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Biden Administration Issues 100-Day Supply Chain Report

Industry-Specific Primer – Semiconductor Manufacturing And Advanced Packaging

On June 8, 2021, the Biden Administration issued the reports mandated by the Executive Order on America’s Supply Chains (the “America’s Supply Chains E.O.” or the “E.O.”), which directed the federal government to assess the supply chains of four critical products: (1) semiconductor manufacturing and advanced packaging; (2) large capacity batteries; (3) critical minerals and materials; and (4) pharmaceuticals and active pharmaceutical ingredients (“APIs”). On June 8, the Biden Administration also issued a [Fact Sheet](#) and held a [press briefing](#) about the reports.

The reports were consolidated into [one document](#) (the “100-Day Report”) that also includes a summary of key takeaways for all four designated critical supply chains. As we wrote in [February](#), the 100-day reports will be followed by six additional sector-specific supply chain assessments that are due by February 24, 2022, which is the one-year anniversary of E.O. 14017.

This Industry-Specific Primer focuses on the “**Semiconductor and Advanced Packaging Manufacturing**” report that was coordinated by the U.S. Department of Commerce (the “Semiconductor Report”). This document is one of four Industry-Specific Primers on each critical supply chain that was covered in the Biden Administration’s 100-Day Report. As discussed below, the 100-Day Report contains important recommendations and funding proposals designed to address current shortcomings – and to create new opportunities in – the semiconductor sector, which plays an important role in the economic and national security of the United States and its global allies and partners.



GENERAL FINDINGS OF THE 100-DAY REPORT

The combined 100-Day Report contains an Executive Summary that identifies common vulnerabilities and policy recommendations across each of the four critical supply chains.

- **Insufficient U.S. manufacturing capacity:** According to the report, the United States lacks sufficient manufacturing capabilities in each of the identified key sectors for a variety of reasons, including competition from low-wage nations and stagnating productivity that impacts opportunities for continued innovation.
- **Misaligned incentives and short-term thinking in private markets:** The Biden Administration found that short-term profit concerns, such as low-wage workforces and stock buybacks, negatively impacted productivity and reduced long-term investments, such as research and development (“R&D”) and new facilities.
- **Industrial policies adopted by allies and competitor nations:** The report concluded that industrial policies adopted by the EU, Taiwan, South Korea, Singapore, and China (especially) have hurt U.S. competitiveness. The report specifically cites semiconductor industrial policies implemented by Taiwan, South Korea, and Singapore, among global allies and partners. As to geopolitical competitors, the report notes that China “stands out for its aggressive use of measures—many of which are well outside globally accepted fair trading practices—to stimulate domestic production and capture global market share in critical supply chains.”
- **Geographic concentration in global sourcing:** The report states that the search for low-cost production and intensive efforts to attract investment by other nations “has led to geographic concentrations of key supply chains in a few nations, increasing vulnerabilities for United States and global producers.” As one example, the report notes that the global economy is dependent on Taiwan for 92 percent of leading-edge semiconductor production.
- **Limited international coordination:** According to the report, the United States “cannot manufacture all needed products at home” and “has not systematically focused on building international cooperative mechanisms to support supply chain resilience.”

The Biden Administration’s Executive Summary of the four reports includes the following recommendations:

- **Rebuilding domestic production and innovation capabilities:** Public funding should be allocated for investments in manufacturing and R&D related to the four critical products, including at least \$50 billion to expand domestic manufacturing of semiconductors and other investments under the Biden Administration’s American Jobs Plan. The Biden Administration also recommends: (1) the establishment of a Supply Chain Resilience Program at the Department of Commerce to “monitor, analyze, and forecast supply chain vulnerabilities and partner with industry, labor, and other stakeholders to strengthen resilience”; (2) the establishment of an interagency Defense Production Act (“DPA”) Action Group “to recommend ways to leverage the authorities of the DPA to strengthen supply chain resilience”; and (3) development of an Export-Import Bank Domestic Financing Program “to support the establishment and/or expansion of U.S. manufacturing facilities and infrastructure projects in the United States that would support U.S. exports.”
- **Leverage Buy American requirements and government investment in critical products:** Critical products should be identified and receive additional preference for government purchases under the Buy American Act and Federal Acquisition Regulatory Council regulations. The report also recommends “updat[ing] manufacturing requirements in federal grants, cooperative agreements and R&D contracts to ensure that taxpayer funded R&D leads to products made in the United States.”



- **Create a new “trade strike force” to strengthen international trade rules, including trade enforcement mechanisms:** The U.S. Trade Representative should establish and lead a “trade strike force” to “identify unfair foreign trade practices that have eroded U.S. critical supply chains and to recommend trade actions to address such practices.” The Biden Administration also recommends the initiation of an investigation under Section 232 of the Trade Expansion Act of 1962 on imports of neodymium magnets, indicating a willingness to continue aggressive trade enforcement actions on national security grounds.
- **Monitor near-term supply chain disruptions as the economy reopens from the COVID-19 pandemic:** A new Supply Chain Disruptions Task Force should be established and led by the Department of Commerce that will “provide an all-of-government response to address near-term supply chain challenges to the economic recovery” and focus on key industries that have faced pervasive supply issues during the pandemic, such as “homebuilding and construction, semiconductors, transportation, and agriculture and food.” In addition, the Biden Administration recommends that the Department of Commerce leverage data from across the federal government “to improve the federal government’s ability to track supply and demand disruptions and improve information sharing between federal agencies and the private sector to more effectively identify near term risks and vulnerabilities.”

KEY ASPECTS OF THE SEMICONDUCTOR AND ADVANCED PACKAGING REPORT

The Semiconductor Report identifies eight risks to the U.S. semiconductor industry: (1) fragile supply chains; (2) malicious supply chain disruptions; (3) use of obsolete and generations-old semiconductors and related challenges to the continued profitability of companies in the supply chain; (4) customer concentration and geopolitical factors; (5) electronics production network effects; (6) human capital challenges; (7) intellectual property theft; and (8) challenges in capturing the benefits of innovation, aligning private and public interests.

In response to these risks, the Semiconductor Report makes several recommendations, including the following:

- **Industry and ally collaboration:** The Department of Commerce should stimulate collaboration by semiconductor industry stakeholders to foster information sharing and investment opportunities. The Semiconductor Report also recommends that the United States work with its allies and partners to support increased production in the United States, including through commercial diplomacy, to promote investments by foreign firms in the United States and insulate domestic manufacturers from harms that are caused by unfair trade practices and industrial policies.
- **Advance the adoption of supply chain management and security:** Semiconductor companies should take action to address supply chain risks, including natural disasters and counterfeits. Recommendations also include involving the National Institute of Standards and Technology (“NIST”) in contingency planning for disrupted supply chains and diversifying sources.
- **Increase funding, both domestic and international:** Congress should provide at least \$50 billion in funding for the CHIPS for America provisions of the National Defense Authorization Act for Fiscal Year 2021 (“NDAA”) to support manufacturing and R&D. The Semiconductor Report also recommends the funding of a Multilateral Semiconductors Security Fund (“Multilateral Fund”), which is also authorized under the NDAA. The Multilateral Fund would involve U.S. allies in joint R&D programs in coordination with the Department of State and would support diplomatic efforts with foreign partners “to align policies on export controls, foreign direct investment screening, supply chain security, intellectual property protection, and transparency requirements on subsidies.” Notably, Congress is considering the Endless Frontier Act, which includes funding for the CHIPS provisions and



other initiatives supporting the U.S. semiconductor industry. The Endless Frontier Act's semiconductor initiatives are extensive and will be addressed in future alerts as developments warrant.

- **Strengthen the domestic semiconductor manufacturing ecosystem:** The U.S. government should foster domestic semiconductor manufacturing by undertaking actions such as: (1) investing in critical infrastructure that will drive semiconductor production; (2) leveraging public funds to support private sector investments in semiconductor manufacturing, R&D, and upstream and downstream industries; and (3) providing support to the Department of Defense on national security-related aspects of semiconductor testing.

The Semiconductor Report also urges government and industry collaboratively to make significant investments to grow and diversify the STEM talent pipeline and train workers for the semiconductor industry.

- **Export controls and foreign investment reviews to protect U.S. technological advantage:** The United States “should target and implement export controls on critical semiconductor equipment and technologies to address certain supply chain vulnerabilities,” and the Biden Administration should coordinate U.S. export controls with key supplier allies. In this regard, the Biden Administration intends to “protect U.S. national security interests by limiting advanced semiconductor capabilities in countries of concern while enabling continued leadership of the U.S. semiconductor sector.”

The Semiconductor Report also recommends that the Committee on Foreign Investment in the United States (“CFIUS”) continue to consider certain factors in its risk assessments of foreign investments. In particular, CFIUS should continue to consider “the impact of [a proposed] transaction on the national security vulnerabilities” in the semiconductor industry and should “conduct robust outreach as appropriate with foreign partners to share information regarding industry and acquisition trends and threats as well as to encourage allies and partners to implement robust national security-based investment screening regimes.”

KEY TAKEAWAYS

The Semiconductor Report sends a clear message to industry stakeholders regarding the current shortcomings and potential opportunities in the domestic supply chain. The report details a critical need for public and private investment in semiconductors and advanced packaging manufacturing, including through Congressional appropriations and CFIUS scrutiny of potential foreign investments in this industry segment. Affected companies and other stakeholders should be taking steps now to shape the legal and policy landscape in their favor as this process continues to unfold.



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