Washington Update

January 19, 2024

This Week In Washington

Senate – The Senate confirmed several nominations and passed H.R.2872, a short-term funding measure that funds the federal government in two tranches through March 1 and March 8, respectively.

House – The House passed H.R.2872, the Supporting Pregnant and Parenting Women and Families Act (H.R. 6918), the Pregnant Students' Rights Act (H.R. 6914), and H.Res.957, denouncing the Biden administration's open-borders policies, condemning the national security and public safety crisis along the southwest border, and urging President Biden to end his administration's open-borders policies.

Biden Administration – President Biden signed H.R.2872 to avert a partial government shutdown. Additionally, the White House released a fact sheet announcing the Improving Student Achievement Agenda for 2024 that will use accountability, reporting, grants, and technical assistance to intensify its drive for the adoption of three evidence-based strategies that improve student learning: (1) increasing student attendance; (2) providing high-dosage tutoring; and (3) increasing summer learning and extended or afterschool learning time.

Next Week In Washington

Senate – The Senate will reconvene on Monday, January 22, and is expected to continue processing nominations.

House – The House will reconvene on Monday, January 29.

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TAX

Taxwriters Release Text of Bipartisan Tax Package, House Ways and Means Moves Bill Forward

Key Points

- *The tax package text has been released, with the total cost estimated to be about $78 billion.*
- *The package's cost has been almost entirely offset by ending the employee retention tax credit.*
- *The House Ways and Means Committee held a markup on the bill Friday morning where it was favorably reported by a bipartisan vote of 40-3.*

On Wednesday January 17, top congressional taxwriters including House Ways and Means Committee Chairman Smith (R-MO) and Senate Finance Committee Chairman Wyden (D-OR) released the text of the long-awaited bipartisan tax package. The House Ways and Means Committee marked up the bill this morning, where it was favorably reported to the House by a bipartisan vote of 40-3, with 15 Democrats joining all Republicans in support.

The legislation, which costs roughly $78 billion, is centered around two partisan priorities: Democratic goals of expanding the child tax credit, and Republican goals of addressing expiring or discontinued provisions from the Tax Cuts and Jobs Act important to the business community. More specifically, the legislation will expand access to the child tax credit for low-income individuals by implementing a phased increase to the refundable portion of the credit for 2023, 2024, and 2025. Beginning in 2024, the credit amount (currently capped at $2,000) will become tied to inflation. The legislation would address research and development (R&D) expensing by allowing businesses to immediately deduct the cost of R&D costs performed in the U.S., rather than requiring them to do so over five years. The bill retains the current 15-year amortization for non-U.S. R&D; more fulsome interest deductibility using a base of EBITDA (instead of the more narrow EBIT base currently in place); and extending 100% bonus depreciation is also included in the bill; as well as enhanced small business 179 expensing.

In addition, the legislation includes two other bipartisan priorities including providing double tax relief for businesses with a footprint in the U.S. and Taiwan; and enhancing the low-income housing tax credit, allowing for increased state allocations and a reduced tax-exempt bond financing requirement.

The bill will be almost entirely paid for by ending the employee retention tax credit (ERTC), moving up the deadline for filing backdated claims to January 31, 2024. The Joint Committee on Taxation (JCT) estimates the net cost of the bill to be $399 million when taking the end of the ERTC into consideration.

The full JCT description of the tax package can be found here. A section-by-section summary can be found here.

Chairman Smith appears poised to try to pass through the House the package near the start of the 2023 filing season, set to begin January 29. For this to occur, the package would likely need to be added to the House Suspension Calendar, requiring two-thirds of the chamber to approve the measure. Considering the bill under suspension would mean the package would likely require Democratic support to be sent to the Senate. At this stage, the potential Senate process for this bill remains less clear.

Senate Budget Committee Holds Hearing on Corporate Tax Loopholes

Key Points:

- *Democrats asserted the TCJA worsened income inequality and encouraged corporations to shift profits overseas.*
- *Republicans stated the TCJA spurred economic growth and that Congress should do more to simplify the tax code.*
- *Witnesses warned members against implementing policies that encourage corporations to shift profits and assets overseas, and encouraged members to protect U.S. jobs and interests.*

On Wednesday January 17, the Senate Budget Committee held a hearing entitled, The Great Tax Escape: Closing Corporate Loopholes that Reward Offshoring Jobs and Profits." Topics discussed in the hearing included offshoring; the Tax Cuts and Jobs Act (TCJA); government deficits; subsidies; and small businesses.

Democrats, led by Senate Budget Committee Chairman Whitehouse (D-RI) asserted tax cuts for large multinational corporations included in the TCJA have worsened income inequality and increased the federal deficit. They further asserted that the legislation encouraged large corporations to offshore revenues to tax havens such as Bermuda, allowing them to avoid paying U.S. corporate taxes while creating jobs in other countries.

Republicans, led by Senator Johnson (R-WI) (on behalf of Ranking Member Grassley (R-IA) who was absent due to illness) emphasized Congress must take additional action to reform the country's "uncompetitive" corporate tax code. They stated the TCJA helped to begin modernizing the U.S. tax code, bringing the corporate tax rate in line with global standards. They said the tax code should be further simplified, with tax rationalization being the ultimate goal. They asserted TCJA provisions have bolstered domestic investment, leading to higher wages and economic growth.

Witnesses spoke against tax policies that encourage corporations to shift jobs and profits overseas, allowing them to avoid paying domestic corporate taxes. They called for the U.S. to engage in international cooperation to create international tax standards that work for the wider developed world while protecting U.S. interests. They further testified that more than half of TCJA benefits went to the top five percent of U.S. taxpayers in 2020. One witness stated Congress has long provided favorable tax treatment for foreign earnings through tax credit, however, the TCJA included bipartisan proposals to reduce incentives for profit shifting overseas.

For more information about tax issues, you may email or call Christopher Hatcher at 202-659-8201. Logan Mazer contributed to this section.

FINANCIAL SERVICES

CFPB Proposes Rule to Decrease Overdraft Fees

Key Point:

- *The CFPB proposed a rule that would limit overdraft fees large banks can charge customers.*

On January 17, the Consumer Financial Protection Bureau (CFPB) proposed a rule that would limit overdraft fees that insured depository institutions and credit unions of $10 billion or more in assets can charge customers. The proposal would allow large banks to extend "overdraft loans" if complying with lending laws (such as the Truth in Lending Act), including the interest rate. Alternatively, such financial institutions would be permitted to charge a fee using the benchmark fee set by the CFP in the proposal or a different amount, if showing their cost data. The proposed benchmarks range from $3 to $14, and CFPB is requesting comments on the amount.

Comments must be received by April 1, 2024.

In announcing the proposal, CFPB Director Rohit Chopra said,
"Decades ago, overdraft loans got special treatment to make it easier for banks to cover paper checks that were often sent through the mail. Today, we are proposing rules to close a longstanding loophole that allowed many large banks to transform overdraft into a massive junk fee harvesting machine."

House Financial Services Committee Chairman Patrick McHenry (R-NC) expressed concern about the proposal, saying in a joint statement with Representative Andy Barr (R-KY),
"The proposed rule issued today by the CFPB would undermine the Bureau's consumer protection mission. The Biden Administration's attempts to mandate one-size-fits-all consumer financial products and services diminish financial inclusion, limit consumer choice, stifle innovation, and ultimately raise the cost of banking for all consumers. This proposed rule will further reduce access to the short-term liquidity products that millions of Americans rely on to help make ends meet. We urge the CFPB to withdraw this misguided proposal that harms the very consumers the agency was created to protect."

House Financial Services Committee Ranking Member Maxine Waters (D-CA) expressed support for the proposal, saying,
"I applaud CFPB Director Rohit Chopra and the CFPB staff for their excellent work to combat junk fees, most recently in a new proposed rule that would curb excessive overdraft fees. For far too long, our nation's biggest banks charged consumers fees as high as $35 or $40 for briefly overdrawing their account, costing those who can least afford it billions every single year. In fact, the banking industry has raked in $280 billion the past two decades, including about $9 billion last year, from these exorbitant overdraft fees. With the CFPB's historic proposal, the average overdraft fee would be reduced by more than half and big banks would no longer be able to profit off the backs of vulnerable consumers. Specifically, this proposed rule will help approximately 23 million households, saving them on average $150 every year. In total, this will save consumers as much as $3.5 billion or more every year."

Senate Banking Chairman Sherrod Brown (D-OH) also expressed support for the proposal, saying,
"I'm glad to see the CFPB continue its work to eliminate junk fees so that Americans can keep more of their hard-earned money. I will review this important proposal."

Senate Banking Committee Holds Hearing on Countering China in Emerging Technology

Key Point:

- *Senators highlighted several different risks China poses to U.S. national security and discussed what changes need to be made to the export control regime and the merits of an outbound investment regime, among other things.*

On January 18, the Senate Banking Committee held a hearing entitled, "National Security Challenges: Outpacing China in Emerging Technology." Chairman Sherrod Brown (D-OH) highlighted various threats China poses to U.S. national security and addressed the FEND Off Fentanyl Act (S. 1271) and two national security amendments in the Senate NDAA: (1) the PASS Act (S. 168) and (2) the Outbound Investment Transparency Act (S. 2678). He noted that these measures passed the Senate but were blocked by the House and said he was committed to getting the bills signed into law. Ranking Member Tim Scott (R-SC) emphasized the need for the U.S. to act strategically and with strength to counter China and he highlighted China's history of controlled markets, government interventions, and intellectual property theft. He called on the Committee to examine the authorities provided to the Executive Branch, how they have been used, and how they can be improved to maximize effectiveness, but warned that an over-application of these tools has the potential to push adversaries closer and damage the U.S. and American industries' long-term abilities to innovate, generate jobs, and generate growth. He stressed that the use of tools must be "sharp but tailored" and argued that the Biden administration has taken the "wrong" approach and has put "politics over policy."

House Panel Holds Hearing on the SEC's Proposed Climate Disclosure Rule

Key Point:

- *Lawmakers debated the merits of the proposal and the SEC's rulemaking authority, among other topics.*

On January 18, the House Financial Services Committee's Subcommittee on Oversight and Investigations held a hearing entitled, "Oversight of the SEC's Proposed Climate Disclosure Rule: A Future of Legal Hurdles." Chairman Bill Huizenga (R-MI) said the SEC underestimated the cost of the proposal for public and private companies, noting that the SEC asserts the proposal would cost current reporting companies about $10 billion a year but argued that will cost nearly $25 billion a year. He questioned if the SEC has statutory authority to issue rules relating to climate issues in light of the Supreme Court's ruling in *West Virginia v. EPA*. Ranking Member Al Green (D-TX) said the hearing is "another assault on helpful investor protections" and argued that for many public companies, extreme weather events or slight changes in regional weather patterns can affect their operating performance. He observed that some companies already include general disclosures about climate risk, but said the reports are vague and lack standardization. He explained that the SEC proposal seeks to address these two problems.

U.S.-China Financial Working Group Holds Third Meeting

Key Point:

- *The Financial Working Group met in China and discussed several topics, including climate stress testing, capital markets issues, and anti-money laundering and countering the financing of terrorism.*

The U.S. Department of the Treasury announced that on January 18 and 19, the U.S.-China Financial Working Group held meetings in China, which began with a review of technical exchanges on climate stress testing and respective resolution planning frameworks for Global Systemically Important Banks. The meetings also included discussions on "financial stability and capital markets issues, international financial institutions, sustainable finance, cross-border payments and data, and anti-money laundering and countering the financing of terrorism (AML-CFT)." The readout noted that "U.S. officials also frankly raised areas of disagreement during the conversations" and the "meetings concluded with both sides agreeing to continue to meet regularly." and also met with Vice Premier He Lifeng. The meetings concluded with both sides agreeing to continue to meet regularly. U.S. Treasury officials also met with Vice Premier He Lifeng.

Upcoming Hearings and Meetings

January 22

CFTC Open Meeting: The Commodity Futures Trading Commission will hold an open meeting to consider three items: (1) Notice of Proposed Order and Request for Comment on an Application for a Capital Comparability Determination Submitted on behalf of Nonbank Swap Dealers subject to Capital and Financial Reporting Requirements of the United Kingdom and Regulated by the United Kingdom Prudential Regulation Authority; (2) LCH SA Request for Exemption from Regulation 1.49(d)(3) to Hold Customer Funds at the Banque de France; and (3) Proposed Rule: Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions.

January 24
SEC Open Meeting: The Securities and Exchange Commission will hold an open meeting to consider whether to adopt new rules and amendments "to enhance disclosures and provide additional investor protections in initial public offerings by special purpose acquisition companies (SPACs) and in subsequent business combination transactions between SPACs and target companies".

January 25
NFIP Reauthorization: The Senate Banking Committee will hold a hearing entitled, "Reauthorization of the National Flood Insurance Program: Local Perspectives on Challenges and Solutions."

For more information about financial services issues you may email Joel Oswald or Mahlet Makonnen. Nicholas May contributed to this section.

ENERGY & ENVIRONMENT

Committee Advances Legislation to Collect Greenhouse Gas Data

Key Points:

- *On January 18, the Senate Environment and Public Works Committee voted to advance the "PROVE IT Act", legislation that would direct the Secretary of Energy to collect and report on data on the greenhouse gas (GHG) emissions associated with domestic and imported products.*
- *As described in a press release issued by the bill's sponsor, Senator Chris Coons (D-DE), collecting "data on product emissions intensity is an important step in addressing climate through trade policy and leveling the playing field for domestic producers and manufacturers who are forced to compete against rivals with little to no standards."*

On Thursday, the Senate Environment and Public Works Committee held a business meeting and voted to report the "Providing Reliable, Objective, Verifiable Emissions Intensity and Transparency (PROVE IT) Act" (S. 1863). The legislation would direct "the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries". The bill is a step towards potential future legislation to establish a tax on imported goods based on the carbon intensity of their production and manufacture.

Senator Chris Coons (D-DE) introduced the "PROVE IT Act" on June 7, 2023. The legislation would direct federal agencies to collect data on the emissions intensity of specified products manufactured in the U.S. and "G7 countries, free trade agreement partners, foreign countries of concern, and countries that hold a substantial global market share for a covered product". Original cosponsors of the legislation were Senators Kevin Cramer (R-ND), Angus King (I-ME), Lisa Murkowski (R-AK), Martin Heinrich (D-NM), Lindsay Graham (R-SC), Sheldon Whitehouse (D-RI), Bill Cassidy (R-LA), and John Hickenlooper (D-CO).

Senator Coons also released a one-page summary of the legislation.

House Subcommittee Considers Pipeline Safety Legislation

Key Points:

- *On January 18, the Energy, Climate, and Grid Security Subcommittee held a hearing on draft pipeline safety reauthorization legislation released last July by Energy and Commerce Committee Republicans.*
- *Republicans on the Subcommittee expressed support for the legislation, which would reauthorize Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety programs, reform permitting processes, and bar state and local bans on energy sources, including prohibitions on natural gas appliances and residential connections.*
- *Democrats on the panel expressed opposition to the legislation, asserting it would weaken pipeline safety oversight. They called on Republicans to take a bipartisan approach to the issue, citing legislation reported in December by the House Transportation and Infrastructure Committee.*

On Thursday, the House Energy and Commerce Committee's Energy, Climate, and Grid Security Subcommittee held a hearing titled "Fueling America's Economy: Legislation to Improve Safety and Expand U.S. Pipeline Infrastructure". The hearing focused on the "Pipeline Safety, Modernization, and Expansion Act of 2023" (H.R.__), a discussion draft bill proposed by full committee Chair Cathy McMorris Rodgers (R-WA) and Subcommittee Chair Jeff Duncan (R-SC) last summer.

In his opening statement, Chairman Duncan declared that pipelines are the safest and most efficient transportation mode for fuels and feedstocks. He said PHMSA and states must cooperate to ensure the 3.4 million miles of pipelines are operated safely. Duncan expressed concern that PHMSA is focusing on climate issues rather than safety objectives and is acting outside the scope of its congressionally directed responsibilities.

Subcommittee Ranking Member Diana DeGette, in her opening statement, characterized the majority's discussion draft bill as including "several sections that are completely unrelated to PHMSA pipeline safety." She also said the bill "would streamline the permitting process, [authorize] a funding level that would be 18 percent below current funding levels, stripping PHMSA of critical funding and safety measures…[and place] additional burdens on the administration's pipeline safety program…"

In his written testimony, PHMSA Deputy Administrator Tristan Brown declared that the agency "has been integral to the whole-of-government approach to mitigating unnecessary greenhouse gas emissions—an essential component of operating the safest, most efficient and economically competitive transportation and energy system of the 21st century." He reported that the agency "anticipates issuing a Carbon Dioxide and Hazardous Liquid Pipeline Safety [Notice of Proposed Rulemaking] early this year [which would]…cover operational and maintenance safety issues relevant to all phases (e.g., supercritical, gaseous, etc.) of CO2 transportation via pipeline—and to address each of the issues identified by PHMSA in its investigation and enforcement activities involving the 2020 pipeline failure in Satartia, MS."

As described in a section-by-section summary, the bill includes the following provisions:

- "Sec. 1. Short Title. 'Pipeline Safety, Modernization, and Expansion Act.'"
- "Sec. 2. Minimum Safety Standards. Requires…PHMSA…to consider the 'safety and economic benefits within the United States' when conducting the cost-benefit analysis of proposed regulations."
- "Sec. 3. Regulation of Carbon Dioxide Pipeline Facilities. Requires PHMSA to finalize safety standards for pipeline facilities that transport carbon dioxide no later than one year from the date of enactment. Clarifies the authority of the Environmental Protection Agency (EPA) to identify areas suitable for underground sequestration of carbon dioxide."
- "Sec. 4. Protecting Fuel Choice for Consumers. Prohibits a State or municipality from banning the transportation of an energy source, including natural gas or liquid fuels, that are sold in interstate commerce using a pipeline facility regulated by PHSMA."
- "Sec. 5. Technical Safety Standards Committees. Requires PHMSA to conduct technical safety advisory meetings more regularly to review and improve proposed regulations."
- "Sec. 6. Strengthening Penalties for Pipeline Safety Violations. Strengthens penalties for 'damaging, destroying, or impairing the operation of' pipeline facilities."
- "Sec. 7. Authorization Levels. Reauthorizes PHMSA's pipeline safety programs for five years."
- "Sec. 8. Pipeline Safety Enhancement Programs. Directs PHSMA to conduct a pilot program to test innovative pipeline safety technologies and integrity management practices that meet or exceed PHSMA's safety regulations."

- "Sec. 9. Pipeline Safety Voluntary Information Sharing System. Directs PHMSA to establish a voluntary information sharing system to gather, evaluate, and quantify critical pipeline safety data and information to improve safety."
- "Sec. 10. Modernizing and Expanding Pipelines. Authorizes the Federal Energy Regulatory Commission (FERC) to issue any federal permit required for the construction, modification, expansion, inspection, repair, or maintenance of an existing pipeline or a new pipeline co-located within an existing right-of-way. A person may request FERC to make a final decision on a permit if the federal agency with statutory authority, or the state to which authority has been delegated by the federal agency, fails to complete a proceeding within one year after the application was filed."
- "Sec. 11. Regulatory Updates. Requires PHMSA to report to Congress on outstanding regulations and overdue congressional mandates required by prior pipeline safety laws."

In December, the House Transportation and Infrastructure Committee held a markup and voted to report its own pipeline safety reauthorization bill (H.R. 6494).

Upcoming Hearings and Events

January 24

Toxic Substances: The Senate Environment and Public Works Committee will hold a hearing titled "Oversight of Toxic Substances Control Act Amendments Implementation". Michael Freedhoff, Assistant Administrator of the Environmental Protection Agency's (EPA) Office of Chemical Safety and Pollution Prevention is scheduled to testify.

Ocean Industries and Climate Change: The Senate Budget Committee will hold a hearing titled "Warming Seas, Cooling Economy: How the Climate Crisis Threatens Ocean Industries".

January 30

Snake River Dams: The House Energy and Commerce Committee's Energy, Climate, and Grid Security Subcommittee will hold a hearing titled "Exposing President Biden's Plan to Dismantle the Snake River Dams and the Negative Impacts to the U.S."

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Noah Hawkins and Windsor Warlick contributed to this report. Updates on energy and environment issues are also available on twitter.

HEALTH

CMS Releases Rule to Expand Access to Health Information and Improve Prior Authorization Process

Key Points:

- *On January 17, the Centers for Medicare and Medicaid Services (CMS) finalized the Interoperability and Prior Authorization Final Rule (CMS-0057-F).*
- *The rule requires all impacted payers to send prior authorization (PA) decisions within 72 hours for expedited requests and seven calendar days for standard requests, to include a specific reason for denying a PA request, to report PA metrics publicly, and to implement a Health Level 7 (HL7) Fast Healthcare Interoperability Resources (FHIR) Prior Authorization application programming interface (API).*

On January 17, CMS finalized the Interoperability and PA Final Rule (CMS-0057-F). The rule sets requirements for Medicare Advantage (MA) organizations, Medicaid and the Children's Health Insurance Program (CHIP) fee-for-service (FFS) programs, Medicaid managed care plans, CHIP managed care entities, and issuers of Qualified Health Plans (QHPs) offered on the Federally-Facilitated Exchanges (FFEs), to expand access to health information and improve the PA process.

This rule builds on the MA requirements finalized in the Contract Year (CY) 2024 MA and Part D final rule. According to the rule, impacted payers will be required to send PA decisions within 72 hours for expedited requests and seven calendar days for standard requests. In the press release, Human Health Services (HHS) Secretary Xavier Becerra stated, "When a doctor says a patient needs a procedure, it is essential that it happens in a timely manner." The rule also requires all impacted payers to include a specific reason for denying a PA request, to report PA metrics publicly, and to implement a Health Level 7 (HL7) Fast Healthcare Interoperability Resources (FHIR) PA application programming interface (API). According to the fact sheet, these API policies will improve patient, provider, and payer access to interoperable patient data and reduce the burden of PA processes.

The final rule is available here.

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Ranking Member Cassidy Sends Letter to Major Contract Pharmacies

Key Point:

- *On January 17, Senate Health, Education, Labor, and Pensions (HELP) Ranking Member Bill Cassidy (R-LA) sent letters to CVS Health and Walgreens questioning them about their revenue from the 340B Drug Pricing Program.*

On January 17, Senate HELP Ranking Member Bill Cassidy (R-LA) sent letters to CVS Health and Walgreens requesting information on how health care entities use and generate revenue from the 340B Drug Pricing Program. According to a press release, the Drug Channels Institute estimates that contact pharmacies can earn 25 to 35 percent of total 340B discounts.

The letter to CVS Health is available here, and the letter to Walgreens is available here.

Upcoming Hearings and Events

January 31

Prescription Drugs: The Senate HELP Committee will hold an executive session entitled "Authorization for Investigation into the High Costs of Prescription Drugs and Related Subpeonas."

For more information about health care issues you may email or call Nicole Ruzinski Bertsch at 202-659-8201. Chris Affambi and Windsor Warlick contributed to this section.

CYBERSECURITY, PRIVACY, AND ARTIFICIAL INTELLIGENCE

Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigations (FBI) Release Guidance on Chinese Manufactured Drones

Key Point:

- *CISA and the FBI released guidance warning of Chinese manufactured drones on the same day that the House Foreign Affairs Committee discussed similar topics.*

On January 17, CISA and the FBI released guidance warning that China could use Chinese manufactured commercially available drones to spy on Americans and obtain sensitive information. The report highlighted that these unmanned aerial vehicles (UAVs) "enable data theft or facilitate network compromises, the People's Republic of China (PRC) has enacted laws that provide the government with expanded legal grounds for accessing and controlling data held by firms in China." The guidance explained how to protect against potential cyber breeches including through isolating and segmenting data networks within organizations to prevent a larger breech, using UAVs that follow CISA's Secure by Design Framework, regularly updated UAV software, and ensuring proper operational procedures are always followed.

This follows a Congressional House Foreign Affairs Committee [hearing](#) on the same day entitled, "Examining the Flow of U.S. Money into China's Military Might" during which lawmakers discussed outbound investment into Chinese companies developing dual-use civil/military technologies. In the hearing, representatives highlighted Chinese laws that require Chinese companies to silently comply with PRC objectives, including handing over large swaths of information and aiding in PRC military operations.

NJ Governor Phil Murphy Signs into Law Protections for Consumer Information

Key Point:

- *Governor Phil Murphy signed into law data privacy protections that require websites and online providers to disclose their intention to sell consumer information and all consumers to opt-out of this practice.*

New Jersey Governor Phil Murphy signed into law S. 3332, which "Requires notification to consumers of collection and disclosure of personal data by certain entities." This includes data collected by internet websites and online providers. On the Governor's website he wrote that the legislation requires entities "to notify customers of the collection and disclosure of personal information to other third parties and to provide customers with an ability to opt-out of that collection or disclosure." More specifically, if an online operator wants to sell a consumer's data, it must "post a link clearly and conspicuously on its site, or in another prominently accessible location that allows them to opt-out of the collection of the personal data."

Governor Murphy commented on the law: "Today New Jersey is standing up for the privacy rights of its residents by empowering them with the ability to direct and know how their personal information is used. This legislation provides some of the strongest data protections in the nation and helps ensure the security of New Jersey consumers and their interests" (Phil Murphy).

Government Accountability Office (GAO) Releases Report Highlighted Bureaucratic Struggles at the State Department

Key Point:

- *GAO report finds role definition and staffing issues at the Department of State.*

On January 18, the GAO released a report that highlighted the State Department is having trouble with role definitions and hiring at the Bureau of Cyberspace and Digital Policy (CDP). The report wrote: "State officials told us that since cyber issues may be relevant to almost any aspect of diplomacy, communication within State to ensure awareness and visibility of issues so expertise is fully utilized is an important, related challenge." State Department officials noted an organizational and role definition consolidation has helped cut needless bureaucratic elements from State Department procedure, however, these cuts have created uncertainty about responsibilities: "According to State officials, CDP is addressing challenges as it pursues strategic objectives, including clarifying roles and hiring staff."

President's Council of Advisors on Science and Technology Approve Recommendations for Cyber-Resilience

Key Point:

- *The Council of Advisors on Science and Technology working group approved a set of recommendations related to the resilience of cyber-physical critical infrastructure that will be released to the public in February.*

On January 18, the President's Council of Advisors on Science and Technology approved recommendations to improve the resilience of cyber-physical critical infrastructure. Although the report was approved, it will not be released to the public until February. The working group collaborated with National Institute of Standards and Technology (NIST), MITRE, the Defense Advanced Research Projects Agency, and the Department of Homeland Security and highlighted four major recommendations including bolstering and coordinating research and development, breaking down silos and strengthening government cyber-physical resilience capacity, developing greater industry accountability, and establishing performance goals. The working group is co-led by Chief Scientific Officer of Microsoft, Eric Horvitz, and Chief Information Security Officer at Google Cloud, Phil Venables. Venables commented on the importance of the group's work: "All of our modern infrastructure are cyber-physical by nature. Our society is becoming ever more dependent on an interwoven set of physical and digital technologies, and all of our critical infrastructure depends on these. Whether it's water, finance, telecommunications, energy, health care and many other sectors" (Cyberscoop)

For more information about cybersecurity issues you may email Mahlet Makonnen or Frank Vlossak. Joe Maalouf contributed to this section.

TRADE

USTR Tai Outlines U.S. Responses to Chinese Non-Market EV Practices

Key Points:

- *In a letter to House CCP Leadership, USTR Tai stated that the U.S. must take action to counter the PRC's non-market practices in the EV industry.*
- *USTR Tai stated that her office's statutory four-year review of Section 301 tariffs will fully consider their effectiveness in countering unfair Chinese practices.*

On January 4, U.S. Trade Representative (USTR) Tai sent a letter to House Select Committee on the Chinese Communist Party (CCP) Chairman Gallagher (R-WI) and Ranking Member Krishnamoorthi (D-IL) acknowledging the non-market practices employed by the People's Republic of China (PRC) to gain control over the global electric vehicle (EV) supply chain.

USTR Tai's letter, which was written in response to correspondence from Chairman Gallagher and Ranking Member Krishnamoorthi in November 2023, states that the PRC has utilized a state-led process to employ unfair and non-market practices in the EV sector. The letter notes the practices span critical mineral sourcing and processing, battery manufacturing, and EV manufacturing sectors. USTR Tai asserts that the Biden Administration will continue to develop responses to the PRC's non-market practices in the EV sector in consultation with U.S. companies and unions. Her letter also states that the Biden Administration will continue to take actions that bolster U.S. supply chain resiliency and explained that her office's review of Section 301 tariffs will include considerations on the impact of Chinese EV tariffs on the economy. USTR Tai estimates that her office's statutory four-year review of Section 301 tariffs is likely to conclude in the coming months.

House Members Call for A Sector-Specific Outbound Investment Regime, e-Commerce Duty Moratorium

Key Points:

- *House Foreign Affairs Leadership has advocated for a sector-based outbound investment regime.*
- *In addition, more than 30 House Members have issued a letter to USTR Tai advocating for the extension of an e-commerce duty moratorium at the WTO's 13th ministerial conference.*

On January 17, the House Foreign Affairs Committee held a hearing entitled, "Examining the Flow of U.S. Money into China's Military Might." Within the hearing, Foreign Affairs Chairman McCaul (R-TX) advocated for the adoption of the Preventing Adversaries from Developing Critical Capabilities Act (H.R. 6349). The bill, which was introduced by Chairman McCaul and Ranking Member Meeks (D-NY) in November 2023, would serve to apply "outbound investment restrictions to Russia, Iran, and North Korea in addition to the People's Republic of China, and expands the technology sectors covered by the Biden Administration's Executive Order to include hypersonics and high-performance computing," according to a press release. In his opening statements, Chairman McCaul noted that the bill was originally included within the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31) but was pulled before its final passage. Chairman McCaul reasserted his commitment to passing the bill at the hearing, stating that "we need to get this new version that was introduced by the Ranking Member [and] myself, signed into law. We cannot wait." His comments also included the assertion that "an outbound forward-looking, sector-based regime is necessary" to "stop the flow of U.S. money into national security sectors in China." Notably, Chairman McCaul added that "while existing tools, such as sanctions, have an important role, they cannot be a substitute for an outbound investment regime that is authorized by Congress."

During the hearing, however, several members (like Rep. Barr (R-KY) who has his own approach on outbound investment) who support an export-control-style approach voiced their views and raised questions on whether sectoral approaches are most effective.

On the same day, a bipartisan group of 30 House members issued a letter calling on USTR Tai to advocate for the extension of the Moratorium on Customs Duties on Electronic Transmissions at the 13th Ministerial Conference of the World Trade Organization (WTO). The letter, which was led by Representative LaHood (R-IL), Representative DelBene (D-WA), and Ways and Means Trade Subcommittee Chairman Smith (R-NE) and Ranking Member Blumenauer (D-OR), warns that the lack of renewal could result in governments imposing tariffs and trade barriers to U.S. industries that "transmit products and services electronically" including "manufacturing, agriculture, entertainment, software, financial services, semiconductors, aerospace, autos, robotics, and medical devices." The correspondence also notes that many countries, including Indonesia, have sought customs regimes to impose tariffs on digital goods and services that could "harm American exports, disrupt supply chains, increase prices for American consumers … and risk potential retaliation" in the event of a lapse in the moratorium. The signatories also cite a September 2023 study from the International Monetary Fund that found that countries applying duties on electronic transmissions lost more in broader economic growth than their direct tariff revenues. The 13th Ministerial Conference of the WTO is set to occur in Abu Dhabi, United Arab Emirates on February 26 to February 29.

Senate EPW Advances Legislation to Measure Climate Competitiveness of U.S. Goods

Key Points:

- *A bill has advanced through the Senate Environment and Public Works Committee to authorize research into the climate impacts of U.S. goods.*
- *The bill, dubbed the PROVE IT ACT, would require the Secretary of Energy to study GHG emission intensity for domestic goods, including steel and aluminum.*
- *The legislation coincides with talks between the U.S. and EU about a Global Sustainable Arrangement on Steel and Aluminum and potential carbon tariffs.*

On January 18, the Senate Environment and Public Works Committee approved a bill to require the Secretary of Energy to conduct a study of greenhouse gas emissions for certain U.S. goods. The Prove IT Act of 2023 (S. 1863), which was introduced by Senator Coons (D-DE), passed out of committee by a vote of 14-5. Notably, the legislation would require the Secretary of Energy to study average carbon emissions of producing goods in the U.S. as well as other G7 nations, foreign countries of concern, and countries with free trade agreements with the U.S. The study would include the average emissions of producing aluminum, steel, cement, plastic, biofuels, lithium-ion batteries, and natural gas.

The study coincides with discussions among some members of Congress about the potential adoption of a carbon tariff for high-emission goods imported from foreign countries. At the Senate Environment and Public Works hearing, the bill's cosponsor Senator Cramer (R-ND) argued that the study would allow the U.S. to prepare for the imposition of a carbon tariff that would defend against the EU's planned carbon border adjustment mechanism. In response, outside groups like Advancing American Freedom chastised Senate Republicans for supporting the bill, stating in a release that the legislation "is nothing more than a backdoor attempt to impose a carbon tax on the American people"

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and cautioning that "taxes on imported goods will be paid for by the American people." The statement asserts that "this type of legislation is commonplace for Democrats, but Republicans should know better than to support a carbon tax."

The study also follows a series of talks on a Global Arrangement on Sustainable Steel and Aluminum between the EU and the U.S. to increase trade for low-emission steel and aluminum products. In light of stalled progress on talks between the two governments throughout 2023, the U.S. and EU have agreed to extend the deadline to reach an agreement through 2025.

President Biden's International Economics Advisor Set to Leave Amid Series of USTR Departures

Key Points:

- *President Biden's Deputy National Security Advisor is set to depart from his position as International Economics Advisor.*
- *The Advisor currently oversees the Biden Administration's global trade agenda.*
- *The development follows other recent departures at USTR.*

The White House National Security Council's Deputy National Security Advisor for International Economics will soon vacate his position. Deputy Advisor Pyle, who is responsible for the Security Council's global trade and critical mineral trade negotiation priorities, has been planning to leave the position for multiple months. The event follows a chain of resignations and departures from the office of the USTR, including Deputy USTR Sarah Bianchi. On January 5, USTR Tai announced that General Counsel Peisch would be replaced by Acting General Counsel Millán. In addition, USTR Chief of Staff Hurlburt announced she was leaving the office on January 26. Deputy USTR White departed on November 1, 2023, according to a USTR readout. On January 11, President Biden announced his intent to nominate Nelson Cunningham as Deputy USTR.

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