

## SPOTLIGHT REPORT

September 21, 2023

## Biden's EV Policy Charges Up

**What's Happening:** Electric vehicles (EVs) are transitioning from an industry in its infancy to a more established one, and supporting this transition is a top priority of President Biden.

**Why It Matters: Biden has a lot riding on the success of EVs.** His re-election campaign is based on the accomplishments of "[Bidenomics](#):" first and foremost, the Inflation Reduction Act (IRA), which places EVs at its center. Now that Democrats can no longer pass partisan bills through the budget reconciliation process since they lost unified control of Congress as a result of last year's midterm elections, his administration can only count on the gains provided from the laws they've already passed. **EVs are at the center of Biden's industrial, economic, energy, and climate policies, and these different policy goals are sometimes at tension with one another, as evidenced by [the role that the transition to EVs is playing in the current labor standoff between the United Auto Workers and the Big Three automakers](#).** But manufacturers have to build them and people have to buy and use them if Biden aims to accomplish his goals. So far, that's trending in the right direction. EVs were [seven percent](#) of new car sales in the first half of the year nationally and a whopping 25 percent in California. **Nevertheless, electric cars face a hodgepodge of significant obstacles in the way of becoming a more dominant mode of personal transportation.** The sticks the administration is employing are found in either executive agency rulemaking or waivers provided to states to adopt tougher standards than the federal government. **Agency regulations and waivers must survive an onslaught of legal challenges funneled through a judiciary that is increasingly skeptical of regulatory power.** **Charging infrastructure is also frequently inadequate.** Of the 47 percent of adults who said their next car is unlikely to be an EV in an April [poll](#), almost 80 percent cited a lack of available chargers in the area as a key reason. A University of California study checked 675 chargers in the Bay Area and found over a quarter of them simply [didn't work](#). **Across the Atlantic, an EV trade war between the European Union and China is brewing, as the former announced they're investigating the latter for unfair state subsidies.** China is now the world's largest exporter and purchaser of EVs, in part due to their stranglehold over many parts of the supply chain for making batteries and mining critical minerals. This very dominance means it will be difficult for other manufacturers to wean themselves off of their supply, even as eligibility requirements for subsidies increase and

investigations into unfair labor practices ramp up.

**What's Next: Crucial tax credits and grants that have fueled the explosive growth of electric vehicles and chargers in the US are set to become much stricter starting in 2024.** EVs placed into service after December 31st of this year cannot contain battery components from “foreign entities of concern” to earn the \$7,500 (30D) tax credit; this expands to critical minerals in 2025. **The details and definition of this term will be clarified by forthcoming guidance from the Treasury Department.** Many current car models or charger designs risk losing their eligibility. Also uncertain is whether or not legal objections to the Biden administration’s rules will rise to the Supreme Court. On the other side of the pond, any provisional tariffs on Chinese car imports to come from the European Union Commission would have to be imposed within [nine months](#).

## Supply Chain Woes

The Inflation Reduction Act’s (IRA) tax credits are heralding a new era of electric vehicles (EVs). Coming restrictions on the \$7,500 tax (30D) credit may demote this to a short-lived sugar high. The law is written with eligibility requirements that start small and ramp up over time. The thinking was that EVs need a quick shot in the arm now, but as the industry matures the tax credit should serve a secondary purpose of encouraging domestic manufacturing and [friendshoring](#). **Electric vehicles placed into service after December 31st of this year cannot contain any battery components manufactured by a “foreign entity of concern” if they want to earn the tax credit. Beginning in 2025, an eligible clean vehicle must additionally not contain any critical minerals that were extracted, processed, or recycled by a “foreign entity of concern.”**

**A lot rides on how the Treasury Department and IRS defines those four words.** Note that the ambiguity lies not in which countries make the list (China, Russia, Iran, and North Korea are guaranteed). **It remains to be determined what Treasury considers a foreign entity “owned by, controlled by, or subject to the jurisdiction of a government of a covered nation.”** This clause determines which Chinese corporations can be partnered with or included in the supply chain and which ones cannot. China’s predominance in critical minerals and EV battery production makes this an existential question for automakers.

The CHIPS Act contains a version of this provision and defined it broadly to include:

- any entity formed in China;
- entities formed outside of China where 25 percent or more of voting interests are held directly or indirectly by Chinese state-owned entities, and
- entities formed outside of China that nevertheless are deemed to have a “principal place of business” in China.

**Were the IRS to define the restrictions in the vein of the CHIPS Act, most EVs on the market would not qualify for the tax credit.** The higher than average price of an electric

car is already the [number one concern](#) of prospective buyers. **However, the Treasury Department is free to craft a narrower definition of entity control, which would give American companies more wiggle room in working with Chinese firms.** The Department has previously elected to use generous definitions of free-trade agreements and the calculation of the foreign composition of battery components in considering tax credit eligibility. One particular matter that needs clarification is licensing agreements; for example, **Ford (F)** is licensing technology from Chinese company CATL in building its own factory in Michigan. House Ways and Means Committee Chair Jason Smith (R-MO) is one of many lawmakers eager that tax credits won't end up in the hands of foreign corporations, and pressed Treasury Secretary Janet Yellen on the question in a [letter](#) he sent earlier this month.

Tax policy isn't car manufacturers' only supply chain problem. **A [Washington Post](#) investigation found that some of Tesla's (TSLA) suppliers have connections to Xinjiang and, possibly, to the forced labor that occurs there.** CATL has lithium mining and processing operations in the province as well. **Volkswagen (VWAGY)** was also implicated in the report. The Uyghur Forced Labor Prevention Act, passed into law last year, treats all manufacturing in Xinjiang as tainted by forced labor unless firms can prove otherwise. **Companies are reluctant to self-police too thoroughly due to their reliance on Chinese raw materials and the size of the consumer market there; 40 percent of new Teslas are sold in China.** Firms are free to continue using these supply chains but they remain vulnerable. Increased enforcement or oversight from the federal government poses more than just headline risk. Especially as the 2024 elections ramp up, the push to look tough on China and, for Republicans, to tie IRA funds to China, will increase. Two House committees have [requested](#) documents and communications detailing Ford's connection to CATL, and the Senate Finance Committee has [asked](#) eight carmakers to disclose their links to companies tied to forced labor.

## A Brewing European Trade War

**In recent years, China's production and exportation of electric vehicles has exploded.** China now exports more such vehicles than any other country; [two-thirds](#) of EVs sold globally last year are Chinese-made. The industry as a whole was subsidized by extensive state subsidies (\$57 billion from 2016-2022 per [one](#) estimate) that have been [extended](#) to 2024 (to the tune of \$72 billion).

European carmakers are beginning to feel threatened by Chinese imports. **The European Commission launched an [investigation](#) last week into whether to impose punitive tariffs to protect European Union (EU) producers against cheaper Chinese EV imports it says are benefiting from state subsidies.** It's not clear whether Chinese carmakers are actually engaging in dumping but the larger impetus for the search is a bid to protect domestic brands. Unlike the US or China, the EU has no comprehensive subsidy across the bloc as a whole; rather, subsidization has come through a patchwork of incentives at the national level. The current EU tariff on Chinese auto imports is 10 percent. Reports indicate that urging by the French government was the largest single reason for

the investigation. To understand why, note that **the imposition of tariffs would be sure to incite trade retaliation**. French automakers face little exposure from counter-tariffs blocking the Chinese market, in contrast to their German counterparts, whose potential liability is large — German cars are 17 percent of the Chinese EV market. **A tariff war would thus likely boost French companies at the expense of both German and Chinese ones**. Any provisional tariffs by the European Commission will have to be imposed within [nine months](#) while any definitive tariffs must be set within 13 months. Tariffs put in place following an anti-subsidy investigation generally pass muster before the World Trade Organization. EU countries can in theory push back against that decision, but to block such a step, opponents would need a so-called qualified majority representing 55 percent of EU member countries and 65 percent of the bloc's population.

France published new eligibility criteria for EV consumer bonuses [on Tuesday](#) that indirectly cut out Chinese firms by limiting it only to vehicles produced with a low carbon footprint. The full list of eligible vehicles will be released in December.

**The US has remained largely immune to the threat of Chinese imports by virtue of a 25 percent tariff implemented during the Trump administration that remains in place** (on top of a pre-existing 2.5 percent tariff). US Trade Representative Katherine Tai has discretion to increase these tariffs unilaterally. Tai is currently reviewing whether to [modify](#) these tariffs as part of a statutory four-year review with a decision to come by the end of the year. **But during a panel discussion earlier this summer, USTR's chief China enforcement counsel, Brian Janovitz, indicated the Biden administration was unlikely to remove the vehicle duties as the result of that review**. Janovitz even suggested the government could take further action to prevent Chinese EVs from flooding the US market. The EU has raised serious concerns about the IRA, claiming it privileges US industry. Both sides have come to a [preliminary agreement](#) with respect to a free-trade agreement for the purposes of the IRA, which would allow cars with European-sourced minerals to be eligible for the tax credits.

## How Tesla Won the EV Charging Wars

After price, the second biggest concern consumers have with electric vehicles is “range anxiety.” Total ranges remain below that of equivalent gas cars, charging takes longer, and there are many fewer electric charging stations on the road than gas stations. Long-distance journeys are an especial challenge, requiring planning ahead of time and relying on often unreliable charging stations. These cross-comparisons obviously ignore a lot of nuance. **The ability to charge your car at home overnight makes EVs a [completely different](#) ball game**. The vast majority of EV owners ([83 percent](#)) do most of their charging at home. Most vehicle trips are [short](#) and well within EV range. EV range has been on the [rise](#) and more charging stations are constantly being built. **But regardless of the reality, if consumers are still worried about range and not being able to readily find a place to charge their car, they won't buy one**.

The White House knows this and has an ambitious goal of having [half a million](#) public

chargers available. To this end, the Infrastructure Investment and Jobs Act included \$7.5 billion in grants to install electric chargers across the country. [Rules](#) for the grants to incentivize deployment of the chargers were released in February. When the rules were released, at least two major charging standards were fighting for dominance.

**Just like your phone, there are several different charging ports for electric vehicles. Tesla developed its own proprietary charging port in combination with its Supercharger network.** Access to this network, which boasts [2,000](#) DC fast chargers in the US, is often seen as a perk of buying a Tesla. Most other manufacturers in North America currently use CCS (the combined charging standard), which has become the standard in Europe. For perspective, Tesla's Supercharging network has 60 percent more posts than all the CCS-equipped networks combined. **In November of 2022, Tesla renamed the charger to the North American Charging Standard (NACS) and opened it up for other companies to use.** This February, they expanded their effort by announcing 7,500 of their stations would be available for non-Teslas to use. This came as part of a [deal](#) with the White House that granted Tesla availability to federal charging funding. Tesla hoped that opening up their pre-existing infrastructure would induce other manufacturers to join them, and it paid off. **Fisker (FSR), Ford, GM (GM), Honda (HMC), Mercedes-Benz (MBGYY), Nissan (NSANY), Polestar (PSNYW), Rivian (RIVN), and Volvo (VLVLY) have all announced that they will switch to the Tesla NACS standard starting in 2025** (for North American vehicles). The development of a standard is a win for the industry and consumers as a whole. Tesla, for their part, managed to convince all other major manufacturers to voluntarily adopt its plug and will soon enjoy the fees from filling up their users.

There's just one problem. **The Biden administration decided to require these federally-funded stations to have [CCS chargers](#) in February. Since then, the alternative NACS standard has become the prospective frontrunner for the North American market.**

**This is actually less of a problem than one might think.** Like with phone chargers, there are swaths of dongles and adapters. Tesla sells a [\\$175](#) adapter for compatibility with CCS (adapters going the other way are similarly priced). Because the bulk of the cost in building a charging station is in the electrical equipment needed to fill an enormous battery, not the cable at the end of it, stations can adapt by adding a second cable or an adapter. Tesla released the "Magic Dock" with an adapter at stations in February of this year. **Now that Tesla stations can be compatible with CCS vehicles, they are eligible to compete for the \$7.5 billion dollars in grant money.** Tesla's decade of experience in building these stations means they can often do it much more cheaply than their competitors. **As a result, they are able to submit lower bids in grant competitions and are [sweeping up](#) much of the federal money.**

Not wanting to be left out, seven major automakers have formed a consortium to spend at least [\\$1 billion](#) building out their own network of stations. The first chargers will begin operating around the middle of 2024 with 30,000 planned to be in place by the end of the decade.

**Just like with battery components, federal charger money comes with strings attached. Increased requirements will mean a more difficult road for EVs starting in January.** The [rules](#) require the chargers to be built in the United States and with 55 percent of their cost coming from American-made components by 2024. Any steel or iron manufacturing necessary has to happen domestically. **Not all charging companies will be able to meet these [restrictions](#) when they kick in.** Only a handful of the companies that submitted public comment on the rule said they would be able to meet these standards under the proposed timelines.

## EPA Rules Before the Courts

The federal government is offering a lot of carrots to enhance EV development but they rely on uptake by the private industry. **The sticks in the EV transition come from the Environmental Protection Agency (EPA).** In May, the agency released groundbreaking proposed [emissions rules](#) applying to light- and medium-duty automobiles from model years 2027 through 2032. **These rules would restrict emissions such that new sales of two-thirds of passenger cars and half of medium-duty trucks would be electric by 2032.** Another less consumer-facing rule applying to large trucks that deliver much of the country's freight would have similarly [large effects](#). The EPA has backed these standards up by proposing to reduce [fuel economy](#) calculations for EVs — the outcome being that it will be more difficult for automakers to merely produce a small number of highly efficient electric cars that bumps up their collective fleet average. The EPA has the ability to change these proposed rules before finalization, and may relax them somewhat. **The biggest risk to these rules come from legal challenges that will be heard by a judicial branch that has proven skeptical of wide interpretations of executive authority.**

**[Three separate environmental regulations](#) pushing for rapid EV adoption facing legal challenges saw action last week.** The US Court of Appeals for the DC Circuit heard two cases last Thursday: one challenging the emission standards for 2021-2026 (in *Texas v. EPA*) and the other taking on the Transportation Department's fuel economy standards (*NRDC v. NHTSA*). In a third case, red states are suing to dispel California's waiver under the Clean Air Act (*Ohio v. EPA*). The Clean Air Act gives California the special ability to enact stricter standards than the rest of the nation with federal permission that other states can then follow. **California has exercised this waiver to pass a law banning new internal-combustion cars by 2035, and 17 states have signed onto these tougher standards.**

Judges appeared skeptical that the EPA had overstepped its boundaries in *Texas v. EPA*. In *Ohio v. EPA*, a different panel of judges suggested that the challengers may lack standing to bring the suit entirely. **However, legal observers have already dubbed the California waiver in the *Ohio* case “SCOTUS bait” for raising issues that seem designed to attract the attention of the high court's conservative wing.** Minnesota auto dealers [have also called](#) on the US Supreme Court to block their state from adopting California's vehicle emissions standards. The importance of this waiver is evident in the Preserving Choice in Vehicle Purchases Act passed by the Republican-controlled House of

Representatives, which legislatively writes the waiver out of the Clean Air Act. While the bill has no chance of becoming law this session, it indicates how high a priority it is for both sides of the aisle. Judges in the third case, *NRDC v. NHTSA*, appeared more dubious of the Biden administration's effort to strengthen fuel economy standards for vehicles built between 2024 and 2026.

**If any of these cases (or similar ones) do end up in the Supreme Court, the rule in question is at real risk of being scaled back, if not stricken down in its entirety.** The court has repeatedly sided against the EPA in disputes over the scope of its authority (see: *West Virginia v. EPA*, *Sackett v. EPA*). The Supreme Court last term applied the "major questions" doctrine for the first time in a majority opinion, requiring agency rules of economic or political significance to have explicit statutory justification from Congress.



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