
Biden Orders Reviews of Critical Supply Chains

February 25, 2021

On Wednesday, February 24, 2021, President Biden signed an [Executive Order](#) (Order) directing a series of reviews of global supply chains—the latest government effort to create more resilient and secure supply chains for critical materials and goods. The reviews will involve multiple departments within the Executive Branch and will implicate a broad range of policy-related concerns, including defense, intelligence, health, climate, the economy, geopolitics and human rights. While the Order does not single out any country in particular, it will likely focus on China, whose dominance of key supply chains is widely perceived as imperiling US economic and national security, as well as other nations “that are, or are likely to become, unfriendly or unstable.”

In addition, this week Senate Democratic leadership announced a complementary legislative initiative to strengthen supply chains and competitiveness for the US semiconductor industry and other high-tech sectors, as discussed further below.

The Executive Branch supply chain reviews will likely generate specific policy recommendations related to reshoring, developing domestic supplies and enlarging stockpiles, and enhancing access to financing, among other actions. Companies in any industry with strategic significance—including semiconductors, artificial intelligence, 5G, autonomous vehicles, healthcare, pharmaceuticals, defense, renewable energies, mining, transportation and industrial food production—should stay abreast of developments in this area and ensure that their equities are taken into account as the policymaking develops.

Executive Order on America’s Supply Chains

The Order calls for three categories of Executive Branch reports on supply chain security, which will likely inform future rulemaking and legislation.

First, the Order directs a 100-day review across federal agencies to assess the vulnerabilities of global supply chains for four industries crucial for American competitiveness. For each sector, the Order directs the responsible agency head to provide policy recommendations to address the articulated supply chain risks. In particular, the Order directs:

- the Secretary of Commerce to submit a report on the risks in the supply chains for *semiconductor manufacturing and advanced packaging*;

- the Secretary of Energy to submit a report identifying risks in the supply chain for *high-capacity batteries*, including those used for electric vehicles;
- the Secretary of Defense to submit a report identifying risks in the supply chain for *critical minerals* and other identified strategic materials, including rare earth elements (critical minerals and rare earth elements in this context include commodities vital to economic prosperity and national security like cobalt, graphite, uranium and *dozens of others*); and
- the Secretary of Health and Human Services to submit a report identifying the risks in the supply chain for *pharmaceuticals and their active ingredients*.

Second, the Order requires Executive Branch agencies to undertake a series of one-year reviews, called “Sectoral Supply Chain Assessments,” of a broad set of US supply chains. In particular, the Order requires:

- the Secretary of Defense to submit a report on supply chains for *the defense industrial base*, including identifying where civilian supply chains are dependent upon “competitor nations”;
- the Secretary of Health and Human Services to submit a report on supply chains for *the public health and biological preparedness industrial base*, complementing ongoing work to ensure pandemic supply chain resilience;
- the Secretary of Commerce and the Secretary of Homeland Security to submit a report on supply chains for critical sectors and subsectors of *the information communications technology (ICT) industrial base*, including the industrial base for the development of ICT software, data and associated services;
- the Secretary of Energy to submit a report on supply chains for *the energy sector industrial base*;
- the Secretary of Transportation to submit a report on supply chains *for the transportation industrial base*; and
- the Secretary of Agriculture to submit a report on supply chains for *the production of agricultural commodities and food products*.

Each Sectoral Supply Chain Assessment must address a broad set of risks, including “the defense, intelligence, cyber, homeland security, health, climate, environmental, natural, market, economic, geopolitical, human-rights or forced-labor risks or other contingencies” that may weaken supply chains.

The agencies must review, among other things, critical goods and materials within each supply chain; what manufacturing capabilities are required to produce them; the locations of key manufacturing and production assets; the availability of substitutes; the state of the US workforce; the role of transportation systems in supporting supply chains and industrial bases; and actions taken by allies and partners and avenues for possible international engagement, in consultation with the State Department.

Recommendations may include reshoring supply chains “sustainably” and developing domestic supplies, identifying alternative supply chains with the cooperation of allies and partners, establishing redundancy in domestic supply chains, stockpiling materials, developing the requisite

workforce capabilities, enhancing access to financing, supporting expanded research and development to broaden supply chains, addressing cybersecurity risks, addressing risks posed by climate change, and others.

Third, the Order requires, as soon as practicable following the submission of the Sectoral Supply Chain Assessments, reports making recommendations on (among other things) strengthening the resilience of America's supply chains; reforms needed to make these actions more effective (including through legislative, regulatory and procedural means); the possible establishment of a quadrennial supply chain review; diplomatic, trade and other actions to "engage allies and partners to strengthen supply chains jointly"; reforms to domestic and international trade rules; and education and workforce policy reforms to strengthen the domestic industrial base.

National Security Advisor Jake Sullivan and Director of the National Economic Council Brian Deese will oversee all three categories of assessments. The Order directs agency heads to consult as appropriate with external stakeholders, including those in industry, academia, NGOs, labor unions, local governments and others. In addition, the White House [stated](#) that it intends to solicit input from Congress.

At several points, the Order highlights the importance of allied engagement—suggesting that supply chains can be secured not only through domestic US production but also by using foreign sources of supply in friendly countries. For example, the Order states that "close cooperation on resilient supply chains with allies and partners who share our values will foster collective economic and national security and strengthen the capacity to respond to international disasters and emergencies." In addition, the Order requires the Sectoral Supply Chain Assessments to include a review of allied and partner actions and possible avenues for international engagement. This echoes a theme President Biden advanced as a candidate, when he [wrote](#) of an "alliance of values" with NATO and pledged to "join together with fellow democracies" to counter China and "lead in forging a technological future that enables democratic societies to thrive and prosperity to be shared broadly." The Administration's emphasis on international coordination could lead it to exercise caution in recommending steps that could be perceived as inconsistent with the United States' international obligations, whether under World Trade Organization rules, free trade agreements, bilateral investment treaties or otherwise.

Complementary Legislative Initiative

On Tuesday, February 23, 2021, Senate Majority Leader Chuck Schumer (D-N.Y.) [announced](#) that he had directed lawmakers to craft legislation investing in the US semiconductor industry and other high-tech sectors. With respect to semiconductors in particular, Leader Schumer stated that the legislation should protect the semiconductor supply chain and enable the United States to "outcompete China and stop depending on foreign sources." Leader Schumer also stated that the legislation should ensure continued US leadership in artificial intelligence, quantum computing and biomedical research, among other areas.

A bipartisan predecessor bill, known as the [Endless Frontier Act](#) (introduced in May 2020), proposed a \$100 billion effort to invest in research in certain key technology focus areas, as well as \$10 billion

for at least 10 regional technology hubs to support R&D in such technologies and support regional economic development.

Broader Context for Supply Chain Policy Initiatives

Recent supply chain disruptions, as well as steps taken by foreign actors, have heightened concerns about latent vulnerabilities and their implications for economic and national security. For example, this year, a global shortage in semiconductors has driven several major American auto manufacturers to reduce production and manpower. In 2020, during the early stages of the COVID-19 pandemic in the United States, shortages of facemasks and other personal protective equipment and pharmaceuticals complicated and delayed the public health response. Moreover, according to recent press reports, China is exploring the possibility of imposing limits on the export of rare earth minerals needed for key defense systems, including the American F-35 fighter jet program.

Over the past two years, a broad bipartisan effort has been underway to revisit the globalization of supply chains integral to the free trade regime that has prevailed, with the support of both US political parties, for decades. WilmerHale discussed this issue in a September 2020 white paper, “[US Decoupling From China and the Onshoring of Critical Supply Chains](#),” and serialized in [Law360](#). Policy moves in this direction began in the Trump Administration and have thus far continued in the Biden Administration—and not only with the Order on supply chains. For example, days after taking office, President Biden [signed an Executive Order](#) to strengthen the “Made in America” provisions that encourage the government to purchase and direct financial assistance to goods and services that are produced in the United States.

WilmerHale’s International Trade, Defense-National Security and Public Policy Groups will continue to monitor US government actions related to supply chains and China and provide strategic advice to affected businesses.

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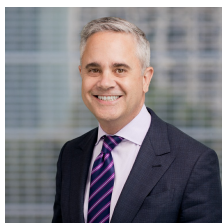
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