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# House of Dragonslayers:

The 117th Congress' Legacy on China and  
Implications for Future Bilateral Trade and  
Technology Engagement

Yilun Zhang  
Amanda (Yue) Jin  
Alec Caruana



**ICAS**

Institute for China-America Studies



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Cover Image: The first session of the 117th Congress in the House Chamber at the US Capitol on January 3, 2021 in Washington, DC. (Source: Getty Images, Photo by Tasos Katopodis)

Institute for China-America Studies  
1919 M St. NW Suite 310  
Washington, DC 20036  
202 968-0595 | [www.chinaus-icas.org](http://www.chinaus-icas.org)

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–YZ, AJ & AC

## About the Authors

**Yilun Zhang** is a Research Associate and Administrative Officer at the Institute for China-America Studies. He is also the manager of the ICAS Trade n' Technology Program. His key area of research pertains to U.S.-China relations, trade and technology, security and the international relations in the Indo-Pacific region. His areas of specialization include: analysis of the U.S.-China strategic competition on security and trade and technology; analysis of major power relationships in East Asia (China-Japan-South Korea-U.S.) and trending issues in the Indo-Pacific region; analysis on the security dynamics in East Asia; and geospatial analysis of the security dynamics in the Indo-Pacific and Arctic region. He holds a master's degree in international relations with a concentration on international political economy from the Paul Nitze School of Advanced International Studies, Johns Hopkins University.

**Amanda (Yue) Jin** is a Research Assistant intern at the Institute for China-America Studies and a member of the ICAS Trade n' Technology Program team. Her research interests include the U.S.-China technology and innovation competition, the governance of data and new technologies, and the international law of the sea. She holds a B.A. in Political Science/International Relations from Carleton College and a J.D. from Harvard Law School. She is currently pursuing a Master's degree in International Relations at the Paul Nitze School of Advanced International Studies, Johns Hopkins University.

**Alec Caruana** is a Research Assistant Intern at the Institute for China-America Studies and is a member of the ICAS Maritime Affairs Program team. He received a BSc in International Relations and History from the London School of Economics and Political Science specializing in cartographic history, American foreign policy, and Chinese involvement in the Global South. He is currently pursuing a master's degree in International Affairs taught jointly by Peking University and the LSE.

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# Executive Summary

**A**s the Biden administration continues to emphasize U.S. strategic competition with China, China has become a central focus of the 117th Congress over the past two years. Legislation was proposed, discussed – and some adopted as law – that directly addressed China on a variety of issues ranging from trade policy, technology and innovation competition, export controls, to measures targeting specific regions, specific industries, and specific public or private practices.

During the last two years, the 117th Congress observed and experienced first-hand the consequences of the free fall that the U.S.-China bilateral relationship underwent during the Trump administration, and they consistently maintained this inertia throughout its duration. The 117th Congress could do little to reverse the trajectory or repair the bilateral relationship not only because of the personal beliefs of certain outspoken members of Congress, but also due to the general deterioration of the American public opinion on China – indeed, no one shall go against the will of the voters.

The complication of excess domestic lobbying, accompanied by the further deterioration of the U.S.-China relations on the international stage, has further raised unnecessary alarm on the Chinese side as Beijing interprets lobbying and political messages from the U.S. domestic discussions as proof of U.S. intention to further contain or even undermine China's rise.

With the new congressional meeting starting in 2023, the 118th Congress will inherit both the deteriorating U.S.-China relations and the increasingly extreme rhetoric concerning China. As developments of the midterm election have

shown, China is a major issue to address for both the Democratic and the Republican party. As the presidential election becomes an increasingly hot domestic issue 2023-2024, the uncertainties of U.S. domestic politics will only increase. With Biden and Trump as the most likely finalists, the discussion over China and how the United States should continue to approach China will become the most dominant, if not only, issue on the candidates' foreign policy agenda.

In order to avoid turbulence caused by another incident in the like of Pelosi's visit to Taiwan, an U.S.-China legislative dialogue should be established to avoid technology and trade issues from running into unknown and mutually harmful grounds. To use the newly elected 118th Congress and China's new People's Congress as a fresh start, both countries should increase communication on the legislative level and incorporate first-hand inputs from the business communities to stabilize the relationship. As developments in the bilateral relationship and in global events have led to increasing unpredictability and calls for more appropriate management, emerging policy issues in the field will require better coordination – or at least sufficient communication – between the two sides to avoid misunderstanding of intention and unnecessary escalation of tensions.



# Introduction

As the Biden administration continues to emphasize U.S. strategic competition with China, China has become a central focus of the 117th Congress over the past two years. On the one hand, legislation was proposed, discussed – and some adopted as law – that directly addressed China on a variety of issues ranging from trade policy, technology and innovation competition, export controls, to measures that target specific regions, specific industries, and specific public or private practices. On the other hand, even major bills that do not directly address China – e.g. the domestic-focused Infrastructure Investment and Jobs Act and Inflation Reduction Act of 2022, were associated with the strategic competition with China and discussed accordingly during the legislative process and, after they became law, in the implementation process.

Most notably, both the lengthy legislative process of the “China competition bill” and the final enactment of the CHIPS and Science Act were defining moments of the 117th Congress. Even when the bill represented only a trimmed version of the most ambitious drafts of either the Senate’s United States Innovation and Competition Act (USICA) and the House’s America COMPETES Act (AmCOM), and even when it took significantly longer than expected or planned to pass, the bill was marked as a key legislative progress of the 117th Congress, the congressional leadership and other major supporters of the bill.

In addition to the competition-focused legislations, the 117th Congress also continued to push for legislation to address increasingly negative U.S. views and issues that the U.S. and its public view as critical grievances towards the People’s Republic of China. Human rights issues continue to be a persistent topic on which this Congress seeks to press China for changes. That said, unlike past legislation that focuses more on addressing the concerns and making the voices heard, the 117th Congress apparently seeks to put more pressure on China to address human rights issues through unilateral economic sanctions. Many of these sanction-based legislations are coincidentally overlapping with areas that are closely related to the U.S.-China bilateral trade and technology engagement, such as the sanctions suggested for the Chinese solar products, which are primarily produced from Xinjiang, where China is allegedly conducting problematic reeducation programs that mistreat its Uyghur minority. This had further complicated the 117th Congress’ move on China as economic benefits and technological decoupling came into play.

The 117th Congress' efforts to empower the American manufacturing industry and to address concerns over China's rapidly developing innovative capabilities also put it in a leading position in advocating for further decoupling between the U.S. and China for various reasons. The 117th Congress not only seeks traditional federal investment-based industrial policies to "Out-China" China, but also shows certain signals to develop legislations that are designed to further decouple the two countries, and contain or even hurt China's development, at least in the short run.

To address increasing American concerns over the issue of Taiwan, the 117th Congress also played a significant role in showcasing more American support for Taiwan and demanding a clearer position from the administration. Given Taiwan's important role in the global semiconductor supply chain, as well as the economic potential of its market, the 117th Congress' proposed moves on Taiwan could have significant impact on both the geopolitical and trade and tech engagement between the U.S. and China.

With clocks ticking, the 2022 midterm elections could present a potential change of the American domestic political landscape. While the elections tend to focus more on domestic issues, China inevitably became a hot topic for both incumbent and challenging candidates. As many of the China-related legislations remained in the pipeline, the upcoming 118th Congress would play an important role in deciding the future trajectory of the U.S.-China bilateral relations, especially their bilateral trade and technological engagements. What are the consistent and persistent issues that we could expect the 118th Congress to inherit from the 117th? What are the newly emerged issues under the 117th Congress that could further expand under the 118th? What could the election results of the midterms tell about the 118th? This report will take a close look to some of the signature legislations under the 117th Congress, the ongoing campaigning of the 2022 midterm elections and the discussion over China, and provide an analysis of these above questions.

# To Play the China Card: Reviewing the 117th Congress' Legacy on China

China has been a focal point in the 117th Congress, the first meeting of Congress under the Biden-Harris administration. In addition to congressional hearings and committee discussions, much focus has been placed on legislative efforts. Up to October 2022, the 117th Congress proposed 798 bills and resolutions that mentioned “China,” a number higher than either meeting of Congress under the Trump administration.<sup>1</sup>

In the field of trade and technology, the most notable bill that became law is the CHIPS and Science Act, a trimmed version of the China competition bill.<sup>2</sup> At the same time, other major legislative progress under the Biden administration have also been associated with the strategic competition with China, including the more domestic-focused Infrastructure Investment and Jobs Act and Inflation Reduction Act of 2022.

Meanwhile, a number of China-related bills remain in the pipeline. As the CHIPS and Science Act primarily addresses the semiconductor industry and government support for R&D, other provisions remain under discussion. These include a number of trade and foreign policy-focused provisions that were present in both the Senate’s United States Innovation and Competition Act (USICA) and the House’s America COMPETES Act (AmCOM) (see Table I) as well as the more controversial and ambitious ones such as tariff reforms and outbound investment screening. Additionally, both chambers of Congress have proposed and even started to discuss some versions of the Taiwan Policy Act, which could have a significant technology and trade portion.

During the last two years, the 117th Congress observed and experienced first-hand the consequences of the free fall that the U.S.-China bilateral relationship underwent during the Trump administration, and they consistently maintained this inertia throughout its duration. The 117th Congress could do little to reverse the trajectory or repair the bilateral relationship not only because of the personal beliefs of certain outspoken members of Congress, but also due to the general deterioration of the American public opinion on China – indeed, no one shall go against the will of the voters.

**TABLE 1: Select Provisions that are Shared by USICA and AmCOM but Excluded from the CHIPS and Science Act<sup>4</sup>**

<b>Provisions</b>	<b>Level of Divergence</b>
<b>China and global supply chain:</b> authorizes \$15 million per year, 2022-2026, to hire experts that will assist interested U.S. businesses with supply chain challenges related to China	<i>Nearly identical</i>
<b>Global infrastructure:</b> <ul style="list-style-type: none"> <li>Requires the President to develop a strategy on providing alternative infrastructure assistance to foreign governments; authorizes \$75 million per year, 2022-2026 to implement the strategy</li> <li>Requires the Executive Branch to comprehensively target China’s predatory lending and financing in the energy sector of developing countries</li> </ul>	<i>Minor divergence</i>
<b>Digital commerce:</b> <ul style="list-style-type: none"> <li>Authorizes the establishment of the “Digital Connectivity and Cybersecurity Partnership” to help foreign countries with internet access, free flow of data, cybersecurity, and promote U.S. ICT exports</li> </ul>	<i>Nearly identical</i>
<b>Strategic partnership:</b> <ul style="list-style-type: none"> <li>Commits to deepen diplomatic, economic and security cooperation with allies and partners in the Indo-Pacific</li> <li>Commits to strengthen engagement with Quad</li> <li>Sets out policy priority on cooperation with ASEAN</li> <li>Commits to enhance U.S.-Taiwan economic, political and security relationship, including on Taiwan’s involvement in international orgs</li> <li>Requires report to address Chinese Fentanyl trafficking</li> <li>Authorizes \$100 million per year, 2022-2026 against disinformation inside and outside of China</li> </ul>	<i>Minor divergence</i>
<b>International Security</b> <ul style="list-style-type: none"> <li>Authorizes \$45 million, 2022-2026 on military training and education in Indo-Pacific</li> <li>Requires report on building security capacities in Indo-Pacific</li> <li>Reemphasizes commitment to freedom of navigation in South China Sea</li> <li>Directs a report on strategy against China’s nuclear and ballistic missile issues and one specifically on China’s transfer of ballistic and nuclear technology to the Middle East</li> </ul>	<i>Nearly identical</i>

That being said, the failure of this 117th Congress is to further escalate the deterioration of U.S.-China relations into fields that are not necessarily of contention between the U.S. and China over the past five decades. Therefore, when analyzing the achievements and wrongdoings of this 117th Congress, it is important to distinguish between issues where the U.S. has long-standing grievances against China, e.g. intellectual property rights and market access concerns, and issues that were newly proposed by the members of the 117th Congress, e.g. supply chain resiliency, technological, economic and financial decoupling with China, etc.

Admittedly, there are valid emerging concerns among those newly proposed issues that past administration and Congress either overlooked or did not foresee, e.g. China's rise, China's progress in innovation and China's technological development in AI, supercomputer, telecom and data governance. However, the sad reality is that an evil amalgama of increasingly negative public views against China, over-exaggeration of the "China factor" for domestic political gains and the occasional overreaction – or sometimes, even more aggressively, hysteria – to the shifting balance of power between U.S. and China, has turned into a major roadblock to securing a path towards a benign and manageable U.S.-China competition. Take the CHIPS and Science Act, a major component to the "China competition bill series" per Congress and President Biden, as an example.<sup>3</sup>

## **The CHIPS and Science Act: A "China Competition Bill" of Domestic-Focused Provisions**

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In mid- and late-July, 2022, it became clear that the reconciliation process of the Senate's USICA and the House's America COMPETES Act – commonly referred to as the "China competition bills" – remained unfruitful despite the gradual approach of the midterm election and repeated urging from congressional leadership, Commerce officials and the American business community.<sup>5</sup> On July 27, 2022, the Senate proposed the CHIPS and Science Act (also known as the CHIPS for America Act of 2022 or the CHIPS-Plus Act). Containing only the semiconductor and research provisions of the competition bill, the CHIPS and Science Act would authorize \$52.7 funding to incentivize semiconductor manufacturing and innovation in the United States and provide various government support for research and innovation in the United States.<sup>6</sup> The House passed the Act the next day, and U.S. President Joe Biden signed the Act into law on August 9, 2022.

The provisions of the CHIPS and Science Act can be essentially traced back to four bills: The CHIPS Act of 2021, which became law on January 1, 2021 to stimulate U.S. semiconductor manufacturing but received no funding until the passage of the CHIPS and Science Act; the National Science Foundation for the Future Act and Department of Energy Science for the Future Act, which aim to enhance U.S. research and innovation

and passed the House on June 28, 2021, and the Endless Frontier Act, a Senate-proposed equivalent intending to address the same problem. All the aforementioned bills address legitimate concerns and challenges for U.S. economy and innovation, but none of these issues – whether it’s the offshoring of semiconductor manufacturing to China or the need to strengthen U.S. R&D – was directly associated with China. Regardless, the combined package of the bills (i.e. USICA and AmCOM) was quickly framed as a “China competition bill” and “a comprehensive package” to compete with China and counter China’s rise.<sup>7</sup> This narrative has limited the possible scope of policy action and made it difficult to fully address the needs to build strength from home and revitalize the American manufacturing industry.



*On August 9, 2022, U.S. President Joe Biden signed into law “The CHIPS and Science Act of 2022.”  
(Source: The White House, Public Domain)*

## ***1. From Addressing the Semiconductor Shortage to Increasing U.S. Competitiveness: Policy Concerns Behind the CHIPS and Science Act***

When the Endless Frontier Act, the first version of the research and innovation bills, was first introduced in the House in March, 2021, the sponsors of the bill made it clear that they aim to enhance American economic and scientific competitiveness, bearing in mind both domestic societal challenges as well as the United States’ global leadership in technology and innovation.<sup>8</sup> As the White House later details, the competition bill “aligned with the President’s vision to enhance American economic and scientific competitiveness; build a stronger, more diverse, and more inclusive innovation ecosystem; and invest in strengthening critical supply chains, our domestic industrial base, and regional economic growth and development.”<sup>9</sup>

Meanwhile, the business community in the United States has long called for government incentives to address the global semiconductor shortage crisis and to support the

domestic manufacturing sector. With open letters from the semiconductor industry, the manufacturer association and big tech companies, the bill is also a response to these needs and an expansion of earlier efforts to support U.S. industries.

### **I.1 Background Legislation: Chips crisis 2020 and CHIPS Act 2021**

With the outbreak of a global semiconductor crisis in early 2020, the bipartisan legislative effort to stimulate U.S. chip manufacturing began as early as June, 2020. Simultaneously introduced by Senator Mark R. Warner, Senator John Cornyn, U.S. Representative Doris Matsui and then House Foreign Affairs Committee Ranking Member Michael McCaul, the original version of Creating Helpful Incentives to Produce Semiconductors Act (CHIPS for America Act 2021, or CHIPS Act 2021) would, among others, create a 40% refundable investment tax credit for qualified semiconductor equipment or semiconductor manufacturing facility investment, a \$10 billion federal funding that matches state and local incentives offered to the building of new semiconductor foundry with advanced manufacturing capabilities and new R&D funding streams to enhance government-supported R&D related to semiconductor technology.<sup>10</sup> The Semiconductor Industry Association, a strong supporter of USICA and the CHIPS and Science Act, applauded the introduction of the bill.<sup>11</sup>

On January 1, 2021, a significantly revised version of the CHIPS Act 2021 became law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA 2021).<sup>12</sup>

#### **BOX 1: Creating Helpful Incentives to Produce Semiconductors Act (CHIPS for America Act 2021) – Summary of the Provisions<sup>21</sup>**

- **Department of Commerce:** Incentivizes investment in U.S. semiconductor manufacturing and R&D by funding U.S. entities that provide equipment or materials for, or engage in semiconductor fabrication, assembly, testing, advanced packaging and R&D.
- **National Science and Technology Council:** Promotes U.S. leadership in microelectronics technology innovation by funding national technology center and public-private partnership programs that support advanced microelectronics R&D and the development of semiconductor manufacturing capabilities.
- **Department of Defense:** Ensures development and production capability of microelectronics that are critical to national security through the funding of public-private partnership and consortia of private companies.
- **Department of Treasury:** Enhances the security of semiconductor supply chains by establishing and maintaining a common funding mechanism, in coordination with trusted foreign partners, to support the development and adoption of secure semiconductor supply chains.

The final CHIPS Act 2021 would direct the Department of Commerce, the National Science and Technology Council, the Department of Defense and the Department of Treasury to establish respective programs in support of U.S. semiconductor manufacturing, R&D and supply chain security.<sup>13</sup> However, NDAA 2021 did not provide a funding mechanism for these programs. Later lobbying and legislative efforts have thus aimed at providing funding for the CHIPS 2021 programs through the competition bills. Additionally, some original provisions that were excluded from the CHIPS Act 2021, e.g. the investment tax credit and the R&D funding, eventually found its way back into the CHIPS and Science Act, albeit in revised and trimmed forms.

## **I.2 Supporting U.S. Chips and Manufacturing: Calls from the American Business Community**

As a cross-section of business groups continued to feel the impacts of a lasting global semiconductor crisis, the business community started to urge the 117th Congress to provide funding for the CHIPS 2021 programs. For the coalition led by the U.S. Chamber of Commerce and the alliance featuring Apple, Amazon, AT&T, Dell, General Electric, Google, HP, Microsoft, a bill to stimulate the U.S. semiconductor industry would not only address long-term chip shortage but also “strengthen U.S. economy, national security, and supply chain resilience.”<sup>14</sup> Meanwhile, Lockheed Martin has highlighted the national security aspect of the issue, arguing that a robust supply of chips “is essential both to national security and to the health of the defense industrial base and the aerospace industry as a whole.”<sup>15</sup>

Similarly, the semiconductor industry argued for government support not only to address the semiconductor shortage, but also for the long-term development and competitiveness of domestic semiconductor manufacturing. Semiconductor businesses, most notably Intel and Semiconductor Industry Association (SIA), have argued that the U.S. share in semiconductor manufacturing has declined because authorities in Taiwan, Korea and China are offering substantial manufacturing incentives to attract semiconductor manufacturing into Asia.<sup>16</sup> Accordingly, Intel, SIA and Information Technology Industry Council (ITI) have constantly called for matching, or at least substantial incentives from the U.S. government to “level the playing field” or catch up with governments of “global competitors.”<sup>17</sup> The end goal, according to ITI’s policy priorities, is to ensure U.S. competitiveness for attracting semiconductor investment “vis-à-vis global partners and competitors who have robust incentives of their own.”<sup>18</sup>

The National Association of Manufacturers (NAM) expanded the above-mentioned reasoning to the manufacturing sector in general. According to NAM, it is imperative that the federal government support the domestic manufacturing sector “in the face of increased global competition for industrial investment.”<sup>19</sup> Among the manufacturer’s six top choices of new legislative provisions (see Table 2), the CHIPS and Science Act directly addressed two.



**TABLE 2: Manufacturer’s Top Choice of Provisions to be Included in a China Competition Legislation<sup>22</sup>**

#	Provision	Status
1	Addressing port congestion and competition issues in ocean shipping	The Ocean Shipping Reform Act, which had been included in the America COMPETES Act, passed into law separately.
2	Eliminating ill-conceived labor provisions that facilitate unionization campaigns	Per the White House, the CHIPS and Science Act support “good-paying, union construction jobs” by requiring Davis-Bacon prevailing wage rates for facilities built with CHIPS funding. <sup>23</sup>
3	Strengthening U.S. leadership in energy innovation and competitiveness	The CHIPS and Science Act authorizes \$67.9 billion over five years, for the Department of Energy, mostly for research and research infrastructure.
4	Funding to increase domestic semiconductor production capacity	The CHIPS and Science Act authorizes \$52.7 billion over 5 years to incentives U.S. semiconductor innovation and production.
5	Investments to support the critical minerals supply chain	Not addressed in the CHIPS and Science Act.
6	Full tax deduction for research expenses	Tax reduction for all research expenses is not addressed in the CHIPS and Science Act.

Notably, neither the CHIPS Act 2021 nor the business community included China – or the direct countering of China – as part of their policy needs and concerns. Even when mainland China was mentioned, it was joined by other U.S. allies and partners who have a strong semiconductor industry. Together, these Asian authorities were used as a benchmark to call for and validate the increase of U.S. government incentives – but the business community by no means suggested or supported countering measures directly aimed at these “global competitors” in semiconductor manufacturing. Meanwhile, the National Association of Manufacturers finalized the above-mentioned statement in July, 2021, at a time when relevant legislations were already by default “China competition bills.” Even then, most, if not all of NAM’s top choices were domestic-oriented, with no mention of issues such as tariff, market access or countervailing duties, let alone those directed at China.

### I.3 Supporting U.S. Chips and Manufacturing: Calls from the American Business Community

While both the White House and Congress share a common understanding to promote U.S. economic and scientific competitiveness through the competition bills, a deeper read into the official documents reveals that at least between the White House and the House Democratic leadership, the nuances and primary focus of their respective policy focus and objectives vary. Below is a comparison based on the White House’s August 9 fact sheet and the House Democratic leadership’s fact sheet, both concerning the CHIPS and Science Act.<sup>20</sup>

**TABLE 3: Policy Purpose and Objective of the House Democratic Leadership and the White House Concerning the Competition Bill<sup>24</sup>**

	The White House	House Democratic Leadership
<b>Emphasis of Policy Purpose<sup>25</sup></b>	“Keep[ing] the United States the leader in the industries of tomorrow.”	“Regaining U.S. strength and reducing long-term supply chain vulnerabilities in critical areas.”
	The industries of tomorrow contain nanotechnology, clean energy, quantum computing, and artificial intelligence.	The critical areas include “advanced manufacturing, next-generation communications, computer hardware, and pharmaceuticals.”
<b>Highlighted policy objective of the bill</b>	“Advance U.S. global leadership in the technologies of the future.”	Develop “use-inspired and translational research” and “technology-based solutions to national, societal or geostrategic challenges.”
<b>Shared technology and areas of focus</b>	<ul style="list-style-type: none"> <li>• Artificial intelligence</li> <li>• Quantum computing</li> <li>• Advanced communications technology/6G</li> <li>• Advanced energy science</li> <li>• Biotechnology</li> </ul>	
<b>House-unique technology and areas of focus</b>	[N/A]	<ul style="list-style-type: none"> <li>• Biological and environmental research</li> <li>• Sustainable chemistry</li> <li>• Food-energy-water system</li> <li>• Precision agriculture</li> </ul>
<b>Other policy objectives mentioned</b>	<ul style="list-style-type: none"> <li>• Investment in the workforce</li> <li>• Catalyze regional economic growth and development</li> </ul>	<ul style="list-style-type: none"> <li>• Research security</li> </ul>

**TABLE 4: Research and Innovation Provisions of USICA and America COMPETES Act<sup>28</sup>**

	<b>USICA (as of November, 2021)</b>	<b>America COMPETES Act (as of February, 2022)</b>
<b>General Purpose</b>	Enhance U.S. competitiveness and leadership in innovation and basic and applied research, especially in STEM	Accelerate collaborative, purpose-driven R&D to address key societal challenges
<b>Focus Areas</b>	Capacities in key technology including: <ul style="list-style-type: none"> <li>• AI</li> <li>• Semiconductor and advanced computing</li> <li>• Quantum information technology</li> <li>• Robotics, automation, and advanced manufacturing</li> <li>• Advanced communications technology and immersive technology</li> <li>• Data storage, data management and cybersecurity</li> <li>• Batteries and other advanced energy and industrial efficiency technologies</li> <li>• Advanced materials science</li> </ul>	Solutions to societal challenges including: <ul style="list-style-type: none"> <li>• Climate change and environmental sustainability</li> <li>• Global competitiveness</li> <li>• Cybersecurity</li> <li>• National security</li> <li>• STEM education and workforce</li> <li>• Social and economic inequality</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• Supports the building of a STEM workforce as well as scholarship on the listed key technologies</li> <li>• Separate funding for the Department of Energy to conduct R&amp;D and address energy-related supply chain activities within the key technology focus areas</li> <li>• Builds regional capacity and reduce geographic disparity (avoid undue geographic concentration of research and education funding)</li> </ul>	<ul style="list-style-type: none"> <li>• Supports all levels of STEM education</li> <li>• Separate support to Department of Energy for research on energy storage, energy transition (solar, hydrogen, fusion, carbon removal, bioenergy), and critical materials</li> <li>• Supports National Institute of Standards and Technology in research and standards development of cutting-edge technologies, including quantum information science, artificial intelligence, cybersecurity, privacy, engineering biology, advanced communications technologies, semiconductors</li> </ul>

This difference in focus parallels the different approach between the older competition bill proposals, namely, the Senate’s USICA and the House’s America COMPETES Act. While both competition bills aim at promoting research and development, USICA focuses on enhancing U.S. competitiveness by increasing U.S. capacities in key cutting-edge technologies – much alike the White House’s focus on “U.S. global leadership in the technologies of the future,” while AmCOM emphasizes “collaborative, purpose-driven R&D to address key societal challenges.” The parallel between the White House fact sheet and USICA might explain why the Senate is silent on its interpretation and vision for the CHIPS and Science Act, since it likely resembles that of the White House.

The actual texts of the final CHIPS and Science Act takes a compromised approach. The National Science Foundation (NSF) – the agency that receives the majority of the research and innovation funding – is instructed to use the funds to both address the societal challenges listed in AmCOM and advance the key technology focus areas as listed in USICA.<sup>26</sup> However, the challenges and the technology focus areas do not have to directly align, and the NSF is instructed to review and adjust the list of challenges and technologies annually, in consultation with an advisory committee composed of stakeholders as well as industrial and academic experts.<sup>27</sup> As such, the NSF has broad authority to set its investment priorities, either through adjusting the list of challenges and technologies of focus, or through deciding the specific projects to support.

Compared to statements and concerns by the business community, the policy purposes of the White House and Congress show a slightly more outward approach – the White House aims to ensure U.S. global leadership in future industries and technologies, while the House mentions supply chain vulnerabilities concerns which could have bilateral and multilateral implications. Nevertheless, both purposes landed on primarily domestic measures, i.e. on the building of U.S. capabilities. Even in areas where emphases vary, the difference centers around whether to focus on technology or societal challenges and thus tightly corresponds to the building of domestic capabilities. Indeed, in the White House fact sheet, China appeared only twice – once in the title of the fact sheet and once when the fact sheet highlights a narrow guardrail to prevent CHIPS funding from being used in China. As the next section will reveal, this trend continues in the actual texts and provisions of the CHIPS and Science Act.

## **2. Stimulating Chips and Science: A Summary of the Provisions**

### **2.1 Funding to Support Semiconductor Manufacturing and Innovation**

The previous CHIPS Act of 2021 – passed as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA 2021) – authorizes the Department of Commerce, Department of Defense and the Department of Treasury to establish respective programs to stimulate the semiconductor industry. The CHIPS and Science Act provides funding for those programs. Specifically, the bill authorizes:

- A total of \$39 billion, from 2022 to 2026, to the Department of Commerce for stimulating semiconductor manufacturing,
- A total of \$11 billion, from 2022 to 2026 to the Department of Commerce for research and workforce development,
- A total of \$2 billion, from 2023 to 2027, to the Department of Defense for lab-to-fab transition of semiconductor technology and DOD-unique applications,

- A total of \$500 million, from 2023 to 2027, to the Department of the Treasury to support relevant agencies in international information and communications technology security and semiconductor supply chain activities
- A total of \$200 million, from 2023 to 2027, to the Department of the Treasury to advance development of domestic semiconductor workforce, training and education.<sup>29</sup>

Within the \$39 billion of CHIPS funds for stimulating semiconductor manufacturing, \$2 billion should be set aside to incentivize manufacturing of mature technology nodes.<sup>30</sup> The White House and Senator Mark Kelly, a chief negotiator of the bill, both implied that this provision has in mind the automobile industry, among others, but the Department of Commerce has relative discretion in distributing these funds.<sup>31</sup>

**TABLE 5: Amount of Funding Authorized by the Semiconductor Division of the CHIPS and Science Act<sup>47</sup>**

Fiscal Year	Manufacturing and R&D incentive (Commerce) <sup>48</sup>	R&D and workforce development (Commerce)	DOD-unique applications and lab-to-fab transition of technology (Defense) <sup>49</sup>	International telecommunications technology security and semiconductor supply chain activities (Through Treasury to State and other agencies)	Workforce Development and Education (Treasury)
2022	\$19 billion	\$5 billion	[N/A]	[N/A]	[N/A]
2023	\$5 billion	\$2 billion	\$400 million	\$100 million	\$25 million
2024	\$5 billion	\$1.3 billion	\$400 million	\$100 million	\$25 million
2025	\$5 billion	\$1.1 billion	\$400 million	\$100 million	\$50 million
2026	\$5 billion	\$1.6 billion <sup>50</sup>	\$400 million	\$100 million	\$50 million
2027	[N/A]	[N/A]	\$400 million	\$100 million	\$50 million
<b>Total</b>	<b>\$ 39 billion</b>	<b>\$11 billion</b>	<b>\$2 billion</b>	<b>\$500 million</b>	<b>\$200 million</b>

**Total funding overall: \$52.7 billion**

In addition to the abovementioned fundings, the CHIPS and Science Act also establishes a 25% tax credit for investment in semiconductor manufacturing, if the manufacturing facilities will enter into service in or after 2023 and if construction begins before 2027.<sup>32</sup> While not included in the previous versions of either USICA or AmCOM, this provision is a qualified

version of the Facilitating American-Built Semiconductors Act (FABS Act) and reflects the approach of the originally proposed draft of the CHIPS Act 2021.

Furthermore, the Act also prohibits recipients of the CHIPS funds from expanding semiconductor manufacturing capacity in China and “any other foreign country of concern” within 10 years since they receive the funding. “Legacy semiconductor” – defined as 28 nanometer generation or older but subject to further modification by the Secretary of Commerce, are excluded from this prohibition.<sup>33</sup> The act also prohibits recipients from using the CHIPS funds for stock buyback and dividends.<sup>34</sup> Finally, the Act clarifies that upstream suppliers and nonprofits are eligible for CHIPS funds and specifies the goal of the programs as promoting U.S. “economic and national security interests.”<sup>35</sup>

In addition to the semiconductor industry, the Act appropriates \$1.5 billion to advance “open architecture, software-based wireless technologies” by funding “innovative, ‘leap-ahead’ technologies in the U.S. mobile broadband market.”<sup>36</sup>

## **2.2 A Wide Range for Support for Advanced Research and Innovation Basis**

Under the CHIPS and Science Act, a total of \$169.9 billion are authorized over the next five years to support research projects in a number of agencies and departments.<sup>37</sup> Specifically, the National Science Foundation (NSF) will receive \$81 billion in funding to advance research and innovation, including through strengthening research infrastructure, promoting STEM education and training and expanding research programs and projects.<sup>38</sup> The bulk of the funding will go to a new Directorate for Technology, Innovation, and Partnerships within the NSF to address societal challenges and advance key technology focus areas. The initial NSF focus areas are as follows:

- Societal challenges:
  - National security [Note: unlike AmCOM, the CHIPS and Science Act lists “national security” as the first of the societal challenges]
  - Manufacturing and industrial productivity
  - Workforce development and skills gaps
  - Climate change and environmental sustainability.
  - Inequitable access to education, opportunity or other services.
- Key technology focus:
  - AI
  - Semiconductor and advanced computing
  - Quantum information technology
  - Natural disaster prevention or mitigation [Note: not included in USICA’s list]
  - Robotics, automation, and advanced manufacturing
  - Advanced communications technology and immersive technology

- Biotechnology [Note: not included in USICA's list]
- Data storage, data management and cybersecurity
- Batteries and other advanced energy and industrial efficiency technologies
- Advanced materials science<sup>39</sup>

The NSF is instructed to review and adjust the list of challenges and technologies annually, in consultation with an advisory committee composed of stakeholders as well as industrial and academic experts.<sup>40</sup> The challenges and the technology focus areas do not have to directly align. Although the NSF has broad discretion in distributing the funds, it is also instructed to conduct a review of its progress in key technology focus areas and challenges no later than five years after the enactment of the CHIPS and Science Act.<sup>41</sup> The review should cover, among others, the relative balance in leadership between the United States, allied and partner countries and China.

The Department of Energy receives the second-most funding under the research and innovation provisions – a total of \$67.9 billion over five years. The bulk of this funding will go to the Department of Energy's Office of Science, supporting its seven core research programs, i.e. Advanced Scientific Computing Research, Basic Energy Sciences, Biological and Environmental Research, Fusion Energy Sciences, High Energy Physics, Nuclear Physics, Isotope R&D and production. According to highlights summarized by the House Science Committee, the funding aims at supporting the fight against climate change as well as research in emerging areas, including quantum information science and artificial intelligence, among others.<sup>42</sup>

The Act also provides \$10 billion to the National Institute for Standards and Technology (NIST) to support the development of standards for emerging technologies and to provide further support and incentives to U.S. manufacturing.<sup>43</sup>

Finally, the Department of Commerce is appropriated with \$10 billion over 5 years to build regional technology hubs to expand innovation capacity in areas that are not leading technology centers.<sup>44</sup> In accordance with the general goal to enhance innovative capacity and economic growth among all regions, the NSF is also instructed to build Regional Innovation Engines, with a special consideration for rural regions. The Regional Innovation Engines shall work in collaboration with the Department of Commerce's regional technology hubs as well as relevant federal agencies, educational institutions and the private sector.

### **2.3 Narrow Guardrails and Old Grievances: CHIPS+ Provisions that Directly Concerns China**

Although the competition bill is often described as an effort to enhance U.S. competitiveness vis-à-vis China, a limited number of provisions in the 1034-page bill directly discuss China.

As were previously mentioned, the CHIPS and Science Act prohibits recipients of the CHIPS funds from expanding semiconductor manufacturing capacity in China except for older-generation “legacy semiconductor.” In addition, Chinese companies are not allowed to participate in the NIST’s Manufacturing USA Program without a waiver, and the NSF shall not provide funding to programs and projects that involve the Confucius Institute.<sup>45</sup>

Furthermore, the Biden administration is also instructed to develop a national strategy in improving the U.S. technological competitiveness in support of the U.S. national security strategy and the national strategy must include an assessment of the extent to which intellectual property developed with federal defense funding is being used by China-related entities.<sup>46</sup> The NSF is also instructed to review its progress including by comparing the “relative balance in leadership” between the United States, China and others in key technology focus areas and in addressing societal challenges.



*The CHIPS and Science Act, as is signed by U.S. President Joe Biden.  
(Source: The White House, Public Domain)*

In sum, the “China” provisions of the CHIPS and Science Act can be generally summarized into three categories: First, “guardrail” provisions that prevent the CHIPS and Science Act funding from benefitting China and at least part of the Chinese entities; second, a provision that address, in passing, the conventional grievance of intellectual property rights; and third, a provision that use China as a benchmark to assess U.S. competitiveness – much alike the approach of the business community as they promote for government incentive measures to support U.S. domestic industries.

### **3. Inclusion of the “China” Factor: A Shortcut to Political Support Turning to a Long Journey of Law-making**

As can be seen from the summary of the CHIPS and Science Act provisions, the bill primarily addresses U.S. domestic policy – specifically, on the development of U.S. semiconductor manufacturing and on government supported R&D efforts in foundational and cutting-edge technologies. Although “China” was not entirely absent from the bill, it was neither a notable component of the policy concerns that the bill aims to address, nor a prevailing factor in the actual content of the bill.

That being said, to allocate enough resources and to overcome partisan differences on the legislation, the China factor was used to rally enough political support – especially to win over the hearts and minds of the partisan Republican. However, by doing so, the original and concrete aim of the package – namely, macroeconomic- and innovation-oriented



stimulation – was plagued by the hyped hysteric fear of China and the overemphasis of national security concerns. Meanwhile, the China factor also became a convenient excuse for any party to lobby or advocate for its own interests that were not supposed to be directly associated with China. This created an intricate phenomenon that during the lobbying process of the CHIPS and Science Act, parties that were both for the bill and against the bill mentioned U.S. strategic competition with China repeatedly, yet in the full body of the legislation, China was only present in five provisions – three ‘guardrail’ ones that prohibit CHIPS and Science Act funding from going to China, one that mentions the traditional grievance of intellectual property rights and one that uses China as a benchmark to assess U.S. competitiveness.

Just as the introduction of the China factor helped ensure support for the bill, it also significantly extended the legislative process. As mentioned earlier, legislative efforts to address the semiconductor shortage crisis started even before the 117th Congress, in July 2020, and resulted only in a temporary conclusion – but hardly a solution – at the beginning of the 117th Congress. Meanwhile, the initial versions of the competition bills – the Endless Frontier Act, the National Science Foundation for the Future Act and Department of Energy Science for the Future Act – passed their respective chambers around June, 2021. At the time, there was both bipartisan and industrial support to pass a bill to both fund the CHIPS Act 2021 and increase support for U.S. research and innovation, but the House and the Senate needed to reconcile their different approach with regard to the research and innovation provisions (see Table 4 and discussions above).

Nevertheless, as the semiconductor and the research provisions became combined into a ‘China competition bill,’ compromises and negotiations with the Republican Senators also resulted in the inclusion of more provisions in USICA – most notably, the reinstatement of Section 301 tariff exclusion which incited controversy. An even more extreme case occurred with the House’s America COMPETES Act (AmCOM). AmCOM passed the House on February 4, 2022, after at least seven months of debates, negotiations and compromises. As the House’s established proposal for the competition bill, the package not only proposed to expand the Trade Adjustment Assistance program and provisions on global climate partnership – both partisan issues that most Republican lawmakers opposed, but it also incorporated a number of other bills that were labeled as important measures to counter China but strongly opposed by several major business groups, mostly because the “countermeasures” had excessively sweeping coverages or aggressive approach compared to the policy goals they proposed to secure (see Table 6).

The concept of a ‘China competition bill’ likely made it difficult to exclude these controversial and, at times, aggressive, bills from the package. And while the inclusion of the bills was likely vital to securing some political and legislative support for the competition bill, controversy surrounding these controversial bills added a multitude of new layers to

the legislative discussion, making any reconciliation effort cumbersome, time-consuming and nearly impossible. By mid- to late-July, 2022, Congress had repeatedly passed estimated and planned deadlines for passing the ‘China competition bill,’ and congressional leaders previously vowed to pass the competition bill in July.<sup>51</sup> On July 27, 2022, the Senate proposed the CHIPS and Science Act, which contains only the semiconductor and research provisions of the competition bill – with the exception of three additional ‘China guardrail’ provisions and the necessary compromise between the Senate and the House approach, the CHIPS and Science Act closely resembles corresponding provisions in the National Science Foundation for the Future Act and Department of Energy Science for the Future Act, and the Endless Frontier Act, all passed more than a year ago and proposed even earlier.

**TABLE 6: Select Provisions of Controversy in USICA and AmCOM<sup>52</sup>**

<b>Provisions</b>	<b>In:</b>	<b>Opposition and Disagreement</b>
<b>Reinstate the exclusion of Section 301 tariff on Chinese goods</b>	USICA	Opposed by AFL-CIO; supported by Senate Republicans U.S. Chamber of Commerce. Lawmakers are divided on the issue.
<b>Trade Adjustment Assistance (TAA)</b>	AmCOM	Supported by labor groups but opposed by Republican lawmakers. Senator Rob Portman suggested that TAA might pass if accompanied by the Trade Promotion Authority (TPA), but the Biden administration showed little interest in seeking TPA.
<b>Outbound investment screening</b>	AmCOM	Opposed by U.S. Chamber of Commerce, the U.S.-China Business Council and other business groups.
<b>De minimis tariff reform</b>	AmCOM	Opposed by U.S. Chamber of Commerce and National Foreign Trade Council.
<b>AD/CVD reform (“Eliminating Global Market Distortions To Protect American Jobs Act of 2021”)</b>	AmCOM	Opposed by U.S. Chamber of Commerce, National Foreign Trade Council, Autos Drive America; supported by American Iron and Steel Institute, Alliance for American Manufacturing and American Institute of Steel Construction.
<b>Global climate partnership</b>	AmCOM	Opposed by Senate minority leader Mitch McConnell and criticized by House Republicans.

#### **4. When Lobbying Rhetoric Leads to Diplomatic Response: Chinese Criticism of the China Competition Bill**

The complication of excess domestic lobbying, accompanied by the further deterioration of the U.S.-China relations on the international stage, has further raised unnecessary alarm on the Chinese side as the Chinese government interprets lobbying and political messages from the U.S. domestic discussions as proof of U.S. intention to further contain or even undermine China's rise.

Since the Senate introduced USICA as a China competition bill, the Chinese government has been critical of the competition bill. On April 22, 2021, after the Senate Committee on Foreign Relations passed USICA, the Foreign Affairs Committee of China's National People's Congress criticized the bill for "consisting of Cold War mentality and ideological biases, slandering China's development strategy and domestic and foreign policies, and grossly interfering with China's internal affairs."<sup>53</sup> The statement specified, however, that "even if the United States and China would compete in certain areas, the competition should be fair, rule-based, benign and manageable," and primarily denounced provisions that concern Taiwan, Xinjiang and Hong Kong. Similarly, on November 30, 2021, China's Ministry of Foreign Affairs called for U.S. and Chinese businesses to "cease undermining and sanctioning Chinese companies, persuade Congress against passing China-related legislations such as the Innovation and Competition Act, and establish a fair area for U.S. and Chinese companies" aiming at benign competition.<sup>54</sup>

As lobbying and legislative efforts for the 'China competition bill' continued, China's position has also hardened and when the U.S. Congress passed the CHIPS and Science Act, the critical attitude extended to the trimmed competition bill – likely also due to the explicit "China guardrail provisions" that were added last-minute by China hawks. Following the congressional passage of the CHIPS and Science Act, China's Commerce Ministry said that the act "contains provisions that restrict relevant companies' normal economic, trade and investment activities in China, which is discriminatory and will distort the global semiconductor supply chain and disrupt international trade."<sup>55</sup> The ministry urged the U.S. to implement the bill in accordance with relevant WTO rules and principles, maintain the security and stability of global industrial and supply chains and avoid fragmentation.<sup>56</sup> China "firmly opposes" the bill and will "take forceful measures to safeguard its legitimate rights and interests when necessary," according to the ministry.<sup>57</sup> Following that line, Chinese Foreign Ministry spokesperson Zhao Lijian said that the bill "is purportedly aimed at bolstering the competitive edge of the US's sci-tech and chip industries" but "certain provisions in the act restrain normal sci-tech cooperation between China and the US."<sup>58</sup> Meanwhile, Chinese Foreign Ministry spokesperson Wang Wenbin called the bill "an example of economic coercion by the U.S.," while emphasizing that "decoupling will harm both itself and others."<sup>59</sup> Restrictions and suppression will not stop the pace of China's technological and industrial development, Wang added.



*Chinese Foreign Ministry spokesperson Zhao Lijian at a press conference in Beijing on July 28, 2022.  
(Source: Ministry of Foreign Affairs of the People's Republic of China, Public Domain)*

### **A Free Fall Into ‘China Threat’ and Decoupling?**

As China became increasingly firm in its criticism and denouncement of the China competition bill, the U.S. lawmakers will interpret China’s diplomatic pushback in two ways: First, they see China becoming increasingly assertive and intending to interfere with U.S. domestic politics, which deepens the perception of the China threat especially during election seasons. Second, China’s strong opposition of the CHIPS Act makes lawmakers, especially the China hawks, believe that technological self-reliance and decoupling hurt China’s interests, which means there will be even more incentives to push for further aggressive legislation to deepen U.S.-China trade and tech decoupling, or even escalating U.S.-China competition in general.

Some of those can be observed from several ‘China bills’ that are currently under discussion in the 117th Congress and could potentially carry over to the 118th Congress. First, looking at “the impact of outbound U.S. investment flows that could circumvent the spirit of export controls or otherwise enhance the technological capacity of [U.S.] competitors in ways that harm [U.S.] national security,”<sup>60</sup> several lawmakers and congressional leaders have continued to push for the establishment of an outbound investment screening mechanism, ideally through the enactment of a legislation. The current legislative proposal, the National Critical Capabilities Defense Act, would establish an interagency committee to review and potentially suspend outbound investment activities that involve nations of concerns – primarily China and “critical national capability.” Business communities and industrial stakeholders have criticized the current bill for having an overly expansive coverage, especially as the bill leaves “critical national capability” undefined and up to the interpretation of the interagency committee.<sup>61</sup>

Second, two bills have been proposed to reform tariff and trade enforcement tools in an effort to counter China. Aiming at combating unfair trade practices “emanating from

China,” the Eliminating Global Market Distortions To Protect American Jobs Act of 2021 would strengthen and expand antidumping and countervailing duty measures, including by extending countervailing duties to cover “cross-border subsidy” resulting from the Belt and Road Initiative and similar practices. Meanwhile, the Import Security and Fairness Act would prohibit the de minimis exemption – the practice to not charge tariffs on goods valued below \$800 for imports from China. While some identified the de minimis reform as a needed change to address the increase of import packages under the de minimis level, partly attributed to the growing cross-border e-commerce, others argued that the reform would lead to significant administrative costs far surpassing possible benefits.<sup>62</sup>

Third, Title V of the Taiwan Policy Act – currently under discussion in the U.S. Senate, aims at “enhanced development and economic cooperation between the United States and Taiwan.” The provisions emphasized Taiwan’s role as a reliable partner “critical for diversifying our Nation’s supply chains,” for reducing U.S. reliance on China and highlighted the U.S.-Taiwan Economic Prosperity Partnership Dialogue as well as its coverage over issues such as 5G networks and telecommunications security, supply chains resiliency, infrastructure cooperation, renewable energy, global health and science and technology. The bill further urged the administration to resume meetings under the United States and Taiwan Trade and Investment Framework Agreement with the goal to reach a bilateral trade agreement.

From untraditional tariff measures such as the de minimis reform (namely, the Import Security and Fairness Act) and the introduction of new AD/CVD tools, to the unrelenting legislative push for an outbound investment screening mechanism (namely, the National Critical Capabilities Defense Act) despite pushback from the business community, the push to decouple U.S.-China trade and technology ties has continued and has expanded to new arenas, with the potential to impact an even broader range of industries, sectors and global actors.

At the same time, corresponding tendencies can also be spotted in the debates and rhetoric surrounding the midterm elections, as candidates solidified a “tough on China” consensus regardless of their party and grew increasingly hawkish – at least in rhetoric – against China. However, as was discussed, such political narrative and messaging now have implications beyond mere domestic politics and lobbying efforts. In a world where the ‘China talks’ have translated into a continuing U.S.-China trade war, increasing tightening of technology control and decoupling, heightened legislative discussion and the domestically applauded enactment of a ‘China competition bill’ and Pelosi’s visit to Taiwan, it will be especially difficult – if at all possible – to convince China that the rhetoric does not reflect U.S. policy intent and strategic planning to contain China. As China’s responses and pushbacks will only intensify the perception of China threat and lead to further efforts in decoupling, the developments could well translate into a self-fulfilling prophecy, where Congress is eventually bound to act just as hawkish as the political talks of the lawmakers. The next section will look into this issue by evaluating the current landscape of the midterm elections as related to the China issues.

## PART III

# ‘Red Dragon’ or Red Herring?

## The ‘China Factor’ in the U.S. Midterm Elections

While the result of the upcoming U.S. midterm elections rests on several polarizing domestic issues, when it comes to Congress’ approach to China, most candidates only differ in just how tough they think the U.S. ought to act towards Beijing. This crystalizing ‘tough on China’ consensus between the two parties’ Congressional caucuses is quite well-founded electorally. China’s unfavorability rating has drastically increased across party lines since the last U.S. midterm elections were held in 2018. According to a recent Pew poll, roughly 9 in 10 Americans (89%) consider China as an ‘enemy’ or ‘competitor’ while 67% feel ‘cold’ towards China, a sentiment that has expanded from 46% of the polled population in 2018.<sup>63</sup>

Many candidates have ‘talked tough’ in an attempt to court a voting public generally dissatisfied with the rise of China, but the lack of substantive debate regarding the relationship – as well as the relative urgency of other issues – has largely neutralized the ‘China factor’ as an important distinguishing point between the two parties this November. Therefore, mentions of China in the midterm campaigns should be taken with a grain of salt – China’s salience electorally is largely a matter of rhetoric and bluster, while its real relevance as it relates to trade policymaking has gone largely unmentioned this election season.

That being said, Republicans have generally centered critique of China in their electoral rhetoric to a greater degree than Democrats this election season. As they are poised to overtake Democrats handedly in the House of Representatives—and possibly in the Senate as well by a narrower margin—we can expect a slightly harder line on China to emerge on the Hill that could pressure President Biden for the remainder of his term. In practice, this rhetoric around China has not neatly coalesced around certain policies. Rather, Republicans have ‘played the China card’ in myriad ways: to signal ideological opposition to a strawman of ‘Chinese communism,’ to pin blame on the President for

perceived Chinese economic abuses, and to demonstrate their willingness to commit military resources in a hypothetical conflict between China and U.S. partners in East Asia. In response, challengers have sought to paint their rivals as hypocrites by calling out their own ties to Chinese firms and call their ‘loyalty’ into question – further devolving the discourse away from real discussions of China policy and towards personality contests.

One such example occurred earlier this year in Pennsylvania, where the Republican primary candidate (now nominee) for Senate, Dr Mehmet Oz, squabbled with his challenger Dave McCormick over business dealings with Chinese health companies and hedge funds, respectively.<sup>64</sup> While this episode was of electoral consequence when initially revealed, one should remember that both candidates positioned themselves as champions of ‘America First’ policies and would likely have adopted similarly populist approaches towards China in office. These rhetorical battles over general ‘toughness’ also serve as an unfortunate distraction to practical questions of how candidates would seek to counter China through the technicalities of trade policy or investment controls.

As such, the remainder of this section will attempt to separate political theater from the real implications that midterm contest will have vis-à-vis China. The two dynamics to be explored are the replacement of a few trade-focused incumbents by more protectionist newcomers, and the lack of a clear partisan binary on trade issues.



American citizens voting in an election.  
(Source: Getty Images, Royalty-Free)

### ***1. Departures of Veteran Trade-Focused Incumbents is Expected to Further Politicize Trade and Technology Policymaking***

Trade-focused incumbents or candidates more often than not are from manufacturing states in the revitalizing ‘Rust Belt’ of the mid-Atlantic and Midwest and – especially in the tech sector – the ‘Sun Belt’ along the nation’s southern coast and border. Therefore, the retiring of Senators Toomey and Portman from Pennsylvania and Ohio, respectively, are two personnel changes that are bound to have a knock-on effect in how the Congressional parties will devise, amend, support, and move China-focused legislation through the next Congress. This is especially true given that the political climate has given way to more radical newcomers.

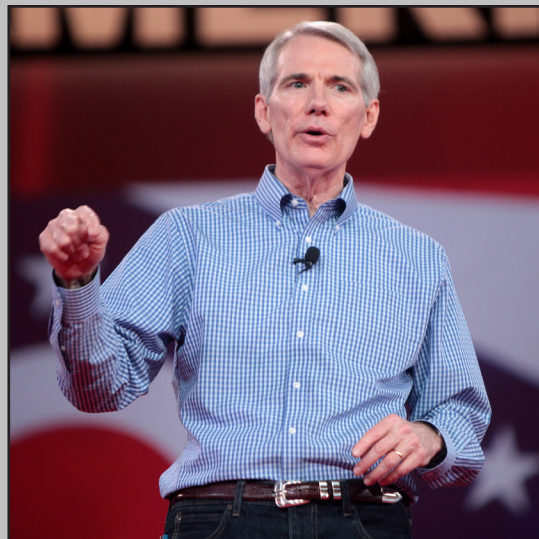
Senator Pat Toomey of Pennsylvania, while serving on the committees of Banking and Finance, consistently sought to prevent trade barriers with China while addressing imbalances in the relationship by other means. For instance, he reached an agreement with labor-aligned Senator Sherrod Brown of Ohio on a bipartisan amendment to USICA that would have provided for sanctions on Chinese organizations involved in money laundering and intellectual property theft.<sup>65</sup> However, Toomey ultimately opposed USICA for its government-directed spending that “imitate[s] Chinese central planning.”<sup>66</sup> Toomey also repeatedly called for Section 301 tariff relief and for a reform of the exclusion process to feature in the final China competition bill.<sup>67</sup>

Toomey’s departure has given way to a race in Pennsylvania between Republican television personality Dr. Mehmet Oz and Democratic Lieutenant Governor John Fetterman. Both candidates have vowed to ‘get tough’ on China and preserve the state’s critical manufacturing sector. While Oz cultivated his anti-China bona fides during his primary race, he has come under fire in the general from Fetterman over his past partnership with a Chinese healthcare company and conspicuously rapid change in tone. Fetterman led solidly for much of the summer, but Oz is currently closing the gap, trailing Fetterman by 3 points on aggregate this week.<sup>68</sup>

Rob Portman, an incumbent Republican Senator from Ohio, is another trade focused incumbent that is leaving Congress at the end of his term. As a former House Member, U.S. Trade Representative, Director of the Office of Management and Budget – and a Finance, Energy, and Foreign Affairs committee member in the Senate – Rob Portman consistently opposed what he saw as unfair trade practices in Beijing, including a successful WTO suit in 2005 against China’s improper duties on auto parts imported from America.



*Senator Pat Toomey of Pennsylvania speaking at the 2014 Conservative Political Action Conference (CPAC) in National Harbor, Maryland. (Source: Flickr/Gage Skidmore, CC BY-SA 2.0)*



*U.S. Senator Rob Portman speaking at the 2015 Defending the American Dream Summit at the Greater Columbus Convention Center in Columbus, Ohio. (Source: Flickr/Gage Skidmore, CC BY-SA 2.0)*



The term of Senator Portman's Democratic counterpart in the state of Ohio, Senator Sherrod Brown, will not end with this election cycle. Both Ohio senators, while divided by party lines, have worked together to protect their state's manufacturing sector through measures like introducing legislation to strengthen trade remedy laws last year and, more recently, jointly urging President Biden to maintain Section 301 tariffs on Chinese goods.<sup>69</sup> Brown has not ruled out running for re-election to the Senate come 2024.

The race for Portman's open seat is between Republican author and commentator J.D. Vance and long-time Democratic House member Tim Ryan. Vance is a Trump-style populist who has aligned himself with the former President's rhetoric on China. Representative Ryan, while having deep roots in organized labor, has also positioned himself as a conservative-friendly candidate saying he "agreed" with Trump on trade during his administration while the then-venture capitalist Vance was touting the importance of free-trade agreements at the expense of local manufacturing jobs.<sup>70</sup> Vance is currently pulling away from Ryan in the polls, leading this week by 4 points on aggregate.<sup>71</sup>

The replacement of one free trade advocate and one trade focused centrist with two more protectionist minded candidates will likely have a pronounced effect on increasing the polarization of the next Congress on issues of trade. The loss of these key individuals, with decades of experience in the technicalities of trade policy, could give way to more politically (as opposed to technocratically) motivated proposals, a dynamic which is likely to be even more pronounced if one or both chambers of Congress flip to the Republican side. Congress could become a source of less reasonable policy entrepreneurship, with measures designed moreso to challenge Biden's trade agenda than to supplement U.S. strategy towards China at large.

## **2. 'Pro-Trade' and 'Protectionist' Voices Across the Map and on Both Sides of the Aisle: Breaking the Partisan Binary**

Rather than a strictly partisan divide on trade and technology relations with China in the leadup to the midterm elections, there exist parallel divides within each party between free trade advocates and protectionists. The protectionist views in each party have emerged from similarly perceived issues in the American economy (such as the declining manufacturing sector) but they manifest in different ways due to the diverging voter bases of each party. Democrats who support more protectionist measures tend to have deeper ties to organized labor, while Democratic candidates with more suburban, upper-class bases of support tend to be less adamant about trade barriers. On the Republican side, support for protectionist measures tends to correlate with candidates who derive their support from the Trump base, while candidates who rely more on connections to the business community and 'main street' Republican voters tend to be more classically liberal—favoring free trade while countering China in other areas.

As the aforementioned races in Ohio and Pennsylvania show us, there isn't always a clear binary in trade policy across party lines. In Ohio, for instance, the Democrat is outflanking the Republican and calling his 'Trumpian' bona fides on China into question. However, the Wisconsin Senate race does display a more traditional partisan divide on trade policy between a 'pro-trade' Republican and a 'pro-labor' Democrat. Incumbent Senator Ron Johnson occupies the classical liberal wing of the GOP, consistently voting in favor of free trade agreements and tax cuts while opposing tariffs and federal subsidies. This means that the Senator has voted against several measures designed to confront China economically, such as the United States Innovation and Competition Act (USICA) and the CHIPS and Science Act, as well as called on the USTR to review the tariff exclusion process and reduce tariffs on China altogether.<sup>72</sup>

However, the Senator has responded to claims that he is too 'soft' on China by pointing to his support of measures to counter China in areas other than bilateral trade. For example, in March he introduced the Protect America's Innovation and Economic Security from CCP Act, which would reestablish an office in the Department of Justice to prevent Chinese spying against U.S. intellectual property and academic institutions. Senator Johnson also defended his vote against USICA by saying it did not adequately take China to task for stealing intellectual property and dodging investigations into the origins of the COVID-19 pandemic. Johnson is currently leading slightly in the polls against his Democratic challenger, Lieutenant Governor Mandela Barnes.<sup>73</sup> Barnes has contrasted himself with Johnson by specifically addressing the U.S.-China trade relationship. For example, the Barnes campaign unveiled a plan to boost local manufacturing that calls for an end to "bad trade deals and anti-competitive practices" that he believes are stymieing Wisconsin businesses' ability to compete with China.<sup>74</sup>

Contrasting these cases reveals a vibrant spectrum of opinions on trade policy towards China hidden beneath electoral rhetoric, but there is as much disagreement internal to each party as there is across party lines. This is another indication that the outcome of the midterms will likely politicize China policy to a greater degree: if the Democrats manage to hold the Senate, the party will likely continue to transition away from neoliberal trade policies and support the Biden team's trade agenda with more gusto; if the Republicans win control of one or both chambers, the party's 'America First' and 'pro-trade' wings will likely throw up challenges to Biden's trade agenda from both sides (through measures like the aforementioned National Critical Capabilities Defense Act, the Import Security and Fairness Act, and the Taiwan Policy Act). Either way, Congress' transition after the midterms will likely result in a relative decrease in technocratic policy entrepreneurship in favor of further buttressing or crippling the White House's leading role in China-focused trade and technology policy. As to the specifics of how this will manifest in the 118th Congress, the next part of the report will go into more detail.

## PART IV

# What to Look For in the 118th Congress?

**W**ith the new congressional meeting starting in 2023, the 118th Congress will inherit both the deteriorating U.S.-China relations and the increasingly extreme rhetoric concerning China. As developments of the midterm election have shown, China is a major issue to address for both the Democratic and the Republican parties. As the presidential election becomes an increasingly hot domestic issue 2023-2024, the uncertainties of U.S. domestic politics will only increase. With Biden and Trump as the most likely finalists, the discussion over China and how the United States should continue to approach China will become the most dominant, if not only, issue on the candidates' foreign policy agenda.

Indeed, this trend will likely occur even when the Ukraine crisis persists in the upcoming years. Biden has already stated clearly through both his own statement and his national security strategy that even when Russia brutally invaded Ukraine, the Biden administration still considers China as the only capable pacing challenge to the United States.<sup>75</sup> While for Trump, his China policy was one of the biggest selling points of his foreign policy success during both his 2016 and 2020 campaign. With no doubt, should Trump become the Republican finalist of the presidential election, he will continue his previous rhetoric and emphasize competition, if not confrontation, with China.

As Biden and his Republican opponents are preparing and running for the 2024 presidential election, there will be more space for the 118th Congress to operate in 2023 and 2024. The 117th Congress has already shown a passion and eagerness to take more responsibility and press the Biden administration to be more active in addressing various issues with regard to China. As such, the 118th Congress should also continue this trajectory and, with several legislative issues and bills already in the pipeline, become more aggressive and more specific in dealing with many key issues concerning U.S.-China trade and technology engagement.



*U.S. President Joe Biden delivers his State of the Union address to a joint session of Congress on March 1, 2022.  
(Source: The White House via Flickr)*

Accordingly, there could emerge an alarming tendency that as the U.S.-China relationships deteriorated and as hawkish China talks grew increasingly prevalent in the United States, legislative attention will turn to focus not on increasing U.S. competitiveness, but on containing and even hurting China. The 117th Congress has focused on playing the China card to ensure the passage of major pieces of legislation and has narrowly met the goal with the passage of the CHIPS and Science Act and Inflation Reduction Act in August. The 118th Congress, in turn, could have both the tendency and the opportunity to advance specific counter-China measures, potentially at the expense of benign competition and further escalation of the U.S.-China bilateral relationship.

## **I. Key legislative issues and topics to keep an eye on**

### **I.1 Enhanced economic ties between U.S. and Taiwan, especially on semiconductor**

Taiwan is a complicated issue that concerns both strategic geopolitical interests, security/ arms sale and technology and supply chain concerns. Due to the fact that the Biden administration has been moving very slowly with establishing proper bilateral trade relationships between the United States and Taiwan, the 118th Congress will likely remain agitated on the issue and will seek to do more than just advocacy and open letters.

So far, the top priority has remained on agricultural trade, an issue that is most relevant to the concerns of the voters. However, should this issue be resolved, judging by what House Speaker Pelosi discussed with Taiwan Semiconductor Manufacturing Company (TSMC) executives, it is highly likely that the 118th Congress, regardless of whether the

Democratic or the Republican party has majority, will still move forward to encourage Taiwan technology companies such as TSMC to invest in the United States – as well as to increase bilateral trade and technology collaboration under bills such as the CHIPS and Science Act, other trade- and supply chain-related USICA provisions that could potentially become law, and the Taiwan trade bill that could be potentially proposed.

In this case, the Taiwan Policy Act, though being regarded by the Biden administration as extremely radical, can nevertheless work as a blueprint for the 118th Congress. Notably, the Senate version of the bill included only non-mandatory, “sense of Congress” nudges that call for resumed meetings under the United States and Taiwan Trade and Investment Framework Agreement with the goal to reach a bilateral trade agreement. With the division of trade and foreign affairs power between the President and Congress, it is unclear whether Congress will have the ability or intent to impose an even stronger measure.

Furthermore, future legislative efforts could allow for and encourage more input from local governments on semiconductor and technology investment, especially as the federal government gets distracted by domestic political events. As was discussed, the initial proposal for the CHIPS Act 2021, which was strongly supported by the Semiconductor Industry Association, would provide \$10 billion federal funding to match state and local incentives offered to the building of new semiconductor foundry with advanced manufacturing capabilities. Accordingly, there is a strong likelihood that industrial incentive to amplify state and local support has remained. On the other hand, as the Commerce Department favors programs that have already secured state or local incentives when distributing the CHIPS and Science funding,<sup>76</sup> the ties and connections between the industry and state and local governments will only intensify through the implementation of the CHIPS and Science Act, leading to a firmer foundation for state and local governments to play a greater role, especially with the appropriate federal support and authorization.

## **1.2 New arenas of technology and capital control**

As several areas have become past issues and settled results, the 118th Congress will likely open up new arenas of U.S.-China tech and trade decoupling. Following trade decoupling led by the Section 301 tariffs as well as the tightened review of Chinese M&A activity and inward investment through the enactment of the Foreign Investment Risk Review Modernization Act (FIRRMA), legislative and political interests have already moved to the supervision and control of outbound capital and technology.

On the front of outbound investment screening, the current legislative proposal aims to establish an interagency committee – much alike the review mechanism for inbound foreign investment into the United States – to review and potentially block activities that relate to China and “critical national capability.” With calls from both legislators and businesses

to narrow the scope of the bill, however, questions abound on the particulars: How will “critical national capability” be defined? Which of the outbound investment activities will be deemed as harmful to U.S. interests and accordingly blocked? How broad would the committee’s review authority apply? And where should the perimeter of extra-territorial application of jurisdiction reside, etc.? Even as some congressional leaders are calling for the White House to go ahead and establish an outbound investment screening mechanism amidst contemplation and debates among lawmakers,<sup>77</sup> Congress will need to eventually present a definitive solution – and clearly define the outer limits and specifics of the outbound investment review mechanism it wishes to establish.

At the same time, the Bureau of Industry and Security (BIS) has been exploring multilateral and unilateral approaches to address congressional concerns, but hearing statements and open letters have shown that many in Congress believe that the administration can do more, whether on the front of emerging and foundational technologies, other dual-use technologies, or beyond. As is shown by proposed bills such as National Critical Capabilities Defense Act (outbound investment screening) and Import Security and Fairness Act (De Minimis Reform), Congress believes that the United States can and should do more to decouple U.S.-China trade and tech engagement in furtherance of U.S. interests.



*Alan Estevez, now head of the Bureau of Industry and Security (BIS), then Principal Deputy Under Secretary of Defense, giving a speech in 2015.*

*(Source: Marvin Lynchard/Department of Defense via Flickr, Public Domain)*

### **I.3 Old Grievances**

Congress will continue to pursue old American grievances towards China. As the bilateral relationship deteriorates, and as rhetoric on China remains extreme, the 118th Congress will only do more, not less, to call out China on issues like human rights, coercive actions and other national security related concerns. In this sense, the foreign strategy and international security provisions in USICA and the value-oriented statements in the America COMPETES Act will likely reenter the legislative discussion and have the potential to appear in even more aggressive tones.

## 2. Midterm Outcomes, Domestic Partisanship and Red-Blue Differences on China

The outcome of the midterm will also slightly change the approach of the 118th Congress. While the ‘tough on China’ tone will persist regardless of the midterm election outcomes, it is generally understood that if Republicans win a majority in the House – which they are expected to – they will become more aggressive and hostile towards China than their Democratic counterparts. The Republicans will likely put extra pressure on issues such as export control and form special committees and groups directly aimed at addressing the ‘China threat.’ Furthermore, Republican House Minority Leader Kevin McCarthy has stated that he would visit Taiwan if he becomes House Speaker – should he follow through with his promises,<sup>78</sup> this can likely mean increased tensions between the United States and China, as well as accompanying legislative proposals on Taiwan.

That being said, the specific stance of the 118th Congress will likely depend on developments in geopolitical events during its two years. Should the Taiwan Strait, the East China Sea and the South China Sea become hot issues, the attention will likely shift from trade and technology to general strategic and security matters. While such a shift cannot stop the further deterioration of U.S.-China relationship, it might at least not accelerate the bilateral tech and trade decoupling. Be that as it may, the uncertainty created by security-related tensions will nevertheless hurt the confidence of the global market. As the US-China Business Council has shown through its annual member survey, uncertainties around U.S.-China tensions and geopolitics have led a majority of the companies to enter a wait-and-see mode, while the increasing risk – including lost sales due to uncertainty of supply – has already harmed U.S. companies and their confidence in future prospects, all the while the companies continue to recognize China’s importance to their global competitiveness.<sup>79</sup> Any actions to and turbulence in the U.S.-China relationships will likely have a garner impact in the long run.

Additionally, the domestic partisanship in the United States is not likely to be solved under the 118th Congress. Therefore, playing the China card will still be the most convenient way to win over the hearts and minds of the U.S. voters. As such, the abovementioned impacts of overly playing the China card – be it the distorted policy intent, mismatched or inefficient solutions to inherently domestic problems, or the unnecessary deterioration of U.S.-China relationships – can likely persist if unaddressed.

# Conclusion and Implications

**D**espite some rekindled hope that the U.S.-China relationship might have a more cooperative undertone under the Biden administration, power-based economic and political tensions between the United States and China have persisted in the past two years. As such, the 117th Congress will pass on to the 118th Congress a continuously deteriorating U.S.-China relationship, a legislative agenda that increasingly focused on China and growing suspicion of the Chinese government on U.S. legislative actions.

As is shown by House Speaker Nancy Pelosi's visit to Taiwan, it will be very difficult to exclude Congress – whether actions or statements of congressional leadership and prominent lawmakers – from U.S. foreign policy. At the same time, uncertainties, confusion, and misunderstanding have persisted. The bilateral relationship has become more nuanced than the friend vs. enemy dichotomy, while simplistic narratives of zero-sum rivalry blended into domestic politics and unavoidably policy making. The congressional involvement in foreign policy is not just another layer of complication. Rather, it contributes to the political uncertainty within the United States, making U.S. foreign policy unpredictable and potentially inconsistent in the eyes of China, the international society and non-public actors such as the business community.

This issue can be addressed in one of two ways. Option one, the United States and China should take the U.S. Congress into full consideration. The two must reconstruct a new approach to bilateral engagements in technology and trade to preserve the most critical shared interests in the field, stabilize the foundation of the bilateral engagement and avoid the complete cut of ties between the two economies. Option two, actions and statements of the U.S. Congress should be taken less seriously by both sides. The U.S. leadership must boldly govern the decision-making process and firmly take hold of the foreign policy power. While it is necessary for domestic politics and the check-and-balance that congressional voices are to be heard, Congress should not hijack the administration's decision-making power in foreign policy. The United States – as a single voice – must clearly signal to China who's calling the shots in American foreign engagements.



On the front of legislative issues, what's important isn't and won't be the routine China bills, e.g. human rights resolutions and legislations or NDAA. Rather, the special-issue bills such as the Uyghur Forced Labor Prevention Act have become a popular form for Congress to specifically address "China issues" and call out China. At the same time, these legislations often contain both an explicit and specific policy intent and broad coverage. Accordingly, significant uncertainties were introduced following the enactment of the bill and the U.S. government needs to devote significant efforts and resources to implement the bill, balancing congressional wishes, policy predictability as well as feasibility and practicality. As such, either the Congress should agree on a more comprehensive and cohesive strategy, list out issues of concerns of priority, and provide the administration with a good list of matters to focus on, or the enacted legislation should not be taken too seriously, lest every one of these bills will turn out to require a comprehensive and costly response from the federal government, waste government resources and generate overall inefficiency.

Finally, to avoid turbulence caused by another incident in the like of Pelosi's visit to Taiwan, an U.S.-China legislative dialogue should be established to avoid technology and trade issues from running into unknown and mutually harmful grounds. As developments in the bilateral relationship and in global events have led to increasing unpredictability and call for more appropriate management, emerging policy issues in the field will require better coordination – or at least sufficient communication – between the two sides to avoid misunderstanding of intention and unnecessary escalation of tensions.

# Endnotes

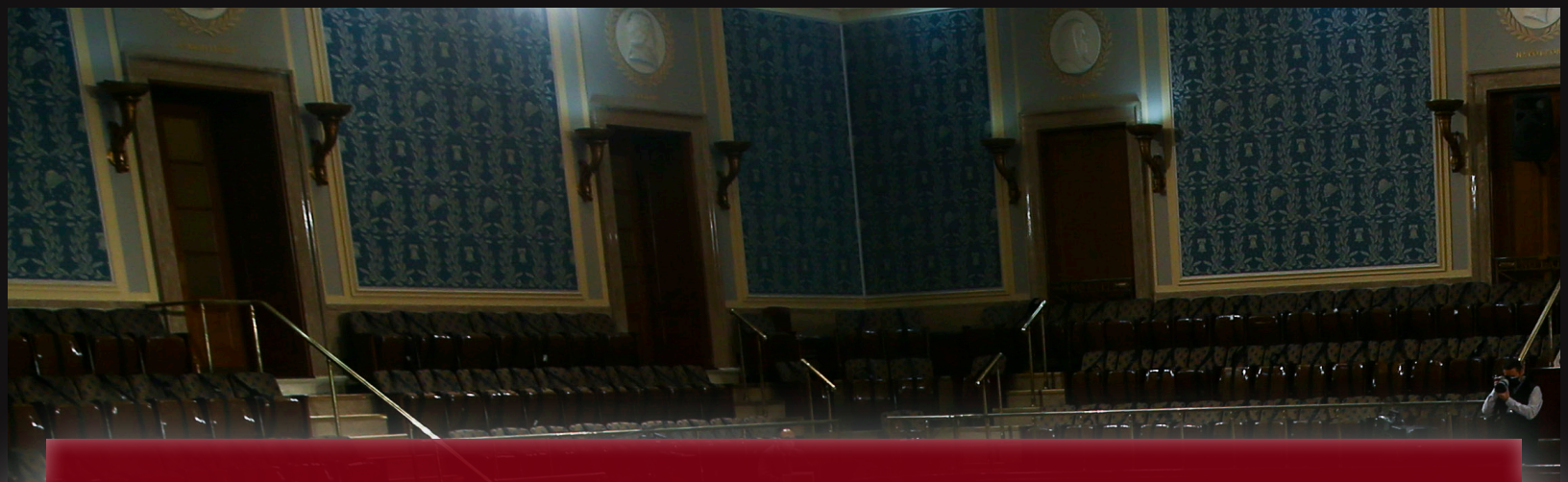
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1919 M St. NW, Suite 310  
Washington, DC 20036  
(202) 968-0595 | [www.chinaus-icas.org](http://www.chinaus-icas.org)