

The White House Launches Supply Chain Initiatives on Essential Items

SEMICONDUCTORS, BATTERIES, CRITICAL MINERALS, ACTIVE PHARMACEUTICAL INGREDIENTS, INFRASTRUCTURE, JOBS, AND MORE

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On June 8, 2021, the White House released its 250-page “Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth” report (the Report) and an accompanying fact sheet entitled: “Fact Sheet: Biden-Harris Administration Announces Supply Chain Disruptions Task Force to Address Short-Term Supply Chain Discontinuities” (Fact Sheet). The Report and Fact Sheet highlight vulnerabilities in critical U.S. supply chains and propose a “whole-of government” approach to addressing these vulnerabilities.

In the near-term, the Administration will establish task forces comprised of public and private entities to diagnose existing problems and develop solutions. Long-term focuses of the Report and Fact Sheet generally include expanded funding for domestic production and innovation; development of emerging industries; government procurement and research; stronger trade enforcement; and greater cooperation with foreign allies.

I. Peril and Promise: The Current State of U.S. Supply Chains

The Report and Fact Sheet highlight the United States’ increasing import dependence on essential items including the four sectors outlined in Executive Order 14017: semiconductor manufacturing and advanced packaging, large capacity batteries, critical minerals and materials, and pharmaceuticals and active pharmaceutical ingredients (APIs). For example, these documents note that the United States now produces only 12% of the world’s semiconductors – down

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from 37% of global production 20 years earlier. Moreover, much of the global large capacity battery supply chain – including raw material mining and purification, cell manufacturing, pack manufacturing, and recycling – has been dominated by the People’s Republic of China through extensive financial support from the Chinese government to Chinese industries.

In general, the Report and Fact Sheet trace supply chain vulnerabilities, including insufficient U.S. manufacturing capacity, misaligned incentives in private markets, geographic concentration in global sourcing, harmful economic policies in foreign countries, and a lack of international coordination between the federal government, private sector, and in some cases foreign allies. Further, the Report notes that unfair trade practices such as massive subsidization of industries by the Chinese government, as well as unjust labor practices, contribute heavily to the deterioration of these critical supply chains.

Despite the vulnerable state of U.S. supply chains, the Administration’s report outlines reasons for optimism that the United States can strengthen domestic production. The Administration underscores that the United States is “well-positioned” to rehabilitate vulnerable supply chains through strong research institutions, a skilled and diverse workforce, innovative businesses, and robust global partnerships. The Administration envisions working closely with industry to increase supply chain health, growth, and security through federal incentives, funding, and information sharing.

II. Short-Term: Federal Funding for Innovative Technologies and the Supply Chain Disruptions Task Force

The Administration’s most immediate action will be to partner with industry participants to address existing shortages. The Administration states in its Fact Sheet that it will establish a “Supply Chain Disruptions Task Force” (the Task Force) to analyze and propose remedies for current vulnerabilities in critical supply chains. The Departments of Commerce, Transportation, and Agriculture will lead the Task Force and bring together private and public entities with expertise in resolving “bottlenecks and supply constraints.” Specifically, the Task Force will focus on the homebuilding and construction, semiconductor, transportation, and agricultural and food industries, as well as the related upstream and downstream sectors. While this Task Force is largely a response to COVID-19, it will provide private entities with an opportunity to identify pre-existing constraints in these supply chains. The Administration will also begin to aggregate supply and demand data from across federal agencies and make this data available to the public. The Fact Sheet further calls for the launch of a Battery Roundtable, led by the Department of Energy, to develop a growth strategy for a highly-advanced lithium-ion battery supply chain over the course of the next 10 years.

Overall, the focuses of the Administration’s efforts are to improve federal agency coordination, enhance public-private partnerships, increase federal government funding for critical industries and R&D (through existing loan programs at the Departments of Energy and Defense for example, and the creation of new programs under the Development Finance Corporation and the Export-Import Bank), enhance opportunities for small and disadvantaged businesses, and create high-skilled and high-paying American jobs. Among the federal funding proposals are more than \$50 billion for investments in semiconductor R&D; \$20 billion to support development and deployment of electric vehicles through the Department of Energy; \$17 billion for

critical materials and minerals and facilities in the battery supply chain; and \$50 billion to support supply chain resiliency through the establishment of a dedicated government office.

III. Long-Term: Addressing Root Causes of Supply Chain Disruptions

The Report and Fact Sheet also recognize the role of trade in creating unstable domestic supply chains. In general, the Administration identifies subsidization as a primary culprit for degraded U.S. manufacturing, where foreign governments flood the U.S. market with subsidized products to drive out U.S. competition. The Report and Fact Sheet's recommendations include the creation of a wholesale review of foreign trade practices affecting critical U.S. supply chains and development of policies to increase supply chain resilience. Unfair trade practices ultimately threaten national security because important sectors are diminished or eliminated and, so, the Administration recognizes that such practices must be countered in order to create sustainability in supply chains.

To this end, the Administration calls for the creation of a Trade Strike Force, led by the United States Trade Representative (USTR), which will propose unilateral and multilateral enforcement actions against unfair foreign trade practices that erode critical U.S. industries. The Administration also announced that it is evaluating a potential Section 232 investigation into imports of neodymium permanent magnets into the United States and their impact on national security, given the United States' significant import reliance and the importance of this magnet to motors and other devices used in the defense and civilian sectors. Based on the outcome of this review, it is possible that the Administration may also open similar investigations into other products that are vital to national security.

Other measures focus on the government's ability to spur economic, manufacturing, and R&D growth through government procurement authorities under the Buy American Act, federal acquisition regulations and practices, and federal grants for science and climate R&D. The Administration is also encouraging the Department of Labor to provide Employment and Training Administration funds to prevent labor shortages in advanced manufacturing.

These measures apply broadly across all sectors, but more detailed, industry-specific plans can be found in the Report as well as the accompanying Fact Sheet.

Wiley has a robust Supply Chain practice, as well as unparalleled experience and expertise in International Trade, National Security, Telecom, Media & Technology, Environmental Law, Food & Drug, Government Contracts, and Trade Analytics, and can help clients navigate evolving supply chain developments. For more information about the Report, Fact Sheet, and related Executive Orders, please contact one of the attorneys listed on the alert.

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