Abstract

THE UNITED STATES AND CHINA: RECENT TENSIONS AND THEIR COLLATERAL IMPACT ON THE REPUBLIC OF KOREA

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Upon entering office in January 2021, President Biden inherited from his predecessor Donald Trump a contentious relationship with China, along with many unprecedented trade concerns. This article provides an overview of the Biden Administration's approach to the U.S.-China trade relationship to date and the implications of these policies for Korean businesses. The article begins with a brief discussion of the respective domestic interests influencing trade policies in the United States and in China. Next, the article summarizes a range of U.S. trade issues, including legislation, tariffs, export controls, sanctions, and investment restrictions, among others. This section highlights how – despite taking different approaches – the Biden and Trump Administrations share many of the same goals with respect to China. The article concludes with a discussion of how these recent U.S. policies targeting China have impacted Korea.

Keywords : China, Biden, Xi Jinping, Phase One Agreement, Chinese Military-Industrial Complex Companies List, Export Controls, CFIUS, ICTS Regulations, Section 301, Section 232, Supply Chains, Taiwan, Hong Kong, Human Rights, Investment Decoupling

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목차

I. INTRODUCTION

Alongside the many unprecedented policy questions facing President-elect Joe Biden in the months leading up to his inauguration on January 20, 2021 – a global pandemic and its resulting economic strains, immigration crises at the U.S. border with Mexico, and an increasingly urgent concern for the climate – one problem was remarkably precedented: how should the United States interact with China? For decades, incoming presidents in the United States have faced a rapidly growing Chinese state that has sought to capitalize on the globalized economy without always playing by global economic rules. President-elect Biden's unique challenge, however, was to follow an incumbent who initiated the most aggressive trade and diplomatic stance vis-à-vis China in recent memory. During a polarizing four-year term, President Trump utilized trade tools in unprecedented and often unpredictable ways, typically with little regard for international norms and the rule-of-law.

Thus, upon entering the White House, President Biden was required to decide which Trump-era policies to continue, which to modify, and which to abandon. While running for the presidency, Mr. Biden previewed a China policy that appeared to integrate elements of both the Trump and Obama Administrations, culminating in what commentators described as "a Trumpian wariness of China combined with a preference for caution in handling strategic matters."[2) Now, more than a year into the Biden presidency, this analysis appears correct for the most part. The Biden Administration has been criticized by the business community for taking only limited actions to unwind Trump Administration policies, while the Administration's rhetoric has continued to blur the lines between national security, economic security, human rights, and other interests.

This paper will primarily evaluate the Biden Administration's policy choices amidst the ongoing U.S.-China trade dispute, and their impacts on Korea and Korean businesses. Section I provides an overview of the domestic considerations underpinning the United States' and China's approach to their trade conflict. Section II summarizes the most significant U.S. trade policy developments under the Biden Administration. Finally, Section III discusses the implications of the U.S.-China relationship and rivalry for Korea and Korean businesses.

Ⅱ. DOMESTIC CONSIDERATIONS UNDERLYING TRADE POLICY

A. Biden Administration Approach

Even before taking office, the Biden Administration emphasized that its top priority would be to address U.S. domestic concerns, prior to considering any international trade policy issues. "As president, I will not enter into any new trade agreements until we have invested in Americans and equipped them to succeed in the global economy," wrote then-presidential candidate Joe Biden in Foreign Affairs in the spring of 2020, referring to China at the time as a "special challenge."[3) The Administration made good on this promise during its first year, focusing primarily on two flagship legislative proposals: the "Build

2) Joe Biden's China policy will be a mix of Trump's and Obama's, The Economist (Nov. 21, 2020), https://www.economist.com/china/2020/11/19/joe-bidens-china-policy-will-be-a-mix-of-trumps-and-obamas.

3) Joseph R. Biden, Why America Must Lead Again, Foreign Affairs (Mar./Apr. 2020), https://www.foreignaffairs.com/articles/united-states/2020-01-23/why-america-must-lead-again.

Back Better" bill, a social-spending and climate bill that the Administration had hoped to push through Congress with only the support of Democrats; and the Infrastructure Investment and Jobs Act ("IIJA"), which was successfully passed into law with bipartisan support in November 2021. Although the Build Back Better bill contain policies related to China (discussed in detail in Section II.A, below), the two bills are primarily aimed at spurring domestic growth, expanding the social safety net, and investing in U.S. infrastructure and climate goals.

With respect to China trade policy, the Biden Administration signaled a "strategic pause" on new trade actions upon entering office, indicating that it intended to do a full review of the U.S.-China relationship and existing policies before making any changes. This stance frustrated many in the U.S. business community, including those who had hoped that President Biden would swiftly roll back Trump-era policies, especially the significant tariffs levied on imports of Chinese-origin products under Section 301 of the Trade Act of 1974. Corporate interests were further frustrated when the Administration released its long-awaited framework for its approach to the U.S.-China Relationship in October 2021. In a Fact Sheet published by the Office of the United States Trade Representative ("USTR"), the Administration did not take any concrete actions, but rather laid out four general priorities: (1) discussing with China its performance under the Trump-era Economic and Trade Agreement Between the United States of America and the People's Republic of China ("Phase One Agreement"); (2) restarting a targeted tariff exclusions process to mitigate the effects of Section 301 tariffs; (3) raising broader concerns about China's non-market policies and practices, including specifically "abuse of state-owned enterprises, anti-competitive behavior and subsidies, the theft of American intellectual property;" and (4) consulting and coordinating with allies.[4]

In fact, domestic political concerns significantly constrain the Administration's options when it comes to China. The free trade consensus in Washington has largely disintegrated under the previous Administrations, with Democrats turning away from trade deals since the 1990s in response to the North American Free Trade Agreement ("NAFTA"), and Republicans more recently following President Trump's "America First" policies. Congressional leaders on both sides of the aisle opposed the

4) JoseOffice of the United States Trade Representative, Fact Sheet: The Biden-Harris Administration's New Approach to the U.S. - China Trade Relationship (Oct. 4, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/fact-sheet-biden-harris-administrations-new-approach-us-china-trade-relationship.

Trans-Pacific Partnership (later renamed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP") and completed without U.S. involvement). Thus, at a time when many U.S. allies are seeking expanded global market access to better compete with China, the Administration will likely be unable to implement trade agreements requiring Congressional approval to help U.S. companies.

Moreover, it must be noted that President Biden's electoral victory in 2020 depended on narrow margins in the American "Rust Belt," where Biden promised to protect U.S. jobs from foreign competition. This commitment is now felt through the Administration's top-down focus on unions and labor issues, considerations that the Administration incorporates into most, if not all, of its trade decisions. As the Administration continues to compete for votes during the mid-term elections in November 2022 in manufacturing regions like Pennsylvania, Ohio, and Michigan, it will prioritize the protection of U.S. jobs and economic competitiveness over strengthening ties abroad.

The Biden Administration must also consider polling data that shows that U.S. popular opinion has shifted dramatically against China. March 2021 polling data from Gallup and Pew showed, for example:

- the percentage of Americans who see China as the United States' greatest enemy doubled since the prior year, from 22% to 45%;
- the percentage of Americans who see China's economic power as a "critical threat" increased to 63% from 46% in 2019;
- the percentage of Americans who have negative views toward China increased from 46% in 2018 to 67%; and
- approximately 53% of Americans would like the United States to get much tougher with China on its economic policies, while 70% want the United States to confront China over human rights issues.[5]

Just as importantly, these views span the political and ideological spectrum. For example, disapproval of China since 2018 rose 22% among Republicans and 23% among Democrats; meanwhile, 67% of conservatives, 56% of moderates, and 54% of liberals see China's economic rise

5) William A. Galston, A Momentous Shift in US Public Attitudes toward China, Brookings (Mar. 22, 2021), https://www.brookings.edu/blog/order-from-chaos/2021/03/22/a-momentous-shift-in-us-public-attitudes-toward-china/.

as a critical threat.[6)]

Finally, U.S. commercial interests vary significantly. U.S. companies with substantial exports often advocate for stronger measures against China, in response to the country's practices regarding forced technology transfer and lax intellectual property protections. On the other hand, agricultural interests have largely benefited from increased Chinese purchases under the Phase One Agreement, and thus they oppose any enforcement measures that could interrupt exports. Meanwhile, a wide range of industries that depend on imports from China have intensively lobbied the Biden Administration to lift Section 301 tariffs.

This combination of political factors, as well as reported disagreements within the Administration itself,[7)] have led to a slow rollout of China policy, with most of the major Trump-era policies remaining in effect.

B. Xi Jinping Administration Approach

Since Chinese President Xi Jinping fully assumed power in 2013, the Chinese Communist Party ("CCP") has embraced policies that have significantly consolidated power under the central government. Xi Jinping has abandoned the collective power sharing model that has guided elite Chinese politics since the death of Mao in 1976. During Xi's tenure of power, he has eliminated presidential term limits, sacked any major factional rivals through "anti-corruption" campaigns, and deployed draconian policies in regions such as Xinjiang and Hong Kong, among other areas. To demonstrate Xi's consolidation of power, the CCP last year adopted a resolution on its "major achievements and historic experiences," only the third such resolution in the party's 100-year history.[8)] With the 20th National Party Congress set to take place at the end of this year and no rival in sight, a third term for President Xi is all but certain.[9)] Nevertheless, Xi and the CCP's leadership are intent on

6) William A. Galston, A Momentous Shift in US Public Attitudes toward China, Brookings (Mar. 22, 2021), https://www.brookings.edu/blog/order-from-chaos/2021/03/22/a-momentous-shift-in-us-public-attitudes-toward-china/.

7) See Bob Davis, Biden Promised to Confront China. First He Has to Confront America's Bizarre Trade Politics., Politico (Jan. 31, 2022), https://www.politico.com/news/magazine/2022/01/31/biden-china-trade-politics-00003379.

8) See Nectar Gan and Steve George, Xi has cemented his power in China. Now he's ready to meet Biden virtually, CNN (Nov. 12, 2021), https://www.cnn.com/2021/11/12/china/xi-jinping-sixth-plenum-biden-mic-intl-hnk/index.html.

9) Chris Buckley et al, Eyeing his future, Xi Jinping rewrites the past, New York Times (Nov. 11, 2021), https://www.nytimes.com/2021/11/11/world/asia/xi-jinping-china-third-term.html.

displaying strength and stability in the months leading up to the Congress. However, evolving external events, such as Russia's invasion of Ukraine and China's "no limits" friendship agreement with Russia signed in early February, have significantly interfered with this political transition process and even created some level of concern among CCP elders regarding Xi's judgement and leadership. China's public support of Russia during this sensitive period has contradicted China's core principles of supporting and respecting the sovereignty of all nations and as "champions" of the third world, including nations such as Ukraine.

One of Beijing's primary goals is to become a global hub of advanced technology, a strategy referred to as the "Made in China 2025" policy.[10)] Announced in 2015, Made in China 2025, which was also enshrined in China's 14th Five-Year-Plan, is a ten-year industrial policy plan focused on a number of economic and scientific priorities including:

improving manufacturing innovation, integrating technology and industry, strengthening the industrial base, fostering Chinese brands, enforcing green manufacturing, promoting breakthroughs in ten key sectors, advancing restructuring of the manufacturing sector, promoting service-oriented manufacturing and manufacturing-related service industries, and internationalizing manufacturing.[11)]

Despite these ambitious industrial policies, China's economy has met significant headwinds this year. For example, China's "Zero-Covid" policies have significantly stifled economic growth in critical economic hubs throughout China, including Beijing, Shanghai, and Guangdong. Furthermore, President Xi's of embrace of a state-driven command and control economy, including regulatory crackdowns on large Chinese tech companies, has alarmed the international investment and business community, resulting in significant capital outflows from China.

Similarly, the Belt and Road Initiative ("BRI"), launched by President Xi in 2013, is an ambitious expansion project focused on global economic integration through building various large-scale

10) See Sean O'Connor, How Chinese Companies Facilitate Technology Transfer from the United States, U.S.-CHINA ECON. AND SEC. REVIEW COMM'N (May 6, 2019), https://www.uscc.gov/sites/default/files/Research/How%20Chinese%20Companies%20Facilitate%20Tech%20Transfer%20from%20the%20US.pdf.

11) 'Made in China 2025' plan issued, THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA (May 19, 2015), http://english.www.gov.cn/policies/latest_releases/2015/05/19/content_281475110703534.htm.

12) Andrew Chatzky and James McBride, China's Massive Belt and Road Initiative, COUNCIL ON FOREIGN RELATIONS (Jan. 28, 2020), https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative.

13) See European Bank for Reconstruction and Development, Belt and Road Initiative (BRI). https://www.ebrd.com/

infrastructure projects, primarily in developing countries.[12] The U.S. and other western governments have expressed growing concern that BRI infrastructure projects, such as port development and modernization projects, could be used to support Chinese military installations in countries such as Equatorial Guinea, Cambodia, and Argentina, among others. Other components of the BRI include strengthening political ties in Eurasia, achieving currency integration via use of the renminbi, and investing in controversial fossil fuel.[13]

Ⅲ. OVERVIEW OF RECENT U.S. POLICIES RELATING TO CHINA

A. Legislation

Holding a narrow majority in the U.S. Congress, the Democratic Party has had an ambitious legislative agenda since President Biden assumed office. Despite that, the Democrats' track record in the 117th Congress has been disappointing, having only passed very few major proposals for the President's signature. Of the proposals put forward, three of them target China: the Uyghur Forced Labor Prevention Act ("UFLPA")[14], a measure targeting forced labor practices in China's XUAR; the Build Back Better Act[15], discussed in the Section I.A, above; and separate bills in the Senate and House that are specifically intended to enhance the United States' "competitiveness" vis-à-vis China.[16] Of these, only the UFLPA has been signed into law.

i. UFLPA

The White House and Congress have paid increasing attention in recent years to the issue of forced labor. In 2020, the Department of Homeland Security, State Department, Treasury Department, and Commerce Department announced steps to enhance enforcement of existing authorities to combat forced labor.[17] In March 2020, Representative

what-we-do/belt-and-road/overview.html; Jennifer Hillman and Alex Tippett, The Climate Challenge and China's Belt and Road Initiative, COUNCIL ON FOREIGN RELATIONS (Mar. 13, 2021), https://www.cfr.org/blog/climate-challenge-and-chinas-belt-and-road-initiative.

14) H.R. 6256, 117th Congress, https://www.congress.gov/bill/117th-congress/house-bill/6256/text.

15) H.R. 5376, 117th Congress, https://www.congress.gov/bill/117th-congress/house-bill/5376.

16) S. 1260, 117th Congress, https://www.congress.gov/bill/117th-congress/senate-bill/1260; H.R. 4521, 117th Congress, https://www.congress.gov/bill/117th-congress/house-bill/4521.

17) U.S. Department of Homeland Security, Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation (Jan. 2020), https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf; https://home.treasury.gov/system/files/126/20210713_xinjiang_advisory_0.pdf.

James McGovern and Senator Marco Rubio introduced the first versions of the UFLPA, which received bipartisan support and passed both houses in early 2021. A compromise bill reconciling the differences between the House and Senate versions was then sent to the President and signed into law in December 2021.

To address the issue of forced labor practices in the XUAR, the UFLPA creates a rebuttable presumption that any goods produced in whole or in part in the XUAR are made by force labor and thus prohibited from entry into the United States.[18] In practice, Customs and Border Protection ("CBP") is scheduled to begin enforcing the law on June 21, 2022, by detaining all goods it believes to have been made in whole or in part in the XUAR, unless the importer is able to demonstrate to CBP "by clear and convincing evidence" that "the good, ware, article, or merchandise was not mined, produced, or manufactured wholly or in part by forced labor."[19]

Although CBP has not issued guidance on the "clear and convincing evidence" standard under the UFLPA, it will likely be a high bar, requiring detailed evidence from importers. The law will likely have the effect of discouraging investment in and trade with the XUAR, as some importers may find that compliance burdens outweigh the benefit of trade and investment in the region.

ii. Build Back Better

After months of negotiations, in November 2021, the U.S. House of Representatives passed the Biden Administration's flagship policy proposal, the Build Back Better Act, mostly along party lines.[20] A $1.75 trillion spending package, the Build Back Better Act was lauded by Democrats as a transformative investment in the American people and criticized by Republicans as "a behemoth bill [that] will do irreparable damage to our republic."[21] The bill primarily focuses on funding for universal preschool, child tax credits, Medicare benefits, and programs to combat climate change. The bill does, however, also include components related to U.S.-China competition, such as providing manufacturing investment credits for

18) Id; see also The Uyghur Forced Labor Prevention Act: What U.S. Companies with China-Based Supply Chains Should Know, Akin Gump Strauss Hauer & Feld LLP (Jan. 24, 2022), https://www.akingump.com/a/web/qCsyW7kj1s5QEibvKFEduh/3BUU7n/international-trade-alert.pdf.

19) The Uyghur Forced Labor Prevention Act, supra note 26.

20) See Nik Popli and Abby Vesoulis, The House Just Passed Biden's Build Back Better Bill. Here's What's in It, TIME (Nov. 19, 2021), https://time.com/6121415/build-back-better-spending-bill-summary/.

21) Mike Lee @SenMikeLee, TWITTER (Dec. 14, 2021, 4:37 PM), https://twitter.com/senmikelee/status/1470870508644323333.

semiconductors and semiconductor tooling equipment, and $5 billion for the Department of Commerce to address supply chain challenges.

Despite passing in the House, the bill stalled in the Senate in December 2021, when Democratic Senator Joe Manchin broke ranks with his party and declared that he could not vote for the legislation. With the narrowest possible majority in the Senate,[22] the Democrats failed to pass Build Back Better without Senator Manchin's vote, dealing a massive blow to the Biden Administration. The fate of the bill remains unclear, although Senator Manchin has noted support for certain elements of the bill that could be passed in standalone legislation in the future.

iii. United States Innovation and Competition Act ("USICA") and the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength Act ("America COMPETES Act")

For over a year, Congress has worked to develop "China competitiveness" legislation, culminating in the Senate's USICA, passed on June 8, 2021, and the House America Competes Act, passed on February 4, 2022. Among many other priorities, the bills fund domestic semiconductor chip manufacturing, dramatically increase scientific research and development funding, revive lapsed trade programs, and re-orient the United States' international posture towards competition with China.[23]

While there are significant differences between the two bills, each is a compilation of more high-profile bills that had been debated and voted out of various committees, a number of which relate to China.[24] For example, USICA includes extensive provisions to reinstate previously expired tariff exclusions, refund importers on those lapsed exclusions, and create a new process for companies to apply for exclusions in the future.[25] However, despite broad

22) In the 117th Congress, the Democratic and Republican Parties each occupy 50 of the 100 seats in the Senate. The U.S. Constitution provides that the Vice President may cast a vote in the Senate in the event of a tie. Thus, the tie-breaking vote of Vice President Kamala Harris, a member of the Democratic Party, gives the Democrats a slim "majority" in the Senate. See U.S. CONST. art. 1, § 3, cl. 4.

23) See H.R. 4521, 117th Congress, https://docs.house.gov/billsthisweek/20220131/BILLS-117HR4521RH-RCP117-31.pdf; S. 1260, 117th Congress, https://www.congress.gov/bill/117th-congress/senate-bill/1260/text.

24) See America COMPETES Act v. US Innovation and Competition Act-Summary of Key Differences and Takeaways, Akin Gump Strauss Hauer & Feld LLP (Feb. 14, 2022), https://www.akingump.com/en/news-insights/america-competes-act-v-us-innovation-and-competition-actsummary-of-key-differences-and-takeaways.html.

25) See S. 1260, 117th Congress, https://www.congress.gov/bill/117th-congress/senate-bill/1260/text; Trade Policy Side-by-Side: Division K of the America COMPETES Act versus Division G of the U.S. Innovation and Competition Act, Akin Gump Strauss Hauer & Feld LLP (Feb. 14, 2022), https://www.akingump.com/a/web/72cjmNCey1fa64Lc6REuF/akin-gump-competes-act-and-usica-division-k-side-by-side.pdf.

support for these tariff provisions in the House, including more than half of Democrats on the House Ways & Means Committee, the America COMPETES Act surprisingly does not include any tariff exclusion provisions.[26)] Rather, the House bill focuses more heavily on diplomatic initiatives, such as boosting U.S. engagement in the Indo-Pacific, and requiring the White House to develop a strategy to keep China from financing foreign governments that are of strategic importance to the United States.[27)]

Despite wide political support for legislation that boosts U.S. competition against China, the vast differences in the House and Senate versions have created a difficult reconciliation process for a sharply divided Congress. At the time of writing, Congress has yet to reconcile these bills through its conference committee process, although the process to do so – albeit slowly – is underway.[28)]

B. Phase One Agreement and Tariffs

On January 15, 2020, the Trump Administration signed the Phase One Agreement with China, addressing a broad range of economic issues including intellectual property, agriculture, financial markets, currency and technology. The Agreement went into effect on February 14, 2020. Prior to the Phase One Agreement, the Trump Administration had been using tariffs to force China to the negotiation table.[29)] Thus, as part of the negotiations, the United States agreed to reduce tariffs on a number of Chinese imports, provided that China changed certain practices. For example, the Phase One Agreement required China to purchase $200 billion-worth of U.S. goods, cease its practice of forcing technology transfers from U.S. companies entering Chinese markets, prosecute Chinese entities that steal confidential business information, and provide greater

26) Trade Policy Side-by-Side, supra note 30.

27) See Foreign Policy Side-by-Side Division D of the America COMPETES Act versus Division C of the U.S. Innovation and Competition Act, Akin Gump Strauss Hauer & Feld LLP (Feb. 14, 2022), https://www.akingump.com/a/web/npXZYbf7Pzhm1zHfWEdHuM/akin-gump-competes-act-and-usica-division-d-side-by-side2.pdf.

28) As part of the policymaking process in the United States, when each chamber of Congress passes legislation that contain different provisions, the House and Senate leadership create an ad hoc panel, known as a "conference committee," which is composed of representatives from each chamber. The conference committee is tasked with reconciling the differences between the two bills in an effort to create one identical bill amenable to both chambers. See Cong. Res. Serv., Conference Committee and Related Procedures: An Introduction (May 21, 2021), https://sgp.fas.org/crs/misc/96-708.pdf.

29) USTR Increases Section 301 Tariffs on List 3 Products to 25% and Announces Additional Tariffs on Remaining Imports from China, Akin Gump Strauss Hauer & Feld LLP (May 13, 2019), https://www.akingump.com/en/news-insights/ustr-increases-section-301-tariffs-on-list-3-products-and.html.

patent protection for the pharmaceutical industry, among many other provisions.[30)]

More than two years later, the United States has made it clear that it does not consider China to have lived up to its commitments. Under the Biden Administration, USTR has made enforcing the Phase One Agreement one of its top priorities with respect to China.[31)] In its 2021 Report to Congress on China's WTO Compliance, USTR stated that while China implemented some provisions of the Phase One Agreement, it has failed to follow through on some of its more significant commitments.[32)] USTR singled out China's implementation of a risk assessment related to agricultural biotechnology and the required purchase of $200 billion of U.S. goods and services as examples of China's Phase One shortcomings.[33)] In fact, the Peterson Institute for International Economics estimates that China purchased only 57 percent of the total U.S. goods and services exports that it had committed to buy under the Agreement.[34)]

Moreover, under the Biden Administration, USTR recognized the shortcomings of the Phase One Agreement itself, stating that its enforcement is only one step on the path towards a significantly different bilateral trading relationship with China:

> The reality is that this Agreement did not meaningfully address the more fundamental concerns that the United States has with China's state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses. China's government continues to employ a wide array of interventionist industrial policies and supporting measures, which provide substantial government guidance, massive

30) Clete Willems Discusses U.S.-China Trade Deal Post Signing, Akin Gump Strauss Hauer & Feld LLP (Jan. 16, 2020), https://www.akingump.com/en/news-insights/clete-willems-discusses-u-s-china-trade-deal-post-signing.html; China Trade Deal Details Protections for American Firms, New York Times (Jan. 14, 2020), https://www.nytimes.com/2020/01/14/business/economy/trump-china-trade-deal.html; Clete Willems Speaks with New York Times, Washington Post on U.S.-China Trade Deal, Akin Gump Strauss Hauer & Feld LLP, (Jan. 15, 2020), https://www.akingump.com/en/news-insights/clete-willems-speaks-with-new-york-times-washington-post-on-u-s.html.

31) Office of the United States Trade Representative, Fact Sheet: The Biden-Harris Administration's New Approach to the U.S.-China Trade Relationship, (Oct. 4, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/fact-sheet-biden-harris-Administrations-new-approach-us-china-trade-relationship.

32) Office of the United States Trade Representative, 2021 Report to Congress on China's WTO Compliance, (Feb. 2022), inter alia, https://ustr.gov/sites/default/files/enforcement/WTO/2021%20USTR%20Report%20to%20Congress%20on%20China%27s%20WTO%20Compliance.pdf.

33) Id.

34) Chad P. Bown, US-China phase one tracker: China's purchases of US goods, (Mar. 11, 2022), https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods.

financial resources and favorable regulatory support to Chinese industries across the economy, often in pursuit of specific targets for capacity and production levels and market shares. In furtherance of its industrial policy objectives, China has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China. It has also used various, often illicit, means to secure foreign intellectual property and technology to further its industrial policy objectives.[35]

Critics of the Biden Administration, on the other hand, have argued that the President and USTR Ambassador Katherine Tai are neglecting to enforce the Phase One Agreement. In a February 2022 letter to USTR, high-ranking Republican Members of the U.S. House of Representatives criticized the Biden Administration for failing to share a detailed analysis of China's implementation of the Phase One Agreement, thus leaving Congress with insufficient data to regulate commerce with China.[36]

In conjunction with enforcing the Phase One Agreement, the Biden Administration has been evaluating the Section 301 tariffs that the Trump Administration imposed on China. In 2018, USTR determined, pursuant to an investigation under Section 301 of the Trade Act of 1974, that China's acts, policies, and practices related to technology transfer, intellectual property (IP), and innovation were unreasonable or discriminatory, and burdened or restricted U.S. commerce.[37] To counter these acts, the Trump Administration used Section 301 authorities to impose four rounds of increased tariffs on the vast majority of U.S. imports from China. USTR at the same time implemented a limited process for companies to request exclusions from the increased tariffs – a process which the Government Accountability Office later found to be inconsistently applied.[38]

For its part, China implemented retaliatory tariffs on imports of U.S. products in response to each round of

35) Id.

36) See Letter from Republican Members of the House of Representatives, Biden Admin Neglecting Enforcement of Phase One Agreement, U.S. House Committee on Ways and Means (Feb. 24, 2022), https://gop-waysandmeans.house.gov/letter-biden-admin-neglecting-enforcement-of-phase-one-agreement/.

37) Office of the United States Trade Representative, "Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 83 Federal Register 14906, https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN301.pdf.

38) United States Government Accountability Office, USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions (July 2021), gao.gov/assets/gao-21-506.pdf.

Section 301 tariffs. As of March 2021, China was estimated to have applied retaliatory tariffs covering 58.3 percent of U.S. exports to China.[39)]

While many touted President Trump's imposition of Section 301 tariffs as an effective tool to hold China accountable for its predatory trade practices, others have questioned the effectiveness of this strategy. CBP has collected about $130 billion of duties on Chinese goods since the imposition of these tariffs (as of March 2022),[40)] but a January 2021 study by the U.S.-China Business Council ("USCBC") found that the Trump Administration's trade war with China reduced U.S. economic growth, costing the United States an estimated 245,000 jobs.[41)] The USCBC's study also noted that an escalation of the U.S.-China trade war and the decoupling of the two economies could "[see] the US economy product $1.6 trillion less in real GDP terms over the next five years and [result] in 732,000 fewer jobs in 2022 and 320,000 fewer jobs in 2025."[42)]

In October 2021, USTR requested comments on whether to reinstate exclusions that had previously been granted by the agency, but had subsequently expired.[43)] USTR announced the reinstatement of 352 out of the 549 eligible exclusions on March 28, 2022.[44)] This exclusion process has been highly criticized by Members of Congress and other stakeholders as too narrow, arbitrary, and ineffective,[45)] given that USTR is only providing exclusions for products that had been previously excluded under the prior

39) Chad P. Brown, US-China Trade War Tariffs: An Up-to-Date Chart (Mar. 16, 2021), https://www.piie.com/research/piie-charts/us-china-trade-war-tariffs-date-chart#:~:text=China's%20retaliatory%20tariffs%20continue%20to,exemption%20from%20the%20retaliatory%20tariffs.

40) Trade Statistics, U.S. Customs and Border Protection (Last visited Feb. 24, 2022), available at https://www.cbp.gov/newsroom/stats/trade.

41) See The US-China Economic Relationship, The US-China Business Council, available at https://www.uschina.org/sites/default/files/the_us-china_economic_relationship_-_a_crucial_partnership_at_a_critical_juncture.pdf; Michael Pettis, How Trump's Tariffs Really Affected the U.S. Job Market, Carnegie Endowment for International Peace (Jan. 28, 2021), https://carnegieendowment.org/chinafinancialmarkets/83746.

42) The US-China Economic Relationship, supra note 14.

43) See USTR Requests Comments on Reinstatement of Targeted Potential Exclusions of Products of China Subject to Section 301 Tariffs, Office of the United States Trade Representative (Oct. 5, 2021), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/ustr-requests-comments-reinstatement-targeted-potential-exclusions-products-china-subject-section.

44) USTR, "Notice of Reinstatement of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 87 Federal Register 17380, Mar. 28, 2022.

45) See Letter from 41 United States Senators to United States Trade Representative Katherine Tai (Feb. 7, 2022), available at https://www.carper.senate.gov/public/_cache/files/3/0/30820d07-b296-4495-a801-e24da52ab6c6/AE0DB476FEBAFA9728D6A5AFD810801F.letter-to-ustr-tai-301.pdf.

Administration.[46] As of the time of this writing, USTR has not reinstated broader tariff exclusions or opened additional procedures for requesting exclusions.

C. Chinese Military-Industrial Complex Companies List

On June 3, 2021, President Biden issued Executive Order 14032: Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China ("CMIC EO"),[47] which modified the Trump-era investment ban on "Communist Chinese Military Companies" ("CCMC").[48] The new "Chinese Military-Industrial Complex Companies" ("CMIC") sanctions program maintained the basic provisions of the previous CCMC sanctions program by restricting U.S. persons from engaging in certain types of transactions in the publicly traded securities and derivatives of designated Chinese entities. Specifically, U.S. persons are prohibited from engaging in "the purchase or sale of any publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities" of identified CMICs, with divestment permitted for a period of 365 days following designation. However, the new CMIC EO further specified the restrictions actually imposed and broadened the scope of the listing criteria to reflect the Biden Administration's foreign policy priorities.[49]

Consistent with the CMIC EO, the Office of Foreign Assets Control ("OFAC") issued implementing regulations on February 16, 2022.[50] The "Non-SDN Chinese Military-Industrial Complex Companies List" is maintained by the Treasury Department and is updated when new entities are designated.[51] The Treasury Department

46) See Reinstatement of Certain Exclusions Previously Extended, Office of the United States Trade Representative, available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended.

47) Executive Order 14032 of June 3, 2021, "Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China," 86 Federal Register 30145, June 7, 2021.

48) Executive Order 13959 of November 12, 2020, "Addressing the Threat From Securities Investments that Finance Communist Chinese Military Companies," 85 Federal Register 73185, Nov. 17, 2020.

49) For an overview of the specifications provided in the CMIC EO, see Biden Administration Revamps Sanctions Program Targeting Publicly Traded Securities of Designated Chinese Military Companies, Akin Gump Strauss Hauer & Feld LLP (June 7, 2021), https://www.akingump.com/a/web/7yixJx7xPVzh7vTPwiWDYF/2LHFPt/biden-admin-revamps-sanctions-program.pdf.

50) Office of Foreign Assets Control, "Chinese Military-Industrial Complex Sanctions Regulations", 87 Federal Register 8735, Feb. 16, 2022.

51) U.S. Department of the Treasury, Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List) (Last Visited Mar. 30, 2021), https://home.treasury.gov/policy-issues/financial-sanctions/consolidated-sanctions-list/ns-cmic-list.

is further empowered under the CMIC EO to designate additional entities that it determines "operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC" or are parents or subsidiaries of such entities.[52]

As the White House explained in a Fact Sheet on the CMIC EO, the measure is intended to prevent "U.S. investment from supporting the Chinese defense sector, while also expanding the U.S. Government's ability to address the threat of Chinese surveillance technology firms that contribute — both inside and outside China — to the surveillance of religious or ethnic minorities or otherwise facilitate repression and serious human rights abuses."[53] The CMIC EO serves as a prime example of an issue area in which the Biden Administration is closely aligned with the Trump Administration. While the new Administration sought to "clean up" the rules (e.g., placing them under the purview of the Department of Treasury (the agency typically tasked with administering sanctions regimes), rather than the Department of Defense, and issuing FAQs and regulations to clarify the rules), the aims and effect of the policy remains the same: to cut off U.S. financial support for Chinese companies with connections to China's defense and intelligence functions.

D. Export Controls

The United States imposes export controls to further its national security interests and promote foreign policy objectives. Although the United States has for many years restricted permissible exports to China through licensing requirements and policies under the International Traffic in Arms Regulations and the Export Administration Regulations ("EAR"), the U.S. Government has sought in recent years to even further restrict strategically important exports to China through the use of list-based tools and other targeted rule changes.

For example, in the final days of the Trump Administration, the Department of Commerce's Bureau of Industry and Security ("BIS") issued a final rule creating a Military End User List ("MEU List") under the EAR.[54] Prior to the issuance of this

52) Executive Order 14032 of June 3, 2021, "Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China," 86 Federal Register 30145, June 7, 2021.

53) The White House, Fact Sheet: Executive Order Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China, (June 3, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/fact-sheet-executive-order-addressing-the-threat-from-securities-investments-that-finance-certain-companies-of-the-peoples-republic-of-china/.

54) U.S. Department of Commerce, Bureau of Industry and Security, "Addition of 'Military End User' (MEU) List to the Export Administration Regulations and Addition of Entities to the MEU List," 85 Federal Register 83793, Dec. 23, 2020.

list, the EAR already prohibited the unlicensed export, reexport, or transfer of specific types of otherwise uncontrolled commodities, software, and technology subject to the jurisdiction of the EAR (e.g., U.S.-origin items) to China, Russia, or Venezuela, if there is knowledge that the item is for a "military end use" or a "military end user." However, the final rule provided clarifications that arguably broadened the scope of the existing MEU rule, and specifically identified 57 MEUs in China. Additional MEUs have subsequently been added to the MEU List by BIS under the Biden Administration.

Another export control rule spanning the Trump and Biden Administrations is the Military-Intelligence End Users ("MIEUs") rule.[55] On January 15, 2021, BIS published an interim final rule imposing controls on specific activities by U.S. persons in connection with "military-intelligence end uses" and "military-intelligence end users." The MIEU rule became effective on March 16, 2021. BIS published the rule in response to a requirement of the Export Control Reform Act of 2018 to impose controls on U.S. person activities involving foreign military-intelligence services.[56] Under the MIEU rule, unless subject to the license requirements of another U.S. government agency, U.S. persons may not support a "military-intelligence end use" or a "military-intelligence end user" in China or certain other listed countries without a BIS license.

BIS has also used the Entity List to target and restrict exports to a number of Chinese firms. A license is required to export, reexport, or transfer any item "subject to the EAR" when an entity that is listed on the Entity List is a party to the transaction.[57] In particular, BIS has targeted Chinese smartphone maker Huawei, using novel tools to expand Entity List restrictions against the company through a series of rules in 2020[58] that the Biden Administration has left in place. Principle among these, BIS revised the "Foreign Direct Product Rule" to expand the range of U.S. technology and software whose use outside the United States would subject foreign-produced items to licensing requirements for the provision of such items to Huawei,

55) U.S. Department of Commerce, Bureau of Industry and Security, "Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons," 86 Federal Register 4865, Jan. 15, 2021.

56) 50 U.S.C. §§ 4812(a)(2)(F), 4813(d), and 4813(a)(16).

57) 15 C.F.R. § 744.11(a).

58) U.S. Department of Commerce, Bureau of Industry and Security, "Export Administration Regulations: Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule) and the Entity List," 85 Federal Register 29849, May 15, 2020; U.S. Department of Commerce, Bureau of Industry and Security, "Addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule)," 85 Federal Register 51596, August 20, 2020.

or for transactions involving such items to which Huawei is a party. Some reports indicate that this rule contributed to Huawei suffering an annual revenue drop of nearly 30 percent in 2021.[59)]

While the Biden Administration has done little to advance or modify export control rules with respect to China, it has maintained the Trump-era rules and continued to identify entities for list-based controls like the CMIC List and the Entity List. The Administration has reportedly been considering additional export restrictions against Chinese semiconductor companies like the Shanghai-based Semiconductor Manufacturing International Corp ("SMIC"),[60)] but has taken no action to date. As it has done with many policy areas, the Biden Administration has emphasized the importance of coordinating with allies on future export controls. Such cooperation is especially important with respect to export restrictions, as unilateral controls often have the effect of taking U.S. companies out of competition with foreign producers that are not subject to similar controls. Thus, unilateral export controls can often have the perverse effect of benefiting foreign competitors of U.S. producers, without actually affecting the intended target, which can acquire similar technology elsewhere. The Biden Administration's approach to multilateralism has faced its first real test with respect to the Russia-Ukraine conflict in early 2022, which could presage the use of future potential tools against China.

E. CFIUS Reviews

The Committee on Foreign Investment in the United States ("CFIUS") is the inter-agency mechanism through which the U.S. Government formally monitors and reviews foreign investment in the United States for possible national security concerns. Chaired by the Department of the Treasury, CFIUS has the authority to initiate reviews of transactions, suspend transactions, impose mitigation measures, and recommend that the President block pending transactions or order divestitures of completed transactions when national security concerns cannot be mitigated. Bipartisan legislation passed in 2018 [61)]

59) Ellen Nakashima and Jeanne Whalen, U.S. Threatens Use of Novel Export Control to Damage Russia's Strategic Industries if Moscow Invades Ukraine, The Washington Post (Jan. 23, 2022), https://www.washingtonpost.com/national-security/2022/01/23/russia-ukraine-sanctions-export-controls/.

60) Jenny Leonard, Ian King, and Bloomberg, Shares of China's Largest Chipmaker Sink to Lowest Close in Nearly a Year as Biden Team Considers Tougher Sanctions, Fortune (Dec. 15, 2021), https://fortune.com/2021/12/15/smic-semiconductors-shares-biden-sanctions-china-exports-chip-supply-chain/.

61) H.R. 5515, 115th Congress, Title XVII, https://home.treasury.gov/sites/default/files/2018-08/The-Foreign-Investment-Risk-Review-Modernization-Act-of-2018-FIRRMA_0.pdf.

(with final implementing regulations made effective in early 2020), which significantly expanded the scope of transactions subject to CFIUS jurisdiction, and enacted for the first time mandatory filing requirements for certain foreign-government controlled transactions and certain transactions involving critical technology.

During the final year of his term, President Trump sought to force TikTok's parent company, ByteDance, to divest the popular social media app, citing concerns with the Chinese Government's access to U.S. citizens' data on the app. Following calls by Congressional leaders on both sides of the aisle for a national security review of TikTok in fall 2019, it was first made public in November 2019 that CFIUS was reviewing ByteDance's 2018 acquisition of the social media app Musical.ly.[62] Then, in August 2020, President Trump issued an executive order banning the use of TikTok in the United States, citing authority granted by the International Emergency Economic Powers Act ("IEEPA").[63] At the same time, the President ordered the divestiture of Musical.ly as a result of the CFIUS review.[64] ByteDance appealed both decisions, and federal judges in October and December 2020 blocked the orders.[65]

President Trump's crusade against TikTok was remarkable both for his aggressive use of IEEPA authorities and for the public, political use of CFIUS authorities. By law, CFIUS proceedings – even the existence of a filing – are strictly confidential, and only the parties to the notified transaction may disclose information regarding the filing, unless and until an executive order blocking the transaction or ordering divestiture is issued. Typically, parties to sensitive transactions negotiate confidential agreements with CFIUS to mitigate potential national security concerns, or abandon transactions for which CFIUS and the parties are unable to come to terms for mitigation. The drawn-out, highly public legal battle in TikTok's case was therefore very unusual.

62) Greg Roumeliotis, Yingzhi Yang, Echo Wang, and Alexandra Alper, Exclusive: U.S. opens national security investigation into TikTok-sources, Reuters (Nov. 1, 2019), https://www.reuters.com/article/us-tiktok-cfius-exclusive/exclusive-u-s-opens-national-security-investigation-into-tiktok-sources-idUSKBN1XB4IL.

63) Executive Order 13942 of August 6, 2020, "Addressing the Threat Posed by TikTok, and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain," 85 Federal Register 48637, Aug. 11, 2020.

64) Order of August 14, 2020, "Regarding the Acquisition of Musical.ly by ByteDance Ltd." 85 Federal Register 51297, Aug. 19, 2020.

65) See Bobby Allen, U.S. Judge Halts Trump's TikTok Ban, The 2nd Court To Fully Block The Action, NPR (Dec. 7, 2020) https://www.npr.org/2020/12/07/944039053/u-s-judge-halts-trumps-tiktok-ban-the-2nd-court-to-fully-block-the-action#:~:text=Press-,U.S.%20Judge%20Halts%20Trump's%20TikTok%20Ban%2C%20The%202nd%20Court%20To,in%20using%20emergency%20economic%20powers.

In what many see as a return to normalcy, the Biden Administration has had very little to say about the TikTok case. However, negotiations appear to have continued behind closed doors, and reports in March 2022 indicated that TikTok was close to finalizing a deal with the U.S. company Oracle, whereby TikTok would store U.S. users' data in the United States and restrict access to ByteDance.[66] The saga illustrates how, despite using differing approaches, the Trump and Biden Administrations often view national security risks posed by China and Chinese companies similarly.

F. ICTS Regulations

On May 15, 2019, President Trump issued Executive Order 13873: Securing the Information and Communications Technology and Services Supply Chain (the "ICTS EO"), declaring a national emergency with respect to the ability of "foreign adversaries" to create and exploit vulnerabilities in information and communications technology and services in order to commit "malicious cyber-enabled actions."[67] The Department of Commerce published a proposed implementation rule in November,[68] prompting a significant number of comments from companies and associations, many of whom were concerned with the potential scope of the rule. In January 2021, the Department of Commerce published an interim final rule (the "ICTS Regulations"), identifying the processes and procedures that the Secretary of Commerce will use to review and identify prohibited transactions. The rule went into effect on March 22, 2021.

Generally speaking, the ICTS Regulations provide a broad framework for the Secretary of Commerce to identify, mitigate, prohibit, or unwind covered "ICTS Transactions"[69] involving "foreign adversaries"[70] that pose an undue or unacceptable risk to U.S. national security. However, a great deal of detail regarding the regime remains to be determined. For example, the Department

66) Kim Lyons, The TikTok and Oracle 'Trusted Technology Partner' Deal Might Really Happen, The Verge (Mar. 11, 2022), https://www.theverge.com/2022/3/11/22972530/tiktok-oracle-china-bytedance-trump-cfius.

67) Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain," 84 Federal Register 22689, May 15, 2019.

68) U.S. Department of Commerce, "Securing the Information and Communications Technology and Services Supply Chain," 84 Federal Register 65316, Nov. 27, 2019.

69) The ICTS Supply Chain implementing regulations define "ICTS Transaction" to mean "any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download."

of Commerce is expected to issue another proposed rule regarding an ICTS licensing regime, as well as identify which office within the Department of Commerce will administer the regime. The Department of Commerce disclosed in March[71] and April[72] 2021 that it had issued subpoenas to Chinese companies to support the review of transactions under the ICTS Regulations, but no further actions have been made public.

The ICTS Regulations provide the Department of Commerce broad authority to review transactions that aren't captured by CFIUS or other regimes. Without a licensing regime or public enforcement priorities, however, companies active in the ICTS sector face significant uncertainty as they structure their supply chains. By initiating the ICTS Regulations through the ICTS EO, the Trump Administration signaled a desire to have a greater hand in monitoring and regulating ICTS supply chains. But the slow promulgation of regulations and enforcement mechanisms has undermined the effort to date. While the Biden Administration has continued the process of implementing the ICTS Regulations, the slow progress indicates that this may not be as high of a priority for President Biden.

G. Investment Decoupling

On December 18, 2020, President Trump signed the Holding Foreign Companies Accountable Act ("HFCAA") into law.[73] The statute requires the U.S. Securities and Exchange Commission ("SEC") to identify public companies that have retained a registered public accounting firm to issue an audit report where the firm has a branch or office that: (1) is located in a foreign jurisdiction, and (2) the Public Company Accounting Oversight Board ("PCAOB") has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. Such companies may be delisted from U.S. stock exchanges if they fail to submit their audit papers to a U.S. accounting oversight body for

70) The ICTS Supply Chain regulations designate China (including Hong Kong), Cuba, Iran, North Korea, Russia, and Venezuela's Maduro regime as "foreign adversaries."

71) U.S. Department of Commerce, U.S. Secretary of Commerce Gina Raimondo Statement on Actions Taken Under ICTS Supply Chain Executive Order (Mar. 17, 2021), https://www.commerce.gov/news/press-releases/2021/03/us-secretary-commerce-gina-raimondo-statement-actions-taken-under-icts.

72) U.S. Department of Commerce, U.S. Department of Commerce Statement on Actions Taken Under ICTS Supply Chain Executive Order (April 13, 2021), https://www.commerce.gov/news/press-releases/2021/04/us-department-commerce-statement-actions-taken-under-icts-supply-chain.

73) Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

three consecutive years. Under the Biden Administration, the SEC adopted two key rules implementing the HFCAA in September[74] and December[75] 2021, and the first companies were identified by the PCAOB in March 2022.

The Biden Administration and Congress are also considering putting in place a potential outbound investment screening mechanism that would establish a body to review foreign investments by U.S. companies for national security or competitiveness/supply chain concerns. For example, the House-passed America COMPETES Act contains a proposal to create an inter-agency process – referred to as the "National Critical Capabilities Review" – to review outbound investment.[76] The law would also create a "Committee on National Critical Capabilities," which would be chaired by USTR and empowered to review any transaction by a U.S. business that "shifts or relocates to a country of concern, or transfers to an entity of concern, the design, development, production, manufacture, fabrication, supply, servicing, testing, management, operation, investment, ownership, or any other essential elements involving one or more national critical capabilities," or "could result in an unacceptable risk to a national critical capability."[77] It is understood that China would be the main "country of concern" under this regime.

While the idea of an outbound investment review mechanism is not new – legislation passed in 2018 to reform the CFIUS review process contained a similar proposal in early drafts – the proposal gained steam as the Senate and House negotiated China competitiveness legislation in early 2021. The Senate-passed USICA ultimately did not include an outbound investment screen, but Secretary of Commerce Gina Raimondo recently signaled the Biden Administration's support for such a mechanism in late March 2022, and it remains to be seen whether the compromise text between the House and Senate versions will include it.

74) Public Company Accounting Oversight Board, Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act (Sep. 22, 2021), https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4.

75) Securities and Exchange Commission, "Holding Foreign Companies Accountable Act Disclosure," 86 Federal Register 70027, Dec. 9, 2021.

76) H.R. 4521, 117th Congress at 2167-2168, https://docs.house.gov/billsthisweek/20220131/BILLS-117HR4521RH-RCP117-31.pdf.

77) H.R. 4521, 117th Congress at 2169-2170, 2170, https://docs.house.gov/billsthisweek/20220131/BILLS-117HR4521RH-RCP117-31.pdf.

H. Supply Chains

One of President Biden's first major actions pertaining to trade was the issuance of Executive Order 14017 on American's Supply Chains in February 2021.[78] The Executive Order directed various federal agencies to conduct a 100-day review of U.S. supply chains in particular industries – semiconductor manufacturing and advanced packaging, high-capacity batteries, critical minerals, and pharmaceuticals – to address the threat of pandemics, cyberattacks, climate shocks and other events on the availability of "critical" and "essential" goods and materials. The Executive Order also called for a more in-depth, one-year review of a broader set of U.S. supply chains with a focus on six key industrial bases: defense, public health, information and communications technology, energy, transportation, and agriculture.

The 100-day supply chain review reports were released by the White House in June 2021, and outlined a number of recommendations, including the establishment of a "trade strike force" led by USTR that would address unfair foreign subsidies and other harmful trade practices.[79] The reports provide significant analysis regarding the symptoms of supply chain issues across the four product groups, but do not include many new concrete recommendations that were not included in previous Biden Administration reports. For example, some of the key recommendations in the semiconductor report involved providing appropriations for semiconductors, which was mentioned previously in the Biden budget proposal and the USICA. Many other recommendations are more process-driven and involve creating new roundtables and working groups to come up with future solutions.

The White House published a capstone supply chain report in February 2022, providing an overview of the key actions the Biden Administration had taken over its first year to reduce the vulnerability of U.S. supply chains across key sectors.[80] Concurrently, seven cabinet agencies also published their one-year Critical Supply Chains reports. These reports identify key weaknesses in some of the nation's

78) The White House, Executive Order on America's Supply Chains (Feb. 24, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/.

79) The White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth (June 2021), https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.

80) The White House, Executive Order on America's Supply Chains: A Year of Action and Progress, (Feb. 24, 2022), https://www.whitehouse.gov/wp-content/uploads/2022/02/Capstone-Report-Biden.pdf

most crucial supply chains, and detail multi-year strategies to address those weaknesses. Building on the reports, the Biden Administration also announced additional actions it will take in 2022 to establish long-term resilience across critical supply chains, and formally institutionalize supply chain resilience throughout the Federal Government.[81)]

The reports highlight the Biden Administration's focus on securing U.S. jobs, production, and access to essential products and materials. Spurred in part by supply chain disruptions resulting from the COVID-19 pandemic, the Administration's focus on supply chains also exemplifies the competing motivations of national security, emergency preparedness, and economic protectionism. While the reports' recommendations allude to cooperation with allies, the vast majority of the proposals focus on onshoring technology and production, while countering developments by adversaries.

I. Section 232 Steel and Aluminum Tariffs

Section 232 of the Trade Expansion Act of 1962[82)] provides the President the authority to impose restrictions on certain imports based on an affirmative determination by the Department of Commerce that the product under investigation "is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." In January 2018, the Department of Commerce submitted final reports to President Trump, finding that imports of certain steel mill products and primary and unwrought aluminum "threaten to impair the national security" of the United States.[83)] In March 2018, President Trump issued proclamations imposing tariffs of 25% on steel and 10% on aluminum imports.[84)]

The Trump Administration subsequently established a two-pronged approach to granting exclusions from these tariffs, allowing U.S. domestic companies to

81) The White House, The Biden-Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022 (Feb. 24, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022/.

82) 19 U.S.C. §1862.

83) U.S. Department of Commerce, Bureau of Industry and Security, The Effect of Imports of Steel on the National Security, (Jan. 11, 2018), https://www.commerce.gov/section-232-investigation-effect-imports-steel-us-nationalsecurity; U.S. Department of Commerce, Bureau of Industry and Security, The Effect of Imports of Aluminum on the National Security (Jan. 17, 2018), https://www.commerce.gov/sites/commerce.gov/files/ the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf.

84) Presidential Proclamation 9704 of March 8, 2018, "Adjusting Imports of Aluminum into the United States," 83 Federal Register 11619, March 15, 2018, and Proclamation 9705 of March 8, 2018, "Adjusting Imports of Steel Into the United States," 83 Federal Register 11625, March 15, 2018.

request individual product exclusions through a Department of Commerce-led mechanism, while instructing USTR to discuss with countries with a "security relationship" with the United States broader, "alternative ways" to address the tariffs. A small number of countries ultimately negotiated country quotas for imports of steel and/or aluminum, including Korea, which agreed to an absolute annual quota for 54 separate subcategories of steel that would automatically be exempt from the Section 232 steel tariffs.[85)]

Application of Section 232 tariffs is not limited to China, and continues to affect imports of covered steel and aluminum products from most countries. Nonetheless, the main concern for the U.S. domestic industry appears to still be Chinese subsidization and overproduction of steel and aluminum. These concerns have impacted some of the agreements the United States reached with close allies to lift the tariffs. For example, the Biden Administration announced a deal with the United Kingdom to replace Section 232 tariffs with a tariff-rate quota, whereby the United States would allow historically-based "sustainable" volumes of U.K. steel and aluminum products to enter the U.S. market without the application of Section 232 tariffs. However, that deal also requires any U.K. steel company owned by a Chinese entity to undertake – and share with the U.S. Government – an audit of its financial records to assess influence from the Chinese Government.[86)] The United States also recently struck deals with the EU[87)] and Japan[88)] to implement similar tariff-rate quota mechanisms.

J. Human Rights

While national security concerns have been the key motivator for many of the United States' actions against China in recent years, the Trump Administration began – and the Biden Administration has continued – to increasingly cite human rights concerns as the rationale for sanctions and other measures. As

85) U.S. Customs and Border Protection, QB 18-118 Steel Mill Articles (AMENDED) (May 1, 2018), https://www.cbp.gov/trade/quota/bulletins/qb-18-118-steel-mill-articles.

86) U.S. Department of Commerce, Raimondo, Tai Statements on 232 Tariff Agreement with United Kingdom (March 22, 2022), https://www.commerce.gov/news/press-releases/2022/03/raimondo-tai-statements-232-tariff-agreement-united-kingdom.

87) Office of the United States Trade Representative, Fact Sheet: U.S. – EU Arrangements on Global Steel and Aluminum Excess Capacity and Carbon Intensity (October 2021), https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2021/october/fact-sheet-us-eu-arrangements-global-steel-and-aluminum-excess-capacity-and-carbon-intensity.

88) Office of the United States Trade Representative, Tai, Raimondo Statements on 232 Tariff Agreement with Japan (Feb. 7, 2022), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/february/tai-raimondo-statements-232-tariff-agreement-japan.

described in Section II.A.i., above, the UFLPA will severely restrict imports from the XUAR when it goes into effect later this year. In addition to these import restrictions, OFAC has in recent years designated several current or former Chinese officials and government entities,[89]and BIS has added dozens of Chinese entities, to the Entity List[90] in relation to human rights abuses in Xinjiang.

U.S. concerns related to human rights abuses in the XUAR have also overlapped with other human rights concerns, for example the obtrusive use of facial recognition and surveillance technology. In December 2021, OFAC added eight companies to its CMIC List, which prohibits U.S. citizens from investing in them. According to a Treasury statement, the companies were added due to their active support for the "biometric surveillance and tracking of ethnic and religious minorities in China, particularly the predominantly Muslim Uyghur minority in Xinjiang."[91] Previously, OFAC had added SenseTime, which specializes in facial recognition software, to the CMIC List, alleging that the company had developed surveillance technologies targeted at identifying ethnic Uyghurs.[92]

China has frequently responded to the imposition of U.S. sanctions by imposing its own sanctions on U.S. individuals and organizations. For example, after the United States imposed sanctions on Shohrat Zakir and Erken Tuniyaz, the former and current chairman of the XUAR, respectively, in December 2021, China announced sanctions on four members of the U.S. Government's Commission on International Religious Freedom.[93]

89) U.S. Department of the Treasury, Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang (March 22, 2021), https://home.treasury.gov/news/press-releases/jy0070; U.S. Department of the Treasury, Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order (July 31, 2020), https://home.treasury.gov/news/press-releases/sm1073; U.S. Department of the Treasury, Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day (Dec. 10, 2021), https://home.treasury.gov/news/press-releases/jy0526.

90) U.S. Department of Commerce Bureau of Industry and Security, "Addition of Certain Entities to the Entity List," 84 Federal Register 54002, October 9, 2019; "Addition of Certain Entities to the Entity List; Revision of Existing Entries on the Entity List," 85 Federal Register 34503, June 5, 2020; "Addition of Certain Entities to the Entity List; Revision of Existing Entries on the Entity List," 85 Federal Register 44159, July 22, 2020; "Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities From the Entity List," 85 Federal Register 83416, December 22, 2020.

91) U.S. Department of the Treasury, Treasury Identifies Eight Chinese Tech Firms as Part of The Chinese Military-Industrial Complex (Dec. 16, 2021), https://home.treasury.gov/news/press-releases/jy0538.

92) U.S. Department of the Treasury, Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day (Dec. 10, 2021), https://home.treasury.gov/news/press-releases/jy0526.

93) Reuters, China Bars Four from U.S. Panel on Religious Freedom in Response to Sanctions (Dec. 21, 2021), https://www.reuters.com/world/china/china-puts-entry-ban-four-us-individuals-response-sanctions-2021-12-21/.

K. Taiwan

Since 1979, the United States has provided diplomatic recognition to the People's Republic of China, and has not had official diplomatic ties with Taiwan, in what is known as the "One China Policy." However, the United States has never supported China's claim of sovereignty over Taiwan. Rather, U.S. relations with Taiwan are governed by the Taiwan Relations Act, which enshrined the promotion of robust informal relations with Taiwan and established a de facto embassy in Taipei called the American Institute in Taiwan. It also requires the United States to make available to Taiwan "such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability."

The United States' Taiwan policy is also often referred to as "strategic ambiguity." The aim of this policy has been both to deter China from taking military action against Taiwan (which would risk the United States becoming involved), and to deter those in Taiwan who might attempt to formally declare independence from China (because there is no promise of U.S. support). However, policymakers in recent years – under both the Trump and Biden Administrations – have increasingly indicated stronger support for Taiwan.

For his part, President Trump accepted an unprecedented congratulatory phone call from Taiwanese President Tsai Ing-wen when he became president,[96] greatly increased arms sales to Taiwan,[97] and, in the final days of his Administration, lifted rules forbidding senior-level contact between U.S. executive branch offices and their Taiwanese counterparts.[98] While many in Taiwan feared that the Biden Administration might roll back the relationship and revert to a more traditional form of strategic ambiguity, the Biden Administration has largely followed the Trump Administration's lead. President Biden invited Taipei's

94) 22 U.S.C. 3301 et seq.

95) 22 U.S.C. 3302(a).

96) Damian Paletta, Carol E. Lee and Andrew Browne, Trump Spoke With Taiwan President in Break With Decades of U.S. Policy, The Wall Street Journal (Dec. 2, 2016), https://www.wsj.com/articles/donald-trump-spoke-with-taiwan-president-tsai-ing-wen-1480718423.

97) Mike Stone, Patricia Zengerle, Exclusive: U.S. Pushes Arms Sales Surge to Taiwan, Needling China □ Sources, Reuters (Sept. 16, 2020), https://www.reuters.com/article/us-usa-taiwan-arms-exclusive/exclusive-u-s-pushes-arms-sales-surge-to-taiwan-needling-china-sources-idUSKBN2671M4; Ellen Mitchell, Trump Administration Approves $2.37B Arms Sale to Taiwan, The Hill (Oct. 26, 2020), https://thehill.com/policy/defense/522861-trump-administration-approves-237b-arms-sale-to-taiwan.

98) Gerry Shih and Lily Kuo, Trump Upsets Decades of U.S. Policy on Taiwan, Leaving Thorny Questions for Biden, The Washington Post (Jan. 13, 2021), https://www.washingtonpost.com/world/asia_pacific/trump-biden-taiwan-china/2021/01/13/1bbadee0-53c0-11eb-acc5-92d2819a1ccb_story.html.

top representative to the United States, Bi-khim Hsiao, to his presidential inauguration,[99] has criticized China for military exercises in the region,[100] and reopened Trade and Investment Framework Agreement negotiations with Taiwan.[101] In October 2021, Secretary of State Antony Blinken called on countries to support Taiwan's participation in the United Nations, and, in an apparent mistake (but one that is quite telling), President Biden stated unequivocally that the United States would defend Taiwan if China attacked.[102] The White House quickly clarified that the United States had not changed its policy toward Taiwan.[103]

The United States' relationship with, and actions toward, Taiwan are a major source of tension between the United States and China. As described in Section I.B, above, a key policy priority for China is defending what it considers to be its sovereign interests in Taiwan, Hong Kong, and other disputed regions. For the United States, Taiwan represents a key defensive interest in the region, as well as an economically important trading partner. Perhaps most of all, the United States sees Taiwan as a foil to China – a democratic country enjoying technological and economic success while maintaining basic liberties for its people.

L. Hong Kong

China's policies and actions toward Hong Kong in recent years have been much more aggressive than those towards Taiwan. While China has slowly chipped away at Hong Kong's independence since the former British colony was handed back over to China 1997, this process has accelerated since 2019. Beginning in the summer of 2019, large protests broke out in opposition to a Beijing-endorsed bill that would have allowed extraditions to mainland China.[104] This ultimately led Beijing to bypass the Hong

99) Chao Deng and Chun Han Wong, Biden Sends Important Foreign-Policy Signal With Taiwan Inauguration Invite, The Wall Street Journal (Jan. 21, 2021), https://www.wsj.com/articles/biden-sends-important-foreign-policy-signal-with-taiwan-inauguration-invite-11611230623.

100) Rozanna Latiff, et al., U.S. Concerned By 'Coercive' Chinese Actions In Taiwan Strait, Biden Tells Summit, Reuters (Oct. 27, 2021), https://www.reuters.com/world/us/us-concerned-by-coercive-chinese-actions-taiwan-strait-biden-tells-summit-2021-10-27/.

101) Doug Palmer, U.S., Taiwan Hold First Trade Talks Since 2016, Politico (June 30, 2021), https://www.politico.com/news/2021/06/30/us-taiwan-hold-first-trade-talks-since-2016-497407.

102) John Ruwitch, Would the U.S. defend Taiwan if China invades? Biden said yes. But it's complicated, NPR (Oct. 28, 2021), https://www.npr.org/2021/10/28/1048513474/biden-us-taiwan-china.

103) Id.

104) Greg Torode, Explainer: Hong Kong's Extradition Bill and the Opposition to It, Reuters (June 30, 2019), https://www.reuters.com/article/us-hongkong-extradition-explainer-idUSKCN1TV0YG.

Kong legislature and impose a strict new national security law that effectively criminalizes any dissent, and adopts extremely broad definitions for crimes like terrorism, subversion, secession, and collusion with foreign powers.[105] Beijing then used this law to seek to eliminate virtually all forms of political opposition in Hong Kong, including disqualifying pro-democracy candidates from running in legislative elections, and arresting prominent pro-democracy activists and lawmakers.

Predictably, this has led to a noticeable decrease of U.S. company presence in Hong Kong in recent years, with its Census and Statistics Department estimating a 10% drop in the number of U.S. companies with regional hubs in Hong Kong in 2021, compared to the previous year.[106] The total number of such companies on the island fell to the lowest point since 2003.[107] The American Chamber of Commerce in Hong Kong reported recently that 42 percent of its expatriate members are considering leaving, or planning to leave, Hong Kong, with 62 percent citing the National Security Law as their main source of discomfort with remaining in the city (while others point to Hong Kong's strict COVID-19 policies).[108] Moreover, AmCham Hong Kong's 2022 Business Sentiment Survey shows that only 9 percent of its members anticipate an improved business environment in Hong Kong over the next year.[109]

In opposition to China's actions in

105) Jessie Yeung, China Has Passed a Controversial National Security Law in Hong Kong. Here's What You Need to Know, CNN (July 1, 2020), https://www.cnn.com/2020/06/25/asia/hong-kong-national-security-law-explainer-intl-hnk-scli/index.html?msclkid=ba481e1eb05d11ecb28f6a8ec7dd96fa.

106) Census and Statistics Department, Table 133: Number of Regional Headquarters in Hong Kong by Country/Territory where the Parent Company was Located, https://www.censtatd.gov.hk/en/web_table.html?id=133.

107) Id.

108) See The American Chamber of Commerce in Hong Kong, 2022 AmCham Hong Kong Business Survey, https://www.amcham.org.hk/sites/default/files/contentfiles/AmCham%20HK%202022%20Business%20Sentiment%20Study%20Report%20(English).pdf; Yen Nee Lee, Amcham finds 42% of members surveyed are planning or considering leaving Hong Kong, CNBC (May 12, 2021), https://www.cnbc.com/2021/05/12/hong-kong-security-law-amcham-finds-42percent-of-members-surveyed-plan-to-leave.html.

2022 AmCham Hong Kong Business Survey, supra note 44.

Alex Leff and Emily Feng, Trump Angers China By Signing Law Backing Hong Kong Protesters, NPR (Nov. 28, 2019), https://www.npr.org/2019/11/28/783529916/trump-angers-china-by-signing-law-backing-hong-kong-protesters.

Executive Order 13936 of July 14, 2020, "The President's Executive Order on Hong Kong Normalization," 85 Federal Register 43413, July 17, 2020.

The White House, Memorandum on the Deferred Enforced Departure for Certain Hong Kong Residents (Aug. 15, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/memorandum-on-the-deferred-enforced-departure-for-certain-hong-kong-residents/

109) 2022 AmCham Hong Kong Business Survey, supra note 44.

Hong Kong, Congress in 2019 revised the 1992 Hong Kong Policy Act, adding a requirement for the Secretary of State to annually certify that Hong Kong was still autonomous and warranted differential treatment from China.[110)] On May 27, 2020, Secretary of State Mike Pompeo certified to Congress that Hong Kong no longer qualified for differential treatment, and President Trump announced two days later that he would begin revoking Hong Kong's unique status under U.S. law. The United States also imposed visa restrictions and financial sanctions on Chinese and Hong Kong politicians believed to be responsible for undermining Hong Kong's right to self-governance.

In July 2020, President Trump issued an executive order formally ending Hong Kong's special status under U.S. law and the Hong Kong Autonomy Act.[111)] The executive order removed Hong Kong's preferential treatment with regard to various statutes related to immigration, export controls, and country of origin marking, and authorized new sanctions against any foreign persons involved in the enforcement of the new Hong Kong national security law or responsible for undermining democracy, human rights, and other freedoms in Hong Kong. The executive order also gave notice of the United States' intent to suspend extradition treaties and terminate other various joint training and academic programs with Hong Kong.

The Biden Administration has largely taken the same tact, periodically issuing new sanctions against Chinese and Hong Kong officials believed responsible for China's ongoing crackdown on political freedoms in Hong Kong, and recertifying that Hong Kong does not warrant differential treatment from China under U.S. law. In addition, the Biden Administration announced in August 2021 that the United States would offer temporary "safe haven" to Hong Kong residents.[112)] President Biden directed the Department of Homeland Security to implement a "deferral of removal" for up to 18 months for Hong Kong residents in the United States.[113)]

110) Alex Leff and Emily Feng, Trump Angers China By Signing Law Backing Hong Kong Protesters, NPR (Nov. 28, 2019), https://www.npr.org/2019/11/28/783529916/trump-angers-china-by-signing-law-backing-hong-kong-protesters.

111) Executive Order 13936 of July 14, 2020, "The President's Executive Order on Hong Kong Normalization," 85 Federal Register 43413, July 17, 2020.

112) The White House, Memorandum on the Deferred Enforced Departure for Certain Hong Kong Residents (Aug. 15, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/memorandum-on-the-deferred-enforced-departure-for-certain-hong-kong-residents/.

113) Id.

IV. IMPLICATIONS FOR KOREAN BUSINESSES

Given today's highly integrated supply chains, shifts in U.S.-China trade relations can have significant – and varied – impacts for companies in third countries, including especially for those in the Asia-Pacific region, such as Korea. Some of these effects may be directly harmful; for example, a Korean company that manufactures products in China for export to the United States has likely been negatively impacted by Section 301 tariffs on China. Korean steel and aluminum manufacturers have also been directly affected by Section 232 tariffs. In other circumstances, policies aimed primarily at China may nevertheless cause collateral damage to Korean companies. For example, the Build Back Better and China competitiveness bills are largely promoted as efforts to compete with China, but the onshoring provisions could spur investment in the United States at Korea's expense. Public funding under the bills for domestic U.S. industries could place Korean companies at a competitive disadvantage vis-à-vis Korean companies competing in the same space.

On the other hand, the declining relationship between the United States and China may have positive effects for Korean businesses if, for example, U.S. policymakers view Korea as a more secure alternative to China for ICTS transactions or outbound investments, or as a friendlier source of inbound investment for the purpose of CFIUS reviews. As the Biden Administration continues to develop its secure supply chain policies, Korea could establish itself as a trusted partner. In a similar way, businesses hit by Section 301 tariffs on Chinese-origin goods might consider relocating production to Korea and other countries in the region. It should be noted, however, that the U.S. Government may be sensitive to third countries that appear to benefit from the China-related measures (e.g., through an improved trade balance with the United States). Still other Korean companies may benefit from U.S. restrictions like sanctions or export controls on their direct competitors in China.

In addition, many U.S. policies directed at China are sure to increase compliance costs for Korean businesses. For example, the UFLPA (discussed in Section II.A.i, above) prohibits the importation of any goods produced in the XUAR unless the importer can show by "clear and convincing evidence" that the good was not produced, wholly or in part, by forced labor. While it remains to be seen how CBP will implement the UFLPA, Korean exporters may be required to employ more rigorous supply chain management systems to ensure that they do not utilize

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inputs from the XUAR or, if they do, that they maintain clear and convincing evidence that forced labor was not utilized in the production of such inputs. Similarly, export control rules that expand the scope of items subject to U.S. jurisdiction may require companies in Korea to develop enhanced compliance policies.

The Korean government may also have opportunities to capitalize on developments in the U.S.-China relationship for the benefit of Korean businesses and citizens. For example, the recent U.S.-U.K. deal to lift Section 232 tariffs on steel and aluminum could act as a roadmap for the Korean government to seek to improve on its agreement with the United States to lift Section 232 steel tariffs, and consider an agreement with respect to aluminum products. The precedent set by exempting other countries from Section 232 tariffs could also increase pressure on the Biden Administration to agree to similar deals with other trading partners like Korea, especially given the priorities that the Administration seems to have placed on alliances in the Asian region.

Korea will also have the opportunity to participate in discussions with the United States and other regional allies regarding the Indo-Pacific Economic Framework ("IPEF"), the United States' cornerstone proposal for countering China through trade. A great deal remains unknown regarding the U.S. strategy for the IPEF. USTR has indicated that the agreement will not require Congressional approval in the United States, ruling out the possibility of binding market access (e.g., tariff reduction) commitments.[114] As of this writing, it is expected that a potential agreement would cover (1) fair and resilient trade, including labor, digital and other elements; (2) supply chain resilience; (3) infrastructure and decarbonization; and (4) tax issues and anti-correction. However, the U.S. Government has released few specific details on commitments it would offer or expect from counterparties, and has sought input from interested stakeholders.[115] The IPEF should provide a forum for the Korean Government to advocate for favorable trade relations, and propose provisions in the IPEF that Korea can leverage in order to enhance their bilateral trade relationship.

114) Madeline Halpert, Bianchi: IPEF to Include 'High-Ambition,' Binding Trade Commitments, Inside U.S. Trade (Feb. 1, 2022), https://insidetrade.com/daily-news/bianchi-ipef-include-%E2%80%98high-ambition%E2%80%99-binding-trade-commitments.

115) Office of the United States Trade Representative, "Request for Comments on the Proposed Fair and Resilient Trade Pillar of an Indo-Pacific Economic Framework," 87 Federal Register 13789, March 10, 2022.

A comprehensive catalogue of the specific effects of the U.S.-China trade policy developments described in Section II, above, on Korea is beyond the scope of this article. As these examples show, however, developments between the United States and China will surely have spillover effects for Korean businesses. Companies with exposure to U.S. and/or Chinese markets – and even those that compete with U.S. and Chinese companies in other markets – will very likely be impacted by the policy decisions of the two countries. It therefore behooves Korean companies to follow developments and participate as interested parties, where appropriate. In many cases, it can be effective for Korean entities to work with their U.S. partners (customers, joint venture partners, etc.) to participate in the various rulemaking processes in the United States. Thousands of exemptions from Section 301 and Section 232 tariffs have been granted to U.S. importers, for example, and, as noted above, agencies responsible for trade portfolios like USTR and the Department of Commerce frequently request stakeholder input on proposed policies. Keeping abreast of U.S.-China policy developments will allow Korean companies time to consider their potential exposure to proposed policies of the U.S. Government, and to build coalitions in the United States to advocate against any unintended consequences for themselves, other Korean companies, and the Government of Korea as a whole.

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