

# Preparing For Congress' Oversight Of Chinese Trade In 2023

By **Alyssa DaCunha, Joel Green and Edward O'Callaghan** (January 4, 2023)

As Republicans assume control of the U.S. House of Representatives, China-related issues are poised to be a key caucus priority and likely a rare area of bipartisan cooperation in a narrowly divided and highly polarized Congress.

House GOP leader Kevin McCarthy, R-Calif., has identified countering China as the single most pressing issue for Congress.[1] Other Republicans have promised a wide-ranging effort to oppose Chinese influence across military, economic, and social spheres.[2]

Republicans recently announced one key mechanism to facilitate greater China-related oversight in the next Congress: the House Select Committee on Strategic Competition Between the United States and the Chinese Communist Party, chaired by Rep. Mike Gallagher, R-Wis.[3]

In December, Gallagher previewed wide-ranging investigative priorities for the select committee — with significant implications for the U.S. business community. Gallagher has promised "a series of hearings that get people to understand the nature of ... the Chinese Communist Party and the stakes."

Among Gallagher's stated priorities are scrutinizing tax-advantaged pension funds and other outbound U.S. investments into China, as well as identifying areas where the U.S. may be too dependent on China, particularly rare earth minerals, pharmaceuticals and medical supplies.[4]

This article previews the new select committee, details likely areas of China-related oversight focus across committees and offers advice on how potentially affected businesses can prepare for oversight now.

## The Select Committee

McCarthy has outlined a Republican vision of a body focused on winning the "new Cold War" with China by investigating and producing policies "to strengthen our economy, rebuild our supply chains, speak out for human rights, stand against military aggression, and end the theft of Americans' personal information, intellectual property, and jobs." [5]

A draft establishing resolution charges the committee with investigating and recommending policies related to "the Chinese Communist Party's economic, technological, and security progress and its competition with the United States." [6]

The composition of the select committee — particularly whether it will be bipartisan — remains unclear. The draft establishing resolution calls for a 16-member committee with at least seven members appointed after consultation with the minority leader, and Gallagher has expressed optimism that the select committee will be bipartisan. [7]

Although Democrats declined to join what became the House GOP China Task Force in 2020, they may still join the select committee to demonstrate the seriousness of the threat China



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poses to U.S. interests.

Given the breadth of touch points to China, Gallagher has indicated that the select committee will seek to conduct joint hearings and investigations with other committees where possible.[8] Gallagher also raised the possibility of field hearings across the country and even overseas.[9]

### **Key Areas of China-Related Focus**

We expect the 118th Congress to scrutinize a wide range of China-related issues. As Gallagher's recent public comments make clear, inquiries may result in unanticipated and unwelcome attention for U.S. businesses.

The following are key areas congressional oversight will likely include.

#### ***Supply Chains and Unfair Trade Practices***

At the forefront will be efforts to onshore or friend-shore critical supply chains.[10] McCarthy and Gallagher have emphasized that the committee will expose America's "dangerous dependence on China and advance policies to build secure sources for critical supply chains"[11]

This echoes bipartisan concern that the American supply chain is overly dependent on inputs from China, which some fear could be coercively cut off during a crisis. Calls for onshoring also reflect a bipartisan interest in revitalizing American manufacturing and creating manufacturing jobs.

As Gallagher signaled, the focus on supply chain will likely manifest in wide-ranging oversight activity. Companies should expect Congress to probe the economic and national security dimensions of U.S. reliance on suppliers in China or vulnerable to Chinese coercion and influence, the resiliency of global supply chains — especially during potential crises or emergencies — and the feasibility of onshoring or friend-shoring key supply chain links.

Sensitive industries like defense, energy, technology, semiconductors and telecommunications should expect special attention. But Gallagher's comments have made clear that other sectors, like rare earth minerals, pharmaceuticals and medical devices, will also receive scrutiny.

Another area of focus is likely to be unfair Chinese trade practices — the subject of perennial legislative as well as executive branch interest. Gallagher has said that the revocation of permanent normal trade relations with China should be on the table,[12] consistent with recommendations by the U.S.-China Economic and Security Review Commission.

Other China-related trade issues, such as Section 301 tariffs on Chinese imports — and the attendant tariff exclusion process — as well as what some Republicans view as an inadequate affirmative trade negotiating agenda by the Biden administration, will also likely continue to attract congressional attention.

#### ***Intellectual Property and Data Privacy***

China's access to U.S. intellectual property and personal data is another likely area of attention. Chinese state and corporate theft of American IP is a long-standing subject of

bipartisan concern that will likely remain salient in the next Congress.

A growing chorus of voices has also focused on data privacy risks associated with the burgeoning presence of Chinese-linked software and social media in American households. Although members of Congress recently introduced bipartisan measures related to TikTok,[13] congressional interest extends beyond particular platforms.

Gallagher has indicated the select committee will hold a hearing on how the Chinese government uses data. A bipartisan group of senators introduced legislation to tighten restrictions on bulk transfers of U.S. data to certain hostile foreign countries, including China.[14] Rep. Cathy McMorris Rodgers, R-Wash., who is expected to chair the House Energy and Commerce Committee, has advocated for investigating how app sellers vet app developers' ties to the Chinese Communist Party, among other things.[15]

Companies that transmit sensitive IP, know-how or data to China should expect scrutiny of their practices and policies around security, access control and links to the Chinese government.

### ***Defense and National Security***

Defense and national security remain at the core of congressional interest in China. Russia's invasion of Ukraine and potential Chinese action against Taiwan have only intensified bipartisan national security concerns.

Gallagher, a former U.S. Marine, has been especially vocal about the urgency of Chinese military threats,[16] and even recently suggested that the committee "bring the war gaming process to Congress." [17]

Export controls will remain a core area of interest. Rep. Michael McCaul, R-Texas, who previously chaired the House GOP China Task Force and is expected to chair the House Foreign Affairs Committee, has stated that Republicans will be "focused like a laser on export controls issues." [18]

One top concern is executive branch enforcement of laws limiting the transfer of critical technologies to China. Congressional Republicans continue to express long-standing concerns about the presence of Chinese-made goods — especially sensitive technology and telecommunications equipment — in the U.S.

For example, Rep. James Comer, R-Ky., expected to chair the House Oversight Committee, recently questioned U.S. Department of Defense officials about a multibillion-dollar effort to remove Chinese-made telecommunications equipment from private land near U.S. military installations. [19]

Republican leaders have also signaled that they will look aggressively at China's complicity in the production and transportation of fentanyl, precursor chemicals and other harmful substances. [20]

Companies dealing in sensitive or dual-use technology with links to, or customers in, China should prepare for increased scrutiny.

Further, regardless of industry, companies using Chinese-origin sensitive technology or with links to companies identified as in the Chinese military industrial complex should also expect pointed congressional inquiries. [21]

Given new congressional restrictions on government funding and contracts for entities to links with China, contractors and federal funding recipients may also be targets.[22]

### ***Inbound and Outbound Investment Flows to China***

Chinese investment into the U.S. continues to garner significant scrutiny from the Committee on Foreign Investment in the United States, as well as a bipartisan swath of Congress.

Republicans have signaled a desire to broaden scrutiny of Chinese investment in the U.S. beyond traditional assets to include Chinese investments, for example, in American farmland, residential real estate and lithium mines.[23]

Gallagher characterized the next phase of this effort as an acceleration of focus on outbound capital investment into China, especially from taxpayer-supported entities.[24]

This builds upon recommendations from the House Republican Study Committee for greater controls on American investment into China, including banning businesses that receive federal funding from expanding so-called cooperation activities with Chinese entities.[25]

Restricting outbound investment in China is controversial but has bipartisan support. In 2021, Sens. John Cornyn, R-Texas, and Robert Casey, D-Pa., proposed bipartisan legislation to establish new outbound screening processes for investments into China.[26] Since then, more modest proposals, such as a notification-only mechanism for certain categories of outbound investments, have gained some traction.

The White House has also deliberated for months about possible executive action in this area. This burgeoning focus will likely lead to a broad range of oversight questions aimed at companies and investors with significant capital ties to China or Chinese entities.

### ***Human Rights, Higher Education and Free Expression***

Bipartisan concern about Chinese human rights violations has long been a mainstay of congressional China policy and oversight, particularly vis-à-vis China's treatment of Uyghur Muslims.

Congress has previously introduced broad compliance obligations related to Uyghur forced labor, including the Uyghur Forced Labor Prevention Act, unanimously passed in 2021.[27]

Individual members continue to inquire about companies' compliance; for instance, on Dec. 22, Sen. Ron Wyden, D-Ore., chair of the Senate Finance Committee, sent pointed letters to eight automakers seeking information about alleged supply chain links to Xinjiang.[28]

Chinese government censorship and state propaganda is also on the agenda. Republicans in both chambers have been critical of American companies that they see as self-censoring political or sensitive content to appease the Chinese government, and have raised concerns about the perceived proliferation of Chinese propaganda in the U.S.

For example, the GOP China Task Force criticized American social media companies for hosting and promoting propaganda linked to the Chinese government and proposed requiring platforms to clearly label any content paid for by the Chinese government or Chinese state-owned enterprises.[29]

Republicans have raised similar concerns about U.S. film studios, sports leagues and financial institutions that have removed sensitive content to comply with Chinese restrictions or promoted friendly messages about the Chinese government.[30]

Gallagher has also signaled a focus on China's attempts to infiltrate American academic institutions, which Republicans view as a key channel for Chinese interference in American discourse. The House GOP China Task Force raised concerns about universities' connections to, and receipt of, donations from China, and proposed new regulatory disclosures for university links to Chinese funding.

Several members — led by Rep. Jim Jordan, R-Ohio, who is expected to chair the House Judiciary Committee — have subsequently sought information about U.S. universities' acceptance of gifts and so-called strategic investments from Chinese sources.[31]

We expect the House to continue asking similar questions, especially as higher education continues to be an increasingly polarized issue space.

### **How Companies Can Plan**

Companies with significant connections to China should not wait to start preparing for congressional inquiries. Investigations and hearings can materialize quickly and with minimal notice — especially when so many committees and members will be looking at China-related questions.

Companies that take the following steps will put themselves in a better position to respond promptly and productively to oversight efforts.

- Conduct an internal diagnostic. Identify touch points with China and how those align with potential areas of congressional oversight.
- Anticipate congressional requests. Understand past oversight actions related to China-related business operations.
- Audit external communications. Review external communications to ensure consistent messaging that reflect your company's most polished position on key issues.
- Develop a comprehensive crisis management plan. This includes establishing a cross-functional response team led by legal, but incorporating internal and external communications, government affairs, and business representatives.

- Prepare top-line talking points. This includes anticipated tough questions and answers, to be used in different forums.
- Consider proactively engaging with Congress. Identify members and committee staff who are likely to lead oversight efforts, and consider engaging with staff to open a line of dialogue and share helpful information proactively.

Although there is no one solution for every oversight request, companies should seek to comply with congressional inquiries in a professional and efficient way that minimizes risk to their business.

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[1] <https://www.republicanleader.gov/leader-mccarthy-announces-china-legislation-conferees/>.

[2] <https://www.politico.com/newsletters/politico-china-watcher/2022/10/06/gop-vow-intense-china-focus-if-they-flip-the-house-00060579>; <https://thehill.com/homenews/house/3708474-republicans-sharpen-knives-for-china-with-eye-on-house-majority/>.

[3] <https://www.republicanleader.gov/leader-mccarthy-announces-rep-mike-gallagher-as-chairman-of-the-china-select-committee/>.

[4] <https://www.bloomberg.com/news/articles/2022-12-19/new-house-panel-on-china-to-scrutinize-us-china-investments?leadSource=verify%20wall>.

[5] <https://www.foxnews.com/opinion/america-locked-china-cold-war-win>.

[6] [https://www.republicanwhip.gov/uploadedfiles/chinacom\\_xml.pdf](https://www.republicanwhip.gov/uploadedfiles/chinacom_xml.pdf).

[7] <https://www.foxnews.com/opinion/america-locked-china-cold-war-win>; see

also [https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm\\_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China](https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China).

[8] [https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm\\_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China](https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China).

[9] Id.

[10] Friend shoring generally refers to the "process of moving supply chains to countries where the risk of disruption from political chaos is low." <https://www.nytimes.com/2022/11/18/business/friendshoring-jargon-business.html>. WilmerHale has extensively tracked regulatory and congressional activity related to onshoring. See, e.g., <https://www.wilmerhale.com/en/insights/client-alerts/20200921-us-decoupling-from-china-and-the-onshoring-of-critical-supply-chains-implications-for-private-sector-businesses>; <https://www.wilmerhale.com/en/insights/client-alerts/20200921-us-decoupling-from-china-and-the-onshoring-of-critical-supply-chains-implications-for-private-sector-businesses>.

[11] <https://www.foxnews.com/opinion/america-locked-china-cold-war-win>.

[12] [https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm\\_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China](https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China).

[13] <https://gallagher.house.gov/media/press-releases/gallagher-rubio-introduce-bipartisan-legislation-ban-tiktok#:~:text=WASHINGTON%2C%20D.C.%2D%2D%20Rep.%20Mike,operating%20in%20the%20United%20States>.

[14] <https://www.wyden.senate.gov/news/press-releases/wyden-lummis-whitehouse-rubio-and-hagerty-introduce-bipartisan-legislation-to-protect-americans-private-data-from-hostile-foreign-governments>.

[15] <https://republicans-energycommerce.house.gov/news/press-release/leader-rodgers-outlines-concerns-regarding-big-techs-relationship-with-china/>.

[16] See, e.g., <https://www.foreignaffairs.com/articles/china/2022-02-01/taiwan-cant-wait>.

[17] [https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm\\_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China](https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China).

[18] <https://www.politico.com/newsletters/politico-china-watcher/2022/10/06/gop-vow->

intense-china-focus-if-they-flip-the-house-00060579.

[19] <https://www.cnn.com/2022/10/18/politics/republicans-china-huawei>.

[20] See, e.g., <https://twitter.com/gopleader/status/1570759450377748480?lang=en>.

[21] For instance, the Department of Defense recently released a list of Chinese entities identified as part of the Chinese military industrial complex. See <https://www.defense.gov/News/Releases/Release/Article/3180636/dod-releases-list-of-peoples-republic-of-china-prc-military-companies-in-accord/>.

[22] See, e.g., <https://www.defensenews.com/congress/2022/09/29/congress-reauthorizes-dod-innovation-grants-with-new-china-safeguards/>.

[23] See, e.g., <https://www.wsj.com/articles/house-republicans-ask-gao-to-probe-foreign-ownership-of-u-s-farmland-11664784003>; <https://www.cotton.senate.gov/news/press-releases/cotton-demands-answers-on-partially-chinese-owned-lithium-mine-potentially-receiving-us-funding>.

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[25] <https://rsc-banks.house.gov/news/press-releases/rsc-introduces-counteracting-communist-china-act>.

[26] <https://www.casey.senate.gov/news/releases/casey-and-cornyn-release-a-joint-statement-on-national-critical-capabilities-defense-act>.

[27] Pub. L. 117-78 (2021).

[28] <https://www.finance.senate.gov/chairmans-news/senate-finance-committee-chair-wyden-questions-major-automakers-about-supply-chain-links-to-forced-labor-in-xinjiang-china>.

[29] <https://gop-foreignaffairs.house.gov/wp-content/uploads/2020/09/CHINA-TASK-FORCE-REPORT-FINAL-9.30.20.pdf>.

[30] [https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm\\_source=ActiveCampaign&utm\\_medium=email&utm\\_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm\\_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China](https://thedispatch.com/newsletter/uphill/rep-mike-gallaghers-plans-for-the-select-committee-on-china/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China&utm_campaign=Rep++Mike+Gallagher+s+Plans+for+the+Select+Committee+on+China); see also <https://www.politico.com/news/2020/04/28/cruz-bill-pentagon-china-film-215942>.

[31] <https://www.aip.org/fyi/2020/republicans-deepen-scrutiny-universities-ties-china>.