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What's Been Happening

1 — Stability or “Downward Spiral”: Blinken’s Tough Trip to China — 1

[In One Sentence]

- Secretary of State Antony Blinken traveled to China from April 24-26, visiting Shanghai and Beijing where he met President Xi Jinping and held five hours-plus of talks with Foreign Minister Wang Yi.
- As a follow-on to Treasury Secretary Janet Yellen’s visit earlier last month, Blinken raised the issue of overcapacity in key strategic sectors during his meetings with senior Chinese officials.
- Blinken also raised the issue of Chinese firms supporting Russia’s war in Ukraine and vowed to “address this problem” if China does not, in a possible reference to sanctions against Chinese banks and businesses.
- Chinese President Xi Jinping told Secretary Blinken that the U.S. should not deny China’s legitimate right to development.

[Mark the Essentials]

- Secretary Blinken emphasized that the White House “want[s] China’s economy to grow” but cautioned that “the way China grows matters”—the reference here being to China’s economic policies and practices, which have raised industrial overcapacity concerns in the solar panels, electric vehicles and batteries sectors.
- Blinken also called for a “level playing field” for U.S. workers and businesses and observed that fostering a healthy economic relationship required China to treat American workers and firms equally and fairly.
- Earlier, Blinken held five-and-a-half hours of talks with Foreign Minister Wang Yi, which spanned the range of bilateral, regional, and global topics. Wang also called for the removal of illegal sanctions on Chinese companies and a halt to the Section 301 tariffs which violated WTO rules.

[Keeping an Eye On...]

- What a difference a year makes. At this time last year, the U.S. and China were barely even communicating, a by-product of the ill-will stemming from the balloon incident earlier that February. It was not until National Security Advisor Jake Sullivan and CPC Central Foreign Affairs Commission Director Wang Yi met in Vienna in mid-May that a semblance of normality began to be restored to the relationship. Twelve months on, there has been an almost across-the-board restoration of bilateral communications channels. Within just the past four months, bilateral in-person meetings have featured the U.S. National Security Advisor-CPC Foreign Affairs Commission Director, the U.S. Secretary of State-PRC Foreign Minister, U.S. Treasury Secretary-PRC Finance Minister and People’s Bank of China Governor, the U.S. Agriculture Secretary-PRC

Agriculture Minister, and the U.S. Homeland Security Secretary-PRC Minister of Public Security. President Biden and President Xi, the U.S. Defense Secretary-PRC Defense Minister, U.S. Commerce Secretary-PRC Commerce Minister, and U.S. Trade Representative-PRC Commerce Minister have also held conversations, albeit over the telephone or videoconference. And in the next two months, additional high-level engagements are slated to be held, including a second visit to Beijing by Commerce Secretary Gina Raimondo and, potentially, a meeting between Defense Secretary Lloyd Austin and PRC Defense Minister Dong Jun on the sidelines of the Shangri-La Dialogue in Singapore at the end of May. Given this breadth of recent engagement, Secretary of State Antony Blinken's second visit to Beijing was no longer confined to simply setting the tenor of the overall relationship. Rather, it was about drilling down on specific agenda items on the secretary's docket with the objective of advancing cooperative or coerced outcomes. Foremost, they concerned bilateral matters—(a) deepening cooperation with Chinese counternarcotics authorities to crack down on illicit shipments of chemical precursors of fentanyl and (b) teeing up a first meeting of their bilateral AI Working Group, probably in late-May/early-June, to discuss respective views and approaches to managing the risks associated with AI applications. On the global front, China's transfer of dual-use items to plug critical gaps in Russia's defense production cycle and thereby support Moscow's operations in Ukraine was the foremost topic of discussion. For all the stabilizing progress in bilateral ties over the past twelve months, the negative tendencies in U.S.-China relations continue to nevertheless deepen. And the gulf separating the strategic perceptions of the two sides remains just as vast. The Biden administration's approach on China, as it has stated many times over, is to invest (in itself), align (with allies and partners), and compete (thereafter with China), while managing the competition with China within robust guardrails and seeking out points of cooperation therein. Beijing continues to express displeasure with this framing, including during this Blinken visit; it would rather prefer that healthy U.S.-China competition be situated within a broader framework of strategic cooperation. This simply will not happen. The U.S., being the stronger party, will get to dictate the overarching terms of the relationship, and Beijing will reactively continue to pursue its interests within this framework.

[Expanded Reading]

- [Blinken warns China to address its support for Russia or 'we will'](#), *The Washington Post*, April 26, 2024
- [China's Xi says the U.S. needs to accept Beijing's rise for bilateral relations to improve](#), *CNBC*, April 26, 2024
- [President Xi Jinping Meets with U.S. Secretary of State Antony Blinken](#), Ministry of Foreign Affairs of the People's Republic of China, April 26, 2024
- [Chinese foreign ministry official on US Secretary of State Blinken's visit to China](#), The State Council Information Office, People's Republic of China, April 28, 2024
- [Choose between stability and 'downward spiral.' China tells Blinken during Beijing trip](#), *CNN*, April 26, 2024
- [Secretary Blinken's Visit to the People's Republic of China](#), U.S. Department of State, April 26, 2024
- [China warns U.S. of 'downward spiral' as Antony Blinken meets with Xi Jinping](#), *NBC News*, April 26, 2024
- [In Beijing, Blinken confronts China over 'powering' Russia's war](#), *Reuters*, April 26, 2024
- [China Condemns US's Overcapacity Claim Just Before Blinken Visit](#), *Bloomberg*, April 23, 2024
- [Blinken spars with China on Russia support, industrial overcapacity](#), *Nikkei Asia*, April 26, 2024
- [Antony Blinken to warn China over its support for Russia's military during this week's visit](#), *NBC News*, April 22, 2024
- [Blinken raises concerns about Chinese trade policies with local officials in Shanghai](#), *PBS*, April 25, 2024

2 — Biden Signs TikTok Law; TikTok Vows to Fight

Divest-or-Ban Order in Court — 2

[In One Sentence]

- On April 24, President Biden signed a law that would ban China's ByteDance-owned TikTok in the U.S. unless it is sold within a year.
- The law, which passed the House on April 20 and subsequently the Senate on April 23, was included as part of a larger foreign aid package to provide support for Ukraine and Israel.
- The House had previously passed a standalone bill that contained a shorter, six-month sale deadline in March by an overwhelming bipartisan vote.
- TikTok has vowed to challenge the new law in court, calling the law "unconstitutional" and citing "free speech" concerns.

[Mark the Essentials]

- The bill, which contains aid to Israel, Ukraine, and Taiwan, had been the Biden administration's top legislative priority for the past 6 months. Prior to the voting on the bill, the White House stated that it favored the divestment of TikTok rather than see the video-sharing app banned.
- U.S. officials have repeatedly warned over TikTok's connection to the Chinese Communist Party and the app's potential as a platform for disinformation while ByteDance, the Beijing-based owner of TikTok, has repeatedly denied the accusation.
- TikTok CEO Shou Zi Chew has argued that the popular app is not a security threat and said that the company has invested many billions of dollars on the trust and security front while storing all of its U.S.-based data in cloud servers owned by U.S. company Oracle.

[Keeping an Eye On...]

- We've seen this TikTok ban-or-divest 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 expression 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 millions of 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 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 was in any case not allowed to go on sale. Almost four years on, the players have changed with Congress taking the lead this time, but the storyline remains the same. On April 24, President Biden signed a bill, as part of a larger foreign aid package, that bans TikTok

in the U.S. if its China-based parent ByteDance fails to divest the app. The company has an initial nine months to sort out the sale, which is extendable for a further three months at the president's discretion. Rather than depend on the President's IEEPA authority (which the courts ruled he did not enjoy on informational materials), the legislative workaround authorizes the Justice Department to enforce a ban on the app on national security grounds, failing its divestiture. For all the effort and creativity that has gone into its crafting, this ban-or-divest bill fails to engage the essential legal crux of the matter—that being, that courts across the land and up to the Supreme Court have ruled that mere invocation of a national security threat based on supposition is insufficient to justify the squelching of First Amendment rights. The threat must be real and a proposed ban shown to be 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 likely to do so again, if such a ban is to be sustained. Neither the White House in 2020 nor the foreign aid package bill today can mount this evidentiary threshold. Ultimately, the likelihood of TikTok winning the day in court remains high. What happens thereafter remains to be seen. That said, it is not too late for the White House and Congress to go down a different route and enact comprehensive privacy protections. That way, Americans' privacy and sensitive data can at least be shielded from prying eyes overseas. The administration's EO of late-February on preventing access to Americans' bulk sensitive personal data is a useful start in this regard.

[Expanded Reading]

- [TikTok plans to fight a new law. Congress already laid a defense](#), *Politico*, April 26, 2024
- [Everything TikTok users need to know about a possible ban in the U.S.](#), *The Washington Post*, April 24, 2024
- ['False Rumors': ByteDance Denies It Is Exploring A TikTok Sale After Ban Bill](#), *Forbes*, April 26, 2024
- [President Biden signs law to ban TikTok nationwide unless it is sold](#), *NPR*, April 24, 2024
- [Biden signs Ukraine aid, Israel funding and TikTok crackdown into law](#), *NBC News*, April 23, 2024
- [US Senate passes TikTok divestment-or-ban bill, Biden set to make it law](#), *Reuters*, April 24, 2024
- [TikTok warns US ban would 'trample free speech'](#), *BBC News*, April 21, 2024
- [Biden signs Israel, Ukraine, TikTok bill into law](#), *CNBC*, April 24, 2024
- [Biden just signed a bill that could ban TikTok. His campaign plans to stay on the app anyway](#), *AP News*, April 25, 2024

On the Hill



[Legislative Developments]

- A House bipartisan group introduced legislation—the “U.S. Trade Leadership in the Indo-Pacific Act”—to establish an independent commission that would develop recommendations for a “comprehensive” trade strategy in the Indo-Pacific.
- House Ways & Means subcommittee ranking member Earl Blumenauer (D-OR) noted that he will not support the “Generalized System of Preferences Reform Act,” which reauthorizes GSP despite GOP efforts to placate Democrats by amending their proposal. The GSP reform is one of many trade-focused bills sought to be marked up by the Republican-led Ways and Means Committee.
- House Ways & Means member Carol Miller (R-WV) introduced the “End Chinese Dominance of Electric Vehicles in America Act” which seeks to close loopholes in sourcing requirements for U.S. EV tax credits that could benefit China.

[Hearings and Statements]

- The chair of the House Ways and Means Committee, Jason Smith (R-MO), charged that the Biden administration's "go-it-alone" trade policy has compelled the Republicans to introduce legislation to "correct" deficiencies that are increasingly empowering China.
- A group of House Republicans criticized USTR's approach to digital trade policy, calling the exclusion of certain foreign regulations in its recently-released National Trade Estimate report a signal that the administration is not interested in defending against digital trade barriers.
- Citing China's penetration into Europe's EV market, Sen. Sherrod Brown (D-OH) called on the Biden administration to use all tools at its disposal to ban Chinese-made EVs from entering the U.S. market.

[Keeping an Eye On...]

- This past week, Tesla's Elon Musk has been visiting China. The highlight of Musk's visit (aside from a sit-down with Premier Li Qiang followed by a dinner) was the signing of a deal with Chinese search giant Baidu to tap the latter's mapping and navigation technology, and thereby move Tesla a step closer to launching self-driving cars on China's roadways. Just as important was the announcement over the prior weekend by a Chinese certification body that Tesla's EV Model 3 and Model Y had cleared four Cyberspace Administration of China (CAC)-recommended data security assessments related to the collection, processing and management of data—in turn, paving the way for the lifting of access restrictions in sensitive or salient locations such as government compounds, airports, and entrances to highways. In the early-2020s, Tesla vehicles had encountered entry bans at such locations in China. Tesla's Model 3 and Model Y join seventy-six other models from six auto companies to have cleared the four data security assessments. Separately, Nissan unveiled a partnership with Baidu last week to deploy its AI and cloud-based software in its vehicles, and Toyota announced a similar partnership with Tencent. With Germany's Volkswagen already having announced tie-ups with Chinese tech groups, the world's biggest clean-energy auto market remains open to all comers, intensely competitive, and totally worth making a play for. Indeed, recent sales of new EVs and plug-in hybrids have even exceeded that of internal combustion engine vehicle sales for the first time. Two months ago, on the other side of the Pacific meantime, the Biden administration's Commerce Department released a proposed rule that seeks to strip out 'country of concern' content from key electric vehicle (EV) software systems—vehicle operating system; telematics systems; automated driving systems; advanced driver assistance systems; battery management systems; satellite/cellular telecoms systems. The purpose of the proposed rule is 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"—as if a particular EV's wiring would be commandeered by the adversary state to inflict a distributed denial of service attack on U.S. intelligent transport systems, communication hardware, or critical infrastructure! On the Hill, meanwhile, there are proposals floating around that extend from closing the Inflation Reduction Act's tax credit loopholes from benefiting Chinese EV's to banning their entry into the United States altogether. The world's two largest clean energy auto markets are trending in opposite—and maybe even path-dependent—directions. Communist China's market will be open, brutally competitive, operate at the production frontier, and create long-term, high-wage employment gains. Capitalist America's market will have protectionist walls, mollycoddle incumbents, and produce sub-par output and employment gains that are temporarily juiced by a one-time sugar-high of subsidies and rent-seeking. In a future-oriented industry in which U.S.

companies (with the bright exception of Tesla) are not the market leaders or innovators, Washington must not dig itself into a deeper hole.

[Expanded Reading]

- [Panetta, Miller, Colleagues Introduce Bipartisan Bill to Reassert Congressional Authority on Indo-Pacific Trade](#), U.S. Representative Jimmy Panetta, April 11, 2024
- [The dangerous consequences of Biden's failed foreign policy agenda](#), Congressman Jason Smith, April 19, 2024
- [Open Letter to Ambassador Katherine Tai, Office of Congresswoman Carol Miller](#), *US-Inside Trade*, April 11, 2024
- [Letter to President Joseph R. Biden, Office of Senator Sherrod Brown](#), *US-Inside Trade*, April 11, 2024
- [Hearing on the Biden Administration's 2024 Trade Policy Agenda with United States Trade Representative Katherine Tai](#), House Ways & Means Committee, April 16, 2024
- [End Chinese Dominance of Electric Vehicles in America Act](#), House Ways & Means Chairman Jason Smith, April 15, 2024