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## President Biden Orders Comprehensive Supply Chain Review

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### Articulates Administration Policy And Reaffirms Need For “Strong, Resilient Supply Chains” For “Critical And Essential Goods And Materials”

On February 24, 2021, President Joseph R. Biden Jr. signed an Executive Order on America’s Supply Chains (the “America’s Supply Chains E.O.” or the “E.O.”). In remarks at the White House, President Biden described critical supply chain security as an area of “concern to our economic security, as well as our national security[.]” He also stated that the E.O. builds upon bipartisan Congressional action concerning supply chain issues to ensure that “the United States can meet every challenge we face in this new era – pandemics, but also in defense, cybersecurity, climate change, and so much more.” National Security Council Senior Director of International Economics and Competitiveness Peter Harrell also described the essence of the E.O. as ensuring that “America leads in making next-generation electric vehicles; pharmaceuticals and active pharmaceutical ingredients — the key ingredients to American medicines; and critical minerals and strategic materials, such as rare earth minerals that are essential to American industry and to America’s defense base.”

#### Administration Policy

The America’s Supply Chains E.O. includes a Statement of Policy carrying forward many justifications for strengthening the domestic supply chain against the impact of “pandemics and other biological threats, cyber-attacks, climate shocks and extreme weather events, terrorist attacks, geopolitical and economic competition.” These threats “can reduce critical manufacturing capacity and the availability and integrity of critical and essential goods, products, and services.” E.O. at § 1. A notable departure from the Trump Administration’s approach to international trade issues (including supply chain risks) is a statement 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.” *Id.*

As a practical matter, this Statement of Administration Policy articulates many of President Biden’s campaign themes on this topic.

### **Immediate Analysis Of Key Supply Chains**

The E.O. requires that President Biden’s advisers for national security and economic affairs complete a review, in consultation with relevant department agencies, within 100 days of four key supply chains:

- (1) Semiconductor Manufacturing and Advanced Packaging (to be prepared by the Secretary of Commerce);
- (2) High-Capacity Batteries, Including Electric Vehicle Batteries (to be prepared by the Secretary of Energy);
- (3) Strategic and Critical Minerals (to be prepared by the Secretary of Interior and Secretary of Defense); and
- (4) Pharmaceuticals and Active Pharmaceutical Ingredients (“API”) production (to be prepared by the Secretary of Health and Human Services). See E.O. at § 2.

A key purpose of the reports will be to assess the resiliency and capacity of the U.S. manufacturing and defense industrial base to support national security and emergency preparedness, particularly with regard to critical minerals (e.g., rare earths), for which the White House’s Fact Sheet expresses the need for the United States “to ensure we are not dependent upon foreign sources or single points of failure in times of national emergency.” In fact, the E.O. broadly construes the meaning of supply chain “when used with reference to minerals” so as to include “the exploration, mining, concentration, separation, alloying, recycling, and reprocessing of minerals.” *Id.* at § 6(e).

The immediate assessment of resiliency and capacity also presents unique challenges and opportunities for emerging and other leading-edge technologies that already are the subject of intense global competition, such as semiconductors, electric vehicle batteries, and 5G spectrum telecommunications technologies. This highlights the critical need for affected industries actively to participate in the process as supply chain policy matters continue to take shape in the months and years ahead.

The E.O. requires the preparation of an “unclassified report with policy options” (and a classified annex, if needed) that assesses several topics, including the following:

- **Critical Goods And Materials** – Identify the goods and raw materials currently defined under statute or regulation as “critical” materials, technologies, or infrastructure relating to “the supply chain in question”;
- **Other Essential Goods And Materials** – Identify other goods and materials that are essential to national and economic security, emergency preparedness, or to advance the policy of the E.O., that are not defined as “critical” under Federal law;
- **Capabilities** – Identify “the manufacturing or other capabilities necessary to produce critical or essential goods and materials;
- **Risks** – Identify “the defense, intelligence, cyber, homeland security, health, climate, environmental, natural, market, economic, geopolitical, human-rights or forced-labor risks or other contingencies that may disrupt, strain, compromise, or eliminate the supply chain — including risks posed by supply chains’ reliance on digital products” and risks resulting from the “failure to develop” domestic production capabilities in a particular supply chain;



- **Resiliency** – Assess “the resiliency and capacity of the American manufacturing supply chains and the industrial and agricultural base” of the U.S. to support national and economic security, emergency preparedness,” and the goals of the Biden Administration’s policy on supply chain security;
- **Allied Actions** – Identify “whether United States allies and partners have also identified and prioritized” similar critical or essential goods and materials;
- **Causes** – Identify the “causes of risk” for vulnerable supply chains;
- **Priorities** – Develop priorities for the critical and essential goods and materials to inform options and policy recommendations that are in accordance with law and with Administration policy;
- **Options** – Identify “specific policy recommendations for ensuring a resilient supply chain” for each sector, including reshoring, enhancing domestic supply options, “cooperating with allies to identify alternative supply chains, building in redundancy into domestic supply chains, [and] ensuring and enlarging stockpiles”, among other topics;
- **Reforms** – Recommend “any executive, legislative, regulatory, and policy changes and any other actions” to effectuate the supply chain goals of the E.O.; and
- **Proposals** – Present “proposals for improving the Government-wide effort to strengthen supply chains, including proposals for coordinating actions required under this order with ongoing efforts.”

E.O. at § 3.

**Sectoral Supply Chain Assessments Of Defense, Public Health, Information And Communications Technology, Energy, Transportation, And Agricultural/Food Industrial Bases**

Within one year, the America’s Supply Chains E.O. also requires the preparation of the following sectoral-specific supply chain assessments:

- (1) Defense Industrial Base (to be prepared by the Secretary of Defense);
- (2) Public Health and Biological Preparedness Industrial Base (to be prepared by the Secretary of Health and Human Services);
- (3) Information and Communications Technology (“ICT”) Industrial Base (to be prepared by the Secretary of Commerce and the Secretary of Homeland Security);
- (4) Energy Sector Industrial Base (to be prepared by the Secretary of Energy);
- (5) Transportation Industrial Base (to be prepared by the Secretary of Transportation); and
- (6) Production of Agricultural Commodities and Food Production (to be prepared by the Secretary of Agriculture).

See E.O. at §§ 4(a)(i-vi).

**General Review And Recommendations**

In addition, the E.O. requires the preparation of additional reports to President Biden “as soon as practicable following the submission of the” sectoral-specific reports. These reports must review “the actions taken over the previous year and” present recommendations on several topics, including: (1) steps to strengthen the resilience of U.S. supply chains; (2) reforms needed to make supply chain analyses and actions more effective, including regulatory, procedural, and institutional design changes; (3) the implementation of quadrennial supply chain reviews;



(4) diplomatic, economic, security, informational, and other actions to engage allies; (5) the insulation of supply chain analysis and actions from conflicts of interest or corruption; (6) reforms to domestic and international trade rules and agreements that constrain supply chain resilience; (7) education and workforce reforms to strengthen the domestic supply chain base; (8) steps to ensure that the policies support small businesses, communities of color, poor areas, and all geographical regions of the United States; and (9) Federal incentives for investment in critical goods and materials.

**Consultation With External Stakeholders**

The E.O. further requires the Biden Administration to “consult outside stakeholders – such as those in industry, academia, non-governmental organizations, communities, labor unions, and State, local, and Tribal governments.” Deputy Director of the National Economic Council Sameera Fazili emphasized this aspect of the E.O. at the press briefing by stating that “this work is going to require a new commitment to public-private partnerships, and we need all voices at that table to help us design those partnerships.”

In sum, the America’s Supply Chains E.O. continues the recent, bipartisan trend in the United States to articulate and address concerns about the current status of several key supply chains that are relevant to the national, economic, and health security of the United States. There are some notable differences in the Biden Administration’s approach, however, such as the inclusion of “climate shocks and extreme weather events” and “human rights or forced-labor risks” among the “risks or other contingencies” that threaten the availability of critical goods and materials. The E.O. requires relevant agencies to prepare extensive reports on numerous topics. Although the full extent to which these reports will actually shape U.S. policy on supply chain resiliency matters is still to be determined, it is clear that the E.O. will comprise just one piece of a much larger series of actions in the Executive and Legislative Branches that will be required to address potential areas of concern.

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