

## **Key Areas of Focus in U.S.-China Relations and Their Impact on Businesses in the 118th Congress**

Article By:

Pablo E. Carrillo

Ludmilla L. Kasulke

Adam M. Berg

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So far in the 118th Congress, U.S.-China relations have been a major focus for Democrats and Republicans alike. House Republicans, the opposition party, tried to challenge the Biden Administration's approach to China, which involves competing with China, cooperating when possible, and confronting them when necessary.

For its part, the Biden Administration has mainly focused on limiting China's technological power and dealing with Chinese companies tied to the Chinese Communist Party (CCP), especially regarding alleged human rights abuses. Republicans have used these issues to highlight differences between themselves and Democrats in the lead-up to the 2024 election.

Despite some disagreements, both parties worked on these China-related issues. As the 2024 election season gets underway, we expect that trend will continue through at least the end of the next calendar year, with the issues we describe below, in particular,

likely affecting Chinese companies doing business in or with the U.S., as well as their American customers and suppliers.

As we detail below, a wide range of industries and firms should expect increased scrutiny from Congress through the end of the 2024 legislative calendar year including PRC technology companies; U.S. technology companies that have operations or partnerships in China; U.S. businesses in apparel, retail, and other industries with supply chains heavily reliant on Chinese manufacturing; pharmaceutical companies that rely on Chinese manufacturing for ingredients and medical supplies; financial institutions, including banks and investment firms, engaging with Chinese companies or holding investments in industries linked to human rights concerns; extractive industries in China or dealing with Chinese resource suppliers; and firms offering consulting or similar professional services to businesses engaged with China.

## Fentanyl Regulation

One of the pressing issues in the U.S.-China relationship is the production and distribution of fentanyl, a powerful synthetic opioid responsible for many overdose deaths in the United States.

Included in the Senate's *National Defense Authorization Act* (NDAA) ([S. 2226](#)), the *FEND Off Fentanyl Act* ([S.1271](#)) would sanction suppliers of fentanyl precursor chemicals. This is significant as approximately 90 percent of illicit fentanyl in the U.S. originates in China.

Because fentanyl traffickers regularly alter the chemical make-up of the drug to produce fentanyl analogs, chemical suppliers must carefully examine whether any of their products can be diverted by transnational criminal groups. Traffickers are increasingly incorporating dual-use chemicals in these precursors to avoid

detection and complicate enforcement.

Underscoring the Administration's focus on the issue, on October 3, the Treasury Department announced sanctions on 13 Chinese individuals and 12 Chinese entities accused of distributing precursor chemicals. That same day, the Department of Justice indicted eight Chinese chemical manufacturers, and Attorney General Merrick Garland remarked that "this global fentanyl supply chain ... often starts with chemical companies in China." Notably, China responded to U.S. overtures in 2019 by prohibiting many fentanyl precursors, suggesting Beijing is willing to seek U.S. concessions in exchange for cooperation on fentanyl trafficking as the "thaw" in relations continues. Such internal policies, combined with new U.S. sanctions authorities arising from the *FEND Off Fentanyl Act's* enactment in the NDAA, could materially affect pharmaceutical companies, financial institutions, and companies in the shipping and logistics industries that handle the transportation of relevant goods across borders.

## **Outbound Investment Restrictions**

In August, the Biden Administration issued an executive order (EO) targeting three categories of critical technologies: artificial intelligence (AI), quantum computing, and semiconductors. This EO aims to limit Chinese access to U.S. capital and technological know-how, especially for PRC start-ups. Some members of Congress wish to expand the scope of that EO to cover passive investments or other technology sectors, potentially further affecting U.S. capital flows to China.

House Select Committee on the CCP Chair Mike Gallagher (R-WI) penned a *Washington Post* op-ed calling for a vastly expanded outbound investment regime, signaling his legislative or oversight

priorities for 2024. Sen. Marco Rubio (R-FL) also pledged to introduce outbound investment legislation this fall, while Rep. Andy Barr's (R-KY) outbound investment proposal, which deploys a sanctions-based approach, cleared the House Financial Services Committee in September.

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## **Export Controls**

The Commerce Department is expected to release a second interim final rule (IFR) in early or mid-October, aimed at refining the export control regime originally announced in October 2022. This IFR is intended to address loopholes in the initial version and align controls on semiconductor manufacturing equipment with Japan and the Netherlands. Future export controls may also target cloud services, which supporters of stricter controls argue enables Chinese entities to "rent" the computing power needed to run advanced AI models. Any regulations not released with the second IFR will likely come following the November Asia-Pacific Economic Cooperation (APEC) Summit in San Francisco, which Chinese President Xi Jinping is expected to attend.

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## **Forced Labor and Human Rights**

Allegations of forced labor in Xinjiang have led to scrutiny of Chinese e-commerce companies Shein and Temu, who source products from supply chains allegedly reliant on forced labor. Congressional pressure has expedited related Entity List (EL) designations, as seen in the case of five Hikvision subsidiaries that were placed on the EL ahead of the Summit for Democracy following calls from House Foreign Affairs Committee Chair Mike McCaul (R-TX) and Ranking Member Gregory Meeks (D-NY). At that summit, President Biden indicated he would use the EL, in conjunction with U.S. allies, to target entities involved in human

rights violations. Any international coordination could lead to global sanctions exposure for PRC entities affiliated with subsidiaries in Xinjiang.

In addition, the Uyghur Forced Labor Prevention Act Entity List currently includes 27 Chinese entities linked to Xinjiang, following the List's most recent update in September. Sen. Ben Cardin's (D-MD) assumption of the chairmanship of the Senate Foreign Relations Committee also indicates an increased Congressional focus on human rights, a key issue for the Senator who has regularly sought to work across the aisle to promote humanitarian causes in U.S. foreign policy.

## **Congressional Investigations**

The House Committee on the CCP has initiated several investigations into various aspects of U.S.-China relations. These include examining U.S. venture capital and private equity investments in China, as well as passive investments made through index funds or exchange-traded funds. Other investigations led by the Committee have explored Chinese purchases of U.S. agricultural land and alleged espionage. Such investigations have had tangible impacts, as demonstrated by Ford Motor Company's pausing of its plans for a \$3.5bln battery manufacturing plant in Michigan that would have been a joint venture with CATL.

Congress maintains a strong interest in protecting U.S. intellectual property (IP) from alleged Chinese theft. While President Biden has not yet released a list of Chinese entities that have violated the *Protecting American Intellectual Property Act (PAIP)*, Congress might apply pressure on the administration in the coming months through its oversight activities to prompt the use of this sanctions authority.

## 2024 Elections

As the 2024 presidential election approaches, China has already become a central topic of discussion, particularly within the Republican presidential primary. Candidates are vying to position themselves as “tough-on-China,” and this rhetoric is expected to feature prominently in the upcoming election cycle. In Congress, several Republicans have criticized the Biden Administration’s approach to China, setting the stage for further debate and policy proposals.

## Conclusion

Because U.S.-China policy evolves rapidly, it is essential that PRC entities and their U.S. customers and suppliers, as well as U.S. companies in relevant industries, stay informed about—and plan appropriately in light of—keen congressional interest in policy areas that could affect them and their businesses.

[1] A block chart below lays out those issue areas in U.S.-China policy that Congress has sought to legislate on so far in the 118<sup>th</sup> Congress. We also illustrate the most prolific legislators to date on U.S.-China policy.

