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TnT ICAS Trade ’n Technology Program

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What's Been Happening

1 — Harris and Trump Vow Toughness on China, in Different Ways — 1

[**In One Sentence**]

- During a recent speech in Pittsburgh, Pennsylvania, Vice President Kamala Harris said that a Harris-Walz administration "will not tolerate unfair trade practices from China or any competitor that undermines American workers."
- Vowing to uphold "fair trade" and a "level playing field," Vice President Harris listed shipbuilding, steel and electric vehicles as potential American industrial sectors that are "threatened" and accordingly need protection.
- The Harris-Walz campaign has announced a plan to "jumpstart a new era in American industry by developing, manufacturing, and deploying technologies and manufacturing them at scale," including by "modernizing" traditional areas of U.S. manufacturing and by incentivizing the development of emerging technologies.
- Meanwhile, former President Donald Trump continued to emphasize his plan to impose 200 percent tariffs on certain manufactured goods, arguing that he will either acquire the approval of Congress or does not need one.
- Complaining that China is "building massive car plants" in Mexico and putting American car manufacturing "out of business," President Trump said that he plans to place "100 to 200 percent" tariffs on Chinese-branded car imports that are made in Mexico to ensure they are no longer competitive.
- Questioning whether former President Trump's policy plan could "deliver," Vice President Harris pointed to a data point noting that the trade deficit with China was lower under the Biden-Harris administration.
- Harris also argued that the U.S.-Mexico-Canada Agreement (USMCA)—which was negotiated under the Trump administration—has made it "far too easy" to outsource U.S. car manufacturing jobs to Mexico.
- In a recent interview on U.S. trade policy, U.S. Trade Representative Katherine Tai observed that tariffs and trade "can and must be used as part of a strategy" to empower the U.S. middle class and working class.

[**Mark the Essentials**]

- A number of U.S. industry associations have reportedly urged Congress to play a stronger role in U.S. tariff policy oversight, pointing especially to the negative impact of the former Trump administration's Section

232 tariffs on steel and aluminum and the potential impact of certain tariff increases. Industry representatives are reportedly assisting in drawing-up legislative measures to craft "guardrails" against the executive branch's "abuse of U.S. economic and trade authorities," including by subjecting "every proposed tariff action" to a congressional vote.

- While former President Donald Trump has repeatedly doubled-down on his plan to impose significant tariff increases, Senate Minority Leader Mitch McConnell (R-KY) has explicitly noted that he is "not a tariff fan."
- Using the electric vehicle (EV) industry as an example, USTR Tai observed that the United States needs to play a combination of "stronger defense"—i.e., protecting U.S. industries from China through tariffs—and "stronger offense"—i.e., investing in infrastructure, semiconductor, EVs and EV batteries.
- Many economists and analysts too have cautioned against the consequences of sharp U.S. tariff increases against China and China-linked supply chains. According to an analysis by the Peterson Institute for International Economics, former President Trump's proposed tariff plan—i.e., a 60% tariff on Chinese imports and a 10% general tariff—would reduce U.S. GDP and employment by 2028 and would damage the economies of major U.S. allies and trading partners. Moreover, if the U.S. decides to end its permanent normal trade relations (PNTR) with China and increase general tariff rates against Chinese imports—a much-touted policy choice on the Hill—the United States will ironically end up with a wider trade deficit with the rest of the world.
- On a related note, the International Monetary Fund (IMF) economists have noted that the United States' and China's trade balances are largely driven by domestic macroeconomic fundamentals (savings, consumption and investment balances), and that the view of industrial policies, including subsidies, as a determinant of external balances is "incomplete at best."

[**Keeping an Eye On…**]

- It is remarkable just how unremarkable it has become to press the case for higher tariffs within the U.S. political system. Tariffs are, first-and-foremost, a tax on middle class consumers—be it a 25% tariff on $370 billion worth of Chinese imports or a proposed 10% tariff on all global imports. It is not without some irony, then, that Vice President Harris' presidential policy platform is titled 'A New Way Forward for the Middle Class.' Low tariffs and unfair economic practices, furthermore, are not the primary cause of the United States'' bilateral trade deficit with China (and as economists will be quick to point out it is a country's global rather than bilateral deficits that matter). That deficit has much more to do with the two countries' contrasting macroeconomic fundamentals—weak domestic demand and a persistent surge in domestic saving in China, and a counterpart decline in domestic saving in the U.S. Besides, the trade spillovers from industrial policy-linked subsidies are modest at best (although they might show up more starkly in individual sectors). As per a recent IMF analysis, China's exports of subsidized products are barely 1% higher than those of non-subsidized products. All-in-all, the U.S. has gone from being first-in-class on tariff levels among advanced economies to becoming last-in-class within the short span of a decade. Be that as it may, the trade and industrial policy section of Vice President Harris' presidential policy platform, released in late September, is certainly an improvement on the 'Maganomics' on offer courtesy Donald Trump. The former's America Forward strategy is crafted very much in keeping with the Biden administration's approach on trade, investment, industrial policy, and economic and national security. China makes a rare appearance in this section of the policy platform. Going forward, Harris can be expected to be a reliable custodian of the U.S.' (and Silicon Valley's) technological rivalry with China in the areas of chips, AI, quantum, biopharma, advanced manufacturing and other high-tech domains. On the other hand, as a California-bred politician,

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she might also hold an innately sunnier disposition towards China (California politics on China sets it apart from the national mainstream—let alone from Beltway politics on China). Besides, in her time and work on disinformation-related matters on the Senate Intelligence Committee, it was Russia and Iran that mostly consumed her focus. Continuity on trade and technology competition with China within the framework laid down by the Biden administration can reliably be expected, going forward, should Harris be elected to office on November 5.

[**Expanded Reading**]

- ‘We are at an inflection point’: U.S. Trade Rep. on new Biden Admin tariffs on Chinese EVs, *MSNBC*, September 29, 2024 [Video]
- ‘Trickle down just doesn’t work’: The truth about tariffs and when they’re actually useful, *MSNBC*, September 29, 2024 [Video]
- How much would Trump's plans for deportations, tariffs, and the Fed damage the US economy?, Peterson Institute for International Economics, September 26, 2024
- Harris heads to Pittsburgh (again) to make a manufacturing pitch to voters, *npr*, September 25, 2024
- A New Way Forward For The Middle Class: A Plan to Lower Costs and Create an Opportunity Economy, Kamala Harris for President, September 25, 2024
- Trump calls for 100% tariffs on cars made in Mexico as part of US manufacturing plan, *AP*, September 24, 2024
- Trump says he will put 100% tariffs on every car coming across Mexico border, *Reuters*, September 24, 2024
- McConnell slaps at Trump’s tariff proposals, warns of higher prices, *The Hill*, September 24, 2024
- Strategic Defense Critical Minerals: A Targeted List for National and Economic Security, Silverado Policy Accelerator, September 24, 2024
- Trade Balances in China and the US Are Largely Driven by Domestic Macro Forces, International Monetary Fund, September 12, 2024
- Economic implications of revoking China's permanent normal trade relations (PNTR) status, Peterson Institute for International Economics, September 2024

2 — EU and China Continue EV Tariff Negotiations as Deadline Approaches — 2

[**In One Sentence**]

- On October 4, the European Union member states voted to place additional tariffs as high as 45% on certain battery electric vehicles (BEVs) imported from China.
- The European Commission (EC) initiated an anti-subsidy investigation on Chinese BEVs in October 2023, citing concerns that Chinese BEVs benefited from “unfair subsidization” and threatened the economic interests of EU BEV producers.
- On July 4, the EC concluded its investigation of China’s BEV subsidization practices and on August 20 circulated a draft decision that calls for imposing tariffs at varying rates on Chinese imported BEVs: a 17% duty on BYD, 19.3% on Geely, 36.3% on SAIC, and 36.3% on all non-cooperating BEV exporters based in China.
- The result of the vote on October 4 will determine whether EU members will impose final or “definitive” duties on Chinese EVs that will be in force for the next five years (and extendable thereupon).
- The EC’s director-general for trade defense Martin Lucas has clarified that, although the Commission concluded its investigation on July 4, it “is not necessarily the end of consultations with China on finding a solution” and that a final decision to implement the “definitive” tariffs needs to be made by October 30.
- Chinese Commerce Minister Wang Wentao and outgoing EU trade chief Valdis Dombrovskis have failed to reach a breakthrough, as yet, in negotiations on a ‘price commitment’ related to BEV exports to the bloc but Chinese representatives remain in Brussels, at this time of writing, for a continuing round of negotiations.

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[**Mark the Essentials**]

- Responding to the tense negotiations between the European Commission and China on the BEV tariffs, the Chinese Commerce Ministry underlined China's "strong commitment" to dialogue with EC and EU counterparts, and that the two sides are reportedly working through a 'price commitment' offer as a means to resolve the dispute. The negotiations are reportedly progressing at this time and both sides claim to possess the requisite "political will to resolve differences through consultations."
- Meanwhile, Chinese automobile manufacturers remain committed to expanding their presence in European markets. Companies such as Chery, Leapmotor, Geely, and BYD have either announced plans to establish production sites in target EU member countries or partnerships with European automotive manufacturers to produce their vehicles in Europe.
- Disagreeing with the proposed countervailing duties on China, German Economy Minister Robert Habeck has argued that the tariffs will lead to "countermeasures…and tariff dispute, perhaps a tariff war, with China," and he reiterated the importance of ongoing efforts to find "a political solution that will not drive us into a tariff war with China."
- The European Commission, for its part, has alerted stakeholders to the torrent of China-manufactured BEV imports into the bloc, noting that the registration of China-built EVs rose from 3.5% of the EU market in 2020 to 27.2% in the second quarter of 2024, and Chinese brands from 1.9% to 14.1%.

[**Keeping an Eye On…**]

- The clock is counting down to the imposition of final countervailing duties by the EU on imports of battery electric vehicles (BEVs) from China. Exactly one year to the day that the European Commission served its notice of initiation of anti-subsidy proceedings concerning the import of Chinese BEV's into the bloc, the EU member states are due to vote on October 4 on a Commission decision to impose 'definitive' countervailing duties. An affirmative vote seems all but certain. As per EU rules, unless a qualified majority of 15 EU member states representing 65% of the population vote nay, the Commission's decision will become final and with binding effect. At this time, France, Italy, Poland and Greece, comprising almost 40% of the EU's population, have already confirmed plans to vote in favor of the Commission's proposal. Arrayed against are some smaller EU member states: Cyprus, Malta, Hungary and Slovakia. Heavyweight Germany appears to be leaning towards abstaining, given the divisions within its ruling coalition, but may come around to voting nay. And Spain, another significant EU player, appears to be shifting from yea to nay, although it may abstain as well. All told, the weighted vote balance solidly favors the Commission's proposal—meaning that on October 4 the EU member states will vote to confirm the definitive tariffs, publish its implementing regulation by October 30, and have the tariffs come into effect on November 4 at the very latest. The EU member states' vote on October 4 is not the final word, though, on the BEV countervailing duties. Through much of mid-to-late September, the European and Chinese sides have been locked in intense negotiations to craft a price undertaking—a (gradually declining) minimum import price for imported Chinese BEVs along with annual volume caps—to remove the injurious effects of Beijing's subsidies. So far, the negotiations have come up short but are expected to continue even after the October 4 vote. If an agreement is reached and a Commission Decision issued thereafter in this regard—and one would be rash to count out this possibility—the Chinese BEV exporters participating in the undertaking would be exempted from the countervailing duty. The definitive duty, to be voted in on October 4, would apply only to non-participating and non-cooperating Chinese BEV exporters. As such, October 30 rather than October 4

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would seem to be the drop-dead deadline by which time the negotiation needs to be concluded. And if successfully concluded, the definitive duties would not need to be rescinded at that time since they will apply to the non-cooperating BEV exporters. Clearly, over the next four weeks, the Chinese side has much on its hands to sort through and the timeline is tight. But it has not come to this fight without ammunition either. Lurking behind the negotiations are China's own anti-subsidy probes of EU pork and dairy products. And dumping margins on French brandy have already been notified, meaning that provisional anti-dumping duties could drop anytime at the Chinese Commerce Ministry's choosing. Both sides seem to have teed-up this BEV anti-subsidy tariff negotiation to perfection. As it enters the home stretch, can the two now make it across the finish line together?

[**Expanded Reading**]

- German vote against EV tariffs undercuts EU's tougher China stance, *Nikkei Asia*, October 4, 2024
- Will EU's Oct 4 vote on Chinese EV tariffs spark a trade war with China?, *Business Standard*, October 1, 2024
- EU says it could continue China EV talks even after tariffs, *Reuters*, September 30, 2024
- China targets consensus with EU on EV tariff dispute through flexible pricing solutions, *Reuters*, September 26, 2024
- France Supports European Tariffs on China EVs, Foreign Minister Says, *Bloomberg*, September 26, 2024
- Mission Impossible: Germany's bid to kill EU duties on Chinese EVs, *Politico*, September 24, 2024
- Why EU tariffs are unlikely to dent Chinese EV makers' European expansion, *CNBC*, September 20, 2024
- EU and China trade negotiators fail to strike deal on electric vehicle imports, *SCMP*, September 20, 2024
- Chinese Automakers' Answer to E.U. Tariffs: Build in Europe, *The New York Times*, September 19, 2024
- China's electric carmakers warn of EU investment cuts over tariff threat, *Financial Times*, September 20, 2024

On the Hill

[**Legislative Developments**]

- Senator Dick Durbin (D-IL) is again advancing a bill to impose carbon taxes on fossil fuels and a few other high emissions products and to apply a "border adjustment fee" on carbon emissions for imports "to ensure an equal playing field for American companies."
- House Ways & Means Committee member Rep. Jodey Arrington (R-TX) has introduced a bill to expand the authority of the U.S. International Trade Commission "to proactively stop foreign, state-owned businesses from using third countries as a backdoor to evade U.S. tariffs," eyeing companies from "non-market economies" such as China.
- House China Committee Chair Rep. John Moolenaar (R-MI) said that House Speaker Mike Johnson (R-LA) and House lawmakers are still committed to passing an outbound investment bill on China by the end of 2024. The House Foreign Affairs and the House Financial Services Committee are yet to agree on the exact policy approach to restrict outbound investment from China, but Rep. Moolenaar expressed optimism that progress may be made in next week's meetings.

[**Hearings and Statements**]

- During an event hosted by the American Enterprise Institute in Washington, DC on September 25, House China Committee Chair Rep. John Moolenaar (R-MI) underscored that the U.S. government was "slow" and "reactive" to the threats posed by Chinese technology companies and called for the U.S. government to take a more proactive posture on China issues beyond focusing on just explicit risks and concerns.

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- In a letter to trade officials of the U.S., Canada, and Mexico, Sen. Jeff Merkley (D-OR) and Sen. Marco Rubio (R-FL) along with major sponsors of the Uyghur Forced Labor Prevention Act (UFLPA) called for stronger enforcement of UFLPA among North American trade partners and argued that the "UFLPA can serve as a model for similar legislation in Canada and Mexico."
- Regarding the on-going labor strike in East and Gulf Coast ports, a group of Republican lawmakers have urged President Biden to "provide any and all support it can offer to both parties as these negotiations continue," "utilize every authority at its disposal to ensure the continuing flow of goods and service," and evade harm to consumers and the American economy.
- During a trade subcommittee hearing on September 20, House Ways & Means Committee members criticized other U.S. trading partners for their discriminatory enforcement of certain digital rules. Chair Adrian Smith (R-NE) criticized European counterpart's Digital Markets Act (DMA), which labels five U.S. companies and one Chinese company as "gatekeepers" subject to stricter regulations but lists no European companies. House Digital Trade Caucus co-chair Darin LaHood (R-IL) also said that DMA in practice "often discriminates against U.S. companies" and undermines innovation and competition.
- After the White House announced plans to block Chinese imports subject to Section 301, 232 and 201 tariffs from getting *de minimis* exemption treatment at the U.S. customs border, House Democrats said that they are looking closely at a broader "product-specific" approach to address *de minimis* reform. According to some affiliated staffers, some House Democrats are looking to exclude certain product categories from *de minimis* benefits regardless of their direct origin, with the goal to "cut down on China as much as possible."

[**Expanded Reading**]

- East and Gulf coast ports strike, with ILA longshoremen walking off job from New England to Texas, stranding billions in trade, *CNBC*, October 1, 2024
- Do Chinese Companies Pose a Risk to Our National Security? A Bipartisan Discussion with Reps. John R. Moolenaar (R-MI) and Raja Krishnamoorthi (D-IL), American Enterprise Institute, September 25, 2024
- Arrington Introduces Legislation to Counter Unfair Foreign Trade Practices, Office of Rep. Jodey Arrington (R-TX), September 24, 2024
- ILA Strike Watch 2024: House Committee Writes Letter to Biden Urging Administration to Aid Negotiations (w/ Full Text), Universal Cargo, September 24, 2024
- Trade Subcommittee Chairman Smith Opening Statement – Hearing on Protecting American Innovation by Establishing and Enforcing Strong Digital Trade Rules, United States House Committee on Ways & Means, September 20, 2024
- Durbin Introduces America's Clean Future Fund Act To Invest In A Clean Future And Spur Job Creation, Office of Sen. Dick Durbin (D-IL), September 19, 2024
- Rubio, Merkley Introduce Bill to Double Down Against Uyghur Forced Labor, Office of Sen Marco Rubio (R-FL), September 19, 2024
- FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products, The White House, September 13, 2024

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What's Been Happening

1 — Amid Election Season, Officials and Specialists Reassess U.S. Trade, Industrial and Climate Policies — 1

[**In One Sentence**]

- In support of what he referred to as a "new era of public-directed investment," Todd Tucker, Roosevelt Institute's Director for Industrial Policy and Trade, said that the United States needs more "actual meat on the bones" in implementing its climate and industrial policies.
- Tucker argued that U.S. climate and industrial policies should be conducted in the sequence of "survive, decarbonize and then become globally competitive," and that tariffs should be used to "safeguard" investments incentivized by subsidies during the first two steps.
- Tucker also supported the crafting of bilateral and international agreements on a sectoral basis, provided they ensure companies follow "high-road practices," e.g. in clean steel and aluminum production and, more generally, adhere to high climate-related standards.
- Michael Beeman, former Assistant U.S. Trade Representative, observed that the United States' traditional bipartisan consensus on free trade and international engagement has collapsed due to the rise of zero-sum-centered politics, as politicians race to take an increasingly harder stance on tariffs in the name of protecting domestic sectors and production.
- According to Beeman, the United States has tended to "walk out" of trade negotiations in the hope of more advantageous outcomes but, instead, has often lost the chance to re-engage trade partners, and in the process surrendered its "decades-long global leadership on trade."
- Michael Pettis, a nonresident senior fellow at the Carnegie Endowment for International Peace, criticized the existing multilateral trading system for focusing only on specific trade violations and for failing to address persistent trade surpluses.
- Accordingly, Pettis argues, the U.S. should "opt out of the existing global trade regime," either unilaterally or with like-minded countries, and establish a new system that would "go after the trade imbalances themselves" as well as countries whose manufacturing capacities significantly exceed their consumption potential.

- According to Pettis, the new system should advocate for trade equilibrium and address trade imbalances through measures such as demanding currency appreciation, controlling capital outflows or increasing tariffs to limit the flow of imports.
- Meanwhile, U.S. Trade Representative Katherine Tai emphasized that "strategic, smart, defensive use of tariffs" has a key role to play in "worker-centered" trade policy, adding that tariffs can be used constructively to level the playing field, give everyone "a fighting chance," and create something "powerful and strong."

[**Mark the Essentials**]

- Morgan Stanley analysts Ariana Salvatore and Arunima Sinha argue that a second Trump administration will be able to impose 60 percent duties on goods from China and 10-20 percent tariffs on all other global imports "seamlessly," given the multiple authorities enjoyed by the executive branch.
- As per Peterson Institute fellows Kimberly Clausing and Mary Lovely, Donald Trump's tariff proposals would cost the typical American household over $2,600 a year, and would essentially impact poorer households disproportionately.
- Analyst Keith Rockwell concludes that Harris' trade policy will be "less predictable" compared to Trump's, whose protectionist stance is marked by "dead certainty." He also notes that the U.S. political landscape is now more anti-trade than ever in the post-war era, with few politicians supporting pro-trade policies. According to Rockwell, Harris "falls squarely" into the camp that is skeptical of trade with China.

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

- U.S. trade and tariff policy are coming full circle. The United States was among the first countries to benefit from the imposition of the MFN (most favored nation) principle on China. In the Treaty of Wanghia 180 years ago (in the wake of the British-won Opium War of 1839-42), the MFN principle—a stark novelty at the time—was among the key immunities and privileges granted to the United States. Today, by way of the Section 301 tariffs, Washington has *de facto* scrapped the principle in its trading relations with China, and some in Congress have called for its permanent revocation *vis-à-vis* Beijing. In the Anglo-American negotiations in the early-and-mid 1940s that culminated in the founding of the Bretton Woods institutions (namely, The World Bank and the IMF), the United States rejected the notion that creditor countries running current account surpluses should be compelled to make symmetric adjustment in order to ensure an equilibrium in external payments (at levels consistent with full employment). Today, some advocate for the establishment of a new system based exactly on that same idea of an external equilibrium backed by an escalating range of sanctions so as to address the U.S.' trade imbalances with China. In the late-1940s, the deal-breakers in the negotiations that saw the United States walk away from establishing an International Trade Organization (the proposed third pillar of the Bretton Woods arrangement) were four-fold. Instead of removing tariff preferences, the draft ITO charter retained the largest existing preference program (the UK's Imperial Preference system). Rather than proscribe quantitative restrictions, they were given a fresh lease of life on balance of payments grounds. Rather than make FDI more secure, it was accorded less protection than it had previously enjoyed. And finally, discrimination against American goods was provided a measure of protection, again on external equilibrium and adjustment grounds. Today, it is the United States that seeks to retain (and limit) preferences to like-minded partners, has *de facto* imposed barriers against inbound Chinese FDI, and actively discriminates against Chinese imports on trade imbalance and external adjustment grounds. On trade and tariff policy matters, where the United Kingdom was 75 years ago the United States is there today. What does this say? It probably says something that the Beltway classes would not be proud, or happy, to hear.

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[**Expanded Reading**]

- [Harris's record on trade paints a dire picture for American producers, consumers](), *The Hill*, October 17, 2024
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- [How Industrial Policy Gets Done: Frontline Lessons from Three Federal Officials](), Roosevelt Institute, October 8, 2024
- [Trade Intervention for Freer Trade](), Carnegie Endowment for International Peace, October 3, 2024
- [Walking Out: New Book Unravels the Shift in America's Trade Policy and Its Global Consequences](), Stanford University, October 1, 2024
- [Trump's bigger tariff proposals would cost the typical American household over $2,600 a year](), Peterson Institute for International Economics, August 21, 2024

2 — EU's EV Tariffs Hang in the Balance as Beijing and Brussels Continue Talks — 2

[**In One Sentence**]

- With China and the European Union as of yet unsuccessful in reaching a solution on the EU's tariffs on Chinese electric vehicles (EVs), the Chinese Ministry of Commerce announced on October 8, 2024 that it would “implement temporary anti-dumping measures on imported brandy originating from the European Union” in accordance with “Chinese laws and WTO rules.”
- USTR Katherine Tai has applauded the EU's tariffs on Chinese EVs as “an important first step” to protect European industry and workers and said she looked forward to “continuing engagement” with the EU and other “market economies.”
- Despite turbulence in the EV market, the retail sales of EVs in Q3 2024 reached their highest levels recorded, representing a 7.8% growth compared to Q3 2023.

[**Mark the Essentials**]

- From September 20-October 9, 2024, the Chinese Ministry of Commerce held eight rounds of negotiations with EU counterparts on the EV tariffs issue. As per the ministry, China remains “committed and sincere towards finding solutions through dialogue and consultation,” and expressed hopes to “reach a proper solution as soon as possible.” It also cautioned the EU to avoid “conducting separate price commitment negotiations with some companies” so as not to jeopardize the overall negotiation process.
- At the recent Paris Motor Show from October 14-20, Chinese automakers put on a trade show despite the impending EU tariffs. Chinese EV startup Leap Motor showcased three models: its compact electric SUV, the B10, which is to be manufactured in Poland; a smaller electric commuter car, the T03, which will retail at a competitive price of 18,900 euros ($20,620), be imported from China and assembled in Poland; and its larger family car, the C10, which will sell from 36,400 euros ($39,700) on. Additionally, the decade-old Chinese EV brand Xpeng announced plans to deliver its P7+ model in Europe from 2025.
- Also at the Paris Motor Show, the CEOs of BMW and Stellantis voiced criticism against the proposed tariffs on Chinese EVs. The CEOs of BMW, Oliver Zipse, argued that European brands need “fair trade rules,” not “protection” and that Europe should not “give up before the [EV competition] has even started.” Carlos Tavares, CEO of Stellantis, which owns the Fiat, Jeep and Chrysler brands, echoed a similar sentiment and was joined by the CEO of French automaker Renault, who argued that European cars need to “learn from [their] competitors.”

[**Expanded Reading**]

- [We should be learning from Chinese EV players, not shutting them out of Europe — auto bosses say](), *Business Insider*, October 15, 2024
- [Paris Motor Show opens during a brewing EV trade war between the EU and China](), *AP news*, October 14, 2024

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- [Hard to see Chinese EV price deal by end of October, says EU official](), *Reuters*, October 14, 2024
- [China invites EU team for more talks to hammer out EV tariffs dispute](), *South China Morning Post*, October 12, 2024
- [Electric Vehicle Sales Mark Another Record in Q3, Thanks to Higher Incentives, More Choices](), *CoxAutomotive*, October 11, 2024
- [China warns EU against separate EV price negotiations](), *Reuters*, October 8, 2024

On the Hill

[**Legislative Developments**]

- Senator Bill Cassidy (R-LA) has announced plans for an energy security summit to advocate for "a U.S. foreign policy integrating national, economic, and energy security"—including through the introduction of carbon tariffs.
- House Ways & Means Committee member Michelle Steel (R-CA) introduced a bill to "effectively end" port strikes by requiring a mediation mechanism between maritime workers and employers and by setting stricter conditions for dock workers to strike.
- In her recently introduced bill, House Ways & Means Committee member Carol Miller (R-WV) has called for the Office of the U.S. Trade Representative (USTR) to investigate Korea's recent anti-monopoly bill and its effect on U.S. technology firms and digital trade.
- House Democrat lawmaker Rep. Jared Golden (ME) proposed to levy a 10% tariff on all U.S. imports to "incentivize American manufacturing and job creation and address the nation's ballooning trade deficit."

[**Hearings and Statements**]

- Arguing that imports of Chinese-origin cooking oil was displacing U.S. domestic feedstocks in the production of biofuels, a bipartisan group of Senators have called for the U.S. government to exclude biofuels made from foreign feedstocks to receive federal clean fuel subsidies.
- A group of Democrat Senators, led by Senator Sherrod Brown (D-OH), has called on the new Mexican President to join U.S. efforts and address the "threat posed by China's connected vehicles," including those linked to joint ventures between Mexican and Chinese businesses.
- Challenging USTR's notion that the U.S. cannot take a stance on international digital trade rules absent domestic regulations at the federal level, Senate Finance Committee member Maria Cantwell (D-WA) criticized USTR for failing to "stand up against digital protectionism abroad."
- In a recent non-binding resolution, the U.S. Export-Import Bank's Board of Directors reaffirmed their support for critical minerals transactions, including by boosting the usage of its financing tools to support U.S. exporters facing competition from China.

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

- As the election approaches, the 118th Congress remains steadfast in its push for further U.S.-China decoupling. During its designated "China Week," the House passed at least 16 China-related bills aimed at addressing strategic competition in critical technologies, with a particular focus on reducing reliance on Chinese supply chains and restricting China's access to key technologies. Beyond these bills, China was also prominently invoked by lawmakers during the 118th Congress' penultimate policy discussions, even in cases where a direct connection was tenuous. Competition with China has become a convenient justification for a variety of policy proposals, especially during election season, when domestic interests take center stage. Both Republican and Democratic candidates have ramped up anti-China rhetoric on the campaign trail,

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reinforcing the bipartisan consensus that views China as a strategic competitor—or, more bluntly, an adversary. This dynamic is expected to significantly influence the policy direction of the upcoming 119th Congress, which is likely to be controlled by Republicans in both chambers, regardless of whether Harris or Trump wins the presidency. Of the 34 Senate seats up for election this November, Republicans currently hold a lead in 13, positioning them to potentially secure a majority in the next Senate given that they already control 38 of the remaining 66 seats. While Democrats are expected to make some gains in the House, the GOP has a slightly clearer path to retaining its majority, needing to win just 3 of 10 competitive seats. As the 118th Congress wraps up its China-focused and China-bashing initiatives, the incoming 119th Congress stands to play a crucial role in shaping the future of U.S.-China ties.

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- Miller Introduces U.S. - Republic of Korea Digital Trade Enforcement Act, Office of Rep. Carol Miller (R-WV), September 27, 2024
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What's Been Happening

1 — Election 2024: Trump's Big Tariff Stick or Harris' Vague Economic Agenda — 1

[**In One Sentence**]

- The latest monthly poll from Open Source shows 44% of registered U.S. voters favor Trump's economic management abilities while 43% express confidence in Harris' approach; in terms of popularity, Harris holds a narrow lead, leading 51% to Trump's 47%.
- In a recent interview, Trump argued that a "10% tariff is not enough," advocating rather for a "50% tariff" as necessary to incentivize American companies to repatriate manufacturing, and with further intent to impose tariffs on European carmakers like Mercedes-Benz and on Mexican imports as high as "100, 200, or even 2000% tariffs."
- On the national debt, both Harris and Trump have sidestepped the issue in debates and on the campaign trail, focusing instead on advancing tax cuts and spending programs while opposing cuts to Social Security and Medicare benefits.

[**Mark the Essentials**]

- Market speculation on a Trump victory has driven up U.S. bond yields and the dollar, yet mainstream investors remain cautious attributing recent volatility more to strong U.S. economic data than political shifts. On Trump's "disruptive" tariff plans, ex-Biden administration staffer Peter Harrell has noted that the Trump team plans to counterbalance it with a "robust deregulatory agenda" paired with an "American energy production agenda" to help lower costs.
- Trump's tariff proposals have faced criticism from industry stakeholders and economists. Maurice Obstfeld, an ex-IMF chief economist and a senior fellow at the Peterson Institute, described Trump's sweeping tariffs as a "grenade thrown into the heart of the [multilateral trading] system," adding that such tactics fragment the global trade landscape for both countries and businesses.
- Trump's former U.S. Trade Representative Robert Lighthizer defended the tariff strategy, noting that in the late 19th century, the U.S. maintained tariffs over 40% on dutiable goods while achieving trade surpluses and fiscal stability.
- A recent study has revealed that should China reimpose tariffs on U.S. agricultural products as it did in 2018, U.S. soybean exports could drop by 51.8% and corn exports by 84.3%. Meanwhile, on October 15, USTR

announced a new initiative allowing stakeholders to request temporary exclusions for certain machinery imports from the Section 301 duties.

[**Keeping an Eye On…**]

- "Are we adversaries, or partners? That is the number one question for us," President Xi Jinping had queried President Joe Biden during his meeting last November at the Filoli Estate in Woodside, California. Returning to the question five months later in his phone conversation with Biden, Xi asserted that the two sides needed to first get the "issue of strategic perception" right, "just like the first button of a shirt that must be put right." Be it a Harris administration or a second Trump administration, the first button is not likely to be worn as per Xi's liking. The era of engagement in U.S.-China relations has drawn to a close and strategic competition is the order of the day. The operative question going forward, rather, is whether the two sides are capable of stabilizing ties by placing guardrails on the relationship, even as the negative tendencies in their relationship deepen. Or whether extreme competition will degenerate into outright strategic rivalry with the possibility of the bottom falling out of the relationship entirely. Both a Harris administration and a second Trump administration's approach towards China is likely to feature many common elements. These include maintaining America's innovation edge over China; countering China's trade and industrial policy practices from distorting global markets and harming U.S. competitiveness; promoting U.S. values and counterbalancing Chinese models of government and influence operations; maintaining an intelligence advantage over Beijing; and, foremost, deterring China from the use of military force regionally. The philosophical basis of the common approach towards China derives from the Trump administration's National Security Strategy of December 2017. Having declared China a "revisionist power" that was engaged in "long term strategic competition" with the United States, the administration worked to redraw the region's 'hub-and-spokes' architecture into a four-cornered network featuring Washington, Tokyo, Canberra and New Delhi as the "principal hubs" to preserve a favorable strategic balance over China. On the geo-economic front, tariffs were imposed on $370 billion worth of Chinese imports and, after declaring that Chinese control of advanced technologies "pose[d] profound challenges to free societies," the United States' technology control regime was reimagined via an expansive ICTS (information and communications technology and services) rule that was trained initially on kneecapping the telecoms giant, Huawei. The Biden administration's three-part approach to 'invest, align and compete' against China has been built on this foundation. Its punitive 'small yard, high fence' controls—be it with regard to chips, supercomputing or connected vehicles—derive from the ICTS order. Trump's Section 301 tariffs have not only been retained but also selectively increased, not scaled down. The administration has also expanded domestic productive capacity in key strategic and high value-added manufacturing sectors, by introducing landmark legislation such as the CHIPS and Science Act and the Inflation Reduction Act (IRA) as well as by employing a number of industrial policy authorities, such as the Defense Production Act, Buy American Act and the Bayh-Dole Act. Geopolitically, the Biden administration's strategy on China has centered on crafting a bespoke "latticework" of trilateral and multilateral coalitions to build "situations of strength" and dictate the terms of effective competition with China. Having assembled these coalitions (i.e., AUKUS, the Quad, the ROK-Japan-U.S. trilateral, the Squad) to shape the strategic environment around China, the administration has, since the November 2022 G20 Summit in Bali, sought to cement a 'floor' under its working relations with Beijing. On November 5, the U.S. will elect a new president. Harris and Trump are down-to-the-wire in a bitter and divisive race. On China policy though, the broad brushstrokes of the last two presidencies will persist, regardless of who wins. The U.S. and China are fated to remain locked in an

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intensely competitive relationship over the next four years. It remains to be seen if the two sides are able, or willing, to embed this competitive dynamic within a steadying strategic framework. Success or failure in this regard will have huge implications for the Indo-Pacific region and the world.

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2 — EU's China EV Tariff Saga: Definitive Tariffs Imposed; Now What? — 2

[**In One Sentence**]

- On October 29, the European Commission (EC) imposed definitive countervailing duties on imports of battery electric vehicles (BEVs) from China for a period of five years.
- A day earlier, on October 28, Beijing issued renewed warnings to the EU, cautioning that separate negotiations with individual Chinese EV companies will "shake mutual trust" and disrupt the bilateral negotiation underway between two sides.
- After eight rounds of negotiations between Brussels and Beijing, "significant gaps" continue to remain in the negotiations, as per the Commission.
- Several Chinese EV companies including Dongfeng Motor Group Co., Chongqing Changan Automobile Co., and Chery Automobile Co. have announced a pause to their plans to localize production in the EU and launch new brands in Europe.

[**Mark the Essentials**]

- Beijing condemned the EU's tariffs on Chinese EVs as "unfair, non-compliant, and unreasonable protectionist practices," arguing that these actions violate WTO rules and disrupt the international trade order. China also criticized the EU's "separate price commitment talks" with individual Chinese EV companies claiming they undermine the formal negotiation process.
- That being said, China's Commerce Ministry has also expressed its interest in conducting the "next stage of price commitment negotiations" calling for both sides to take account of "each other's core concerns" and on this basis establish a "communication mechanism for the [finalization], implementation and supervision of price commitment" related to Chinese EV imports into the bloc.
- Customs data show that Chinese automakers shipped 60,517 EVs to the 27 countries in the EU bloc in September, marking a 61% increase from 2023. This figure represents the second-highest record for Chinese EV shipments to the EU, despite the EU's tariffs on these imports. Additionally, BYD Co. announced plans to offer electric vehicles in Germany priced between €25,000 ($27,340) and €30,000.
- Paolo Gentiloni, the EU's Economic Commissioner, has remarked that three or four years ago, the EU held "a more optimistic attitude on trade with China." However, he stated that to ensure "a level playing field," the EU now needs to exercise caution regarding "how much subsidies are working and how several sectors are affected by overproduction." However, Gentiloni clarified that the EU's " new approach" should not be seen as being protectionist.

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

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- Nobody said that it would be easy to finalize a price undertaking arrangement for Chinese battery electric vehicle (BEV) imports into the EU, and so it has turned out to be the case. Lacking a negotiated solution thus far, on October 29, the European Commission (EC) concluded its anti-subsidy investigative process by imposing definitive countervailing duties on imports of BEVs from China for a period of five years. The automaker BYD is to be assessed an additional duty of 17%, Geely 18.8% and SAIC 35.3% respectively. All other cooperating companies are to be assessed an additional duty of 20.7% and non-cooperating producers an additional duty of 35.3%. In parallel, discussions are to continue on finding an alternative, WTO-compatible solution—i.e., negotiation of price undertakings—that is effective in addressing the underlying subsidization problems identified by the Commission's investigation. At this time, the primary sticking point appears to be the inadequacy of the minimum import price (MIP) proposed by the China Chamber of Commerce for Import & Export of Machinery & Electronic Products (CCCME), the industry body that is negotiating with the Commission on behalf of 12 Chinese BEV exporters. CCCME has proposed a single MIP for a wide range of product models (that are to be subject to varying EU duty rates) that amounts to an effective duty rate of 21.3%. It has also proposed the implementation of an annual quota for the initial three-year period during which time imports would be assessed at a discounted duty level. As for establishing a price benchmark, CCCME has sought to index the MIP to the Lithium-ion Batteries Price Index. Both the proposed duty rate and the price benchmark are considered inadequate by the Commission. Side-by-side, three exporting producers—SAIC, and two belonging to the Geely Group—have individually offered alternative price undertakings too but which, upon consideration, have not been accepted by the Commission for reasons of adequacy, effectiveness and enforceability. China's Ministry of Commerce has frowned upon these individual offers, fearing that breaking ranks within CCCME could undercut the Chinese side's negotiating position. Going forward, both parties—the Commission and the Commerce Ministry-CCCME duo—have stated their commitment to finalizing a price undertaking. It is a matter of when, not if, the negotiations will be successfully brought to a conclusion. There is too much riding in the negotiation for both sides to walk away without a mutually satisfactory arrangement. That being said, it would be wise for the Chinese side to pay heed to the Commission's key BEV-related industrial policy objective, which is also the EC's bottom line in the negotiation. And that being the uncompromisable need for the EU's domestic BEV industry to reach economies of scale and thereby be able to decrease its unit cost of production in the future. CCCME's price undertaking proposal should be structured to accommodate this bottom line, so that this key European industry can survive and prosper and Chinese BEV manufacturers too, both as exporters and as Chinese-invested companies on EU soil, can profitably play the role of co-contributor to the building-out and the greening of Europe's automotive transportation sector.

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3 — Derisking Efforts Continue Days Ahead of the Election — 3

[**In One Sentence**]

- Within the past week, the Biden administration, through the Departments of Justice, Treasury, and Commerce, has introduced several key regulations: a data restriction rule to protect U.S. bulk private data from foreign adversary access; a ban on outbound investments in China's semiconductor, quantum technology, and AI sectors; and a tax credit rule to boost U.S. clean energy manufacturing related to critical minerals and battery components.
- Earlier, in late-September, the administration had issued a proposed rule to secure connected vehicle supply chains from foreign adversary threats, including from China and Russia.
- U.S. Trade Representative Katherine Tai emphasized the need for "a very considerable amount of attention" to address the "concerning developments" of Chinese companies acquiring sites in Mexico for factory construction.

[**Mark the Essentials**]

- Reps. John Moolenaar (R-MI) and Raja Krishnamoorthi (D-IL) have urged the Commerce Department to impose further restrictions on the "flow of semiconductor manufacturing equipment to Huawei's clandestine network of semiconductor companies." Separately, a group of lawmakers have pressed USTR to "swiftly conclude" its investigation into unfair trade practices in China's shipbuilding industry and criticized CFIUS for failing to appropriately review Chinese EV battery manufacturer Gotion's investment in a Michigan plant.
- Mexico's economy ministry has warned that the Biden administration's prohibition on Chinese automotive software and hardware could disrupt supply chains, raise costs, and risk unemployment in its automotive sector.

[**Expanded Reading**]

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What's Been Happening

1 — Trump Storms Back To White House, Announces Early Cabinet Picks — 1

[**In One Sentence**]

- Following a hard-fought contest in key swing states, Republican candidate Donald Trump secured a resounding victory in the 2024 Presidential Election, winning 312 electoral votes to Kamala Harris' 226.
- Susie Wiles, who was the co-chair of Trump's election campaign in 2016 and 2024, has been appointed by Trump as his White House Chief of Staff.
- Rep. Mike Waltz, who is a Green Beret veteran, served in Afghanistan, and was a Member of the House's Armed Services, Foreign Affairs and Intelligence committees, is to serve as the next National Security Adviser.
- Kristi Noem, currently serving as the Governor of South Dakota, has been nominated to be the next Secretary of Homeland Security, and Robert Kennedy Jr., a vaccine skeptic, as the next Secretary of Health and Human Services.
- Florida Senator Macro Rubio is slated to be the next Secretary of State, FOX television channel presenter Pete Hegseth, the next Defense Secretary, and ex-Rep Tulsi Gabbard the next Director of National Intelligence.
- Regarding the potential appointment of Treasury Secretary, several of Trump's advisers have backed Scott Bessent, founder of the hedge fund Key Square Group and a key financial supporter of Trump's campaigns.
- The Chinese Foreign Ministry extended its congratulations to Donald Trump on his election as the 47th U.S. President, stating that it "respects the choice of the American people."
- China's President Xi Jinping congratulated Trump on his victory and underlined that the U.S. and China should find the "right way to get along with each other."

[**Mark the Essentials**]

- Following Trump's victory, speculation has intensified regarding Robert Lighthizer's potential return as U.S. Trade Representative (USTR). At present, no official confirmation has been made regarding the appointment, and he may even return in a position as trade and export control czar that sits atop USTR.
- Senator Marco Rubio, the nominee for Secretary of State, has a longstanding record of taking hardline stances on China. He previously sponsored the Uyghur Forced Labor Protection Act and has pushed for

stricter export controls, higher tariffs on Chinese critical minerals, the removal of Chinese goods from *de minimis* protections, and the exclusion of vehicles with Chinese components from the U.S.-Mexico-Canada Agreement.

- Similarly, Rep. Mike Waltz, who has been nominated as National Security Advisor, holds an aggressive stance on China. Waltz has advocated for a "whole-of-government approach for R&D" to counter China's threats to U.S. security and currently sits on the House China Select Committee.
- President-elect Donald Trump's election victory is already influencing China's economic policies. Analysts have suggested that Trump's proposed tariff increases could potentially cause "huge damage" to China's economy, prompting Beijing to consider the election outcome when determining the scale of its recent stimulus measures. Other analysts have mused that a potential "phase-two" deal between Beijing and the incoming Trump administration could lead to increased Chinese investment in the U.S., aligning with Trump's emphasis on goods produced for American consumers being "produced in the U.S. using U.S. labor."
- In response to Donald Trump's election as U.S. President, South Korean Trade Minister Cheong In-kyo stated that South Korean companies should consider "increasing direct investment and on-site production" in the United States if tariffs are raised. Simultaneously, ministers from several countries, including Canada, Mexico, the European Union and Thailand, expressed their willingness to strengthen collaboration with the incoming administration.

[**Keeping an Eye On…**]

- On January 20, 2025, the United States' 45th president will also become its 47th president, with Donald Trump having swept his opposition across all the key battleground states. Trump won handsomely across several demographic segments—noncollege white folks; seniors; suburban voters—and gained important ground among Black and Latino male voters (although his popular vote tally budged upwards by a mere 1.5 million from 2020 to 75.6 million votes—Harris, by contrast, had an almost 9 million vote drop-off from Biden's 81.2 million vote count). Ultimately, what lifted Trump and sank Harris was not just about Rust Belt jobs or socially conservative men from small-town America. Rather, it was about a cost-of-living challenge that cut across vast swathes of the American public, with inflation outpacing wage gains and leaving a significant number of Americans worse off than they were before the pandemic. Not until early 2024 did real median household incomes surpass its late-2019 number. By contrast, the first three years of Trump's first presidency witnessed a double-digit rise in the median household income, with wages growing faster than at any time over the preceding Bush and Obama terms. There is a certain irony here for the Democrats to think through. In 2016, Hillary Clinton's defeat to Trump was ascribed in part to the Obama administration's lack of emphasis on running a "high pressure economy," i.e., running the economy temporarily hotter than cyclical macroeconomic indicators would advise so as to reverse the adverse supply side effects that stemmed from the economy's structural shortfall in aggregate demand (remember the super-low and even negative interest rates of the time). Indeed, in a notable speech in 2016, the then-Federal Reserve Chair and current Treasury Secretary Janet Yellen had emphasized the importance of a quick, coordinated and aggressive fiscal and monetary policy response following a recession as well as the need of policymakers to adopt a more accommodative stance during recoveries than would otherwise be called for under the traditional view that the economy's supply capacity is largely independent of demand. Both ideas were pressed into service during the Biden years to recreate a "high pressure economy." A massive US$1.9 trillion stimulus package (the American Rescue Plan) was enacted in May 2021 (on top of the two large COVID-related Trump stimulus

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injections of 2020), the Federal Reserve maintained an accommodative stance initially even as inflation wildly overshot, and the U.S. government continues to run to this day a massive fiscal deficit that has no precedent in non-crisis periods during peacetime. The "high pressure economy" did deliver solid growth and employment gains. It also delivered inflation, high interest rates, depressed real wages and a cost-of-living crisis, which were exacerbated no doubt by COVID supply chain snafus and Russia aggression-induced commodity price spikes. In the end, the "high pressure economy" delivered no better for Kamala Harris electorally than the demand-deficient economy did for Hillary Clinton. Be that as it may, America will come to rue in time the departure of the Biden team from office. Not since the Depression-era Great Deal programs did America have such an opportunity to spur the creation of major new industries, resurrect private investment, reimagine antitrust regulation to combat oligopolistic market concentration risks, and rejigger capitalism's tools more broadly for socially inclusive ends. It is not clear now that some of the industrial policy and antitrust innovations will survive the second Trump administration or whether these introduced policies will have enough staying power to outlive Trump 2.0 and be resurrected under a future Democratic Party administration. At the end of the day, though, the American voter has spoken, and that voice must be respected.

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2 — Xi Jinping To Meet Joe Biden in Peru; China Pumps Out Fresh Stimulus — 2

[**In One Sentence**]

- Chinese President Xi Jinping and U.S. President Joe Biden are scheduled to meet during the Asia-Pacific Economic Cooperation (APEC) summit in Lima, Peru, which is currently ongoing and runs through November 16.
- During his APEC swing, President Xi will also inaugurate a new Chinese-built megaport port in Chancay near Lima, which would add to Peru's credentials as an important resource-rich region and trade center in South America.
- Domestically, Beijing announced a US$1.4 trillion package to help clear up local government debt overhangs and stabilize economic growth.

[**Mark the Essentials**]

- Following Trump's election victory, President Biden faces a difficult challenge of credibility at the upcoming APEC Economic Leaders Meeting, given his status as a lame-duck president of the defeated party. Regarding the U.S.-China relationship over the next four years, Danny Russel, a top official in the Obama

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administration, has argued that President Biden might need to convey some "practical points" to his assembled counterparts, given the high likelihood of the Trump administration's tariff increases.

- Beijing's latest stimulus program proposes to increase—and implement—the local government debt limit by 6 trillion yuan over a three-year period as well as allocate an additional 800 billion yuan in local government special bonds every year over five years. Chinese Finance Minister Lan Fo'an stated that these measures will assist local governments in reducing "hidden debt," projecting a decrease from 14.3 trillion yuan at the end of 2023 to 2.3 trillion yuan by 2028.
- After Beijing's announcement of its new fiscal stimulus package, Hong Kong's Hang Seng index closed down 1.5 % on November 11. Some analysts suggest that "investors are unwinding bullish bets as they feel the major [fiscal stimulus] event is over and they are a bit let down." Concurrently, China's central bank set the renminbi's trading midpoint at RMB 7.18 per dollar, marking its lowest level in a year and a 0.5% decrease from the previous fix. Several economists underlined that markets' primary concern remains the package's relative lack of effectiveness in boosting consumption and demand.
- On November 5, 2024, at the opening of the China International Import Expo in Shanghai, Chinese Premier Li Qiang highlighted Beijing's capacity to "drive sustained economic improvement," adding that the government has "ample space for fiscal policy and monetary policy." He also reaffirmed China's commitment to achieving an economic growth of around 5 %.

[**Keeping an Eye On…**]

- Economic stimulus was never priority #1 for the Chinese government…and it shows. With the post-COVID economic bounce failing to materialize, the government had chosen in 2023 to go down the harder path of implementing business operating-environment reforms rather than simply throwing cheap stimulus money at the problem. Its hand was forced nonetheless this September when third quarter data showed that one of the economy's last growth motors, fixed asset investment in industrial upgrading and high-tech manufacturing, was losing momentum. This was on top of anemic consumer spending and six consecutive quarters of deeply embedded deflationary pressures. And hence the Party Politburo's decision on September 26 to implement a package of measures to stimulate the economy. The monetary policy loosening and capital market support measures have been intelligently devised, are ambitious, and are already being implemented. By contrast, the fiscal stimulus support measure—a one-off large issuance of central government debt to pay off local government "hidden debt" and the issuing of special treasury bonds to replenish the core tier-one capital of China's six big commercial banks—are disappointing and somewhat misdirected. It will do nothing to enforce a hard budget constraint on China's banking sector, which bears greater resemblance in terms of credit quality assessment to its third world peers than the modern and advanced financial intermediation system that China deserves. Worse, the fiscal measures constitute a missed golden opportunity to build out China's social protection system and thereby buttress the consumption potential of the economy (it is not that there are no demand side measures; there is important fiscal support intended to stabilize and optimize the housing sector). Given Xi Jinping's long-term rather than short-termist focus, the government should have increased the basic pension and the subsidy towards basic medical insurance premiums for the vast majority of poor retirees and rural adults who sit at the base of China's shallow state-funded social protection pyramid. It is not clear that breaking the deflationary cycle is a priority either for the Chinese government (even though the focus on tackling the bad debt issue is a correct one). Rather, the government wants to do just enough, it seems, to prevent deflation from tightening its grip, which is not a terribly smart way to anchor inflationary expectations. The fiscal measures appear set to deliver the economy to the (arbitrary) "around

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5%" growth target envisaged at the beginning of the year, as well as clear local government balance sheets to enable them to juice-up capital investments in China's 'new quality productive force' industries. The economic stimulus is a domestic matter. Its focus disproportionately however on stimulating the supply side of the Chinese economy could invite blowback down the line. It will fuel excess capacity which, willy-nilly, will have to be unloaded in foreign markets, which will aggravate the already-high trade tensions. It could make it harder for the macroeconomy to exit deflation. And there are no guarantees that local governments will use the space opened up on their balance sheets to make wise future investment decisions. Rather, the odds are that the funds would be wastefully sprayed on industrial policy-related guidance funds to conjure up the next-generation provincial superstar firms (and provincial revenue source), much like the wasteful spraying of infrastructure spending via the now-infamous local government investment vehicles that were structurally baked into the system. In which case, Beijing will have to shell out yet another stimulus package to nurse its next debt hangover. All-in-all, an important structural reform opportunity has gone abegging.

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On the Hill

[**Election Results**]

- Republicans secured a majority in the 2024 Senate election, winning 53 seats while Democrats now hold 47 seats.
- In the House of Representatives, Republicans also achieved a majority with 218 seats.
- The control of both the Senate and the House will grant Republicans a more comfortable legislative environment to advance their policy agendas and bolster their incoming President's authority.
- Rep. John Moolenaar (R-MI), who is the Chairman of the House Select Committee on the CCP, secured his seat in the House re-election against Michael Lynch.
- The incumbent Chairman of the Senate Banking Committee, Sen. Sherrod Brown (D-OH), failed to secure re-election against his Republican challenger, Bernie Moreno.
- Sen. Ted Cruz (R-TX), the ranking member of the Senate Committee on Commerce, Science, and Transportation, secured his Senate seat defeating Rep. Colin Allred (D-TX).
- Rep. Jim Banks (R-IN), a Member of the House Committee on the CCP and sponsor of numerous China related bills, will now represent the party in the Senate having won the election against Valerie McCray.
- Sen. John Thune (R-SD) is to be the new Senate Majority Leader, replacing Sen. Mitch McConnell (R-KY).

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[**Mark the Essentials**]

- David McCormick, the newly elected Republican senator from Pennsylvania, has proposed a "clear outbound investment regime" to cut off American investments in China's technology development sector deemed critical to national security. He has also pushed for ending U.S. reliance on China for energy products such as solar panels and EV components.
- Rep. Elissa Slotkin (D-MI), the new senator from Michigan, has called for a "formal national security review" of Chinese-connected vehicles and has advocated for limiting their entry into the U.S. market.
- Rep. John Curtis (R-UT), the new senator from Utah, has urged the imposition of tariffs on China to "force them to pay for their pollution and level the playing field."
- Former government officials and analysts suggest that although Trump has in the past shown a preference for personal diplomacy over institutionalized mechanisms, he will still need to engage Congress to advance his China policies. Trump's aggressive policy proposals, especially concerning tariffs and outbound investment screening, will likely require legislative support in order to be implemented. This balancing act with Congress could determine whether the United States escalates toward economic confrontation or finds a path to ensure dialogue with China on issues such as tariff hikes and technology restrictions.

[**Keeping an Eye On…**]

- The Republican Party's victory in this year's election cycle battle for Congress will have strong implications for the outlook for U.S.-China ties. With the GOP conquering all three branches of the American political system, Republican lawmakers will enjoy even greater leeway to push their legislative agendas during the incoming 119th Congress. The second Trump administration, which will only have four years to realize a full basket of Donald Trump's MAGA dreams, will inevitably need to work closely with the incoming Congress to advance core domestic policies on taxes, tariffs and border security. In return, and following the trajectory of the 117th and 118th Congresses, the 119th Congress will likely continue to demand a greater participative role in the shaping of American foreign and economic policymaking, "fixing" trade policy, and countering China with even tougher measures. This GOP-driven 119th Congress will add another layer of complexity, if not tensions, to the fragile U.S.-China bilateral relationship.

[**Expanded Reading**]

- Republican John Thune Of South Dakota Is Elected The Next Senate Majority Leader, *AP News*, November 13, 2024
- 2024 Senate Election Results, *AP News*, November 13, 2024
- 2024 House Election Results, *AP News,* November 13, 2024
- Republicans Win House, Delivering Trump A Trifecta, *On the Hill,* November 11, 2024
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What's Been Happening

1 — Trump Picks Lutnick For Commerce; Bessent To Lead Treasury — 1

[**In One Sentence**]

- Howard Lutnick, billionaire investor, CEO of bond trading firm Cantor Fitzgerald, and a vocal supporter of President-elect Donald Trump's expansive tariff plans has been nominated as Secretary of Commerce in the second Trump administration.
- For Secretary of the Treasury, Trump selected Scott Bessent, his economic policy adviser during the campaign and founder of the investment management firm Key Square Capital Management.
- In contrast to Lutnick's appointment, Trump deliberated extensively over several candidates for the Treasury pick.
- The shortlist of candidates for the Treasury nomination included Bessent, Kevin Warsh (a former member of the Federal Reserve Board), Marc Rowan (CEO of Apollo Global Management), and Sen. Bill Hagerty (R-TN), a member of the Senate Banking Committee.
- Previous reports also reveal that Trump plans to nominate Kevin Warsh as the next Federal Reserve Chair when Jerome Powell's current term ends in 2026.
- A slew of other cabinet and non-cabinet level appointments, including to the Agriculture, Energy, Transportation, Education, Housing, and Veterans Affairs departments, were also announced.
- Meanwhile, the nominee for the post of U.S. Trade Representative remains undecided.
- Late on Monday, this week, Trump took to Truth Social to post that he would impose an additional 10% tariff on all Chinese goods (over and above any additional tariffs) on Day #1 of his second administration to force Beijing to stop sending "massive amounts of…Fentanyl" to the United States.
- Per a separate social media post, he also plans to impose a 25% tariff on all goods from Mexico and Canada on Day #1 of his second administration for the two countries' failure to curb migration and the movement of fentanyl into the United States.

[**Mark the Essentials**]

- Trump expressed his enthusiasm for Howard Lutnick's appointment, stating that he was "thrilled" and emphasized that Lutnick would "lead our Tariff and Trade Agenda" with additional oversight of the Office of the U.S. Trade Representative.
- Trump also highlighted Scott Bessent's nomination as Treasury Secretary, describing him as pivotal to ushering in a "new golden age" for the U.S. economy. He added that the administration aims to "reinvigorate the private sector and help curb the unsustainable path of the federal budget."
- Despite the Trump administration's ambitious tariff agenda, some critics believe there may still be "opportunities as well as challenges" in collaborating with Trump on trade issues. Jake Colvin, President of the National Foreign Trade Council, has suggested that Congress and the administration could explore innovative ways to open new markets for U.S. enterprises. He pointed to trade promotion authority (TPA) as "the key to unlocking a conversation with the Hill."
- Regarding Trump's plan to fold USTR into the Commerce Department, Everett Eissenstat, a former deputy director of the National Economic Council under Trump and ex-Senate Finance Committee chief trade counsel, has argued that Congress might be "adamantly opposed" to such a move, noting it had already rejected a similar proposal by the Obama administration in 2012.
- Adam Posen, President of the Peterson Institute for International Economics, notes that major economies are preparing to "preemptively make offers" to the Trump administration to avoid sweeping tariffs. He speculated that countries such as Japan, South Korea, the United Kingdom, and Canada might present incentives like purchasing more U.S. natural gas and weapon systems or relocating production to the U.S. Also, Posen highlighted that the administration's ideal outcome would be to "get these goodies" without resorting to tariff threats.
- While the Trump administration intends to impose strict tariffs on China, critics argue this may not necessarily result in a surge of Chinese imports being redirected to Europe. Analysts in Switzerland have opined that the anticipated "flood never happened" during Trump 1.0, with Chinese exports to the European Union remaining "roughly in line with pre-trade War trends." They emphasize that trade deflection from China to the EU has been "infrequent and marginal."

[**Keeping an Eye On…**]

- So, what's up with Bobby, the purveyor of the peculiar idea that the purpose of a free trade agreement is to grant preferential treatment to a trading partner in return for an approximately equal amount of preferential treatment in their market (i.e., a dollar balance of preferential trade outcomes)? The incoming Trump administration's cabinet appointments have more-or-less come and gone and the name Robert Emmet Lighthizer is nowhere to be found. Granted, the appointee for U.S. Trade Representative has yet to be announced and the position might even be nixed from the cabinet. But having served as USTR in Trump 1.0, there is every reason to believe that Lighthizer would consider a return to the agency as a downgrade. Besides, even as Trump's USTR, he was the primary lead in the Treasury-USTR led co-front in the tense negotiations with the Chinese. As such, nothing less than the role of China trade and export control czar this time around is likely to be seen as fitting his paygrade. Complicating this outlook is the assignment of moneybag Howard Lutnick to the Commerce Department seat—and, by extension, to oversight of the critical export controls portfolio. Be that as it may, there is every reason to believe that Robert Lighthizer will remain a close confidante of the president. And, furthermore, that he will have a West Wing role that will allow him to whisper in the president's ear and serve as a control tower player on China trade and export control policy (and be excused from having to log the thousands of air miles that the Bessents, Lutnicks, and future USTR

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pick, to their misfortune, will have to suffer through). Given his deep insider knowledge of the United States' various trade and export control authorities (as he is a longstanding Beltway trade remedies lawyer), his intimate understanding of the senior bureaucracy's workings (from his days as Deputy USTR go back to the Reagan administration), and his time-honored ideological affinity on trade policy with Trump (since he was a backer of Trumpian tariff ideals when the Donald was still regarded as something of a political buffoon), Lighthizer, one way or the other, is likely to be back in a highly influential role in Trump 2.0, and especially on the China brief. Hence, it is best for Beijing as well as his critics to stay prepared for the Lighthizer stamp on China decoupling policy. This will include: raising tariffs on China to the level that will balance U.S.-China trade; strengthening export controls and eliminating future technological integration and dependence on China; continuing restrictions on inbound Chinese investment and introducing additional outbound investment restrictions; a ban on federally-funded research universities from engaging with Chinese entities in matters involving strategic technology-related research, education or employment; and enhancing the Foreign Agent Registration Act (FARA) to widen disclosure of Chinese money within the Beltway. To the extent that his boss may be open to banning TikTok, U.S. market access for Chinese social media companies could be rescinded too. Keep a watch out for Lighthizer. His nomination might yet turn out to be one of the most important ones of Trump 2.0, just as his nomination as U.S. Trade Representative turned out to be in Trump 1.0.

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- Trump Names Billionaire Scott Bessent As Treasury Secretary Pick, *CNN*, November 22, 2024
- Donald Trump Picks Scott Bessent As Treasury Secretary, *Financial Times*, November 22, 2024
- Trump Considers Warsh Serving As Treasury Secretary—And Then Fed Chair, *The Wall Street Journal*, November 22, 2024
- Who Will Trump Pick For Treasury Secretary? These Are The Top Contenders—And Their Betting Odds, *Forbes*, November 22, 2024
- Matt Gaetz Says He Doesn't Plan To Rejoin Congress After Withdrawing As Trump's Pick For Attorney General, *NBC*, November 22, 2024

On the Hill

[**Legislative Developments**]

- Rep. John Moolenaar (R-MI), House Committee on China Chair, has introduced a bill to prevent the Treasury Secretary from using the Inflation Reduction Act (IRA)'s advanced manufacturing production tax credits to benefit Chinese entities, adding that under no conditions "foreign entities of concern" like China's battery manufacturer Gotion should qualify to benefit from these credits.
- To exclude "import-sensitive" goods from obtaining benefits under the *de minimis* rule, Sen. Ron Wyden (D-OR), Chair of the Senate Finance Committee, has introduced the *Fighting Illicit Goods, Helping Trustworthy Importers, and Netting Gains for America Act.*
- Rep. Moolenaar (R-MI) also introduced the *Restoring Trade Fairness Act*, which seeks to revoke China's permanent normal trade relations (PNTR) status with the United States and impose a 100 percent ad

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valorem duty on Chinese "strategic goods," arguing that granting PNTR to China has "failed our country, eroded our manufacturing base, and sent jobs to our foremost adversary."

- Rep. Suzan DelBene (D-WA) and Rep. Don Beyer (D-VA), members of the House Ways & Means Committee, have introduced the *Preventing Tariff Abuse Act* to curb the misuse of presidential emergency powers to impose tariffs, stressing that such actions impose significant costs on American families "without Congressional approval," harm U.S. trade relationships with allies, and provoke retaliatory measures.

[**Hearings and Statements**]

- The U.S.-China Economic and Security Review Commission released its annual report highlighting policy priorities for Congress, including updating trade and economic tools, reducing U.S. reliance on supply chains influenced by China, enhancing executive accountability to Congress, prioritizing domestic production and employment, addressing China's overcapacity, and strengthening U.S. economic resilience.
- Regarding the *de minimis* rule, the Commission recommended that imported goods sold through e-commerce platforms should not qualify for *de minimis* exemptions, arguing that the surge in e-commerce sales undermines U.S. regulatory compliance and safety efforts while posing challenges at U.S. ports in detecting risky products. The Commission also emphasized that banning only Chinese imports would be ineffective as these products could be rerouted through other countries.
- The Commission has also urged Congress to engage in "more intense coordination" on technology policies to address trade and tech challenges posed by China, emphasizing the need for "a comprehensive policy realignment" particularly on measures such as export controls, outbound investment restrictions, tax incentives, and sanctions with allies and like-minded countries.
- The House Committee on the Chinese Communist Party has requested five leading semiconductor equipment manufacturers—ASML, KLA, Applied Materials, Lam Research, and Tokyo Electron—to provide information on their equipment sales to China to better understand the flow of chip-making equipment and their role in China's rapidly advancing semiconductor manufacturing capabilities.

[**Expanded Reading**]

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- Moolenaar, Golden Introduces Bipartisan Bill To Block Biden Rule That Allows Tax Credits For Foreign Adversaries, The Office of Rep. John Moonlennar, November 20, 2024
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What's Been Happening

1 — The Biden Administration's Final Push to Decouple from China — 1

[**In One Sentence**]

- On December 2, 2024, the U.S. Commerce Department issued new export controls targeting China's semiconductor industry, including two new Foreign Direct Product Rules and the addition of 140 new organizations and firms to its Entity List.
- Commerce Secretary Gina Raimondo emphasized that these measures aim to "impair the PRC's ability to indigenize the production of advanced technologies that pose a risk to our national security," while underscoring the Commerce Department's "central role" in executing the U.S. national security strategy.
- In response, Beijing announced a ban on the export of several materials critical to the production of semiconductors, communication and military technologies, and the export of dual-use items to the U.S.
- According to the Chinese Ministry of Commerce, the Chinese retaliation covers materials such as gallium, germanium, antimony, and superhard materials, while graphite exports will be subject to "stricter end-user and end-use reviews."

[**Mark the Essentials**]

- Rep. John Moolenaar, Chair of the House Select Committee on CCP, criticized the Biden administration's new measures to restrict Chinese access to U.S. semiconductor manufacturing equipment and affiliated technologies. He argued that the new export control regulations still allow chip companies such as Semiconductor Manufacturing International Corp (SMIC) to exploit "loopholes" and evade the sanctions.
- Following Washington's announcement of its latest export controls, four Chinese semiconductor industry bodies issued an advisory to Chinese chip firms to remain "cautious" about acquiring U.S.-made chips, which they describe as "no longer safe, no longer reliable." The Internet Society of China urged the Chinese internet firms to "expand cooperation" with semiconductor suppliers in other countries. To safeguard the security and stability of the automotive industry and its supply chain, the Chinese automakers association emphasized the need for automotive firms to "exert caution in purchasing U.S. chips."
- On November 22, 2024, the U.S. Department of Homeland Security (DHS) added 29 Chinese companies to the sanctioned entities list under the Uyghur Forced Labor Prevention Act (UFLPA), effectively preventing them from importing U.S. goods. Beginning November 25, 2024, the Bureau of Industry and Security (BIS)

will enforce a "rebuttable presumption" that goods from the entities either include materials sourced from Xinjiang province or involve collaboration with the region, barring their import under the UFLPA.

[**Keeping an Eye On…**]

- With its time in office winding down, the Biden administration has gone into regulatory overdrive to deepen the 'selective decoupling' of U.S.-China advanced technology ecosystems. On October 29, the U.S. Justice Department issued a massive 422-page Proposed Rule to prevent access to Americans' bulk sensitive personal data as well as government-related data by countries of concern, such as China. The rule proposes to establish a new national security-based regulatory regime governing the collection and transfer of personal data. Two types of commercial transactions between a "US person" and a "country of concern" are to be prohibited—transactions involving "data brokerage" (with the term defined broadly) and transactions involving human genomic data. Also, on October 29, the U.S. Treasury Department released a Final Rule to prohibit outbound investments in semiconductors and microelectronics, quantum information technologies, and AI systems to China. The purpose of the Outbound Order is to shut down a pathway for Beijing to exploit the "intangible benefits"—including enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing—that accompany the flow of US investments to China. The order marks the first instance of the U.S. government controlling outbound capital flows for national security reasons. And while the regulation is framed as addressing capital flows, it effectively regulates the coverage of 'greenfield' and 'brownfield' investments in these national security technologies and products too. Finally, on December 2, the U.S. Commerce Department issued a Final Rule that upgrades the existing controls on China's access to semiconductor manufacturing equipment so as to impair its capability to produce advanced node semiconductors. The rule significantly expands the Commerce Department's foreign direct product rule's (FDPR) application to semiconductor manufacturing equipment (SME) and three types of software tools. In addition to these SME controls, the rule imposes controls on the transfer of AI-related high-bandwidth memory (HBM) chips, which are crucial for accelerating AI training and inference tasks, as well as adds 140 Chinese entities spanning tool companies, chip fabs and shell companies masquerading as investment firms to the Entity List. Alongside, the Biden administration continued to aggressively push out CHIPS Incentives Awards totaling in the many billions to the likes of Intel, BAE Systems, GlobalFoundries, and TSMC. In his September 2022 speech, National Security Advisor Jake Sullivan had listed three "families of technologies"—computing related technologies; biotechnologies and biomanufacturing; clean energy technologies—as "force multipliers" that would define the geopolitical landscape of the 21st century. Given their foundational nature, the U.S. would seek to "maintain as large a lead as possible" over adversary nations, he had maintained. The Fall 2024 measures constitute a cleanup play by the administration in this regard as it endeavors to maintain as large a lead as possible in these technologies, utilizing its "small yard, high fence" approach on strategic trade controls.

[**Expanded Reading**]

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- Moolenaar Urges Raimondo To Close Dangerous Loopholes In New Export Control Rules, The Select Committee of the CCP, December 5, 2024

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- DHS Will Now Restrict Goods From Over 100 PRC-Based Companies From Entering The United States Due to Forced Labor Practices, Department of Homeland Security, November 22, 2024

2 — TikTok on the Brink; EU and China Struggle to Reach Deal on EV Tariffs — 2

[**In One Sentence**]

- On December 6, 2024, the U.S. Court of Appeals for the D.C. Circuit upheld the constitutionality of the *Protecting Americans From Foreign Adversary Controlled Applications Act* which mandates that Chinese parent company ByteDance divest TikTok by January 19, 2025, or have the latter face a ban on its U.S. operations.
- Also on December 6, TikTok requested the Appeals Court to pause its ruling—meaning the law would not take effect—until the U.S. Supreme Court had the "opportunity" to review the case.
- As of December 9, the European Union and Chinese officials are still not able to agree on a price undertaking agreement to resolve the tariffs imposed on Chinese electric vehicles (EVs).
- Meanwhile, the European Commission is actively working to bolster the development of EV battery manufacturers within EU member states through a 1.2 billion euro auction for hydrogen production and a 2.4 billion euro call to fund net-zero technologies, with the goal of safeguarding Europe "against dependency on a single supplier."
- France, Germany, and Sweden have jointly urged the new European Commission to prioritize making Europe self-sufficient in battery production.

[**Mark the Essentials**]

- Following the adverse ruling, TikTok has argued that the U.S. Supreme Court should "have an opportunity" to review the case, given that it is an "exceptionally important case" that touches on First Amendment rights.
- TikTok has also argued that pausing the ruling would allow the incoming Trump administration sufficient time to assess the situation, suggesting that the new administration might "moot both the impending harms and the need for Supreme Court Review." The company emphasized the potential impact of banning TikTok in the U.S., warning it would silence the "voice of over 170 million Americans here in the U.S. and around the world" starting on January 19, 2025.
- Despite ongoing challenges in reaching a comprehensive agreement on the European Union's tariffs on Chinese EVs, Chinese manufacturers continue to pursue collaborative ventures within Europe. Chery Automotive from China launched a joint venture product, the EBRO S700, with Spanish EV companies on November 23 in Barcelona, and other Chinese EV brands such as BYD, Leapmotor, NIO and Xpeng are actively advancing their market entry and joint venture plans across Europe.
- To "sidestep the new EU tariffs on Chinese BEVs (battery-powered EVs)," Chinese EV firms are increasingly shifting their production focus to PHEVs (plug-in hybrids). According to the Chinese Passenger Car Association, exports of Chinese hybrid EVs to Europe have more than tripled to 65,800 compared to the same period in 2023. In the third quarter of 2024, plug-in hybrids and conventional hybrid EVs accounted for 18% of Chinese total exported vehicles to Europe.
- The collapse of Northvolt, Europe's leading homegrown EV battery supplier, has become a "Nordic noir thriller", threatening Europe's development of the battery industry and its green transition by 2035. More

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importantly, the bankruptcy of Northvolt has exposed the European EV industry's reliance on Asian EV battery suppliers, especially Chinese battery companies.

[**Keeping an Eye On…**]

- So what comes next in the long-running saga to shut down Chinese ownership of TikTok in the U.S.? Or failing which, shut down TikTok's operations altogether in the U.S? On December 6, the U.S. Court of Appeals for the D.C. Circuit upheld the U.S. government's view that Chinese ownership of the social media app, and particularly the Chinese state's potential to manipulate content covertly on the TikTok platform, constitute a national security threat. As such, unless TikTok executes a qualified divestiture by January 19, 2025—or the President grants a 90-day extension based upon progress towards a qualified divestiture—the platform will effectively be unavailable in the United States. The 170 million U.S. subscribers of TikTok can go stew. The court could point to no instance, past or present, of the Chinese state covertly coercing TikTok into manipulating content in the U.S. That said, in the court's view, the fact that U.S. intelligence agencies could provide no concrete evidence did not mean that it was speculative to infer that TikTok's content would not be manipulated in the future to conform to the PRC's "censorship, propaganda, or other malign purposes." Rather, the U.S. government's "informed judgment" was that such manipulation could—and would—happen, and that the court would not substitute its judgment for those of the political branches (executive and legislative) on questions of national security. "Great weight" must be given to this informed judgment, the court averred. Furthermore, the court also noted that the *Protecting Americans From Foreign Adversary Controlled Applications Act* that singles out TikTok was not an effort to "control the flow of ideas to the public" or "influence the content that appears on a substantial medium of communication." It did not impinge on First Amendment protections. Rather, the government was acting solely "to prevent a foreign adversary from doing so," and the divestiture exemption was proof that ending foreign adversary control, not content censorship, was the objective. The narrow logic of the Appeals Court's ruling, focusing as it does on the national security question, is no doubt watertight (although the only evidence of content manipulation that it can point to are arguably Taiwan-linked ones which the court ought to know is not considered by Beijing as being "outside of China"). But the larger First Amendment-related questions that were part-and-parcel of the appeal remain just as relevant—and unsatisfyingly unanswered; the court only tangentially engaged the landmark *Lamont v. Postmaster General* First Amendment ruling. By the court's own reading, a president is not allowed to ban "communications or informational materials" on the basis of the International Emergency Economic Powers Act (IEEPA) after declaring a "national emergency" (due to the IEEPA's Berman amendment). Yet, if Congress and the President concur that a relevant First Amendment-related "communications or informational material" constitutes a threat to national security, then a ban is allowable. So, a presidentially-declared national emergency is no good, but a presidentially-signed bill with a finding of a national security threat is good to sideline First Amendment protections. Question: Aren't (some) national emergencies declared typically because there is a threat to national security in the first place? And in treating TikTok essentially as a broadcaster or publisher, the court also erred. TikTok may have the media reach well beyond that of a broadcaster or publisher but technically, at bottom, it remains a digital intermediary. And thus, it enjoys the benefit of 'intermediary liability' protection for content shared on the platform on the basis of Section 230 of the Communications Decency Act of 1996. The basis of the court's support for the government's argument for divestiture is also suspect. On the one hand, the court supported the government's "informed judgment" that the Chinese

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state's ability to manipulate content covertly on the TikTok platform is real and present – even if never pursued in the U.S. As such, Bytedance, a Chinese entity subject to the jurisdiction of the PRC, must divest TikTok. On the other hand, the court took note of the fact that as per a National Security Agreement (NSA) between the Biden administration and TikTok, certain 'Excerpted Data' as well as 'Public Data' is allowed to flow to China so as to enable Bytedance engineers to continually develop TikTok's recommendation engine and platform source code (the U.S. is looking to shut down the NSA). So, here's the question: If the value of what TikTok offers its users is intrinsically linked to the development of its algorithm in China, how does one disentangle the two and yet maintain the value of TikTok in the U.S. marketplace? Its value, after all, stems from its secret sauce—the recommendation algorithm. Or is the case, which the Court does not state but implicitly suggests, that ByteDance must essentially surrender the intellectual property behind its secret sauce to an American buyer. But here too, then, the Court observes that its concurrence with the government's position does not amount to a regulatory taking—which it seems to be. All said, there is much to chew over in the Appeals Court's ruling. Be that as it may, none of the above should be deemed as absolving Beijing of its greasy fingerprints in the cyberespionage and information manipulation space. Its cyberoperations are laid out in detail in the ruling, and Bytedance does not deny that it has manipulated content "outside of China" at the PRC government's behest. At times, it can almost seem as if the Chinese government is its private sector's own worst enemy.

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- Why Isn't Europe Diversifying From China?, Rhodium Group, December 2, 2024
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