

3 Areas Of Focus In Congressional Crosshairs This Year

By **Amanda B. Robinson, John Ring and David Plotinsky** (January 18, 2024, 3:49 PM EST)

The 118th U.S. Congress has entered 2024 in flux, with key policy issues unresolved, a new speaker of the U.S. House of Representatives, and the November elections looming large.

While legislative agendas may be difficult to push forward, Congress can still have a significant impact on both U.S. and non-U.S. companies as various congressional committees increase oversight and exercise their investigative authorities.

Looking forward, we anticipate that the House and Senate will build on their 2023 foundations and continue vigorous oversight in several key areas, including: (1) investments in or by China Communist Party-controlled companies, (2) evolving workplace safety and labor relations issues, and (3) emerging opportunities and challenges presented by generative artificial intelligence.

1. China

In the past year, Congress has focused significant attention on U.S.-China relations, both geopolitical and economic, through more detailed oversight carried out by its use of formal hearings.

The House Select Committee on Strategic Competition Between the U.S. and the Chinese Communist Party has been at the forefront of many congressional inquiries, with committee chair Rep. Mike Gallagher, R-Wisc., and ranking member Rep. Raja Krishnamoorthi, D-Ill., working in a strong bipartisan manner — something unique in the 118th Congress.

In 2023, the select committee opened bipartisan inquiries into several areas that are expected to continue into 2024, including:

- U.S. automakers' ties to Chinese companies, especially in the electric vehicle sector;
- U.S. venture capital firms' investments in the Chinese technology sector;
- Financial firms' role in directing U.S. capital, including pension, retirement and endowment funds, to China through passive investment vehicles and indices; and



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- Forced labor accusations in the fast fashion sector, and the potential exploitation of the de minimis tariff exemption as an end-run to Uyghur Forced Labor Prevention Act enforcement.

Congressional interest in the growing relationship between U.S. automakers and Chinese suppliers seems likely to accelerate in 2024, possibly growing into a key election year issue, as highlighted by some members' reaction to the Biden administration's recent publication of U.S. Department of Energy proposed regulations affecting battery production for electric vehicles.

One of the main areas of expected oversight will be into the use of tax credits and funding from the Inflation Reduction Act, which contains significant incentives to produce the next generation of clean energy vehicles.

Congressional attention will likely focus on where automakers source critical mineral and battery components to be eligible for IRA tax credits, as well as the application of related guidance recently issued by the U.S. Departments of the Treasury and Energy on what constitutes a "foreign entity of concern." Sourcing and technology collaborations between U.S. and Chinese companies will likely draw a more critical Congressional eye.

The select committee extended its interest in activities affecting China through letters sent in July 2023 to venture capital firms and asset managers regarding investments they may have made in Chinese technology companies, particularly companies involved in semiconductors, artificial intelligence and quantum computing.

Gallagher has publicly suggested that the July letters were "just the beginning of the committee's investigation," and noted that the first tranche of letters did not include "some of the biggest actors."^[1] Congress is expected to scrutinize these deals to see how the technology is being used in regard to national security and human rights.

Congressional attention may also focus on limitations on the scope of the recent Executive Order No. 14105, which directed the Treasury Department to promulgate regulations on U.S. outbound investment in certain types of Chinese technology companies.

Congress has maintained a consistent, bipartisan objective of eliminating forced labor in the U.S. supply chain, with a nearly singular focus on the allegations of forced labor of the Uyghur minority in the Xinjiang Uyghur Autonomous Region of the People's Republic of China.

More than a year ago, the UFLPA went into effect, creating a rebuttable presumption that any goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region are prohibited for importation into the U.S. due to forced labor concerns.

Congress has since monitored and criticized the speed and scope of the enforcement of the UFLPA. A recent focus on the Tariff Act de minimis provisions raises the prospect that U.S. companies that operate marketplace-style e-commerce sites may need to prepare for further congressional attention on supply chain compliance and the economic impacts of marketplace business models.

2. Workforce Safety and Labor-Management Relations

The Senate Committee on Health, Education, Labor and Pensions and the House Education and Workforce Committee spent considerable resources in 2023 investigating workforce safety and labor

and management relations issues, albeit from very different perspectives.

Under the chairmanship of Sen. Bernie Sanders, I-Vt., the HELP committee focused on what were perceived as corporate abuses of federal labor law and violations of workplace safety and worker health issues.

For its part, the House Education and Workforce Committee, under the leadership of Rep. Virginia Foxx, R- N.C., chair of the committee, put the spotlight on the U.S. Department of Labor and the National Labor Relations Board and their attempts to pursue a pro-union worker agenda.

Both committees can be expected to continue those efforts in 2024.

Throughout 2023, Sanders outlined what he considered major corporate violations of labor and workplace safety laws: failure to bargain in good faith, union avoidance, Occupational Safety and Health Administration workplace safety failures, and workplace injuries, in industries as diverse as warehousing, nursing, retail and transportation. In virtually every instance, Sanders named specific companies for investigation and oversight. Those efforts will likely continue and quite possibly escalate in 2024.

The House Education and Workforce Committee will focus on DOL and NLRB initiatives on defining a joint employer, union election procedures, and union organizing efforts, and relying on corporate representatives to tell their story.

3. Artificial Intelligence

Senate Majority Leader Chuck Schumer, D-N.Y., and the Senate spent much of 2023 racing to get up to speed on the opportunities and challenges posed by the emergence of artificial intelligence. With that said, past experience has shown that oversight often follows education, especially when it comes to technology.

This year, and likely extending into the 119th Congress, we expect many committees on Capitol Hill to begin questioning how companies are using AI.

Sen. Bob Casey, D-Penn., introduced the No Robot Bosses Act in July 2023 to "protect job applicants and workers from employers using automated decision systems to make employment decisions, including hiring, disciplinary actions, and firing."

Casey is also chair of the Senate Special Committee on Aging, which recently held a hearing on AI-facilitated scams and how AI can be used to detect and fight back against that same fraud.

Meanwhile, Senate Banking, Housing and Urban Affairs Committee Chair Sherrod Brown, D-Ohio, is delving into key issues surrounding AI products in the financial services sector, saying,

[i]ncreasingly, banks, brokers, and insurance companies are employing AI to process data, decide who can get a loan, and tailor financial products to customers. With the advent of this new and potentially transformative technology, we have a responsibility to assess what AI means not just for our financial system, but for the American people.

We expect that Congress will remain focused on AI employment and workplace-related issues, financial

services products, consumer privacy, data and other issues related to how companies use AI and the products offered to consumers.

Congressional attention may also include legislation putting into action many of the standards set by President Joe Biden's recent Executive Order No. 14110 on artificial intelligence, which, among other things, seeks to address safety and security, privacy issues, equity and civil rights, consumers, and workers.

Conclusion

While far from an exhaustive list of potential congressional oversight activities, companies that have operations, customers or suppliers that involve any of the above categories should be prepared for the possibility of a direct congressional inquiry or congressional investigations that lead to increased regulation in these areas.

Companies that receive a congressional inquiry are best served by carefully reviewing the type of inquiry to devise strategies for managing competing legal and political considerations, while minimizing reputational risk from these often very public proceedings.

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[1] <https://finance.yahoo.com/news/congressman-investigating-four-vc-firms-115323245.html>.