

## Washington Update

February 9, 2024

### This Week In Washington

**Senate** – The Senate confirmed several judicial nominations. A vote to open debate on a supplemental spending bill with Ukraine and Israel aid, border security measures, and other items failed, but did vote to open debate on a supplemental spending bill with Ukraine and Israel aid without border security measures ([H.R. 815](#)). A procedural vote is expected no later than 7 pm this evening and could potentially continue debate of the bill through the weekend and into next week.

**House** – The House passed the Protecting Health Care for All Patients Act ([H.R. 485](#)), failed to impeach Homeland Secretary Alejandro Mayorkas ([H. Res. 863](#)), and failed to pass a bill containing \$17.6 billion in funding for Israel ([H.R. 7217](#)).

**Biden Administration** – On February 9, the White House [announced](#) that it is planning to invest over \$5 billion in semiconductor-related research, development, and workforce needs, including in the National Semiconductor Technology Center.

### Next Week In Washington

**Senate** – The Senate may remain in session through approximately Tuesday considering H.R. 815, then is expected to leave on recess until February 26.

**House** – The House will reconvene on Tuesday, February 13, and may consider the Creating Confidence in Clean Water Permitting Act ([H.R. 7023](#)).

## TAX

### Timing of Tax Bill in Senate Still Faces Uncertainty

#### *Key Points*

- *The bipartisan tax package faces uncertainty in the Senate, where key senators are urging for the package to be either marked up in Committee or obtain changes through other means.*
- *Some Republican senators have taken issue with the package's expansion of child tax credit income eligibility, specifically the bill's income look-back provisions.*
- *The timing of a final vote on the bill remains uncertain, as the Senate is about to begin a two-week recess.*

Following the House of Representatives' overwhelming approval of the \$78 billion tax package by a vote of 357-70, the future of the package in the Senate remains uncertain. The cause of uncertainty centers around some Senate Republicans' insistence on holding a markup of the bill or obtaining changes in some other fashion. Senate Finance Ranking Member Crapo (R-ID), Senator Cassidy (R-LA), and Senator Rubio (R-FL) have been particularly vocal on this issue, stating they would like to remove a provision in the bill allowing families to use prior-year income to qualify for the expanded child tax credit. Some senators have also expressed concern about how the package is being paid for. Meanwhile, several other off-committee Senate Republicans expressed support for the package this week. Currently, the package's \$78 billion price tag is being almost entirely offset by ending the employee retention tax credit, a COVID-era program that has faced charges of significant fraud. Senator Braun (R-IN) has stated he would not support any bill with a "fake pay-for," even if it contained some policy provisions he would typically support.

Another issue is timing. On February 12, the Senate is set to begin its two-week recess after addressing an emergency foreign aid package in the coming days, meaning any process to obtain changes in the tax package would not be able to begin until February 26. This timing presents new challenges, as the Senate will likely need to start processing government funding bills, as the first funding deadline arrives on March 1, followed by March 8.

Some Republicans remain optimistic the package can be approved quickly. Finance Member Senator Young (R-IN), who cosponsored legislation rolling back the five-year amortization of research and development costs, said the House's overwhelming approval of the bill would lead to a "reassessment of the bill" in the Senate.

## New IRS Estimate Predicts Significant Tax Gap Revenue Increase from Additional IRS Funding

### Key Points

- According to its updated scoring model, the IRS predicts it will collect \$851 billion in new revenue from the 'tax gap' over the next 10 years, up from its current estimate of \$211 billion.
- The increase is largely due to investments being made in enhanced IT and technology models.
- The estimate does not account for the \$20 billion funding cut agreed to by House Republicans and President Biden.

Last week, the Internal Revenue Service (IRS) published a [report](#) updating its 10-year revenue outlook after considering the agency's increased enforcement funding levels. Under a previous forecast, the agency expected to collect \$211 billion in new revenue after the next 10 years, however, in its new analysis, the agency estimates it will collect \$851 billion. This estimate is in large part due to planned technology and IT system enhancements, which the agency estimates will directly contribute to \$301 billion in new revenue.

That said, the report makes multiple assumptions that may not hold true. First, the agency assumed it would continue to receive the \$80 billion funding enhancement included in the Inflation Reduction Act. This ignores an agreement made between House Republicans and President Biden to rescind \$20 billion. In addition, the report assumes funding levels are not decreased further before fiscal year 2034 – the end of the estimate's 10-year window. According to the Department of Treasury, the \$20 billion rescission would reduce revenues by \$100 billion.

### Upcoming Hearings and Meetings

#### **February 15**

**House Ways and Means IRS Commissioner Hearing:** On Thursday, February 15, at 10:00 AM the House Ways and Means Committee will hold a hearing entitled, "Hearing with Commissioner of the Internal Revenue Service, Daniel Werfel." The hearing will be held at 1100 Longworth House Office Building and will be broadcast to the Committee's [website](#).

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**

### **Treasury Secretary Yellen Testifies to Congress in Annual FSOC Review**

#### *Key Points:*

- *Treasury Secretary Janet Yellen testified before the House Financial Services Committee and Senate Banking Committee about the FSOC annual report, although other topics were also raised.*
- *Members of Congress discussed numerous issues with Yellen, including the Basel III Endgame proposal, designating nonbank financial institutions as systemically important, the overall state of the economy, fiscal issues, and other regulatory measures, among other topics*

On February 6, the House Financial Services Committee held a [hearing](#) entitled, “The Annual Report of the Financial Stability Oversight Council.” Chairman Patrick McHenry (R-NC) argued that FSOC has expanded its regulatory reach to fit the Biden administration’s political priorities and is acting like a “roving regulator” under current leadership. He said this includes relaxing the criteria used to designate nonbank financial companies as systemically important that, which would result in Federal Reserve regulation. He said such regulations are not necessarily appropriate for institutions that may engage in different activities and therefore pose different risks than the risks bank activity poses and he emphasized that Congress did not intend for this designation to be politicized or weaponized. Ranking Member Maxine Waters (D-CA) argued that “Wall Street is peddling lies” regarding the Basel III Endgame proposal because Wall Street does not want people to know that “the only people who benefit from lower capital requirements are the wealthy bank executives.” She warned that less capital leaves consumers more vulnerable and that lower capital requirements mean taxpayers are more likely to be used to bail out banks. She applauded FSOC for updating its nonbank designation procedures to ensure the Council can use all of its tools to protect the financial system and for FSOC’s work to guard the U.S. from the risks of artificial intelligence, cryptocurrencies, and climate change.

Secretary Yellen also [testified](#) on February 8 before the Senate Banking Committee. Chairman Sherrod Brown (D-OH) applauded FSOC for updating its nonbank designation procedures because of the threat nonbank financial companies, including hedge funds, private equity firms, insurance companies, and clearinghouses, pose to the financial system because they hold more than \$20 trillion in assets. He argued that Wall Street lobbyists are trying to block FSOC from doing its job. He also applauded FSOC’s work on digital assets, cybercrime, changing climate, and artificial intelligence, and expressed support for increased capital requirements. Ranking Member Tim Scott (R-SC) called out the Biden

administration's foreign and domestic policy "failures" that he argued have made the U.S. less safe and the American Dream less attainable.

## **SEC Adopts New Dealer Definition Rule**

### *Key Points:*

- *The SEC adopted a rule requiring proprietary traders and other firms that routinely deal in government bonds and other securities to register as broker-dealers.*
- *The final rule was approved by a vote of 3-2, with Commissioners Peirce and Uyeda voting no.*

On February 6, the Securities and Exchange Commission (SEC) held an open meeting to discuss and vote on adopting a new dealer definition rule. Under the final rule, the SEC's definitions for a "dealer" and a "government securities dealer" are instead based on certain activities such as whether a firm is regularly signaling to the market an interest in buying and selling a security around the best price available. The new rule would also apply to entities that primarily earn revenue by capturing the price differences between buying and selling securities or from trading venues and exchanges. Chair Gensler expressed support for the final rule "because it requires that firms that act like dealers register with the Commission as dealers, thereby protecting investors as well as promoting market integrity, resiliency, and transparency."

Commissioner Peirce dissented because the new rule defines dealer "in a way that is inconsistent with the statutory framework within which it sits and will distort market behavior and degrade market quality." She explained that the rule turns traders into dealers, which she argued runs counter to the statutory framework. She added that the rule "obliterates" the dealer-trader distinction that the SEC has repeatedly issued guidance on. She warned that the rule would drive competitors out of the markets and "dampen" liquidity provision by "penalizing trading and investing strategies that have the effect of providing liquidity to the markets." She expressed concern about the implementation challenges the rule faces because it is "ambiguous in scope" and will "almost certainly bring in firms the Commission has given no thought to including."

A fact sheet can be found [here](#) and the final rule text can be found [here](#).

## SEC Adopts Amendments to Private Fund Reporting

### Key Points:

- *The SEC adopted amendments to Form PF that are designed to “enhance how large hedge fund advisers report investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio liquidity, and financing and investor liquidity to provide better insight into the operations and strategies of these funds and their advisers and improve data quality and comparability.”*
- *Commissioners Peirce and Uyeda dissented.*

On February 8, the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) adopted amendments to Form PF, “the confidential reporting form for certain SEC-registered investment advisers to private funds”. Among other things, the amendments would change “how advisers report complex structures to improve the ability of the Financial Stability Oversight Council (FSOC) to monitor and assess systemic risk and to provide greater visibility for both FSOC and the Commissions into these arrangements.” Chair Gensler expressed support for the amendments, and he argued that the amendments “will enhance the Commissions’ and FSOC’s understanding of the private fund industry as well the potential systemic risk posed by the industry and its individual participants.” Gensler added that the adoption “furthers investor protection efforts.”

SEC Commissioner Mark Uyeda and Commodity Futures Trading Commission (CFTC) Commissioner Carolyn Pham released a [joint dissent](#) and objected to the amendments for three reasons: (1) “it is not necessary for the CFTC to be provided Form PF data for non-CFTC registrants;” (2) “broader distribution of all Form PF data increases its vulnerability to cybersecurity threats;” and (3) “the memorandum of understanding’s provisions for handling of confidential Form PF data are inadequate given the sensitivity of that information.” SEC Commissioner Hester Peirce also [dissented](#) with the rule, stating, “These revisions stem from the Commission’s unbridled curiosity rather than from a legitimate regulatory objective.”

A fact sheet can be found [here](#) and the final rule can be found [here](#).

## Upcoming Hearings and Meetings

### February 13

**CFTC EEMAC Open Meeting:** The Commodity Futures Trading Commission Energy and Environmental Markets Advisory Committee will hold an [open meeting](#) to explore the role of rare earth minerals in transitional energy and electrification, including the potential development of derivatives products to offer price discovery and hedging opportunities in these markets.

### February 14

**FinCEN Oversight:** The House Financial Services Committee will hold a [hearing](#) entitled, "Oversight of the Financial Crimes Enforcement Network and the Office of Terrorism and Financial Intelligence."

### February 15

**Federal Reserve Discount Window:** The House Financial Services Subcommittee on Financial Institutions and Monetary Policy will hold a [hearing](#) entitled, "Lender of Last Resort: Issues with the Fed Discount Window and Emergency Lending."

**Digital Asset Illicit Activity:** The House Financial Services Subcommittee on Digital Assets, Financial Technology, and Inclusion will hold a [hearing](#) entitled, "Crypto Crime in Context Part II: Examining Approaches to Combat Illicit Activity."

**CFTC Open Meeting:** The Commodity Futures Trading Commission will hold an [open meeting](#) to consider three proposed rules: (1) "Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions;" (2) Foreign Boards of Trade; and (3) Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants, an Application of Taiwan Futures Exchange Corporation for an Exemption from Registration as a DCO, and an ICE NGX Petition for Amended DCO Registration Order.

### February 27

**SEC Advisory Committee:** The Securities and Exchange Commission (SEC) Small Business Capital Formation Advisory Committee will hold a meeting on "matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws."

**February 29**

**Financial Services Legislation Markup:** The House Financial Services Committee may hold a markup to consider financial services legislation.

*For more information about financial services issues you may email [Joel Oswald](#) or [Mahlet Makonnen](#). Nicholas May contributed to this section.*

**ENERGY & ENVIRONMENT****House and Senate Hearings Examine Biden Administration LNG Export “Pause”***Key Points:*

- *House and Senate committees heard testimony this week on the Biden Administration’s decision to direct the Department of Energy to stop approving further exports of liquefied natural gas (LNG) to non-Free Trade Agreement (FTA) countries.*
- *Republicans and Senate Energy and Natural Resources Committee Chairman Joe Manchin (D-WV) criticized the decision, warning that it would have negative consequences for national security, energy security, and global greenhouse gas emissions.*
- *Democrats and Deputy Secretary of Energy David Turk defended the move, pointing to the significant growth in U.S. LNG exports, and its impacts on the environment and domestic natural gas prices.*

This week, hearings on both sides of the Capitol focused on the Biden Administration’s recent decision to suspend review and permitting of LNG exports. On January 26, the Administration announced “a temporary pause on pending decisions on exports of Liquefied Natural Gas (LNG) to non-FTA countries. As described in the White House [Fact Sheet](#), the “pause” will allow the Department of Energy to “update the underlying analyses” for export authorizations.

***House Hearing:***

On Tuesday, the House Energy and Commerce Committee’s Subcommittee on Energy, Climate, and Grid Security held a [hearing](#) titled, “Politics Over People: How Biden’s Liquid Natural Gas (LNG) Export Ban Threatens America’s Energy and Economic Security.”

Subcommittee Chairman Jeff Duncan (R-SC) stated President Biden’s move is against the interest of the United States and would impose an indefinite ban on non-FTA countries while the DOE conducts a review of the impacts of LNG exports. He said the Biden Administration issued the major policy shift without Congressional authorization and



asserted that the move harms communities while causing uncertainty in the LNG industry. He said he would welcome feedback from the witnesses about the benefits of LNG exports on energy security, domestic jobs, and global greenhouse gas (GHG) emissions. He said that global demand for natural gas is expected to increase by 43 percent by 2050. Duncan noted that Qatar, Russia, Iran, and the U.S. hold the four largest reserves of natural gas. He contended that Vladimir Putin knew that President Biden's energy policies would allow Russia to profit more from its natural resources. Duncan expressed support for granting the Federal Energy Regulatory Commission (FERC) sole authority to approve LNG facilities and their associated exports, explaining that the current process requires approval from both FERC and DOE. He noted that the "Unlocking Our Domestic LNG Potential Act" ([H.R. 7176](#)) would establish FERC as the sole agency reviewing the import and export of LNG. He said that DOE's own reports have consistently found that LNG exports benefit the public, strengthen energy security, and reduce global GHG emissions.

Ranking Member Diana DeGette (D-CO), in her opening statement, said the U.S. leads the world in production and exportation of LNG, and that the DOE reported that current LNG facilities can produce 14 billion cubic feet (BCF) per day. She stated that there are enough approved facilities to double the nation's export capacity by 2027. DeGette declared that the U.S. could triple its LNG exports by the early 2030s. She explained that export facilities must undergo rigorous processes with FERC and DOE, and that DOE's public interest requirement encompasses economic and environmental considerations. She noted that the Biden Administration announced a temporary pause on pending approvals of new LNG exports to allow DOE to update its public interest analysis from the last review in 2018. DeGette emphasized that U.S. LNG exports in 2018 were only a third of current LNG exports. She stated that the pause will allow the Administration to assess whether new projects are in the public interest while considering environmental and economic factors.

### ***Senate Hearing:***

On Thursday, the Senate Energy and Natural Resources Committee held its own hearing on the LNG pause.

In his [opening statement](#), Chairman Joe Manchin (D-WV) said the U.S. has a responsibility to its trading allies. He cautioned that DOE's pause may result in allies procuring Russian and Iranian natural gas. He commented that domestic production and exportation of natural gas have significantly increased in the past decade, noting that the U.S. exported 4.7 million barrels of crude oil and 37 trillion cubic feet of natural gas in 2023. He explained that the Henry Hub's spot price of natural gas has remained near \$2.50 per million Btus in both 2016 and 2023. Manchin also noted that U.S. is consuming 32 trillion cubic feet

annually. He stated that there are sensible reasons to update DOE's LNG export authorization process, however he asserted that DOE's review should be concluded before it can justify a pause on export permits. He called the Biden Administration's pause a "political ploy intended to get votes in an election year."

Ranking Member John Barrasso (R-WY), in his [opening statement](#), criticized the Administration's action. He asserted that it is an election-year payoff to appease "radical environmentalists" who wish to halt LNG exports. He stated that LNG exports have overwhelmingly positive impacts on the environment, economy, and the U.S. foreign policy objectives. He asserted that the White House decided to pause exports "based on the demands of a 25-year-old so-called influencer on TikTok." Barrasso said that LNG exports do not raise domestic natural gas prices, noting that the domestic spot price of natural gas has decreased since U.S. exports began in 2015. He said that LNG exports stimulate additional domestic natural gas production and help improve the balance of trade. He stated that U.S. LNG is vital to allies and partners who wish to avoid reliance on Russia and Iran.

In his [testimony](#), Deputy Secretary of Energy David Turk said the Natural Gas Act of 1938 tasks the DOE with determining whether U.S. LNG exports to countries without FTAs are in the public interest. He stated that DOE has paused the review of pending applications for additional exports to non-FTA countries while it updates how it determines the public interest. He stated that DOE's macroeconomic analysis has found that the U.S. exported less than 4 BCF per day in 2018. He explained that U.S. exports have more than tripled since then, and that already-authorized projects are expected to produce up to 26 BCF per day by 2030. He stated that 48 BCF per day has already been authorized for export by DOE, noting that the quantity accounts for almost half of total current domestic natural gas production.

Turk told the Committee that DOE must consider the impact of the industry's growth on the U.S. economy. He explained that DOE's Energy Information Administration (EIA) has found that higher LNG exports create a tighter domestic natural gas market resulting in increased domestic natural gas prices. He stated that DOE intends to provide additional considerations within its analysis of climate impacts. Turk asserted that the Department's review is not unprecedented, adding that DOE has updated its authorizations every five to six years. He said that Europe's demand for natural gas is expected to decline by 20 percent from 2021 to 2026. He added that China's demand for LNG is expected to increase by 65 percent by 2030. He affirmed that DOE is committed to evaluating the transformational changes of increased LNG exports to best determine whether they are in the public interest.

## Upcoming Hearings and Events

### **February 14**

***Utility Commissioners and Energy Challenges:*** The House Energy and Commerce Committee's Energy, Climate, and Grid Security Subcommittee will hold a [hearing](#) titled "Powered Up: State Utility Regulators on Challenges to Reliable, Affordable Electricity". As described in a [statement](#) by full Committee Chair Cathy McMorris Rodgers (D-WA) and Subcommittee Chairman Jeff Duncan, the "hearing will be an opportunity to hear directly from state public utility commissioners about the threats and challenges facing our electric grid as well as how we can ensure reliable and affordable electricity for Americans."

***Pending Legislation:*** The House Natural Resources Committee's Subcommittee on Water, Wildlife and Fisheries will hold a [hearing](#) on pending legislation.

### **February 15**

***FERC Meeting:*** The Federal Energy Regulatory Commission (FERC) will hold its monthly [open meeting](#). The [agenda](#) includes: "Customer Matters, Reliability, Security and Market Operations"; "[Office of Public Participation] Fundamentals for Participating in FERC Matters"; and "Enforcement of Statutes, Orders, Rules, and Regulations".

***Federal Land Management:*** The House Natural Resources Committee's Subcommittee on Oversight and Investigations will hold a [hearing](#) titled "Bidenomics & Land Management: The Misguided National Strategy to Develop Environmental Economic Decisions."

### **February 22**

***Crude Oil Outlook:*** The New York Energy Forum will hold a [panel discussion](#) titled "Outlook for End-2024 Crude Oil Markets: Trade Channels, China, OPEC, and Geopolitics" The virtual event will examine "the top ten risks to the oil market in 2024." The "risks are likely to include: (1) the new China, its 'real' level of growth and its inventory policies impacting imports of crude oil and exports of petroleum products; (2) the trade route distortions impacted by climate change (e.g. Panama canal) and geopolitics (e.g. Suez Canal) and the lessons of similar distortions created by the Western response to the Russian invasion of Ukraine...; and (3) new trade patterns coming from developments like the trans-Canada oil pipeline's 600 thousand barrels per day increase in pipeline capacity to the Pacific and reduction of exports (along with an expansion of production and exports to the Pacific), with less Canadian crude entering PADDs II and III and much more entering the Pacific arena, including into PADD V."

For more information about energy and environment issues you may [email](#) or call Frank Vlossak at 202-659-8201. Noah Hawkins and Evan Reed contributed to this report. Updates on energy and environment issues are also available on [twitter](#).

## **HEALTH**

### **Congress Continues Work on Prescription Drug Pricing**

#### *Key Points:*

- *On February 8, the Senate Health, Education, Labor, and Pensions (HELP) Committee held a hearing on drug pricing. The topics discussed in the hearing included pharmacy benefit managers (PBMs), the 340B program, U.S. vs. international prices, patent abuse, price determinations, manufacturers' efforts to lower costs, and balancing innovation and accessibility.*
- *On February 6, the House Oversight and Accountability Committee held a markup and favorably reported the Delinking Revenue from Unfair Gouging (DRUG) Act, to the House, as amended, by a vote of 29-11.*

On February 8, the Senate HELP Committee held a [hearing](#) entitled "Why Does the United States Pay, by Far, the Highest Prices in the World for Prescription Drugs?" Topics discussed in the first panel of the hearing included PBMs, the 340B program, U.S. vs. international prices, patent abuse, price determinations, and manufacturers' efforts to lower costs. Topics discussed in the second panel of the hearing included balancing innovation and accessibility. Two days prior to the hearing, Chairman Bernie Sanders (I-VT) released a [report](#) focused on the business practices of the three companies testifying at the hearing.

Sanders noted at the hearing that the U.S. has far higher drug costs than other countries and spends almost twice as much per capita on health care. He said one-fourth of people cannot afford to fill their prescriptions, with no data on the numbers of consequent harms and deaths available. Ranking Member Bill Cassidy (R-LA) said understanding why the U.S. has higher prices than other countries requires analyzing several flawed incentives, including insurance benefit design, price transparency, regulatory barriers, intellectual property barriers, and government discount programs.

On February 6, the House Oversight and Accountability Committee held a markup and favorably reported [H.R. 6283](#), the DRUG Act, to the House, as amended, by a vote of 29-11. This bill would delink PBM incentives from the list price of a drug. It also includes provisions to ban spread pricing and patient steering. Representatives Eric Burlison (R-MO), Paul Gosar (R-AZ), Jamie Raskin (D-MD), Shontel Brown (D-OH), Cori Bush (D-MO), Greg Casar (D-TX),

Daniel Goldman (D-NY), Jimmy Gomez (D-CA), Summer Lee (D-PA), Melanie Stansbury (D-NM), and Jasmine Crockett (D-TX) voted no.

## Senators Release 340B Discussion Draft

### Key Points:

- A bipartisan Senate group released a discussion draft of the Supporting Underserved and Strengthening Transparency, Accountability, and Integrity Now (SUSTAIN) 340B Act.
- The discussion draft follows a request for information for stakeholder input last summer.

On February 2, a bipartisan Senate group released a [discussion draft](#) of the SUSTAIN 340B Act. The discussion draft is intended to clarify congressional intent for the 340B program.

The legislation seeks to resolve ambiguity over the use and accountability of contract pharmacies under the 340B program by allowing covered entities to use them in accordance with the Health Resources and Services Administration's 2010 guidance. It also looks to update the definition of a patient to ensure child sites are aligned with the program intent, increase transparent reporting, update audit guidelines, prevent duplicate discounts through the creation of a national third-party clearinghouse, ensure benefits go to covered entities rather than insurance companies or pharmacy benefit managers (PBMs), impose a user fee program, and authorize additional funding for the 340B programs enforcement. The discussion draft solicits stakeholder feedback on improving and expanding patient access to health care treatments.

## Upcoming Hearings and Events

### **February 14**

**Patient and Caregiver Support:** The House Energy and Commerce Subcommittee on Health will hold a legislative [hearing](#) entitled, "Legislative Proposals to Support Patients and Caregivers."

### **February 15**

**Vaccine Safety:** The House Oversight and Accountability Select Subcommittee on the Coronavirus Pandemic will hold a [hearing](#) entitled, "Assessing America's Vaccine Safety Systems, Part 1."

For more information about health care issues you may [email](#) or call Nicole Ruzinski Bertsch at 202-659-8201. Windsor Warlick and Val Laurianti contributed to this section.

## **CYBERSECURITY, PRIVACY, AND ARTIFICIAL INTELLIGENCE**

### **Chinese Hackers Have Been Embedded in U.S. Critical Infrastructure For At least Five Years**

*Key Points:*

- *Chinese hacking group Volt Typhoon has been embedded in U.S. critical infrastructure for years.*
- *Several U.S. agencies released a joint cyber advisory to help critical infrastructure industries identify, mitigate, and prevent damage from hacks.*

On February 7, the Cybersecurity and Infrastructure Security Agency (CISA), National Security Agency (NSA), and Federal Bureau of Investigation (FBI) released a [joint cyber advisory](#) acknowledging that “U.S. authoring agencies have recently observed indications of Volt Typhoon actors maintaining access and footholds within some victim IT environments for at least five years.” Volt Typhoon is the name of a People’s Republic of China (PRC) state-sponsored cyber hacking group that has successfully compromised the cyber infrastructure in the communications, energy, transportation, and water and waste industries. The cyber advisory noted that Volt Typhoon does not operate like traditional hacker groups: “Volt Typhoon actors are pre-positioning themselves on IT networks to enable lateral movement to OT assets to disrupt functions.”

The cyber advisory highlighted several detection mechanisms including using the joint guidance provided in the [Identifying and Mitigating Living off the Land Techniques](#): routinely reviewing system event logs, using the gait Zeek extension to detect network proxy activities, examining VPN and other account log in times, and reviewing directories for unusual files. CISA Director Jen Easterly commented on the joint advisory: “We are at a critical juncture for our national security. We strongly encourage all critical infrastructure organizations to review and implement the actions in these advisories and report any suspected Volt Typhoon or living off the land activity to CISA or FBI” ([CISA](#)).

### **National Cyber Director Announced an Upcoming Release of a Paper on Memory-Safe Software Development**

*Key Point:*

- *In his first major announcement, newly confirmed National Cyber Director Harry Coker said the Office of the National Cyber Director (ONCD) will release a paper on memory-safe software development.*

On February 7, National Cyber Director Harry Coker announced during an Information Technology Industry Council event the ONCD will soon release a paper on memory-safe software development. At the event, he said: “Some of the most dangerous vulnerabilities that criminals look to exploit are memory safety bugs, and memory-safe coding languages prevent those errors from ever making it into production, and yet, developers have been slow to adopt them, even though many have existed for years” ([NextGov](#)). This news comes as the ONCD is continuing to implement the March 2023 release of the [National Cybersecurity Strategy](#). For more information on the strategy, please refer to the Cybersecurity Update in the Reports section of the Williams & Jensen webpage.

## **Federal Communications Commission (FCC) Rules to Make Artificial Intelligence (A.I.) Robocalls Illegal**

### *Key Point:*

- *The FCC adopted a Declaration of Ruling finding that A.I. generated voice clones used in robocalling are illegal.*

On February 8, 2024, the FCC unanimously adopted a Declaration of Ruling that A.I. generated voices are classified as “artificial” per the Telephone Consumer Protection Act’s (TCPA) definition. The ruling prohibits the use of A.I. generated voice-cloning technology used in robocall scams. FCC Chairwoman Jessica Rosenworcel commented on the ruling saying “bad actors are using AI-generated voices in unsolicited robocalls to extort vulnerable family members, imitate celebrities, and misinform voters. We’re putting the fraudsters behind these robocalls on notice” ([FCC](#)). Notably, this ruling comes after President Joe Biden’s voice was cloned and used in a call to New Hampshire voters urging them not to participate in the state’s primary election.

On January 17, a group of 26 state attorneys general wrote a letter supporting the FCC’s choice to weigh in on this issue: “The State AGs thank the FCC for the opportunity to weigh in on this very important matter. We reiterate our commitment to collaboratively work with our federal partners and the communications industry in protecting consumers from unwanted robocalls and robotexts, as well as holding bad actors accountable. As the development of AI technologies continues to evolve, we look forward to a continued discussion” ([Attorney General Michelle A. Henry](#)).

*For more information about cybersecurity issues you may email [Mahlet Makonnen](#) or [Frank Vlossak](#). Joe Maalouf contributed to this section.*

## TRADE

### **USITC Rules Tin Mill Imports Not Eligible for AD/CVD Duties**

#### *Key Points:*

- *USITC has found negative determinations for antidumping or countervailing duties on tin mill products from Canada, China, Germany, and South Korea.*
- *The decision has faced sharp criticism from members of Congress citing Commerce's January preliminary finding to adopt AD/CVD duties for the four countries.*

On February 6, the U.S. International Trade Commission (USITC) ruled that tin mill steel and aluminum products from Canada, China, Germany, and South Korea do not qualify for antidumping or countervailing duties. According to a [press release](#), the Commission found “negative determinations in its final phase antidumping and countervailing duty investigations for Canada, China, and Germany and voted to terminate the antidumping duty investigation for South Korea.” The decision follows the Department of Commerce’s published preliminary [findings](#) that tin mill imports from the four nations “are being unfairly priced, i.e., dumped, into the U.S. market, and imports of tin mill products from China are also being subsidized.” In turn, the Department recommended that Korean, German, and Canadian tin mill imports receive antidumping duty rates ranging from 2.69 to 6.88 percent depending on the company. The findings also recommended that all Chinese tin mill imports receive duty rates of 122.52 percent.

Domestic tin mill steel producers like Cleveland Cliffs had pushed hard for the duties while consumer/end user groups opposed the potential duties and suggested they would increase prices on canned goods.

Senator Capito (R-WV) roundly criticized USITC’s negative determinations, stating in a [release](#) that she was “concerned about the impacts of the ITC’s reversal and ... will closely review the rationale behind this decision further as a final report is made public in the coming weeks.” In an additional [press release](#), Senator Brown (D-OH) stated that the ruling “makes it impossible for Ohio’s tin mill industry and other domestic manufacturers to compete with unfair, illegally dumped steel from countries like China.” He further added that the ruling “is just the latest evidence that our trade enforcement tools are not strong enough” and that “Congress must modernize our trade enforcement laws ... to fight back against the unfair trade practices that are putting these Ohioans out of work.”



## Members of Congress Focus on TRIPS Waiver Expansions Ahead of MC13

### Key Points:

- *Members of the House Ways and Means Trade Subcommittee held a hearing on U.S. priorities for the WTO's MC 13.*
- *Witnesses at the hearing expressed minimal hope of long-term policy progress at the Ministerial.*
- *In addition, four House Democrats issued a letter to USTR Tai calling for the expansion of TRIPS waivers for COVID-19 therapeutics and diagnostics.*

On February 7, the House Ways and Means Subcommittee on Trade held a hearing entitled, "Advancing America's Interests at the WTO's 13<sup>th</sup> Ministerial Meeting." The hearing included witness testimony from former [Deputy U.S. Trade Representative \(USTR\) Shea](#), [Bobby Hanks](#) of the USA Rice Federation, [Eddie Sullivan](#) of SAB Biotherapeutics, [Bruce Hirsh](#) of Tailwind Global Strategies, and [Kelly Ann Shaw](#) of Hogan Lovells. In his [opening remarks](#), former Deputy USTR Shea stated that WTO's lack of critical reforms has hindered the effectiveness of its Ministerial Conferences, concluding that "it seems that very little has changed in Geneva that would signal a sustained upward trajectory for the organization" and that "recent dispute settlement panel decisions ... have set the WTO back further." He added that the U.S. must push for an extension on the current moratorium on duties for electronic transmissions. Notably, he stated that "the prospects of establishing a permanent moratorium at MC13 are remote, [but] another two-year extension combined with a robust work program would be a good outcome."

Chairman Smith (R-NE) outlined in his [opening statements](#) his perspective on key U.S. objectives at the World Trade Organization's (WTO) 13<sup>th</sup> Ministerial Conference (MC13). Specifically, Chairman Smith expressed deep frustration with the Biden Administration's decision to withdraw "robust digital trade proposals from the 'Joint Initiative on E-commerce' negotiations at WTO," adding that "these rules – which received overwhelming bipartisan support in the U.S.-Mexico-Canada Agreement – are key to U.S. innovation leadership." He added in his remarks that the Biden Administration should negotiate "aggressively" regarding the second phase of WTO's Fisheries Agreement to address exploitative practices in China and other countries. Further, Chairman Smith also expressed opposition to the expansion of IP waivers for COVID-19 diagnostics and therapeutics under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement at the hearing, stating that "such a move would be as harmful as it is illogical."

Days prior to the hearing, four House Democrats issued a [letter](#) to USTR Tai calling for the extension and expansion of TRIPS waivers for COVID-19 vaccines, therapeutics, and

diagnostics. The letter, which was signed by Representatives Schakowsky (D-IL), Doggett (D-TX), Garcia (D-IL), and DeLauro (D-CT), argues that USITC's October 2023 [report](#) on COVID-19 therapeutics and diagnostics under TRIPS "makes it clear that there is no reason for continued U.S. inaction on this issue." The four members maintain that the lack of accessible therapeutics and diagnostics in developing nations is a "key factor driving the transmission of COVID-19" and has driven "the resurgence of new variants of COVID-19 that threaten not only the citizens of these countries but those of all nations." The letter ends by calling on USTR Tai to prioritize a proposal at MC13 to "extend the June 2022 WTO Decision on the TRIPS Agreement to also cover COVID treatments and tests" to ensure the "health and well-being of those in developing nations, and in our own."

## **Biden Administration Appears Set to Impose New Executive Order on Foreign Acquisition of U.S. Consumer Data**

### *Key Points:*

- *The Biden Administration is set to impose restrictions on U.S. data flow to countries of concern next week.*
- *The restriction would only apply to data that is covered under national security concerns.*

The Biden Administration is reportedly set to release an executive order (EO) as soon as next week that would restrict foreign adversaries' ability to procure bulk data on American citizens. The executive order, which aims to particularly curtail the People's Republic of China's (PRC) mass collection of U.S. consumer data, would direct the U.S. Attorney General to coordinate with the Department of Homeland Security on issuing restrictions on bulk data transactions with countries of concern if they constitute as national security threats. The EO particularly aims to curb the PRC's artificial intelligence training capabilities while mitigating economic impacts. The Treasury Department, the State Department, and the Commerce Department would also be tasked under the current draft of the EO with assessing the potential economic impacts of restricting data transactions.

*For more information about trade issues you may [email](#) or call Christopher Hatcher at 202-659-8201. Noah Hawkins contributed to this section.*