TnT

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Dispatch

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ICAS Trade 'n Technology Program

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What's Been Happening

1 — Tough Talk Ahead of Yellen's Trip to Beijing — 1

[**In One Sentence**]

- U.S. Secretary of the Treasury Janet Yellen is traveling to China from April 5-9 to visit the commercial and manufacturing hub of Guangzhou and then continue discussions with officials in Beijing.
- In the run-up to Yellen's visit, Chinese officials emphasized that the U.S. needs to cooperate with China to create mutually beneficial economic and trade ties and provide "fair, transparent, and non-discriminatory" circumstances for Chinese firms.
- During public remarks made on March 27, Secretary Yellen said that she plans to make China's overcapacity in solar, electric vehicle (EV) and lithium-ion batteries sectors "a key issue" in her discussions.
- Secretary Yellen previously assured U.S. lawmakers that U.S. tax credits and subsidies for the solar, EV and battery industries will only support manufacturing in the U.S. and "accomplish" supply chain onshoring.

[**Mark the Essentials**]

- Secretary Yellen's planned visit to China follows several high-level visits by U.S. officials as well as a phone call between U.S. President Joe Biden and Chinese President Xi Jinping, as the Biden administration seeks to stabilize the bilateral relationship. Secretary Yellen's previous visit to Beijing in July 2023 led to the launch of the Economic and Financial Working Groups, which aims to facilitate "exchange of information on macroeconomic and financial developments."
- Secretary Yellen said she plans to "press" China on "unfair trade practices" and China's "industrial overcapacity," engage in works to "bolster financial stability," address transparency concerns in Beijing's "foreign exchange practices," expand cooperation on countering illicit finance, and address climate change and debt distress issues.
- Before her visit to Beijing, Secretary Yellen will first visit Guangzhou for two days and meet with representatives of the American business community in China.
- Meanwhile, Chinese senior officials have hosted several meetings with CEOs and heads of American companies to discuss the state of the business sector's confidence in China's economy. Specifically, Chinese Premier Li Qiang suggested that some stakeholders and commentators might have placed excessive emphasis

on China's difficulties and challenges. Premier Li highlighted the various structural advantages of China's economy and expressed "full confidence" that China will resolve the difficulties and achieve new progress.

- Secretary Yellen said she is "concerned" about "global spillovers" from China's overcapacity and that China's overcapacity "distorts global prices and production patterns, hurts American firms and workers," and leads to "concentrated supply chains." Secretary Yellen specifically highlighted the solar, EV and lithium-ion battery industries and said that she will "press [her] Chinese counterparts to take necessary steps to address this issue."
- Secretary Yellen also argued that tax credits and subsidies under the U.S. Inflation Reduction Act (IRA) helps provide resources for "producing and investing in clean energy" and helps ensure that the transition to clean energy in the United States makes sense economically. According to Secretary Yellen, IRA-related investments will provide the U.S. clean energy industry time and space to "reach their full potential" which is why the Biden administration is keeping a close eye on "pressures abroad."

[**Keeping an Eye On…**]

- China's industrial subsidies are back in the news yet again—this time in the context of accusations of overproduction of green goods (solar, EVs, lithium-ion batteries) and their potential dumping subsequently in international markets. This was essentially the gist of Treasury Secretary Janet Yellen's charge during her speech at an American solar cell manufacturing plant in Norcross, Georgia on March 27. Across the Atlantic, on April 3, the European Commission launched two investigations into Chinese manufacturers of solar panels suspected of benefiting from state subsidies to obtain an unfair advantage while bidding for a solar park procurement tender in Romania. These accusations are not unfounded. China's excess investment-led growth model was the product of high domestic savings. China is moving away from that overinvestment model but the level of domestic savings remains excessively and uncomfortably high. As such, the fear that these savings (and domestic under-consumption) will macroeconomically manifest itself in the form of domestic overproduction that is dumped overseas in export markets is understandable. And because a component of this overproduction is the product of industrial subsidies, this would amount to unfair trade-distorting competition in international markets. Balanced against this argument, of course, is the fact that China enjoys real comparative as well as competitive advantages in many of the product groups which it is now being accused of dumping. EVs and batteries are not primary sector goods like steel and aluminum, which China was accused of dumping on global markets in the 2010s. China's lead in EVs and in the battery sector is due to genuine product and process innovation and red-hot competitive capabilities. Besides, if the Biden administration feels so strongly about China's trade distorting subsidies, it is welcome to bring a case against these subsidies at the WTO. Which is exactly, in fact, what China did on March 28 when it initiated pre-case consultations with the U.S. at the WTO regarding the latter's non-compliant clean vehicle credit contained in the Inflation Reduction Act (IRA). Three years down the line, it will be China and not the U.S. that can point to a third-party legal finding of impeccable authority—that being a WTO panel report—to back its case. Setting aside the legalities, the more important discussion point here pertains to the design of industrial policy. China's industrial policy succeeds (on occasion) spectacularly because it is premised on the production of sophisticated tradable goods by innovative domestic firms backed by an entrepreneurial state that possesses the resolve to stand behind and support the creation of such markets at scale. After larding subsidies on market participants initially, it ruthlessly winnows down the list of players using the disciplining function of the market such that the final survivors are primed for success in global markets. Importantly, the government does not pick winners or protect incumbents. To the contrary, it is only too willing to cut loose

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the weaker players by shutting off their subsidy tap. Can the same be said of the emerging outlines of the United States' industrial policy, especially in the EV and batteries sectors? Is the cultivation of globally competitive industry players the purpose of the IRA's clean vehicle credit? Or is it to protect incumbents, the Big Three auto companies in particular backed by their multi-million dollar lobbying operations, during the transition from internal combustion engine vehicles to battery-run ones? Can barriers to market entry be lowered to facilitate ferocious competition in the marketplace? Or is Chinese oversupply being used as an excuse for protectionist policies aimed at advancing decoupling between the two economies? Is U.S. industrial policy aimed at sharpening U.S. manufacturing competitiveness to break into global markets or is its purpose to manufacture employment in electorally salient swing states? At the end of the day, the longer-term success or failure of U.S. industrial policy will hinge on the answers to these questions.

[**Expanded Reading**]

- Yellen Heads to China This Week to Press Beijing on Overcapacity, *Bloomberg*, April 2, 2024
- Secretary of the Treasury Janet L. Yellen to Travel to the People's Republic of China, U.S. Department of the Treasury, April 2, 2024
- Biden and Xi Jinping hold phone call ahead of Yellen's trip to China, *CNBC*, April 2, 2024
- China's EV sector a live wire for US, with war of words over excess capacity casting shadow over Janet Yellen visit, *South China Morning Post*, March 28, 2024
- China's Xi meets American CEOs to boost confidence in world's second largest economy, *CNN*, March 27, 2024
- Foreign Ministry Spokesperson Lin Jian's Regular Press Conference on March 25, 2024, Ministry of Foreign Affairs of the People's Republic of China, March 25, 2024

2 — Battle for Electric Vehicle Supply Chain Localization Heats Up — 2

[**In One Sentence**]

- China is challenging five U.S. tax credits made available by the Inflation Reduction Act (IRA) at the World Trade Organization (WTO), including ones on renewable energy and electric vehicles.
- In response, U.S. Trade Representative Katherine Tai noted that the United States is "carefully reviewing" the challenge but defended the IRA as a "groundbreaking tool" to address global climate crisis and bolster the competency of the U.S. economy.
- Separately, Rep. Jim Banks, a member of the House China Committee, has called on the Department of Commerce to initiate procedures and consider imposing Section 232 tariffs on Chinese electric vehicle (EV) imports, citing national security concerns.

[**Mark the Essentials**]

- According to China, the U.S. tax credits on electric vehicles violate WTO rules because they provide preferential treatment to domestic products over imports and because they unreasonably discriminate against goods of Chinese origin.
- The legal basis of the Chinese complaint cites Article I:1 and Article III:4 of the GATT, Article 2.1 and Article 2.2 of the TRIMs (Trade-Related Investment Measures) Agreement, and Articles 3.1(b) and 3.2 of the SCM (Subsidies and Countervailing Measures) Agreement.
- USTR officials have argued that the inflow of Chinese electric vehicles into the North American market is especially concerning during an election year, given the "political environment." Furthermore, there are concerns that existing U.S. tax credits are not sufficient to ensure the U.S. EV industry can "evolve and remain competitive."

- Rep. Banks' request joins a significant and rising number of concerns in Washington regarding electric vehicle imports from China. Lawmakers, policymakers and stakeholders have long expressed concerns about the impact of Chinese electric vehicle imports on the U.S. market and on domestic U.S. industries, especially given ongoing efforts in the U.S. to transition to a more sustainable and cleaner economic model. U.S. Trade Representative (USTR) Katherine Tai has previously called for "additional responses" to address China's "state-directed" practices in the EV industry.

[**Expanded Reading**]

- China initiates dispute regarding US tax credits for electric vehicles, renewable energy, World Trade Organization, March 28, 2024
- China wins WTO dispute with Australia over steel products, *AP News*, March 27, 2024
- China opens WTO dispute against US subsidies to protect its EV industry, *Reuters*, March 26, 2024
- Statement from Ambassador Katherine Tai on the People's Republic of China's Request for WTO Consultations Regarding the Inflation Reduction Act, Office of the United States Trade Representative, March 26, 2024
- Rep. Banks calls on White House to impose section 232 tariffs on Chinese EVs, Office of the Rep. Jim Banks (R-IN), March 18, 2024

3 — U.S. and the EU Aiming for Progress at TTC6 — 3

[**In One Sentence**]

- The Sixth Trade and Technology Council's ministerial meeting (TTC6) is being held from April 4-6 in Leuven, Belgium.
- The European Union (EU) and U.S. are expected to reach several lesser-order agreements at TTC6, including on a common framework for evaluating generative AI models, extension of two administrative arrangements on semiconductor supply chains, and principles for clean energy incentives transparency.
- The two sides are not expected to reach a final agreement or even an 'agreement in principle' on a Critical Minerals Agreement (CMA) despite a push to conclude one in the months leading into the ministerial.

[**Mark the Essentials**]

- Following the U.S. Trade Representative's decision to name the European Union's Digital Markets Act as an issue of concern with regard to barriers to foreign trade, European Commission Executive Vice President Margrethe Vestager assured reporters that the "working relationship" between U.S. and EU officials is "as good as it has been for a very long time." Some stakeholders and commentators have expressed concerns for the future of transatlantic trade and technology policy engagement given the upcoming U.S. elections.
- European Commission officials have expressed "conviction" that the U.S. and EU can "advance" "joint cooperation" on a number of issues, including on critical minerals so that EU EVs could benefit from U.S. tax credits under the Inflation Reduction Act.
- EU officials also reiterated that the Carbon Border Adjustment Mechanism (CBAM)—which aims to charge carbon tariffs on certain imports from high-carbon emission producers—complies with World Trade Organization rules and argued that the EU will continue to work with other countries on CBAM measures. The United States has sought to negotiate a bilateral agreement on steel and aluminum to potentially obtain certain exemptions from the CBAM but the proposal was eventually rejected by the EU, and negotiations on a steel and aluminum arrangement have now been suspended until Spring 2025.
- Additionally, a group of German machinery and equipment manufacturers have called on the U.S. and the EU to reduce the regulatory burden on the trade of capital goods including machinery and industrial equipment.

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Stakeholders argue that a reduction of technical and conformity assessment barriers can reduce wait times for exporters and help decrease manufacturing costs for clean technologies.

[**Keeping an Eye On…**]

- Later this week and weekend, the U.S. and the EU will host their sixth and final Trade and Technology Council (TTC) meeting in Leuven, Belgium, before breaking off for election season on both sides of the Atlantic. TTC6 was advertised as a 'capstone' ministerial that would tie together the many working groups and discussion threads under the aegis of the TTC format as well as provide a final action-forcing opportunity to hammer out a bilateral agreement on something tangible. The most likely candidate in this regard being a Critical Minerals Agreement (CMA) that would enable European companies to benefit from the sourcing requirements in the United States' Inflation Reduction Act-linked electric vehicle tax credits. In the event, TTC6 appears to be headed towards a familiar denouement—lots of talk but little by way of materially important outcomes. At TTC5 in October 2023, the two sides had failed to wrap up two years of negotiations and deliver an arrangement on sustainable steel and aluminum. The failure was compounded by the lack of even a joint statement; the two sides put out separate press releases. Similarly, at TTC6, the two sides are not expected to wrap up their negotiations on the CMA. At TTC5, the two sides declared that they had "made progress" towards a targeted CMA. From making progress, the two sides are expected to declare at TTC6 that they have "advanced negotiations" towards a CMA. An "agreement in principle," let alone an actual final agreement, still seems quite some distance away, however. To be fair, the difficulty in arriving at a final CMA has been compounded by the fact that certain sticking points in the negotiation are either not within the scope of EU law (that parties notify each other of specific investments in the context of their respective investment screening mechanisms) or EU competencies (working with the U.S. to address specific worker concerns affected by labor law violations; promotion of employer neutrality regarding labor unions). And furthermore, that important progress has indeed been made in bridging the gap between the two sides on the forced labor issue. In March, the EU Council and the EU Parliament reached a provisional agreement that would allow member states to investigate instances of forced labor in supply chains and ban the relevant good/s from the EU market. In the case of forced labor claims in third countries, the European Commission is tasked to take the investigatory lead. This having been said, it has been two-and-a-half years since the Uyghur Forced Labor Prevention Act came into being and almost two years since the passage of the Inflation Reduction Act. Thus, the two sides have had ample time to exchange notes and get on the same page as far as some of the CMA's labor rights-related provisions are concerned. This clearly has not been the case. Instead, the "capstone" TT6 will end with a mishmash of progress on conformity assessments, AI and 6G principles, e-invoicing, and suchlike. A bilateral framework that started with a bang in September 2021 is ending with a whimper. And if Donald Trump is elected president this November, the TTC format (and the CMA and perhaps also the IRA) will go out with a bang as well.

[**Expanded Reading**]

- EU's power sector emissions plummet as renewables surge, *Politico*, April 4, 2024
- US aiming to 'crack the code' on deploying geothermal energy at scale, *The Guardian*, April 2, 2024
- EU and US continue to cooperate on AI, including genAI, *Euractiv*, March 29, 2024
- The U.S. and its allies want to bring the entire chip supply chain in-house—and that could create an OPEC-style cartel for the digital age, *Yahoo Finance*, March 28, 2024
- A Make-or-Break Moment for the EU-U.S. Trade and Technology Council, IBM, March 27, 2024

[Legislative Developments]

- The House passed the Ocean Shipping Reform Implementation Act, which aims to build on the previous Ocean Shipping Reform Act and further expand the authority of the Federal Maritime Commission (FMC) to target “market manipulation or other anti-competitive practices” by Chinese shipping companies.
- The House passed a bill that would end the veto power of the Commerce Department’s Bureau of Industry and Security within the Operating Committee for Export Policy, an interagency committee that coordinates and adjudicates the administration’s export control licensing decisions.
- Senator Mark Warner (D-VA) and House Representative Raja Krishnamoorthi (D-IL) introduced a bill that would enable the intelligence community to cooperate with U.S. companies on curbing Chinese efforts to undermine U.S. investment in critical minerals.
- A bipartisan group of Senators introduced a bill to direct the President to conduct a “comprehensive threat analysis” regarding national security threats posed by U.S. economic integration with China, with particular attention paid to artificial intelligence and critical minerals.

[Hearings and Statements]

- Rep. John Moolenaar (R-MI) will be the new chair of the House’s China Committee following Rep. Mike Gallagher (R-WI)’s resignation and departure from Congress.
- The House China Committee is calling on the U.S. Trade Representative and the Commerce Department to investigate the circumvention of U.S. tariffs targeting unmanned aerial vehicles (UAV) manufactured in China and to increase support for the domestic drone manufacturing industry.

[Expanded Reading]

- US Asks South Korea to Toughen Up Export Controls on China Chips, *Bloomberg*, April 2, 2024
- China opposes US abuse of national security as chip export restrictions extended, *Global Times*, March 31, 2024
- U.S. updates export curbs on AI chips and tools to China, *Reuters*, March 29, 2024
- Former Dow Chemical Scientist to Lead US House’s China Committee, *Bloomberg*, March 25, 2024
- Lawmakers Call for Increasing Tariffs on Import of Chinese Drones, *Dronelife*, March 22, 2024
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What's Been Happening

1 — Deepening Competition Despite Biden-Xi Call & Yellen's China Trip — 1

[**In One Sentence**]

- During Secretary of Treasury Janet L. Yellen's trip to China from April 4-7, the U.S. and China agreed to establish a bilateral exchange to discuss "global balanced economic growth" and facilitate Treasury-People's Bank of China Cooperation on anti-money laundering and financial stability.
- However, Secretary Yellen failed to convince China to cut back on the flood of exports of electric vehicles, lithium-ion batteries, and solar panels to global markets.
- In response to the Biden administration's argument that China's industrial overcapacity is caused by Beijing's unfair subsidy practices, Chinese officials described it as a "manifestation of the market mechanism."
- Before Secretary Yellen's trip to China, U.S. President Biden and Chinese President Xi held a phone call to exchange views, including on China's "unfair trade policies and non-market economic practices" and the United States' "endless" sanctions and restrictive measures to "suppress China's trade and technology development."
- The U.S. has agreed to enter into consultation procedures with China at the World Trade Organization (WTO) over a complaint filed by the latter over the allegedly WTO non-compliant electric vehicle and renewable energy tax credits under the U.S. Inflation Reduction Act.

[**Mark the Essentials**]

- Although Secretary Yellen's communication with Chinese officials is largely categorized by the Biden administration as cordial, commentators argued that her visit failed to convince China to adjust its policies and address U.S. concerns on topics such as overcapacity in green products manufacturing. Many argued that high-level official talks are necessary to prevent unintended risks in the bilateral relationship, but that the negotiations seem unlikely to change either U.S. economic policy on China or China's economic and industrial practices.
- U.S. policymakers and stakeholders are meanwhile pushing the Biden administration to initiate Section 301 investigations and eventually impose tariffs on Chinese imports of electric vehicles, solar panels and other green energy products and technologies. They argue that a new U.S.-China dialogue on trade, such as during the Trump administration, might need to happen alongside more U.S. tariffs or other trade actions on China.

- Beijing recently clarified its cross-border data transfer rules and exempted certain types of data from the requirement to undertake a security assessment before transferring the said data abroad. Analysts argue that the move is part of Beijing's efforts to ease compliance costs for foreign companies in China and incentivize foreign investment in China.

[Keeping an Eye On...]

- The 'new normal' in U.S.-China relations continues to take shape, one piece at a time. The 'new normal' is not a 'new Cold War' as some have posited—although there is a palpable Cold War-style, zero-sum equation settling into their competition to dominate the high-technology and advanced manufacturing industries of tomorrow. Nor is the 'new normal', on the other hand, merely a more contentious version of the mix of engagement and competition that characterized their four-decade-long post-normalization relationship. Strategic competition between the U.S. and China is for real and, if mismanaged, could easily drift into outright across-the-board rivalry and conflict—both hot and cold. That said, there is no one typology of interaction that cuts across the 'baskets' of U.S.-China issues; the two countries' interactions, rather, span the range from the icy to the lukewarm. Positioned towards the latter end of this spectrum is Washington's and Beijing's engagement on macroeconomic and financial issues, helmed by their Economic and Financial Working Groups. Over the course of four meetings since their establishment last fall, the EWG and the FWG have touched on matters as varied as each jurisdiction's approach to financial stability oversight, the financial stability implications from their respective insurance sector's exposure to climate risk, supervision and regulation of cross-border supply of financial services, and aligning anti-money laundering rules on crypto assets and beneficial ownership, among others. The two countries also co-chair the G20 Sustainable Finance Working Group, which supports low-carbon development through renewable energy expansion, capacity building and adaptation financing in the developing world. Capping this ample agenda was the deepening of discussions on China's industrial overcapacity issue within an Intensive Exchange on Balanced Growth in the Domestic and Global Economies framework during Treasury Secretary Yellen's visit to Guangzhou and Beijing earlier this month. The framework appears modeled on the Strategic Impediments Initiative (SII) that the United States and Japan devised three-and-a-half decades earlier to deal with the structural drivers that Washington believed was behind the large trade imbalance between the two nations. These drivers concerned not border measures such as tariffs and import quotas but matters wholly in the realm of domestic policy and regulation, including Japan's excess savings as well as the oligopolistic and interlocked nature of its corporate structures which Washington argued excluded outside parties from transactions. Substitute (Chinese) state-owned enterprises for (Japanese) oligopolistic corporate structures today, and the makings of a new SII should be readily apparent. One way or the other, this new SII framework in current or altered form is here to stay, regardless of whether the Biden administration is returned to office or not. Donald Trump's past—and likely future—trade czar, Robert Lighthizer, was one of the architects, after all, of the trade wars of the 1980s that had led to the establishment of the Strategic Impediments Initiative.

[Expanded Reading]

- China Pushes Back Against Janet Yellen's Warnings on Overcapacity, *The Wall Street Journal*, April 9, 2024
- Yellen Sees 'More Work to Do' as China Talks End With No Breakthrough, *The New York Times*, April 8, 2024
- Russia, chopsticks, oversupply: Everything you want to know about Janet Yellen's China visit, *CNN*, April 8, 2024
- Biden-Xi phone call sparks clash on U.S. high tech export controls, *Politico*, April 2, 2024
- Biden and Xi seek to manage tensions in phone call as US officials head to China, *The Guardian,* April 2, 2024
- Readout of President Joe Biden's Call with President Xi Jinping of the People's Republic of China, The White House, April 2, 2024

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2 — TTC6 Concludes with More Work Remaining Amid Election Season — 2

[**In One Sentence**]

- The sixth U.S.-EU Trade and Technology Council (TTC) meeting concluded with a joint-statement which highlighted various outcomes such as advancing transatlantic leadership on critical and emerging technologies, promoting sustainability and new opportunities for trade and investment, strengthening economic security and prosperity, and facilitating the international standards-making for digital communication platforms and their integrity.
- The U.S. and European Union did not manage to reach a deal on critical minerals and relevant tax credits under the U.S. Inflation Reduction Act despite long talks during and before TTC6.
- EU officials expressed optimism about the TTC's future amidst concerns about the U.S. election results, but the European Commission said that it had also set up "a structured internal process to prepare for all possible outcomes."
- U.S. Secretary of Commerce Gina Raimondo and EU Commission Vice President for the Digital Age and Competition Margrethe Vestager specifically urged stakeholders to "continue the work" and "stay engaged" on 6G and AI, regardless of any change to the TTC format.
- The EU also noted that bloc-wide progress had been made on crafting legislation to address forced labor concerns in supply chains.

[**Mark the Essentials**]

- In reaffirming commitments to transatlantic collaboration on emerging technology and green trade, the United States and the European Union agreed to build new partnerships on artificial intelligence (AI) safety and evaluative technologies for AI, adopt a new "vision" for 6G technology based on shared values, and deepen collaboration on green supply chains to facilitate U.S.-EU flow of green technologies. The two sides were not able to conclude an agreement though to ease the regulatory burden of conformity assessment procedures between the U.S. and EU regarding products essential to the green transition.
- European Commission Executive Vice President Margrethe Vestager also argued that common, transatlantic standards for AI safety—which the U.S. and EU committed to jointly develop—will "enable a trans-Atlantic marketplace" on AI.
- According to industrial and labor stakeholders, the Biden administration's support for trade unions has helped close the gaps between the U.S. and EU on labor concerns and relevant business due diligence issues. However, actual outcomes from the U.S.-EU labor and sustainable steel talks appear to be much less ambitious.

[**Expanded Reading**]

- The US and Europe need a strategy for the geopolitical contest over AI, *Financial Times*, April 16, 2024
- EU anti-subsidy probe becomes more absurd, *China Daily*, April 12, 2024
- US and EU commit to links aimed at boosting AI safety and risk research, *Yahoo News*, April 5, 2024
- U.S-EU Joint Statement of the Trade and Technology Council, The White House, April 5, 2024
- EU and US vow to team up against China, but can't hide the cracks, *Politico*, April 5, 2024

[Legislative Developments]

- House lawmakers introduced a bill that directs the Biden administration to look into gender bias and the distributional effects of trade in the U.S. tariff system.
- The House voted to pass the Iran-China Energy Sanctions Act, which extends U.S. sanctions on Chinese financial institutions involved in the purchase of petroleum products from Iran.
- Rep. Carol Miller introduced a bill to tighten certain foreign origin requirements for electric vehicle (EV) tax credits, citing concerns for Chinese EV companies "accessing" U.S. tax dollars.

[Hearings and Statements]

- At a hearing of the House Ways and Means Committee, U.S. Trade Representative Katherine Tai highlighted the administration's efforts to strengthen enforcement of trade agreements for American farmer and worker interests, collaborate with trade partners on promoting supply chain resilience, and counter China's unfair economic practices.
- During the same hearing, several bipartisan members of the House Ways and Means Committee criticized the Biden administration's trade agenda on China over issues including ignoring labor concerns, neglecting Congress' authority over and role in trade policy, and for allowing Japan, the EU, the UK and Indonesia to access electric vehicle tax credits offered by the Inflation Reduction Act.
- Six Senate Democrats urged USTR to launch a comprehensive Section 301 investigation and provide relief measures to address the damages that China's unfair trade practices have had in the American shipbuilding, transportation, and logistics sectors.
- A group of House Democrats has asked the Biden administration to protect American automotive manufacturers, job losses in the sector, and national security from the potential influx of low-cost, heavily subsidized Chinese autos by increasing tariffs on these autos.
- In a letter to President Biden, Sen. Sherrod Brown (D-OH) expressed strong opposition to Nippon Steel's proposed acquisition of American steel manufacturer U.S. Steel, emphasizing the Japanese company's ties with China and associated national security risks.
- A group of Republican Senators from the Senate Finance Committee criticized USTR Katherine Tai for disregarding Congress' objectives and priorities while altering the U.S. stance on digital policy, data localization, source code disclosure, and cross-border transfer rules.

[Keeping an Eye On...]

- It is not an exaggeration to say that the blue-collar vote will be not just on the ballot in November 2024 but that it will also make and break presidential fortunes. The blue-collar vote in the industrialized Rust Belt states has already done so in successive elections. In November 2016, Donald Trump eked out a narrow 77,736 combined vote edge in Michigan, Pennsylvania and Wisconsin to claim these states, and thereby the electoral college, and consign Hilary Clinton to political retirement, despite losing the popular vote. In November 2020, had a mere 257,025 votes changed hands in Michigan, Pennsylvania and Wisconsin (of the 155 million total ballots cast), Donald Trump rather than Joe Biden would have continued to sit in the Oval Office—despite a 7 million popular vote margin of defeat. It is little wonder, then, that President Biden was in Pennsylvania earlier this week peddling anti-China protectionism in the shape of elevated Section 301 tariffs

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on Chinese steel and aluminum (never mind that a WTO panel has already ruled that Trump's Section 232 steel and aluminum tariffs violated international trade law) and a probe into China's shipbuilding, maritime, and logistics practices. Both are dead-end U.S. industries with little future in terms of international competitiveness. Separately, U.S. Trade Representative Katherine Tai announced that her glacial review of the U.S.' Section 301 tariffs on China (found also to be illegal by a WTO panel) that began in September 2022 is finally nearing completion—timed to land, bang in the middle of election campaign season. It is not hard to foretell what the review's findings will look like. And across Pennsylvania Avenue, a raft of China-focused bills that would eliminate *de minimis* eligibility for Chinese shipments, investigate forced labor in critical minerals chains, tighten foreign entity of concern (FEOC) rules to minimize qualifying IRA (Inflation Reduction Act) tax credit-eligible Chinese content, and deny GSP (Generalized System of Preferences) benefits to countries that deepen military ties to China, among others, is winding its way through the committee process. The starting gun on the presidential election campaign *vis-à-vis* China has well-and-truly fired this week. The bill on the (continuing) damage to America's global trade leadership credentials will follow later in due course.

[**Expanded Reading**]

- USTR Initiates Section 301 Investigation of China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, Office of the United States Trade Representative, April 17, 2024
- Testimony of Ambassador Katherine Tai Before the House Ways and Means Committee Hearing on the President's 2024 Trade Policy Agenda, Office of the United States Trade Representative, April 16, 2024
- US trade chief Tai says taking 'serious look' at tools to deal with China, *Reuters*, April 16, 2024
- House Passes Gottheimer-led Bipartisan Legislation Prohibiting China from Purchasing Iranian Petroleum Products, Office of the Rep. Josh Gottheimer, April 16, 2024
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- Republicans press Tai on digital trade ahead of hearings, *Politico*, April 15, 2024
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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 with 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.

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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.

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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.

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[**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.

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What's Been Happening

1 — Assessing Xi Jinping's First Trip to Europe in Five Years — 1

[**In One Sentence**]

- From May 5-10, Chinese President Xi Jinping paid a three-country visit to Europe, touching down in France, Serbia, and Hungary.
- France and China reached several new bilateral agreements such as advancing global governance on artificial intelligence (AI), deepening cooperation in green sectors, and facilitating French agricultural exports to China.
- During a trilateral meeting in France, European Union (EU) Commission President Ursula von der Leyen urged China to ensure "balanced trade" with Europe, failing which the EU would be compelled to implement "tough decisions" to protect its market from subsidized Chinese imports.
- China and Serbia plan to advance the China-Serbia Free Trade Agreement and initiate new bilateral cooperation in critical minerals and green energy sectors.
- China and Hungary agreed to expand Beijing's involvement in Hungary's infrastructure development and Belt and Road Initiative (BRI) projects, such as the Hungary-Serbia railroad project, as well as promote the presence of Hungarian enterprises at China's Import-Export Expo.

[**Mark the Essentials**]

- In deepening their bilateral cooperation in artificial intelligence, China and France agreed to jointly promote secure, reliable and trustworthy AI systems, adhere to the principle of "AI for good," advance the global governance of AI, ensure the inclusiveness of AI technology for all individuals, and support China's AI Global Summit in 2024 and France's AI summit in 2025.
- French President Emmanuel Macron, President Xi Jinping and EU Commission President Ursula von der Leyen made only limited progress on trade concerns during their trilateral meeting. The EU Commission President expressed her concern with regard to China's massive exports of EV and wind turbines and underlined the need to protect the EU market against China's subsidized imports. President Xi, on the other hand, rejected the charge of China's "overcapacity," stating that it does not exist whether viewed from the perspective of "comparative advantage" or "global demand."
- In Serbia, President Xi and President Vucic vowed to advance the Medium-term Action Plan for the Joint Construction of BRI between China and Serbia (2023-2025), upgrade the China-Serbia infrastructure

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cooperation agreement, and establish new bilateral collaboration in Serbia's mineral, renewable energy, and digital commerce sector. In Budapest, China and Hungary elevated their current comprehensive strategic partnership to an "all-weather comprehensive strategic partnership for the new era."

- Regarding the Russia-Ukraine conflict, President Macron and EU Commission President von der Leyen encouraged China to use "all its influence" to "end Russia's war of aggression against Ukraine" and limit its "dual-use material" support for Russia's defense industrial base.
- Commentators argued that President Xi traveled to Europe to move individual European countries away from the European Union's "de-risking," "decoupling" and even "trade war" policy on China and, by extension, on EU unity on its China policy. Analysts generally contended that the trip was relatively unproductive, arguing that President Xi made few genuine concessions to address EU's trade-related concerns and that the majority of the EU countries continue to see China as an economic and security threat.

[**Keeping an Eye On…**]

- It has been a common refrain of the Chinese side of late that so long as Europe and China remain engaged in mutually beneficial cooperation, no attempt to create bloc confrontation can succeed; likewise, so long as Europe and China stay committed to openness and win-win, there will be no deglobalization. All fair and good. The only problem, though, is that mutually beneficial cooperation and win-win exchanges are not self-implementing. Xi Jinping's mass movement-style exhortations in their regard will not deliver China and Europe any closer to the promised land. Only genuine structural reform will ensure that China accedes to advanced economy standards in terms of market oversight and intervention, and Europe and China can thereafter inhabit and mutually enjoy the benefits of a free, fair, open and globalized economic order. On this count, the Chinese government has much to answer for. Seventeen years after ex-premier Wen Jiabao had labeled China's economy as being "unstable, unbalanced, uncoordinated and unsustainable," the excess savings-led investment-consumption imbalances continue to persist and manifest itself in the form of substantial trade surpluses. It is inevitable that these surpluses will come under the EU's scanner or, for the matter, elsewhere too. Ten years after repeated urgings by EU (and U.S.) leaders to level the commercial playing field, especially with regard to its tilted domestic industrial subsidies regime, the application of industrial policy remains almost as interventionist and discriminatory. Fed up with this stasis, the European Commission has begun to hurl its Foreign Subsidies Regulation (FSR) rulebook at Beijing (the regulation, itself, is barely a year old and should not be confused with the EU's trade defense instruments), opening four investigations against EU-based Chinese operators for receiving foreign subsidies that could distort the EU's internal market. In three of the four cases, the Chinese company subsequently opted to drop out of the relevant procurement tender it was bidding on rather than open its books to inspection. If China will not rein-in its skewed subsidies regime and play by the EU's state aid rules, then China will just have to take its subsidized products elsewhere—so goes the EU's thinking. We will have to see how the FSR holds up when it meets its match in the form of a torrent of Chinese greenfield EV investment that has already begun to wash up on the EU's shores. A level playing field is nevertheless coming one way or the other, by persuasion or coercion, and Beijing would be wise to inscribe two key reform principles in its industrial and investment policies and practices going forward. First, non-discrimination (i.e., disallowing discrimination between foreign and local producers) must reside at the heart of every policy action—be it procurement, investment incentives, innovation incentives, license issuances, competition law or judicial enforcement. Objective market regulation, rather than conditioning establishment rights and access on local product use, must

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become the norm. Second, China's industrial policy interventions must metamorphose from a direct to an indirect, fiscal incentives-based subsidization model. This will require reformulating the matrix of the state's support measures, given the state's role currently as both producer and subsidizer at every level of government, as well as clarifying its neutral stance regarding the commercial operations of SOE's in all but a handful of strategic sectors. The Third Plenum, scheduled for July, would be an excellent place to entrench these reformist principles.

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2 — Biden's Quadrupled Chinese EV Tariffs Threaten Aggravated Trade Frictions — 2

[**In One Sentence**]

- The Office of the U.S. Trade Representative (USTR) raised tariffs on electric vehicles, batteries, critical minerals, semiconductors, solar cells, cranes and steel, and aluminum products from China, following the conclusion of a statutory four-year review of the Trump administration-introduced Section 301 China tariffs.
- China criticized the move, saying that it will take "all necessary measures to defend its rights and interests."
- Some industrial representatives have expressed concerns that the tariff increases were primarily driven by political needs and would invite retaliation from China, possibly triggering a new or escalated trade war.
- Meanwhile, Senator Sherrod Brown, Senator Marco Rubio and other lawmakers have argued that even more drastic trade enforcement measures are needed, such as a complete ban on all Chinese EV imports.
- Earlier, the Department of Treasury released a final rule on the EV tax credits under the Inflation Reduction Act, which denies tax credits to EVs using certain percentages of critical minerals and battery components sourced from China.

[**Mark the Essentials**]

- The U.S. tariff rate on electric vehicles under Section 301 will increase from 25% to 100% in 2024; the tariff rate on lithium-ion EV batteries will increase from 7.5% to 25% in 2024; the tariff rate on lithium-ion non-EV batteries will increase from 7.5% to 25% in 2026; and the tariff rate on battery parts will increase from 7.5% to 25% in 2024. Current fact sheets and press releases do not specify whether the tariffs would extend to EVs that are not manufactured in or not shipped from China.

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- The White House's National Economic Council Director (NEC) Lael Brainard argued that the tariff increases aim to ensure that President Biden's "historic investment in jobs" are not "undercut by a flood of unfairly underpriced exports from China." Meanwhile, the White House announced that the 100% tariffs on Chinese electric vehicles will "protect American manufacturers" and ensure "the future of the auto industry will be made in America by American workers."
- In an effort to electrify its auto lineup and quickly build competitiveness in the electric vehicle market, Stellantis N.V., which owns the Jeep, Chrysler, Maserati and Peugeot brands, has purchased stocks in Chinese EV company Zhejiang Leapmotor Technology Co. The deal gives Stellantis exclusive rights to sell Leapmotor's EVs outside of China, initially in Europe through its dealership and distribution network, and potentially participate in Leapmotor's manufacturing operations.
- Hesai Technology Co., a Shanghai-based, Nasdaq-traded company that develops sensor technologies for self-driving cars, is currently suing the United States government for listing Hesai as a company that aids China's military. Hesai says that its products are designed and made for commercial and civilian use only and argues that the U.S. government listing has disrupted its plans to build manufacturing plants in the U.S.
- Commentators argued that given China's sheer scale and competitiveness in renewables manufacturing, it is necessary to work with the Chinese EV manufacturing base and thereby hasten the electrification and greening of the transportation sector.

[**Keeping an Eye On…**]

- Almost twenty-four months to the week that it initiated a review of the Section 301 tariffs on China, the Biden administration released the review's findings and its follow-on tariff measures. (By comparison, the Trump administration had taken just nine months to get from the initiation of a probe to an announcement of tariffs in April 2018.) Per the administration's telling, the decision to raise a selective few Section 301 tariffs on China is no big deal. The amounts involved are small ($18 billion of raises) and relate to sectors where historic investments are underway, by way of the Inflation Reduction Act's and the Bilateral Infrastructure Act's domestic preference-based subsidies. The tariffs will prevent an undercutting of these investments—although the argument marshaled by the administration to justify the remedy to this undercutting (namely, that China is producing at a rate that is in excess of any plausible estimate of global demand for that good) is in fact identical to the one being trotted out by Beijing to defend its case regarding EVs (namely, that global capacity for EVs is still far below market demand). Besides, the new tariff raises are not broad-based, the administration says, unlike the across-the board imposition being under threat of application by Donald Trump. The administration's economic case for its tariffs is utterly wrong-headed—although perhaps not its underlying electoral case. First, the Section 301 tariffs should have been substantially pared down, and some even eliminated; tariffs are and remain a tax on the American consumer, and a few tariff lines are in fact even being raised. Next, the select dozen or so Chinese imports which are sought to be further priced out of the U.S. market (batteries, semiconductors, solar cells, steel, EVs, etc.) are, in fact, already barred for the most part via executive orders, anti-dumping orders, content requirements, foreign adversary rules, and suchlike. Third, the Section 301 tariffs has been the least potent tool within the armory that has been deployed against China by the Trump and Biden administrations. Their negatives outweigh the marginal supply chain resiliency gains achieved. Finally, the lawless nature of the measure—most notably how the tariffs fly in the face of the United States' basic obligations at the WTO—reflects poorly on the Biden administration's adherence to international law-bound means. It is

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particularly disheartening that the administration has chosen to double-down on the Trump team's forced technology argument—that Beijing coercively pressures U.S. companies to transfer technologies on non-market terms as a condition for entry into the Chinese market—to peddle its case for the continuation of the tariffs. Conditioning the approval of foreign inward investment in exchange for mandated performance requirements, such as technology transfer, local content, offsets, and export performance, is a violation of the terms of China's WTO Accession Protocol. If the administration believes this to be the case, it should have pursued a legal challenge at the WTO. It is telling that when the Trump administration was confronted on this question within the WTO's dispute settlement system, it confessed that it had no case to submit (it defended the Section 301 tariffs as being "necessary to protect public morals"), and that its legal challenge was limited to two smaller intellectual property rights claims, which were subsequently by resolved by Washington and Beijing during the consultation phase. That a more internationalist-minded Democratic administration would now continue this charade is a further blow to the global trading order. One step at a time, the U.S. is reverting to its pre-WTO era 'might-is-right' dictum. Forty years ago, in his incessant trade battles with Japan, Robert Lighthizer—Reagan's Deputy USTR and Trump's once and future USTR—shifted away from using the GATT's (at the time, toothless) dispute settlement provisions and rely solely on the Section 301 tool. Whereas all but one of the Section 301 investigations against Japan from the late-1970s to the mid-1980s was accompanied with the bringing of a formal GATT dispute, none of the Section 301 investigations initiated thereafter resulted in the bringing of a formal GATT case. Unilateralism trumped third-party dispute resolution measures, then, and is once again coming to dominate U.S. trade enforcement policy today. The main problem, though, forty years on, is that the U.S. no longer strides the international trading order like a colossus. It isn't even the largest global trader anymore. And while it is true that the American consumer still towers over its peers and therefore makes trade sanctioning an inviting policy tool, the days of serving as the global primary consumer of last resort are numbered too. Which begs the question: is it not in the longer-term interest of the U.S. and its producers to abide by—and not freeride on—multilateral trade rules? Protectionism can cut both ways, after all.

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[**Legislative Developments**]

- U.S. Senator John Barrasso (R-WY) introduced a bill to repeal tax credits for electric vehicles (EVs) and prevent China from "exploiting loopholes" and benefitting from the EV tax credits.
- A bipartisan group of leading House lawmakers from the Foreign Affairs Committee and the China Committee introduced a bill to authorize the use of export controls to "safeguard" artificial intelligence technologies from China and other "adversaries."
- The House Committee on Oversight and Accountability voted overwhelmingly to advance the Biosecure Act, which would restrict business with China's leading biotech companies on national security grounds, to the full House for consideration.

[**Hearings and Statements**]

- A bipartisan, bicameral group of U.S. lawmakers jointly released a report outlining a "comprehensive vision" to "revitalize [the U.S.] maritime sector," including through government funding and policy support to expand the domestic shipbuilding industry.
- U.S. Senator Sherrod Brown (D-OH) called on the Biden administration to ban all internet-connected and smart vehicles that are designed, developed, manufactured or supplied from China.
- In a joint letter to U.S. Trade Representative (USTR) Katherine Tai, Republican leaders of the House Ways & Means Committee and its trade subcommittee said they "expect" USTR to release "significant and substantive proposals" to address U.S.-China trade "challenges" following USTR's four-year review of Section 301 tariffs on Chinese imports.
- In a joint letter to President Biden, Senate Majority Leader Chuck Schumer and other six Senate Democrats underlined the "critical need to maintain or increase" tariffs on Chinese or China-related imports to address unfair trade practices and national security concerns.
- The House Oversight Committee has reportedly asked USTR officials to conduct a "transcribed interview" on its change of stance in U.S. position on digital trade and cross-border data flows at the World Trade Organization and beyond.

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- Chairman Smith: "Only the Biden Administration would need over two years to figure out that the Trump tariffs combatting China's unfair trade practices were, in fact, a good thing," House Ways and Means Committee, May 14, 2024
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- Rep. Waltz Co-leads National Maritime Strategy Report, Office of Rep. Mike Waltz, May 8, 2024
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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — U.S. and China Hold First Talks on AI; Congress Rushes to Control AI Model Exports — 1

[**In One Sentence**]

- On May 14, the U.S. and China held their first artificial intelligence (AI) talks in Geneva, Switzerland where the two countries exchanged perspectives on their respective approaches to AI safety and on building common rules for AI.
- The House Foreign Affairs Committee advanced a bipartisan bill to expand the President's ability to restrict exports of certain "artificial intelligence systems" and related technologies and pave the way for future export bans on individuals working abroad, including Americans who might participate in the design, development or maintenance of AI systems or related emerging technologies.
- Separately, a bipartisan Senate working group has called on lawmakers to develop a framework to determine the national security implications of various AI systems and identify trigger points for imposing export control measures.

[**Mark the Essentials**]

- During the talks in Geneva, the U.S. and China reached a consensus that the conversation regarding AI between the two countries would be a "continued commitment" with the existence of both "opportunities and risks" related to the development of AI.
- On AI governance, the two countries expressed differing views. The U.S. underlined the importance of ensuring AI systems are "safe, secure, and trustworthy" and thereafter building a global consensus on this basis. China, on the other hand, advocated for expanding the role of the United Nations in AI governance and emphasized that "all countries regardless of size, strength or social system" should have equal access to AI technology.
- In early January, the Commerce Department had proposed a rule that requires providers of IaaS—a type of cloud computing that allows users to access infrastructure remotely—to institute "know-your-customer" procedures and report the identity of foreign users to the U.S. government. Critics believe this rule is a precursor to cloud-computing export controls, and have commented that the rule would "impose high costs on privacy," which might drive foreign customers to seek non-U.S. service providers.

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

- Move over, chips; AI is the new frontline in the United States' export control and technology denial obsession regarding China. Indeed, 2024 promises to be a bumper year in this regard. By year-end, the 'yard' will be a lot wider and the 'fence' a lot taller. This may not be apparent from the cordial U.S.-China discussions in Geneva in mid-May, where the two sides exchanged views on guiding principles, emerging practices and risk management related to the regulation of generative AI. But the cordiality in store is deceiving. Discussions are currently underway at the Commerce Department to draft a rule that would restrict the sale of powerful closed source AI models to China. It is not clear yet when this proposed rule will drop; it is expected later in the year. The discussions mirror those underway on the Hill to ban the export of powerful AI systems by U.S. companies to China, as well as implement security checks when American AI labs seek to collaborate with counterparts in China. For added measure, a bipartisan working group of senators led by Majority Leader Chuck Schumer released a report earlier this month with a laundry list of recommendations that includes shielding advanced AI technologies from foreign adversaries. Also, underway at the Commerce Department is the drafting of a rule that would compel U.S. cloud infrastructure providers to alert the government when foreign clients use their compute power to train their AI models. Foreign customers that train large AI models with potential capabilities that could be used in "malicious cyber-enabled activity" will likely have their accounts blocked—essentially, a blanket means to decouple Chinese entities from the U.S. cloud. This 'know-your-customer' rule should be ready sometime this summer. Over at the Treasury Department, the tedious drafting of an interim final rule on outbound investments is underway, which will mandate prior notification for U.S. investments in Chinese entities related to software incorporated in AI systems and designed for military end use. The rule should be finalized by year's end. And just earlier this month, the Commerce Department revoked special licenses that had let U.S. chip suppliers Qualcomm and Intel ship neural processors supporting AI functions to Huawei for use in its laptops and handsets. The revocation is a postscript to the hard-hitting October 2022 and (updated) October 2023 Advanced Computing and Semiconductor Rule, finalized just this March, which chokes off China's access to high-end AI chips as well as blocks Chinese AI chip design companies from accessing U.S.-made chip design software and semiconductor manufacturing equipment globally. A number of Chinese AI players were also placed on the dreaded Entity List. On review, the various AI-related strategic trade controls will probably not come as a surprise to Beijing. The very State Department that had sought the cordial meeting in Geneva also blocked China from participating in the AI Seoul Summit a week later. China had been an invitee at the first United Kingdom-organized AI Safety Summit held at Bletchley Park in November 2022. Its presence, along with a host of other non-'like minded nations', was not welcome at this second summit in Seoul; one summit is all that it took to begin dividing the AI universe into a 'us v. them' configuration. The "candid and constructive" U.S.-China conversation on AI promises to get testy pretty soon in 2024.

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2 — Latest 301 Tariffs Continue to Test Nerves All Around — 2

[**In One Sentence**]

- In response to the Biden administration's continuation and enhancement of the Trump administration-imposed Section 301 tariffs, China reiterated that it "firmly opposes and lodges solemn representations" and vowed to "take resolute measures."
- Following the proposed U.S. tariff increases on China, U.S. Secretary of the Treasury Janet Yellen urged European officials to respond to China's "industrial policy" "strategically and in a united way," warning that failure thereof would risk "the viability of businesses" in the U.S., Europe and beyond.
- European Commission President Ursula von der Leyen said that the EU shares "some of the concerns of our [US] counterparts" but prefers "a different approach, a much more tailored approach."
- The G7 Finance Ministers and Central Bank Governors issued a communique at their meeting in Stresa, Italy expressing "concerns about China's comprehensive use of non-market policies and practices" and vowed to "ensure a level playing field in line with WTO principles."
- WTO Director-General Ngozi Okonjo-Iweala said that the WTO is "very concerned" about Washington's protectionist policies towards China, cautioning against further escalation of protectionist measures and further deterioration of the U.S.-China relationship.
- U.S. Deputy Secretary of Commerce Don Graves told industrial representatives from the U.S. renewable energy sector that the administration seeks to be "very responsive and…very thoughtful" to support the sector through its current "evolution" and against "coercive" actions that are happening "abroad."

[**Mark the Essentials**]

- Criticizing the Biden administration's 102.5% tariff on Chinese electric vehicles as a "misguided half-solution," U.S. Senator Marco Rubio (R-FL) argued that a "comparable tariff increase" should also be placed on Chinese internal combustion engine vehicles to "adequately address the [overall] extinction-level threat that Chinese vehicles…pose to American automakers."
- Along with the decision to maintain and expand the Trump-imposed Section 301 tariffs on Chinese goods, the Office of the U.S. Trade Representative (USTR) has proposed the establishment of an exclusion process "targeting machinery used in domestic manufacturing," including solar manufacturing equipment.
- Amidst a range of efforts to "strengthen American solar manufacturing," the Biden administration has announced that it will no longer exempt bifacial solar panels from the U.S.' Section 201 safeguards tariffs.
- During a mid-May USTR hearing on promoting supply chain resilience, witnesses argued that efforts to "rebuild U.S. production capacity" has unique and irreplaceable importance which cannot be substituted by nearshoring. Accordingly, industrial representatives at the hearing proposed measures such as expansion of labor rights and enforcement in trade treaties, tightening of rules-of-origin rules, additional U.S. trade enforcement tools, and preferential government procurement policy.

- Across the Atlantic, European Commission President Ursula von der Leyen observed that Europe fundamentally seeks both competition and trade with China, albeit in a fair way and according to established rules. According to von der Leyen, the EU has concerns over issues such as China's "artificially cheap products," "excessive production subsidies," and difficulties for European companies to access the Chinese market "under fair conditions."

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

- Another week, another round of skirmishing on 'overcapacity' at the podium and over the airwaves. U.S. National Economic Advisor Lael Brainard led off the latest round of this tussle by admonishing Beijing for facilitating excess global supply by unfairly depressing domestic capital, labor and energy costs, during a speech on May 16. This industrial overcapacity disrupts market-based demand signals and undermines innovation and competition, she said. Carrying the baton forward, Treasury Secretary Janet Yellen sounded the alarm on the "threat to the development of clean energy industries around the world" posed by Chinese 'overcapacity' and called for a united response during a speech in Frankfurt ahead of the G7 Finance Ministers Meeting. The G7 Finance Ministers statement has vowed to "ensure a level playing field, in line with WTO principles" to counter China's "comprehensive use of non-market policies and practices." This has, in turn, drawn a rebuke from Beijing which observed that the G7's China overcapacity hype is "completely against the facts and laws of economics" and that protectionism serves nobody's interest. Across the Atlantic, meanwhile, Josep Borrell, the EU's High Representative for Foreign Affairs and Security Policy, cautioned that with the U.S. market becoming progressively closed to Chinese goods, including with the imposition of tariffs on Chinese-made EV's, the threat of diversion of China's 'excess capacity' to Europe was real and needed to be countered. It is the terms of this countering that merit watching closely in the weeks ahead. Will the EU resort to the use of conventional trade defense instruments (safeguards; anti-dumping/countervailing duties) that are judicable in third-party settings (both the EU and China are parties to the Multi-Party Interim Appeal Arbitration Arrangement) to slow down the ingress of Chinese green and other industrial goods into the bloc? Will it perhaps substitute Chinese-invested local production for China-originating imports? Or will the EU resort to foreign adversary-based national security arguments to arrest entirely the entry or local production of Chinese-made green goods? Most indicators point to the former, especially with the EU's imports of Chinese-made industrial and transport equipment having fallen for six consecutive quarters. That said, it is the bloc's use of its newest non-trade defense instruments (the Foreign Subsidies Regulation, or FSR, and the International Procurement Instrument, or IPI) that will bear watching closely. China's 'gray zone' industrial subsidies may have met their match in these instruments. But applied indiscriminately, the FSR and IPI could also touch off a trade war with China, placing the bloc's US$275 billion of agricultural and goods exports at threat of reprisals. Brussels and Beijing have much to think through over these busy and heated summer months.

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- The U.S. Raised Tariffs on China. Now It Wants Europe's Support, *The Wall Street Journal*, May 21, 2024
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On the Hill

[Legislative Developments]

- To prevent Chinese companies "infiltrate the U.S. auto supply chain," a group of bipartisan lawmakers led by Sens. Sherrod Brown (D-OH) and Joe Manchin (D-WV) have proposed to overturn the Treasury Department's Inflation Reduction Act's tax credit rules for electric vehicles.
- Senate Commerce Committee Chair Maria Cantwell (D-WA) and committee member Marsha Blackburn (R-TN) introduced the "Promoting Resilient Supply Chains Act" to "map, monitor and model" U.S. supply chains in critical industries and technologies, address gaps or vulnerabilities for critical goods, and establish a "early warning supply chain disruption system." The companion Hill bill passed with a commanding 390-19 majority.
- Reps. Greg Stanton (D-AZ) and Dusty Johnson (R-SD) introduced the "Semiconductor Supply Chain Security and Diversification Act" to "complement" investments via the CHIPS and Science Act and "diversify" the U.S. semiconductor supply chain by developing a regional semiconductor ecosystem in Latin America.

[Hearings and Statements]

- On May 21, the Senate Finance Trade Subcommittee held a hearing which addressed enhancing Customs and Border Protection (CBP)'s trade enforcement at U.S. ports and increasing efforts to "alleviate port congestion and supply chain bottlenecks."
- Senate Finance Committee Chair Ron Wyden (D-OR) said that U.S.-based automakers, including BMW, Jaguar Land Rover, and Volkswagen, have "critical blind spots" in their due diligence protocols required to comply with import bans linked to forced labor in supply chains, and that they continue to source components from proscribed suppliers.
- At the Anti-Monopoly summit on May 21, Rep. Rosa DeLauro (D-CT) cautioned that there is only a short window of opportunity for Congress to reclaim trade policymaking from corporate interests and make progress on issues such as workers rights and antitrust. Senator Elizabeth Warren (D-MA) echoed the opinion and referred to the Ocean Shipping Reform Act as a case in point.

[Expanded Reading]

- [Cantwell, Blackburn introduce Bill to prevent supply chain disruptions before they happen, protect American producers & pocketbooks](), U.S. Senate Committee on Commerce, Science & Transportation, May 21, 2024
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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — EU Announces Proposed Countervailing Duty Rate on Chinese EVs — 1

[**In One Sentence**]

- The European Commission announced plans to impose additional tariffs of 17.4% (BYD), 20% (Geely) and 38.1% (SAIC) on made-in-China battery electric vehicles (BEVs) starting from July.
- China warned that it will “take all measures necessary to firmly defend our lawful rights and interests,” criticizing the anti-subsidy probe as “typical protectionism” and urging the EU to support free trade.
- Industry experts argue that Chinese automakers will likely be able to survive the rise in EU tariffs and make a profit even with a 25% tariff rate due to their “high profit margins.”
- German and Swedish policymakers had lobbied intensely against additional tariffs on Chinese EVs, especially a cumulative tariff rate beyond 15%—China’s current tariff rate on all car imports.

[**Mark the Essentials**]

- The imposition of provisional duties stem from an anti-subsidy investigation on Chinese passenger BEV’s that was initiated in October 2023. Definitive (final) duties are due by November 2024.
- Compared with one year ago, the number of Chinese-made electric vehicles in Europe rose 23% and in the first quarter of 2024, there were 119,300 Chinese-made battery electric vehicles (BEVs), representing one in five EVs imported into the EU.
- Chinese BEV company BYD recently disclosed its intention to establish a second automobile factory in Europe, following the successful establishment of its first factory in Hungary. This second BYD factory will produce plug-in hybrid vehicles so as to cater to a wider range of customer preferences including those who have complained about the relative lack of EV charging stations.
- The European automobile industry—especially German carmakers BMW, Volkswagen and Mercedes-Benz—have been much less supportive of the European Commission's probe, given their heavy reliance on the Chinese market. In the first quarter of 2024, BMW’s China business accounted for almost a third of its total sales.
- During an industry summit in Chongqing, China, BYD Chairman Wang Chuanfu noted that the takeover of combustion engines by eclectic and hybrid vehicles was an “overriding and unstoppable trend.”

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

- The European Commission's provisional countervailing duties on Chinese battery electric vehicles (BEVs) have finally dropped. BYD will be hit with a duty of 17.4%, Geely with 20%, and SAIC with 38.1%. Other Chinese BEV producers that did not cooperate with the investigation are to face a 38.1% duty, the highest rate. The provisional duties kick-in on July 4. So, are we in a EU-China 'trade war' now? Judging by China's Commerce Ministry's overwrought response (which notably directs the EU to "immediately correct its wrong practices"), one might be forgiven in thinking so. Well, that may be the case…or maybe not. At this fevered moment in supposed 'trade war' politics, it is well worth recapitulating an earlier episode of provisional anti-dumping duties imposed by the EU to stem an import deluge of a Chinese green good, and how the ensuing events played out thereafter. Eleven years ago, in early June 2013, the European Commission imposed provisional anti-dumping duties, set at an average of 47.7% (which incidentally is higher than the current EV duties), on imports of solar panels and components (cells and wafers) from China, following a nine-month anti-dumping probe and a seven-month anti-subsidy probe. The investigation had found that Chinese imports of solar panels and components represented 80% of the European market in 2011-12, with local EU players accounting for just a 13% market share—which itself was down from 19% as late as 2009. Left to its own devices, the EU industry would "quickly cease to operate altogether." The investigation also found that in terms of production capacity, Chinese production of solar panels and components represented around 150% of global consumption, with excess production capacity amounting to 90% of global demand in 2012. China's production capacity, furthermore, had increased ten-fold over a short three-year period—in turn, leading to numerous insolvencies and production stoppages among EU-based players. China's BEV production and export figures are nowhere as extreme today. Two months after the imposition of provisional anti-dumping duties in June 2013, however, a mutually satisfactory arrangement was hammered out by Brussels and the Chinese side. In early August, a group of cooperating Chinese export producers of solar panels and components, together with the China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME), reached a joint price undertaking with the European Commission. As per the undertaking, a (gradually declining) minimum import price for solar panels and cells and wafers was set, and their annual import volume levels were capped too, which in essence removed the injurious effects of dumping. Chinese exporters participating in the undertaking would be exempt from paying the anti-dumping duty, with the exemption extended to the anti-subsidy proceedings too. The provisional anti-dumping duties averaging 47.7% would continue to apply only on exports above the annual volume ceiling as well as on the minority of non-cooperating Chinese solar panel exporters (who were to be hit with a higher tariff). On this basis, the provisional duties, unchanged at an average of 47.7%, were confirmed later that December as the definitive anti-dumping and countervailing duty. The downward spiral of prices on solar panels was arrested and present and future investment decisions based on stabilized prices were facilitated. Five years later, in August 2018, the duties were sunset, leading China's Commerce Ministry to anoint the understanding as a "model for successfully resolving trade frictions through consultation." Eleven years on, might this again be the playbook to amicably resolve the 'existential' level crisis facing the European EV industry in the face of the China challenge? Don't count it out.

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- [EU-China EV tariffs: German carmakers fear backlash], *DW*, May 27, 2024

2 — Biden Administration Sees No Trade as Free, Especially with China — 2

[**In One Sentence**]

- U.S. Trade Representative Katherine Tai argued in an op-ed that trade policy must be transformed in order to counter the partnership between "short-term profit-driven businesses" and "non-market autocracy," and thereby "democratize economic opportunity" for workers.
- Ambassador Tai later said that she shared with her predecessor, Robert Lighthizer, "a lot of the same diagnoses" on China as well as a "commitment" to changing the United States' approach to trade amidst "significantly different" global economic dynamics.
- U.S. Secretary of Commerce Gina Raimondo reiterated that U.S. economic engagement in the Indo-Pacific "isn't about China" and does not seek to stop regional countries from trading with China, but added that if U.S. and partner countries "act together," it will "send a message to China."
- Arguing that unilateral tariffs only lead to superficial outcomes, a senior trade analyst has contended that Washington could get "tougher and more effective" on China by challenging "core Chinese policies that distort international trade" at the World Trade Organization.

[**Mark the Essentials**]

- At an event hosted by the Atlantic Council on the future of U.S.-EU trade, USTR Tai argued that China should no longer be considered "a cooperative partner" and is instead neither a democracy nor a "capitalist, market-based economy." Accordingly, the U.S. and the EU should "work together" to rethink traditional approaches to trade and bring about "another new world order" which incorporates both economic and security needs.
- Referring to the extension of the Section 301 tariffs on China, Ambassador Tai noted that the Biden administration does not seek to "constrain China's economic development" and that the recent expansion of U.S. tariffs on Chinese goods is "not about escalation." Instead, according to Ambassador Tai, the tariffs are "defensive in nature" and seek to "create the space" for U.S. firms to "survive," to "compete," and to "thrive."
- As one among the Biden administration's various trade enforcement actions to "protect American workers and businesses from China," the Department of Commerce made a preliminary finding that China is unfairly subsidizing its glass wine bottle industry, and is currently contemplating additional tariffs for all Chinese producers at a rate from 21.14% to 202.70%.
- The World Shipping Council—a trade association representing major international liner shipping companies—has told the Office of the U.S. Trade Representative (USTR) that imposing a port fee on Chinese-built ships that dock at U.S. ports would not "meaningfully" alter China's practices or market

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dynamics for shipbuilding. The port fee instead "appears designed to raise funds" to finance domestic shipbuilding in the United States. A group of major U.S. unions had earlier petitioned USTR to address China's "unfair trade practices" in shipbuilding, proposing as "remedies" the port fee as well as other measures such as the creation of a shipbuilding fund for U.S. shipbuilders.

[**Keeping an Eye On…**]

- With much of her trade agenda in the works (trade liberalization never got off the ground; trade enforcement is preoccupied with labor cases against Mexico and tariffs against China), U.S. Trade Representative Katherine Tai has been holding forth of late on all matters trade related. Two themes have stood out in her musings—both of which put into perspective the gap between the politics of trade in America and that in other advanced economies. First, for USTR Tai, trade is part of the social contract, and its role needs to be reworked so that economic opportunity can be "democratized" in favor of workers. For too long, trade resembled a form of "trickle down economic policy" that enriched the few (i.e., businesses) and kicked the many (i.e., the working classes) to the curb. Tai has it exactly backwards. Trade benefited the many (consumers who enjoyed lower prices) and hurt a few (job losses in concentrated industries or regions). Which is also the reason why almost every major economic area—be it the European Union, Japan or China (amounting to almost $40 trillion in GDP between the three) is still reducing or eliminating their tariff and non-tariff barriers. Perhaps, if U.S. administrations starting with the Clinton administration had expended greater political capital to champion the virtues of trade (and not just exports), and perhaps if the U.S. state had a more generous welfare system—as per the OECD's 'social spending' tracker the U.S. is a relative laggard—the populist predicament facing the political system might not have been as stark today. The second theme is just as damning. In her musings, USTR Tai noted that the U.S. and the EU should work together to rethink approaches to trade in the face of China's "incredibly large footprint." Harking back to the 1930s, she noted that the failure of democracies to find common ground on international economic issues had led to devastating consequences. To avoid a repetition of the past, the community of advanced democracies should start a rules-setting initiative that is essentially layered over the WTO system in order to rein in China's excesses (an exercise on these lines on industrial subsidies during the Trump administration came up short). It is nobody's case that China is an easy trade partner to manage. There is genuine anxiety about its competitive prowess and disgust regarding some of its underhand practices that President Xi Jinping vows to eradicate but somehow never comes around to eliminating. That said, every major advanced economy other than the U.S. would prefer to manage and resolve its differences with China within the framework of trade multilateralism and the four corners of treaty law—and, if need be, consensually build out that framework of treaty law. It is not surprising that the U.S. is the only major advanced economy that remains outside the Multi-Party Interim Appeal Arbitration Arrangement that countries have set up to resolve their trade disputes on the basis of WTO principles and law in the absence of a functioning WTO Appellate Body. An attempt to layer a rule-setting initiative over-and-above the WTO system and, in effect, treat China as a 'foreign entity of concern' may work in the technology arena but will find no purchase in the trade policy arena—including within the club of advanced democracies. The MFN principle and the 'national treatment' principle are too deeply baked into the system for them to be jettisoned on a whim. That the U.S. would even consider surrendering its intellectual patent so casually on the multilateral trade system that it so assiduously conceived and constructed is itself depressing. Be that as it may, the race to the top that USTR Robert Zoellick had challenged his advanced economy peers to, by way of his strategy of 'competitive liberalization' two decades ago, has long since passed. Under USTR's Tai and Lighthizer, a new

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race to the bottom has been inaugurated with the two parties vying to outdo each other in terms of 'competitive populism.'

[**Expanded Reading**]

- U.S. economic engagement in Indo-Pacific 'isn't about China,' Commerce Secretary Raimondo says, *CNBC*, June 7, 2024
- Katherine Tai on how US and EU trade approaches must 'evolve' to deal with China and other global challenges, Atlantic Council, June 4, 2024
- U.S. Department of Commerce Makes Affirmative Subsidy Determination in Trade Case on Glass Wine Bottles from China, Buchanan Ingersoll & Rooney PC, May 30, 2024
- Beyond US Unilateralism: Rethinking the Response to China's Trade Practices, Baker Institute for Public Policy, May 29, 2024
- Op-Ed by Ambassador Katherine Tai: Trade must transform its role in the social contract, Office of the United States Trade Representative, May 28, 2024
- PRC Must Not Be Allowed to Wipe Out Competition, *Voice of America*, May 28, 2024
- Press Briefing by Press Secretary Karine Jean-Pierre and United States Trade Representative Katherine Tai, The White House, May 14, 2024
- IPEF Starts To Demonstrate Results, Center for American Progress, June 10, 2024

On the Hill

[**Legislative Developments**]

- House Ways & Means Committee member Rep. Blake Moore (R-UT) has introduced a bill that would terminate permanent normal trade relations (PNTR) with China if China "engages in an act of military aggression or serious economic coercion…that violates the sovereignty or territorial integrity of Taiwan."
- U.S. Senators Tammy Baldwin (D-WI) and Marco Rubio (R-FL) introduced a bill to closely monitor China's "currency manipulation," including by using "the voice and vote of the U.S." at the International Monetary Fund.
- Rep. Elissa Slotkin (D-MI) introduced a bill to authorize the Department of Commerce to "review any sale, importation or other transaction" that involves a "connected vehicle designed, built or supplied" by Chinese companies or citizens.

[**Hearings and Statements**]

- Sen. Elizabeth Warren (D-MA) said that the renewal of the Generalized System of Preference (GSP) must be accompanied by Trade Adjustment Assistance (TAA), arguing that the mere renewal of GSP will provide a "windfall refund" to big business while neglecting the interests of U.S. workers who lost their job to trade.
- In two separate letters to the Department of Commerce and the U.S. International Trade Commission, a bipartisan and bicameral group of lawmakers called for investigations into "unfair trade practices by primarily Chinese-owned companies operating in Cambodia, Malaysia, Thailand and Vietnam," and address China's dominance in the solar industry.
- Senate Finance Committee Chair Ron Wyden questioned BMW for its failure to conduct adequate due diligence while importing "thousands of vehicles" that allegedly contain components made by Sichuan Jingweida Technology Group, a Chinese supplier that is banned under the Uyghur Forced Labor Prevention Act (UFLPA).

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[**Expanded Reading**]

- Finance Chair Wyden Questions BMW over its use of Components Made with Forced Labor, United States Senate Committee on Finance, June 10, 2024
- US Senate panel expands probe into BMW use of parts from banned Chinese supplier, *Reuters*, June 10, 2024
- At hearing, Warren Calls out Republicans for retroactive tariff cuts for big business, renewal of federal assistance for American workers affected by trade, Office of Sen. Elizabeth Warren (D-MA), June 5, 2024
- Congressman Blake Moore introduces bicameral legislation to deter Chinese aggression against Taiwan, Office of Rep. Blake Moore (R-UT), June 3, 2024
- Baldwin, Rubio Introduce Bipartisan Bill to Protect American Workers and Business from China, Office of Sen.Tammy Baldwin (D-WI), May 30, 2024
- Slotkin Announces Legislation Establishing National Security Review for Chinese Connected Vehicles, Office of Rep. Elissa Slotkin (D-MI), May 29, 2024

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What's Been Happening

1 — G7 Italy: Tough Stance on China Economic Policy and its Ties to Russia — 1

[**In One Sentence**]

- On June 14, the G7 countries issued their Apuila Leaders' Communique, which registered concerns about China's "persistent industrial targeting" and "comprehensive non-market policies and practices" which create "global spillovers, market distortions and harmful overcapacity" in sectors such as electric vehicles and clean-energy products.
- To counter China's "unfair competition" and "harmful overcapacity," the European Commission announced additional duties of about 38.1 percent on Chinese electric vehicles, following the United States' announcement of 100 percent tariff on Chinese EVs in May.
- The G7 countries also issued strong language against China for its support for Russia's illegal war in Ukraine and criticized China's "transfer of dual-use materials" to Russia's defense sector.
- The Chinese Foreign Ministry denounced the G7's "Chinese overcapacity' allegation" as "an excuse for protectionism" and warned that the G7 is "acting against the world trend of peaceful development."

[**Mark the Essentials**]

- In order to level the playing field and protect economic security, the G7 pledged to undertake "new monitoring and information sharing efforts" as well as update their respective toolkits to counter China's harmful policies and practices.
- The Biden administration reportedly spent considerable time and effort on pushing the G7 to take a tough stance on China, highlighting the need to protect domestic industries against China's trade and industrial policies as well as China's "partnership without limits" with Russia.
- Regarding China's "enabling" of Russia's war machine in Ukraine, the U.S. and EU have sanctioned Chinese companies and vowed to "continue taking measures" including secondary sanctions against financial actors in China that materially support Russia.
- While the G7 Communique took a tough stance on China's economic and trade practices, the communique also noted that the G7 countries seek "constructive and stable relations with China," "recognize the importance of direct and candid engagement," and "continue to engage [China] in areas of common interest."

[**Keeping an Eye On…**]

- Tough talk on China seems to come easily to the G7; tough measures that are taken in concert, well, not so much. On June 14, as per the White House's telling, President Joe Biden rallied his G7 colleagues to "work together to confront [China's] non-market policies and practices and efforts to dominate strategic sectors," including notably the electric vehicles (EV) sector. NSA Jake Sullivan even declared the G7 to be "more unified than they've ever been" on China economy-linked challenges. Problem is that just two days earlier, the European Commission issued its provisional countervailing duties on Chinese EV's following an anti-subsidy probe. The Commission's duties fly in the face of the 'ever more united' stance; indeed, the gap between the U.S. side and the European Union on Chinese EV's is as wide as the Atlantic. The Commission's peak provisional duty rate on Chinese EVs following the eight-month probe is two-fifths that of the United States; 38.1% v. 100%—Washington didn't even conduct an anti-subsidy probe prior to jacking up its tariffs. The rate on China's most nimble competitor in this space, BYD, at 17.4% is less than a fifth of the United States'. Second, the Commission's duties, once formally proclaimed, will be appealable by China to the Multi-Party Interim Arbitration Arrangement (MPIA) that 47 WTO members, including the EU and China, set up in 2020 as an alternative appeal process, now that Uncle Sam has crushed the original WTO dispute settlement appeals process like a bug. Beijing has even heeded the MPIA's authority in the case of a losing challenge; by contrast, the U.S.' EV tariffs are appealing to nobody. Third, even if Chinese EV's were to somehow magically surmount the sky-high U.S. tariff wall, they would be blocked out of the U.S. market by the Biden administration's 'foreign entity of concern' rules (in the Inflation Reduction Act and Bipartisan Infrastructure Law) and the draft 'connected vehicles' rule. By contrast, BYD has already established greenfield operations in the EU and Chinese EV companies are in talks with European counterparts regarding setting up distribution networks on the continent. Finally, there is a fair likelihood that the EU and Chinese sides will arrive at a negotiated settlement on the provisional duties, not unlike their price and volume undertaking on solar panel and component imports a decade ago. The two sides have kicked off consultations already. By contrast, there is nothing on EVs to be consulted about insofar as Washington is concerned, and more than three years into her tenure USTR Tai has yet to even show up in Beijing. Blowhard talk by the G7 is just that. Lots of heat; little light. And not a terribly useful guide to action.

[**Expanded Reading**]

- Joe Biden forging ahead with efforts to counter China as Donald Trump, election loom large, *South China Morning Post*, June 24, 2024
- Ukraine war: US warns China to halt exports that support Russia or face 'further steps', *South China Morning Post*, June 19, 2024
- Foreign Ministry Spokesperson Lin Jian's Regular Press Conference on June 17, 2024, Ministry of Foreign Affairs of the People's Republic of China, June 17, 2024
- G7 Apulia Leaders' Communiqué, The White House, June 14, 2024
- G7 threatens China with further sanctions over Russia war support, *Financial Times*, June 14, 2024
- Rich countries unite against China … sort of, *Politico*, June 14, 2024
- G7 vows to counter 'economic and national security threats' posed by China, *South China Morning Post*, June 14, 2024
- On-the-Record Roundtable by APNSA Jake Sullivan Previewing the President's First Day at the G7, The White House, June 13, 2024

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2 — Treasury Releases Proposed Rule on China Outbound Investment — 2

[**In One Sentence**]

- The U.S. Treasury Department released a Proposed Rule to implement President Biden's Executive Order of August 2023 on outbound investment controls.
- The Proposed Rule prohibits U.S. investment in China and Chinese companies that the U.S. government determines as posing "a particularly acute national security threat because of its potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities" of China.
- The Proposed Rule lists a number of industries and technologies that are either barred for U.S. investors or trigger a notification requirement, but does not provide an explicit definition for "national security."
- China expressed "deep concerns" and "firm opposition" to the United States' proposed rules on outbound investment controls, adding that it "reserves the right to take corresponding measures."

[**Mark the Essentials**]

- The release of the Treasury Department's Proposed Rule comes 10 months after President Biden signed Executive Order 14105, which tasked the Treasury to issue specific regulations that ban or require prior notification for certain U.S. investments in China. It constituted the first instance ever of the U.S. government seeking to regulate outbound capital flows for national security reasons.
- Specifically, U.S. citizens, companies and foreign subsidiaries under their control are prohibited from certain investment, acquisition or business expansion in China or related to Chinese companies if they engage in, among others: the development of semiconductor design software; front-end semiconductor fabrication equipment; high-performance, advanced or cutting-edge semiconductor; supercomputer and quantum computer; high-performance artificial intelligence (AI) systems; and AI systems that is designed exclusively for military end use, governance intelligence or mass-surveillance.
- The Proposed Rule has been generally welcomed by the business community given its tailored approach. In a statement, the U.S.-China Business Council (USCBC) noted that it "supports the Biden administration's efforts to protect U.S. national security while also ensuring robust commercial exchange with China for the benefit of American companies, workers and our economy."

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

- Later this year, the other shoe will drop with regard to investment controls and China. In August 2018, Congress and the Trump administration expanded CFIUS' (Committee on Foreign Investment in the United States) jurisdiction beyond transactions that could result in foreign control of a U.S. business to also sweep non-controlling minority investments within CFIUS' inward investment screening remit. The authority applied to non-controlling investments in U.S. businesses that were developing critical technologies, owned or operated critical infrastructure, or maintained or collected sensitive personal data of U.S. citizens—collectively known as TID (technology, infrastructure, and data) businesses. By denying foreign investors of "countries of special concern" from having access to material nonpublic technical information in the possession of that U.S. business, the aim was to shut down gaps and loopholes that could enable the said foreign investor to exploit a minority investment position in an early-stage technology company to obtain cutting edge IP and trade secrets. Chinese FDI in the United States cratered from that point on, in part due to the chilling effect of the measure. Almost six years later, the Treasury Department has now flipped its focus. On June 21, the department issued a 165-page Proposed Rule to control U.S. outbound investments to China. The Proposed Rule follows an outbound investment-related Executive Order issued by President Biden in August 2023 and an Advanced Notice of Proposed Rulemaking later that month. As per the Proposed Rule, U.S. investors are to be prohibited from engaging in transactions that facilitate the advancement of sensitive technologies or products critical to military, intelligence, surveillance or cyber-enabled capabilities by entities that are either: (a) registered and based in China ("country of concern"), (b) placed on any of the U.S. government's restricted lists (e.g. Entity List, Military End User List, SDN List, etc.), or (c) tied to China, by way of substantial interests in Chinese companies, in other jurisdictions (say, via the variable interest entity structure in the Caymans or routed through Middle Eastern investments). The prohibition extends to investments in existing operations too in China insofar as the investment involves a business expansion or pivot to these proscribed technologies or products. The technologies or products listed (the "covered activities"), which are accompanied by highly technical parameters, belong to the semiconductor and microelectronics, quantum information, and artificial intelligence (AI) sectors. On the other hand, the threshold for being deemed to have engaged in a proscribed "covered activity" in China has been kept at the high end (50% of revenue, capital expenditure, operating expenses, or net revenue must be derived from China), meaning that only a narrow subset of U.S. investments in third country firms that have exposure to the Chinese market will fall within the ambit of the Proposed Rule. And exemptions have been built into the rule too - for full buyouts, for intra-company transactions, for certain Limited Partner investments, and for publicly traded security investments. Given that public market investments represent the majority of U.S. capital flows to China, the impact of this outbound investment rule will, as the Treasury Department has maintained, remain tailored and targeted. For better or worse, the Trump and Biden administration's foreign inbound and U.S. outbound investment controls, respectively, on China are here to stay. Since the two sides were never quite 'coupled' in the advanced node chips, quantum, and AI sectors, it would be improper to characterize the proposed measure as an instance of 'decoupling'. That said, the gap between the two ecosystems in these sensitive technologies and sectors will only get wider with the passage of time. In September 2022, NSA Jake Sullivan had identified "three [foundational] families of technologies" in which the United States would strive to "maintain as large a [technological] lead as possible." Also that month, the administration issued an Executive Order that premised the flow of investments and technology exchanges on their underlying impact on U.S. technology leadership. The Proposed Rule on outbound investment controls, which is expected to be finalized and issued in almost-unaltered form later this year, is a continuation in this vein.

[**Expanded Reading**]

- U.S. May Tighten Quantum Investment Restrictions On China, *The Quantum Inside*, June 26, 2024
- OpenAI Taking Steps to Block China's Access to Its AI Tools, *Microsoft*, June 25, 2024
- McHenry Statement on Treasury's Outbound Investment Proposed Rule, Financial Services Committee, June 21, 2024
- US Moves Closer to Restricting Outbound Investment in China for Chips, AI Tech, *Bloomberg*, June 21, 2024
- US Treasury Department Moves Closer to Implementing Outbound Investment Restrictions Through Latest Proposed Regulations, *The National Law Review*, June 26, 2024
- Treasury Issues Proposed Rule to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, U.S. Department of the Treasury, June 21, 2024

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[**Legislative Developments**]

- Underlining the changing nature of global markets and the expansion of e-commerce, Sen. Bill Cassidy (R-LA) and Sen. Catherine Cortez Mastro (D-NV) have proposed a bill to "modernize" U.S. customs laws and improve customs procedures, including with regard to data collection.
- A group of 13 Senate Democrats have introduced a bill to reauthorize the Trade Adjustment Assistance program through 2030 to assist U.S. workers who "lose their jobs because of corporate outsourcing and China's cheating" amidst the U.S. trade policy "failure."

[**Hearings and Statements**]

- Senate Finance Committee Chair Ron Wyen (D-OR) tore into BMW for its failure to conduct adequate due diligence while importing at least 8,000 vehicles that allegedly contained components produced by Sichuan Jingweida Technology Group Co, a Chinese supplier that is banned under the Uyghur Forced Labor Prevention Act (UFLPA).
- Two members of the House China Committee, Reps. Darin LaHood (R-IL) and Jake Auchincloss (D-MA) have called for more legislative measures to push back against China's "protectionist policies" while deepening economic engagement with regions like the Indo-Pacific and the Global South by developing trade initiatives with enforcement mechanisms (e.g., CPTPP instead of IPEF).
- During a June 13 hearing of the House Energy and Commerce Committee's environment, manufacturing and critical minerals subcommittee, witnesses and lawmakers argued that the U.S. should build a resilient critical mineral supply chain by establishing a domestic mining industry, facilitating a "friendshored" supply chain with allies like Australia, and reducing China's footprint throughout the supply chain from mining to processing to recycling.

[**Expanded Reading**]

- Sen. Sherrod Brown Introduces Bill to Reauthorize Trade Adjustment Assistance, Alliance for American Manufacturing, June 21, 2024
- Brown introduces legislation to reinstate trade adjustment assistance, Office of Sen. Sherrod Brown (D-OH), June 18, 2024
- Environment, Manufacturing, and Critical Materials Hearing: "Securing America's Critical Materials Supply Chains and Economic Leadership", House Committee on Energy & Commerce, June 13, 2024
- NCBFAA Applauds Senators Cassidy and Cortez Masto for Customs and Trade Facilitation Framework, National Customs Brokers & Forwarders Association of America, June 11, 2024
- Report Launch: Friendshoring the Lithium-Ion Battery Supply Chain, CSIS, June 11, 2024
- ICYMI: Americas Act Represents Transformational Opportunity for Western Hemisphere, counters China, Office of the Senator Bill Cassidy (R-LA), June 10, 2024
- Finance Chair Wyden Questions BMW over its use of Components Made with Forced Labor, United States Senate Committee on Finance, June 10, 2024

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