordination Talks since ex-Speaker Nancy Pelosi’s controversial visit to Taipei in August 2022. On January 11, Commerce Secretary Gina Raimondo spoke over the phone with her counterpart, Wang Wentao. From January 18-19, senior officials of the U.S. Treasury-People’s Bank led Financial Working Group held its meeting in Beijing. Also on January 18, Agriculture Secretary Tom Vilsack hosted his counterpart Tang Renjian in Washington, D.C. On January 27, it was the turn of National Security Advisor Jake Sullivan and CPC Central Commission Foreign Affairs Director Wang Yi, meeting this time in Bangkok. The Sullivan-Wang meeting was followed by the first meeting of the Counternarcotics Working Group, tasked to control the flow of fentanyl-related chemicals, in Beijing on January 30. And most recently, from February 5-6, the third meeting of the U.S. Treasury-Finance Ministry led

Economic Working Group was held in Beijing. Clearly, there has been no shortage of communication between the two sides, although U.S. Trade Representative Katherine Tai has still not been able to summon the courage to explain where matters stand on the Section 301 tariffs to her Chinese counterparts. As welcome as this breakout of dialogue has been, it should not be confused as being the dominant trend in U.S.-China ties. That trend, rather, is the steady selective decoupling of the two economies across a range of advanced technologies and frontier industries (namely, microelectronics, quantum, AI, biomanufacturing, clean energy) and attendant measures, many of a punitive nature, to implement this decoupling. The past 40 days have already seen the blacklisting of China's key memory chip maker, drone maker, lidar maker, and AI companies as "Chinese military companies," raids on the U.S. subsidiary of a Chinese auto parts manufacturer, and the rollout of a proposed rule geared to limit Chinese AI companies' access to the computing power of U.S. cloud providers to train their frontier AI models. Reciprocally, sanctions against five U.S. defense industrial and defense technology companies have been imposed by Beijing, and trade controls on the export of graphite and related products, essential to the manufacture of lithium-ion batteries in EVs, have also begun to bite. Communication and competition continues apace.

### [Expanded Reading]

- [Japanese bid for U.S. Steel puts Biden in tight spot](#), *The Washington Post*, February 1, 2024 [Paywall]
- [2023 Review of Notorious Markets for Counterfeiting and Piracy](#), Office of the United States Trade Representative, January 30, 2024
- [U.S. agricultural imports expected to outpace exports in 2024](#), *Dairy Foods*, January 24, 2024
- [Dairy Forum 2024 Hub](#), International Dairy Foods Association, January 24, 2024
- [Japan's role in selling Biden's Indo-Pacific agenda](#), *Politico*, January 24, 2022
- [Statement from Agriculture Secretary Tom Vilsack on Meeting with China's Minister of Agriculture and Rural Affairs Tang Renjian](#), U.S. Department of Agriculture, January 18, 2024

## On the Hill

### [Legislative Developments]

- Countering House Foreign Affairs Chair Michael McCaul's proposal to limit outbound investment on a sector-specific basis, several Republican lawmakers from the House Financial Services Committee proposed a bill with a sanctions-based approach that will restrict U.S. investment to Chinese entities already sanctioned by the U.S. government.
- With the support of industry groups, legislators in the House and Senate have sought to reduce taxes on American manufacturing and encourage R&D spending to promote "American innovation and growth."
- A bipartisan group of senators introduced a bill which requires the Interior Department to collect data on the U.S.'s access to critical minerals, as a step towards supporting American companies that seek to divest from mining operations under Chinese control and thereby decrease reliance on China.

### [Hearings and Statements]

- In an open letter to the Federal Maritime Commission (FMC), several House lawmakers urged the FMC to swiftly make rules for shipping exchanges to curb China's manipulation of the global ocean shipping market and ensure that "market participants" have "trusted, real-time data" on ocean shipping.
- A bipartisan group of Senators asked President Biden to "increase and enforce" the Section 301 tariffs on China's solar imports to protect the U.S. manufacturing and clean energy sectors.



- In a letter to U.S. Trade Representative (USTR) Kathrine Tai and Federal Trade Commission (FTC) Chair Lina Khan, a group of 50 House Republicans again criticized USTR's decision to withdraw support for certain digital trade proposals at the World Trade Organization, arguing that the agencies conducted "backroom deals" to prioritize antitrust efforts over U.S. interests in digital trade.
- House China Committee Chair Mike Gallaher and ranking member Raja Krishnamoorthi urged the Homeland Security Department to tighten enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) by expanding the UFLPA entity list and raising the *de minimis* threshold for UFLPA enforcement.

### [Expanded Reading]

- [Brown Leads push to increase and enforce solar tariffs](#), U.S. Senator for Ohio, February 5, 2024
- [Letter from House lawmaker Johnson, Garamendi to Federal Maritime Commission regarding China's ocean shipping](#), Congress of the United States, February 1, 2024
- [Better Investment Barriers: Strengthening CCP Sanctions and Exploring Alternatives to Bureaucratic Regimes](#), Financial Services Committee, January 30, 2024
- [Gallagher, Krishnamoorthi Urge Secretary Mayorkas to Strengthen Enforcement of the Uyghur Forced Labor Prevention Act](#), The Select Committee on the Chinese Communist Party, January 22, 2024
- [Strategic Importance of Digital Economic Engagement in the Indo-Pacific](#), Hearing in the House Foreign Affairs Committee, January 19, 2022
- [Cornyn, Colleagues Introduce Bill to Secure Critical Mineral Supply Chains, Counter Chinese Dominance](#), United States Senate, January 18, 2024
- [Mike Gallagher and Raja Krishnamoorthy's letter to Secretary of DHS, regarding UFLPA](#), The Select Committee on the Chinese Communist Party, January 17, 2024
- [Examining the Flow of U.S. Money into China's Military Might](#), Hearing in the House Foreign Affairs Committee, January 17, 2024
- [House Prepares to Drop China Investment Curbs from Defense Bill](#), *Bloomberg*, November 28, 2023

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## What's Been Happening

### 1 — Seemingly Good Mood at MC13 but Stiff Challenges Remain — 1

#### [In One Sentence]

- The World Trade Organization's (WTO's) 13th ministerial conference (MC13) will be held from February 26-29 in Abu Dhabi, United Arab Emirates.
- WTO Director-General Ngozi Okonjo-Iweala identified a "relatively positive tone" in the lead-up negotiations to MC13, while WTO Deputy Director General Angela Ellard said the atmosphere is even more "constructive" compared to the lead-up to MC12.
- Meanwhile, U.S. Trade Representative Katherine Tai acknowledged the positive "feeling" but cautioned that progress at the WTO is "not going to be easy" and requires "pragmatism" and "incremental" steps.
- Several officials, like former longtime WTO spokesman Keith Rockwell, have pointed out the difficulty in reaching agreements in fishery subsidies and on e-commerce.
- The co-convenors of WTO's e-commerce initiative concluded a new draft text to reflect consensus on several e-commerce matters, including a permanent moratorium on customs duties on electronic transmissions.
- The e-commerce draft text does not include proposals on cross-border data flows, data localization, and source code and leaves out some discussions related to ICT products, electronic payments and development.

#### [Mark the Essentials]

- According to the WTO's schedule, a significant number of meetings will focus on issues such as dispute settlement reform, e-commerce, and trade-related intellectual property rights, while preparatory works in the lead-up to MC13 were tense on issues such as fisheries subsidies and (agricultural) public stockholding.
- In a web post on the upcoming MC13, the U.S. Chamber of Commerce's John Murphy called first for the continuation of the "e-commerce moratorium;" a two-decade-old moratorium against imposing any customs duties on cross-border electronic transmissions. According to Murphy, the e-commerce moratorium is "one of the biggest drivers of growth in the world today." The chamber's call to extend the moratorium was later supported by a group of 22 major U.S. business groups.
- In the course of finalizing preparations for MC13, WTO members agreed to a final report which states that no consensus has been reached regarding whether to expand the TRIPS waiver for COVID-19 vaccines to also cover tests and treatments. WTO members agreed in June 2022 to ease certain intellectual property

requirements under the TRIPS agreement for COVID-19 vaccines but have been divided on whether to expand this waiver to also cover COVID-19 diagnostics and therapeutics.

- In a February 6 article on the WTO and the upcoming MC13, former WTO director and spokesperson Keith Rockwell estimated that given his current reading of the negotiations, MC13 will not deliver any concrete deal on agriculture, fisheries subsidies, e-commerce moratorium extension or WTO reform “unless things turn around quickly.” According to Rockwell, despite general understanding that the listed issues need to be addressed, the United States has shown limited commitment to secure concrete progress, and WTO members have yet to form a consensus on these matters.
- During a U.S. House Ways & Means Committee’s subcommittee on trade hearing, Hogan Lovells partner Kelly Ann Shaw told lawmakers that “there is very little, if anything, on the MC13 agenda that will advance U.S. interests.” Former Deputy U.S. Trade Representative and U.S. Ambassador to the WTO Dennis Shea argued that the WTO was “fundamentally flawed” and that aside from the extension of the e-commerce moratorium, “less ambitious” MC13 outcomes are “perfectly acceptable” from the U.S. perspective.

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

- Trade liberalization, memorialized in successive multilateral trade rounds, was a transformative force for good during the latter half of the 20<sup>th</sup> century. The twenty-fold increase in international trade was pivotal to the leap in global incomes and standards of living. Even in the post-Cold War period, the four-fold reduction in poverty worldwide can be traced to trade, as low-and-middle income countries doubled their share of global trade. What a pity, then, that almost 25 years into the 21<sup>st</sup> century, the WTO had failed to conclude any significant market-opening agreement—be it via the single undertaking approach or other bespoke approaches. And what a pity, equally, that, almost 25 years into the 21<sup>st</sup> century, the WTO’s unwieldy membership is struggling to tie-up loose ends on a low-octane agreement representing second-order 20<sup>th</sup> century trade policy issues (reining in fisheries subsidies more comprehensively; extending the e-commerce moratorium; extending the TRIPS waiver to cover COVID-19 diagnostics and therapeutics) in the run-up to the WTO’s thirteenth ministerial conference (MC13) in Abu Dhabi. An agreement to incorporate the July 2023 Investment Facilitation Agreement into the WTO’s legal architecture and the admission of two LDC countries, Timor Leste and Comoros, is expected to be announced at MC13. As for the most consequential 20<sup>th</sup> century trade policy issues—the gusher of trade-distorting domestic agricultural subsidies (spending on ag. subsidies outrank fisheries subsidies by a factor of 10) and the broken dispute settlement system—solutions seem nowhere to be found. The former is not even on the conference agenda. And as to when 21<sup>st</sup> century inter-governmental trade multilateralism will get down to addressing the actual and pressing 21<sup>st</sup> century trade policy challenges—new disciplines on trade and environment in this age of climate crisis; new rulemaking on trade’s nexus to the Article XXI national security exception; comprehensive rulemaking on industrial subsidies—that prospect remains as distant as ever. The e-Commerce Joint Statement Initiative is a relative break from this pattern. WTO-centered trade multilateralism has been likened to the canary in the coalmine of global economic governance. While this trade multilateralism is not about to break down completely, its political inability to tackle the plain 21<sup>st</sup> century trade challenges in, well, this 21<sup>st</sup> century bodes poorly for the future of global economic governance.

### [Expanded Reading]

- [Fisheries subsidies chair circulates draft text to ministers as basis for MC13 negotiations](#), World Trade Organization, February 16, 2024
- [Agriculture negotiations chair circulates revised text, aiming for outcome at MC13](#), World Trade Organization, February 16, 2024

- [US trade chief looks for incremental reform at WTO meeting](#), Reuters, February 14, 2024
- [Big trade deals likely elusive at WTO meet in Abu Dhabi](#), France 24, February 13, 2024
- [3 Business Priorities for the WTO's 13th Ministerial Conference](#), U.S. Chamber of Commerce, February 6, 2024
- [A moment of truth for the WTO](#), Hinrich Foundation, February 6, 2024

## 2 — Katherine Tai Readdresses America's Trade Direction — 2

### [In One Sentence]

- U.S. Trade Representative Katherine Tai headlined a Council on Foreign Relations event to discuss “current U.S. trade strategy and priorities for the WTO Ministerial Conference.”
- Describing the United States’ “traditional” trade policy as a payment of labor and environmental standards in exchange for greater market access, Tai argued that her work today is to create jobs and “reinvigorate the American middle class” in trade policy conversations.
- Tai also argued that the United States must first decide its domestic laws on privacy and data regulation before “tak[ing] steps forward” in trade and multinational discussions, defending USTR’s move to withdraw support for certain digital trade proposals at the WTO.
- In a later meeting, Tai argued that USTR has “developed and is negotiating the highest-standard labor texts ever developed” for the Indo Pacific Economic Framework, the United States-Taiwan Initiative on 21st-Century Trade, and the United States-Kenya Strategic Trade and Investment Partnership.

### [Mark the Essentials]

- According to USTR Tai, the Biden administration’s “economic focus” is to “build out and reinvigorate the American middle class,” with USTR “extend[ing]” this focus to “the trade policy conversation.” Tai argued that worker and environmental concerns should be a shared aspiration of the U.S. and its partners.
- Tai argued that the advancement of digitalization has made data, data privacy and data-related regulatory concerns an issue beyond “facilitating trade.” Instead, the United States must first determine its regulation of data and of “companies that accumulate, harvest and trade in this data” before the USTR “can thoughtfully and responsibly engage in trade negotiations.” Unlike the European Union and China, the United States has yet to legislate a comprehensive federal framework for data protection or privacy.
- The United States’ deficit in goods and services fell by nearly 19% in 2023 compared to 2022, with a \$35 billion increase in exports and a \$142 billion contraction in imports. U.S. exports of services was a major driver behind the shrinking deficit. Service exports increased by around \$74 billion while goods exports decreased by \$39 billion.

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

- U.S. Trade Representative Katherine Tai, along with Ron Kirk, President Obama’s first USTR, have been the weakest USTRs on record since the creation of the position in the early-1960s. The third year of a first-term administration is typically the year when important trade policy outcomes get done. Instead, in 2023, USTR Tai drew an ignominious blank in her key negotiations with Asian (on the Indo-Pacific Economic Partnership) and European (on a Global Arrangement on Sustainable Steel and Aluminum and a Critical Minerals Agreement) partners. Closing out these negotiations in an election year, for the EU Parliament in June and in the U.S. a couple of months later, will only get harder. On one key future-oriented trade policy topic though—framing cross-border digital trade rules—she, rather than her detractors, has got it absolutely right. In a consequential decision that will resonate for many years to come, USTR pressed the pause button in October on supporting certain digital trade provisions, such as the unrestricted free flow of data across

borders, a total ban on data localization requirements, and proscriptions against the turning over of proprietary source codes, in future trade agreements. The purpose of doing so, rightly, was to avoid preempting Congress' prerogative to frame comprehensive digital policy rules at home, now that a head of steam has built up on Capitol Hill to rein in the monopolistic excesses of Big Tech. Of course, Congress should have moved much earlier on this front. China's own crackdown and straightening out of Big Tech at home just goes to show the value of proactive enforcement—even if the methods employed left much to be desired. It was always a long shot to expect that international data flow rules could somehow preempt or flout the redrawing of domestic regulation in the sector. The decision by USTR to delineate regulatory 'policy space' is especially timely, given the dynamism and fluidity of innovation, processes and practices in the digital universe as well as the fast-paced changes in regulatory best practice. Rules such as those requiring access to algorithmic "black boxes" in this day and age of generative AI would have been inconceivable even three years ago. USTR Tai's decision to pause also comports with the ultimate end-goal of free trade, that being the welfare of the consumer, broadly understood. Social media platforms and digital companies have been the antithesis of responsible guardians of the consumers interest, with a legion of documented harms now clear for all to see. USTR Tai was spot-on in saying that getting ahead of domestic debates and decisions on digital trade would amount to "the tail wagging the dog" and would constitute "massive malpractice." The digital trade 'pause' has come not a day too soon. The ball is now in Congress' court; it needs to stop talking and start legislating.

### [Expanded Reading]

- [China Reports Smallest Foreign Investment increase in over two decades](#), *The Wall Street Journal*, February 18, 2024 [Paywall]
- [German Direct Investment in China Rose to Record in 2023](#), *Bloomberg*, February 16, 2024 [Paywall]
- [Senate poised to pass biggest piece of tech regulation in decades](#), *The Washington Post*, February 15, 2024 [Paywall]
- [Readout of First Round of the U.S.-Japan Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains](#), Office of the United States Trade Representative, February 14, 2024
- [2024 President's Interagency Task Force to Monitor and Combat Trafficking in Persons Annual Meeting](#), The White House, February 13, 2024 [Video]
- [US Outbound Investment in China: Implications and Possible Congressional Action](#), event by American Enterprise Institute, February 13, 2024
- [C. Peter McColough Series on International Economics with Katherine Tai](#), event by Council on Foreign Relations, February 12, 2024
- [US trade deficit rises marginally in December; narrows sharply in 2023](#), *Reuters*, February 7, 2024
- [US firms in China slightly more optimistic, but caution remains-survey](#), *Reuters*, January 31, 2024
- [U.S. and China are working to make the business environment less volatile, Beijing says](#), *CNBC*, January 26, 2024

## 3 — Busy Schedule of U.S. International Trade Outreach — 3

### [In One Sentence]

- The U.S., Austria, France, Italy, Spain and the United Kingdom have agreed to extend a political compromise that exempts U.S. firms operating in European jurisdiction from digital service taxes while the Integrated Framework negotiations are ongoing.
- The U.S. and Philippines plan to host the sixth Indo-Pacific Business Forum in Manila on May 21, 2024 to allow government and business representatives to exchange ideas, explore partnership and discuss future commercial opportunities.

- U.S. and European Union officials agreed to take “another look” at concluding negotiations on a critical minerals trade deal which is crucial to resolving Brussels’ concerns about the United States’ Inflation Reduction Act subsidies.

### [Mark the Essentials]

- European Union Trade Commissioner Valdis Dombrovskis told reporters that the EU is interested in bringing in other countries into the transatlantic talks to address both global overcapacity in steel and aluminum and the industry’s decarbonization standards. According to Dombrovskis, Japan, the UK, Canada and other countries have also expressed “lots of interests.” The U.S. and EU have made limited progress on their steel and aluminum talks last year, which Dombrovskis attributed to the United States’ failure to provide a “credible pathway” to removing its Section 232 measures on the EU’s steel and aluminum exports.
- During a panel discussion at the Washington International Trade Association’s (WITA) annual trade conference, Singapore’s ambassador to the U.S. Lui Tuck Yew urged the U.S. to have more engagement with the Indo-Pacific’s existing regional agreement partners. He pointed out that the U.S. is absent from various multilateral frameworks in the region like RCEP and the CPTPP. For Singapore, U.S. economic engagement is critical not only to maintain the regional economic order but also to balance China’s growing presence in this region.

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

- It is a truism that very little gets done on the trade policy front in an election year. With elections bearing down in June for the EU Parliament and in November in the U.S., the window to strike productive trade outcomes is narrowing fast. Finalizing the trade pillar of the Indo-Pacific Economic Framework (IPEF) has more-or-less been given up on. The Latin America-focused Americas Partnership for Economic Prosperity (APEP) was nothing much to begin with in the first place. MC13 in Abu Dhabi trundles on. Three last bites of the apple remain in the truncated time-window, going forward. In April, the EU and the U.S. will sit down for one last ‘capstone’ TTC meeting. It remains to be seen if the two sides can emerge with an agreement, either on critical minerals or on conformity assessment procedures related to certain green goods and technologies. Neither will be easy to finalize. Difference on conformity assessments and mutual recognition was what had sunk the U.S.-EU TTIP negotiations in the early and mid-2010s. In May, the president of Kenya will pay a state visit during which time the two sides will try to finalize their Strategic Trade and Investment Partnership (STIP) negotiations. Finally, forward progress on the agriculture chapter of the U.S.-Taiwan Initiative on 21st Century Trade can be expected during the early months of 2024. After that, it’s off to the races.

### [Expanded Reading]

- [PH,US co-host 2024 Indo-Pacific Business Forum in Manila](#), *Philippine News Agency*, February 13, 2024
- [United States to Co-Host the Sixth Indo-Pacific Business Forum](#), U.S. Department of State, February 12, 2024
- [The United States’ Enduring Commitment to the Indo-Pacific: Marking Two Years Since the Release of the Administration’s Indo-Pacific Strategy](#), U.S. Department of State, February 9, 2024
- [Trump Team Targets European Union for Punishing Trade Steps](#), *Bloomberg*, February 7, 2024
- [How Brussels can precision-tune its instruments of trade conflict](#), *Financial Times*, January 29, 2024
- [EU hopes to overcome US opposition to WTO ‘court’ as key summit nears](#), *EURACTIV*, January 24, 2024



### [Legislative Developments]

- The House Rules Committee advanced a bill that would end the Biden administration's temporary pause on exporting liquefied natural gas (LNG) to countries without a free trade agreement with the United States.
- Nearly 90 House Democrats, led by House Appropriation Committee ranking member Rosa Delauro (D-CT), have expressed their appreciation for USTR's withdrawal of support for digital trade provisions on data flows, data localization and source code at the World Trade Organization.

### [Hearings and Statements]

- In an open letter to the Federal Maritime Commission (FMC), several House lawmakers urged the FMC to rapidly set the rules for shipping exchanges to restrain China's "manipulation" of the global ocean shipping industry and ensure that market participants obtain trusted and real-time data "with proper regulatory oversight."
- A new House China Committee report says that U.S. venture capital investments have played a "critical" role in development of China's tech industries, especially artificial intelligence and semiconductors.
- The Biden administration is engaging with stakeholders as well as Senate Finance Committee Chair Ron Wyden (D-OR) to restrict the export of U.S. citizen data to data brokers and other entities of concern.
- In an open letter to USTR Katherine Tai, the House Judiciary Committee Republicans have requested USTR to provide comprehensive information related to the Biden administration's "policies, processes, and decisions relating to" the proposed expansion of the TRIPS agreement for COVID-19 vaccines at WTO.
- The House Ways & Means Trade Subcommittee Chair Adrian Smith said that House lawmakers are making "good progress" towards renewing the Generalized System of Preferences (GSP) program.
- The House Science, Space & Tech Committee Chair Rep. Frank Lucas (R-OK) said that the passage of an outbound investment law is unlikely in 2024, given lingering divisions in Congress on the matter and the upcoming elections.

### [Expanded Reading]

- [House approves bill to block Biden's pause on new gas export projects](#), *The Hill*, February 15, 2024
- [The letter from 12 members of the House Committee on the Judiciary to USTR Kathrine Tai regarding the TRIPS at WTO](#), Congress of the United States, February 13, 2024
- [2024 Washington International Trade Conference](#), WITA, February 13, 2024
- [DeLauro Leads 87 Representatives in Letter Supporting U.S. Trade Representative Katherine Tai's Worker-Centered Digital Trade Policy](#), Congress of the United States, February 12, 2024
- [U.S. lawmakers accuse five VC firms of investing \\$3 billion in Chinese companies linked to military activities](#), *CNBC*, February 9, 2024
- [COMMITTEE REPORT: American VC Firms Investing Billions into PRC Companies Fueling the CCP's Military, Surveillance State, and Uyghur Genocide](#), The Select Committee on the CCP, February 8, 2024
- [How to Deter China Economically with Representative Frank Lucas](#), Hudson Institute, February 5, 2024
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## What's Been Happening

### 1 — MC13: Minimum Deliverables, Major Impasses — 1

#### [In One Sentence]

- The World Trade Organization's 13th Ministerial Conference (MC13) was held from February 26 to March 2, 2024, in Abu Dhabi, United Arab Emirates.
- The closing of MC13 was delayed several times because negotiators struggled to reach a deal on major issues including fisheries subsidies, an agriculture work program, and e-commerce.
- Despite the extension of the conference, no agreement or deliverable was reached on WTO dispute settlement system reform or on fisheries subsidies.
- Compared to MC12, the new draft text on fisheries subsidies at MC13 had contained several new additions, including stricter provisions, an expansion of applicability to include all WTO members, and a U.S.-backed proposal on forced labor in fisheries.
- The e-commerce work program and the moratorium on customs duties on electronic transmission was extended until 2026, but did not include text on closing the "digital divide" between developed and developing countries or the standard clause found in past moratorium extensions that hints at its proposed extension beyond the next ministerial.

#### [Mark the Essentials]

- European Trade Commissioner Valdis Dombrovskis had previously warned that MC13 negotiations would be "complicated and unpredictable," arguing that negotiations would likely be prolonged, and expectations for dispute settlement reform must be "realistic" given its "political sensitivity" for the United States.
- At the beginning of MC13, WTO Director-General Ngozi Okonjo-Iweala had called on the "several countries who consider themselves leaders" to "exercise leadership" and make trade-offs to reach a meaningful agreement. In the event, leadership was at a premium and meaningful trade-offs were few and far between.
- The negotiation on dispute settlement reform has been stuck due to member disagreements on the WTO's appeal/review mechanism and on dispute settlement system's accessibility. A large number of WTO members had sought to issue a ministerial declaration in order to show further commitment to resolving the nonfunctioning status of the Appellate Body but the United States reportedly blocked the attempt.



- The United States also issued a new proposal to address forced labor in the fisheries sector, characterizing it a priority at MC13. The proposal would have required each WTO member to notify the WTO of “any vessels and operators for which the Member has information that reasonably indicates the use of forced labor, along with relevant information to the extent possible.” In the event, the proposal did not find widespread support.
- A number of major business groups in the United States went vocal with regard to the importance of extending the e-commerce moratorium at MC13, arguing that the moratorium has yielded “tremendous benefits” to U.S. industry, workers and consumers and that non-continuation of the moratorium would constitute “a major blow to the credibility and durability of the WTO as an institution.”

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

- As surely as night follows day, and to the surprise of nobody, the WTO’s 13<sup>th</sup> Ministerial Conference (MC13) in Abu Dhabi ended as a big fat failure. There was no deal on fisheries subsidies (even the limited fisheries subsidy agreement of MC12 has yet to enter into force), no agreement on public stockholding and an agriculture work program, no agreement on dispute settlement, and narrow avoidance of failure on renewing the 26-year-old moratorium on ecommerce duties. Come MC14, the e-commerce moratorium could be on the chopping block too, depending on how matters play out at the OECD/G20 Inclusive Framework tax treaty discussions this June on allowing countries to tax foreign companies doing business within their borders despite a lack of physical presence there. The thinking is that even if a multilateral deal is realized—an iffy proposition—it will be shot down in the U.S. Senate at the time of ratification, given that the burden of taxation will disproportionately fall on American Big Tech firms. And in which case on the day after, not only will there be a plethora of digital services taxes imposed by a number of countries as they exercise their digital taxing rights but that the ecommerce moratorium on duties at the WTO could also be on the ropes at the next ministerial conference. Washington has not been shy to exercise its veto authority at the WTO, notably with regard to stalling the restaffing of the appellate body and getting the dispute settlement system up-and-running. This take-no-prisoners approach has rubbed off on some of the WTO membership’s least constructive participants, India and South Africa, as evidenced in New Delhi’s intemperate posture on a number of issues in Abu Dhabi. Should the Inclusive Framework tax discussions at the OECD fail, the ecommerce moratorium at the WTO may well be the next domino to fall. That having been said, MC13 did witness the limited success of a number of “joint initiatives” (plurilateral negotiations) conducted beyond the WTO’s formal and unwieldy consensus-based framework. These include a minor agreement on domestic regulation of services and one on investment facilitation for development, along with progress achieved in other “joint initiative” areas too. Plurilateral negotiations may well be the WTO’s near-and-medium-term future, going forward, although even here the habitual rejectionists could obstruct the pathway to formalizing these plurilaterals within the WTO’s legal framework. Broadening the frame beyond MC13, global trade continues to fragment under the pressure of supply chain ‘resilience’ measures by national governments, and the violation of WTO rules is becoming endemic too. All-in-all, the multilateral trade governance skies have darkened. And all this before Donald Trump has even become president (possibly) a second time around.

### [Expanded Reading]

- [WTO fails to reach deal on fishing subsidies](#), *SeafoodSource*, March 4, 2024
- [EU Policy. India’s unrealistic demands sank WTO agri talks, claims commissioner](#), *Euronews*, March 4, 2024
- [India Reverses Course And Permits Tariff Moratorium To Be Extended](#), *Forbes*, March 4, 2024
- [MC13 ends with decisions on dispute reform, development; commitment to continue ongoing talks](#), World Trade Organization, March 1, 2024
- [World Trade Organization ends meeting in UAE after failing to reach major agreements](#), *ABC news*, March 1, 2024

- [India calls for ban on China, EU fishery access agreements at WTO Abu Dhabi talks](#), *SeafoodSource*, February 29, 2024
- [Don't just blame the US; India is blocking WTO reform too](#), *Politico*, February 16, 2024

## 2 — White House Rolls Out New Cyber ‘Desinicization’ Measures — 2

### [In One Sentence]

- U.S. President Joe Biden signed an Executive Order (EO) to reduce U.S. reliance on Chinese manufactured cranes, citing national security risks and cybersecurity concerns related to U.S. vessels, harbors and ports.
- Citing the national security risk of “autos from China” that seek to “flood” the U.S. market, the Biden administration has tasked the Commerce Department to investigate “the threat to critical infrastructure or the digital economy” from “foreign adversary” configured smart cars—“connected autos” that “incorporate technology from China.”
- A day earlier, the Biden administration signed another Executive Order to restrict large-scale transfer of Americans’ bulk personal data to “countries of concern.”
- The Office of the U.S. Trade Representative (USTR) aims to expand usage of the U.S.-Mexico-Canada Agreement’s rapid response mechanism, arguing that the mechanism has proven fruitful to protect workers rights at auto parts facilities.
- The International Energy Agency (IEA) aims to establish a new program to strengthen supply chain resilience of critical minerals, given the upcoming challenge of transitioning to renewable energy sources.

### [Mark the Essentials]

- In a follow-up fact sheet, the Biden administration announced that it will invest more than \$20 billion in U.S. port infrastructure over the next five years, including grants and other awards made available by the Bipartisan Infrastructure Law and the Inflation Reduction Act. The fact sheet specifically highlighted the decision of PACECO Corp., a U.S.-based subsidiary of Japanese company Mitsui E&S Co. Ltd to onshore U.S. manufacturing of cranes.
- According to the White House, the Department of Justice is also directed to “establish clear protections” for Americans’ “sensitive personal data” and to extend protections to “genomic data, biometric data, personal health data, geolocation data, financial data, and certain kinds of personal identifiers.”
- According to the IEA, the program aims to address two main concerns: insufficient critical minerals supply to keep up with the demand resulting from the clean energy transition; and the over-concentration of critical mineral supply in “one single country or two.”
- Representatives of some U.S. importers have told USTR that despite continuous efforts, it will take at least several years to fully move away from Chinese vendors and Chinese imports, citing quality, quantity and product safety issues with suppliers outside of China.
- Analysts and commentators have called on the U.S. government to require more disclosures and conduct more data gathering on U.S. investments in China, especially portfolio investment, so that a meaningful policy can be devised on restricting and reviewing U.S. outbound investment in China.

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

- Cybersecurity concerns involving China have long risen to the fore in U.S. politics and national security. During the 2010s, the focus was on cyber-enabled commercial espionage, with President Barack Obama winning a pledge from President Xi at the 2013 Sunnylands Summit to clamp down on such theft. In the years since President Trump declared a new great power rivalry in his National Security Strategy of December 2017,

the focus shifted to China's cyber-activities within U.S. government systems and U.S. critical infrastructure. In May 2023, the cybersecurity agencies of the Five Eyes countries issued a joint advisory against Volt Typhoon, an allegedly Chinese state-sponsored actor, that had infiltrated and burrowed itself inside U.S. and Five Eyes' critical infrastructure systems. In mid-February, FBI Director Christopher Wray delivered a blistering critique of China's pre-positioning of malware that could be triggered disruptively at a future date to an audience of cyber-chiefs at the Munich Security Conference. Wray's words may need to be taken with a pinch of salt, given the spectacular implosion of the Justice Department's various 'China Initiative' cases as well as the recent throwing out of the FBI's-landmark trade secrets theft charges against Fujian Jinhua Integrated Circuit Company. Be that as it may, Wray's critique was a prelude to three Biden administration Executive Orders in the space of ten days on China-linked cybersecurity concerns. On Feb. 21, an EO that addresses cyber-vulnerabilities linked to ship-to-shore cranes produced in China was rolled out, following media reports as well as a congressional investigation that such cargo cranes deployed at more than 200 ports around the country contained remotely accessible communications equipment (cellular modems) that was unneeded for normal operations. On Feb. 28, an EO accompanied by a 90-page Advanced Notice of Proposed Rulemaking (ANPRM) that is designed to restrict 'foreign adversaries' access to Americans' bulk sensitive data, was released. The ANPRM constitutes the second instance of the U.S. government seeking to directly regulate U.S. personal data for national security reasons (rather than for privacy or other reasons) following the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA) of August 2018 which had listed categories of "sensitive personal data" of U.S. citizens to be effectively kept beyond the acquisitions reach of a foreign adversary. And tucked-in also on Feb. 28, was an EO and accompanying ANPRM that seeks to strip out foreign adversary content from key electric vehicle software systems—vehicle operating system; telematics systems; automated driving systems; advanced driver assistance systems; battery management systems; satellite/cellular telecoms systems—to guard against undue risk of "sabotage," "subversion" or other "catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy." Although a touch overwrought, to say the least, and informed no doubt by the growing protectionist phobia that aims to keep Chinese EV's out of the U.S. market, the three EO taken together are the latest instance of the U.S. government's laser-focus on 'derisking' important industrial sectors as well as the digital economy of China-linked cybersecurity concerns. Surely, this will not be the last such instance.

### [Expanded Reading]

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- [U.S. launches investigation of Chinese vehicles, citing security risks](#), *The Washington Post*, February 29, 2024
- [China's BYD Confirms Mexico Factory Plan But Rules Out Exports](#), *Asia Financial*, February 29, 2024
- [Chinese automaker BYD looking for Mexico plant location, executive says](#), *Reuters*, February 28, 2024
- [Executive Order on Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern](#), The White House, February 28, 2024
- [US ports remain confident in China-made cranes despite security concerns](#), *China Daily*, February 26, 2024
- [U.S. to Invest Billions to Replace China-Made Cranes at Nation's Ports](#), *The Wall Street Journal*, February 21, 2024
- [FACT SHEET: Biden-Harris Administration Announces Initiative to Bolster Cybersecurity of U.S. Ports](#), The White House, February 21, 2024
- [Executive Order on Amending Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States](#), The White House, February 21, 2024

### [Legislative Developments]

- The trade subcommittee Chair Adrian Smith (R-NE) said the lawmakers are making “good progress” on producing a bipartisan bill to reauthorize the Generalized System of Preferences (GSP).
- 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 address China’s growing influence in global technology standards.
- Republican Senator Josh Hawley (R-MO) introduced a bill to raise tariffs on automobiles from China, including automobiles manufactured by China-headquartered companies in third countries.
- A group of more than 40 Republican lawmakers introduced the “Countering Communist China Act.” Labeled as “the “largest and most comprehensive legislation addressing the Chinese Communist Party (CCP) ever introduced in Congress,” the bill aims to end the permanent normal trade relations with China, restrict outbound investment in China and promote free trade with third countries, among others.

### [Hearings and Statements]

- Finance committee members Sens Sherrod Brown (D-OH) and Rick Scott (R-FL) have called on the Biden administration to reform the *de minimis* rule using existing executive power, stressing that interests of American businesses are being undermined by the deluge of low-value e-commerce packages from China.
- Arguing that imports of cheap Chinese goods could lead to an “extinction-level event” for the U.S. automobile industry, the Alliance for American Manufacturing has called on the U.S. government to take “dedicated and concerted efforts,” including through higher tariffs and rigorous enforcement of USMCA rules.
- A group of House Democratic lawmakers told Treasury Secretary Janet Yellen that existing IRA implementation rules must be revised and tightened to onshore the solar supply chain from China and encourage domestic polysilicon and wafer production in the U.S.
- A bipartisan group of Ways & Means Committee lawmakers pressed the Biden administration to aggressively address China’s use of forced labor in the seafood supply chain and to reach a “hard bargain” on disciplining fisheries subsidies at MC13, highlighting the need for U.S. leadership on the issues given their economic, ecological, and human rights significance.
- The House Oversight Committee expressed dissatisfaction with the U.S. Trade Representative’s partial response to requests for documents related to the Indo-Pacific Economic Framework’s negotiations and other matters, leading to ongoing follow-ups and broader inquiries into USTR’s transparency and policies.
- Senate Intelligence Committee Chair Sen. Mark Warner (D-VA) and ranking member Sen. Marco Rubio (R-FL) have called on the Commerce Department to implement stricter export controls on biotechnology to restrict the outflow of relevant U.S. technology, capital, data and talent to China.

### [Expanded Reading]

- [Sen Hawley wants Biden to hike tariffs on Chinese energy imports](#), Fox News, March 5, 2024
- [Senator Rubio seeks stiffer tariff to stop China 'flooding US auto markets'](#), Reuters, March 5, 2024
- [House Oversight chair launches probe into USTR digital pivot](#), Politico, March 4, 2024
- [Warner, Blackburn Introduces Legislation to Reestablish U.S. Leadership in International Standards-Setting for Emerging Tech](#), Senator Mark R. Warner, February 29, 2024
- [House Republicans tout new bill as 'strongest' anti-CCP measure in history](#), Fox News, February 29, 2024

- [Senate Democrats ask Treasury to require American-made wafers for solar panel domestic content bonus](#), *Solar Power World*, February 29, 2024
- [Law enforcement leaders, manufacturers join Brown to push administration to close “De Minimis” trade loophole that undermines American manufacturers](#), Sherrod Brown U.S. Senator for Ohio, February 28, 2024
- [Email Print Intel Chairman Mark R. Warner Applauds EO Protecting Americans’ Sensitive Personal Data](#), Senator Mark R. Warner, February 28, 2024
- [US should block cheap Chinese auto imports from Mexico, US makers say](#), *Reuters*, February 24, 2024

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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
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