

A New Comprehensive China Policy: Principles and Recommendations for a Serious Debate in Congress

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KEY TAKEAWAYS

The most persistent and consequential challenge that will confront the United States for the next several decades is China.

Congress now has a once-in-a-decade opportunity to construct a China policy that will give direction to the Biden Administration and future Administrations.

A Congress-led China policy requires a comprehensive approach that engages all levers of power while defending human rights, religious liberty, and economic freedom.

Senate Majority Leader Chuck Schumer (D-NY) has prioritized Senate passage of a major new bill on U.S. China policy. How the bill will come together—a total of eight committee chairs have been tasked with drafting it—remains an open question. Whatever the ultimate vehicle, this bill is a once-in-a-decade opportunity for Congress to develop a comprehensive approach to China. It should adhere as closely to the regular order as possible. In the process, Members should consider the following principles and specific policy recommendations.

Seven Principles for a Congress-Led China Policy

In order to fashion a China policy that is in the U.S. national interest, Congress should:

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1. Go Big. Some Members want to make the bill entirely about economic competitiveness. But the China challenge encompasses a much larger gambit. It is also about more than the U.S. military presence in the region—which is essential to the U.S. presence in the Indo-Pacific and handled by Congress through the National Defense Authorization Act (NDAA) and defense appropriations bills.

There are diplomatic issues at stake. There are issues involving Taiwan, Tibet, and Xinjiang, and faith communities of many stripes. There are domestic regulations that handicap the U.S. globally. All these and many other issues need to receive proper, systematic treatment. The U.S. competed with the USSR for 40 years in every area of engagement, all within the general framework of containment, and learned to adjust and adapt as conditions warranted. A similar comprehensive approach is warranted with respect to China, certainly different than the Soviet Union, and more complex, and thus needing similarly big ideas.

2. Watch the Congressional Purse. As one-time Senate Minority Leader Everett Dirksen (R-IL) is said to have remarked: “A billion here, a billion there, and pretty soon you’re talking about real money.” The fact that the federal debt is above \$28 trillion and growing, with many looking the other way, does not mean that “money is no object.” Someday, the U.S. will have to make good on these debts. America’s strength lies not in how much taxpayer (and bond holder) money it can promise, but how well it can harness the advantages of its educational and research institutions, its deep markets, and the ingenuity of its people.

3. Stay Engaged. Congress often passes legislation on foreign policy and then forgets about it. In the upcoming China debate, Congress should institute forward-looking procedures requiring affirmation of the policies’ implementation. Carefully constructed certification and reporting requirements can be useful. Conversely, reporting requirements meant to simply prevent a Member from offering a more substantive proposal, are not.

4. Use Waivers Sparingly. There are ways to draft waivers that preserve congressional intent. The complex and amended waivers in the 2017 Counter America’s Adversaries Through Sanctions Act are good examples. On the other hand, blanket “national interest” or “national security interest” waivers are not the most effective use of Congress’s time.

Similar to the dynamics around reporting requirements, in processing the dozens of amendments that will be offered on this bill, it will be tempting to agree to the most sweeping of waivers. Members should resist. If their commitment is not strong enough to defend their amendment and force a vote, they should not offer it. U.S.–Chinese relations are headed in one

direction for the foreseeable future. It will be exceedingly difficult for the Administration to argue for maximum diplomatic flexibility.

5. Avoid Protectionism. COVID-19 highlighted U.S. dependence on China for such necessities as pharmaceuticals¹ and personal protective equipment. Congress has also recently stood up a task force to examine national security supply chains and their vulnerability to Chinese influence. In the past, the U.S. has responded by requiring certain commodities or sectors to be supplied only from domestic U.S. sources. Often, such efforts are driven by a desire to shore up an ailing U.S. industry. Such remedies result in higher prices and often do not fix the base problem.

Instead of protectionism, the U.S. should focus on targeted measures that restrict critical purchases from entities controlled by the Chinese Communist Party and allow the United States to take full advantage of its rich network of allies to meet its national security needs.

6. Create a Policy Framework. One need look no farther than the Taiwan Relations Act (TRA) to know that congressional policy statements matter. Administrations come and go, but the TRA has remained. Another example is the enduring value of the 1992 Hong Kong Policy Act, on which most action on Hong Kong has been built since. Congress should aim to create the same sort of lasting policy on China policy generally. It should think beyond the length of one session of Congress or one Administration, or the next election cycle.

7. Look Beyond China Itself. China presents the U.S. with many direct challenges. It seeks to constrain the movement of the U.S. Navy in international waters. Its agents steal U.S. intellectual property. With Made in China 2025 and Standards 2035, it has publicly declared economic war on vital elements of the U.S. economy. It is trampling on the rights of America's friends in Hong Kong and destitute mainlanders. But the U.S. is not alone in this struggle. It has allies in Australia, Japan, the Philippines, South Korea, and Thailand, and partners in India, Taiwan, Singapore, and throughout Europe. Whether Congress is talking about foreign policy or supply chains, it must keep the broader supportive context in mind.

14 Priorities for a Comprehensive China Bill

The following list is not exhaustive. The base China legislation and floor debates will involve many worthwhile proposals. This list is a sample of some of the highest-priority, immediately actionable items.

1. Taiwan. As much as Congress has done over the past few years, much remains to be done. Congress should take action on the provisions

contained in the Rubio–Merkley Taiwan Relations Reinforcement Act, including making the director of the American Institute in Taiwan a Senate-confirmed position and helping U.S. businesses and nongovernmental organizations navigate pressure from China on Taiwan-related issues.

Congress should make an unequivocal, binding statement in support of a free trade agreement with Taiwan. The U.S. Trade Representative’s (USTR) institutional tendency is to avoid Taiwan. At the very least, a substantive proposal and debate will force it to face Taiwan.

To help facilitate regular interaction on trade issues, Congress should require the USTR to remove it from the same office dealing with China and put it under the authority of the Assistant USTR handling Japan, Korea, and the Asia–Pacific Economic Cooperation. Dealing with China takes up so much of the USTR’s time that there is little left for Taiwan, even if the USTR is inclined to engage it. It often is not, due to Beijing’s sensitivities, another aspect of the gap that separating the functions will help ameliorate.

2. Xinjiang. Congress should direct the Administration to tackle forced labor in China by requiring an expansion of existing cotton and tomato Withhold Release Orders (WROs) to a region-wide level for a two-year period. Congress should provide that, if an overwhelming percentage of goods apprehended by the U.S. Customs and Border Protection under the expanded WRO are found to have been produced with forced labor, the U.S. must institute a region-wide rebuttable presumption that goods produced in certain sectors of Xinjiang are produced with forced labor. In addition to addressing forced labor, Congress should extend Priority-2 refugee status to Uyghurs fleeing persecution in China.²

3. Hong Kong. Congress should extend safe haven protections to Hong Kong citizens facing newfound persecution by declaring them eligible for P-2 refugee status. According to U.S. refugee laws, a refugee is an individual who has experienced, or has a well-founded fear of future, persecution on account of “race, religion, nationality, membership in a particular social group, or political opinion.”³ The Department of Homeland Security should remain in charge of evaluating the eligibility of individuals seeking refugee status.

4. U.S.–Chinese Space Cooperation. Congress should codify prohibitions on U.S.–Chinese space collaboration in what is currently renewed annually in the appropriations process, and expand congressional notifications to include the Senate Foreign Relations and House Foreign Affairs Committees. Congress should also tighten executive branch waiver authority, or scrap it altogether in favor of the direct approach to military-to-military engagement in the FY 2000 NDAA.

5. The Better Utilization of Investments Leading to Development (BUILD) Act. Congress should reform the BUILD Act to make it explicitly about countering Chinese influence. What makes U.S. government-provided foreign infrastructure financing and risk insurance at all palatable is its place in a broader China strategy. That place should be made clear in the law that authorizes the new International Development Finance Corporation. Funds should also be made subject to the regular appropriations process so that Congress can maintain sufficient oversight.

6. Chinese Cyber Theft. Congress should codify Executive Order 13694, which blocks property of foreign entities engaged in cyber theft and other cyber malicious activities, expand the action to physical theft and deemed exports, and decouple the sanctions from reliance on the International Emergency Economic Powers Act.

7. Confucius Institutes. Congress should require universities and K–12 schools to disclose their financial ties to Confucius Institutes—nationwide propaganda organizations, masking as cultural institutions, sponsored by the Chinese government. Shortly after taking office, the Biden Administration withdrew a rule proposed late in the Trump Administration to do so. Congress should require it to be reinstated. As for the purported purpose of the institutes to encourage the study of Mandarin, there are alternative ways of ensuring a sufficient pool of Mandarin speakers is available for U.S. government service.

8. Easing Export Controls on India. Congress should revise the Arms Export Control Act to include India among a special group of NATO alliance members and key non-NATO partners (Australia, Israel, Japan, New Zealand, and South Korea) facing lower regulatory hurdles to U.S. arms exports.

9. Chinese Influence within International Organizations. China is using economic and diplomatic pressure to secure support in international organizations. Congress should authorize the Administration to use aid and other incentives as a counterweight. Beijing has also clearly signaled its desire to put Chinese nationals in positions of authority in the United Nations system. The U.S. needs to be well prepared for appointments and elections. It should develop a robust list of prospective candidates and ongoing procedures to campaign and rally support for these candidates.

Congress can help by establishing an office to coordinate this process and renew the congressional reporting requirement on the status of U.S. employment in the U.N. to help keep track of progress. Finally, Congress should use its financial leverage to enhance U.N. transparency, whistleblower protections, and accountability, which help to reveal malfeasance in the U.N. system.

10. Rare-Earth Minerals. Congress should address concerns about supplies of rare-earth minerals by focusing on reform at home. It is not China that has made these minerals difficult for the U.S. to secure, but domestic regulation. Actions that Congress can take to get at the problem include clearly defining “navigable waters” in the Clean Water Act to strictly limit federal authority, prohibiting pre-emptive and retroactive vetoes under Section 404 of the Clean Water Act, empowering states to manage their water resources, repealing the National Environmental Policy Act, reforming the Endangered Species Act, prohibiting the use of the social cost of carbon in regulatory proceedings, and eliminating agencies’ ability to regulate greenhouse gases.

11. The 2022 Winter Olympics. Congress should encourage the International Olympic Committee to postpone the 2022 Beijing Olympics and select a new host country. In the absence of such a change, Congress should call for an international diplomatic boycott. This means no official attendance beyond what is necessary for the participation and security of U.S. athletes.

12. Religious Liberty. Congress should require the Administration to issue a report listing individuals and entities sanctionable under the Global Magnitsky Act, along with explanations for why they may not yet be sanctioned.

13. Banking-Sector Reform. Congress should reduce impediments to competition in the financial-services sector so that people will want to invest in U.S. markets instead of in other countries. To strengthen the U.S. financial-services sector and attract more investment and capital formation, Congress should implement reforms, such as creating new charters for financial firms that eliminate activity restrictions and reduce regulations in return for straightforward higher-equity or risk-retention standards, as well as adjusting the currency-transaction-report threshold for inflation from \$10,000 to \$60,000 and the non-bank reporting threshold for inflation from \$3,000 to \$10,000 and repealing the beneficial ownership reporting regime on small businesses.

14. Digital Currency. Congress should respond to China’s plans for creating a digital currency by fostering innovation at home. The United States cannot assert significant influence over China’s digital currency plans. It can, however, orient its own policies to create a prosperous environment for America’s financial innovations. Congress should remove barriers to market entry for alternative monies, and ensure that no single type of money enjoys a regulatory advantage. At a minimum, Congress should amend “legal tender” laws, eliminate capital gains tax disadvantages, and modify private coinage statutes.

Conclusion

In a sense, Congress has been preparing for a grand debate on China for years. Comprehensive bills have been filed, such as the Strengthening Trade, Regional Alliances, Technology, and Economic and Geopolitical Initiatives Concerning China (STRATEGIC) Act and the America Labor, Economic competitiveness, Alliances, Democracy and Security (America LEADS) Act. The House Foreign Affairs Committee's 2020 China Task Force Report has literally hundreds of recommendations. The U.S.–China Economic and Security Review Commission and the Congressional-Executive Commission on China are veritable idea factories. And, none of this even accounts for the almost 300 individual stand-alone measures that were introduced in the past Congress.

It is time to put as many of these ideas as possible to the legislative test and construct a China policy that will give direction to the Biden Administration and Administrations to come.

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Endnotes

1. Tori K. Smith, Edmund F. Haislmaier, and Maiya Clark, "The U.S. Should Focus on Targeted and Temporary Tools to Ensure Access to Medical Supply Chains," Heritage Foundation *Issue Brief* No. 5057, April 14, 2020, <https://www.heritage.org/sites/default/files/2020-04/IB5057.pdf>.
2. Olivia Enos and Tori K. Smith, "Strengthening the U.S. Response to Forced Labor in Xinjiang," Heritage Foundation *Background* No. 3586, February 17, 2021, <https://www.heritage.org/asia/report/strengthening-the-us-response-forced-labor-xinjiang>.
3. Refugee Act of 1980, Public Law No. 96-212.