

President Biden Signs EO to Strengthen Critical Supply Chains

February 25, 2021

On February 24, 2021, President Biden signed an executive order (EO) instituting a formal, whole-of-government strategy to develop more resilient and secure supply chains across the United States. The EO calls for a comprehensive review of domestic production, research and development capabilities, and the formulation of strategies to strengthen critical sectors. The intended outcome is to protect U.S. industries from “[p]andemics and other biological threats, cyber-attacks, climate shocks and extreme weather events, terrorist attacks, geopolitical and economic competition, and other conditions [that] can reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services.” The potential outcomes from the EO reviews could include: changes to domestic and international trade policy, implementing federal incentives and procurement, education and workforce reforms, changes in federal law and regulation, and engaging allies and partners to strengthen supply chains.

Companies that supply the information and communications technology sector, the energy sector, the defense industrial base, and other identified sectors should consider informing policymakers in the relevant agencies.

What the EO does:

The EO institutes a two-track parallel examination of supply chain vulnerabilities: (1) a targeted, 100-day review of four key industries, and (2) a one-year comprehensive review of a broader range of industries.

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More specifically, the initial 100-day review directs federal agencies to measure the viability of domestic supply chains against the United States' import reliance, with particular emphasis on imports from foreign sources that are most vulnerable to supply chain disruptions. The 100-day review will focus on sectors that are integral to U.S. national security, including active pharmaceutical ingredients (APIs), critical minerals and rare earth elements, semiconductors, and large capacity batteries, such as those used in electric vehicles.

The second, one-year review will focus on measuring the health and resilience of the defense industrial base; the public health and biological preparedness industrial base; the information and communications technology (ICT) industrial base; the energy sector industrial base; the transportation industrial base; and supply chains for agricultural commodities and food production. It will require federal agencies to review risk factors within the supply chain and industrial base, identify locations of key manufacturing and production assets, the availability of substitutes and alternative sources, and the state of the workforce and skill gaps across these sectors.

What Does It Mean for Industry?

Notably, the EO directs the government to consult widely with outside stakeholders, including industry. The reviews and feedback the Biden Administration receives, as a result, could help shape future policy in the areas of easing regulatory burdens on companies, countering unfair trade practices of foreign competitors, incentivizing domestic investments, and instituting economic policies to broaden the consumer base for domestically manufactured goods.

This initiative creates an important opportunity for companies to advocate to the U.S. government for forward-leaning policies that expand growth opportunities in both the domestic and export market. Companies in the identified sectors should consider informing federal agency policymakers of relevant constraints to their competitive positions and supply chains. Where the EO identifies certain sectors, companies should keep in mind that the specific supply chain challenges they face may also extend to upstream supply sources as well as the downstream customer base. These factors should inform their advocacy strategy. Further, industries should evaluate their growth challenges not only in the immediate-term but also in the medium- and long-term, in order to inform the government of policies that are needed to stimulate economic expansion.

As the EO recognizes, securing critical U.S. supply chains will require a coordinated approach involving federal agencies and Congress. The move builds on new and existing authorities, including the Creating Helpful Incentives to Produce Semiconductors for America (CHIPS) Act, which was included in the FY 2021 National Defense Authorization Act (NDAA), the Defense Production Act, International Development Finance Corporation (DFC), Department of Energy's (DOE) financing programs, and efforts at the federal level to ensure that key supply chains and the resilience of the defense industrial base.

Wiley has a robust Supply Chain practice, as well as unparalleled experience and expertise in International Trade, National Security, Government Contracts, Telecom, Media & Technology, and Trade Analytics, and can help clients navigate evolving supply chain developments. For more information about the EO, please contact one of the attorneys listed on the alert. Wiley's multidisciplinary team has been helping companies with

shifting export controls, entity listings, various U.S. Department of Commerce (DOC) information and communications technology and services (ICTS) supply chain regulations, the Federal Acquisition Security Council, Federal Communications Commission (FCC) supply chain activities, and procurement restrictions such as Section 889 and new NDAA restrictions.