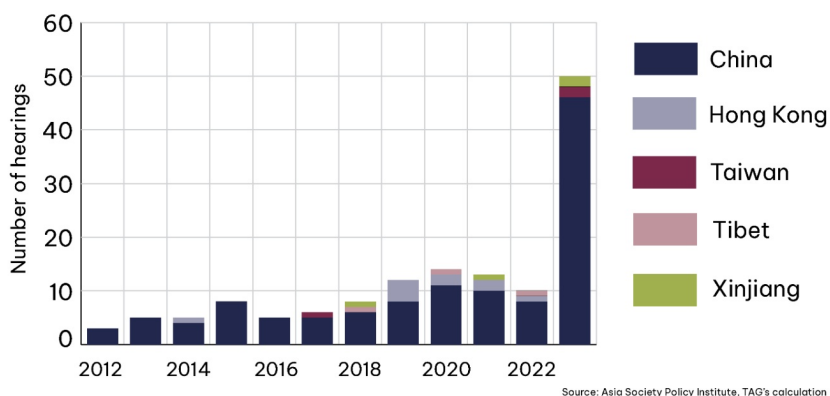




China and the U.S. Congress in 2024

Number of Congressional Hearings on China



The U.S. Congress and China in 2023:

- Despite otherwise being **historically unproductive**, the U.S. Congress in 2023 was uniquely focused on U.S.-China relations.
- Factional infighting stymied most legislative activity, but former Speaker of the House Kevin McCarthy (R-CA) established a new **House Select Committee on Strategic Competition Between the United States and the Chinese Communist Party** in January 2023, setting off a horse race of oversight efforts related to the U.S.-China bilateral relationship.
- By December 2023, over 40 China-focused Congressional hearings had been held, vastly outstripping an average of 10 China-focused hearings per year dating back to 2017.

Looking Forward to 2024 ... and 2025:

- With the next general election looming in November, Congress is primed to harness the overall nationwide rise in public and bipartisan interest in China for political purposes – meaning that

politicking over China policy will become more jagged and partisan.

- The Biden administration's China policy decisions – and non-decisions – will take on added electoral significance as Republican leaders seek to characterize Biden's approach to China as “weak” in addressing China's challenges to U.S. power and prosperity.
- This will limit Biden's political space to take a more cooperative approach toward China.
- In the end, despite the “bipartisan consensus on China,” partisan divides will mean that most legislative action on China may be punted to 2025 for a new Congress to consider.
- *The Asia Group (and our clients) must track the ideas put forward in 2024, regardless of their near-term prospects, since a changed political alignment in 2025 might see a rush of intense (and more productive) legislative activism on China.*

118th Congress to Date

The high degree of Congressional attention on the challenges China poses to U.S. values and interests did not translate into new lawmaking last year. Senate Majority Leader Chuck Schumer's (D-NY) early **plans** to pull together a China Competition Bill 2.0 – the third such effort since the 2021 legislation that eventually resulted in passage of the CHIPS Act – stalled and were overtaken by debt ceiling, budget, and nomination fights. Former Speaker McCarthy similarly **promised** to deliver a House bill to ban TikTok and implement the Republican's 2020 **China Task Force Report**.

By end the end of 2023, bipartisan interest in banning TikTok, lowering the de minimis exemption for shipments to the United States under Section 321 of the Tariff Act of 1930, and statutorily enshrining the Biden administration's Executive Order (EO) restricting outbound U.S. capital flows into certain sectors of China's economy all failed. Jurisdictional infighting coupled with a politically divided Congress also thwarted the inclusion of major bipartisan China provisions in the annual defense bill, including:

- sanctions on Chinese fentanyl producers,
- expanding the authority of the Committee on Foreign Investment (CFIUS) to review and block agricultural land purchases by foreign entities,
- imposing a federal contracting ban on Beijing Genomics Institute, and
- providing environmental permitting waivers for CHIPS Act semiconductor projects.

Instead, Congress - and specifically the House Select Committee - leveraged its “bully pulpit” through statements, letters, investigations, and subpoena threats to drive the news cycle and actively shape the political environment in which China policy and business decisions were made. Recently, the Department of Homeland Security **raided** the U.S. facility of a Chinese company, Qingdao Sunsong, which committee members had previously **accused** of tariff evasion. The committee’s **efforts** to shed light on China's overseas police stations, specifically one illegally operating in New York City, arguably elevated the issue for the FBI to **act**. Finally, committee scrutiny of venture capital flows into China forced some **firms** to reevaluate their internal business structures.

Legislative Landscape for 2024

Following the rollout of the Select Committee’s year-end **report** in December, Chairman Mike Gallagher (R-WI) **stated** that he hopes that the committee’s policy recommendations will be pulled into a “big China bill” and put up for a vote by the House in 2024. However, a China policy “omnibus” is highly unlikely this year due to the following factors.

- **Fewer Legislative Days:** If the current **schedule** holds, both the House and the Senate are set to facilitate additional weeks of campaigning away from Washington, particularly between June and the election in November. Fewer days in Washington tends to amplify partisan obstacles to the development of major legislation beyond “must-pass” bills.
- **Heightened Partisan Stakes of Dealmaking:** Besides the National Defense Authorization Act for Fiscal Year 2024 signed into law last December, a divided Congress pushed dealmaking on nearly all major legislative issues to 2024, comprehensively raising the partisan stakes of compromise in a presidential election year. In March, continuing resolutions on the federal budget will expire along with the authorization of the Federal Aviation Administration and a range of social programs, and in April, major intelligence collection authorities will expire. Alignment with each respective nominees’ political agenda will be the overriding concern for the majority party in each chamber in evaluating legislation.
- **Tenuous Position of the Speaker of the House:** Speaker Mike Johnson (R-LA) faces an even slimmer House majority in 2024 than McCarthy did in 2023, in addition to all the same structural challenges of managing the right wing of the House Republican caucus. His ability to negotiate both with the Democrat-controlled Senate and White House remains severely constrained, and his tenure as Speaker will likely depend on how federal budget and supplemental appropriations fights are resolved.
- **Presidential Politics:** Presidential politics are now actively shaping dealmaking in Congress. The Republican-controlled

House plans to impeach President Biden and Secretary of Homeland Security Alejandro Mayorkas before November. At the same time, Donald Trump's plans to make immigration policy central to his general election campaign has become the biggest **factor** affecting Congressional debate on the Biden administration's request for supplemental appropriations to address crises in Ukraine, the Middle East, Asia, and at the U.S.-Mexico border. As Trump formally consolidates his role as the Republican Party's nominee for President in 2024, he will seek to leverage his influence over the range of issues and legislation debated in Congress before November.

Key Watchpoints

The presidential election cycle will generally act as a force multiplier for Congressional leveraging of its "bully pulpit" on China policy. Moreover, "bipartisan consensus" on China-related issues is likely to largely falter in a presidential cycle where China dominates the agenda, as evidenced by the **breakdown** of the House China Task Force in 2020. However, TAG cannot rule out the possibility that a "bipartisan consensus" on China might snowball at the right time into legislation that could pass in a divided Congress, such as on the following issues:

- **Outbound Investment Screening:** Speaker Johnson has reportedly committed to brokering a compromise bill within Q1 of 2024 on the three primary outbound investment approaches – Senators Cornyn (R-TX) and Casey's (D-PA) **bill** that largely codifies reporting language in the administration's outbound EO, Reps. McCaul (R-TX) and Meeks' (D-NY) **bill** that expands on the EO to include additional sectors, and Rep. Barr's (R-KY) **bill** that imposes entity-specific sanctions on Chinese military companies and which is backed by the House Financial Services Committee. Both the Senate Banking and House Foreign Affairs Committees held hearings in early 2024 to renew support for their respective approaches, but jurisdictional divides between sector-specific or entity-specific approaches remain.
- **TikTok:** TikTok legislation – including the **RESTRICT Act**, **DATA Act**, **ANTI-SOCIAL CCP Act**, and **GUARD Act** – remains hampered by conflicting policy preferences across various committees of jurisdiction in both the Senate and the House, but staff-level efforts to develop a compromise bill related to TikTok continue. If Trump discusses his administration's previous efforts to ban the app from the United States on the campaign trail, jurisdictional redlines across the chamber are likely to further harden. On the other hand, new developments highlighting the negative effects of the Chinese government's access to Americans' TikTok data or control over ByteDance's algorithm could jar legislation loose.
- **Export Controls:** The House Foreign Affairs and Select Committees are poised to continue intense oversight efforts of China-related export controls, including recommending that Chinese entities be added to various U.S. government lists. In

December, McCaul published a **review** of the Bureau of Industry and Security's management of the export control regime and proposed significant policy changes. Gallagher and McCaul continue to call for revoking all general licenses permitting exports to Huawei and tightening restrictions on Chinese chipmaker SMIC in response to last fall's 5G chip "breakthrough." Senators have also **asked** the Government Accountability Office to review the efficacy of current chip controls, and Commerce is now **studying** the legacy chip supply to the United States.

- **Biotechnology:** China's role in the biotech space continues to remain of growing interest to Congressional members, as many were disappointed that the sector failed to be included in the administration's outbound EO. The failure to secure a federal contracting ban on Beijing Genomics Institute (BGI) in last year's annual defense bill has also incentivized a renewed push to publicly scrutinize the sector and legislate this year. The Select Committee recently announced bicameral, bipartisan **legislation** that targets BGI, as well as WuXi Apptec, and the bill is well positioned to become law in some form - possibly riding on an appropriations bill or in the annual defense bill. The market's **response** to the proposed legislation targeting WuXi Apptec will likely embolden Congressional oversight efforts, and the Select Committee is reportedly holding a field hearing on biotech in February to build interest in oversight activities.
- **De Minimis:** Congressional concerns over China and fentanyl have fueled bipartisan interest in lowering the de minimis threshold for duty-free and expedited processing of shipments into the United States. Rep. Earl Blumenauer (D-OR), a longstanding advocate for eliminating the exemption and ranking member on the trade subcommittee of the House Committee on Ways and Means, has **joked** that Gallagher now gives his de minimis speech better than he can. The House is well positioned politically to reform de minimis, but it remains unclear which legislative vehicle might include such reform efforts and how receptive the Senate - historically a stumbling block on previous de minimis efforts - would be. Relatedly, members are likely to keep up public scrutiny of Chinese fast fashion retailers SHEIN and Temu as a way to build support for lowering de minimis, and in the case of SHEIN, members will continue to explore ways to pressure the U.S. Securities and Exchange Commission to slow roll or halt SHEIN's IPO in the United States over concerns about the company's supply chains.
- **PNTR:** Revoking permanent normal trade relations (PNTR) became a litmus test for hawkishness on China during the Republican presidential primary. The bipartisan Select Committee **reportedly** endorsed a full repeal, but subsequent internal and external criticism softened the report language to instead endorse the development of a new tariff column for Chinese imports. In light of the Biden administration's ongoing review of the existing Section 301 tariffs, Trump has **floated** imposing a flat 60 percent tariff on all Chinese imports. As both political parties continue to view tariffs on China as a political necessity, how the House Committee on Ways and Means considers proposed legislation that matches the committee's

recommendations and Trump's campaign rhetoric will be a major watchpoint.

- **Taiwan:** It remains unclear whether Speaker Johnson intends to follow in Former Speaker Pelosi's footsteps and travel to Taiwan this year. Following Lai Ching-te's election in January, Johnson **stated** that he intends to send relevant committee chairs to Taiwan around Lai's inauguration in May. If Taiwan becomes a prominent pillar in the U.S. presidential campaign, Johnson may seek to play a more active role and potentially travel to the island himself.
- **Select Committee on China Activities:** In 2024, the committee will seek to build legislative momentum on the policy recommendations detailed in their three policy reports from 2023; continue their investigations into U.S. capital, research, and supply chain ties to China's strategic sectors; and leverage the news cycle to influence policy and business decisions. While the committee has been relatively bipartisan in its work to date, presidential politics this year will incentivize Chairman Gallagher to pursue partisan breaks from ranking member Rep. Raja Krishnamoorthi (D-IL), such as on green technologies, Inflation Reduction Act incentives, strength of export controls, and diplomatic engagement with China. The committee may also seek to address lingering criticisms of its 2023 work by holding hearings with private sector witnesses and senior U.S. government policymakers.

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