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Dispatch

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TnT ICAS Trade 'n Technology Program

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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

[Keeping an Eye On…]

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

[Expanded Reading]

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- EU prolongs tariff suspension for US products related to the steel and aluminum dispute, European Commission, December 19, 2023
- Fireside Chat with Katherine Tai, event by Aspen Institute, December 7, 2023
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- PEC Letter Manufacturing - November 29, 2023, President's Export Council, November 29, 2023

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2 — Moribund Outlook for Trade in 2024— 2

[In One Sentence]

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

[Mark the Essentials]

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

[Keeping an Eye On…]

- On entering office, it took USTR Katherine Tai eight months to unveil the Biden administration's "new approach" on trade policy towards China. When that approach was laid out, it was, for the most part, hollow and to the extent that there was some substance to it, this substantive element appeared similar to that of the Trump administration's trade policy approach towards China. There were apprehensions at the time—borne out to be correct now—that some or many of the United States' Section 301 tariffs, judged to be illegal by a WTO panel, would also become permanent. That unveiling of the administration's "new approach" was nevertheless the high point of USTR's China policy. In eight months, a policy—however incomplete—had at least been tabled. Today, the speed of that China policy unveiling looks almost breakneck by comparison. On May 3, 2022, USTR initiated a review of the Section 301 tariffs on Chinese imports, one that was statutorily mandated. As per Ms. Tai, the review even after multiple extensions was set to be completed by Fall 2023. Come late-December, and with people's attention turned to festive matters elsewhere, the completion of that review was once again kicked out to sometime in 2024 (USTR will not give a 2024 final date of completion). As matters now stand, one should not rule out the possibility that there might never be a date of completion of the Section 301 tariff review in 2024. And if completed, that the review's findings will be kept under wraps through 2024, given that the administration would be disinclined to touch these tariffs with a bargepole in a combustive election year. Or maybe, on the other hand, the administration will openly embrace the tariffs after the review to underscore its protectionist credentials on the campaign trail and out-trump Trump's economic nationalist agenda. Regardless, it bears remembering that the first tranche of the Section 301 tariffs took less than one month to finalize and a little over three months to implement in the spring and summer of 2018. Now, it takes an eternity to review them, with USTR effectively kicking the review into the long grass. One way or the other, the outlook for the removal or significant reduction of the Section 301 tariffs looks bleak in 2024. And, truth be told, their substantive removal looks just as bleak even beyond 2024.

[**Expanded Reading**]

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- USTR Tai's Justification to Take a Time-out on Digital Trade Does Not Hold Up, Information Technology & Innovation Foundation, December 13, 2023
- Remarks by Ambassador María L. Pagán at Virtual World Trade Organization mini-Ministerial, Office of the U.S. Trade Representative, December 11, 2023
- After USTR's Move, Global Governance of Digital Trade Is Fraught with Unknowns, Centre for International Governance Innovation, December 11, 2023
- Fireside Chat with Katherine Tai, event by Aspen Institute, December 7, 2023

On the Hill

[**Legislative Developments**]

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

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[Hearings and Statements]

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

[Expanded Reading]

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- Exclusive: US lawmakers warn Biden to probe EU targeting of tech firms -letter, *Reuters*, December 18, 2023
- Correa Leads Bipartisan Call On Biden Administration To Protect American Firms, Consumers From E.U. Overreach, Office of Rep. Lou Correa, December 18, 2023
- Manchin Requests GAO Legal Opinion on Administration's Ability to Issue Temporary IRS Guidance That Violates the Inflation Reduction Act, Office of Sen. Joe Manchin, December 18, 2023
- Bera-Led Countering Economic Coercion Bill Advances in House Foreign Affairs Committee, Office of Rep. Ami Bera, December 14, 2023
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- House committee calls for reset on China-U.S. economic relations, *The Washington Post*, December 12, 2023
- Select Committee Adopts Proposal to Reset Economic Relationship with The People's Republic of China, The Select Committee on the CCP, December 12, 2023
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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

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

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

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

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

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- [MOFCOM Regular Press Conference](), Ministry of Commerce People's Republic of China, January 11, 2024
- [Notice of Reestablishment of the President's Export Council Subcommittee on Export Administration and Solicitation of Nominations for Membership](), Federal Register, January 9, 2024
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- [Letter to the Secretary Raimondo and Ambassador Tai](), The Select Committee on the Chinese Communist Party, January 5, 2024
- [China's electric vehicle dominance presents a challenge to the west](), *Financial Times*, January 5 ,2024 [Paywall]
- [Letter to Secretary Austin and Secretary Yellen](), Select Committee On The Chinese Communist Party, January 3, 2024
- [U.S. export controls need to 'change constantly' even if it's tough for businesses, Secretary Raimondo saysed-to-change-constantly.html](), *CNBC*, December 5, 2023
- [Letter to the ambassador Tai](), The Select Committee on the Chinese Communist Party, November 7, 2023

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

[**Expanded Reading**]

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On the Hill

[**Legislative Developments**]

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

[**Hearings and Statements**]

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

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

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

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

[**Expanded Reading**]

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What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

[**Keeping an Eye On…**]

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

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- Commission proposes new initiatives to strengthen economic security, European Commission, January 24, 2024
- EU AI Act: First Regulation on Artificial Intelligence, European Parliament, June 8, 2023

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

[In One Sentence]

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

[Mark the Essentials]

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

[Keeping an Eye On...]

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

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

[Expanded Reading]

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- Dairy Forum 2024 Hub, International Dairy Foods Association, January 24, 2024
- Japan's role in selling Biden's Indo-Pacific agenda, *Politico*, January 24, 2022
- Statement from Agriculture Secretary Tom Vilsack on Meeting with China's Minister of Agriculture and Rural Affairs Tang Renjian, U.S. Department of Agriculture, January 18, 2024

On the Hill

[Legislative Developments]

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

[Hearings and Statements]

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

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

[**Expanded Reading**]

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- Better Investment Barriers: Strengthening CCP Sanctions and Exploring Alternatives to Bureaucratic Regimes, Financial Services Committee, January 30, 2024
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- Cornyn, Colleagues Introduce Bill to Secure Critical Mineral Supply Chains, Counter Chinese Dominance, United States Senate, January 18, 2024
- Mike Gallagher and Raja Krishnamoorthy's letter to Secretary of DHS, regarding UFLPA, The Select Committee on the Chinese Communist Party, January 17, 2024
- Examining the Flow of U.S. Money into China's Military Might, Hearing in the House Foreign Affairs Committee, January 17,2024
- House Prepares to Drop China Investment Curbs from Defense Bill, *Bloomberg*, November 28, 2023

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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

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

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

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

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

[**Expanded Reading**]

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- [3 Business Priorities for the WTO's 13th Ministerial Conference](), U.S. Chamber of Commerce, February 6, 2024
- [A moment of truth for the WTO](), Hinrich Foundation, February 6, 2024

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

- U.S. Trade Representative Katherine Tai, along with Ron Kirk, President Obama's first USTR, have been the weakest USTRs on record since the creation of the position in the early-1960s. The third year of a first-term administration is typically the year when important trade policy outcomes get done. Instead, in 2023, USTR Tai drew an ignominious blank in her key negotiations with Asian (on the Indo-Pacific Economic Partnership) and European (on a Global Arrangement on Sustainable Steel and Aluminum and a Critical Minerals Agreement) partners. Closing out these negotiations in an election year, for the EU Parliament in June and in the U.S. a couple of months later, will only get harder. On one key future-oriented trade policy topic though—framing cross-border digital trade rules—she, rather than her detractors, has got it absolutely right. In a consequential decision that will resonate for many years to come, USTR pressed the pause button in October on supporting certain digital trade provisions, such as the unrestricted free flow of data across borders, a total ban on data localization requirements, and proscriptions against the turning over of proprietary source codes, in future trade agreements. The purpose of doing so, rightly, was to avoid preempting Congress' prerogative to frame comprehensive digital policy rules at home, now that a head of steam has built up on Capitol Hill to rein in the monopolistic excesses of Big Tech. Of course, Congress should have moved much earlier on this front. China's own crackdown and straightening out of Big Tech at home just goes to show the value of proactive enforcement—even if the methods employed left much to be desired. It was always a long shot to expect that international data flow rules could somehow preempt or flout the redrawing of domestic regulation in the sector. The decision by USTR to delineate regulatory 'policy space' is especially timely, given the dynamism and fluidity of innovation, processes and practices in the digital universe as well as the fast-paced changes in regulatory best practice. Rules such as those requiring access to algorithmic "black boxes" in this day and age of generative AI would have been inconceivable even three years ago. USTR Tai's decision to pause also comports with the ultimate end-goal of free trade, that being the welfare of the consumer, broadly understood. Social media platforms and digital companies have been the antithesis of responsible guardians of the consumers interest, with a legion of documented harms now clear for all to see. USTR Tai was spot-on in saying that getting ahead of domestic debates and decisions on digital trade would amount to "the tail wagging the dog" and would constitute "massive malpractice." The digital trade 'pause' has come not a day too soon. The ball is now in Congress' court; it needs to stop talking and start legislating.

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- U.S. and China are working to make the business environment less volatile, Beijing says, *CNBC*, January 26, 2024

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

[**In One Sentence**]

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

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

[**Mark the Essentials**]

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

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

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

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- EU hopes to overcome US opposition to WTO 'court' as key summit nears, *EURACTIV*, January 24, 2024

On the Hill

[Legislative Developments]

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

[Hearings and Statements]

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

[Expanded Reading]

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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — MC13: Minimum Deliverables, Major Impasses — 1

[In One Sentence]

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

[Mark the Essentials]

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

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

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

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

[**Expanded Reading**]

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- India Reverses Course And Permits Tariff Moratorium To Be Extended, *Forbes*, March 4, 2024
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2 — White House Rolls Out New Cyber 'Desinicization' Measures — 2

[In One Sentence]

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

[Mark the Essentials]

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

[Keeping an Eye On...]

- Cybersecurity concerns involving China have long risen to the fore in U.S. politics and national security. During the 2010s, the focus was on cyber-enabled commercial espionage, with President Barack Obama winning a pledge from President Xi at the 2013 Sunnylands Summit to clamp down on such theft. In the years since President Trump declared a new great power rivalry in his National Security Strategy of December 2017, the focus shifted to China's cyber-activities within U.S. government systems and U.S. critical infrastructure. In May 2023, the cybersecurity agencies of the Five Eyes countries issued a joint advisory against Volt Typhoon, an allegedly Chinese state-sponsored actor, that had infiltrated and burrowed itself inside U.S. and Five Eyes' critical infrastructure systems. In mid-February, FBI Director Christopher Wray delivered a blistering critique of China's pre-positioning of malware that could be triggered disruptively at a future date to an audience of cyber-chiefs at the Munich Security Conference. Wray's words may need to be taken with a pinch of salt, given the spectacular implosion of the Justice Department's various 'China Initiative' cases as well as the recent throwing out of the FBI's-landmark trade secrets theft charges against Fujian Jinhua Integrated Circuit Company. Be that as it may, Wray's critique was a prelude to three Biden administration Executive Orders in the space of ten days on China-linked cybersecurity concerns. On Feb. 21, an EO that addresses cyber-vulnerabilities linked to ship-to-shore cranes produced in China was rolled out, following media reports as well as a congressional investigation that such cargo cranes deployed at more than 200 ports around the country contained remotely accessible communications equipment (cellular modems) that was unneeded for normal operations. On Feb. 28, an EO accompanied by a 90-page Advanced Notice of Proposed Rulemaking (ANPRM) that is designed to restrict 'foreign adversaries' access to Americans' bulk sensitive data, was released. The ANPRM constitutes the second instance of the U.S. government seeking to directly regulate U.S. personal data for national security reasons (rather than for privacy or other reasons) following the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA) of August 2018 which had listed categories of "sensitive personal data" of U.S. citizens to be effectively kept beyond the acquisitions reach of a foreign adversary. And tucked-in also on Feb. 28, was an EO and accompanying ANPRM that seeks to strip out foreign adversary content from key electric vehicle software systems—vehicle operating system; telematics systems; automated driving systems; advanced driver assistance systems; battery management systems; satellite/cellular telecoms systems—to guard against undue risk of "sabotage," "subversion" or other "catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy." Although a touch overwrought, to say the least, and informed no doubt by the growing protectionist phobia that aims to keep Chinese EV's out of the U.S. market, the three EO taken together are the latest instance of the U.S. government's laser-focus on 'derisking' important industrial sectors as well as the digital economy of China-linked cybersecurity concerns. Surely, this will not be the last such instance.

[**Expanded Reading**]

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[Legislative Developments]

- The trade subcommittee Chair Adrian Smith (R-NE) said the lawmakers are making "good progress" on producing a bipartisan bill to reauthorize the Generalized System of Preferences (GSP).
- Senate Finance Committee members Mark Warner (D-VA) and Marsha Blackburn (R-TN) introduced the Promoting United States Leadership in Standards Act of 2024 to address China's growing influence in global technology standards.
- Republican Senator Josh Hawley (R-MO) introduced a bill to raise tariffs on automobiles from China, including automobiles manufactured by China-headquartered companies in third countries.
- A group of more than 40 Republican lawmakers introduced the "Countering Communist China Act." Labeled as "the "largest and most comprehensive legislation addressing the Chinese Communist Party (CCP) ever introduced in Congress," the bill aims to end the permanent normal trade relations with China, restrict outbound investment in China and promote free trade with third countries, among others.

[Hearings and Statements]

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

[Expanded Reading]

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- House Oversight chair launches probe into USTR digital pivot, *Politico*, March 4, 2024
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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

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

[**Keeping an Eye On…**]

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

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

[**Expanded Reading**]

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- Forced sale of TikTok "absolutely could" happen before Election Day, Rep. Mike Gallagher says, *CBS News*, March 17, 2024
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2 — Intensifying Measures and Calls in EV and Shipping Supply Chains — 2

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

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

[**Expanded Reading**]

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On the Hill

[Legislative Developments]

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

[Hearings and Statements]

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

[Expanded Reading]

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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

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

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

[**Keeping an Eye On…**]

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

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

[**Expanded Reading**]

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

[**Expanded Reading**]

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

[**Keeping an Eye On…**]

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

[**Expanded Reading**]

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

[Legislative Developments]

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

[Hearings and Statements]

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

[Expanded Reading]

- US Asks South Korea to Toughen Up Export Controls on China Chips, *Bloomberg*, April 2, 2024
- China opposes US abuse of national security as chip export restrictions extended, *Global Times*, March 31, 2024
- U.S. updates export curbs on AI chips and tools to China, *Reuters*, March 29, 2024
- Former Dow Chemical Scientist to Lead US House's China Committee, *Bloomberg*, March 25, 2024
- Lawmakers Call for Increasing Tariffs on Import of Chinese Drones, *Dronelife*, March 22, 2024
- Johnson, Garamendi's Ocean Shipping Reform 2.0 Passes U.S. House, Congressman Dusty Johnson (R-SD)'s statement about Ocean Shipping Reform 2.0, March 21, 2024

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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

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

[In One Sentence]

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

[Mark the Essentials]

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

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

[**Keeping an Eye On…**]

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

[**Expanded Reading**]

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

[**Expanded Reading**]

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

[Legislative Developments]

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

[Hearings and Statements]

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

[Keeping an Eye On…]

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

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

[**Expanded Reading**]

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

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What's Been Happening

1 — Stability or "Downward Spiral": Blinken's Tough Trip to China — 1

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

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

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2 — Biden Signs TikTok Law; TikTok Vows to Fight Divest-or-Ban Order in Court — 2

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

- We've seen this TikTok ban-or-divest movie before. On August 14, 2020, President Trump issued an Executive Order instructing ByteDance to divest all interests and rights in the U.S. operations of its video-sharing app TikTok within 90 days and, upon divestment, destroy all user data wheresoever located. ByteDance shot back in court that the order violated TikTok's First Amendment expression rights, its Fifth Amendment due process protections as well as the Fifth Amendment's Takings Clause and amounted to an overbroad and unjustified claim of authority. The court sided with ByteDance. By restricting the transmission of personal communications and informational materials, items covered under the International Emergency Economic Powers Act's (IEEPA) Berman Amendment, President Trump had exceeded his authority under the IEEPA and violated the First Amendment rights of TikTok and its millions of users. Relatedly, on August 28, 2020, China's Commerce Ministry updated its list of "forbidden and restricted technology exports" to include "personalized information recommendation services based on data analysis"—in effect, meaning that ByteDance would need government approval (which would not be forthcoming) to effectuate a divestiture. For added measure, China enacted a new Export Control Law two months later which permitted recourse to "reciprocal measures" if another country abuses export controls to endanger national security or national interests. In sum, the White House's divestiture order was nullified, and the app was in any case not allowed to go on sale. Almost four years on, the players have changed with Congress taking the lead this time, but the storyline remains the same. On April 24, President Biden signed a bill, as part of a larger foreign aid package, that bans TikTok in the U.S. if its China-based parent ByteDance fails to divest the app. The company has an initial nine months to sort out the sale, which is extendable for a further three months at the president's discretion. Rather than depend on the President's IEEPA authority (which the courts ruled he did not enjoy on informational materials), the legislative workaround authorizes the Justice Department to enforce a ban on the app on national security grounds, failing its divestiture. For all the effort and creativity that has gone into its crafting, this ban-or-divest bill fails to engage the essential legal crux of the matter—that being, that courts across the land and up to the Supreme Court have ruled that mere invocation of a national security threat based on supposition is insufficient to justify the squelching of First Amendment rights. The threat must be real and a proposed ban shown to be an unavoidable option to address this threat. TikTok must be shown to have aligned its algorithm with Beijing's disinformation efforts at the latter's behest or coercion and likely to do so again, if such a ban is to be sustained. Neither the White House in 2020 nor the foreign aid package bill today can mount this evidentiary threshold. Ultimately, the likelihood of TikTok winning the day in court remains high. What happens thereafter remains to be seen. That said, it is not too late for the White House and Congress to go down a different route and enact comprehensive privacy protections. That way, Americans' privacy and sensitive data can at least be shielded from prying eyes overseas. The administration's EO of late-February on preventing access to Americans' bulk sensitive personal data is a useful start in this regard.

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- TikTok warns US ban would 'trample free speech', *BBC News*, April 21, 2024
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- Biden just signed a bill that could ban TikTok. His campaign plans to stay on the app anyway, *AP News*, April 25, 2024

On the Hill

[**Legislative Developments**]

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

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[**Hearings and Statements**]

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

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

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

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

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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

[**Keeping an Eye On…**]

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

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

[**Keeping an Eye On…**]

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

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

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[Legislative Developments]

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

[Hearings and Statements]

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

[Expanded Reading]

- US House committee advances bill to restrict BGI, WuXi AppTec, *Reuters*, May 15, 2024
- Majority Leader Schumer Floor Remarks On President Biden's Announcement Of New Tariffs To Protect US Workers And Confront The CCP's History Of Trade Abuses, Office of the Senate Democrats, May 14, 2024
- Chairman Smith: "Only the Biden Administration would need over two years to figure out that the Trump tariffs combatting China's unfair trade practices were, in fact, a good thing," House Ways and Means Committee, May 14, 2024
- Bipartisan Coalition Introduces Monumental Bill Giving Admin Authority to Export Control Advanced AI Systems, House Foreign Affairs Committee, May 10, 2024
- Rep. Waltz Co-leads National Maritime Strategy Report, Office of Rep. Mike Waltz, May 8, 2024
- Brown pushes Biden Administration to ban all connected vehicles from China and vehicles using Chinese smart technology, Office of Sherrod Brown, May 8, 2024
- Barrasso Legislation Stops Lavish Electric Tax Credits, Office of Senator John Barrasso, May 2, 2024

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What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

[Keeping an Eye On...]

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

[Expanded Reading]

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

[**Keeping an Eye On…**]

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

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On the Hill

[**Legislative Developments**]

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

[**Hearings and Statements**]

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

[**Expanded Reading**]

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- Stanton, Johnson Introduces Bipartisan Legislation to Invest in 'Nearshoring' of Semiconductor Supply Chain, Office of the Rep. Greg Stanton, May 21, 2024
- Examining Trade Enforcement and Entry of Merchandise at U.S. Ports, United States Senate Committee on Finance, May 21, 2024
- Automakers Shipped Cars and Parts Made by Chinese Company Banned for Forced Labor to the United States; Car Companies Are Failing to Police Their Supply Chains For Chinese Components Made with Forced Labor, Finance Committee Majority Staff Investigation Finds, United States Senate Committee on Finance, May 20, 2024
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What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

[**Keeping an Eye On…**]

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

[**Keeping an Eye On…**]

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

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

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- [PRC Must Not Be Allowed to Wipe Out Competition](), *Voice of America*, May 28, 2024
- [Press Briefing by Press Secretary Karine Jean-Pierre and United States Trade Representative Katherine Tai](), The White House, May 14, 2024
- [IPEF Starts To Demonstrate Results](), Center for American Progress, June 10, 2024

On the Hill

[**Legislative Developments**]

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

[**Hearings and Statements**]

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

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[**Expanded Reading**]

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

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What's Been Happening

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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[Keeping an Eye On…]

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

[Expanded Reading]

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

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

[**In One Sentence**]

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

[**Mark the Essentials**]

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

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

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

[**Expanded Reading**]

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- OpenAI Taking Steps to Block China's Access to Its AI Tools, *Microsoft*, June 25, 2024
- McHenry Statement on Treasury's Outbound Investment Proposed Rule, Financial Services Committee, June 21, 2024
- US Moves Closer to Restricting Outbound Investment in China for Chips, AI Tech, *Bloomberg*, June 21, 2024
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[**Legislative Developments**]

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

[**Hearings and Statements**]

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

[**Expanded Reading**]

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- Environment, Manufacturing, and Critical Materials Hearing: "Securing America's Critical Materials Supply Chains and Economic Leadership", House Committee on Energy & Commerce, June 13, 2024
- NCBFAA Applauds Senators Cassidy and Cortez Masto for Customs and Trade Facilitation Framework, National Customs Brokers & Forwarders Association of America, June 11, 2024
- Report Launch: Friendshoring the Lithium-Ion Battery Supply Chain, CSIS, June 11, 2024
- ICYMI: Americas Act Represents Transformational Opportunity for Western Hemisphere, counters China, Office of the Senator Bill Cassidy (R-LA), June 10, 2024
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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — Disjointed U.S. Trade, Industrial and Foreign Policies at the Fore — 1

[**In One Sentence**]

- The Office of the U.S. Trade Representative (USTR) told Congress that the U.S.-Mexico-Canada Agreement (USMCA) should be adjusted to address concerns about Chinese investment and labor practices in Mexico's automobile sector.
- USTR also said that the U.S. will continue to grant USMCA tariff relief only to automobiles that source a higher percentage of their core components in North America, a practice that runs counter to a January 2023 USMCA dispute settlement panel ruling.
- In public comments to the Commerce Department, industry representatives have complained about the administration's "barrage of requests for information" regarding supply chain matters, and highlighted the need for "greater coordination across the federal government."
- Speaking at the U.S. Chamber of Commerce's Critical Minerals Summit, analysts and former officials criticized Washignton's attempt to outcompete China on conventional battery materials as "a race to the bottom on cost."
- They support, rather, strict trade enforcement to shut out goods made with forced labor but argued that U.S. companies should be allowed to "innovate our way out" by investing in "next-generation" battery products that can "leapfrog the status quo."

[**Mark the Essentials**]

- The United States disagrees with Canada and Mexico on USMCA's rules of origin requirements for automobile imports. Under the U.S.' interpretation, automobiles are eligible for USMCA tariff relief only if a higher threshold of "core components"—primarily engines, advanced batteries and transmission—are sourced in North America. The United States' interpretation would increase North American content requirements by 10-20% compared to Mexican and Canadian practices—an interpretation that a USMCA dispute panel struck down in January 2023.
- The State Department, the Office of the U.S. Trade Representative (USTR) and the Commerce Department have announced plans to establish a new Economic Diplomacy Action Group to "advance U.S. economic priorities, including supply chain resilience," "create opportunities for American businesses globally," and

"attract foreign investment into the United States in sectors vital to U.S. national security." According to Secretary of State Blinken, the Economic Diplomacy Action Group will aim to ensure high labor and environmental standards in global trade.

- Speaking on USTR's withdrawal of U.S. support for digital trade proposals at the WTO, USTR Katherine Tai called for the recognition that decisions at the trade negotiation table have "significant and consequential" implications for U.S. domestic policies and argued that trade negotiators and trade policy should "complement our system but not to supercede it."
- Ambassador Tai also called on trade policymakers and practitioners to avoid "deal fever" and focus more on a trade agreements' "effect" on matters related to "economic opportunity" and "political participation."
- Meanwhile, industry representatives from the U.S. semiconductor and automobile industries have urged the Biden administration to pursue a trade policy that is "complementary" to U.S. industrial policy, including by promoting the free flow of cross-border data and securing overseas market access for U.S. manufacturers. John Neuffer, CEO of the Semiconductor Industry Association, argued that "whether it is for digital or hardware trade, we've just got to get back in the business of opening markets around the world."

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

- What happens in UMSCA dispute settlement doesn't stay in USMCA dispute settlement. Twenty-four years ago, the operation of NAFTA's (USMCA's forerunner) dispute settlement function came to a standstill when the United States, staring at a loss in a case filed by Mexico against U.S. restrictions on sugar, blocked the formation of an arbitral panel—in effect, paralyzing the procedure. Sugar, like steel, happens to be a politically super-sensitive sector which, in Washington's view, cannot be left to the discretion of a third-party arbitrator. Up until then, three NAFTA dispute settlement panels had been seated and cases litigated, including two where the United States was the respondent. The non-appointment of arbitrators in this fourth sugar case broke the back of the dispute settlement procedure; it essentially ceased to function thereafter. And this NAFTA-tested panel blocking strategy became the inspiration for the U.S.'s wrecking ball approach a decade-and-a-half later to tear down the WTO's Appellate Body (there had been too many adverse steel-related rulings for Washington's comfort). Fast forward to 2019 on the NAFTA/USMCA front. To prevent a repeat of the dispute settlement impasse, the Protocol of Amendment to the USMCA's dispute settlement chapter made it a point to ensure that if a respondent party fails to designate its roster of panelists within a defined time-frame in a contentious case, then the complainant party is at liberty to fill these spots. Essentially, if one party wants a dispute settlement roster set up to hear a complaint, it would get that roster set up. So, is the problem solved? And an elegant future solution, too, to the WTO Appellate Body impasse? Well, on panel blocking, probably yes. On adhering, more broadly, to dispute settlement rulings, no. In its report to Congress earlier this month on the operation of the automotive goods trade provisions in the revised USMCA, USTR essentially let it be quietly known that it does not intend to comply with an adverse ruling in an automotive rules of origin case brought by Mexico before a USMCA panel in January 2022. Unable to block the panel's seating, the Biden administration now insists that its interpretation of auto trade rules of origin must prevail over the arbitrator's interpretation. And perhaps at a later date, the U.S. will probably trade off this loss politically against a loss by Mexico in a future dispute settlement case. So much for the integrity of third-party rulings, then. And which further begs the question: Is there any purpose expending time, money and effort in trying to sort through the panel blocking impasse at the WTO? Even if a USMCA-styled remedy does come to pass, is it of any use if the Appellate Body's rulings are blithely disregarded thereafter? Going forward, maybe the 53 parties (as of June 2024) to the Multi-Party Interim Arbitration Arrangement (MPIA) that was set up in

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2020 should drop the 'interim' from its title and make it the permanent alternative appeals forum for WTO dispute settlement cases. With the EU, China, Japan, Canada, Australia, Brazil and Mexico already subscribing to the forum, and with South Korea, the United Kingdom (now that it has a Labour government), and the ASEAN countries hopefully incentivized to opt into the process, the MPIA could once again restore the integrity of third party dispute settlement among a nucleus of key and interested WTO member states that matter to the multilateral trading system.

[Expanded Reading]

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- Canada Enacts Digital-Services Tax Amid Risks of U.S. Trade Retaliation, *The Wall Street Journal*, July 4, 2024
- Automotive sector benefited from USMCA amid pivot toward zero-emission, hybrid vehicles: USTR, *Fastmarkets*, July 3, 2024
- USTR Releases Second Biennial Report on the Operation of the USMCA with Respect to Trade in Automotive Goods, U.S. Trade Representative, July 1, 2024
- Prospect of low-priced Chinese EVs reaching US from Mexico poses threat to automakers, *AP*, June 27, 2024
- Fixing the Information Crisis Before It's Too Late (For Democracy), *Open Markets*, June 27, 2024
- United States Establishes Economic Diplomacy Action Group to Bolster U.S. Competitiveness, U.S. Department of State, June 24, 2024

2 — The EU's Provisional China EV Tariffs (Continued) — 2

[In One Sentence]

- The European Commission (EC) began imposing provisional countervailing duties on Chinese battery electric vehicles (BEVs) starting July 4 for a maximum duration of four months, prior to a definitive decision in this regard.
- Duty rates vary across Chinese EV manufacturers and were marginally lower than the numbers disclosed a month earlier on June 12.
- Per the Commission's finding, Chinese BEV's benefit from a range of trade-distorting industrial subsidies that are provided by the government at less than fair market value.
- The European Union and China have started negotiations on the EC's EV provisional tariffs and consultations, reportedly, have "intensified" "in recent weeks."

[Mark the Essentials]

- According to a European Commission press release, the EC "concluded that the BEV [battery electric vehicle] value chain in China benefits from unfair subsidization, which is causing a threat of economic injury to EU BEV producers." Accordingly, the Commission has decided to impose countervailing duties on Chinese BEV imports at varying rates. BYD will be applied a duty of 17.4%, Geely 19.9%, SAIC 37.6%, while BEV producers who cooperated in the investigation but were not sampled are subject to a 20.8% weighted average duty. Meanwhile, all non-cooperating BEV companies in China are to be hit with a 37.6% duty.
- The provisional duties were imposed nine months after the EU initiated the anti-subsidy investigation into China's BEV sector. Definitive tariffs will need to be statutorily announced by November 2024.
- It is uncertain whether the countervailing duties might also apply to non-Chinese—and potentially European—brands that make BEVs in China. According to the European Commission, "one BEV producer in China – Tesla – may receive an individually calculated duty rate at the definitive stage," "following a substantiated request."

- Following a talk between China's Minister of Commerce Wang Wentao and European Commission Executive Vice President and Trade Commissioner Valdis Dombrovskis on June 22, the two sides agreed to "start consultations on the EU's anti-subsidy investigation into electric vehicles originating from China."
- More recently, the European Commission has noted that contacts "at [the] technical level" have continued "with a view to reaching a WTO-compatible solution" that addresses EU concerns on China's BEV subsidies. Meanwhile, China's Ministry of Commerce said the two sides have held multiple rounds of talks at the technical level and expressed hopes that the European side and China can "reach a mutually acceptable solution as soon as possible" "on the basis of rules and reality."

[**Keeping an Eye On…**]

- Much has transpired in the time since the starting gun was fired on the China-EU battery electric vehicle (BEV) trade tussle with the announcement of provisional countervailing duties on Chinese BEV imports by the European Commission on June 12. On June 17, China's Commerce Ministry opened an anti-dumping investigation into EU pork and pork byproducts, with Spain and France—two of the most vocal advocates of the EV tariffs—likely to be the hardest hit (if the AD duties materialize). On June 22, China and the European Commission (EC) agreed to launch consultations on the EU's anti-subsidy investigation to arrive at a negotiated and WTO-consistent solution to their BEV dispute. On July 4, as per its internal processes, the Commission began imposing the said provisional countervailing duties, albeit marginally modified, on Chinese BEV imports. In its accompanying 208-page(!) Implementing Regulation, the Commission listed a bevy of actionable, producer-side, trade-distorting subsidies handed down by the Chinese government to its EV industry and related input suppliers, including preferential access to fiscal, land, and financial support at levels less than adequate remuneration, i.e., on non-market terms. Notable in the course of the EC's probe is a finding that companies like CATL that supply batteries to the EV manufacturers, a key input cost, essential operate as 'public bodies', exercising government functions to the effect that they implement the government's policy of supplying batteries at less than fair market value to facilitate the development of the domestic BEV industry. A day later, on July 5, China's Commerce Ministry announced the holding of an anti-dumping hearing on European brandy imports on July 18, following its initiation of a probe this January. French brandy imports are expected to be the hardest hit. Heavy hints have also been dropped that provisional tariffs could be imposed on the import of internal combustion engine (ICE) vehicles with engine displacement larger than 2.5 liters under the guise of aligning with green low-carbon development goals. Luxury models manufactured by German automakers are expected to take the biggest hit. Furthermore, on July 10, China's Commerce Ministry opened an unfair trade practices investigation into the EU's Foreign Subsidies Regulation (FSR), which the latter has employed to elbow out Chinese firms from participating in EU procurement projects in the wind, solar and electric trains sectors. Clearly, much has happened during this past month since the starting gun was fired on June 12. Looking ahead, it is the Chinese Commerce Ministry-European Commission negotiations that will determine the fate of Chinese BEVs in the EU marketplace. The sticks and carrots have been set out by both sides. Overall, the portents are, on balance, favorable. As the EC notes in its own Implementing Regulation of July 3, the "purpose of the countervailing duties is not to stop the imports of BEVs from China, but to restore a level playing field … [the] duties will therefore only compensate the distorting subsidization; trade will, however, continue to flow." And it bears remembering equally that eleven years ago, the EC and China had consensually resolved a relatively similar anti-subsidy and anti-dumping dispute on solar panels and components by hammering out a negotiated price and volume arrangement on imports from China that

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stabilized prices within the bloc and facilitated subsequent investment decisions by EU businesses. Will past be prologue?

[Expanded Reading]

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- BMW seeks lower import tariffs for China-made electric Mini, report says, *Reuters*, July 8, 2024
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- EU lays out its China EV tariff calculations, *Reuters*, July 4, 2024
- EU brushes aside risk of China trade war over electric vehicle tariffs, *The Guardian*, July 4, 2024
- Commission imposes provisional countervailing duties on imports of battery electric vehicles from China while discussions with China continue, European Commission, July 4, 2024

On the Hill

[Legislative Developments]

- The House China Committee's critical minerals working group, led by Rep. Rob Wittman (R-VA) and Kathy Castor (D-FL), aims to accelerate legislative efforts by the end of the year to reduce the United States' dependency on China's critical minerals through providing "transparency into U.S. supply chain dependency for critical minerals" and developing "proposed investments, regulatory reforms, and tax incentives."
- House Republicans on the Appropriations Committee have proposed significant funding cuts to key trade agencies, including the U.S. Trade Representative, the U.S. International Trade Commission, and the Commerce Department, under the "Commerce, Justice, Science and Related Agencies Appropriations Act," despite these agencies' request for funding increase to compete with China.
- Negotiation over reauthorization of the Generalized System of Preferences (GSP) program has encountered a sticking point with the Democrats demanding that reauthorization of GSP include the renewal of Trade Adjustment Assistance (TAA), which the Republicans oppose.

[Hearings and Statements]

- During a House China Committee hearing, witnesses and lawmakers proposed several countermeasures against China's dominance in the chip, ship, and drone sectors, including imposing higher tariffs and quotas on imports from China, delisting Chinese firms from U.S. exchanges, and a new aid program for the U.S. shipbuilding sector along with port fees.
- Democrat Senators from Ohio and Pennsylvania have urged the Biden administration to block Nippon Steel's acquisition of U.S. Steel, arguing that the acquisition presents "clear and present threats" to the U.S. domestic steel industry and American workers. According to the senators, "foreign steel companies, such as Nippon, seek to gain any advantage they can when competing with the US," and accordingly, Nippon Steel's acquisition of U.S. Steel could color "future ITC rulings."

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TnT ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — China Vows Deeper Reform at Third Plenum, Western Observers Unimpressed — 1

[**In One Sentence**]

- From July 15 to 18, 2024, the 20th Central Committee of the Communist Party of China (CPC) held its third plenary session in Beijing.
- The session highlighted the CPC's commitment to "further deepening reform comprehensively to advance Chinese modernization" as well as its focus on important issues such as innovation, education, finance, domestic consumption, and national security, with the aim of fostering a high-standard socialist market economy by 2035.
- Critics in the West expressed their doubt regarding the third plenum's outcome particularly insofar as tackling China's near-term economic challenges, and argued that the meeting concluded with few signs of "fundamental economic reforms."
- China's economy faces challenges such as a crisis in the property sector, high local government debt, weak domestic demand, and lack of self-sufficiency in core technologies, leading to a downgrading of investor's confidence in the country's growth prospects.

[**Mark the Essentials**]

- To deepen reform and advance Chinese modernization, the CPC has vowed to build a "high-standard socialist market economy" with a "fairer and more dynamic market environment"; push for "high-quality development" and "all-around innovation" through new institutions and mechanisms that "foster new quality productive forces" and "talent development;" emphasize "coordinated reforms in fiscal, tax, financial" systems, and "equal exchanges and two-way flow of production factors" between urban areas and the countryside. Moreover, the plenum highlighted opening up as "defining feature of Chinese modernization."
- Unimpressed critics underscored that there were few signs of the third plenum representing a "major change" in the economic policymaking direction of the CPC. Some commentators also argued that the policy decisions are more "cliche" than substance and are mostly superfluous insofar as dealing with the current troika of sluggish domestic demand, property sector woes, and local government debt crisis.

- The IMF recently upgraded its estimation of China's economic growth from the original 4.6% to 5% in 2024. Earlier, in March 2024 the Two Sessions of the National People's Congress had set an annual growth target of "around 5%" for 2024.

[**Keeping an Eye On…**]

- China's Big Man is also a big picture man who happens to be consummately aware of the complex challenges—'principal contradictions' in his words—facing China's modernization ambitions. A succinct paragraph in Xi Jinping's explanation of the Third Plenum's Resolution on Comprehensively Deepening Reforms captures the essence of the challenge facing his country: "*The market system still needs improvement; the market itself is not adequately developed; the relationship between the government and the market needs to be further straightened out; our innovation capacity falls short of the requirements for high-quality development; the industrial system, while large in size and extensive in scope, is not yet strong or sophisticated enough; the over-reliance on key and core technologies controlled by others has not been fundamentally changed; the foundations of agriculture need to be further strengthened; wide gaps persist in development and income distribution between urban and rural areas and between regions; and weak links remain in improving the people's wellbeing and protecting the ecological environment*." The Resolution itself, coming in at 17,700 words, is remarkably detailed, compared to the drab 3,700-word Third Plenum Communique. From a policy programmatic perspective, two subsections in the resolution stand out. They are: (a) deepening scientific and technological structural reform (Item #14); and (b) deepening reform of the fiscal and tax systems (Item #17). The S&T sub-section provides the most thorough public exposition so far of the views of the Party leadership on the topic, both in terms of diagnosing the challenge that China faces and the proposed pathways forward. The purported self-sufficiency that is sought in terms of scientific and technological infrastructure is to be achieved through, both, a Party control tower-led topic-down approach as well as flexible market incentives-based approaches that would be familiar to American S&T policy specialists. The fiscal and tax system subsection is the real 'game changer' element in the Third Plenum Resolution and is easily the most important outcome of the meeting. It includes arrangements to expand the sources of tax revenue at the local level and place more fiscal resources at the disposal of local governments while also granting the central government greater administrative authority and increasing the share of its expenditure in total government expenditure. Clearly, a good deal of thought and consensus-building has gone into drawing up this reform; this is not where the government was, policy-wise, even as recently as February. Implemented earnestly, these fiscal and intergovernmental tax reforms could be just as influential for sparking consumption-centered growth as the tax sharing system (TSS) reform of 1994—which did away with the perverse incentives of the 1980s-era fiscal contracting system—was for three decades of robust investment-led growth. On the other hand, some of the other proposed consumption-linked reforms, be it with regard to redistribution mechanisms and transfer payments, build out of the social security system, pushing out the retirement age, or reform of rural land ownership systems, appear to lack the needed detail or the required conviction and urgency. The obvious takeaway, then, is that China's 'excess savings' will not be productively absorbed in the domestic economy anytime soon, and that it will remain a point of contention with trade partners for quite some time. As for the external sector, while high-standards opening-up is prioritized, so also is the prioritization of resiliency measures. The medical sector is a prime example. Medical services are to be opened more widely to foreign investors while medical equipment supply chains (along with those for integrated circuits, industrial machine tools, instruments, basic software, industrial software, and advanced materials) are to be subject to risk-controllable resiliency measures. In any case, the chief impediment on this external opening front is not

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so much the lack of trade and investment market access (China is already a highly open economy) as much as the lack of a level playing field that implicitly favors local players at the expense of foreign businesses and, in the process, also ends up misdirecting capital for the most part to favored local players. As China's WTO trade policy review (TPR) report also notes, the aggregate scale of industrial subsidies are not easily quantifiable and tend to be doled out non-transparently. All-in-all, the Resolution on Comprehensively Deepening Reforms contains many useful reforms that are key to China's modernization prospects over the medium term. While foreign observers hoping for quick fixes to China's stumbling property woes or a 'big bazooka' stimulus injection to jump-start flatlining retail sales will be dismayed, the redesign of China's fiscal structure and system of taxation and the shift towards supporting household consumption (albeit at a slower pace than desired) bode well for the future. Ultimately, the proof of this pudding will be in its eating, i.e., in its implementation. The July 2024 Third Plenum Decisions should not be left to wither on the vine as was the case with the November 2013 Third Plenum Decisions.

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2 — GOP Formally Nominates Trump, Endorses his Trade Platform — 2

[**In One Sentence**]

- The U.S. Republican Party formally nominated former President Donald Trump as the party's candidate for the 2024 presidential election.
- The Republican National Committee approved the 2024 GOP platform which closely mirrors former President Trump's trade policy plan to "rebalance trade," address "unfair foreign competition," and "secure strategic independence from China."
- Former President Trump recently defended high tariffs on China during a *Bloomberg* interview, arguing that tariffs such as the McKinley ones (Tariff Act of 1890) made the country rich and that tariffs make for good bargaining chips during negotiations.
- He also reiterated the importance of eliminating the goods trade deficit with China and for bringing manufacturing lines and employment back to the United States, expressing concerns that "China is building massive automobile plants" in Mexico.

[**Mark the Essentials**]

- Robert O'Brien, a former national security adviser under Trump, recently wrote that Washington should decouple with China through high tariffs and tough export controls to weaken China's economy. Former

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U.S. Trade Representative Robert Lighthizer has also repeatedly called for a strategic decoupling from China across a wide range of fields including trade, technology, investment, research and social media.

- During his Bloomberg interview, former President Trump said he "had no problems with China" but must take moves to address the trade deficit, stop the "rapid" decline of U.S. economic power, and develop domestic manufacturing, e.g. in automobiles. Trump also criticized Taiwan for taking "almost 100% of our chip industry" away and argued that Taiwan has become "immensely wealthy" through its semiconductor dominance at the expense of the U.S. The stock prices of several semiconductor companies, including TSMC, Tokyo Electron and Nvidia, fell following Trump's criticism of Taiwan's chips dominance and amidst concerns of tightened U.S. export controls on semiconductors.
- Close aides to former President Trump are reportedly drafting a policy plan to incentivize AI and emerging technology innovation by investing in the development of relevant military technology and deregulating "unnecessary and burdensome" rules that hinder AI innovation. Silicon Valley venture capitalists Marc Andreessen and Ben Horowitz recently endorsed Trump for the presidency, arguing that Trump's policies best support tech startups and the innovation ecosystem while the Biden administration's focus on safety standards and tests solely "enshrine" Big Tech and monopolies.
- The International Monetary Fund recently warned that the introduction of additional tariffs could lead to higher inflation, while two Peterson Institute economists argued that if Trump implements his plan to replace income taxes with tariffs, the move would "cost jobs, ignite inflation, increase federal deficits, and cause a recession."

[**Keeping an Eye On…**]

- In a race that will be settled in a handful of swing states, many of them decided by white, non-college educated, blue collar voters based outside large metropolitan centers, the Democrats have seemingly chosen to plump for a Californian progressive who identifies as black and, in the likely view—rightly or wrongly—of the aforementioned swing voter, is a lady who has probably never done an honest day's labor with her hands. Good luck to the Democrats with their choice and her electability in Rust Belt America. Balanced against this, of course, is Donald Trump's high unfavorability ratings with average voters. Be that as it may, it is time to take Donald Trump both seriously and literally. And certainly so for his trade policy priorities, including his championing of a *Trump Reciprocal Trade Act* if he is re-elected president in November. In July 2018, a Trump acolyte had introduced a *United States Fair and Reciprocal Tariff Act* that would provide the president the authority to "impose a rate of duty on imports of that good from [a] country that is equal to the rate of duty applied by that country" on a like U.S. good. Or in Trump's words at the time, "fairness really." The leverage of threatened tariff hikes would compel countries to come to the table and lower their tariff and non-tariff barriers on U.S. goods. The bill went nowhere at the time, generally viewed as something between quixotic and crackpot. That is not the case today. With WTO law-breaking now becoming routine in the practice of U.S. trade policymaking, a *Fair and Reciprocal Tariff Act* in 2025 is no longer the sort of overreach that was seen to be the case in 2018. And even if a President Trump does not possess the congressional majorities to have a *Fair and Reciprocal Tariff* bill brought to his signing table, he will enjoy extensive tariff proclamation authority to ratchet tariffs upwards. By contrast, the president enjoys limited authority to lower tariffs and that too entirely in the context of trade promotion authority which is currently lacking. Essentially, with or without declaring a national emergency, the President can avail of a number of (non-anti-dumping/countervailing/ safeguards duties-related) statutes to increase tariffs. These include: Section 5(b) of the Trading with the Enemy Act (TWEA) of 1917; Section 232(b) of the Trade Expansion Act

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of 1962; Sections 122, 301, 604 of the Trade Act of 1974; and Section 203(a) of the International Emergency Economic Powers Act (IEEPA). So long as the president acts within the (wide) scope of his congressionally delegated tariff-raising powers on the basis of an "intelligible principle" that bears a "reasonable relation" to the task at hand, courts will not second-guess the president's methods and measures. Invocations of a "national emergency" are dime-a-dozen too, with 79 such declarations, as of February 2024, invoked under the *National Emergencies Act* since its enactment in 1976 (70 of those declarations utilized IEEPA authority thereafter). And it bears remembering too that President Nixon had utilized his TWEA-based authority (IEEPA's predecessor) to impose a 10% tariff on all imports into the United States in 1971, which was subsequently challenged but upheld in court. Trump has threatened a similar across-the-board tariff on all foreign imports, plus higher rates for Mexico and China. All said and done, tariff increases are on their way, one way or another. And if a *Fair and Reciprocal Tariff Act* is enacted, it will also bring the curtains down on 90 years of U.S. trade policy liberalization that started with the landmark, Depression-era *Reciprocal Trade Adjustment Act of 1934.* On trade, it's time to take Trump both seriously and literally.

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3 — Unpacking J.D Vance's Stance on China Trade and Technology — 3

[**In One Sentence**]

- Former U.S. President and GOP presidential nominee Donald Trump announced that J.D. Vance, U.S. Senator from Ohio since 2023, will be his vice-presidential running-mate.
- During his first interview as Trump's Vice President nominee, Senator Vance said that China is "the biggest threat" to the United States and the "real issue" to focus on.
- Vance also told the Republican National Convention that he intends to "protect the wages of American workers" and "stop the Chinese Communist Party from building their middle class on the backs of American citizens."
- Tesla CEO Elon Musk, tech entrepreneur David Sacks and several tech investors applauded Trump for choosing Vance as his running mate, but some commentators expressed concerns over Vance's criticism of Big Tech and Wall Street and cautioned for consequent market impacts.

[**Mark the Essentials**]

- Some commentators argued that with J.D. Vance picked as the Vice President candidate, the Republican Party will be able to demonstrate greater policy continuity even after the ending of a potential second Trump presidency, including in the fields of U.S.-China relations. Vance has generally supported Trump's policy agenda of imposing high tariffs on China to address "cheap Chinese goods" and protect American workers from Chinese manufacturing. Similarly, echoing Trump's statement that Taiwan needs to "pay [the U.S.] for defense," Vance said that U.S. allies could no longer "free ride" on U.S. support.
- Analysts have expressed varied views about the Trump-Vance China agenda. Some support a future Trump-Vance administration's heightened focus on China as necessary and out of acknowledgement of the

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new geoeconomic realities. Others caution against a "China-only" focus and argue that U.S. commitments in Europe and the Middle East are essential to competing with China globally.

- While the Republican Party has long supported deregulation and corporate tax cuts, there are signs that a Trump-Vance administration might not necessarily embrace policies favorable to big companies and multinationals, and Vance has previously voiced support for current Federal Trade Commission head Lina Khan's antitrust agenda against Big Tech.

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What's Been Happening

1 — Kamala Harris' View on Politics, Economy, and Trade — 1

[**In One Sentence**]

- Vice President Kamala Harris has picked Tim Walz, the serving governor of Minnesota, as her vice presidential running mate.
- Up to August 9, 2024, Vice President Harris has not released her presidential policy platform.
- Before being picked as Joe Biden's running mate in 2020, Kamala Harris had criticized trade agreements such as the Obama administration's Trans-Pacific Partnership (TPP) and the North American Free Trade Agreement (NAFTA), rechristened as USMCA, for lacking sufficient labor and environmental protections.
- In addition, she has advocated for reducing the cost-of-living for middle- and working-class households through expanded social welfare provision.
- During the 2020 Biden-Harris election campaign, Kamala Harris, as the Vice Presidential Candidate, advocated for a tax policy that offered tax credits to single filers and married couples, increased corporate and estate taxes, and promised not to raise taxes for those earning less than $400,000.
- In addition, Harris supported a worker-centered and green-friendly trade policy and underlined the importance of reinforcing domestic trade preferences, including "Buy American" provisions.
- Moreover, she criticized the Trump administration for "losing that trade war" with China and argued that Trump's tax credits had in fact raised the living costs for American families and led to a 'manufacturing recession' at home.
- As Vice President, Harris has advocated for green industry cooperation between the U.S. and ASEAN, and was involved in promoting the United States' cooperation with African countries on digital trade.
- During the 2023 ASEAN-led summits, Vice President Harris reaffirmed the United States' commitment to cooperate with regional countries on maritime issues such as sustainable fishing.
- As the presumed new Democratic Presidential nominee, Harris has vowed to push for a "care economy," expanding social welfare provision such as paid family leave, housing assistance, child care and elderly care.

[**Mark the Essentials**]

- Stakeholders in Silicon Valley have argued that both Harris and Trump have adopted "aggressively anti-China" positions but with different approaches, with the Biden-Harris administration approach being "more predictable" by comparison. On domestic tech regulation, some critics argue that the Biden-Harris administration's antitrust scrutiny and restrictions on mergers and acquisitions is not welcomed by Silicon Valley players, andTrump is seen as more friendly to tech industries such as crypto and AI.

- Democratic Vice Presidential nominee Tim Walz and Republican Vice Presidential candidate JD Vance devoted themselves to class warfare in recent election campaigning, with a view to appealing to the 130 million middle- and low-income registered voters. Governor Walz criticized JD Vance's "career funded by Silicon Valley billionaires," and underlined "that's not what Middle America is." Responding to Walz's criticism, JD Vance defended himself by highlighting his rise as the "American dream."
- Kamala Harris was critical of several U.S. trade initiatives before Joe Biden picked her as his running mate in 2020. In 2016, then-Senator candidate Harris opposed the Obama Administration's Trans-Pacific Partnership (TPP) and argued that TPP undermined the "best interests of workers" and risked further climate change in California. In 2019, then-Senator Kamala Harris expressed her opposition to the U.S.-Mexico-Canada Agreement (USMCA) and called for greater protections for American workers.
- Since becoming Vice President in 2021, Harris has placed emphasis on digital trade issues and Africa, such as Mobilizing Access to the Digital Economy (MADE) Alliance in Africa and the Partnership for Digital Access in Africa (PDAA).
- In her early career as a senator in California, Harris had criticized China for its theft of intellectual property, but also emphasized the importance of cooperating with China on climate matters. Later, as Biden's vice-president, Harris stressed the importance of "maintaining open lines of communication" with Beijing, while criticizing Beijing too for its "bullying" activities in the South China Sea. Critics argue that Harris' China policy will be not significantly different from Biden's.

[**Keeping an Eye On…**]

- So much for Kamala Harris' background and policy positions as vice president in the Biden White House and earlier, which have been fairly unremarkable. In her first major decision as a leader in her own right though, she has hit the ball right out of the park. Her choice of Minnesota's heretofore-not-well-known governor, Tim Walz, as her vice-presidential running mate is both a sign of good judgment as well as a necessity. Aside from his compelling backstory, Walz's white, Midwestern, working class roots will come in handy on the campaign trail. It is hard not to exaggerate the extent to which this demographic will shape the outcome of the 2024 presidential election, given the peculiar electoral college counting system. Had a mere 257,025 (of the total 155 million-plus) ballots in the critical Rust Belt states of Michigan, Pennsylvania and Wisconsin been cast for Trump instead of Biden, the twice-impeached Donald would have retained the White House in 2020—despite losing the popular vote by a 7 million-plus margin. Likewise, had a mere 77,736 ballots in Michigan, Pennsylvania and Wisconsin been cast for Hilary Clinton instead of Trump in 2016, Mrs. Clinton would have become the first woman president of the United States. Those 77,736 votes enabled Trump to overturn his 3 million margin of defeat in the popular vote. As for the 'white men' element, Trump's defeat in 2020 was primarily the result of a five-percentage point shift among white men in favor of Biden. This shift was primarily driven by men who had voted for Obama in 2008 and 2012 but were put off by Clinton's 'unlikability' persona and chose Trump over her in 2016 (Trump faces a similar unlikability quandary today). The five-percentage point shift was instrumental to Biden's victories in Michigan, Pennsylvania and Wisconsin. As a black Californian woman, Kamala Harris stands on shaky ground vis-a-vis each of these demographics—white men, working class voters, and particularly in Midwestern swing states. The selection of Walz provides a much-needed re-balance to the Democratic

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ticket. Better still, it shows that Harris as a leader in her own right is capable of good judgment. As for her trade policy priorities going forward, that is best analyzed in the next issue of the *TnT Dispatch*, once the Democratic Party Platform is released in the days ahead in the run-up to the party's convention in Chicago from August 19-22.

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2 — The U.S. and China Clash Over the IRA at the WTO — 2

[**In One Sentence**]

- China has requested that the World Trade Organization (WTO) establish a dispute panel and assess whether the United States' Inflation Reduction Act (IRA) tax credits conform with WTO rules.
- In the formal WTO complaint, China argued that several of the IRA "subsidies" discriminated against imported goods, violating a number of WTO rules.
- Meanwhile, the U.S. said that Beijing's move represents "a regrettable attempt to prevent progress" on climate change and to "entrench reliance" on China.
- The U.S. blocked China's initial request, although China has the option to continue advancing the matter through a second request which the U.S. will not be able to block.
- The WTO Appellate Body remains in paralysis as the U.S. continues to block the appointment of new judges, making it impossible for the WTO General Council to adopt a binding, conclusive decision on the matter.
- In assessing U.S.-EU cooperation under the Biden administration, some Republican Senators have argued that the introduction of the Biden administration's non-WTO-compliant IRA subsidies has evoked transatlantic tensions and accordingly halted earlier efforts towards a coordinated U.S.-EU partnership to jointly address China's industrial subsidy and other non-market practices.
- The IRA tax credits have evoked concerns and necessitated negotiations with U.S. allies such as the European Union, South Korea and Japan, among others.

[**Mark the Essentials**]

- Calling the United States' Inflation Reduction Act (IRA) "the largest single subsidy measure in modern economic history," China argued that five tax credits under the IRA—including the electric vehicle credit and four related to renewable energy—constitute subsidies contingent upon the use of domestic goods over imported ones or otherwise discriminate against goods of Chinese origin. Accordingly, the subsidies violate provisions of the General Agreement on Tariffs and Trade (GATT) as well as WTO's agreements on

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trade-related investment and subsidies. A *Xinhua* article cited by China's State Council further argued that the IRA measures "have severely disrupted the global NEV industry chain and supply chain, increased the cost of energy transition," "damaged the fair competitive environment" and "challenged the authority of the multilateral trading system," but was noticeably silent on China's own unending list of non-market, trade-distorting industrial subsidies that are laid out in excruciating detail in the European Commission's anti-subsidy probe of Chinese battery electric vehicle (BEV) imports.

- In a later statement that responded to China's WTO request, the U.S. delegation argued that "China's dominance of the solar sector," efforts to "dominate the production and supply of many critical minerals important to clean energy" and threat to "weaponize" the control of critical minerals have necessitated the U.S.' "efforts to address the global climate crisis and build a resilient clean energy supply chain."
- The U.S. also distinguished its IRA measures from China's "massive non-market excess capacity in clean energy sectors," arguing that the IRA measures, unlike China's practices, do not target any sector for global or domestic dominance; do not create non-market excess capacity or an oversupply of clean energy products; do not drive competitors out of business; or engage in "a network of non-market policies and practices."
- In a recently released report titled *One Step Forward, Two Steps Back: A Review of U.S.-Europe Cooperation on China*, U.S. Senate Foreign Relations Committee ranking member Jim Risch observed that the passage of the IRA increased U.S.-EU tensions and has scuppered "promising" earlier efforts between U.S. and allies to uncover, identify and challenge China's unfair and non-market subsidy practices at the WTO.

[**Keeping an Eye On…**]

- The U.S. has not had the best of runs at the WTO dispute settlement body (DSB) of late, having lost three successive cases over its interpretation and use of the exceptions provided-for in the GATT text, specifically those in Article XX (general exceptions) and Article XXI (security exceptions). From the moment the ink had dried on China's filings in the Section 232 steel and aluminum case and Section 301 tariffs case as well as Hong Kong's filing in the origin marking requirement case, it was clear as daylight that the constituted panels would strike down the U.S.' exceptions-based interpretations—its Article XX-based 'public morals' defense in the Section 301 case and its Article XXI-based 'national security' defense in the Section 232 steel and aluminum case as well as the origin marking requirement case. In the steel and aluminum case, the WTO panel ruled that while excess capacity in the steel industry might be a "matter of international attention," it was hardly tantamount to being "an emergency in international relations." Ducking under the WTO's Article XXI security exception was not an acceptable use of the provision. In the origin marking requirement case, by utilizing the Article XXI exception to compel Hong Kong exporters to incorrectly label their exports as a product of China at a time when U.S.-Hong Kong international relations were neither at a point of emergency or breakdown (the U.S. did, after all, carry on normal day-to-day trade with the customs territory), USTR had heaped a competitive disadvantage on Hong Kong's exporters. In the Section 301 case, the WTO panel judged the United States' remedial tariffs bore no correlation to achieving the said 'public morals' objective (there was nary a mention of the words 'public morals' in 250 pages of USTR's Section 301 investigative reports on China). The U.S. is now poised to lose a fourth GATT exceptions-linked case to China pertaining to its Inflation Reduction Act subsidies. While the U.S. has yet to file a legal defense, early signs suggest that USTR plans to champion the climate change cause and lean on an Article XX(b) general exceptions-based defense (USTR might also take recourse to Article XXI's "emergency in international relations" provision as a justification). This legal argument will not pass muster. While WTO members are allowed to adopt a policy measure that is inconsistent with GATT disciplines but "necessary to protect

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human, animal or plant life or health" (Article XX(b)), the relevant measure must not be applied in a manner which would constitute "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." By singling China out, the IRA subsidy measures amount to "a disguised restriction on international trade" that discriminates against goods of Chinese origin. The same legal principle applies with regard to the Article XXI "emergency in international relations" justification. While the self-judging invocation of an 'essential security interest' is permitted for the most part, the measure must not amount to being a disguised restriction on trade. Whether the climate change challenge amounts to being an emergency in "international relations" also remains to be seen. The U.S.-China clash over the IRA at the WTO has many months, if not years, to run; its legal outcome at the panel stage is, however, not in doubt. The interesting question to observe during the course of proceedings is whether the European Union, Japan and South Korea will join the IRA case in a third-party capacity and thereby implicitly support the Chinese position. They had done so in the Section 301 case, and had also registered their WTO law-based criticisms of the IRA at the time of its signing. In the time since though, each has struck up—or is in the process of striking up—its own sweetheart bargain with the Biden administration, muting its criticism in exchange for access to IRA subsidy money.

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What's Been Happening

— Special Edition: Unpacking Harris's Economic and Trade Policy Platform —

[**In One Sentence**]

- The U.S. Democratic National Convention (DNC) was held in Chicago, Illinois from August 19-22, 2024.
- During the DNC, Vice President Kamala Harris and Minnesota Governor Tim Walz were officially confirmed as the Democratic Party's nominees for President and Vice President.
- The 2024 Democratic Party Policy Platform, which the DNC approved on August 19, 2024, highlights several economic priorities including cutting taxes for American working families, ensuring big corporations' responsibility of paying their fair share, lowering the costs of healthcare, food and housing, and expanding the provision of social welfare.
- The platform aligns with previous policy statements of Vice President Harris but also repeatedly refers to President Biden's policies.
- On climate change, the policy platform aims to lower the cost of renewable energy and create more employment opportunities in the clean energy sector.
- On trade, the platform stresses priorities that protect American workers, facilitates the adoption of clean energy, and creates resilient supply chains.
- The policy platform describes China as the "most consequential strategic competitor" while emphasizing a "steadfast commitment" to "relentlessly advanc[e] U.S. interests and values while ensuring a floor of stability" in U.S.-China relations.
- On tech, the platform prioritizes the reinforcement of data privacy, promoting competition within the tech industry, ensuring online platforms' responsibility for content they share, and "managing the risks of AI."
- During her campaign swing in North Carolina, Kamala Harris backed a tax policy that expands child tax credits and increases the corporate tax rate from 21% to 28%, as well as pledged not to raise taxes for those earning less than $400,000.
- To address the current housing crisis, Vice President Kamala Harris plans to provide a tax credit of up to $25,000 to first-time homebuyers and reduce the costs for homebuilders to purchase starter homes.
- Moreover, Harris plans to exempt taxes for service and hospitality workers earning $75,000 per year or less.

- As Governor, Tim Walz's economic policy in Minnesota has focused on expanding social welfare and reducing taxes for the low and middle-income families.
- Vice President nominee Walz has a long history of engaging with China, including traveling to China in the late-1980s as part of an international teaching program organized by an NGO—in turn, leading multiple Republican lawmakers to criticize his "longstanding connection" with China.

[**Mark the Essentials**]

- Throughout the course of Harris' campaign, she has kept emphasizing the priority of reducing the cost of living for American families. To address the high cost of housing as well as rent price inflation, she has sought to partner "with industry to build housing, both to rent and to buy" and set a target of 3 million new homes over the next four years.
- Calling for a federal ban on corporate "price gouging" by grocery store chains in order to reduce food prices for American families, Vice President Harris plans to use new penalties to punish companies that "exploit crises and break the rules." Economists have scathingly dismissed her proposal as a "gimmick."
- Tim Walz's economic policies in Minnesota have shown a close alignment with Harris' economic agenda. As Governor of Minnesota, Walz prioritized the child tax credit, social welfare for K-12 students, and paid family and medical leave. He also enacted a series of tax cuts and tax credits for low and middle-income Minnesotans.
- In addition, Tim Walz's long history of contact with China has become a focal point of discussion. Republicans Rep. James Comer and Sen. Marco Rubio have criticized Walz's personal connection with China. Walz would become the first vice president to have lived in China since George H.W. Bush, who served as a U.S. diplomat in Beijing in the 1970s.

[**Keeping an Eye On…**]

- So, what is one to make of Kamala Harris's trade and industrial policy priorities if elected president? The Democratic Party did not bother to update its party platform to reflect Harris's priorities following Joe Biden's exit from the race. The draft platform that was approved on July 16 (before Biden exited) and affirmed this week on the convention floor instead repeatedly refers to a second Biden term. Within the 92-page document, the smattering of thoughts that pass as policy positions on trade and international economic policy appear primarily on pages 88 and 89. By contrast, the 2020 platform had a succinct section on building a fairer system of international trade within the first two-dozen pages, with substantive details laid out at the tail end of the document. To the best that one can glean something useful on trade from the 2024 platform, it is that a Democratic Party administration will be more selective in applying tariffs than one led by Donald Trump. Compounding matters, Vice President Harris has been sparse in her views on trade (and immigration), hoping that good vibes and upbeat messaging will compensate for lack of depth and detail against a boorish and undisciplined opponent. This is not a risk-free strategy. On the single most important campaign issue going into Labor Day—the cost-of-living distress, Mr. Trump's record is far better than Biden's. Inflation-adjusted weekly earnings rose handsomely during Trump's years in office; they continue to lag three-and-a-half years into the Biden presidency. Worse, it is not clear if Vice President Harris is capable or even interested in articulating a governing philosophy. Standing for all the good things that the Democratic Party stands for, and behind, does not amount to a philosophical rendering of deeply-held personal views, values, hopes and aspirations. Not since the end of the Cold War has there been a major party nominee for the presidency so lacking in the 'vision thing' as seems to be the case with Harris. Be that as it may, a Harris administration can be expected to pursue the same trend lines on trade and

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international economic policy as the Biden administration. In April 2023, National Security Advisor Jake Sullivan laid out its clearest exposition during a speech on the administration's "foreign [and economic] policy for the middle class" at the Brookings Institution. An eclectic mix of Donald Trump and Peter Navarro-style economic populism, Janet Yellen-popularized 'friendshoring', and Katherine Tai-championed worker-centered international partnerships, Sullivan's speech alluded to a five-pronged approach: pursuit of an expansive industrial policy at home; working with like-minded partners to build a resilient and leading-edge techno-industrial base; moving beyond traditional trade deals to new international partnerships; mobilizing large sums for global anti-poverty and climate change efforts; and protecting U.S. foundational technologies with a 'small yard, high fence' approach. The approach and trend lines are expected to more-or-less remain the same during a Harris presidency. As to their efficacy, that remains to be seen. While the Trump-Biden tariffs have led to a noticeable decline in China's bilateral trade surplus with the United States, China's overall market share of global goods exports has risen, not declined. While there has been a diversification—or 'friendshoring'—of goods production away from China, Chinese-sourced inputs remain key to assembly operations in these 'friendshored' destinations (i.e., Mexico and Vietnam). Besides, these diversification partners have not seen any significant recent U.S. investments, suggesting that it is Chinese (and Taiwanese) firms that are driving this diversification trend. A similar 'going out' dynamic was observed on the part of large Japanese firms following incessant U.S. pressure to revalue the yen in the early-1980s, leading in turn to the creation of Asia's dynamic, vertically integrated production networks. Today, Chinese firms stand to back-handedly benefit from this forced internationalization. And finally, while the 'small yard, high fence' export controls have temporarily hit hard, they have also done more to concentrate minds in Beijing to deepen reform of China's S&T ecosystem and self-sufficient capabilities than any 'Made in China 2025' plan could have achieved. A potential Harris presidency comes at a critical time in the United States' economic relations with China and the world. It is a pity that her party's platform does not reflect this seriousness on the trade and international economic policy front.

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What's Been Happening

1 — As U.S.-China Relations Stabilize, Wide Differences over Trade Remain — 1

[**In One Sentence**]

- From August 27-28, 2024, U.S. National Security Advisor Jake Sullivan visited China and met with President Xi and senior Chinese officials including Foreign Minister Wang Yi and Vice-Chairman of China's Central Military Commission, General Zhang Youxia.
- Following Sullivan's visit, the White House announced that President Biden and President Xi would hold a phone call in "the coming weeks."
- During the meeting with Foreign Minister Wang, Sullivan expressed concerns over China's "unfair trade policies and non-market economic practices" and underlined that the U.S. would take "necessary actions" to prevent American technologies from being used to "undermine the U.S.' national security, without "unduly limiting trade or investment."
- In response, Foreign Minister Wang Yi charged that the U.S. is using "overcapacity" as an excuse to pursue "protectionism" that will impair "global green development" and "world economic growth."
- China's Ministry of Commerce has announced that U.S. Under Secretary of Commerce for International Trade Marissa Lago will meet with China's Vice Minister of Commerce Wang Shouwen for a second meeting of the bilateral Commercial Issues Working Group on September 7 in Tianjin, China.
- The Office of the U.S. Trade Representative has once again delayed the announcement of its final plan to implement additional U.S. Section 301 tariffs on Chinese electric vehicles (EV) and batteries, pushing the date from some time in August to early September.
- The Office of the U.S. Trade Representative is seeking public and stakeholder inputs on U.S. electric vehicle and renewable energy tax credits under the Inflation Reduction Act, noting the "major issues" that China has raised while challenging the tax credits at the WTO.
- On August 26, Canadian Prime Minister Justin Trudeau announced that Canada will impose a 100% tariff on China-made EVs and 25% tariffs on Chinese steel and aluminum, addressing concerns over China's "non-market practices" "in parallel with other economies around the world."

- A week later, on September 3, China, the world's largest oilseed importer, announced plans to initiate an anti-dumping investigation into canola imports from Canada as well as an "anti-discrimination investigation" with regard to the relevant restrictive measures taken by Canada.

[**In Other News**]

- The European Commission has decided to reduce the tariffs that the European Union will impose on China-made Tesla EVs from 20.8% to 9%. According to the European Commission, the new tariff rate reflects the "level of subsidies" Tesla received in China after the Commission conducted a field trip in China to verify the relevant information. Nevertheless, some analysts argue that Tesla received significant local government loans, e.g. from the Shanghai government, and that Tesla has relied extensively on Chinese battery maker Contemporary Amperex Technology Limited (CATL), which also receives subsidies from the Chinese government.
- Following Canada's announcement of its plan to impose tariffs on China-made electric vehicles (EV), Canadian Minister of Export Promotion, International Trade and Economic Development Mary Ng highlighted the importance of working with the U.S. on "economic security," ensuring "greater economic and supply chain resilience" and addressing "certain non-market practices and policies related to electric vehicles as well as steel and aluminum."
- In a recent article, Peterson Institute for International Economics's Senior Fellow Mary Lovely and Research Analyst Jing Yan argue that the European Union and the United States are diverging in their approaches on trade ties with Beijing, which will inevitably impact their ability, down-the-line, to agree on national security and technology control policies related to China.

[**Keeping an Eye On…**]

- The 'new normal' in US-China relations continues to take shape, one piece at a time. In late-August, it was the turn of U.S. National Security Advisor Jake Sullivan to pay a return visit to Beijing (his counterpart, the Director of the Foreign Affairs Central Commission Office, Wang Yi, had visited the White House last October). In Beijing, Sullivan and Wang, held "candid, substantive and constructive discussions", which apparently seems to be the case with all presidential, cabinet and principals-level bilateral exchanges these days! The two sides agreed to disagree on the fundamental strategic framing of their relationship. Washington seeks a relationship of competitive coexistence where 'extreme competition' in four competitive domains (military, economic, political, and global governance) is sought to be managed rather than resolved; Beijing, on the other hand, seeks a relationship of peaceful coexistence where the two sides first develop a "right strategic perception" of each other: that they are partners, not rivals. Beneath this overarching disagreement though, the two sides continued to harvest modest but useful deliverables in the areas of counternarcotics, climate change, mil-mil communications, and AI safety and risk management. This 'new normal' in US-China relations is not a 'new Cold War' as some have posited – although there is a palpable Cold War-style zero-sum equation settling into their competition to dominate the high-technology and advanced manufacturing industries of tomorrow. Nor is the 'new normal', on the other hand, merely a more contentious version of the mix of engagement and competition that characterized their four decade-long post-normalization period of ties. Strategic competition between the US and China is for real and, if mismanaged, could drift into outright rivalry and across-the-board conflict – both hot and cold. That said, there is no one typology of interaction that cuts across the 'baskets' of US-China issues; the two countries' interactions, rather, span the range from the productive to the icy. Positioned towards the former end of the spectrum is their multilateral cooperation on climate change as well as Washington's and

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Beijing's multi-dimensional engagement on bilateral and multilateral macroeconomic and financial issues, helmed by their Economic and Financial Working Groups. 20-plus dialogue channels and communication mechanisms across a range of issue areas also continue to beaver away. On the other hand, the two countries' labor ministers have never met (the US insists that genocide and forced labor continues to be carried out in Xinjiang) and US Trade Representative Katherine Tai has yet to show up in-person in Beijing and explain her administration's stance on the Section 301 China tariffs. A complex relationship demands complex choices, built as much on ideology and values as on realism and objectivity. In an article in *Foreign Affairs* in August 2019, eighteen months before they assumed their role as the architects of the Biden administration's Indo-Pacific policy, Jake Sullivan and Kurt Campbell wrote of the imperative to establish a "clear-eyed coexistence [with China] on terms favorable to U.S. interests and values." America could, and should, both challenge and coexist with China. In Summer 2024, the spelling out of the terms of that 'clear-eyed coexistence' remains a work in progress. And while Beijing continues to pursue its bilateral interests reactively within this framework, this is not necessarily a losing proposition. A non-disruptive external environment, backed by a stable and coexistent relationship with the US, remains an essential ingredient of China's overarching #1 national interest priority – that being its re-rise and the fulfillment of its national modernization aspirations by the end of the first half of the 21st century.

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On the Hill

[Legislative Developments]

- Applauding the U.S. Supreme Court's decision to overturn the *Chevron* doctrine, which grants federal agencies considerable leeway to impose rules and regulations by expansively interpreting legislative languages, Senator Mike Rounds (R-SD) introduced a bipartisan resolution to establish a joint congressional committee to comprehensively review all federal rules and regulations that significantly impact the U.S. economy.

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- Meanwhile, Senator Elizabeth Warren (D-MA) has led a group of influential Democrat lawmakers to introduce a bill that would legislatively codify the *Chevron* doctrine, arguing that the Supreme Court's decision hinders important regulatory progress in climate, green energy, and public health by unduly limiting the government's rulemaking authority.
- The Bureau of Industry and Security (BIS) is reportedly working with Senate Finance Committee Chair Ron Wyden (D-OR) to develop a National Defense Authorization Act (NDAA) amendment that would provide BIS the authority to regulate chips that can be remotely accessed, "fixing the loophole" that allow Chinese companies to rent AI chips from American companies like Amazon and Google via their cloud offerings.

[**Hearings and Statements**]

- Following the Supreme Court's decision to overturn the *Chevron* doctrine and require federal agencies to provide more justification in their regulatory rulemaking, House Republican leaders and Committee Chairs have reportedly sent oversight letters to "nearly every agency in the Executive branch," requesting information on agency rulemaking and documents to "reign in the vast, out-of-control administrative state."
- Rep. John Moolenaar (R–MI), Chair of the House China Committee, and Senator Macro Rubio (R-FL), ranking member of the Senate Intelligence Committee, have urged the Defense Department to put China's Contemporary Amperex Technology Co. Ltd (CATL) in its licensing blacklist, given CATL's "contribution" to China's civil-military fusion policy. The lawmakers argue that such a move would help "safeguarding America's military infrastructure from exposure to the PLA," and send "a powerful signal" to American companies that cooperate with CATL.

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What's Been Happening

1 — USTR Finalizes Sweeping Tariff Increases on Chinese Imports — 1

[**In One Sentence**]

- After repeated delays, the Office of the U.S. Trade Representative finalized its actions on the statutorily required Section 301 China tariff review on September 13, 2024.
- USTR confirmed that it will enforce a duty of 100% on Chinese EVs, 50% on solar cells, 25% on steel, aluminum, EV batteries and key minerals, and 100% on syringes and needles, which would become effective on September 27, 2024.
- In addition, USTR announced a 50% duty on Chinese semiconductors, including on silicon wafers and polysilicon, and a 50% tariff on medical gloves, which would take effect in 2025.
- Starting in 2026, the USTR plans to impose tariffs of 50% on face masks, 25% on non-EV batteries, 25% on natural graphite, and 25% on permanent magnets.
- Moreover, USTR decided to adopt 14 temporary tariff exclusions on Chinese manufacturing equipment for solar cells and wafers, while declining to adopt five temporary exclusions on solar module manufacturing equipment.
- USTR also decided to expand the scope of the exclusion process to include five additional categories of machinery imports from China, out of 312 proposed additions.
- The Biden administration announced plans to no longer grant *de minimis* exemptions to imports of items from China that are subject to Section 232, Section 301 or Section 201 tariffs, seeking to close a "loophole" that it says benefits "China-founded e-commerce platforms."
- Meanwhile, on September 9, during election campaigning in Wisconsin, former U.S. president Donald Trump claimed if other countries intend to reduce the use of dollars, he will put a 100% tariff on these countries' exported goods to the United States.

[**Mark the Essentials**]

- In addition to finishing up its repeatedly extended review of Section 301 tariffs on China's exports to the U.S., the September 13 announcement implements the Biden administration's May 14 Memorandum on Actions related to the statutory 4-year review of the Section 301 investigation of China's technology transfer, intellectual policy and innovation-related policies and practices. Shortly after USTR's announcement, China's Commerce Ministry criticized the tariffs and labeled the U.S as a "disrupter of global industrial and supply chains" in its second annual report on the United States' compliance with the WTO.

- Among others, USTR's action seals the Biden administration's decision to impose a 100% tariff on Chinese electric vehicles (EVs). The Biden administration and other U.S. policymakers have argued that the tariffs are intended to "protect American workers and businesses from China's unfair trade practices" arising from the latter's subsidization of its EV sector, resulting in low and highly competitive EV price offerings. Others, though, attribute the significant price gap between U.S. and Chinese EVs to the comprehensiveness of the EV supply chain in China.
- U.S. policymakers have long expressed concerns over China's "dominance" in the solar industry, especially in the production of solar cells and modules. Nevertheless, downstream industrial users have resisted the imposition of tariffs or restrictions on Chinese solar imports. In 2022, for example, following an anti-circumvention investigation on Chinese solar panels by the U.S. Department of Commerce, the Biden administration nevertheless provided a 24-month tariff moratorium on solar panels shipped from Southeast Asia to avoid market and industry disruptions.
- Under existing customs practices, import shipments valued at US$800 or below are exempt from U.S. tariffs. According to the Biden administration, "some e-commerce platforms and other foreign sellers" have utilized the *de minimis* "loophole" to "circumvent" U.S. tariffs, including Section 301 tariffs on Chinese imports. As such, the administration has now instructed agencies to issue new rules to "improve accountability and enforcement in *de minimis* shipments," with a particular focus on e-commerce platforms such as Temu and Shein. The White House has cautioned though that "comprehensive legislative reforms on *de minimis*" is required to fully address the issue.

[**Keeping an Eye On…**]

- Almost exactly four years to the day that a dispute settlement panel in Geneva had ruled that the Trump administration's Section 301 China tariffs were inconsistent with the United States' WTO obligations under the GATT, the Biden administration has formally decided to not only double-down on the tariffs but also selectively expand them. The first tranche of tariff increases will drop as early as September 27. For those who argue that the president does not enjoy the authority to ratchet tariffs upwards in a big way (Congress constitutionally, after all, gets to "regulate commerce with foreign nations"), well, they should think again. On the basis of delegated retaliatory tariff authority under Section 307 of the Trade Act, the president has just quadrupled an already-unlawful tariff on electric vehicles to 100%, without even so much as a preliminary investigation of China's practices in the sector. Be that as it may, USTR's September 13 decision on the tariffs is a useful moment to take stock of the self-defeating nature of the Section 301 tariffs. Granted that the tariffs have reduced the bilateral trade deficit by over $100 billion, which is not exactly chump change. And the argument for their selective expansion—which is, to protect the recent industrial policy interventions by way of the CHIPS Act and the Inflation Reduction Act—holds a certain logic. Nevertheless, ample data and analysis is now available that confirm that the tariffs have become a massive exercise in trade self-marginalization on the part of the United States. And that they are a 'gift' to Beijing from a political standpoint. First, even as China's share of U.S. imports have slipped, China's overall market share of global goods exports has increased over these past five years, meaning that the country has become more important to the rest of the global economy. In a related vein, EU-China trade ties have intensified too during this period, particularly in medium-skill and technology-intensive goods. This intensification is set to deepen over the next decade, notwithstanding the various subsidization-linked trade measures proposed

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by Brussels that target Chinese producers. Second, while there has been a relocation and diversification of production outside China to escape the Section 301 tariffs, this diversification is limited and shallow. Nearshoring to Mexico and friendshoring to Vietnam has dominated this trend. Yet even here, the evidence suggests that final assembly of items in these countries continues to depend on China-sourced intermediate inputs. This 'lengthening' of supply chains runs counterintuitive to the logic of supply chain resilience which was the supposed reason—or, rather, the excuse—given to 'derisk' dependence on China. Third, much of the foreign direct investment supporting this supply chain diversification has tended to arrive from non-U.S. and non-Western sources. Which, in turn suggests, that it is East Asian and most likely Chinese investors providing the FDI that is driving this trade diversification. So much for 'decoupling' from China. And just as Japan. Inc.'s forced relocation of domestic production to East Asia due to American badgering to revalue the yen four decades ago spawned the remarkable region-wide production networks, so also the Section 301 tariffs will come to be seen as a blessing that equipped Chinese firms to internationalize and entrench their world-beating operations globally and obtain valuable 'learning by doing' experience along the way. Finally, the Section 301 China tariffs have turbocharged calls for protectionism—rarely ever a good idea—within the U.S. body politic. Like salted peanuts, the more they are dispensed to favored industries, the more they will be, and are being, demanded. The Section 301 tariffs (along the steel and aluminum Section 232 tariffs) have also dislodged the long-held trade policy consensus within the Beltway from its pro-liberalization moorings, with trade policy today shot through with streaks of populism and protectionism. At a time when most major economic players continue to liberalize their trade policy frameworks, albeit at a slower pace, Washington's tariff play has been a grand exercise in self-deluding marginalization on the global stage. Whatever one's view may be of the technology policy decoupling that Washington has pursued over the past half-decade, its trade policy counterpart has been an undiluted lose-lose proposition. It is set to continue with no turnaround in sight even on the distant horizon. And in the meantime, China will not just continue to intensify its trade linkages with much of the Global South and (the rest of the) North but also rack up wins *vis-à-vis* Washington at the WTO dispute settlement panel stage along the way.

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[**Legislative Developments**]

- During what was dubbed as "China Week" in the U.S. Congress, the House passed more than 25 China-related bills on or around September 9 to "protect Americans against the military, economic, ideological, and technological threats" imposed by China.
- The BIOSECURE Act, for one, prohibits executive agencies from procuring, and federal contractors from using biotechnology equipment and services from certain Chinese companies that are deemed to be connected to the Chinese government.
- Among the dozens of "China Week" bills that passed the House, four of them sought to reform the U.S. export controls system. Specifically, the bills seek to clarify that the U.S. export controls system should be also used to protect United States' trade secrets and the domestic industrial base; create an expedited procedure for federal agencies to propose and enact modifications to the Entity List; expand the scope of export controls to also cover remote access of U.S. technologies and items; and require the Department of Commerce to periodically report its export controls enforcement progress to Congress.
- Two other bills would allow the President to sanction foreign entities that conduct economic or industrial espionage against U.S. companies; and push for better interagency coordination and harmonization of various sanctions lists.
- Regarding electric vehicles (EVs) and EV batteries, two bills would prohibit the Department of Homeland Security from procuring foreign-made EV batteries from a list of Chinese companies as well as further tighten regulations to ensure that Chinese businesses and Chinese business owners cannot benefit from U.S. tax credits that promote EV development.
- Other "China Week" bills would, among other changes, require prior congressional notification before the White House enters into, renews or extends the Science and Technology Agreement (STA) with China; revokes certain privileges granted to the Hong Kong Economic and Trade Offices; reestablish a "CCP Initiative" within the Department of Justice to curb "spying" and "trade secret theft" "by the Chinese Communist Party"; require a study into the national security risks posed by China-made consumer routers and modems; and require the United States representative to oppose an increase in the weight of the Chinese Renminbi in the International Monetary Fund's Special Drawing Rights (SDR) basket.
- On the Senate side, Senator Bob Casey (D-PA) introduced a package of five bills to enhance U.S. regulators' ability to review China's investment in and procurement of emerging technologies in the U.S.; disclose and limit U.S. investment in China; modify the rules-of-origin standards to prohibit goods with more than 20% of China-made components from enjoying free trade agreement benefits; and educate the U.S. port and shipping industry of Chinese logistics infrastructure and technology threats.

[**Hearings and Statements**]

- On September 12, the House Committee on Homeland Security and the House China Committee jointly released an investigative report regarding the "rising threat" of Chinese-made port cranes to U.S. economic and homeland security.

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- Although several U.S. lawmakers have applauded the Biden administration's decision to revoke the *de minimis* benefit accorded to Chinese exporters, lawmakers including House China Committee Chair John Moolenaar (R-MI), House Ways and Means Committee Chair Jason Smith (R-MO), Rep. Earl Blumenauer (D-OR) and Rep. Rosa DeLauro (D-CT) argued that the Biden administration's "first step" on the *de minimis* reform front merely reinforces the urgent need for Congress to pass legislation to close the *de minimis* "loophole."

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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.

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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?

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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."

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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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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**]

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- [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.

[**Expanded Reading**]

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- Steel Introduces Legislation to End Port Strike, Office of Rep. Michelle Steel (R-CA), October 2, 2024
- Export-Import Bank of the United States Board of Directors Increases Support for Critical Minerals Transactions, Export-Import Bank of the United States, October 2, 2024
- Miller Introduces U.S. - Republic of Korea Digital Trade Enforcement Act, Office of Rep. Carol Miller (R-WV), September 27, 2024
- Golden introduces bill to restore American manufacturing with 10 percent tariff on all imports, Office of Rep. Jared Golden (D-ME), September 26, 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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- Economists Warn Of New Inflation Hazards After Election, *The Wall Street Journal*, October 28, 2024
- The Problem With The Trump Trade, *Financial Times*, October 26, 2024
- Kamala Harris And Trade: Better Than The Alternative, But Not Much, *The Interpreter*, September 30, 2024

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

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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.

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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 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
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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.

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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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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.

[**Expanded Reading**]

- TikTok Asks To Pause Ban Until Supreme Court—And Trump—Weigh In, *Forbes*, December 9, 2024
- Appeals Court Upholds TikTok Ban, Declining To Block Law That Would Force Sale, *CBS News*, December 6, 2024
- China Automakers Pivot To Hybrids For Europe To Counter EV Tariffs, *Reuters*, December 5, 2024
- EU Will Give Aid For EV Batteries That Have Less China Content, *Automotive New Europe*, December 4, 2024
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- Why Isn't Europe Diversifying From China?, Rhodium Group, December 2, 2024
- Europe's Battery Crisis A Humiliating Reminder Of China's EV Dominance, *South China Morning Post*, November 29, 2024
- EV Battery Maker Calls For Cheaper EU Energy To Counter China, *Bloomberg*, November 25, 2024

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