

# CORPORATE COMPLICITY: SUBSIDIZING THE PRC'S HUMAN RIGHTS VIOLATIONS

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## HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED EIGHTEENTH CONGRESS FIRST SESSION

JULY 11, 2023

Printed for the use of the Congressional-Executive Commission on China



Available at [www.cecc.gov](http://www.cecc.gov) or [www.govinfo.gov](http://www.govinfo.gov)

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2023

53-486 PDF

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## **CORPORATE COMPLICITY: SUBSIDIZING THE PRC'S HUMAN RIGHTS VIOLATIONS**

**TUESDAY, JULY 11, 2023**

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
*Washington, DC.*

The hearing was held from 10:05 a.m. to 12:34 p.m., in room 2020, Rayburn House Office Building, Washington, DC, Representative Chris Smith, Chair, Congressional-Executive Commission on China, presiding.

Also present: Senator Jeff Merkley, Co-chair, and Representatives Salinas, Wexton, Wild, and Nunn.

### **OPENING STATEMENT OF HON. CHRIS SMITH, A U.S. REPRESENTATIVE FROM NEW JERSEY; CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Chair SMITH. Good morning, everybody. We will be joined in a few moments by Senator Merkley, who is on the Senate side, of course, and will be here for his opening—we're going to delay a little bit, but we do have two panels. And as soon as he does come, obviously, we'll recognize the distinguished senator and co-chair.

Today's hearing, "Corporate Complicity: Subsidizing the PRC's Human Rights Violations," will come to order. Since the Tiananmen Square massacre in 1989, and for some, even before that date, far too many elite leaders of America's most profitable corporations and like-minded government enablers here and around the world have embraced and welcomed the Chinese Communist Party with open arms. The predictably false hope that robust trade would somehow help China matriculate from a dictatorship to a functioning democracy had no compelling precedent in history, especially a country that's owned lock, stock, and barrel by force, by a brutal Communist Party.

That false hope has been further exposed every single year since the early 1990s by China's ever-worsening abuse and violence against its own citizens—the pervasive use of government-sanctioned genocide, torture, rape, forced abortion, involuntary sterilization, forced organ harvesting, human trafficking, sex trafficking, and labor trafficking, religious persecution, kangaroo courts (particularly for political and religious prisoners), free speech and assembly violations, and the atrocities they have committed in Hong Kong after making solemn promises to protect basic rights and abide by the Sino-U.K. agreement. And of course, there's so many other crimes against humanity. They attest to an absolutely shameful record of wanton cruelty.

Tragically, the abuse and violence has only gotten worse under Xi Jinping. You know, with his famous executive order of May 26th, 1994, President Clinton abolished the requirement that the Chinese Communist Party achieve “significant progress” in protecting human rights as the condition for extending most favored nation status; in other words, the elimination of import tariffs by the United States. A few months earlier in 1994, before President Clinton’s capitulation, I traveled to Beijing and met with foreign ministry officials and argued that President Clinton wasn’t going to back down or back off his promise to end MFN unless China reformed its barbaric practices.

I even conveyed to the CCP officials a bipartisan letter signed by 100 members of Congress, left and right. Nancy Pelosi was on that. Frank Wolf was a cosponsor—cosigner, and many others. And we said, We stand with President Clinton. And we stand for human rights. While there, I also met with the U.S. Chamber of Commerce in Beijing, who thought that we were wrong to link MFN with human rights. After a spirited exchange over breakfast, I came away with the inescapable conclusion that no human rights violation by the CCP would disrupt lucrative business deals.

A few months later, to my shock and dismay, President Clinton delinked human rights from trade. He did it on a Friday afternoon, after almost everybody in this building had left to go back to their districts. I was lingering—doing some work in the office when the story hit. I ran over to the press gallery. I did a press conference impromptu. If you go to C-SPAN, you can see it. I wasn’t the only one. Nancy Pelosi ended up doing her own press conference. We were shocked that he delinked. Clinton had accused, and rightfully, President George Herbert Walker Bush of coddling dictatorship. And I agreed with that, after Tiananmen Square. Then he coddled like no other.

The symbiotic U.S.-China trading relationship that emerged in the 1990s and continues to this day allowed many to become incredibly rich and powerful, while conveying to the CCP extraordinary industrial capacity and know-how for both consumer goods and, ominously, military products and capability. That CCP military capability today poses an existential threat to Taiwan, numerous nations in the region, and to the United States of America ourselves. Today it is deeply discouraging to see the ongoing complicity of American companies in aiding and abetting the Chinese Communist Party’s heinous crimes against humanity, and genocide.

Many are complicit in concealing the PRC’s abuses. Many are complicit in the PRC’s restrictions on freedom. Many are even complicit in amplifying the Chinese Communist Party’s propaganda across our country, spreading political and ideological stances that are completely contrary—antithetical—to what the United States stands for. American companies and consumers should not be subsidizing tyranny.

In January, I introduced—I should say re-introduced—the China Trade Relations Act of 2023, to end MFN, now called normal trade relations, to China. Actually, it’s almost a carbon copy of what we were talking about in 1993. I did press conference after press con-

ference thanking President Clinton for linking human rights and trade, only to see that he delinked it one year later.

Every single person here testifying has done an enormous amount of work and provided leadership, and we're so grateful that you're here. One of our distinguished witnesses today has paid an enormous price, the loss of his amazing 11-year basketball career in the NBA, for his courageous stand for human rights, especially for the Uyghurs, the victims of Xi Jinping's ongoing genocide.

He will testify today that after he got released, about three weeks later—released means fired, of course—China put the games back on television that had been barred from Chinese TV because he wore basketball shoes that said “free the Uyghurs.” ESPN did an investigation and found out that 49 NBA owners have \$10 billion tied up in China. Money talks and human rights go right out the window. The Chinese Communist Party ordered the NBA to sanction—to fire—Enes Kanter Freedom, and like cowards, they obeyed.

I'd like to yield to my good friend and colleague, the co-chair of our Commission, Senator Merkley.

**STATEMENT OF HON. JEFF MERKLEY, A U.S. SENATOR FROM OREGON; CO-CHAIR, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

Co-chair MERKLEY. Thank you very much, Mr. Chairman, and welcome. It's good to have you with us. I'm glad we're continuing to dig into the issue of corporations' connection to the Chinese Communist Party's human rights abuses in China and elsewhere. This has been an intense interest—a bipartisan and bicameral interest of this Commission. With so many of the issues that we monitor, the CCP's abuses are sometimes amplified or even abetted by the actions of actors closer to home.

When products, from cotton to car parts, are made on the backs of Uyghur slave labor, companies seeking to get those products into the U.S. market subsidize the economic machinery of genocide. When authorities crush Hong Kong's cherished freedom, they count on multinational corporations to continue business as usual. When mass surveillance and biometric data collection target repressed populations, some American companies provide the technology, the services, or the data that bolster the surveillance state.

Our commissioners have taken an interest in these issues because it's unacceptable to us if any American business props up genocide, enables censorship, or legitimizes actions that trample on basic universal freedoms. That's why last Congress I chaired hearings focused on the message leading American companies were sending by lending their prestige to the 2022 Beijing Olympics. And we focus on the way the PRC leverages technology for deeply repressive purposes, and the coercive economic dynamics that too often lead companies to self-censor, or even parrot propaganda.

We sent letters to some of the most respected brands in America when their actions put them at risk of complicity in human rights abuse, companies like Apple, Hilton, Amazon, Airbnb, NBC, the NBA, and more. This Commission's signature initiative to guard against corporate complicity has been the Uyghur Forced Labor Prevention Act. Representative McGovern, Senator Rubio, Rep-

representative Smith, and I spearheaded that legislation to protect American consumers and hold corporations trading in the products of forced labor accountable. At our April hearing, we heard from experts about the initial implementation of this law and the difficult road ahead to make sure we enforce it effectively. I'm grateful that Under Secretary Silvers, the chair of the Forced Labor Enforcement Task Force, is with us today to help us grapple with those challenges.

As we heard at the April hearing, businesses should now consider themselves on notice that protecting their supply chains from being tainted by forced labor must be a top-tier issue of corporate compliance, because it is for the U.S. Government. But that's only the start of the paradigm shift that we need. We need businesses across the economy to diversify their supply chains to be less susceptible to Chinese coercion, to avoid complicity with human rights abuses. We need greater transparency about businesses' data practices, exposure to the pressures coming from China, and more. And defenders of freedom need to speak out so businesses know that there will be reputational costs for abetting human rights abuse.

Thank you to all of our witnesses for your role and speaking out. And I appreciate you sharing your expertise and personal stories with us. And I look forward to your testimony.

Chair SMITH. Thank you so very much, Senator Merkley.

We're joined by Commissioner Salinas. Thank you. I yield to you.

Representative SALINAS. I have no comment, thank you.

Chair SMITH. OK. Well, thank you.

With the one-year anniversary of the Uyghur Forced Labor Prevention Act's implementation just last month, we're grateful to welcome the Honorable Robert Silvers, Under Secretary for Policy at the U.S. Department of Homeland Security. Under Secretary Silvers is responsible for driving policy and implementation plans across all of the Homeland Security missions and enforcing all forced labor laws under its purview. The Uyghur Forced Labor Prevention Act, drafted and spearheaded by this Commission, is one of the most important pieces of legislation passed by Congress in the last two decades.

As I expressed at our hearing just a few months ago, it is my hope that the legislation will prick the consciences of corporate actors and then it will be my further hope that companies will determine that the bottom-line concerns will motivate them to do the right thing. And indeed, I believe there are shared hopes of all of us today; Under Secretary Silvers, as chair of the Interagency Forced Labor Enforcement Task Force, is making eliminating forced labor from tainting U.S. and global supply chains a top priority. When our Commission wrote to him about our concerns about the implementation, he echoed our sentiments and detailed his plans on how the Forced Labor Enforcement Task Force will continue expanding the entity list and fine-tuning its important efforts to best hold violators accountable. Thank you, Under Secretary Silvers, for joining us today. And on behalf of our entire Commission, I welcome you and look forward to your testimony. And I yield you such time as you may consume.

**STATEMENT OF ROBERT SILVERS, UNDER SECRETARY FOR  
STRATEGY, POLICY, AND PLANS, U.S. DEPARTMENT OF  
HOMELAND SECURITY; CHAIR, FORCED LABOR ENFORCE-  
MENT TASK FORCE**

Under Secretary SILVERS. Thank you, Mr. Chairman, Co-chairman Merkley, and distinguished commissioners. Thank you for the opportunity to discuss the work of the Department of Homeland Security and the Forced Labor Enforcement Task Force to combat forced labor in global supply chains. The U.S. has long condemned the People's Republic of China's ongoing genocide and crimes against humanity against Uyghurs and other minority groups, including the systemic use of forced labor. U.S. laws that prohibit importation of these illicit goods reflect our values. They honor human rights. They protect American workers and legitimate businesses. At DHS, we are proud to enforce our nation's forced labor laws. It is the right thing to do.

Congress charged the task force with leveraging the authorities of our member agencies across the executive branch to ensure that the U.S. Government is doing everything in its power to eradicate forced labor. I am honored to chair the task force, and under the leadership of Secretary Mayorkas we are facilitating the flow of legitimate trade while working across the public and private sectors to keep goods made with forced labor out of U.S. commerce. We applaud the commitment of the Commission and members of Congress who, on a bipartisan basis, secured the passage of the Uyghur Forced Labor Prevention Act, the UFLPA. This law has brought a sea change to the way we approach the eradication of forced labor.

Our implementation of the UFLPA has been speedy, strong, and surgical. Speedy, because we implemented ahead of the aggressive schedule required by the law. Strong, because we devote the full weight of our resources to enforcing the law. And surgical, because our enforcement is based on risk assessment, intelligence, and data-driven targeting. Since the UFLPA took effect in June of 2022, Customs and Border Protection has targeted more than 4,200 shipments valued at over \$1.4 billion, sending a clear message to importers that we take our mandate seriously.

We continue to improve our operations with innovative technology, such as artificial intelligence and machine learning, and scientific testing that can help us determine the true origin of goods. Our early enforcement has been strong, but we do face challenges, including the risks posed by *de minimis* shipments and the need for further resources to fulfill our mandate. We welcome the opportunity to work with this Commission and Congress to address these challenges together in a bipartisan way.

In addition to the rebuttable presumption that the UFLPA established for goods coming from Xinjiang province, the UFLPA has other important components, including the public identification of illicit actors through the UFLPA entity list. The task force is committed to expanding the UFLPA entity list, as demonstrated by the recent addition of two new entities, extending the list to a current total of 22 entities. There is an active pipeline of referrals we are examining, and we anticipate more additions to the list in the coming months. Our partnership with the NGO community is critical,

as is their research and monitoring efforts to identify forced labor schemes.

Our engagements with the trade community focus on ensuring that they have information and guidance to support their compliance efforts, including best practices for supply chain tracing and risk management, and statistics on our enforcement from CBP's digital dashboard. We engage industry leaders, including C-suite executives and board directors, to emphasize that eradicating forced labor from their supply chains must be a top-tier compliance issue. They must address this issue with the same vigilance with which they address foreign corrupt practices, export controls, sanctions, privacy, anti-money laundering laws, and other pillars of modern corporate compliance.

We are still in the early stages of quantifying the impact of the UFLPA on private sector behavior, but early data show promise. One respected supply chain mapping company, Altana AI, reports that transactions from entities potentially subject to enforcement under the law decreased by approximately 40 percent between June 2022 and March 2023. The same period also saw the overall value of transactions decrease by approximately 50 percent. Another supply chain mapping company, Sayari, has informed us that it has similar data. We are seeing similar trends from other providers, and these all support extensive anecdotal reporting that industry is taking UFLPA compliance seriously and taking steps to ensure that it comes into line with the law's requirements.

The UFLPA is a testament to the impact that Congress and the executive branch can have when they work together. This new enforcement regime is a significant step towards justice, accountability, and fair competition. There is much more work to do, and we are all-in on this mission. I thank the Commission and Congress for their support in the fight against forced labor. Thank you for the opportunity to appear. I look forward to taking your questions this morning.

Chair SMITH. Thank you so very much, Mr. Secretary, for your testimony and, again, for the work that you're doing each and every day.

Let me ask you, at our hearing just a few weeks ago, we heard some very disturbing testimony about the *de minimis* loophole, which you mentioned in your testimony, that so much could be coming into the U.S. from Xinjiang that goes undetected, and an \$800 threshold. How do you know—how do we know when we're not checking packages coming in because there's an assumption that it is part of the *de minimis*?

One estimate was that there's three million packages a day coming. I thought that was very high. I don't know if that's accurate. But that came out of that hearing. And I'm wondering if you have any thoughts on what we should be doing to maybe close that loophole—do a more robust checking of those packages? Because it seems to me, if the Chinese Communist Party and the businesses that are working there could find a way to skirt any kind of sanctions, they will do it. And they're masters at that.

Under Secretary SILVERS. Thank you, Mr. Chairman, for the question. I share your concerns and your questions about the effect of the *de minimis* exception and what it means for our forced labor



enforcement. To be clear, the UFLPA does apply to *de minimis* shipments. We conduct our risk-based targeting and our other approaches on *de minimis* shipments. However, there are challenges. We get less data for *de minimis* shipments than we do for shipments valued at over \$800. And that makes the targeting and the enforcement work more difficult. We do receive into this country somewhere between two and three million *de minimis* shipments per day.

Chair SMITH. Per day?

Under Secretary SILVERS. Per day. And so the numbers I've heard are something around 700 million or so per year. And so it is an extremely high volume. I should note, this doesn't just challenge our enforcement as to our forced labor laws. It challenges our enforcement as to a whole host of important issues; for example, our ability to detect narcotics that may be shipped in, fentanyl, other contraband counterfeit items, and products made with forced labor. Recognizing the challenges, I have worked very closely together with the terrific team at Customs and Border Protection to develop short-, medium-, and long-term strategies to work on this issue.

In the short term, we are adopting software enhancements that will improve our ability to target *de minimis* shipments and enforce our laws. In the medium term, we are looking at regulatory changes that can enhance our data collection. And in the long term, we would like to work with Congress. You're going to be hearing a lot over the coming months about what we are calling our 21st Century Customs Framework. This is an attempt to modernize the way we process cargo into this country so that it is both efficient and has integrity and security. And we would like to work with Congress on those issues, because it will have a lot of positive impact for our ability to enforce forced labor laws, including the *de minimis* environment.

Chair SMITH. Mr. Secretary, about a year ago I chaired a hearing on the outrageous practice by the Chinese Communist Party of exploiting children. In the Democratic Republic of Congo, they have pretty much captured the entirety of the cobalt mining. Something on the order of 35,000 to 40,000 children are being exploited every day, and maybe upwards of 200,000 adults. When those mines were owned by United States companies, arguably, they were better in terms of their treatment, their payment of salaries, and more humane conditions. But that has all gone the wrong way with Chinese leadership.

Now, we were told at that hearing—and I introduced a bill just a few weeks ago that would look to enforce our trade sanctions against forced labor and child labor, whether they find themselves in an EV or for some other purpose—cobalt obviously has multiple purposes. And I'm wondering your thoughts on that. I think the bill is an idea whose time has come. How dare we build cars—whether it be Tesla or any others—with child labor, kids who are dying.

And what came through with that hearing, and we have followed up very vigorously, the Democratic Republic of Congo leadership, it would seem, is just simply looking the other way or getting paid off by the Chinese Communist Party. We know there's no Foreign Corrupt Practices Act, so that's a very easy thing to do. So all this

cobalt is going into China. It's being refined and then put into use in EVs and in other applications.

And I'm just wondering what your sense is about that. You know, we'll send you the bill. I hope you'll take a look at it and give us any thoughts you might have on it. But, you know, I see Teslas all over the road, I mean, especially in this area. And every time I see one now I say, that was built on the backs of some African child, or some African adult, who may be dead now—certainly often sick, and many of them do die in those mines or from the sicknesses garnered from breathing in those vapors or that dust. Your thoughts on that.

Under Secretary SILVERS. Thank you, Mr. Chairman. We are going to enforce our forced labor laws wherever the facts lead, whether they lead to China or whether they lead to other countries where China may be exporting its forced labor practices. And no place, or industry, or supply chain is off the table when it comes to our zero-tolerance approach for forced labor. I would look forward to reviewing the bill and working with you on the issue.

Chair SMITH. Can I just ask finally, then I'll yield to my distinguished colleagues, what is being done by DHS to address the use of prison labor at Chishan Prison, where a supplier for Milwaukee Tool employs political prisoners for labor, making them work seven days a week, 13 hours a day, to meet their quotas?

Under Secretary SILVERS. Thank you, Mr. Chairman. We are quite concerned about the significant amount of reporting that we receive about abusive labor practices in PRC prisons. Our Homeland Security Investigations Agency, including through their presence at our embassy in Beijing, investigate and look into those kinds of issues. And if there is a link found between forced labor in Chinese prisons and product that is to be shipped to the United States, we will fully enforce.

I will say, it is difficult work because it is so difficult to get facts about what is happening in China, not least of all within a Chinese prison. The lack of transparency into the Chinese system is a challenge that we have to penetrate. It's a challenge that companies that want to do the right thing have to penetrate, because it makes due diligence difficult. I think that's part of the reason why you've seen a number of companies working to pull their supply chains out where they cannot obtain the transparency that they need and that the law that you passed requires.

Chair SMITH. I appreciate that. Without objection, I ask unanimous consent that a letter from Senator Merkley and me be included in the record. It's a letter to Steve Richman, who's the president of Milwaukee Tool. We lay out the problem as we see it, particularly since Wisconsin Watch did an investigative report on this, and the findings are very, very damaging. And Milwaukee Tool gloves continue to be sold at Home Depot, as well as on Amazon. And we need to get to the bottom of this. So without objection, this will become part of the record.

Senator Merkley.

Co-chair MERKLEY. Thank you, Mr. Chairman.

And, Mr. Secretary, I'll try to be brief in my questions because I have a lot of them. And if you can be succinct in your responses, it would be helpful. First, we see that a lot of shipments that are

being questioned are really being shipped through Malaysia and Vietnam. Are you getting cooperation from the governments of Malaysia and Vietnam?

Under Secretary SILVERS. We are. We engage with both those countries. And that is correct. The two countries that have the most enforced shipments under the UFLPA are actually Vietnam and Malaysia. And it shows the distributed nature of supply chains and that things that are made in Xinjiang may end up elsewhere before being shipped to the United States. And we understand that and we enforce on it.

Co-chair MERKLEY. And I think it also reflects an effort to launder the products out of China, to try to make it more difficult for the U.S. to intercept them under this bill. So I'm glad you're paying a lot of attention to that.

Under the UFLPA dashboard, about 16 percent of the 4,200-plus shipments that were targeted were denied entry into the U.S. When they are denied entry into the U.S., is the manufacturer or the shipper able to then transport those goods to another country?

Under Secretary SILVERS. Under the law, they are—if we deny entry they are permitted to re-export or destroy the goods.

Co-chair MERKLEY. I just want to note that that's an area we should pay attention to, because if it simply means they're stopped in the U.S., but they're shipped across the border to Canada, we really haven't achieved much. Which brings me to my next question, how much cooperation are we getting with Canada and Mexico in terms of creating a more united regime in regard to forced labor?

Under Secretary SILVERS. Senator, I agree 100 percent with you that we won't have achieved our common goal of eradicating forced labor if the goods just go elsewhere. That is why we are putting such a priority on international cooperation. The USMCA trade agreement requires the U.S., Mexico, and Canada all to have forced labor enforcement regimes. We are working with both those governments towards that end.

Co-chair MERKLEY. Great. And Europe?

Under Secretary SILVERS. We engage with European partners as well. I think there are huge benefits to harmonized laws. The UFLPA—I think the Commission can take great pride—is the most forward-looking, aggressive law in the world right now on this subject. And I've seen interest in a number of other governments in adopting similar legislation, which I think is all to the good.

Co-chair MERKLEY. So in the last year, the task force has only added two new companies to the entity list. And you mentioned the entity list. Are there roadblocks to expanding the entity list? Why only two?

Under Secretary SILVERS. Senator, we did add two very recently; there's now a total of 22 that were listed in the first year of enforcement, though the first 20 came much earlier in the enforcement period. We are placing a very high priority on populating the entity list. When the new law was passed, it did not come with resources for the Forced Labor Enforcement Task Force. We aggressively pulled resources and people from other mission spaces. Over the course of the months we had to build an entirely new process for an entity list that did not exist at all. That is now up and run-

ning. And I am placing a very high priority on naming additional entities. We have a very active pipeline of cases, and more will come soon.

Co-chair MERKLEY. Do we see companies really starting to respond, saying, Hey, this is real. We either have to establish our safe harbor, like, very clear documentation, or we need to move our production that has been tied to forced labor into a different country or a different part of China, so on, so forth. Are companies starting to take this seriously?

Under Secretary SILVERS. Yes. We have significant data and significant anecdotal evidence that companies are hearing this, that the message is well received in terms of congressional intent, as well as through our strong enforcement in year one. And so, for example, the AI-driven supply chain management software company Altana noted that suspicious shipments from Xinjiang—or, related to Xinjiang, to the U.S., declined by 50 percent over the first year of enforcement based on its trade data.

Co-chair MERKLEY. Are we seeing a fair amount of that being bifurcated supply chains? That is, Well, we have a factory in Vietnam. We'll send those products to the U.S., while sending the Xinjiang factory's products somewhere else that doesn't have this enforcement?

Under Secretary SILVERS. I think—and that goes to our prior discussion—I think there is always the risk, Senator, that goods that we won't let in, manufacturers will try to send elsewhere. That's why we place such a premium on having like-minded countries introduce similar enforcement regimes. We are also very mindful of the risk of transshipment, that is of companies trying to obscure the provenance of goods by shipping them through third countries or shell companies. We are very attuned to that in our enforcement.

Co-chair MERKLEY. So Congress appropriated funding for innovative technology to help with enforcement, such as supply chain mapping, supply chain traceability, DNA testing. Do you have any pilot projects that have started utilizing that money? Is the rubber hitting the road?

Under Secretary SILVERS. The rubber has already hit the road, Senator. We are using several AI-based software supply chain mapping tools. We see tremendous pickup in the importing community, the private sector, of those same kinds of tools. We are also looking very closely at scientific testing, such as DNA testing, that can help determine the provenance of goods. In particular, DNA testing that can tell you whether cotton comes from Xinjiang province. And we're likewise seeing uptake in the trade community. CBP hosted a technology expo a couple months back. I think that I saw a number of staff members from the Commission attended. And to showcase the range of technologies that can help with due diligence and supply chain visibility.

Co-chair MERKLEY. Another challenge is growing direct-to-consumer apps, like Shein and Temu. How do you intend to handle those direct-to-consumer strategies?

Under Secretary SILVERS. I think this raises issues about what is happening with de minimis shipments, that is shipments that are valued at less than \$800 and which, pursuant to statute, re-

ceive an expedited process for coming into the country. Look, first, when we receive reports that any shipping channel may be infected with forced labor products, we are going to look into that, and investigate, and take enforcement action as appropriate. And as I was discussing with Chairman Smith earlier, we have developed strategies for addressing the challenges of UFLPA enforcement in the de minimis contexts, including enhanced software that we are procuring, and potential regulatory and statutory changes.

Co-chair MERKLEY. Thank you.

Under Secretary SILVERS. Thank you.

Chair SMITH. I will now yield to Commissioner Salinas.

Representative SALINAS. Thank you, Mr. Chair. And thank you to both co-chairs for this hearing today.

Secretary Silvers, a goal of the Inflation Reduction Act as well as the CHIPS and Science Act, is to build up our domestic manufacturing capacity and reduce our reliance on China. This could make it far easier to avoid some of the challenges we discussed earlier around mineral supply chains, but it also makes me wonder what we might lose by building a more arm's-length economic relationship with China. Is there evidence that Chinese entities actually respond to American import restrictions by improving their labor practices?

Under Secretary SILVERS. Thank you very much, Congresswoman. We do strongly support supply chain resilience initiatives such as the CHIPS Act, building up a domestic supply chain and manufacturing base for things like semiconductors. That's just critical to our future. We believe we can do that while still maintaining our leverage to shape practices within China to the extent we can. But as important, perhaps, shape the practices of importers and where they decide to source from.

I think the last decades have shown that we may not have complete leverage in terms of shaping how China intends to run its system, but what we do have a lot of leverage over is what products we allow into this country. And I think what we have seen is Congress on a bipartisan basis pass laws like the UFLPA. And we have significant reason to believe that that is causing a lot of companies to pull their supply chains out of Xinjiang province. And so I think we can pursue the really important domestic supply chain and manufacturing resilience strategies that you mentioned, while also keeping enforcement strong to keep these kinds of forced labor products out of our system.

Representative SALINAS. Thank you. I think we can do both as well. Thank you. I yield back.

Chair SMITH. Thank you.

Commissioner Wexton.

Representative WEXTON. Thank you very much, Mr. Chairman. Can you all hear me OK?

Chair SMITH. Yes, we can. Perfectly. Thank you.

Representative WEXTON. Good. Wonderful. Thank you so much for being here today. Thank you so much, Mr. Secretary for being here as well. Before I get started with my questions, I'm going to tell you I have an illness which affects how I speak, which makes it kind of hard for me to speak in a way that is understandable. I'm sorry if I do that. And please do not hesitate if I say something

you have trouble understanding. Please do not hesitate to let me know, and ask me to repeat the question, or repeat the question yourself to make sure you got it right, OK? Can you do that for me, please? [Laughs.]

Under Secretary SILVERS. I will. Thank you.

Representative WEXTON. Thank you so much.

I represent Virginia 10, which is a Northern Virginia district. And it had till very recently one of the highest populations of Uyghur Muslims in the United States. And it's still—we have a very big population here in Northern Virginia. So this is something that is really important to a lot of my constituents. I commend the work that the DHS and the Forced Labor Enforcement Task Force have been doing on this issue. I'll admit I was kind of skeptical when we had the sense that the administration was slow-walking with passage of this bill. Now it's been passed, you guys are doing a really fantastic job getting everything done. So I really appreciate that and just thank you. So, really thank you for that and the work you've been doing.

But there are methods and models for human rights to do due diligence. And we're not seeing companies demonstrating that they know how their operations and supply chains affect human rights. So it's a problem. The companies don't—I don't know that they actually know how their supply chains are affecting human rights, or whether they're just being deliberately blind to how they're affecting them. Sorry about that, my dog wants to come in. [Laughs.] I'll let her in in a minute.

But anyway, so the CDP—is the CDP giving clarity on what it will ask if companies—how companies can demonstrate they're not causing, contributing to, or benefiting from human rights abuse in the PRC? Do you approve giving training and telling people how they should be avoiding contributing to human rights abuses in the PRC? Are you telling companies about what they should be doing?

Under Secretary SILVERS. Thank you very much. Thank you very much, Congresswoman. We are indeed speaking regularly through engagements, as well as guidance that we have published to companies about what we expect from them. We have published guidance and we speak directly with C-suite executives and board directors and compliance teams at companies to tell them what we expect of them when it comes to supply chain transparency and due diligence. I think that is really one of the incredible features of the UFLPA—that it turns the system around so that importers are responsible for knowing their own supply chain. They have to take the steps. They need to own the issue.

We have published through the multi-agency Forced Labor Enforcement Task Force that I'm honored to chair, substantial guidance for what the best practices are for achieving that supply chain transparency, conducting that supply chain due diligence, and managing risk when it comes to forced labor in very complex supply chains. And we have emphasized repeatedly that forced labor is now, in 2023, a top-tier compliance issue for companies that they have to own and take responsibility for. And I think that message has been clearly received.

And I think it's been received based on the data I shared and the anecdotal evidence. And then I think if you look at our enforcement

data, over \$1.4 billion in shipments detained for inspection across a range of sectors—I think it speaks for itself. And the importing community has heard it and is responding. But there is more work to do.

Representative WEXTON. Thank you, Mr. Undersecretary. I really appreciate that.

Do you feel that you have the resources that you need in order to be able to do this work? Do you feel like you have enough resources? I know you said something about having to pull resources from other places in order to have the resources to get the committee up and running. And do you feel like you have to have the resources that you need? Or do you need more resources to do this work?

Under Secretary SILVERS. Thank you for that question. We do need more resources to support both CBP's operations at the ports as well as for the Forced Labor Enforcement Task Force to maintain the entity list and do the other work that Congress charged it with doing. We very much appreciate the resources that Congress appropriated to CBP for forced labor enforcement recently, but more is needed both for CBP and the Forced Labor Enforcement Task Force. In the meantime, though, we are pulling resources from elsewhere in the department, because bottom line, this is a high priority area for us. And we are going to resource it to get the job done. But we would look forward to working with Congress to get us more so that we can do more, more quickly.

Representative WEXTON. Thank you very much, Mr. Secretary. One other question for you. I very much appreciate you talking about the *de minimis* system, because we've all seen companies popping up that are using this exclusively as their way of exporting. So the goods come directly from the factory, they didn't go through customs, they don't go through the regular channels, and it makes it really hard to be able to determine whether they were made by—sourced by forced labor. So it makes it really hard to be able to enforce the UFLPA. And so I want to make sure how we can best manage Section 321 to ensure that companies like Shein, which stand credibly accused of exporting products sourced from forced labor, are prohibited from exploiting the *de minimis* loophole. How can we amend Section 321 to make sure that we don't have this problem anymore?

Under Secretary SILVERS. Thank you, Congresswoman. I share your concerns about potential abuse of the *de minimis* exception for packages valued at under \$800. The UFLPA does apply. We do enforce in that context. But there are a lot of challenges to our enforcement given the volume of packages, and the limited data received as to those packages. We are procuring software that is helping us to better target in the *de minimis* environment. We are looking at regulatory and statutory changes that can help us procure better data and enforce more meaningfully in the *de minimis* context. But I do want to emphasize that *de minimis* is subject to UFLPA, and we take the issue quite seriously and are doing everything in our administrative ability to do it.

Congresswoman, I do just also want to address—you mentioned that in the 10th congressional district in Virginia you have a very large Uyghur community. I just want to say that engaging with

Uyghur communities across the United States has been one of the more fulfilling parts of my job. It is absolutely horrific what is happening to them and their family members in Xinjiang province, but it is also inspiring to see their resilience and their advocacy. And we appreciate the chance to honor them and be their champions through our enforcement of these laws.

Representative WEXTON. Thank you very much, Mr. Secretary. I'm afraid I don't know how much time I have left, but I have one more question. Which is that, without getting into sources and methods, could you please tell us a bit about how you've actually been able to enforce the UFLPA with the *de minimis* exception? Do you do spot checks with the carriers? Or how do you determine what's actually being shipped?

Under Secretary SILVERS. Thank you, Congresswoman. We conduct data-driven targeting across the vast volume of trade that comes into this country every year. And we enforce based on our analysis of trade data, based on our use of technologies like supply chain mapping tools, based on referrals that we receive from non-governmental organizations, civil society organizations, which so often are our ears and eyes on the ground, and we so value our partnership with them. Their activities have led to numerous enforcement actions by the Department of Homeland Security. And we act on other intelligence and data that we receive to make sure that any cargo that is coming into this country where we have a suspicion that forced labor might be involved, is inspected thoroughly.

Representative WEXTON. Thank you very much, Mr. Secretary. Mr. Chairman, I just want to quickly make a comment, which is, we also need to make sure that we do work about the mutual pairing assistance program, because that's another way that they're getting around that whole Xinjiang issue. But anyway, we can deal with that another day. Thank you so much, Mr. Secretary, for being with us.

Thank you, Mr. Chairman. I yield back.

Chair SMITH. Thank you very much, Commissioner.

Let me just ask one final question. I have others that we'll submit for the record. But Enes Kanter Freedom makes an excellent point about how China has absolutely silenced the NBA. He points out that one of his friends, Daryl Morey, who tweeted "Stand with Hong Kong"—on his efforts with regard to Free Tibet, and then he did Free the Uyghurs. And he says, "Enes, don't give up. When I tweeted about Hong Kong, the NBA made me take down my tweet and made me apologize. They made me put statements out which I didn't want to put out." He then encouraged Enes to continue on, because he felt so bad about what the NBA had done to him.

Well, we have written—our Commission—to the National Basketball Association's Players Association. And we asked them to inform and to help NBA players terminate contracts with Chinese sportswear companies, like Anta, Li-Ning, and Peak, that all pledged to continue using cotton and rayon from Xinjiang. They are still selling those products on their websites as well as on Amazon. Again, you know the story of Enes Kanter Freedom and what a heroic man he is. He has lost his entire career because he said "Free the Uyghurs."



I can't believe—and I'll use the word again—the cowardice of the NBA in kowtowing to Xi Jinping and company, the Chinese Communist Party, to silence every single player. Well, now these individuals were trying to say, How do we help any NBA player get out from under being part of sportswear using cotton and rayon, like I said, from Xinjiang? In your opinion, should goods from these companies be banned from import into the U.S. market?

Under Secretary SILVERS. Mr. Chairman, President Biden gave an interview on CNN a few days ago. And he was asked whether he would let up on criticizing the human rights situation in China as part of the administration's China policy. And he, and I'm paraphrasing, but he said something like, When it comes to slave labor we're not staying quiet. That's just who we are. And at the Department of Homeland Security, and on behalf of all the member agencies of the Forced Labor Enforcement Task Force, zero tolerance policy. Wherever the facts lead, we are going to enforce our forced labor laws strictly. And we have done so in year one. And we are only accelerating in our efforts. And I think that message has been received loud and clear from the importing community.

Chair SMITH. In your opinion, is Anta, Li-Ning, and Peak violative of the Uyghur Forced Labor Act?

Under Secretary SILVERS. I'm not going to speak to particular companies and enforcement actions.

Chair SMITH. Would you take that back, and really take a hard look at that?

Under Secretary SILVERS. I will take it back. And I will also say, just at a more general level, that we can, and have, and will continue to enforce our forced labor laws when it comes to Xinjiang cotton. That is a prioritized enforcement area for us. We have taken enforcement actions with respect to Xinjiang cotton, regardless of who the apparel company is or what kind of label is on the product. And we're going to continue to do so because it's the law and it's the only right thing to do.

Chair SMITH. Thank you. I appreciate it. And I really look forward to continuing working with you and your department. So thank you.

Under Secretary SILVERS. Thank you, Mr. Chairman. Thank you, Co-chair.

Chair SMITH. We're going to now move on to our next panel. I know Commissioner Wild, you had no questions, right?

Representative WILD. No questions.

Chair SMITH. Okay, thank you. I'd like to now welcome to the witness table our second panel and thank them in advance for their tremendous leadership on these issues.

We have Mr. Isaac Stone Fish, who is a visiting fellow at the Atlantic Council and author of the book "America Second: How America's Elites Are Making China Stronger." The book highlights how the PRC and Chinese Communist Party has leveraged its economic clout to demand political and ideological compliance across American corporations, Hollywood, and academic institutions. He has extensive insight on the Chinese Communist Party's pernicious influence in the U.S., and how it impacts our daily lives. In addition, Mr. Isaac Stone Fish is an adjunct at New York University's Center for Global Affairs, a contributor to CBS News, a columnist on

China risk at Barron's, and founder and CEO of the Strategy Risks Corporation.

We will begin however, with Mr. Enes Kanter Freedom. As a professional basketball player, he had a celebrated career in the National Basketball Association, having played for the Utah Jazz, New York Knicks, Oklahoma City Thunder, and Boston Celtics over 11 years. In 2021, leading up to the Beijing 2022 genocide games, Mr. Freedom became the most outspoken athlete both on and off the basketball court about the PRC's human rights violations and the NBA's willingness to acquiesce to the dictates of the Chinese Communist Party. His commitment has led him to being ousted from the NBA. They fired him simply because he spoke truth to power.

Just to give you some context of how good a player he was—what a good player at the time of his banishment—his player efficiency rating among NBA players all-time ranking was 61, a metric that basketball fans will absolutely recognize. Rather than buckling under and yielding, Mr. Freedom continued to stand tall and firm. In fact, social media app TikTok, which is owned by the Chinese company ByteDance, even banned his account because of his posts about Chinese human rights violations. His account was reinstated, however, when the TikTok CEO was questioned about it before Congress. Well, Mr. Enes Kanter Freedom, I hope you will post about this hearing today to boost awareness of this important topic.

We will then hear from Ms. Shi Minglei, a Chinese Christian who also goes by the beautiful name of Hope. She became a human rights advocate after her husband, Cheng Yuan, was arrested by the Chinese National Security Bureau in July of 2019. Cheng Yuan was a prominent leader who championed health rights for the Chinese people. His work was so influential that the tyrannical regime in Beijing grew scared and accused him of subversion of state power. Cheng Yuan is currently languishing in a Chinese prison located in China's Hunan province.

This is a prison where political prisoners were found to be subject to forced labor, sewing gloves for American tool manufacturing company Milwaukee Tool. Gloves that are still sold on Amazon and at Home Depot locations across the United States. And I would note parenthetically that yesterday the Commission wrote a letter to the leadership of Milwaukee Tool—the one I put into the record a few moments ago—to address this very issue. Ms. Shi Minglei, motivated by her Christian faith and love of her husband, aims to expose and end the forced labor of Chinese political prisoners. Thank you so much for being here and joining us today.

Finally, we will be joined by Dr. Aynne Kokas, who brings a wealth of knowledge on today's topic, on corporate complicity. She's the author of "Trafficking Data: How China is Winning the Battle for Digital Sovereignty," which dives into how the Chinese government is essentially refining the art of gray-zone warfare by influencing and exploiting the U.S. tech sector in Silicon Valley. Dr. Aynne Kokas is also the author of the award-winning book, "Hollywood—Made in China," detailing how investment from China has shaped Hollywood. She is currently associate professor of media studies at the University of Virginia, focusing on China, U.S.

media, and technology relations. And, again, thank you for being here.

What a panel of leaders, amazing leaders, and experts. Thank you for your collective wisdom. And this is the book. So thank you for giving me a copy. [Laughter.] I will read it in August, when I read all my books. I'd now like to turn to Mr. Freedom for his testimony.

**STATEMENT OF ENES KANTER FREEDOM, HUMAN RIGHTS  
ADVOCATE AND FORMER NBA BASKETBALL PLAYER**

Mr. FREEDOM. Yes. Chairman Smith, and Co-chairman Senator Merkley, and the members of the Congressional-Executive Commission on China, thank you all for having us, and having me here today.

I want to start with—I'm a basketball player. I love going out there, competing with my teammates and trying to win a championship. But some of the things that have happened in my life obviously made me take a very different route. So for the last 10 years I have been talking about the problems that are happening in Turkey. There are lots of human rights violations and political prisoners over there. And, you know, my family had to publicly disown me because they were getting affected so much. They put my dad in jail. They raided my house. And just recently they put a bounty on my head. They put my name on the Interpol list, and I have 12 arrest warrants.

When the topic was Turkey, the NBA was very supportive, especially the commissioner, Adam Silver, and my teammates, and the coaches, and the five different organizations that I played for. That actually gave me so much hope and motivation to fight against the dictatorship in Turkey. And just three years ago, I was actually doing a basketball camp in New York with Congressman Hakeem Jeffries. And after the basketball camp I was taking pictures with the kids one by one. And I remember taking a picture with this kid, and his parents called me out in front of everybody, and said: How can you call yourself a human rights activist when your Muslim brothers and sisters are getting tortured and raped every day in concentration camps in China?

So I turned around, I was like, I promise I'm going to get back to you. So that day, I canceled everything. I went back to my hotel, and I called my manager. I was like, I need you to find me a concentration camp survivor. He found a lady. You know, we sat down and had a one-hour conversation. And I remember she was telling me about all the torture methods and all the forced sterilization, and abortion, and stuff. And I was like—at the end of our conversation, I asked her: What can I do to help? She said, nothing. I was like, so we just had this one-hour conversation for no reason? I was like, no. She said, I'm in America. I can do whatever I want. I can say whatever I want. And I can eat whatever I want. Help those 2 to 3 million Uyghurs who are in concentration camps.

So I wanted to bring an awareness and I wanted to do it in a very unique way, because I remember when I was a kid whenever I watched an NBA game the first thing I was watching was the shoes. What color they are, if they are comfortable. And the next day I was telling my dad, please buy those shoes for me. So we de-

cided to reach out to artists around the world, you know, and who've been oppressed by their government, and we created the shoes. This is non-slave labor. And we put all these messages on our shoes—there was no rule against this because three years ago when we were in the NBA bubble all the players were putting on their shoes, Black Lives Matter, Black Revolution, George Floyd, which I'm not against.

So my first topic was "Free Tibet." Our first game—I was playing for the Boston Celtics, and our first game was against the New York Knicks, our biggest rivalry. And I remember putting on these "Free Tibet" shoes. I went out there, I started to warm up. A minute before the game, two gentlemen from the Boston Celtics came to me and said: Take your shoes off. I was like, excuse me? Your shoes have been getting so much attention internationally. You've got to take your shoes off. It was the perfect moment for me because I was just getting ready for my citizenship test. So I closed my eyes. I was like, OK, there are 27 amendments. My First Amendment, freedom of speech. I turn around and I said, no, I'm not taking them off. [Laughter.]

So they're like, What are you talking about? I said, I don't even care if I get fined. I'm not taking them off. They said, We're not talking about a fine. We're talking about getting banned. So at halftime, I went back to my locker room. I played zero minutes. I looked at my phone. There were tons of notifications. I clicked on the one that my manager sent me. He said every Celtics game is banned in China. Really. It took them 24 minutes—first quarter, 12 minutes second quarter, 12 minutes—to ban every Celtics game on television. So that game I played zero minutes, and I had played every game before that. We lost the game, obviously. [Laughter.]

And after the game, there was a media storm. And I told my manager, I don't want to do any media because I don't want my teammates to think that I'm doing it for attention. So actually after the first game, the NBPA, the Players Association, called me and said: Do you know what you did? You can never wear those shoes again. I was like, am I breaking any rules? They said, no, but you cannot wear them ever again. I talked about the problems that were happening in Turkey for the last 10 years, and all I got was support. But when the topic was China, one day and my phone was ringing once every hour.

So they were pressuring me and my manager so much. I was like, you know what, I promise I'm not going to wear "Free Tibet" shoes ever again. They said, promise? I promise. I hang up the phone. For the next game, I wore "Free Uyghurs" shoes. [Laughter.] So they called me after the game. They said you're a liar. You lied to us. I was like, first of all, I never lied to you. I never said I'm not going to wear "Free Uyghur" shoes. I just said I'm not going to wear "Free Tibet" shoes. So after the third game one of my teammates walked up to me and said: You know this is your last year in the NBA, right? You're never going to get another contract after this because when you criticize the NBA and Nike, it's over for you.

And that pretty much happened. You know, February came and, you know, I got released and it was over for me. You know, I want to say I love basketball. My job is not—I'm not a politician. I

should be on a basketball court working out and getting ready for the season, but unfortunately because of the things that I said it's not going to happen. But, you know what? It's bigger than myself. It's bigger than basketball. It's bigger than the NBA. And I will continue to be, you know, a voice of all those innocent people out there who don't have a voice. And thank you all for, you know, organizing this beautiful hearing to be our voice. So this definitely means a lot to us. Thank you so much, guys.

Chair SMITH. Mr. Freedom, thank you so very much for your courage, but also for—what a sense of humor, despite all that you have—

Mr. FREEDOM. You've gotta laugh. You know, if you lose your smile, you lose hope.

Chair SMITH. Well, thank you.

Mr. FREEDOM. Thank you.

Chair SMITH. Ms. Shi, Hope herself. [Laughter.]

**STATEMENT OF SHI MINGLEI, WIFE OF  
CHINESE HUMAN RIGHTS ACTIVIST CHENG YUAN**

Ms. SHI. Yes. Thank you, Mr. Chairman. Thank you, Senator Merkley and the Congressional-Executive Commission on China for convening this hearing.

My name is Shi Minglei. I'm the wife of a famous Chinese human rights activist, Cheng Yuan, who is currently serving a five-year sentence at a facility called Hunan Chishan Prison. There, as I will discuss in more detail later, prisoners are forced to work making gloves for a famous American brand, Milwaukee Tool.

But first, I'd like to tell you about my husband. In 2008, Cheng Yuan left a job in finance to found an NGO called Nanjing Based Justice For All, which was initially focused on combating employment discrimination against persons with hepatitis B, which is a significant issue in PRC. From there, he expanded his work to other areas of social justice, including advocating for an end to the PRC's one-child policy and standing up for the rights of laborers and Chinese human rights lawyers after the 709 crackdown, by founding NGO ChangSha Funeng. This work led PRC security agents to arrest him on July 22nd, 2019. And I haven't seen him since. He was arbitrarily detained, tortured, charged with subversion of state power, and secretly tried and sentenced to five years' imprisonment. That's how he ended up at Hunan Chishan Prison.

Another activist who was imprisoned there is Lee Mingche, a Taiwanese human rights activist who was arrested by the PRC government in March 2017 and released in April 2022. After his release, Lee revealed that while he was imprisoned at Hunan Chishan Prison, he was forced to produce gloves, including gloves bearing the Milwaukee Tool logo. One of Lee's jobs was to cut materials into the shape of a glove. Another of Lee's jobs was sewing the cut materials into actual gloves.

I am told my husband is currently forced to do a significant amount of sewing as well. Lee said that if prisoners refused to work or to meet the quota, they were subject to a variety of punishments, including being forced to stand for several hours straight, having their contact with family members cut off, and, in some cases, being subjected to beating, including with electric batons.

Lee has attested to many of these facts under penalty of perjury and is willing to testify to them under oath as well.

Another recently released prisoner, whom I will refer to using pseudonym Xu Lun, as he is still in the PRC, has similarly reported being forced to produce gloves bearing the Milwaukee Tool logo while imprisoned at Hunan Chishan Prison. Xu confirmed that failure to meet the production quotas was met with punishments like being forced to stand and being beaten and shocked with electric batons. Xu also confirmed workdays of about 11 hours, at least six days a week, with minimal breaks, and being paid only \$3 per month. That works out to an hourly wage of one cent.

Due to the lack of rule of law in the PRC, however, it is extremely dangerous for former prisoners located there to speak publicly to these issues. That is precisely why big companies like Milwaukee Tool are able to get away with benefiting from forced labor in the PRC. They know that the lack of human rights protection in the PRC means it's difficult, if not impossible, for victims to hold them accountable.

Meanwhile, it's extremely beneficial to Milwaukee Tool's bottom line if those who are actually making their gloves are paid only one cent per hour. Of course, they would prefer to have their gloves manufactured in the PRC rather than in the States, where they would have to pay workers several thousand times more, and where the kinds of abuses people like Mr. Lee and Mr. Xu suffered would not be tolerated. In this way, American workers can also be considered—counted among the victims of Milwaukee Tool's disregard for human rights.

As for my husband, I'm deeply concerned about his wellbeing. In recent visits by other family members, he has confirmed that he is forced to work 11 to 12 hours a day, hunched over a sewing machine. He was also put in solitary confinement for three months, tortured, forced to stand for hours, deprived of sleep and food, and forced to drink water from the toilet. Thus, Mr. Chairman, Senators, Representatives and CECC representatives, I'm calling on you to stop American companies like Milwaukee Tool from using forced labor in the PRC now. I'm looking forward to taking questions, but may be not able to answer all these questions due to safety concerns and contemplated litigation. Thank you.

Chair SMITH. Ms. Shi, thank you very much for your testimony, and for your courage as well. And for your great love for your husband.

Ms. SHI. Thank you.

Chair SMITH. We'll all continue to work for his release.

I'd like to now yield to Mr. Stone Fish.

#### **STATEMENT OF ISAAC STONE FISH, VISITING FELLOW, ATLANTIC COUNCIL**

Mr. STONE FISH. Commissioners, I appreciate your focus on these issues, and issues that we ignore at our peril. I'd like to talk about business complicity both in the present and issues I'm worried about in the future. And the major one is lack of transparency. Congressman Smith, you talked about Anta earlier. I don't know if folks realize that Anta also owns Louisville Slugger, a beloved American brand, and Wilson. And Anta itself has very clear ties to

forced labor. I do wonder if Major League Baseball, tennis associations, understand how they're being complicit with forced labor by using those brands—storied American brands.

On the issue of transparency, American corporations for decades have been very entwined with China and the Chinese Communist Party. And as corporations have become more vocal in the United States, they've become more quiet about what they're doing in China. And we have wonderful laws and tools that push that. The UFLPA I think is a fantastic one. I worry right now about how easy it is for American corporations to support the Chinese military. There's a focus on civil-military fusion, but frankly it's a lot simpler than that. The People's Liberation Army, the military in China, is the armed wing of the Communist Party. It's not a separate organization. So any SOE is part of the same organization as the PLA—Bank of China, ICBC, a lot of these major companies are just part of the same organization that is the Chinese military and may at some point soon be killing Americans.

The other issue I want to talk about is the way that major American military companies have deep ties to China. Boeing, Raytheon—I'm quite worried about the fact that the most important defense corporations have major markets in China, Boeing especially. And in China, there are no private airlines. Every plane that Boeing sells in China, it sells to the Communist Party. And so we're in a situation where we're facilitating not only the growth of the Chinese economy and the Chinese military, but also making it so American corporations have different interests and incentives than a lot of the people in this building.

I want to continue with that and talk very concretely about the risks of war. We are at a very perilous time right now. And I worry that we're not having the national conversation about what would happen if China invades Taiwan. What does that mean for major American corporations who not only may be acting against the interests of the American people, but also, frankly, are putting a lot of their Chinese staff in danger? This Commission so wonderfully focuses on vulnerable people in China, and I don't think we really think through, Oh, if China invades Taiwan, so many people who have worked for Apple, and Microsoft, and Boeing will be seen by the Chinese Communist Party potentially as enemy combatants. And they will be harassed, and they will be rounded up, and potentially worse things will happen.

And it's unfortunate that I have to speak this way, but we are in a scenario—again, I can't predict the future, but we are in a scenario where World War Three might be upon us and there'll be massive, massive ethical concerns for that. I'm also quite worried about the treatment of Chinese Americans here. We have a horrible history in this country of rounding up people who are citizens or, worse, citizens of countries that we were fighting. Germans in World War One. Japanese in World War Two. And we need to have a national conversation about how we're going to ethically protect our own, going to protect Chinese Americans.

It's something that really, really worries me, and it's something that I think we need to talk about. The solutions are already in our wonderful political tool book. It's open and raucous debate. It's more transparency for American companies. Most American compa-

nies don't break out their China revenue, so we have a very difficult time of knowing what exactly they're doing in China. The more we can learn, the more we can understand, the better it is. So I'll stop there. Thank you very much.

Chair SMITH. Thank you, Mr. Stone Fish, so much for that testimony and your leadership.

Ms. Kokas.

**STATEMENT OF AYNNE KOKAS, C.K. YEN PROFESSOR,  
MILLER CENTER, UNIVERSITY OF VIRGINIA**

Ms. KOKAS. Thank you so much. Thank you, Chairman Smith, Co-chairman Merkley, and distinguished members of the Congressional-Executive Commission on China. It is an honor to present my testimony.

As the U.S. grapples with how to approach China's expanding digital influence, fragmented U.S. laws interact with expansive Chinese government oversight in a way that pressures corporations to prioritize compliance with Chinese laws and policies. Drawing from my recent books, "Trafficking Data," and "Hollywood Made in China," I recommend enhanced data oversight in the U.S. to reduce digital rights violations by tech corporations from both the U.S. and China. More comprehensive U.S. digital oversight would align the U.S. with its allies and partners and countervail against pressure companies face from Chinese regulations. I look forward to the discussion and would be happy to expand on any of these points during questioning but let me highlight the key points of my testimony.

First, U.S. technology oversight assumes corporations have the capacity to track and mitigate harm, which we've seen time and again is not actually the case in many situations. Second, most Chinese corporate data oversight laws have extraterritorial scope and nontransparent enforcement. The opacity of these laws obscures which firms are exploiting data and generating other harms in the normal course of their operations, not just in China but in the U.S. and with our allies and partners. Number three, limited U.S. data protection and the potential for financial, civil, and criminal penalties in China incentivizes following Chinese laws where there are not U.S. equivalents. So by not regulating within the U.S., it's not that we're creating more freedom for our companies, it's that we're incentivizing them to follow Chinese laws. Number four, similar pressure encourages firms to modify content to adhere to Chinese laws.

In the absence of comprehensive data privacy over oversight, the patchwork of sector-based and state-based oversight in the U.S. fails to keep pace with evolving technologies. I'm thinking about things like the Health Insurance Portability and Accountability Act, which does not cover key technologies like commercial DNA testing and smart health monitoring, or COPPA, the Children's Online Privacy Protection Act, which does not account for the ways that children's data is accessible on devices like Amazon's Alexa or Google Home, and how increasingly savvy users under the age of 13 are able to access that user data anyway. And finally on the mental health impact on teens who are over the age of 13, many of whom we see at the University of Virginia.



States offer different protection for their citizens, different access for corporations to user data, biometric data, financial data, and access to different state networks and devices. This creates a very difficult environment for any sort of compliance and, as a result, companies have an incentive to choose to go to different states rather than to comply with data oversight. But corporate and user data oversight form the foundation of a wide range of emerging information and communication technologies, like generative AI. So therefore, long-term competitiveness depends on good U.S. data protection laws.

Now, by contrast, in China what we see is uneven enforcement and forced data localization. China's 2017 cybersecurity law requires critical infrastructure data to be stored in China. The personal information protection law expands data localization requirements to make the transfer of data overseas subject to a security assessment by the Cyberspace Administration of China, very broadly defined. Similarly, opaque enforcement encourages corporations to comply with the most conservative interpretations of the law. For example, China's national security data audit system established by the data security audit, which has extraterritorial implications, so applies to companies that operate in China and in the U.S., can review any data that might influence national security. Similarly opaque are the oversight mechanisms of the 2020 Hong Kong National Security Law, which I know this Commission has dealt with in great depth.

So corporations in the United States that are subject to Chinese laws face significant pressure to comply with Chinese laws in the absence of U.S. data protection in areas like the connected device industries, precision agriculture, gaming, payment, mobility, communication sectors, and beyond. I talk about these in my book, "Trafficking Data," and I'm happy to talk about them in the Q&A as well. So the pressure—we also see that pressure for Chinese market access interacts with U.S. laws to shape content. Now, this is an area that I talk about in my book "Hollywood Made in China." We had the recent—in 2019 "Abominable" contained a map of contested Chinese maritime claims. I know some of you may have heard about the discussions of the "Barbie" movie over this past weekend. If you want to talk about that, I'm happy to discuss it further. We also saw the recent case with "Top Gun: Maverick."

Now my recommendations are as follows—and I focus primarily on the digital sector because I think this is an area where Congress needs to act and where this Commission's leadership is essential. First of all, working with allies and partners to establish standards for international data transfer. Aligning adequacy standards for cross-border data transfer with the European Union and Japan, and other allies and partners. Join or rejoin key trade agreements that enhance transparency and cross-border data transfers. Enhance U.S. oversight to prevent international data trafficking, through things like the bipartisan RESTRICT Act, which we just heard Senator Warner discussing, and which was subject to—I think he mentioned \$100 million of TikTok lobbying money.

Regulate the data broker industry. We also see the UPHOLD Privacy Act of 2023 and the Protecting Military Service Members Data Act of 2023 offering first steps in this direction. Enhancing

SEC reporting of data storage practices by publicly traded firms, and then building out a national security data privacy monitor to mitigate data trafficking. Finally, and this is what I say as the director of the East Asia Center at the University of Virginia, fund Chinese Area studies. A lot of companies don't necessarily know what they're doing because they don't have people who work in those companies with this expertise. This is of crucial national security importance, and I look forward to the Commission's leadership on this.

Thank you so much for your time and attention, and I welcome your questions.

Chair SMITH. Thank you so very much, Ms. Kokas.

Senator Merkley has a vote pending in the Senate, so I certainly yield to our distinguished co-chair.

Co-chair MERKLEY. Well, thank you very much, Mr. Chairman. And I want to turn right away to the NBA. And I believe before the experience you went through, Mr. Freedom, Daryl Morey, the general manager of the Houston Rockets, had tweeted in support of Hong Kong. And I think he suffered immediate backlash as well. So I just want to make the point that this is not just one vignette. This is an absolutely broader challenge because of the amount of money the NBA seeks to make in China. Did you have conversations with any of the NBA players who were considering or had endorsement deals with the Chinese sportswear companies? And did you get any kind of feedback from them, or did you get any support from players for the stand you were taking?

Mr. FREEDOM. You know, when I started to talk about the problems that were happening in China, it was the perfect moment because it happened right before the Beijing Winter Olympics. People call it The Genocide Games. So forget about the NBA. I tried to reach out to the NFL, MLB, MLS, the NHL, WWE. I even tried to reach out to Olympians. I was, like, listen, you know, while we are dribbling a ball, on the other side of the world there's a genocide happening. You know, we can come together, and we can actually bring so much voice for these innocent people.

You know, they all said the same thing. They said, listen, I think what you're doing is so courageous, so inspirational. Keep doing what you're doing. We love you. We support you. We just cannot do it out loud. I asked them a simple question. You know, I was like—I asked them, why? They said, well, you know, we live on deals. We want to get another contract with the league that we play with. And then my following question to them was, put yourself in their shoes. If your mother, if your sister, if your daughter was in those concentration camps getting tortured and raped every day, would you still pick money and business over your morals, values, and principles?

They usually turn around and leave the room, you know. And the one thing that broke my heart, I played 11 years in the NBA, I had hundreds of teammates, hundreds of coaches, I had so many friends who I used to call my brothers because I used to see them more than my family, which I haven't seen in over 10 years. After I got released, not one of them texted me and said good luck with whatever is coming your way next. Not one of them called me. I was shocked. I started to ask myself, am I doing anything wrong?

You know, I don't talk about politics, because human rights is above politics. I don't care if you're from the right, from the left, whatever party you cheer for, whoever you vote for. You have to care about human rights.

So they were just scared about—If I do an interview, or if I ever talk about—if I do a podcast, they just didn't want me to mention their name because they knew that if I ever said, Oh, this player supported me, this player said this and that, all their endorsement deals would be gone. So it was a very lonely road for the last year and a half. But I still check their stats. I still see if they're healthy or not. I still cheer for the Celtics, cheer for the teams that I played for. I just hope they understand at the end that, you know, what we are doing is—what I'm trying to do is bigger than basketball, bigger than the NBA, bigger than everything that that we ever have done.

Co-chair MERKLEY. Well, we all greatly appreciate your stand on behalf of human rights.

Mr. FREEDOM. Of course.

Co-chair MERKLEY. And I personally, and Congressman Salinas coming from Oregon, we also appreciate greatly your time with the Portland Trailblazers. [Laughter.]

Mr. FREEDOM. Oh, thank you so much. I had an amazing time there.

Co-chair MERKLEY. Ms. Shi, has Milwaukee Tool acknowledged the problem, or their involvement with prison forced labor in China?

Ms. SHI. No. We sent several letters. And we also requested a conversation. But they refused to meet me in person.

Co-chair MERKLEY. Are there other American companies in a very parallel position to Milwaukee Tool that you've had any contact with?

Ms. SHI. Yes. I also found another American company involved in this case. We can hand over the details later.

Co-chair MERKLEY. And we—

Ms. SHI. By the way, we also contacted Walmart, Home Depot, and Amazon, because they are the major channels on Milwaukee Tool. Fortunately, Walmart took action after I sent a letter to their CEO, and they deleted Milwaukee Tool gloves on their website. And they also promise they won't sell them anymore in the store. But Home Depot and Amazon are still selling Milwaukee Tool gloves made with forced labor.

Co-chair MERKLEY. One of the things that we've discussed a lot on this Commission is transnational repression, in which those who stand up for human rights here in America, their families are threatened. Obviously, your husband's already suffering in prison. Has anyone walked up to you on the street and said: We know where other family members are in China and—or intimated that there would be further consequences of your speaking out?

Ms. SHI. Until now, I think I'm safe in the States. But actually, when my husband was arrested, I was suddenly put under home arrest for half a year. And they also accused me of subversion of state power, even though my job is just global Ecommerce in the business area.

Co-chair MERKLEY. OK. Thank you. And, Mr. Stone Fish, are there examples of U.S. companies that have been challenged by China who have stood up to China that we can celebrate in a more positive way?

Mr. STONE FISH. It's a great question. And unfortunately, the companies that do that don't want to get credit for it. We work with a lot of these companies. And reporters will come to me and say, Hey, I'd love to do a positive piece on a company that's reducing its exposure to China. And so I'll talk to our clients, and they'll say: Absolutely not. And I do hope that that changes because I think it's a very important trend. And I do think people need to know, especially people in the business community, that there is a way to reduce your exposure to China, to reduce your reliance on the Communist Party, and still make money and succeed. But unfortunately, all of the companies that I know that would fit that qualification would much prefer to be silent. And I think that's a shame.

Co-chair MERKLEY. Thank you. My time is up but I'll submit some questions for the record about whether we should have disclosure requirements for U.S. companies doing business in China, and if so, what those should look like, and other issues related to companies facing penalties for violating PRC laws. Thank you very much.

Chair SMITH. Thank you, Senator. Thank you so much, again, each of you, for your testimony, your leadership. And I'm looking forward to reading your book during the August recess, so-called. District work period, as we really refer to it as.

I do have a number of questions. You know, let me just say for the record, we will invite the NBA and the NBA Players' Association to testify. Obviously, they're free to turn us down. I hope they won't. I hope that they realize that the courage that Enes Kanter Freedom has provided is something that they all ought to aspire to. You know, injustice need not be forever, and I would argue cowardice need not be forever. You know, money should not trump standing up for people, as you pointed out, Mr. Freedom, who are being raped every day, who are being so horribly mistreated, children.

I mean, it is genocide, and genocide—"who remembers the Armenians"—many, many years back; you remember Lemkin? He coined the term genocide. Same goes for the Holocaust. We really do need to be much more vigilant and strong. And you have done that at great cost to yourself. I'm in awe of that kind of courage. And the fact that the others have not—and I'm sure in their heart of hearts, many of your fellow players do have strong concerns about what is going on in all of China, but also in Xinjiang with the genocide. And so thank you for that leadership.

We will invite them. We'll invite Milwaukee Tool to come, and others. And I would point out that we had a number of hearings, and so did the Lantos Commission. I chaired one with our distinguished chair at the time, now Co-chair Senator Merkley, before the Olympics. And we had companies come and testify. And I remember Coca-Cola, I asked them specifically about the genocide. And it was like he lost his voice. Wouldn't say a word because of fear of losing market access. And again, the more that we enable

the Chinese Communist Party through our acquiescence to those bullying tactics, the more that they will use them.

I even remember when Liu Xiaobo got the Nobel Peace Prize—there were threats made against the Peace Prize Committee and others. And it was like that was the last we heard of it after that. I was there. I'm the one who led the effort in Congress to have him and two others named as Peace Prize recipients. And it was forgotten so quick because China was threatening whole countries about their support of Liu Xiaobo. They wouldn't even let his wife accept the Nobel Peace Prize.

But again, Senator, I do thank you. You had those corporations here at that hearing. And it was very telling how fearful they were of saying just one word about the genocide and about all things human rights-wise with China. We had argued, just for the record, very vigorously. Senator Marco Rubio and I had written letters to the Olympic Committee because they got these bogus assurances from the Chinese Communist Party, that they would adhere to human rights. It was like, are you kidding me? It's deeds, not words. Their words are very deceptive, if not outright lies. So in this case, they were.

And the issue of having the Olympics—you know, it's too bad that the genocide Olympics did occur there. I'm all for the Olympics, but not there. As we all are. So I do thank you, again, for all of that. We will invite the NBA. I hope they say yes, sooner rather than later. Because I think if a few others follow your courageous lead, it could have a very cascading positive effect on human rights, because now they know they—OK, so they barred the Celtics TV coverage in China for a while. Big deal! I mean, is money everything? I hope not.

And you know, it was discouraging to watch Bill Gates as he met with Xi Jinping the other day. You know, he's done some work on health and the like, but Microsoft and others have been enablers in the most egregious ways for decades. I had a hearing back in 2006, in which I invited Microsoft, Yahoo, Cisco, and Google to talk about how they were censoring and providing personally identifiable information on users to the Chinese secret police. So I swore them all in. I asked, Why are you following that? Yahoo had given up all this information that put Shi Tao into prison for 10 years about the Tiananmen Square remembrances. Ten years, for just conveying to a human rights group in New York how they were being censored about what they could say about Tiananmen Square.

We had Google during that hearing, the Google that you would get in China, that showed Tiananmen Square—not a single mention of the massacre, of the bayoneting. All part of the big lie. The bigger the lie, the better, I think, from the Chinese Communist Party perspective. And they're all part of it. I pointed out that IBM—I read a book on IBM and the Holocaust, very well footnoted—and IBM then called my office and complained—about how they helped the Gestapo go after individuals because they had very, very good capabilities. They shared it all with the Nazi Party and the Gestapo, and they found Jewish people and others who were unmentionables and, obviously put them into concentration camps.

So it was really—what a telling. And here we have it being repeated now, as it was in 2006 at this hearing. So we need to learn from it. And big corporations in tech really need to do far more to be on the side of freedom and democracy and not on the side of human rights abuse. Let me also just ask, Ms. Shi, to you. Are you in any kind of contact with your husband? How is he doing?

Ms. SHI. Yes. Since January this year, my family members can visit him. But before that, for three and a half years we couldn't visit him. But still, my letters to him through my sister-in-law were all seized by the prison. And even a photo—even some photos of me and my seven-year-old daughter, and they just deprive him from seeing the photos. And so it's really hard for me to contact him.

Chair SMITH. Okay. Mr. Stone Fish, you know, one of the issues of the transference of military capability and know-how, dual-use items which they have picked up almost with impunity to turn into a force that we may face someday, that Taiwan may face sooner rather than later, sadly. There was—you might recall the Cox Commission; Christopher Cox, a member of Congress from California, did an amazing job. A bipartisan commission that looked at all of that and said: We're arming China. We're making them a first-rate, capable, militarily speaking, courtesy of making money off of them. Hughes Aircraft and all these others were more than accommodating to give them everything they possibly want.

You mentioned an issue that I haven't focused enough on. And that is especially the Chinese nationals who are working for U.S. corporations. Should the balloon go up and there is fighting, God forbid, but there could be, how at risk they will be. And when you mentioned Boeing, I immediately thought of McDonnell Douglas and Boeing, and all of the airlift capability that gives their troops. You know, in the United States—whether it be American Airlines, or United, should we go to war they get pressed into service to move troops and materiel. Well, what do you think the Chinese will do with our aircraft that we sold them?

And, you know, this myopic view that so many have here that just sell and, you know, make a buck and move on, well, that could be used to move troops as well. So you might want to speak to that issue because the Cox Commission was in the 1990s. Why haven't we learned? And, again, on the data, I look forward to reading your book. Your testimony was excellent. Your leadership is excellent. Maybe you could just elaborate a little more on what we could be doing to mitigate the damage. Because it's, you know, is it too far gone? You know, I was sickened by the Gates interview with Xi Jinping.

Xi Jinping ought to be at The Hague for crimes against humanity, not having Americans, business leaders in that case, and American politicians—you know, I look at this in a bipartisan way. When Brent Scowcroft traveled to Beijing right after the Tiananmen Square Massacre to assure the Chinese Communist Party, "No problem here," I was shocked. He's a Republican, and I spoke out then. I feel similarly about the kowtowing that's going on by some in our government. Thankfully, our first witness is not in that group. Mr. Silvers is standing up strongly. But not enough

people are. So maybe I could start with Mr. Freedom. If you just wanted to comment further.

Mr. FREEDOM. Yes, of course. Thank you. I think even just bringing awareness is very important. But more than awareness, you know, when we are in the locker room, we always say let's play hard, let's play smart, let's have fun. And the coach comes in and says: Well, don't just talk about it, be about it. So it is important to just talk about and bring awareness, but I think we need to figure out what we can do to help those people over there. And like you said, Chairman, this is a non-political issue. This is a human rights issue. So every part of the country needs to just help those people over there, because while we are living comfortably in this country, on the other side of the world people are losing their lives, losing their homes, and losing their loved ones. So we've got to do whatever we can to help those people over there.

So, like I said, again, I'm not a politician. I'm an athlete. I still consider myself an athlete. You guys know better than me what we can do or not. But those people over there can't even breathe anymore. So we've got to do whatever we can to help them.

Chair SMITH. I do hope you will inspire other NBA players, including the NBA Players Association, to stand with you. And you ought to be invited back based on your skill and your ability and not the fact that you—

Mr. FREEDOM. Of course. Many, many athletes over there, you know, sign contracts. Not only NBA, but companies like Nike. I mean, just look at Nike. Nike stands with Black Lives Matter in this country. They stand with the LGBTQ community. They stand with No Asian Hate, the Latino community. But everybody knows about the slave laborers and sweatshops. You know, they keep preaching about how important the social justice issues are, but when it comes to using slave labor they're one of the biggest companies that uses slave labor. So we've got to do whatever we can to put pressure on these companies.

Chair SMITH. Thank you.

Mr. FREEDOM. Of course.

Chair SMITH. And we will invite Nike to our hearing as well.

Mr. FREEDOM. I love it. I love it.

Chair SMITH. Ms. Shi.

Ms. SHI. Last Saturday, we went to Home Depot, brought our kids. I have one daughter. She is seven years old. Every time she goes to Home Depot with me, she will look around and see whether the Milwaukee gloves are still sold there. She even knows exactly the three models made in the Hunan Chishan prison. And last Saturday, Daniel, a kid whose father is Chinese human rights lawyer Chang Weiping—also detained in China, they just moved to Minnesota, and we hosted them. And he went to Home Depot along with us. And he said, Auntie Shi, if you fail in the lawsuit against Milwaukee Tool, when I grow up I will be a lawyer and I will do the lawsuit for you.

You know, he's only 10 years old. We pass this information on to the kids, My daughter knows "Don't buy Nike" because they are using slave labor, because their fathers are good human rights activists in China. So I really encourage them to continue to think positively and continue, know that God loves us, and God has jus-

tice. But every time, it's just heartbreaking—you know, talking about the hard issues with our kids. So we need to take some action now. And we hope that all products made by forced labor in China will be banned immediately. And also we hope the companies will be held accountable for that. Thank you.

Chair SMITH. Thank you. Mr. Stone Fish.

Mr. STONE FISH. Thank you. That was an excellent point—the military companies complain about regulations, but sometimes they love them because they can hide behind them. And so having a regulation or a law that restricts the ability of American companies to support the PLA, or to enter into joint ventures with the PLA, or to source from PLA-owned factories will be a massive compliance headache but will also allow major U.S. companies to say: Listen, I still want to do business in China, I just have to follow U.S. laws. So I have to reduce my investment in the PLA. I have to move out from all of these issues. And it's a compromise. And it's a way to work. And I think the UFLPA is a very excellent model for that.

I'll make another point about Scope 3 emissions, which are basically emissions that a company makes throughout its lifecycle. You brought up the great example of cobalt mining in the Democratic Republic of Congo. For so many companies, Scope 3 is just China. They have such a massive manufacturing presence there. So regardless of which side of the aisle you are on on climate change, forcing more environmental transparency forces companies to disclose how exposed they are to China and the Chinese market. And it's another way of both increasing transparency and raising the cost of investment in China.

Chair SMITH. Thank you, Mr. Stone Fish. Ms. Kokas.

Ms. KOKAS. Thank you so much, Chairman Smith, and thank you for that excellent question.

To your final question of whether we're too far gone, I teach a class called "The Data Ethics of TikTok" at the University of Virginia. And I have our students read the TikTok terms of service. And they read it, and they get very depressed, but then they still stay on TikTok. [Laughter.] And their question is, What can we do? And one of the answers is, we need systemic regulation so that these are not decisions that 18-year-olds have to make by themselves while reading terms of service ad nauseam.

And also, one of the things we talk about is the importance of mitigation strategies. So no, we're not going to solve the issue of data trafficking and international data transfers. It's probably just like in the forced labor context—we were just talking about the *de minimis* issue, and how it's very difficult to resolve it. But does that mean we don't try to mitigate? No, we keep working. And so some things—some low hanging fruit includes joining or rejoining trade agreements like the CPTPP which China is trying to join, and Taiwan is trying to join, and has data transfer agreements. Enhancing reporting requirements for companies through existing mechanisms like the Securities Exchange Commission. Where are they storing their data? How are they transferring it?

National security data privacy—we've had some movement in this direction. The American Data Privacy and Protection Act was introduced last year. And there were, admittedly, problems with it, but it's a step forward. And right now, the U.S. is so far behind



our allies and partners on a lot of these issues in terms of data privacy and protection that we can't even come to consensus with the people that we normally agree with on things. So I think that this is a really important area that Congress can move on. And not just for me, not just for the people on this panel, but for all of the people who are coming forward and are feeling rather hopeless right now.

Chair SMITH. Thank you.

Ms. KOKAS. Thank you.

Chair SMITH. Commissioner Salinas

Representative SALINAS. Thank you, Mr. Chair, and thank you to all the panelists.

Dr. Kokas, your testimony paints a really revealing picture of the risks posed to Americans, both by the lack of strong standardized data protection in the U.S. and by our exposure to Chinese laws. And clearly Congress has its work cut out for us to ensure that we're able to protect Americans' data. In fact, we just saw a data breach in Oregon of almost our entire DMV system, about 3 million Oregonians, nearly the entire population of the state. So can you talk a little bit more about the implications of strong domestic privacy laws for international norms?

Ms. KOKAS. Yes. I spent last summer in Japan as an Abe fellow. And one of the really interesting parts about that dynamic was talking with Japanese policymakers about their data transfer agreements and the data adequacy agreement that they had established with the European Union. And how by not having those data adequacy agreements with the United States, it actually prevented them from being able to have better trade with the U.S. and more alignment in terms of ballasting against Chinese data gathering in Japan and the European Union, in the United States.

So by making the decision to kind of go our own way—and there's a reason for this. It's not—it didn't occur by accident. It's that the country has enriched itself, and I have probably personally enriched myself through my 401(k) balance, by the rapid growth of tech stocks. And this is a way that we're able to grow and enrich the country. But it's also that now tech companies do not have the same types of incentives that they once did in terms of alignment with U.S. national security interests. Also, these have become really significant international issues that are driving a lot of national security interests, not just domestically but internationally. And the power of the Chinese tech sector means that this isn't something that the U.S. can do by itself.

So I thank you for your question. And also, to one of my points, the importance of aligning state and national standards and using federal resources to help provide technical support for state organizations, which are really doing their best but are often faced with quite untenable circumstances. Thank you.

Representative SALINAS. Thank you. Mr. Stone Fish, you noted that the key to addressing corporate complicity and Chinese human rights violations is to promote transparency. And as a reporter, you have no doubt, I'm sure, thought about the consequences of bringing to light previous opaque connections. I wonder, though, whether transparency is sufficient. We heard about the NBA's connections to China, Mr. Kanter Freedom has clearly brought about a

high degree of public awareness of how the NBA works to appease the Chinese government to protect its own businesses. We've heard of TikTok and making headlines for risking exposure of Americans' data. These kinds of stories are widely reported. My question is, is transparency enough to reform corporate operation? And what kinds of disclosures would you like to see that might actually have some teeth? And what, as Members of Congress, do we need to do to put those teeth in there?

Mr. STONE FISH. Thank you. I think those are excellent questions. In the spirit of transparency, I'm an ex-reporter. I run a data and consulting company, so I don't want to pretend to be speaking objectively on these really important issues. I think you're absolutely right. I think transparency is a step, but there's far more that needs to happen. I think the national security argument is a very important one, and letting companies know and understand that unless they take action, the U.S. Government's going to get very involved in a way that's bad for corporations and bad for the U.S. Government. And that if tensions worsen and China gets close to or, God forbid, invades Taiwan, national security concerns will take over. And there's massive amounts of human rights implications with that. And I hope we're careful and can take a deep breath and have conscious debate at that time. But companies need to know that they're going to be in a very difficult situation.

And I think the argument that we find to be the most effective, and it's sad that this is true, it's not about national security. It's not about human rights. It's about regulatory risk and it's about the bottom line. So make it clear to companies that this is how this loses you money, and that reducing your exposure to China has very clear financial benefits. One of the issues is with hacking and with Internet Protocol. You know, companies pay massive externality costs because of all the technology that they just leak into the Chinese ecosystem. And that's a very major cost. And the more that we bring that to light the more companies can calculate that better on their bottom line.

Another one is insurance. Insurance premiums on deals in China are way too low because we're not properly pricing the risk. And the government has a role that it can play in that. So if you make it more expensive through insurance for companies to make certain kinds of investments in China, it's going to change the math for them. And they're going to do it differently. The other thing that I think is very effective—and I applaud this Commission for doing it—is companies are very afraid of being hauled in front of Congress to testify. It's embarrassing. It distracts their CEO time. It forces them to answer difficult questions. So the more that companies understand that, the better it is.

And the final thing I'll say is on the role that consumers can play. Consumers are far more critical of Beijing and the Communist Party than Wall Street and the executive branch of the government, I would argue. And so the more that actual consumers have a voice in their purchasing decisions, the more they know about where the goods, the labor, that they're consuming comes from, the more likely that they'll push against what corporations are doing. And corporations will speak to the market and act to reduce their China exposure.

Representative SALINAS. Thank you. Thank you, again, to the panelists. I yield back.

Chair SMITH. Commissioner Nunn.

Representative NUNN. Thank you, Chairman Smith, and also to the bipartisan panel here. I think this is not only a really good conversation, it's incredibly timely. Professor Kokas, you highlighted at the beginning that when the United States Government fails to define this battlespace, the Chinese will do it for us. And I think that is an absolute truism. You need only look at what Ms. Shi has highlighted today as being so very true. I would offer that the same is also true for our business and innovation sector. If we in the United States fail to define this battlespace, the Chinese are going to do it for us.

Mr. Kanter Freedom, more than a decade playing professional sports in the NBA—I mean, you are an individual who came, from a community that had a totalitarian regime, to the United States. You're now an amazing U.S. citizen. You're still an incredible basketball player. You came under this vacuum of leadership by corporate America that allowed the Chinese to define what our principles would be in the United States simply because you wore a pair of shoes that said, I don't support the Chinese government's abuse of Tibet or its abuse of the Uyghurs. Who specifically did you feel the most pressure from? Was it someone in China? Or was it somebody right here in the United States?

Mr. FREEDOM. It was actually the Players Association, to whom I give thousands of dollars every month to protect my rights against the NBA, you know? And I was very confused. I'm like, why are they pressuring me? They should be on my side, not the NBA's side.

Representative NUNN. Absolutely right.

Mr. FREEDOM. And one of my teammates said, well, if there is no NBA, there is no Players Association. So they've got to do whatever they can to put pressure on you. At one point, I was talking to someone from the NBPA, the Players Association. They said, if you don't stop—if you don't stop wearing those shoes, we are going to change the rules so no one can put any kind of message on their shoes. And I was like, I cannot believe that they are telling me that they're going to change the rule in the whole NBA, so no one can.

Because it was so beautiful, seeing all these players writing these beautiful messages on their shoes about their kids, about if someone passed away, RIP blah blah, you know? It was a beautiful message. And then during the NBA bubble, the NBA was the one that was telling us, you know, be outspoken about the social justice happening in America. They put the BLM logos on the floor. They put the phrases on our jerseys, which was controlled by the NBA. We couldn't pick what we wanted. Adam Silver was the one telling all the players, hey, just go out there and speak, give interviews and stuff.

And all of a sudden when the topic was China, you know, they were just all silent. And they were just going against what I was saying, which was nonpolitical, you know? So it was someone from America. And I was like, how can the biggest dictatorship in the world, China, control a 100 percent American-made company and fire a U.S. citizen? And I would just keep asking that question to

myself. I was like, are we really free? Is it only the NBA? The more I studied, the more I realized, the NBA is not the only one. You see Hollywood, Wall Street, academia, big tech, you know, farmland. And I started to ask this question of myself; you just keep talking about the freedom we have in this country—are we really free? So it was literally someone from the NBA who was American.

Representative NUNN. Mr. Kanter Freedom, you highlight the story of wearing “Free Uyghur” shoes. As an amazing NBA player, you were pulled—didn’t play a single game when you wore those shoes. And within 24 minutes of that game alone, the Chinese government said they were going to pull all Boston Celtics games. As a result, the NBA basically not only pressured you, but gave, (1), the Boston Celtics a horrible loss. [Laughter.] (2), deprived people of China a great opportunity to see not only a great game, but really give an on-ramp for more Chinese to see what is true and great about America, our freedom of speech.

And (3), perhaps worst of all, we saw an American institution that wraps itself in the flag and is proud to stand on every social issue for the voice of, as you highlighted, our First Amendment freedom of speech rights, but then muzzles our own American population because of a hopeful pot of money coming out of China to keep them going. This is frustrating not only on multiple levels—and Mr. Stone Fish has highlighted this—this is the soft power that China controls all over the world. But to have it come home to roost here in the United States puts us in a highly detrimental place, Mr. Chairman. And I appreciate that this Commission is really looking at what the Chinese have done to subvert our own basic freedoms in the U.S., as they’ve done in Ms. Shi’s case back home.

I want to speak very specifically now on a couple of issues that are of acute interest. Professor, you know, I’m an information operations warfare officer with the U.S. Air Force. One of the things that we have looked at specifically is this relationship—China has tried to manipulate the battlespace, specifically in the digital sector. Can you please speak about some of these emerging technologies, specifically artificial intelligence, blockchain—with China’s blockchain-based service network, their consumer-facing applications, as you highlighted, TikTok here domestically, but WeChat domestically in China, and the contribution of the Chinese Communist Party’s global surveillance state for data collection and how it’s manipulating. It’s a lot.

Ms. KOKAS. Oh, no, but I love it. It’s a great question. I won’t be able to answer it all today, right here, but I’ll do my best. I like to think about this on three different levels. On one hand, the risk that kind of comes up most commonly is the risk to individuals. So, like, what’s happening when I’m being surveilled? I would argue that this is actually kind of the lower level. We can kind of even put that aside because most people are not that interesting. Maybe members of this Commission are, but you know, most people are not.

Then there’s this level of economic competitiveness. It’s the fact that there’s this asymmetrical trade in data between the U.S. and China. So companies like ByteDance and companies like TikTok can operate in the U.S., but equivalent firms cannot operate in

China. So there's data that Chinese companies in the U.S. are able to gather and as a result, they are able to out-compete U.S. firms.

So this is an economic competitiveness risk, which then feeds into—you know, when we talk about the communication space, the movement away from the creation of controlled communication environments, where we don't actually know precisely what the terms of service mean, what the long-term implications are—there aren't really mechanisms in the U.S. to prevent private companies from executing on their own terms of service. So in the event that this changes our communication environment, there's very little that we can do.

Now in the context of something like WeChat, people who start WeChat accounts in China and then continue using them in the U.S., there is a CitizenLab report that noted that Chinese-registered accounts—and even those that switched to international numbers—can still be subject to Chinese terms of service. So we are already seeing this kind of expansive censorship and expansive use of Chinese government extraterritorial oversight in a U.S. context.

Now, when we think about the long-term issues of things like generative AI, this asymmetrical trade becomes particularly important because these firms, as a result of civil-military fusion, are pressured by the Chinese government and can be pressured by the PLA to share their insights to be able to develop new tools in a wide range of different areas, from health, to communication, to financial services. And these not only out-compete, but they also have dual uses.

One area that I thought was very interesting that I couldn't do a lot of research on because of my lack of clearance was the precision medicine industry and the investment of Chinese firms in the precision medicine industry in the U.S., and the development not just of new precision medicine tools, but potentially bioweapons in the long term. So that's something that I would, in your context, perhaps look at in greater depth.

Representative NUNN. Both enlightening and frightening at the same time. The other area that you highlighted here is the uneven enforcement by the CCP. Here in the United States, at least you have the ability to go in front of a court and have your day. For a recent series of raids done by the Chinese Communist Party on U.S. financial sectors—I'm talking here Bain Capital, Mintz—these growing hostilities—some American companies doing business in China are recognizing that their future there is short term if they don't completely abdicate to Chinese rules of enforcement. Talk to us about how that is not only a bludgeon to basically force U.S. companies to give up their American principles, but it's also becoming a very dangerous tool. Those who are doing business within China are going to be sacrificing their long-term capital, no longer being U.S. institutions, but really Chinese institutions that happen to operate in the United States.

Ms. KOKAS. This is a really important point. And again, I'm happy to discuss it in greater depth. But I think that we need to think about this on a couple of different levels. First of all, it's the role that individuals play. So individuals now post-COVID face significant checks on their ability to move. COVID checks require you

to share your passport number or your residence permit, your Chinese bank account number. So to be able to do anything, like be able to get into a cab or rent a scooter or purchase something, you have to be able to follow these checks and be able to submit yourself to this type of surveillance. So people who are working for those companies, both foreigners and Chinese people, in order to continue to exist within a Chinese context have to follow, essentially, the most conservative versions of these rules in order to continue to operate.

Now, one of the things in talking with people from the American Chamber of Commerce that's been very revealing is that in a lot of situations it's not actually possible for companies to follow all Chinese laws at the same time, so they're inevitably violating some laws. So as a result, there's always the potential of a crackdown somewhere. And as we're seeing increasingly vague laws (we just had this espionage law that came out on July 1st) that apply to companies, in addition to data security and oversight regulations. This increases the difficulty for companies to operate and to be able to operate legally.

And I don't know what that looks like for the future and what types of decisions companies have to make in order to maintain their presence in the Chinese market. So I would say that this is an area where enhanced reporting requirements, particularly for Chinese investments, become really important so that at a very minimum those decisions are more visible.

Representative NUNN. Professor Kokas, I think those are exceptional recommendations. The areas where I think this Commission can be very effective too is holding the transparency. Look, this has got to be a team fight. We have the opportunity to stand for American principles with the U.S. Government, with the American people. We also need our business and innovation sectors to be on the same page because we are essentially allowing winners and losers to operate in this space; those who decide to do the bidding and will of the Chinese Communist Party get to have some sanctuary and therefore a market share, while those who hold the same principles that they would operate under in the United States are deprived of that.

And as a result, we're enfranchising the bad behavior of a few corporations who exploit humans, who torture individuals, who sacrifice American principles, so they can get a market advantage over those who are doing the right thing. I think transparency is a huge part of what this is. And I thank the Chairman for bringing this forward in a bipartisan way. I hope those companies have the opportunity to come here and justify their existence as well. Thank you very much, panel.

Chair SMITH. Thank you, Commissioner Nunn, so very much.

Ms. Wexton, I know—I think you're still online.

Representative WEXTON. I'm still here. Thank you very much, Mr. Chairman. Good to see everybody. Thank you so much for coming today. This has been very, very enlightening—a very enlightening discussion, so I'm really glad to have been here for it.

I do want to ask Mr. Stone Fish—when Shein announced that it was going to engage in independent audits now, spot checks to address forced labor, experts like Adrian Zenz said that these audits

would be inadequate if state-sponsored forced labor was in any way involved. And it creates a systematically corrosive environment in which targeted groups mobilize through extensive government and grassroots recruitment efforts. With this environment in mind, what tactics have you seen companies like Shein take in hiding the source of materials mined, produced, or manufactured, either in whole or in part, with Uyghur forced labor?

Mr. STONE FISH. Thank you, Congresswoman. I think that's an excellent question. You cannot do audits in China today anymore. It is not safe. You don't get concrete information. And you're often putting your Chinese staff in danger. When you hire a company in China to go do an audit, you're sending someone to a plant and you're incentivizing them to lie. Because what if they go to a plant and they find forced labor, and they know that if they speak out about it maybe they'll be in danger, or their families or their friends or their children. So there's no way to do it. And what we strongly recommend is using open-source information, which you can do safely from outside of China, to paint very accurate pictures of links between corporations and various elements of the Chinese Communist Party.

And that's a model that we, ourselves, take at the company I run, Strategy Risks. It's using open-source information to show the links between companies and the Chinese Communist Party. And we think that's incredibly important. It's also—as the information environment in China degrades—it's going to get more and more difficult for journalists, for policymakers, for companies—as Commissioner Nunn was saying—to get good, concrete information from China. And so we need to understand that big data, AI, open-source collection methods, are going to be necessary for transparency.

Representative WEXTON. Thank you very much for that answer. Another question, your testimony said that we need to require corporations to disclose their exposure to China. But companies in their filings to the SEC often don't break out their China revenue, hiding behind broader categories like "Asia." The more information investors, regulators, and citizens have about how American companies are exposed in China the better. That's one of the reasons that I'll be reintroducing my Uyghur Forced Labor Disclosure Act, which passed in the 116th Congress with bipartisan support. But a lot of my colleagues believe that issuers should only be required to disclose information that's material, and they already are obliged to disclose it, and they don't think that this is material. Please explain why it's important that corporations disclose their financial ties to China, including their supply chains.

Mr. STONE FISH. That's an excellent point. It's, for so many companies, the most important market outside of the United States, and for some even more important than the United States. And so the idea that not giving a full picture on your most important market, or one of your most important markets, is just beyond me. I think another thing that companies do to hide behind this is they don't clarify whether or not when they say "China," they're including Hong Kong, or Macau, or Taiwan. And so I think requiring clarity there as well is incredibly important—so that when companies say "Greater China" or "China," what exactly are they saying?

Because there's a real need for investors to make material decisions based on what their exposure is. So I applaud you, Congresswoman, for pushing on this issue.

Representative WEXTON. Thank you very much, Mr. Stone Fish. And I would applaud you for the change of heart that you've had as you've progressed through your career. Please talk a little bit about how you came to that, and how you came to the conclusion that you wanted to fight for good rather than be part of the problem. If you could talk a little bit about that, that'd be great.

Mr. STONE FISH. Thank you. I love that question. That's a fun one to answer. I lived in Beijing for six years. I was a journalist. And it's hard to blame anything but naïveté. When you're living in Beijing, you think the way things are is the way things are supposed to be. You bask in that environment. And it was only coming back to the States and seeing prominent Americans talk about China, not like Chinese people do—which is incredibly diverse and fascinating—but like the Communist Party. So they would say things like, China has 5,000 years of history, and China only wants peace. China has lifted hundreds of millions of people out of poverty. And you wonder, why are they just repeating Chinese propaganda?

And then I forced myself to go back and look at all the times that I did that, and all of the ways that I praised or facilitated the Communist Party. And it was a very uncomfortable transition, but I think it's really important for us to do—to go through and see how we did this, and just be very open-minded about these things. I do worry now a little bit about self-censorship in the other direction. I'm, myself, very anti-Communist Party, but there are legitimate reasons to support the Party. And one has to be able to have a conversation about it.

You know, I don't want us to be in a scenario where if someone says something nice about Beijing, they're automatically accused of being a Chinese spy, or of being a toady, or a lackey. I think we need to have a reasoned debate. And I applaud this Commission for the way that it frames these issues and discusses these issues. So thank you for that.

Representative WEXTON. Thank you very much. I want to thank all the witnesses for being here today. And I want to acknowledge everything you guys have been through. I mean, it's true that a lot of you are still dealing with the effects of what your families are going through in China here in the U.S. And I feel really bad for you about that. But we're trying to make sure that we do what we can to stop this transnational coercion. Thank you so much. And even Professor Kokas, I think you may not consider yourself very "interesting"—I'm sure you are very interesting to the Chinese Communist Party. So lock down all your devices, please.

Thank you all so much for coming. It was really fascinating. Take care. And I yield back.

Chair SMITH. Thank you very much, Commissioner.

I'd now like to yield to Commissioner Wild.

Representative WILD. Thank you so much, Mr. Chairman. And let me just commend the chairs of this Commission and the staff who have put together an incredibly dynamic hearing with absolutely fascinating witnesses. So much of what we do here in Con-



gress often goes unnoticed by the public. And part of that is just because it doesn't seem that interesting to the outside world. And we've all found that when we can make subjects interesting, people are more likely to listen. And thank you for helping us to do that. I'm honored to be a member of this Commission.

I just want to say a few things. First, Mr. Freedom, full disclosure, Sixers fan here. [Laughter.] I think the last time you and I saw each other was in January of 2021. We were on Zoom at the peak of COVID and talking about human rights and equal justice around the world. And I think at that time, you weren't yet a United States citizen. And now you are one. So congratulations on that. I have to say, you're a very good storyteller. You said a couple of times, I'm not a politician. But I suspect that there is a place for you in U.S. politics, if you're interested [Laughter.] because you're so good at telling stories.

You made the comment that human rights is about politics. You also very vividly illustrated that fighting for human rights can be lonely. It can be a lonely task. But what we've also seen through this hearing, and what we know if we just look around the world and look at different companies, is that fighting for human rights is sometimes at odds with the almighty dollar, or euro, or lira, or whatever currency a company is dealing in. And that profits often transcend concern for human rights. And I think that's what this hearing is all about. It's sad, but I'm glad that we are having it. The other thing I'll say about your comments, you made the comment that somebody in the Players Association said to you, If there's no NBA, there's no Players Association. I would suggest to the Players Association that they study the power of organized labor and what they have done in this country and elsewhere to really advance their rights.

So with that said, Mr. Stone Fish, I just want to comment on what you said about the power of the consumer. We often have seen campaigns at the grassroots level against products, companies. And they don't start because somebody in Congress is talking about it. They start because there is an activist, or a group of activists, who are going out there and dispersing information, which, of course, is a little easier now with social media. And, you know, more power to them. Quite honestly, rather than Congress leading the way, what we often see is that governments—and I'll speak for Congress here—often take our direction from what consumers in the population are talking about, and worried about, and advocating about. So I agree with you that the power of the consumer is huge.

You know, Dr. Kokas, let me just say, first of all, thank you for having your students read the terms of service—the TikTok terms of service. They might be the only people in the world who have, but I'm glad somebody did. [Laughter.] Some lawyer, or group of lawyers, spent a lot of time on those terms of service, so it's nice that somebody read them. But you've made some really fascinating points in your testimony. And we've talked a lot about what companies are doing wrong. And I really do worry that often corporate America, or maybe corporations around the world, talk out of both sides of their mouths. You know, they can condemn human rights

abuses but, you know, We have to have this relationship because it's critical to our profit margin.

What I'd like to do—just because we've talked a lot about the negative—can you give us any examples of U.S. companies that have navigated these dynamics with China differently, in a positive way, how they have navigated the PRC market and still done well? They've still been able to continue selling products in the world's largest market, while still standing up for their fundamental principles. Do any come to mind for you? And, by the way, I open this up to anybody—but you in particular, because you've studied it so much.

Ms. KOKAS. Thank you. I think that that's a really important question. And one of the things that we've seen is that companies do the right thing when they face pressure, most consistently—

Representative WILD. Back to Mr. Stone Fish's point, right?

Ms. KOKAS. Right. Yes. And this isn't just pressure internationally, but also pressure from their consumers. So the "Top Gun" case that I discussed—you know, there was a huge outcry after Tom Cruise's bomber jacket had the Taiwan flag and the Japanese flag obscured. And then eventually Tencent pulled out, so there was less financial incentive for the film to move forward—making those statements. So I think really shining a light on things becomes really important. And that's one of the reasons why I have my students read the terms of service, so that at a very minimum they know what's happening.

And that's why I think hearings like this are so important. And also transparent reporting requirements that are easy for consumers to read and that occur quarterly, are the sort of things that companies have to respond to. Now, I would urge—there are existing statutes in place, there are already existing reporting requirements that just could be tweaked.

The other thing that I think is useful is to look at things like ESG indices that help to—and this isn't something that Congress would do, but it's something that Congress could support—where when we enhance reporting requirements, there's a way to actually financially reward companies that are involved in those particular indices. So I think Mr. Stone Fish is ready to go. So I'll let him—

Representative WILD. Go ahead.

Mr. STONE FISH. Thank you. I think that's an excellent question. We rank companies on their China exposure. And I can say with almost certainty that the company that has the lowest China exposure doesn't want people to know that. And I do hope with the new regulatory climate—

Representative WILD. And why is that? Why do they not want people to know that?

Mr. STONE FISH. Because some investor, some board member, some business tie they have will see that and then perhaps get angry and get upset. It's actually very fundamental with the NBA as well. We did a big project with ESPN, ranking NBA team owners on their China exposure, and we found that a lot of the pressure came not from the team itself, but from the owner. It's very similar with Hollywood, too. It's not just that this film offended Beijing or kowtowed to Beijing. It's that someone involved with the

making of the film, or the parent company, or the studio thought that this could jeopardize their business relationship.

And so there's no—you know, we rank on a scale from zero to 100, and there's no zero. There's no company that has no exposure to China. I mean, we are in a very entwined world. We, in 2019, traded 25 times more with China than we did with Russia. The number is much higher now. And so where we are in this very messy process is, we are decoupling. We are de-risking. We are moving in that direction, so that hopefully in six months or a year, if tensions continue to go the way they're going, there will be companies that can stand up and proudly say: Yes. I have removed my China exposure. And this makes me a healthier company, more responsible to my shareholders and to my consumers.

Representative WILD. Well, thank you. You know, it's interesting because there seems to be almost a kneejerk reaction to "made in China" products. I will tell you, political candidates who have political swag—T-shirts, hats, whatever—that are found to have a tag that says, "made in China," they're going to hear about it, and it's going to become a negative hit on them. But so many people I don't think really understand the full cycle. So what a lot of consumers, voters, and other people in the U.S. might be thinking about is: We've outsourced so many things to China. We've lost market share. We've had factories close down, including in my own district, the Pennsylvania Seven. You know, workers have lost their jobs.

But the reason for that is not only that there are very low wages and lower costs of operating in China, but that that comes at the expense of the Uyghurs and the people who are producing these products in China. And that's the part that often—I will tell you—and I don't fault anybody for this, because it takes a lot of critical reading and thinking—but I think it's really important that we draw that full circle.

And that it's not just about your factory closed and everybody lost their job. Huge, and very, very destructive to a community. And why did that happen? Well, because the Chinese can produce it more cheaply. And why can the Chinese produce it more cheaply? And that's really the question. When we're talking about human rights, that needs to be elevated and really needs to be talked about. Not just that we're losing market share. And, you know, as I said, I represent—or maybe I didn't say—I represent a district where manufacturing is king. It is the largest sector of our economy, which I'm really happy to report, because for a long time it wasn't. We lost Bethlehem Steel, which closed specifically because of Chinese steel.

Really, we were on a downward slide. We have come back. And quite honestly, the CHIPS and Science Act that was passed here is going to make a huge difference in manufacturing communities like mine—and, of course, we know that the Chinese waged a particularly high-profile campaign on social media against the CHIPS and Science Act. And I think that [Laughs] there's a reason for that.

I want to switch gears for just a minute, and—well, let me just finish this line of questioning. You know, as we talk about all of these things, we still have to acknowledge that we are very interconnected. As Secretary Yellen said on her visit to China, we seek

to diversify not decouple. I think that's a really important message. And people have to understand that. Can any of you speak to what more we can do as policymakers to assist businesses that want to invest fully here in the United States, but are reliant on doing business in the PRC, at least in the short run, for certain parts or processes? Because I hear about that a lot in my community, things that cannot be made without things in the supply chain coming from China. How can we support those companies?

Mr. STONE FISH. I'll answer that. There are things that can't be made outside of China, but there are plenty of things that can. And so—

Representative WILD. But that takes ramp-up. I mean, let's face it, we're seeing that right now with semiconductors. I mean, it's going to take a while to get to where we need to be. But go ahead, I'm sorry.

Mr. STONE FISH. No, I think that's an excellent point. And it does take ramp-up. And it's good that we're starting now. Or, you know, starting over the last couple of years. I think the issue is that so many American champions of American solutions also have large ties to China that aren't economically required. I will have to double check this, but I believe Mountain Pass, which is seen as the U.S. solution to the rare earths problem, is something like 7 or 8 percent owned by Chinese companies. And that's not the solution that the American people need.

And it's not that this company needs that stake in order to survive. We deal with companies on this all the time. When, you know, a company has, say, 1,200 factories in China, the idea isn't, Shut them all down. The idea is, okay, of these factories, maybe 10 or 20 percent are nonessential, but are also very entangled with the Chinese Communist Party. And those are the ones that you get rid of first.

Ms. KOKAS. One thing that I think is also useful is rewarding mitigation strategies. Shutting down a factory is more visible, but rewarding companies and working with companies to develop their mitigation strategies, and honoring that, and honoring that ramp-down time is really important, because it's not financially feasible in a lot of cases to shut things down.

Representative WILD. I completely agree with you. I'd love to have another discussion at some point about the pragmatic approach to doing that, because I think you're absolutely right. But those are great words. We've got to figure out how we do that to support those.

I want to switch now, if I may—do I have a few more minutes? Thank you, Mr. Chair.

Ms. Minglei, thank you so much for being here. And thank you for advocating for workers in the PRC, as well as for your husband. You have a lot of courage and you've spoken very powerfully. And, you know, the defense of universal human rights, and dignity, and fighting against the use of forced labor, is just so incredibly important. Your husband, as we know, was arrested and sentenced to five years' imprisonment in 2019 due to his activism, including defending workers from discrimination in the workplace.

As you may have gleaned from my initial comments, I am a big fan of organized labor. I think that it serves a purpose. I think the

Players Association should take some lessons from them. But it's just critically important because that is how an ordinary worker gains power—not alone, but collectively. And that's how it has to happen. And, of course, we know that pro-worker advocacy is dangerous in the PRC, because they don't have organized labor, as we know it, there. There's the All-China Federation of Trade Unions, which is government controlled and is the only legal organization that workers can join, am I right?

Ms. SHI. Yes.

Representative WILD. Let me just ask you—I just want to express my solidarity, I hope that comes through, for the sacrifices that you and your husband have endured. I hope that—have you been able to speak with him?

Ms. SHI. Not really. Actually, since he was arrested, I have never had a chance to meet his lawyers. I was in China—we finally came to the United States two years ago. But before that, for almost two years, I would go to the detention center, the court, and I also went through the Chinese procedural process. I went there 24 times, but never had a chance to visit him and never had a chance to call him, never had a chance—like, even recently, my letters are still seized by the prison. And they just don't even—

Representative WILD. You're not sure he's even receiving them?

Ms. SHI. Yes. They just don't give the letters to him. My family members confirmed. I have sent several letters to him, and he said he didn't receive them. So even a photo—because when he was arrested, my girl was only three years old. And they arrested him in front of my daughter; the same day, I was put into backwards handcuffs and also interrogated overnight. I left my daughter in the preschool, and they didn't allow me to pick her up. My girl is now a 7-year-old, so almost four years. I really wanted to just give him a photo. You know, as a father, you really want to see how your baby is growing. But even this very tiny request—the Chinese government won't let him have that photo.

So this is why human rights is so important. I also work in the business area and my job used to be global commerce director. And I also was the supply chain director for one year. I know all of the business area. But the point here is, don't ask a company about the profit, don't ask about the expense, just ask them one question: As a human, where are human rights? If we don't have human rights, we lose freedom.

Representative WILD. Well, I think—I have to say, I think that is the exact point of this Commission.

Ms. SHI. Yes.

Representative WILD. I'm grateful that it was created and exists. And the challenges—that's too soft a word—but what your husband has gone through, what you have gone through, what your daughter has gone through, highlight just how critical this situation is. And that's just one story. I am sure there are many, many stories like that. And, of course, that suppresses any thoughts that other workers might have about collectively coming together to fight this kind of abuse. So thank you for telling the story. Thank you all for being here. It's incredibly important. And I hope that one day we will be able to look back on this and see some improvement.

I've never believed that the solution is to just completely shun China. I agree with the Secretary—diversify not decouple—it's just a reality. But we also have to remember that there are many, many people there who are not the PRC, they are just residents, citizens of China. And they are not bad people. And that's something that often gets—a message that gets lost too. So we just have to keep amplifying this, I really believe. But thank you all for really compelling testimony. With that, I yield back.

Chair SMITH. Thank you so much, Commissioner Wild.

And I too would agree with what my friend and colleague has just said, that our argument is not with the people of China, it's with the oppressors. We stand with the oppressed, not the oppressors. And the Chinese Communist Party are the oppressors. So I thank all of you for your extraordinary testimony. Is there anything you would like to add before we end this hearing? If not, I would ask unanimous consent that the comments of Jim McGovern, our ranking member on the House side, be made a part of the record. Also, Sarah Cook, who is the senior adviser on China, Hong Kong, and Taiwan for Freedom House, and Maya Mitalipova, who is the MIT Director of the Human Stem Cell Lab, that their testimony be included in the record. And that the statement of Roger W. Robinson, Jr. in partnership with the Coalition for a Prosperous America, be made a part of the record as well.

I want to express my deepest thanks to Jenny Wang for her work on this hearing—I really deeply appreciate the leadership she has shown; Matt Squeri; Scott Flipse; Piero Tozzi, our chief of staff for the China Commission; Diana Moyseowicz, for her help as well. You know, there are many, many witnesses who could be here. I think we've got the best of the best who have given us insight and information that is actionable. And I can't thank you enough for that.

We will continue this series on corporate complicity by inviting the corporations themselves to be here—including Nike, the NBA, the NBA Players Association, and others. Of course, Milwaukee Tool. In the past, some have said yes, and I think that's a good thing. I mean, hopefully they'll all say yes. And hopefully they'll come to see that they can make an enormous difference. The NBA, which is not hurting for money—we're talking about value added in terms of dollars that they make, and players make. It is a very lucrative league without China. So my hope is that the moral imperative that Enes Kanter Freedom brings to a sharp point here at this hearing is heard by them. There are good players who I think want to do the right thing. Hopefully, they'll be encouraged by your leadership to do so.

So, without any further ado, this hearing is adjourned. And again, I thank you.

[Whereupon, at 12:34 p.m., the hearing was concluded.]

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## **A P P E N D I X**

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## PREPARED STATEMENTS

### PREPARED STATEMENT OF ROBERT SILVERS

Good morning, Chairman Smith, Co-Chairman Merkley, and distinguished Commissioners. Thank you for the opportunity to discuss the critical work of the Department of Homeland Security (DHS) and the Forced Labor Enforcement Task Force (FLETF) to combat the scourge of forced labor in global supply chains, including that stemming from the People's Republic of China's (PRC) systematic use of forced labor to profit on the backs of ethnic and religious minorities.

The United States has long recognized and condemned the PRC's ongoing genocide and crimes against humanity against predominantly Muslim Uyghurs and other members of ethnic and religious minority groups in the Xinjiang Uyghur Autonomous Region (Xinjiang). This includes the abhorrent practice of using these groups' forced labor in the mining, production, and manufacture of goods.

U.S. laws that prohibit the importation of goods made with forced labor reflect our values. We are proud at DHS to enforce our forced labor laws. We do so because they are the law of the land. And we do so because it is the right thing to do.

Congress charged the FLETF with driving initiatives that support enforcement and enhance compliance by leveraging the authorities and expertise of the Task Force's member agencies—DHS, along with the Departments of State, Labor, Commerce, Justice, and Treasury, and the Office of the U.S. Trade Representative.

In my role as Chair of the FLETF, I focus on ensuring that the U.S. Government is doing everything it can to eradicate forced labor from global supply chains. Under the leadership of Secretary Mayorkas, we are facilitating the flow of legitimate trade while working across the government and with non-governmental organizations (NGOs) and industry to keep goods made with forced labor out of U.S. commerce.

Our country has enforced forced labor laws for many years. But it was the unwavering commitment and determination of the Congressional-Executive Commission on China (Commission) and other supporting Members of Congress that, on a broad and bipartisan basis, led to the passage of the Uyghur Forced Labor Prevention Act (UFLPA). This new law has brought a sea change to the way we approach these issues.

### UFLPA IMPLEMENTATION

Our implementation of the UFLPA has been speedy, strong, and surgical. Speedy, because we implemented ahead of the schedule required by the law. Strong, because we devote the full weight of our resources to enforcing the law. We made it clear that when it comes to forced labor in Xinjiang or goods made by persecuted minorities removed from their homes in Xinjiang, we will brook no quarter. And surgical because our enforcement is based on sophisticated risk assessment, intelligence, and data-driven targeting.

There are several components of the UFLPA that make it uniquely powerful in addressing the PRC's state-sponsored cruel and inhumane forced labor regime. These, among other things, include the public identification of illicit actors through the UFLPA Entity List and the law's key enforcement mechanism: a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in Xinjiang, or by entities identified on the UFLPA Entity List, are prohibited from importation into the United States.

### THE UFLPA REBUTTABLE PRESUMPTION AND U.S. CUSTOMS AND BORDER PROTECTION (CBP) ENFORCEMENT

The UFLPA charges CBP with the enforcement of a rebuttable presumption that the importation of goods mined, produced, or manufactured wholly or in part in Xinjiang, or by entities identified in the UFLPA Entity List, are prohibited from entry to the United States under Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. §1307).

Since the UFLPA's rebuttable presumption took effect in June 2022, CBP has targeted more than 4,200 shipments under the law, valued at over \$1.4 billion, sending a clear message to importers that we take our mandate seriously.

CBP uses a risk-based methodology, leveraging dynamic models that utilize the latest intelligence and analysis to identify shipments that warrant further scrutiny. DHS is partnering with industry to test innovative artificial intelligence and machine-learning technologies that can streamline supply chain tracing and improve CBP's analytical capabilities. We are also exploring more precise scientific testing for cotton and other commodities that can help us determine the true origin of goods.

Our early enforcement posture has been robust, but we do face challenges. The UFLPA mandate came without additional funding for CBP enforcement efforts, the FLETF's work on the UFLPA Entity List, or other FLETF enforcement-related activities. We appreciate Congress's subsequent support provided to CBP, but more is needed. To meet the FLETF's UFLPA mandate, we have shifted resources toward this mission, and we look forward to working with Congress to secure much-needed additional funding.

We also are pursuing strategies to address the risk of goods made with forced labor entering the United States through low value, *de minimis* shipments that have less detailed data available for our review. As there is no *de minimis* exception to the UFLPA, we are firmly committed to meeting this challenge, including undertaking initiatives to increase information availability and assess risk in the *de minimis* environment. We welcome the opportunity to work with Congress to address these challenges together.

Alongside our enforcement activities, DHS and CBP are committed to supporting industry's compliance and due diligence efforts to prevent illicit goods from entering legitimate commerce in the first place. Toward that end, we have held more than 400 engagements with the trade community and provided extensive information and guidance to industry to help our trade community partners understand our implementation and enforcement of the UFLPA and to support their own complementary efforts.

Recognizing that many in the trade community may not have sufficient resources or mechanisms to identify indicators of forced labor in their supply chains, CBP recently held its first Forced Labor Technical Expo to highlight tools and technologies that promote due diligence by enhancing transparency and verifying the provenance of goods. We also issued best practices guidance based on lessons observed to date, including documentation that traces a given product through the entire supply chain. Additionally, CBP developed an interactive Digital Dashboard with statistics on UFLPA enforcement that provides insight for the public on stopped entries by industry sector and country of export. As part of our commitment to transparency and accountability, we will continue to assess what additional data we can publicly report.

#### THE PRIVATE SECTOR'S RESPONSE TO THE UFLPA

Since we began enforcement of the UFLPA, we have seen significant evidence that industry is taking compliance seriously. Private sector decision-makers are rapidly coming to understand that there is collective will on the part of Congress and the Executive Branch to stand firmly behind a zero-tolerance policy for goods made with forced labor. They understand that they have a responsibility to examine their entire supply chains for any indicators of forced labor and to take immediate steps to mitigate the risks from suspect suppliers.

We are still in the early stages of quantifying the impact of the UFLPA on private sector behavior, but early data show significant promise. For example, one respected supply chain mapping and verification technology company reports that "transactions from entities potentially subject to enforcement under the law decreased by approximately 40 percent between June 2022 and March 2023. The same period also saw the overall value of transactions decrease by approximately 50 percent."<sup>1</sup> We are seeing similar trends from other providers which support extensive anecdotal reporting from the trade community that industry is taking UFLPA enforcement seriously and taking steps to ensure compliance, including moving their supply chains out of Xinjiang and away from suppliers that cannot deliver the requisite transparency.

<sup>1</sup> Altana Technologies (2023, June), *The fight against forced labor is a struggle. As we pass the one-year anniversary of the Uyghur Forced Labor Prevention Act's enforcement...* LinkedIn. [https://www.linkedin.com/posts/altana-ai\_altana-illuminating-the-xinjiang-forced-activity-7078081734608617472-JqRg]

We will continue to monitor the data for trends and act on that data, and continue every effort necessary to ensure that the United States is not a dumping ground for goods produced through the suffering of others.

#### UFLPA STRATEGY AND THE ENTITY LIST

As Chair of the FLETF, DHS led the development and implementation of a comprehensive strategy that identified illicit actors through the UFLPA Entity List and called for strategic partnerships and collaboration with key stakeholders across government, industry, civil society, and like-minded international partners.

Since passage of the UFLPA, the FLETF initiated extensive engagements with industry and NGOs in the development and implementation of a strategy to prevent the importation of goods made with forced labor in the PRC. We continue to solicit and review information about the PRC's forced labor schemes, as well as regarding effective corporate compliance programs and other industry efforts to conduct due diligence.

With the information collected from stakeholders and our federal partners, the FLETF issued the *Strategy to Prevent the Importation of Goods Mined, Produced or Manufactured with Forced Labor in the People's Republic of China* (the UFLPA Strategy) in June 2022, identifying 20 entities for the inaugural UFLPA Entity List. This strategy provides extensive guidance for how we expect importers to examine their supply chains for indicators of forced labor and establishes a framework for partnership with industry and civil society.

We continue to refine and implement the UFLPA Strategy. The FLETF is committed to expanding the UFLPA Entity List by identifying companies that utilize or facilitate the use of forced labor in or from Xinjiang in line with the statutory standards. This commitment was recently demonstrated by the addition of two new entities to the UFLPA Entity List. There is more work to do, and the FLETF will continue to add entities to the UFLPA Entity List as warranted by the facts and the law.

We have an extraordinary partnership with the NGO community, whose research and monitoring efforts are critical to our understanding of forced labor schemes and efforts to obscure the true origin of goods. Through our collaboration with NGOs and the development of our own knowledge base, the FLETF is expanding our expertise in identifying and assessing suspected entities, and we anticipate more additions to the UFLPA Entity List in the coming months. There is an active pipeline of referrals that our agencies are examining, and we will continue to move expeditiously to act on these referrals.

Collaboration and engagement with stakeholders across the trade community is a critical component of our work to fully implement the UFLPA Strategy. We have engaged with hundreds of representatives from the private sector, including meetings with C-Suite executives and board directors, to emphasize our message that forced labor must be a top-tier compliance issue. In the same way that corporate compliance programs routinely include safeguards to address corrupt foreign practices, money laundering, export controls, sanctions, and privacy laws, the private sector must direct institutional attention to compliance with forced labor laws. My engagements have taught me that the overwhelming majority of corporate leaders want to do the right thing. Through our enforcement actions, we are making clear that it is incumbent on them to do so, and we have provided detailed guidance to show them what we expect to see in terms of due diligence.

#### CONCLUSION

The PRC's ongoing genocide and crimes against humanity against Uyghurs and other minorities in Xinjiang has continued for years, but with the passage of the UFLPA, we have taken a significant step towards justice, accountability, and fair competition. This is a testament to the impact that Congress and the Executive Branch can have when they work together. There is much more work to do. But we are all-in on this mission.

We will further our collaboration with civil society to expand our intelligence on forced labor schemes and their presence in global supply chains. We will continue our enforcement activities wherever the facts lead. We will build on our partnerships with the private sector to share information and guidance that can enhance due diligence practices and compliance policies. We will press forward with further innovation and deployment of technologies that support this mission. And we will continue to work closely with the Commission and Congress to advise you of the important work being done.

I thank the Commission and Congress for your support in the fight against forced labor. Thank you again for the opportunity to appear before you today, and I look forward to taking your questions.

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PREPARED STATEMENT OF ENES KANTER FREEDOM

Chairman Smith and Co-chair Merkley, and members of the Congressional-Executive Commission on China, thank you for the opportunity to be here today.

I'm a basketball player. My job is to go out there and compete with my teammates and try to win an NBA championship. I ask people when they call me a retired NBA player, not to—because I refuse to accept that my career ended the way it did. My entire life I worked so hard to achieve my NBA dream, and I made it. However, because I wanted to stand up for what is right, my career ended in a very brutal way.

I have been talking about the human rights violations in my home country, Turkey, for the last 11 years. There are many innocent people in Turkey being persecuted by Erdogan's regime. Due to my outspokenness about the human rights violations and political prisoners in Turkey, Turkish President Erdogan fired my dad from his job as a scientist. My sister went to medical school for 6 years, and she still can't find a job. My little brother was playing basketball and he got kicked off every team because he shares the same last name as me. They were affected so much that they had to put a statement out publicly disowning me. The letter is still on the internet. The Turkish government didn't believe it, and they sent police to raid my house in Turkey. They took all their electronics away because they wanted to see if I am still in contact with my family or not. They couldn't find evidence, but they threw my dad in jail. The U.S. put so much pressure on Turkey, and they finally let him go.

After that, they revoked my passport, tried to kidnap me in Indonesia, put my name on the Interpol list, put a bounty on my head, and in 10 years they sent 12 arrest warnings for me.

One of the reasons I was fighting so hard against this brutal regime is because I had so much support from the NBA—support from the commissioner, Adam Silver, my teammates, and every organization I played for (5 different teams—Utah, Oklahoma, the New York Knicks, Portland, Boston).

Especially the support from my teammates and the NBA gave me so much hope and motivation to fight.

When I was playing for the New York Knicks, I didn't travel to London for an exhibition game against the Washington Wizards because I was scared for my life. Commissioner Adam Silver came out in a press conference and said, "As an NBA family we support Enes Freedom and his fight against the Turkish regime, we support every player to stand for whatever they wanna believe in." I wanted to cry that day because of how much support I felt.

Three years ago, in 2020, Covid hit and the NBA took us to Orlando to continue to play the games. It was during the George Floyd protests that the NBA told every player that this is all about social justice, and that they are here to bring change. We are more than athletes. I respect everyone who peacefully protests. During those times the NBA put Black Lives Matter logos on the floor and put those phrases on our jerseys (this was controlled by the NBA—we couldn't pick what we wanted to pick). In every interview we were doing, the NBA was telling us to talk about social justice issues. All the players were putting these social justice messages on their shoes and we brought lots of attention about what's going on.

My activism towards China started with a simple basketball camp. I had a beautiful basketball camp in New York. In fact, Congressman Hakeem Jeffries joined me at that camp. After the basketball camp, I sat down and was taking pics with the kids one by one. I remember taking a pic with this kid and their parent called me out in front of everyone and said, "How can you call yourself a human rights activist when your Muslim brothers and sisters are getting tortured every day in concentration camps in China?" I was still smiling for the camera, after I took a picture with his kid. I turned around and said, "I promise I'm going to get back to you."

That day, I canceled everything and went back to my hotel and started to educate myself about what's going on. I know on the Internet you can find all kinds of news, so I called my manager and told him that I need him to find me a concentration camp survivor. In a couple weeks, he found a lady who was a survivor. She and I had a one-hour conversation about all the torture methods, the gang rape, the forced sterilization and abortion methods. I couldn't believe my ears. At the end of our conversation, I asked her, "What can I do to help you?" She answered, "Nothing." I said, "What do you mean, 'nothing'?" So we had this 1-hour conversation for

no reason?" She said "Listen, I live in America, I can do whatever I want, I can say whatever I want, I can eat whatever I want, I'm free. I have my freedom here. Help those 2 to 3 million Uyghurs who are in concentration camps, getting tortured, and raped every day."

At that moment, I said to myself, I don't care what it takes, I'm going to help these people.

I wanted to do it in a unique way, because when I was a kid watching an NBA game, the first thing I looked at was the NBA players' shoes. I looked at the color, the brand, if they're comfortable or not, and the next day I was asking my dad to please buy them for me. Every kid loves shoes, so I wanted to inspire the young generation with something I knew they would pay attention to.

I reached out to artists around the world who were oppressed by their regimes, and I told them to put all of the struggles, pain and stories on the shoes. I created these shoes without using slave labor.

My first topic was "Free Tibet." I was playing for the Celtics, and it was our first game of the season against the New York Knicks at Madison Square Garden. Because it was opening night at the Garden, everyone was there to watch that game. Knicks vs. Celtics is always a good rivalry so the whole country and world was watching that game. I put "Free Tibet" on my shoes and started to warm up with my teammates. We sang the National Anthem, and there was 1 minute left until the game started. We were in a huddle in front of our bench when two gentlemen from the Celtics came up to me and said, "You need to take your shoes off immediately." I asked them why and they said, "Your shoes have been getting so much attention internationally and we are getting many calls so please take them off."

It was the perfect moment for me because I was just getting ready for my citizenship test. So I closed my eyes and said, "Okay, Enes, there are 27 amendments and my First Amendment is freedom of speech." I opened my eyes and told them "No, I'm not taking my shoes off."

They kept telling me to take them off, and I said, "Even if I get fined, I'm not taking them off." They said, "We're not talking about a fine, we are talking about getting banned."

They were really threatening to ban me from the NBA because of my shoes.

I played zero minutes that half and after the first half I went back to my locker room and checked my phone. There were thousands of notifications and I clicked on the one that my manager sent me saying, "China just banned every Celtics game on television." It literally took China 24 minutes (1 quarter 12 minutes, 2nd quarter 12 minutes) to ban every Celtics game. The game went into overtime and we lost the game. I played zero minutes that night after previously playing in every game before that. After the game, every media outlet wanted to talk to me, and I told my manager no, because I didn't want my teammates to think I'm doing this for attention.

After the first game, the NBPA (The NBA Players Association) called me and said, "The NBA is pressuring us so much. You can never wear those shoes again." They were calling me and my manager every hour, wanting to make sure I was not going to wear them ever again. I spoke about the problems happening in Turkey for the last 10 years without consequence, yet I speak about China for 1 day and my phone was ringing every hour asking me to stop what I'm doing.

The NBPA told me that if I didn't stop, they would change the rules so that no player can put any kind of message on their shoes ever again. I couldn't believe how much they were pressuring me because I paid thousands of dollars to the players association every month to protect my rights against the NBA, but on this topic they were on the NBA's side.

At one point I was so frustrated, and I told them, "Okay, I promise that I'm not going to wear 'Free Tibet' shoes ever again." They asked me a few times to promise them and I said, "I promise" and they said, "Okay, problem solved."

The next game I wore "Free Uyghurs" shoes. The NBPA called me after the game and said, "Enes, you are a liar, you lied to us, we can never trust you again." And I told them, "I never lied to you. I just said, 'I'm not going to wear 'Free Tibet' shoes ever again, but I never said I'm not going to wear 'Free Uyghurs' shoes.'" So, at that point, they understood that they were not going to be able to make me delete my tweets, apologize to the Chinese government, and put any false statements out there.

After the third game, one of my teammates walked up to me and said, "Enes, you know this is your last year in the NBA, right? If you ever criticize China or NIKE, then you're never going to be able to play basketball in this league. So have fun, smile, and I hope we win a championship this year because this is your last year—your basketball career is ending."

My agent called me after the fourth game and said, “Enes, I work for you, I don’t work for the NBA, so I have to keep it honest with you. If you say another word about the Chinese government, then you’re never going to play basketball in this league again. No team will sign you, and all the owners who look like they care about social justice, in reality all they care about is money and business, so you won’t be playing again.”

After the fifth game, I had a conversation with Commissioner Adam Silver. We had a 30-minute phone conversation and at the end, he even admitted the following: “We are a business, Enes, it’s a different system in China.” I asked him, “What do you think about China banning every Boston Celtics game on television?” and he said, “It’s not true.” I told him that there were lots of legitimate reports out there and he said, “I don’t know about it”—which was a lie.

It was the perfect moment for me because it was right before the Beijing Winter Olympics, so I tried to reach out to everyone. Not just NBA players...I tried to reach out to the NFL, MLB, MLS, the NHL, WWE, and even the Olympians.

But unfortunately, they all said the same thing: “Enes, what you are doing is so amazing, so courageous, so inspiring; we love you, we support you, but we cannot do it out loud. I asked them why, and they said, “We have shoe deals, endorsement deals, jersey sales, and we want to get another contract with the league that we play with.”

I asked them one simple question: “Put yourself in their shoes. If your mother, your sister, or your daughter was in those concentration camps getting tortured and raped every day, would you still pick the money and business?” They usually turned around and left the room.

After a couple of months, one of my friends called me. His name is Daryl Morey. He was the first guy who tweeted and said, “Stand With Hong Kong” and the NBA lost millions of dollars because of it. I was playing for the Boston Celtics when he tweeted, and the Celtics made us unavailable to the media for 2 weeks because I was the only player in the NBA that supported Morey’s tweet publicly. When we had a conversation after a couple of months regarding me talking about China, he said, “Enes, don’t give up; when I tweeted about Hong Kong, the NBA made me take my tweet down, they made me apologize, they made me put out some statements which I didn’t wanna put out. But you don’t give up and you keep going.”

February came, and there was a trade deadline. Many of my teammates knew that I had played my last game in the NBA and they were telling me you will get traded or let go. And they were right.

The Boston Celtics traded me to the Houston Rockets, (who are known to be China’s team because of players like Yao Ming). And the Houston Rockets released me immediately.

It was over, and everyone in the NBA knew it, too.

After I got released, about 3 weeks later, China put the games back on television. ESPN did an investigation and found out that 49 NBA owners have 10 billion dollars tied up in China. I had a conversation with the ex-owner of the Milwaukee Bucks and he even said: “China’s taken a very aggressive stance, which is ‘if you want to bitch about us, you’re out—I get it, it’s business.’”

I played 11 years in the NBA, I had hundreds of teammates and hundreds of coaches, yet not one of them reached out to me or texted me to say good luck with whatever is coming next. They were so scared that if I ever did an interview, that I would mention their name saying, “He texted me or he supported me.” They knew that if I ever did, it would affect their contract situation or their endorsement deals.

I just turned 31 years old. I’m young, healthy, and love basketball. I still work out almost every day and I’m in really good shape. Everyone knows that the only reason I’m not in the NBA is because of the things that I spoke about. I averaged a double-double with Portland the year before I spoke out about the issues in China.

I have NO regrets. If I had to do it all over again, I would do it even stronger. This is bigger than me, bigger than basketball and bigger than the NBA.

People keep talking about me losing my career, but they need to realize that I lost my family because I wanted to stand up for the victims of human rights violations in Turkey. Me losing my career is nothing compared to losing my family.

Freedom is not free, and it’s going to come with some consequences. But someone had to stand up for the innocent around the world, no matter how much money or business I have lost because of it.

According to my manager, I lost around 50 million dollars, with all the NBA contracts and endorsement deals that I could’ve signed.

I sleep in peace at night knowing that I did the right thing. My only question is: How can the biggest dictatorship in the world, China, control a 100% American-made company and fire an American citizen?

Thank you all.

## PREPARED STATEMENT OF SHI MINGLEI

Thank you, Mr. Chairman, and thank you to the Congressional-Executive Commission on China for convening this hearing.

My name is Shi Minglei. I am the wife of a famous Chinese human rights activist, Cheng Yuan, who is currently serving a five-year sentence at a facility called Hunan Chishan Prison. There, as I will discuss in more detail later, prisoners are forced to work making gloves for a famous American brand, Milwaukee Tool.

## SHORT INTRODUCTION OF CHENG YUAN

First, I'd like to tell you about my husband. In 2008, Cheng Yuan left a job in finance to found an NGO called "Nanjing-based Justice For All," which was initially focused on combating employment discrimination against persons with hepatitis B, which is a significant issue in the People's Republic of China. From there, he expanded his work to other areas of social justice, including advocating for an end to the PRC's one-child policy and standing up for the rights of Chinese human rights lawyers after the 709 Crackdown by founding NGO Changsha Funeng.

## ABOUT THE CHANGSHA FUNENG CASE

Cheng Yuan's fruitful and influential human rights work led PRC security agents to arrest Cheng Yuan and his two colleagues Wuge Jianxiong and Liu Dazhi on July 22, 2019, which is known as the "Changsha Funeng NGO Case." And they were called the Changsha Three.

I haven't seen Cheng Yuan since he was arrested in 2019. He was arbitrarily detained, tortured, charged with "subversion of state power," deprived of the legal right to access to his legal defense, deprived of communication rights with family members and lawyers, and secretly tried and sentenced to 5 years' imprisonment. That is how he ended up at Hunan Chishan Prison.

PERSECUTION AGAINST CHENG YUAN'S FAMILY MEMBERS  
TO FORCE HIM TO PLEAD GUILTY

The persecution against Cheng Yuan also expanded to our family members. On the same day he was arrested in 2019, I was suddenly placed under home arrest with my 3-year-old daughter. I was handcuffed, put into a black hood, and interrogated for almost 20 hours in a secret place by Chinese national security agents in plainclothes. The Chinese national security agents threatened to bring my 3-year-old girl to undergo interrogation with me. That night my daughter was left in her preschool until night, and they didn't allow me to pick her up. After that day, my daughter and I lived under surveillance for half a year. The Chinese national security agents also froze my bank account and seized my photo ID, passport, driver's license, and even my Medicare card to silence me. Cheng Yuan's brother, sister, my mom, and my relatives, also my colleagues and my ex-boss, were harassed by Chinese national security agents.

## NO RULE OF LAW IN CHINA

Here I want to point out that the sentences against Cheng Yuan and the Changsha Three are totally illegal. They indicate the PRC government's abuse of the Chinese national security law against NGO activists and Chinese civil society, its arbitrary detention, and its deprivation of lawyers' rights, torture, and secret sentencing. All of these are against the UN conventions the PRC government signed, and they're even against Chinese constitutional and procedural law itself.

And even now, the court refuses to give our family members Cheng Yuan's verdict document. It has become a state secret and is hidden away from the public, which is also against Chinese procedural law itself.

## RELEASED PRISONERS TESTIFIED ABOUT FORCED LABOR IN HUNAN CHISHAN PRISON

Another activist who was imprisoned there is Lee Mingche, a Taiwanese human rights activist who was arrested by the PRC government in March 2017 and released in April 2022. After his release, Lee revealed that while he was imprisoned at Hunan Chishan Prison, he was forced to produce gloves, including gloves bearing the Milwaukee Tool logo. One of Lee's jobs was to cut materials into the shape of a glove. Lee said that there were three to four cutting machines devoted to cutting Milwaukee Tool gloves. Another of Lee's jobs was sewing the cut materials into actual gloves. I am told my husband is currently forced to do a significant amount of sewing as well. Lee said that if prisoners refused to work or to meet quotas, they were subject to a variety of punishments, including being forced to stand for several

hours straight, having their contact with family members cut off, being denied commissary rights, and, in some cases, being subjected to beatings, including with electric batons. Lee has attested to many of these facts under penalty of perjury and is willing to testify to them under oath as well, though he is currently facing difficulties traveling to the United States.

Another recently released prisoner, whom I will refer to using the pseudonym Xu Lun, as he is still in the PRC, has similarly reported being forced to produce gloves bearing the Milwaukee Tool logo while imprisoned at Hunan Chishan Prison. Xu confirmed that failure to meet the production quotas was met with punishment like being forced to stand and being beaten and shocked with electric batons. Xu also confirmed workdays of about 11 hours, at least 6 days a week, with minimal breaks, and being paid only 20RMB, or about \$3US, per month. That works out to an hourly wage of 1 cent.

#### REASONS BIG COMPANIES LIKE MILWAUKEE TOOL USE FORCED LABOR IN CHINA

Due to the lack of rule of law in the PRC, it is extremely dangerous for former prisoners located there to speak publicly about these issues. That is precisely why big companies like Milwaukee Tool are able to get away with benefiting from forced labor in the PRC. They know that the lack of human rights protection in the PRC means it is difficult, if not impossible, for victims to hold them accountable. Meanwhile, it is extremely beneficial to Milwaukee Tool's bottom line if those who are actually making their gloves are paid only 1 cent per hour. Of course, they would prefer to have their gloves manufactured in the PRC, rather than in the U.S., where they'd have to pay workers several thousand times more, and where the kinds of abuses people like Mr. Lee and Mr. Xu suffered would not be tolerated. In this way, American workers can also be counted among the victims of Milwaukee Tool's disregard for human rights.

#### CONCERNS ABOUT CHENG YUAN'S WELL-BEING AND CALL FOR ACTION TO STOP FORCED LABOR

As for my husband, I am deeply concerned about his well-being. In recent visits by other family members, he has confirmed that he is forced to work 11 to 12 hours a day, hunched over a sewing machine. He has also said that he has been subjected to solitary confinement, forced to stand for hours, deprived of sleep and food, and forced to drink water from the toilet. And although he has not specifically said that he has been working on gloves bearing the Milwaukee Tool logo, the mere chance that he might be should be intolerable to Americans.

Thus, Mr. Chairman, Senators, Representatives, CECC representatives, I am calling on you to stop American companies like Milwaukee Tool from using forced labor in the PRC now!

Mr. Chairman, I ask that two documents be entered into the record. The first is an investigative report from Wisconsin Watch about Milwaukee Tool's forced labor in Hunan Chishan Prison, and the second is an explainer regarding Cheng Yuan's case. [Both appear under Submissions for the Record.]

Thank you.

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#### PREPARED STATEMENT OF ISAAC STONE FISH

Distinguished Chairmen and Commissioners:

Boeing keeps me up at night. The company considers China one of its most critical markets. It's also a key element in an American warfighting strategy. In June the CEO of Raytheon—another crucial defense contractor—admitted to having “several thousand suppliers in China” and claimed decoupling was “impossible.” Boeing is far more exposed to China than Raytheon is. If China invaded Taiwan, would Boeing exercise its considerable influence in Washington to weaken the Pentagon's warfighting efforts?

Corporate America has a China problem. For decades, Beijing has successfully incentivized many elite American corporations, business leaders, and politicians to strengthen the ruling Chinese Communist Party, and to entangle themselves within China—often at a cost to America.

It goes like this: Beijing and its allies publicly excoriate a relatively small number of people and institutions—freezing out the NBA in 2019 after a deleted tweet, say, or criticizing Mercedes-Benz in 2018 for quoting the Dalai Lama in an Instagram post. The global companies fear a boycott in the Chinese market, or regulatory scrutiny. Chinese officials then reach out to the company's government affairs department, or its leadership, or its diplomat consultants—more on that later—and urge



them to apologize. To yield. Fascinatingly and disturbingly, sometimes companies that yield get punished further. And sometimes companies and individuals that don't yield find themselves rewarded by Beijing. The Party's unpredictability and unevenness leads businesses to be overcautious—which only makes the strategy more effective. And so, companies seek to placate Beijing.

How did this problem of corporate complicity start, and how can Americans fix it?

There is a clear origin story. Before Walt Disney thanked a public security bureau that rounded up Uyghurs and sent them to concentration camps, before LeBron James criticized the Houston Rockets' general manager for discussing democracy in Hong Kong, before Marriott fired an employee for supporting Tibet, before Boeing ran ads praising Beijing, before the late business tycoon and Republican super-donor Sheldon Adelson personally lobbied to kill a bill condemning China's human rights record, before Ronald Reagan called China a "so-called Communist country," Henry Kissinger, whose relationship with the Party became a blueprint for this whole mess, sat with Premier Zhou Enlai in a Chinese government guesthouse in July 1971, discussing philosophy.

By his charm, flattery, and persistence, over dozens of conversations over several years, Zhou initiated Kissinger as a "friend" of China. ("Friend" is a technical term for a non-Chinese person who supports the Party.) Zhou, and successive Party leaders, convinced Kissinger that strengthening ties between the United States and China was not only good for America—they benefited the individuals involved (in this case, Kissinger). And Kissinger, arguably the most influential person in 20th century foreign policy, spread these ideas.

Kissinger's trips to China shaped history not only by reestablishing a relationship between the two countries. They also inaugurated two crucial phenomena that still shape American corporate and political behavior today. First, Beijing successfully employed tactics from the United Front Work Department: strengthening American "friends" and weakening "enemies." As Chairman Mao Zedong put it, the United Front "mobilizes friends to strike at enemies." Second, Kissinger's trips engendered the rise of a whole new industry, that of "diplomat consultants," who fit nicely into the long-standing Chinese tradition of trading access for accommodation.

It's a tradition with sadly bipartisan enablers. Former defense secretary William Cohen, democracy icon Madeleine Albright, president George H.W. Bush, and especially former secretary of state Kissinger enriched themselves by instructing American firms on how to cohere to Party standards, chill anti-Party speech, and ensure that they were strengthening the Party in America. They do this not only when acting in their capacity as consultants, but also in their capacity as "formers": dulling criticism while serving on think tank boards, ensuring cooperation with China while chairing U.S. Government panels, pretending to journalists that they seek a strong U.S.-China relationship because it helps America. In other words, since founding the consulting firm Kissinger Associates in 1982, Kissinger—and so many like him—have been businesspeople masquerading as diplomats.

Corporate complicity in America is a difficult problem to discuss because it involves criticizing so many powerful individuals. We cannot address the problem abstractly. Moreover, decorated Americans and storied brands make mistakes, and act in complex ways: people and institutions aren't just 'Chinese lackeys' that jeopardize American interests—they sometimes take actions that help, and sometimes take actions that hurt, America's manifold and often contradictory interests.

And as war with China grows increasingly likely, this difficult conversation about corporate complicity grows increasingly urgent.

I should disclose at this point that I'm not a disinterested observer, nor are my views objective. It will be helpful here to share my background, and a mea culpa for some of my own compromises and ethical lapses, before I discuss how to address this mess. I'm a former Beijing-based journalist, who covered Chinese politics and culture for *Newsweek*. I visited all of China's twenty-two provinces, its four municipalities, its five (inaccurately named) autonomous regions, the "special" administrative regions of Hong Kong and Macau, and the country of Taiwan, which Beijing has long disingenuously claimed.

In 2022 I published a book, "America Second" (Knopf), which arose out of my frustration with how Americans, and American corporations, discussed China. Not in the wonderful, awful, plain, or madcap ways of Chinese people, but in the ways of the Party. They'd repeat Party phrases like "China has lifted hundreds of millions of people out of poverty," or "China has 5,000 years of history." The problem is not the veracity of the phrases—the problem is repeating phrases which, like the two quoted here, are Party propaganda. Context and history matter. One can be, for example, an American socialist, and think that the country should nationally be social-

ist—but no one with any sense of history should ever call themselves a National Socialist.

The book also arose out of a desire to apologize for committing similar ethical lapses, from my two decades researching, living in, travelling through, working on, and countering China. I'd self-censor, tempering my criticisms to avoid offending the Party. I've taken money from organizations linked to the Party: still, today, I consult for corporations that strive to maintain access to China. Sometimes, I self-censor in the opposite direction, being more critical than I actually feel on China in settings with other China hawks. The data and consulting company I run, Strategy Risks, benefits from an increasingly risky world. Indeed, I started the company several years ago with these trends in mind. Let me never pretend to be a disinterested observer.

These are complicated issues, and expressing oneself accurately is challenging. Still, I'd like to do better.

The solutions to corporate complicity and kowtowing to Beijing aren't to be found in mandating any sort of objectivity around China; rather, they lie in promoting transparency and healthy debate. Require corporations to disclose their exposure to China. Public companies, in their filings to the SEC, often don't even break out their China revenue, hiding behind broader categories like 'Asia.' The more information investors, regulators, and citizens have about how American companies are exposed to China, the better.

Strong libel laws that protect U.S. activists, journalists, and thinkers benefit America's battle against the pernicious aspects of Beijing. I'm delighted that, on July 4th, I can write the words "Henry Kissinger is an agent of Chinese influence"—a conclusion I drew from dozens of hours of research into Kissinger's business dealings, back when I was a journalist—and know that our wonderful First Amendment protects me.

And the solution to corporate complicity requires a healthy debate about war with China. Should the United States go to war with China to defend Taiwan? Does that mean World War III? If there is a war, how are we defending ourselves from the possibility of a Chinese attack? If there is a war, how do we ensure that we protect Chinese Americans, and people in China? I worry that we're suppressing this conversation, even though war may be near.

Play the grim parlor game: if one of those Chinese spy balloons had exploded over America, how many Americans would have to die for us to go to war with China? The possibility of war is very real, and very worrying.

I worry, too, about our awful history of Japanese internment during World War II, and the ethical sacrifices U.S. bureaucracies will make and have made in times of crisis. I worry about the millions of Chinese who have worked for, or closely with, American companies and whom Beijing may soon see as enemy combatants. I worry about American companies supporting the Chinese war effort, or hampering the American war effort. And I worry that—like after 9/11—fear and xenophobia, and not caution and strategy, will drive our actions.

We must prepare. Prepare by ensuring that we adhere to our values of diversity, integration, and protecting our own. Prepare by working with Boeing, Raytheon, and other pillars of our military production to reduce—immediately—their exposure to China. Prepare by encouraging American companies to have contingency plans to protect their Chinese staff, and their staff in China. Prepare by admitting to ourselves that if Beijing attacks Japan, or Taiwan, or kills a number of Americans—public pressure may demand a response, even if that rashly leads to the next world war.

Prepare for the looming specter of World War III, not because you strive for war, but because you strive for openness, transparency, and civic debate. Be prepared, because the alternative is far worse. Talk about it.

## PREPARED STATEMENT OF AYNNE KOKAS

Chairman Smith, Cochairman Merkley, and distinguished members of the Congressional-Executive Commission on China, it is an honor to present my testimony.

As the United States grapples with how to approach China's expanding digital influence, it is imperative to explore the role of U.S. corporations operating in the country as well as firms that serve as U.S.-based data brokers. My testimony explores the ways that fragmented U.S. data oversight laws interact with Chinese government data oversight to pressure corporations to prioritize compliance with Chinese laws and policies. Additionally, I delve into similar dynamics that have fueled misinformation and censorship in the media sector. Drawing from my recent books, *Trafficking Data: How China Is Winning the Battle for Digital Sovereignty* (2022) and *Hollywood Made in China* (2017), I make recommendations to reduce U.S. corporate digital rights violations by Chinese firms, as well as firms operating as data brokers in the U.S. I argue for the importance of focusing attention on how to bring overarching U.S. digital oversight in line with our allies and partners to better serve as a countervailing force against pressure companies face from Chinese government regulations. I look forward to the discussion and would be happy to expand on any of these points during questioning.

My testimony focuses on four key findings:

1. U.S. data oversight laws follow a risk-based model, which assumes corporations have the capacity to mitigate harm.
2. Many Chinese corporate data oversight laws have expansive extraterritorial scope and lack transparency. The opacity of these laws makes it difficult to determine the extent to which firms are exploiting data in the normal course of their operations.
3. Without comprehensive data protections in the U.S. and the potential for financial, civil, and criminal penalties in China, companies must navigate a complex legal landscape.
4. The intersection of pressure for Chinese market access with weak U.S. laws has further created an environment ripe for censorship and disinformation.

**U.S. technology oversight assumes the capacity to mitigate harm. However, there are currently no comprehensive data security laws in place either domestically or extraterritorially.**

Fragmented sector-based and state-based oversight fails to keep pace with evolving technologies, leaving U.S. citizens vulnerable to data breaches and exploitation.

Sector-based oversight, such as the Health Insurance Portability and Accountability Act (HIPAA), neglects key areas of the health technology sector, from commercial DNA testing to medical devices to smart watches. The Children's Online Privacy Protection Act (COPPA) requires parental consent for self-disclosure of information by children under 13,<sup>1</sup> but has serious limitations—it protects children under 13 only when information is shared by them, rather than by an adult.<sup>2</sup> Once a parent consents to the child's self-disclosure, sites can freely collect any shared information.<sup>3</sup> Moreover, the law does not appear to cover household-level (rather than individual-level) data that might include that of children under 13, such as that collected by Google Home and Amazon Alexa devices.<sup>4</sup>

By failing to update existing sector-based laws to reflect the breadth of opportunities for data-gathering by firms, it becomes impossible to move forward with even the most basic standards of user data protection.

State-based oversight further fragments the U.S. corporate data security landscape, with state legislatures facing pressure to oversee complex laws that often exceed their technical capacity, budgetary constraints, and scope of oversight. States with more technical resources already offer digital rights enforcement to their citizens (e.g., enhanced protection of biometric data for Illinois residents, financial data for New Yorkers, and user data for those living in California, Utah, and Virginia), thereby creating a patchwork of data protection regulations across the country. For example, there are multiple competing standards for how people in different states can use popular apps like TikTok and WeChat. This makes it difficult for U.S. businesses and citizens to navigate the complex and often conflicting regulatory environment.

Adding to this complexity are third-party data brokers, who acquire and sell corporate data. In bankruptcy proceedings, banks can require firms to liquidate their data as an asset, increasing the vulnerability of user data.<sup>5</sup> Data broker activity in bankruptcy proceedings and elsewhere further fragments U.S. data oversight and highlights the need for comprehensive national data protection regulations.

Corporate and user data form the foundation of a wide range of emerging information and communication technologies. It is important to prevent data trafficking, the uncontrolled movement of commercial data across borders through government pressure, not just for immediate security purposes, but also to protect long-term competitiveness in communications, artificial intelligence, healthcare, payments, and other critical sectors.

**Chinese laws, by contrast, are wide-reaching with strong data localization requirements, unclear enforcement or statutes of limitations, and an extraterritorial scope.**

The Cybersecurity Law of the People's Republic of China<sup>67</sup> requires critical information infrastructure data to be stored in China. China's Personal Information Protection Law (PIPL) offers enhanced data localization requirements beyond the critical information infrastructure data localization which makes transfer of data overseas subject to a security assessment by the Cyberspace Administration of China.<sup>8</sup> Article 3 of PIPL includes broad corporations that process personal information within China's borders, emphasizing the extraterritorial nature of the law's scope.

PIPL is one of many Chinese laws that implicate worldwide corporate operations. The "Provisions on the Governance of the Online Information Content Ecosystem" asserts potential criminal or civil liability for consuming, producing, or sharing "negative" information. The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, colloquially known as the Hong Kong National Security Law, permits the Chinese government to hold people and platforms liable for crimes committed extraterritorially, which puts particular pressure on firms with large Chinese operations.<sup>9</sup>

Further, most Chinese digital oversight laws lack clear enforcement parameters, encouraging corporations to comply with the most conservative interpretations of the law. The Provisions in Online Governance, Cybersecurity Law, Personal Information Protection Law, and Hong Kong National Security Law all lack clear enforcement provisions, but one of the more interesting opportunities for government access to corporate data is China's national security audit system, established by the 2021 Data Security Law,<sup>10</sup> that can review any activities that influence or might influence national security data. All companies operating in China are subject to the regulations, and the scope of what constitutes national security data is neither fixed nor transparent. Through the data audit process, regulators can pressure firms to share data with the Chinese government as a condition of their continued operation.

**Corporations gathering user data in the United States that are subject to Chinese laws face significant pressure to comply with Chinese laws in the absence of comprehensive U.S. data protections.**

This dynamic is apparent in the Internet of Things (IoT). Haier, a Chinese company, purchased GE Appliances in 2016 for \$5.4 billion,<sup>11</sup> the world's largest consumer appliance company.<sup>12</sup> Since then, Haier has launched an entire line of connected consumer electronics called GE Smart Appliances<sup>13</sup> that gather data and store it on apps developed by Haier U.S. Appliance Solutions, Inc. Haier has also developed the U+ Connect platform, which collects data through all connected GE Appliances and Haier-connected products.<sup>14</sup> Haier uses Baidu's TianGong smart IoT platform to connect equipment, manage devices, and store data for the U+ Connect platform that GE Appliances use,<sup>15</sup> thereby integrating GE Appliances into China's data storage system.

Precision agriculture is another prominent area where this dynamic plays out. Syngenta, a firm that gathers and integrates data about agricultural yields,<sup>16</sup> is one of precision agriculture's major players. ChemChina, the state-owned China National Chemical Corporation, became the world's largest supplier of pesticides and agrochemicals with its \$43 billion acquisition of Syngenta in 2017 and it is also the top pesticide seller in North America.<sup>17</sup>

Syngenta collects data via drones and satellites to help farmers manage crop yields<sup>18</sup> and sells seeds, fertilizers, and pest management to AgriEdge users at a discount. AgriEdge has become integrated into the U.S. agricultural landscape, covering 10.5 million acres of arable U.S. land in 2021, with more than 95% of growers using whole farm management systems from Syngenta.<sup>19</sup> Even the Ram, a popular farm vehicle which holds a greater than 25% stake in the U.S. truck market, now offers packages that include AgriEdge.

By integrating the U.S. agricultural and IoT ecosystems with a firm owned by a Chinese state-owned enterprise, the U.S. is taking a risk that the extraterritorial nature of Chinese laws will force firms to share key data about how U.S. homes and agricultural ecosystems function. I discuss other examples in the gaming, social media, satellite, smart city, and payment sectors in my book, *Trafficking Data*. How-

ever, regardless of the sector, the Chinese firms face no legal data storage requirements in the United States.

Beyond industry-specific exposure, COVID-19 protocols in China control the behavior of people working at corporations in China. Access to essential payment, mobility, and communication apps in China now require sharing, at a minimum, one's passport number or residence card number, but more commonly, a Chinese bank account, enabling both monitoring and punitive action. Such technical systems require individuals doing anything in China, whether visiting family, working, or doing research, to either depend on a Chinese colleague or friend, allow tracking, or submit oneself to the scrutiny of a residence permit, to engage in the most basic activities of living. When using a term like corporate complicity, it is important to recognize that many of the workers or corporations in question must balance their ability to continue to function.

**Pressure for Chinese market access interacts with weak U.S. laws to contribute to censorship and disinformation.**

These shifts in market power are changing our digital landscape in two key ways.

First, firms are changing the content they produce. To gain access to China's profitable but tightly regulated media market, Hollywood studios must comply with Chinese censorship rules, which can impact the content of films. For example, in *Doctor Strange*, the character of The Ancient One was portrayed as a Tibetan monk in the original version of the movie, but in the Chinese version, this character was changed to be a Celtic woman to avoid offending the Chinese government, which does not recognize Tibet as an independent country.<sup>20</sup> Similarly, the character of The Mandarin, who is portrayed as a villain in the original version of the movie, was changed to be non-Chinese in the Chinese version.<sup>21</sup> While it is clear that "yellow peril" stereotypes like those visible in characters like The Ancient One and The Mandarin present problematic representations of race, it is the market under which studios changed those characters that is most significant. In *Mulan* (2020), the film's global release evoked Chinese central government narratives urging the prioritization of the central government at the expense of dangerous borderlands.<sup>22</sup>

Figure 1: Nine-dash line maritime claim in *Abominable* (2019)



Source: *South China Morning Post*

Second, firms are extending Chinese market policies globally in the absence of laws. The University of Toronto's Citizen Lab reported that accounts that fall under WeChat's Chinese terms of service, accounts first registered in China (or "China-registered-accounts"), are subject to "pervasive political censorship" even outside of China, even when those accounts move to international numbers.<sup>23</sup> This includes

foreign students, immigrants, and businesspeople who first download WeChat in China but switch phone numbers when they move outside of China.

### **Recommendations**

The following recommendations are based on my award-winning books *Trafficking Data: How China Is Winning the Battle for Digital Sovereignty* (Oxford University Press, 2023) and *Hollywood Made in China* (University of California Press, 2017). These strategies are critical for reducing U.S. corporate violations of digital rights violations in relation to Chinese firms and all firms that serve as data brokers in the United States.

#### **• Work with Allies and Partners to Establish Standards for Data Transfer**

- Review and align the U.S. with adequacy standards for cross-border data transfer established by the European Union and Japan.
- Join key trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CP-TPP) and other trade agreements that enhance transparency in cross-border data transfers while also requiring the protection of personal information for users.

#### **• Enhance U.S. Oversight to Prevent International Data Trafficking**

- Work with states to harmonize state-level data security oversight through federal legislation. This could include practices such as issuing best practices for state data-security oversight. Grants for specific state-level data security projects would help to enhance state-level technical oversight capacity.
- Build out a national data privacy framework to prevent consumer data exfiltration to non-allied countries. Such a move is important not just to protect user data, but it is also essential to help build consensus among democratic allies, many of whom have different approaches to data oversight than the United States.
- Enhance technology sector collaboration across developed democracies as outlined in S. 604, the Democracy Technology Partnership Act.
- Develop more precautionary approaches to the use and introduction of ICT products and services. Approaches like S. 686, the bipartisan RESTRICT Act, represent an important first step.
- Regulate the data broker industry in the United States. S. 631, the UPHOLD Privacy Act of 2023, S. 1029, the Protecting Military Servicemembers' Data Act of 2023, and H.R. 3045, You Own the Data Act and others, offer first steps in this direction.
- Enhanced SEC reporting of data storage practices by publicly traded firms would use existing reporting mechanisms to enhance corporate accountability for how, when, and where firms share their data. Explore ways to require data storage and security reporting by privately held U.S. firms. Improved transparency in data storage and security practices is valuable not just due to the ability to track data trafficking, but also in the provision of helpful metrics to include data storage and security in environmental, social, and corporate governance investment indices.

**Fund Chinese area studies** so that workers can better understand the implications of their business decisions related to China. The lack of secondary and tertiary education opportunities to learn about China means that most people entering the U.S. workforce do not have a working understanding of China's political system, which can lead to uninformed decision-making both in terms of the under- and over-estimation of risk. Funding from Title VI, the Fulbright U.S. student China program, the East-West Center, the Woodrow Wilson Center, the National Endowment for the Humanities, and the Kluge Center at the Library of Congress, has been central to my ability to research and teach about China at the University of Virginia and as a student in public universities in California and Michigan. To prevent corporations from enabling human rights violations, there is a crucial national security need to fully fund the study of China and Chinese by American students and scholars.

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**Endnotes**

- <sup>1</sup> Federal Trade Commission, “Children’s Online Privacy Protection Rule (‘COPPA’).”
- <sup>2</sup> Federal Trade Commission, “Children’s Online Privacy Protection Rule (‘COPPA’).”
- <sup>3</sup> Federal Trade Commission, “Children’s Online Privacy Protection Rule (‘COPPA’).”
- <sup>4</sup> Smith, “Voice-Captured Personal Data”; Haber, “Internet of Children”; Lutz and Newlands, “Smart Speakers.”
- <sup>5</sup> Guillou, “Privacy Issues in Bankruptcy Sales.”
- <sup>6</sup> Standing Committee of the National People’s Congress, 中华人民共和国网络安全法 [Cybersecurity Law of the People’s Republic of China].
- <sup>7</sup> Creemers, Triolo, and Webster, “Translation: Cybersecurity Law of the People’s Republic of China (Effective June 1, 2017).”
- <sup>8</sup> Julia Zhu, “The Personal Information Protection Law: China’s Version of the GDPR?,” *Columbia Journal of Transnational Law*.
- <sup>9</sup> The National People’s Congress, 中华人民共和国香港特别行政区维护国家安全法 [Law of the Hong Kong Special Administrative Region of the People’s Republic of China on Safeguarding State Security].
- <sup>10</sup> Rafaelof et al., “China’s ‘Data Security Law (Draft).’ ”
- <sup>11</sup> Yu, “Haier Has A Plan.”
- <sup>12</sup> GE Appliances, “Time-Saving Technologies.”
- <sup>13</sup> GE Appliances, “Time-Saving Technologies.”
- <sup>14</sup> GE Appliances, “Time-Saving Technologies.”
- <sup>15</sup> Tencent Tech, “Baidu, Haier Partner.”
- <sup>16</sup> Syngenta Global, “Our Research Areas.”
- <sup>17</sup> M&A Critique, “ChemChina Buys Out Syngenta.”
- <sup>18</sup> Tully, “Drones to Modernize Farming”; McMahon, “Drones Provide a Bird’s Eye View”; Ostrom, “New Pilot Program Delivers Innovative Digital Technology.”
- <sup>19</sup> Syngenta US, “AgriEdge.”
- <sup>20</sup> Child, “Tilda Swinton Cast.”
- <sup>21</sup> Zakarin, “Chinese Cut of ‘Iron Man 3.’ ”
- <sup>22</sup> Kokas, “Hollywood Needs China.”
- <sup>23</sup> Knockel et al., “We Chat, They Watch.”

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## PREPARED STATEMENT OF HON. CHRIS SMITH

Today's hearing, "Corporate Complicity: Subsidizing the PRC's Human Rights Violations," will come to order.

Since the Tiananmen Massacre in 1989—and for some, even before—far too many elite leaders of America's most profitable corporations and like-minded government enablers here and around the world have embraced and welcomed the Chinese Communist Party with open arms.

The predictably false hope that robust trade would somehow help China matriculate from a dictatorship to a functioning democracy had no compelling precedent in history—especially a country that is owned—lock, stock, and barrel—by a brutal Communist party.

That false hope has been further exposed every single year since the early 1990s by China's ever-worsening abuse and violence against its own citizens.

The pervasive use of government-sanctioned genocide, torture, rape, forced abortion, involuntary sterilization, forced organ harvesting, sex and labor trafficking, religious persecution, kangaroo courts (particularly for political and religious prisoners), free speech and assembly violations, the atrocities they have committed in Hong Kong after making solemn promises to protect basic rights as well as the Sino-UK Agreement—and of course there are so many other crimes against humanity—an absolutely shameful record of wanton cruelty.

Tragically, the abuse and violence has only gotten worse under Xi Jinping. With his infamous executive order of May 26, 1994, President Clinton abolished the requirement that the Chinese Communist Party achieve "significant progress" in protecting human rights as a condition for extending Most Favored Nation status (MFN)—the elimination of import tariffs by the U.S.

A few months earlier in 1994, before President Clinton's capitulation, I travelled to Beijing and met with foreign ministry officials and argued that President Clinton wasn't going to back down or back off his promise to end MFN unless China reformed its barbaric practices. I even conveyed to CCP officials a bipartisan letter signed by 100 Members of Congress—left and right, Nancy Pelosi was on that, Frank Wolf was a co-signer, and many others—and we said we stand with President Clinton, and we stand with human rights.

While there, I also met with the U.S. Chamber of Commerce in Beijing who thought we were wrong to link MFN with human rights. After a spirited exchange over breakfast, I came away with the inescapable conclusion that no human rights violation by the CCP would disrupt lucrative business deals.

A few months later—to my shock and dismay—President Clinton delinked human rights from trade. He did it on a Friday afternoon, after almost everybody in this building had left to go back to their districts. I was lingering, doing some work in the office. I ran over to the press gallery and did a press conference, impromptu. If you go to C-Span, you can see it. I wasn't the only one: Nancy Pelosi ended up doing her own press conference. We were shocked that he delinked. He had accused—and rightfully—George Herbert Walker Bush of coddling dictatorship and I agreed with that after Tiananmen Square.

The symbiotic U.S.-China trading relationship—that emerged in the 1990s and continues to this day—allowed many to become incredibly rich and powerful while conveying to the CCP extraordinary industrial capacity and know-how for both consumer goods, and ominously, military products and capability.

That CCP military capability today, however, poses an existential threat to Taiwan, numerous nations in the region—and to the United States of America.

Today, it is deeply discouraging to see the ongoing complicity of American companies in aiding and abetting the Chinese Communist Party's heinous crimes against humanity and genocide.

Many are complicit in concealing the PRC's abuses. Many are complicit in the PRC's restrictions on freedom. Many are even complicit in amplifying the Chinese Communist Party's propaganda across our country—spreading political and ideological stances that are completely contrary and antithetical to what the United States stands for.

American companies and consumers should not be subsidizing tyranny.

In January, I introduced—I should say re-introduced—the China Trade Relations Act of 2023 to end MFN, now called normal trade relations, with China.

Actually, it's almost a carbon copy of what we were talking about in 1993, with President Clinton. I did press conference after press conference, thanking him for linking human rights with trade—only to see one year later that he delinked it.

Every single person testifying here has done an enormous amount of work and provided leadership. We're so grateful that you're here. One of our distinguished witnesses today has paid an enormous price: the loss of his amazing 11-year basket-

ball career in the NBA—for his courageous stand for human rights, especially for the Uyghurs, the victims of Xi Jinping’s ongoing genocide.

He will testify today that after he was released, about 3 weeks later—released means fired, of course—China put the games (that had been barred from Chinese TV because he wore basketball shoes that said “free the Uyghurs”) back on television. ESPN did an investigation and found out that 49 NBA owners have \$10 billion tied up in China.

Money talks and human rights go right out the window.

The Chinese Communist Party ordered the NBA to sanction—to fire—Enes Kanter Freedom and like cowards, they obeyed.

I’d like to yield to my good friend and colleague, Co-chair of our Commission, Senator Merkley.

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PREPARED STATEMENT OF HON. JEFF MERKLEY

Thank you very much, Mr. Chairman. And welcome, it’s good to have you with us. I’m glad we’re continuing to dig into the issue of corporations’ connection to the Chinese Communist Party’s human rights abuses in China and elsewhere. This has been an intense interest, a bipartisan and bicameral interest of our Commission. With so many of the issues we monitor, the CCP’s abuses are sometimes amplified or even abetted by the actions of actors closer to home. When products from cotton to car parts are made on the backs of Uyghur slave labor, companies seeking to get those products into the U.S. market subsidize the economic machinery of genocide. When authorities crush Hong Kong’s cherished freedoms, they count on multinational corporations to continue business as usual. When mass surveillance and biometric data collection target repressed populations, some American companies provide the technology, the services, or the data that bolster the surveillance state.

Our commissioners have taken such an interest in these issues because it’s unacceptable to us if any American business props up genocide, enables censorship, or legitimizes actions that trample on basic universal freedoms. That’s why last Congress I chaired hearings focused on: the message that leading American companies were sending by lending their prestige to the 2022 Beijing Olympics, and we focused on the way the PRC leverages technology for deeply repressive purposes and on the coercive economic dynamics that all too often lead companies to self-censor or even parrot propaganda. We sent letters to some of the most respected brands in America when their actions put them at risk of complicity in human rights abuses, companies like Apple, Hilton, Amazon, Airbnb, NBC, the National Basketball Association, and more.

This Commission’s signature initiative to guard against corporate complicity has been the Uyghur Forced Labor Prevention Act. Representative McGovern, Senator Rubio, Representative Smith, and I spearheaded that legislation to protect American consumers and to hold corporations trading in the products of forced labor accountable. At our April hearing, we heard from experts about the initial implementation of this law and the difficult road ahead to make sure we enforce it effectively. I’m grateful that Under Secretary Silvers, the Chair of the Forced Labor Enforcement Task Force, is with us today to help us grapple with those challenges.

As we heard at that April hearing, businesses should now consider themselves on notice that protecting their supply chains from being tainted by forced labor must be a top tier issue of corporate compliance—because it is for the U.S. Government. But that’s only the start of the paradigm shift that we need. We need businesses across the economy to diversify their supply chains to be less susceptible to Chinese coercion and to avoid complicity in human rights abuse. We need greater transparency about businesses’ data practices, exposure to the pressure coming from China, and more. And defenders of freedom need to speak out so businesses know there will be reputational costs for abetting human rights abuse.

Thank you to all of our witnesses for your role in speaking out. I appreciate you sharing your expertise and personal stories with us and I look forward to your testimony.

## PREPARED STATEMENT OF HON. JAMES P. MCGOVERN

Good morning. I join my colleagues in welcoming those present at today's hearing on business and human rights in China. I regret that I am not able to join you in person.

Today's hearing is not the first time the Congressional-Executive Commission on China has taken up the role of businesses and their potential—even actual—complicity in the commission of grave human rights violations in the People's Republic of China.

We did our best to engage the corporate sponsors of the 2022 Winter Olympics, held in China in February 2022, to use their leverage in support of human rights. But our efforts and those of many other human rights advocates fell short—the Games were not postponed and they were not moved. It turns out that the profit motive that fuels the engine of capitalism is far more powerful than the principle of human dignity that lies at the heart of America's Bill of Rights and is the core of international human rights laws and norms. "Reputational risk" cannot compete.

This reality informed the bipartisan Uyghur Forced Labor Prevention Act that I was privileged to lead and which became law in December 2021. Rather than rely on moral suasion, the law creates a rebuttable presumption that all goods produced in the Xinjiang region of China are made with forced labor. Importing goods made with forced labor is illegal in the United States—has been since 1930. Now the burden of proof lies with those who want to import goods to show that their supply chains are free of forced labor. We will hear today from DHS Under Secretary Silvers that the law has brought a sea change to the way the Government approaches forced labor issues. That is a very good thing.

But I cannot help but express my frustration that it seems to be so hard to get the private sector to pay attention to grave human violations that occur in the places they do business, in concrete ways that actually matter.

We will hear today about several ways that the PRC government pressures businesses to comply with its ideological and "security" interests. That is information that has been shared with us consistently in the past and it is important to continue to document and draw attention to the ways these pressure campaigns work.

But I hope the witnesses will also talk about how we can do a better job of getting businesses to comply with the spirit of human rights laws. For all the kudos we have received for passage of the UFLPA, there have also been plenty of complaints about the "burden" it creates for the private sector.

The reality is that Congress ends up having to write human rights laws as tightly as possible, because experience suggests that they will not be honored otherwise.

My question for the witnesses today is, Why is it so difficult to get businesses to comply, and what can we do about that? Is the best option—perhaps the only option—to make sure that compliance is in the financial and market interest of businesses?

If that's the case, maybe my colleagues across the aisle should rethink their opposition to economic, social, and governance guidelines for investment—since ESG rules are the very thing that Uyghur advocates have been asking us to use to end Uyghur slave labor.

One further point: I understand that implementing a law like the UFLPA requires resources. This Commission must be clear that talk about human rights in China—or anywhere else, for that matter—has to be backed up with funding. Cuts to the budgets of agencies that implement human rights policy will gut that policy. It is important to keep this in mind during appropriations season.

Thank you.

## SUBMISSIONS FOR THE RECORD

*Office of Strategy, Policy, and Plans*U.S. Department of Homeland Security  
Washington, DC 20528

June 9, 2023

The Honorable Jeffrey A. Merkley  
 Cochair, Congressional-Executive Commission on China  
 United States Senate  
 Washington, DC 20510

Dear Senator Merkley:

Thank you for your April 11, 2023, letter regarding the Uyghur Forced Labor Prevention Act (UFLPA)<sup>1</sup>, and for your support of the U.S. Department of Homeland Security's (DHS) robust implementation of this law. Forced labor is a scourge that violates human rights, undermines the rule of law, and harms American workers and businesses. The state-imposed nature of forced labor occurring in the Xinjiang Uyghur Autonomous Region (Xinjiang) of the People's Republic of China is particularly reprehensible. DHS is committed to enforcing all forced labor laws under its purview. We could not take this issue more seriously.

To date, our enforcement of the UFLPA has been speedy and strong. Speedy because we released the UFLPA Strategy ahead of the 180-day schedule required by law, and strong because we have devoted the full weight of our resources to enforcing it. In this fight to combat forced labor, DHS has worked closely with civil society organizations to uncover potential violations of the UFLPA and to hold violators accountable. With industry, DHS has stressed that corporate leaders have a responsibility to ensure their supply chains are free of forced labor, and that we expect forced labor to be a top-tier compliance issue in the board room and C-Suite.

I appreciate the Congressional-Executive Commission on China's (the Commission) engagement with the Forced Labor Enforcement Task Force (FLETF) and its efforts to eliminate forced labor from U.S. and global supply chains. I address the issues raised in your letter below, and also am pleased to offer a briefing to you and your staff to engage in more detailed, data-driven discussions if that would be helpful. Congress has equipped us with powerful tools to combat forced labor, and it is important to us that we offer Congress transparency so that you can understand the full scope of our efforts to put those tools to work.

**U.S. Customs and Border Protection's (CBP) Applicability Review and UFLPA Reporting Requirement**

The UFLPA's rebuttable presumption applies to goods mined, produced, or manufactured wholly or in part in Xinjiang or by an entity on the UFLPA Entity List.<sup>2</sup> CBP reviews high-risk imports on a shipment-by-shipment basis to determine whether the UFLPA rebuttable

<sup>1</sup> Pub. L. No. 117-78, 135 Stat. 1525 (2021).

<sup>2</sup> Pub. L. No. 117-78, § 3(a), 135 Stat. 1525 (2021).

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presumption applies. When CBP analyzes risk factors to identify shipments considered high risk, it must then conduct a review to determine whether in fact the goods were made, in whole or in part, in Xinjiang.

Our applicability reviews are thorough. We have in many instances detained shipments for months as our enforcement officers review and examine supply chain documentation rigorously, ask detailed follow-up questions, and request additional documentation from importers. We release cargo only after an applicability review demonstrates that the contents of a shipment are not subject to the UFLPA's restrictions. In many instances our applicability reviews have resulted in decisions to exclude cargo from entering the United States. We are confident that our applicability reviews honor both the letter and the spirit of the UFLPA.

If CBP determines that an import is subject to the UFLPA rebuttable presumption, the importer may obtain an exception to the rebuttable presumption if the importer proves by clear and convincing evidence that the good is not mined, produced, or manufactured wholly or in part with forced labor, among other requirements.<sup>3</sup> Regarding the UFLPA's related statutory reporting requirements, the law requires CBP to submit a report to Congress "after making a determination of an exception under subsection (b)."<sup>4</sup> CBP is committed to reporting to Congress any exception that it may grant to a U.S. importer whose goods are subject to the rebuttable presumption. To date, CBP has granted no such exceptions.

#### **Entity List Expansion**

DHS and the FLETF, which I chair, are committed to expanding the UFLPA Entity List. We appreciate your support for that commitment, and the FLETF has recently approved two new additions to the UFLPA Entity List: Xinjiang Zhongtai Chemical Co. Ltd. and Ninestar Corporation, to include Ninestar's eight subsidiaries based in Zhuhai, China.<sup>5</sup> The FLETF will continue to expand the UFLPA Entity List and is actively assessing additional nominations. As FLETF Chair, DHS has prioritized this mission at Secretary Mayorkas's direction, and has redirected resources to create entirely-new operating procedures for the federal agencies to nominate and consider UFLPA Entity List designations. DHS and other FLETF Members have developed robust partnerships with civil society organizations, labor organizations, and academia, which have been invaluable to the FLETF's work in this vein. The FLETF is dedicated to fulfilling its mandate to identify companies that perpetuate forced labor practices in China, and to holding them accountable.

#### **Addressing Transshipment**

In response to your request that CBP report on how it intends to address the challenge of transshipment, CBP has contended with the illegal transshipment of merchandise to evade trade

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<sup>3</sup> *Id.* § 3(b).

<sup>4</sup> *Id.* § 3(c).

<sup>5</sup> The eight Ninestar subsidiaries included are: Zhuhai Ninestar Information Technology Co. Ltd., Zhuhai Pantum Electronics Co. Ltd., Zhuhai Apex Microelectronics Co., Ltd., Geehy Semiconductor Co., Ltd., Zhuhai Pu-Tech Industrial Co., Ltd., Zhuhai G&G Digital Technology Co., Ltd., Zhuhai Seine Printing Technology Co., Ltd. and Zhuhai Ninestar Management Co., Ltd.



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enforcement activity for many years; this issue is not limited to UFLPA enforcement. CBP employs a range of techniques to combat illegal transshipment, to include: identifying risk factors for shipments that pose an illegal transshipment risk; leveraging trade analysts to identify potential violators and enforcement personnel to identify the true provenance of imported merchandise; and investing in modernized trade platforms that allow the agency to focus its resources to identify areas of highest risks, such as illegal transshipment, while simultaneously facilitating lawful and compliant trade. The agency also works to identify new technologies to counter illegal transshipment. CBP hosted a technical expo in March where the trade community was able to learn more about new supply chain tracing technology. I was pleased to see a number of congressional staff at the event.

CBP through the FLETF will provide an update on how it is addressing transshipment in the 2023 UFLPA Strategy. The FLETF also publishes biannual enforcement reports on key issues, which recently have touched on UFLPA implementation, that we would be happy to provide to the Commission if requested.

#### **De Minimis Enforcement**

In response to your request for information regarding “de-minimis” shipments, CBP enforces the UFLPA on all importations regardless of value. There is no de minimis exception for forced labor. All shipments, regardless of value, pass through CBP systems and are subject to CBP’s risk assessment and screening. De minimis shipments pose unique challenges not only in forced labor but in all areas of trade enforcement, given that the advanced data required for those shipments is not as detailed as the data required for other types of entries. CBP has multiple initiatives underway that will increase data available to CBP and enhance its ability to assess risk, and take appropriate enforcement action, in the de minimis shipments context. We also would welcome the opportunity to work with Congress as it considers the many facets of the de minimis challenge.

#### **Conclusion**

I appreciate the Commission’s continued support of DHS’s efforts to implement the UFLPA. Thank you again for your letter and invitation to testify at a future hearing. I look forward to continued discussions with the Commission on the critical issue of combatting forced labor in China and around the world. I would appreciate your support in ensuring that DHS, CBP, and the FLETF are provided the necessary resources to continue to fully implement and enforce the UFLPA. This is intensive work and we need more resources, even as we pull assets away from other missions to ensure we are fully meeting our responsibilities under this important mandate.

Enforcing our forced labor laws is a top priority for us. It is important for human rights, workers’ rights, and our values. It is the right thing to do. We are committed to this work and we appreciate your oversight and support for us.

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The cosigners of your letter will each receive a separate, identical response. Should you require any assistance, please do not hesitate to contact the DHS Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Silvers', with a stylized flourish extending to the right.

Robert Silvers  
Under Secretary for Policy  
Chair, Forced Labor Enforcement Task Force



ONE HUNDRED EIGHTEENTH CONGRESS  
 REPRESENTATIVE CHRISTOPHER H. SMITH, CHAIR  
 SENATOR JEFF MERKLEY, COCHAIR

July 10, 2023

Mr. Steve Richman  
 Group President  
 Milwaukee Tool  
 13135 West Lisbon Road  
 Brookfield, WI 53005-2550

Dear Mr. Richman,

We write to raise questions about forced labor used to make Milwaukee Tool products in the People's Republic of China (PRC) and your company's response to the possibility that U.S. consumers continue to buy such products made by political prisoners.

We raise these concerns after reading an investigative report by Wisconsin Watch which detailed how political prisoners in Chishan Prison were forced to work against their will, with little pay, to produce gloves for your company. Prisoners have included Chinese human rights advocate Cheng Yuan, who was arbitrarily detained by the PRC and is still incarcerated, and Taiwanese democracy activist Lee Ming-che, who was imprisoned in Chishan Prison for five years and released last year. Both men were detained for simply advocating for rights respected and protected in free societies around the world. Cheng Yuan spouse, Shi Minglei, has amassed evidence that political prisoners at Chishan Prison were forced to make gloves for Shanghai Select Safety Products, a supplier for Milwaukee Tool.

Forced labor in the PRC contravenes international human rights standards and China's international obligations. In April 2022, the PRC's National People's Congress Standing Committee ratified the International Labour Organization's (ILO) Forced Labour Convention of 1930 (C029) and Abolition of Forced Labour Convention of 1957 (C105). C029 requires countries to prohibit the use of forced labor and make the use of forced labor "punishable as a penal offence." Countries that ratify C105 are prohibited from using forced labor "as a means of political coercion or education" or "as a means of racial, social, national or religious discrimination."

Further, as you know, importing products made with forced labor is a violation of U.S. law, which defines forced labor as "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer work or service voluntarily." Evidence of prison labor made goods from the PRC in global supply chains, however, keeps emerging—mostly from evidence provided by ex-prisoners and their family members.

We hope you can provide us with information about these reports and your company's reaction to them. The issue of forced labor in China, and the unfair trade advantage it offers companies like yours, is one that has plagued the U.S. economy for decades. We understand that Milwaukee Tool

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may have strongly worded policies against the use of forced labor, as do most every company with global supply chains, but the evidence in this case is very compelling.

Milwaukee Tool gloves continue to be sold at Home Depot and on Amazon. American consumers should not be unwittingly subsidizing the PRC's human rights abuses. We ask that you respond to our questions below, as we are compiling information for future reports and a congressional hearing where we may request your testimony:

- Your company's policy on sustainability mentions renewable energy, environmental health, safety, and sustainability, but does not mention forced labor or human rights. Does your company have a global human rights policy? If not, why not?
- Has Milwaukee Tool investigated how its products reportedly came to be linked to prison forced labor in China, and if so, what conclusions did you reach?
- Has your company told Home Depot and Amazon to stop the sale of Milwaukee Tool brand gloves made by Shanghai Select Safety Products?
- Has Milwaukee Tool severed its relationships with Shanghai Select Safety Products?
- Given the Uyghur Forced Labor Prevention Act addresses imports made with labor from the Xinjiang Uyghur Autonomous Region or coercive labor transfer programs elsewhere in China, how has your company mapped its supply chain in China, particularly as Uyghur labor is transported to factories in and around Shanghai and elsewhere in eastern China?
- Would you be willing to do scientific testing on products that use cotton or rayon, to ensure that they are not made from inputs from the Xinjiang Uyghur Autonomous Region, where the PRC is conducting genocide?
- Has your company conducted due diligence assessments to identify and map out every level of your supply chain – including contractors, sub-contractors, suppliers, sub-suppliers, and all operations and business relationships in China? If so, can you share your findings with us?
- Can you confirm if workers in China across your supply chain are allowed to freely organize labor groups or conduct religious activities at their workplace?
- What monitoring mechanisms, if any, does Milwaukee Tool have in place to ensure that no goods made with forced labor are sold in stores and online?

Thank you in advance for your consideration of these questions. We look forward to engaging with you on this timely and important issue.

Sincerely,



Representative Chris Smith  
Chair



Senator Jeff Merkley  
Cochair

## FORCED ORGAN HARVESTING AND CORPORATE COMPLICITY IN CHINA

The Chinese government is building the world's largest DNA database by acquiring DNA sequencing data from companies within China and across the globe, including the USA.

Numerous biotechnology companies are assisting the Chinese police in building this database and may find themselves complicit in these violations. They include multinational companies such as U.S.-based Thermo Fisher Scientific and major Chinese companies like BGI (Beijing Genome Institute), AGCU Scientific, and Microread Genetics.

Chinese authorities are enrolling in genome surveillance tens of millions of people in Tibet and Xinjiang (aka East Turkistan), who have no history of serious criminal activity. Those individuals have no control over how their samples were collected, stored, and used. Neither do they know of the potential implications of DNA collection for them and for their extended families.

The indiscriminate collection of biometric data in China was first reported by Human Rights Watch. Beginning in 2013, state authorities obtained biometric samples from nearly the entire population of Tibet (3 million residents) and in 2016, a similar program was launched in Xinjiang, where data from the region's estimated 15 million Uyghurs and other Turkic people was collected under the guise of free annual physical exams. Note, the Han Chinese population of the region was exempt from this program. Despite it being "free exams," no results were returned to these residents.

Mass DNA sequencing is a costly project. The least expensive sequencing of a small portion of DNA today costs \$100 per sample. To sequence 15 million samples in Xinjiang can cost at least \$1 billion to \$2 billion. To maintain these databases for tens of millions of samples, you need a substantial number of professional bioinformatic specialists, specialized computers and software, and expensive sequencing machines.

Why is the Chinese government investing billions of dollars to sequence the DNA of the entire population of Xinjiang and Tibet?

What can DNA sequenced data be used for? DNA sequencing can be used in basic biological research, disease discovery, finding of novel treatments, forensics, ancestry research, and in organ transplantation.

Now let's see which of these uses can be applied to Uyghur people in Xinjiang:

- Finding disease mutations and ancestry research? In the region, where the Chinese government is conducting genocide against Uyghur people by detaining up to 3 million (according to the State Department) of them in prisons and camps? The answer is "NO."
- For forensic investigation? On the rest of the population of Uyghurs who are not yet detained? On people who are tightly monitored by extensive surveillance cameras? On people whose passports have been confiscated by authorities since 2016? On people whose kitchen knives are chained in their homes? They live in open air prisons.

They have no way to commit a criminal act even if they want to. On the margin it can add to the cost of DNA sequencing by tightening surveillance capacity. But the answer is "NO."

Then the only other reason for DNA use left is for organ transplantation.

And "YES," its use for forced organ harvesting and transplantation can absolutely justify the enormous cost of mass DNA sequencing.

According to witnesses, authorities in Xinjiang, on a mandatory basis, withdraw not only blood for DNA, but also perform an ultrasound check of all internal organs including an iris scan. Again, patients never receive the results of these health checks.

China's organ transplantation industry amounts to, at a minimum, 60,000 organ transplants per year. The least expensive kidney transplant costs around \$70,000 and other organs can cost up to half a million dollars.

In free countries like the USA and Europe, organ donor recipients are on a waitlist for years for matching donor organs, while in China the matching donors can be found in a few weeks. The Chinese government favors forced organ harvesting from prisoners of conscience and this has been practiced for decades, involving a very large number of Falun Gong practitioners and now Uyghurs. According to research conducted by Ethan Gutmann, an estimated minimum of 25,000 Uyghurs are subject to forced organ harvesting per year.

For successful organ transplantation, doctors rely on several important criteria including three main blood tests, cell surface tests and limited DNA tests to determine if a patient and a potential donor are a match. Current genetic tests detect differences in DNA sequences at just a few specific locations in the genomes of transplant recipients and their organ donor. The fewer the differences, the better the chances of long-term acceptance of the new organ. Whole genome sequencing data for a large number of genes would give a better match of donor and recipient organs, which in turn will result in no rejection and long-term survival of transplanted organs.

When a patient requests an organ in China, his/her DNA-sequenced data will be blasted against millions in the DNA database stored in computers. Within a few minutes, a perfect match will be found. If a potential donor of the organs is not in prison or a camp, then Chinese authorities can easily find a reason to detain a match to be killed for their organs on demand.

This is the main reason why the Chinese government invested billions of dollars in DNA sequencing of the entire population of Xinjiang and Tibet. Because it will make exponentially many more billions of dollars per year in return.

Thermo Fisher's involvement in forced organ harvesting in Xinjiang is undeniable. But, while it has vowed to stop selling sequencing machines to the region and to stop providing technical support to maintain them, the company is very successfully selling HLA kits and other custom-made DNA profiling products for organ transplantation, as high as in the ten million range. Thermo Fisher's Huaxia PCR amplification kit was developed specifically to identify the genotypes of Uyghur, Tibetan, and Hui ethnic minorities.

The continued sale of DNA profiling products and technologies by Thermo Fisher to China has to be stopped by Congress!

I urge Congress to question, and if necessary to sanction, Thermo Fisher for aiding China in the genocide of the innocent Uyghur people and prisoners of conscience throughout mainland China!

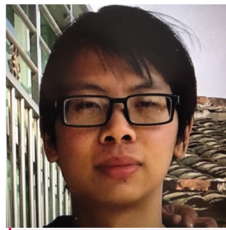


Changsha Funeng is an anti-discrimination NGO based in Changsha (Hunan province, China). It was founded by **Cheng Yuan (程渊)**, an activist with over ten years of experience advocating for health rights and fighting discrimination on the basis of disability and health status, including through impact litigation.

On **22 July 2019**, Cheng Yuan and his NGO colleagues **Wu Gejianxiong (吴葛健雄)** and **Liu Dazhi (刘大志)** were arrested by State Security police in Changsha and accused of 'subverting State power,' a **serious national security crime** carrying a heavy sentence. They are now known as the '**Changsha Three**'.



**Cheng Yuan**  
(程渊)



**Wu Gejianxiong**  
(吴葛健雄)



**Liu Dazhi**  
(刘大志)

Since their arrest, the **Special Procedures** – the United Nations (UN)'s independent human rights experts – have responded by increasing international visibility on the 'Changsha Three,' and stepping up pressure on the Chinese authorities, through:



A **joint letter** by 6 UN experts sent to the Chinese government in December 2019: they raise 'serious concerns' about their 'short-term enforced disappearance,' the 'serious charges brought against them' as well as over their 'preclusion from contact with their families and their legal representation.'



A **legal opinion** by a group of UN experts from April 2020 determining that their detention is arbitrary under international law.

In early August 2021, Cheng Yuan's wife, **Shi Minglei (施明磊)**, said Cheng Yuan had been **sentenced in a secret trial to 5 years' imprisonment**. Lawyers appointed by the government refused to provide the verdict to the family. In early January 2022, Cheng Yuan's family was informed that he had been transferred to **Chishan Prison**, where communication with his family has been highly restricted. Until today, Cheng Yuan **family's requests for a visit have been refused**.

Wu Gejianxiong and Liu Dazhi were sentenced to three and two years in jail respectively. Liu was released in July 2021, based on time served.

**As of July 2022, Cheng Yuan and Wu Gejianxiong remain in prison, arbitrarily detained for over 1000 days.**



“

***This is an outright illegal trial;  
our family will never recognise it.***

*Shi Minglei*



## FOCUS: UN EXPERTS' LEGAL OPINION ON THE ARBITRARY DETENTION OF THE 'CHANGSHA THREE'

In April 2020, the five independent experts composing the UN Working Group on Arbitrary Detention determined in a [legal opinion](#) that Cheng Yuan, Wu Gejianxiong and Liu Dazhi's detention is arbitrary, because it:

### ■ Is clearly impossible to invoke any plausible legal basis:

the experts stress that the grounds for arrest – for 'subversion of State power' – are 'vaguely and broadly worded provisions [that] could be used to deprive individuals of their liberty without a specific legal basis and violate the due process of law upheld by the principle of legality.' The Working Group, and other UN experts have [repeatedly called](#) for the repeal of article 105 of China's Criminal Law on 'inciting subversion' and 'subversion of State power'.

### ■ Results from the exercise of rights and freedoms guaranteed by the Universal Declaration of Human Rights (UDHR):

the experts point that they were not presented with 'any evidence that the exercise by Messrs. Cheng, Liu and Wu of their rights to freedom of expression and of peaceful assembly and association could be reasonably qualified as posing threats against morality, public order and the general welfare in a democratic society'.

### ■ Resulted from grave violations of fair trial guarantees, including:

- ❑ 'the absence of legal counsel violated their rights to a fair trial and due process under articles 10 and 11(1) of the UDHR'.
- ❑ the denial of the 'right to be visited by and to correspond with, in particular, family members'.

### ■ Is discriminatory, as the experts consider that:

- ❑ the detention constitutes a 'violation of articles 2 and 7 of the UDHR on the grounds of discrimination, based on political or other opinion as well as on their status as human rights defenders'.
- 'they have been a target of persecution and there is no explanation
- ❑ for this other than their exercise of the right to express views and convictions'.

The five UN experts declared that Cheng Yuan, Wu Gejianxiong and Liu Dazhi should be released 'immediately.'

## LET'S RECAP: A DETAILED TIMELINE OF THE 'CHANGSHA THREE' CASE

2019

22  
July

Cheng Yuan, Wu Gejianxiong and Liu Dazhi are taken by State Security police. Cheng's wife, Shi Minglei is also blindfolded, handcuffed, and taken for interrogation. Her personal belongings (IDs, electronic devices) are taken away, and her bank account frozen. She is released the next day but is placed under residential surveillance<sup>1</sup> at her own house in Shenzhen City, suspected of 'subversion of State power' – yet, no charges are officially brought against her.

Cheng Yuan is formally **arrested on charges of 'subversion of State power'**, held at Hunan's National Security Detention Center). All requests for visits by the three defenders' families and lawyers are rejected.

Shi Minglei continues to suffer **intimidation and threats**. On **28 September**, State Security police warn her not to give media interviews or post on social media ahead of China's National Day (1 October). On **24 October**, she is threatened by Changsha's Procuratorate, accused of violating the terms of her residential surveillance.

2019

26  
August

2019

11  
December

Six UN experts<sup>2</sup> write a joint **letter** to the Chinese authorities:

*'We express our serious concerns regarding the alleged arbitrary detention, short-term enforced disappearance and formal arrest of Messrs. Cheng, Liu and Wu, the serious charges brought against them, which appear to be a direct result of their human rights activism, in particular their advocacy for non-discrimination and the rights of disadvantaged groups in the realization of their right to health.'*

*'We also wish to express our concerns over their preclusion from contact with their families and their legal representation in order to mount their legal defence [and] serious concerns over their treatment, along with the conditions in which they are being kept.'*

*'We further express concerns about the placement of [Shi Minglei] under residential surveillance and the investigation opened against her and Mr Cheng's Brother.'*



The experts request the government to give detailed information on the legal and factual grounds of detention and charges brought, their conditions of detention, and access to lawyer and family. They urge the government to take all measures to halt the violations and prevent their reoccurrence.

The government provides a one-paragraph [response](#), indicating the authorities handled the case 'in accordance with the law' and 'fully guaranteed their rights.'

2020

**23**  
December

2020

**JAN**

Shi Minglei is released from residential surveillance, her personal belongings returned to her by the police and her bank account finally unblocked. In the weeks following, Shi Minglei, and Cheng Yuan's brother, Cheng Hao, are threatened by police for speaking out in support of Cheng Yuan.

The UN's Working Group on Arbitrary Detention determines that the detention of Cheng, Wu, and Liu, is arbitrary, because it lacks a legal basis, is discriminatory, it did not comply with fair trial guarantees, and it results from the exercise of fundamental freedoms and rights. The Working Group calls for their immediate release.

2020

**APR**

2020

**24**  
June

Cheng and his colleagues are [indicted in secret](#). Shi Minglei is only informed about it 16 days later, after contacting the Procuratorate.

The three defenders have been [unable to meet with lawyers appointed by their families](#) since their arrest. The authorities later inform their families that the defenders have 'dismissed' their lawyers, who have been replaced by government-appointed ones. However, the authorities refuse to disclose the new lawyers' identity and contact information to the families.

Cheng Yuan and his colleagues are **tried in secret**: neither the court nor the government-appointed lawyers inform their families of the hearing. Shi Minglei and other family members only find out that the cases had been heard after attempting through various channels to reach the government-appointed lawyers.

2020

SEP

2021

7

April

Shi Minglei and her five-year-old daughter are able to relocate to the United States.

Nearly ten months after their secret trial, the three defenders are sentenced, once more without notification from the court. Family members are only informed later by one of the government-appointed lawyers that Wu Gejianxiong and Liu Dazhi had been **sentenced to three- and two-years imprisonment** respectively. Yet, Cheng Yuan's verdict remains unknown to his family until **early August 2021**, as the lawyers refuse to disclose the sentence and location of the prison, or to provide a written copy of the official verdict, as required by Chinese law.

**Liu Dazhi** was reportedly released in July 2021, as he had already been held in pre-trial detention for two years.

2021

20  
July

2021

27  
September

The European Union (minus Hungary) calls for their 'immediate release' at the 48th session of the UN Human Rights Council.

Cheng Yuan is granted a three-minute-long call with his older sister in China, and tells her that he's serving his sentence at Jinshi Prison. This is the first direct contact between Cheng Yuan and his family since his detention. Cheng's father is notified by mail on the same day that Cheng was transferred on 15 September, and that he has been sentenced to **five years imprisonment** for 'subversion of State power'.

2021

2  
October

Prison officials inform the family that allegedly due to COVID-19, all meetings between prisoners and family members are suspended until further notice.

2021  
**22**  
December

Cheng Yuan calls his sister to ask for clothes, as he's reportedly suffering from a cold. He did not receive any of the clothes his family had previously sent to the prison, in 24 separate packages. Wu Gejianxiong is allowed to call his father to ask for ointment to treat injuries and muscle strains. Their families are very concerned about the health of the two defenders in prison.

Cheng's family is informed that Cheng was transferred to Chishan Prison (赤山监狱, Yuanjiang City, Hunan province) on **18 January 2022**. Their requests for a visit are denied by prison officials.

2022  
**JAN**

2022  
**9**  
February

The United Kingdom's Human Rights Ambassador reiterates calls for Cheng Yuan's release.

Shi Minglei issues an open letter to the Governor of Hunan Province, Mao Weiming, stating that her husband and colleagues have been unable to meet with their lawyers and families since their arrest. Since their transfer to Chishan Prison in January 2022, they have even been denied the right to write letters and have private phone calls with their loved ones, leading to a complete lack of information and access to the detained defenders.

2022  
**10**  
May

2022  
**18**  
May

Shi Minglei writes an open letter to High Commissioner Michelle Bachelet prior to her visit to China. Immediately after, Chishan prison officials allow Cheng Yuan to write a first letter to his sister, delivered on 22 May through expedited shipping.

Cheng Yuan's family receives three letters from him, indicating he has been held in solitary confinement for three months. Based on the testimony of other detainees, Shi Minglei suspects he is denied any communication with others, and is held in a small cell with room only for a single bed, no room to move around, no windows, and strong lights 24 hours a day. He reports that he has lost weight, and that his hair 'is nearly all white.'

Shi Minglei suspects that he's been subjected to *ill-treatment and acts tantamount to torture*, as well as to *forced labour*. This last technique, to coerce him into 'confessing' and 'implicating other people, was also evident in the case of Taiwanese activist Lee Ming-che (李明哲), himself previously detained in Chishan Prison.

2022

4  
July

Shi Minglei believes that pressure from family members and engagement with the UN has reportedly prompted this change in his conditions, but regrets that her husband has still not been allowed to speak with her directly.

1 - Note: this correspond to 'residential surveillance' under the Criminal Procedure Law, but not to 'Residential Surveillance at a Designated Location'.

2 - UN Special Rapporteurs on human rights defenders, freedom of expression, freedom of peaceful assembly and association, and the right to health, and the Working Groups on arbitrary detention, and on enforced disappearance.



## JUSTICE &amp; SAFETY

## Chinese prisoners: We were forced to make Milwaukee Tool gloves for cents each day

*Chishan prisoners report being forced to produce work gloves for the Brookfield, Wis.-based tool company, which did not answer specific questions.*



by Zhen Wang / Wisconsin Watch  
May 4th, 2023

Why you can trust Wisconsin Watch



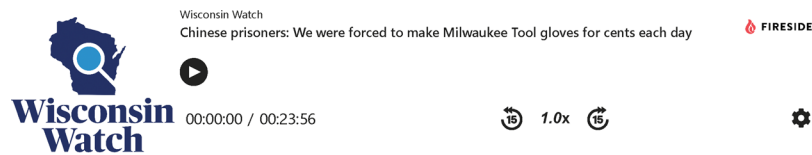
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Milwaukee Tool: Former Chinese inmates speak out

Shi Minglei, the wife of an imprisoned Chinese human rights activist Cheng Yuan, fled to the United States in 2021 and now lives in Minnesota's Twin Cities. She is calling for Brookfield-Wis.-based Milwaukee Tool to stop sourcing gloves made from forced prison labor in China. A Milwaukee Tool spokesperson says the company has "found no evidence to support" allegations about forced labor. Shi is shown in Minneapolis on Feb. 19, 2023. (Ariana Lindquist for Wisconsin Watch)

**Reading Time:** 11 minutes

*[Wisconsin Watch](#) is a nonprofit and nonpartisan newsroom. Subscribe to our [newsletter](#) to get our investigative stories and Friday news roundup.*



*Editor's Note: In Chinese culture, people typically list their family name first, followed by their given name. On second-references to Chinese people quoted in this story, Wisconsin Watch is using their family name.*

Day after day over nearly five years in Chishan Prison, Lee Ming-che walked the 5 minutes from his cell to one of several manufacturing spaces on prison grounds.

The prison in China's central Hunan Province houses political prisoners like Lee, a renowned human rights activist who [met with then-House Speaker Nancy Pelosi](#) during her consequential 2022 visit to Taiwan. Lee, a Taiwanese college administrator, was convicted in China of "subverting state power" in 2017 and released last year.

In an interview in Mandarin with Wisconsin Watch from his home in Taiwan, Lee said officials forced him and hundreds of other Chishan prisoners to work roughly 13 hours a day, seven days a week with just a few days off around the Chinese New Year. His pay? The equivalent of about 48 cents a day.

"I was like a robot, doing work in the daytime and then returning to the cell (at night)," Lee recalled.

His tasks included cutting polyester fabric and sewing it together to make work gloves, producing at least 200 pairs a day.

<https://wisconsinwatch.org/2023/05/milwaukee-tool-gloves-chinese-prisoners/>

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Milwaukee Tool: Former Chinese inmates speak out

He said he knew the gloves were destined for the United States.

He later learned about the company whose brand was on the gloves, stamped with a thunderbolt and the word “Milwaukee.” Shown photos of Milwaukee Tool gloves for sale at two Madison, Wis. Home Depot stores, Lee verified four types of gloves he was forced to make — Free-Flex, Demolition, Performance and Winter Performance.

“I can recognize the models and the logo of work gloves,” Lee told Wisconsin Watch. “As long as I’ve made them before, I can recognize them.”

A Wisconsin Watch investigation found additional evidence that Chishan prisoners were paid pennies to make work gloves bearing the iconic brand of Milwaukee Tool, [a company with a nearly 100-year history in Wisconsin](#).

A supplier for Milwaukee Tool subcontracted work to the prison, two former prisoners said in separate interviews. A self-identified salesperson of the supplier, Shanghai Select Safety Products, said it manufactured the majority of Milwaukee Tool’s work gloves. And regulatory [filings](#) show Shanghai Select was contracted to manufacture “Performance Gloves” for a subsidiary of Milwaukee Tool’s parent company.



Lee Ming-che addresses an audience at an event held by human rights groups in Taiwan, on Dec. 10, 2022. Lee, a Taiwanese college administrator, was convicted in China of “subverting state power” in 2017 and released in 2022. He says he was forced to make Milwaukee Tool glove models under grueling conditions while incarcerated at Chishan Prison in China’s central Hunan Province. (Courtesy of Lee Ming-che)

### **Milwaukee Tool: ‘no evidence to support’ forced labor accusation**

Wisconsin Watch began its investigation after Chinese exile Shi Minglei, who now lives in Minnesota’s Twin Cities, launched a [change.org](#) petition in November to pressure Milwaukee Tool to stop sourcing gloves made at the prison. She alleges her husband, imprisoned human rights activist Cheng Yuan, also has been forced to use a sewing machine to produce goods at the prison. Shi cannot verify he is making Milwaukee Tool products, but she heard from two former prisoners of Milwaukee Tool’s production at the prison.

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Milwaukee Tool: Former Chinese inmates speak out



The Milwaukee Tool global headquarters are seen at 13135 West Lisbon Road, Brookfield, Wis., on March 9, 2023. A spokesperson says the company “found no evidence to support” allegations that subcontractors have used forced prison labor in China to produce several types of Milwaukee Tool-branded gloves. (Jim Malewitz / Wisconsin Watch)

A Milwaukee Tool spokesperson said the Brookfield-based company has “found no evidence to support the claims being made” about its link to forced labor.

“Milwaukee Tool regularly conducts a complete and thorough review of our global operations and supply chain,” Kharli Tyler, vice president of brand marketing, said in an email that did not answer specific questions from Wisconsin Watch.

Thirteen shipments of work gloves from Shanghai arrived at United States ports since the summer of 2019 when Lee said he noticed Chishan prisoners making Milwaukee Tool-branded gloves, according to an analysis of customs shipping data provided to Wisconsin Watch by S&P Global Market Intelligence.

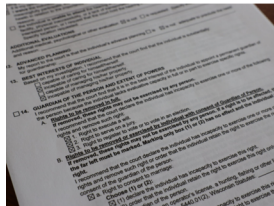
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Milwaukee Tool: Former Chinese inmates speak out

## MORE FROM ZHEN WANG



### Why I investigated Milwaukee Tool work gloves – and what we learned



### Why some Wisconsin residents with mental disabilities lose voting rights – and how they can restore them

Listed as a consignee for the gloves: Milwaukee Electric Tool Co.

Those records end in 2020, but whether the shipments ended is unclear. Companies can ask federal Customs and Border Protection to shield their names and addresses from published shipping data, said S&P Global spokesperson Katherine Smith.

“If Milwaukee Tool was sourcing from a foreign prison, they’re in violation of Section 307,” said Charity Ryerson, a human rights lawyer and executive director of Chicago-based Corporate Accountability Lab, referring to [the federal law](#) banning imports of goods made with forced labor.

Milwaukee Tool’s parent company, Hong Kong-based Techtronic Industries Company Limited, has a policy prohibiting the use of “[modern slavery and human trafficking](#).” The Milwaukee Tool Legal Council in December [told the Business and Human Rights Centre](#) that “a thorough investigation of these claims was conducted, and we have found no evidence to support the claims being made.” The company “does not tolerate the use of forced labor.”

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Milwaukee Tool: Former Chinese inmates speak out

In February, in a response shared with Wisconsin Watch, DLA Piper, a law firm with offices around the world that represents Milwaukee Tool and Techtronic Industries, said forced labor allegations were “investigated, and denied.”

### **Prisoners discuss forced labor**

Shi, who is pushing the change.org petition, has had little contact with Cheng since his imprisonment in 2019. She said her husband wrote three letters to his family in 2022 in which he opaquely referenced forced labor.



Chinese exile Shi Minglei, who now lives in Minnesota's Twin Cities, is shown with her husband Cheng Yuan around Christmas of 2018. The photo was taken about six months before authorities in China arrested Cheng on subversion charges while he was running a Chinese organization that advocated for victims of discrimination. Cheng is still in prison, and Shi says he has been forced to make products under grueling conditions. (Courtesy of Shi Minglei)

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Milwaukee Tool: Former Chinese inmates speak out

[In a letter to his sister](#) last May, Cheng implicitly described excessive hours of forced labor by citing two lines from a poem by [Tao Yuanming](#), one of China's great poets. Translations [go like this](#): "I rise early to clear away the weeds, Till, hoe on shoulder, I plod home with the moon."

Shi said she aims to ease the slavery-like conditions endured by Cheng, who was arrested while [running a Chinese organization that advocated for victims of discrimination](#).

Wisconsin Watch interviewed an additional former prisoner who claims Milwaukee Tool is profiting from forced labor at Chishan Prison.

He asked to use the pseudonym Xu Lun to protect his safety.

While incarcerated at Chishan Prison, Xu remembers making all types of work gloves Lee identified and another Milwaukee Tool-branded model: Winter Demolition.

"Everyone knows these things will be exported to America," Xu said. "We stitched labels onto every single pair (of gloves). Labels do show the address."

The label attached to one pair purchased by Wisconsin Watch reads: "ENGINEERED BY MILWAUKEE TOOL. PROFESSIONALLY MADE IN CHINA," and it includes the company's website URL and Brookfield address.

Xu said many prisoners developed eczema in hot and humid conditions at the prison workplace. Lee said he now has allergies which his doctor blames on the clouds of fabric dust he inhaled while working in prison.



The label on a pair of Milwaukee Tool "Performance" gloves is seen at a Home Depot in Madison, Wis., on Feb. 5, 2023. It reads "Professionally Made in China." Two men say they were forced to make "Demolition" gloves and other Milwaukee Tool glove models under grueling conditions while incarcerated at Chishan Prison in China's central Hunan Province. (Zhen Wang / Wisconsin Watch)



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Milwaukee Tool: Former Chinese inmates speak out

### Contracting down the supply chain

Lee and Xu independently identified the name of the supplier that outsourced work to Chishan Prison as Shanghai Select Safety Products, [which advertises its own line of gloves](#).

Lee said he heard the name from the prison police and also saw it on purchase orders. Xu recalled hearing the supplier's name from a prisoner who worked in a warehouse stocking gloves.



The Milwaukee Tool global headquarters are seen at 13135 West Lisbon Road, Brookfield, Wis., on March 9, 2023. Regulatory filings show Shanghai Select Safety Products was contracted to manufacture "Performance" gloves for a subsidiary of Milwaukee Tool's parent company. Two former Chishan prisoners separately identified Shanghai Select Safety Products as a Milwaukee Tool supplier that outsourced work to their prison, where they were forced to produce gloves for the equivalent of pennies each day. (Jim Malewitz / Wisconsin Watch)

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Milwaukee Tool: Former Chinese inmates speak out

In August 2015, Shanghai Select Safety Products signed a \$1 million contract with Techtronic Trading Limited, a subsidiary of Techtronic Industries, according to a [2018 initial public offering](#) filed with the Chinese National Equities Exchange and Quotations. The contract was later renewed, and the Chinese manufacturer was contracted to make “Performance Gloves” for Techtronic Trading in 2017, the IPO shows.

Also in June 2015, Milwaukee Tool introduced a new product, Demolition work gloves. The next year, the company launched three more models: Free-Flex, Performance and a fingerless version of Performance made of the same polyester fabric.

“For the next two, three, and four years, you’ll continue to see me up here talking about the new latest greatest gloves from Milwaukee,” [a Milwaukee Tool product manager](#) announced at a 2016 event.

Milwaukee Tool has continued to expand its product line to add gloves with dipped coating and goatskin leather work gloves.

### **Salesperson: ‘We’re making the majority of Milwaukee-branded work gloves’**

In February, this reporter sought to purchase Milwaukee Tool-branded gloves on Taobao, China’s version of Amazon.com. Two third-party vendors told the reporter they sell work gloves that suppliers rejected as defective. Shanghai Select Safety Products was one of such suppliers.

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Milwaukee Tool: Former Chinese inmates speak out



Milwaukee Tool "Demolition" gloves are seen at a Home Depot in Madison, Wis., on Feb. 5, 2023. Two men say they were forced to make "Demolition" gloves and other Milwaukee Tool glove models under grueling conditions while incarcerated at Chishan Prison in China's central Hunan Province. (Zhen Wang / Wisconsin Watch)

Posing as a middleman for an American buyer, this reporter separately contacted a self-identified Shanghai Select Safety Products salesperson. "We're making the majority of Milwaukee-branded work gloves," the salesperson said in a text message.

The salesperson shared a catalog that identified Shanghai Select as a gloves supplier for Milwaukee Tool.

Shi believes Shanghai Select Safety Products outsources to cut labor costs and subcontracts portions of work gloves orders to the Chishan Prison corporation.

China's government prison enterprise system requires provincial governments to pay for prison operations. The government-run prison enterprise contracts with private businesses for prisoners to produce goods,

<https://wisconsinwatch.org/2023/05/milwaukee-tool-gloves-chinese-prisoners/>

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Milwaukee Tool: Former Chinese inmates speak out

generating revenue to run the prison.

Chishan Prison contains around 2,900 prisoners. The same prison corporation runs 11 manufacturing spaces within the compound.

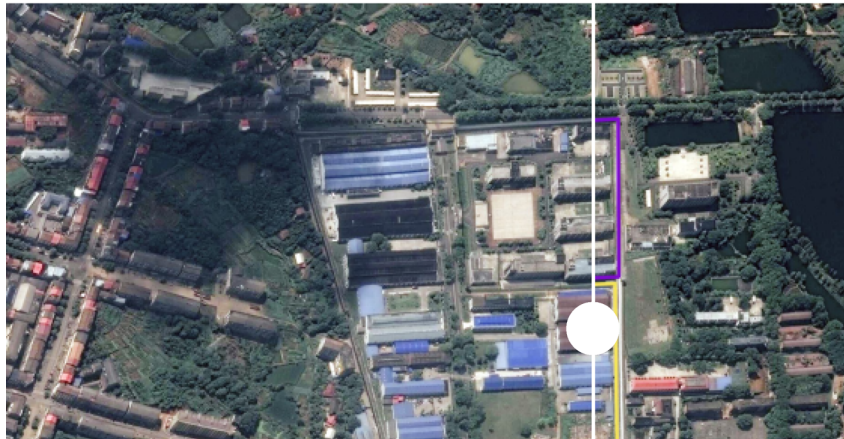
Examining satellite imagery, Lee and Xu each pointed out the buildings on prison grounds where they made gloves.

These long, rectangular workshops cover more than 80,000 square meters. Their metal roofs are brightly colored, often blue, but sometimes red or black, according to the satellite image.

### Forced labor a growing concern

Concerns over the use of forced labor in China are rising in the United States. A 2021 [law](#) prohibits importation of all goods from China's far-western Xinjiang region due to the rampant use of forced labor. Chishan Prison sits outside of that region.

Since the 1990s, CBP has issued [60 active enforcement actions related to](#) goods made by prisoner laborers, with two-thirds against Chinese goods. China in recent years has faced scrutiny related to the use of forced labor of Uyghurs, a [largely Muslim ethnic minority group](#) whom Chinese officials have forced into “re-education” camps — a move the United Nations has said could be considered [a crime against humanity](#).



<https://wisconsinwatch.org/2023/05/milwaukee-tool-gloves-chinese-prisoners/>

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Milwaukee Tool: Former Chinese inmates speak out



Chishan Prison houses around 2,900 prisoners in a compound that includes 11 manufacturing spaces where prisoners are forced to work. "The whole prison is mainly divided into two separate areas of manufacturing and living area for prisoners," says Lee Ming-che, who was convicted in China of "subverting state power" in 2017 and released last April. Lee told Wisconsin Watch the purple border denotes the living area for prisoners while the yellow border shows the manufacturing area of the prison. The colored borders were added by Wisconsin Watch. (Satellite image ©2023 Maxar Technologies)

Ryerson of the Corporate Accountability Lab said the new regulations and scrutiny should prompt American companies to reassess and better monitor their supply chains.

"If you are so far removed from the supply chain that you are unknowingly sourcing from a Chinese prison, you are actually not keeping up with the rest of the industry," she said.

Peter Rickman, president of the Milwaukee Area Service and Hospitality Workers Organization, said such exploitative conditions stem from corporate executives who chase profits at the cost of the working class. Milwaukee Tool reported [\\$8.1 billion in sales in 2022](#), mostly in North America.

"Maybe (Milwaukee Tool is) ignorant of it. Maybe they are surprised themselves," Rickman said. "But that doesn't lessen their responsibility for ensuring wherever their production facilities are that workers are treated with dignity, respect, and humanity and are paid living wages."

Forced laborers at Chishan Prison get reimbursed monthly depending on the complexity of the task, ranging from 20 to 300 yuan, or \$3 to \$43, according to Lee and Xu.

In Wisconsin, some prisoners work in state-owned correctional industries and facilities. They get paid 97 cents per hour on average, according to an ACLU [analysis](#). That equates to a monthly wage of \$155 under 40-hour work weeks.

Over the past decade, American customers have [found](#) notes in the products hidden by inmates who make [Christmas cards](#), paper bags, ornaments or garments in Chinese prison labor facilities. Released prisoners

<https://wisconsinwatch.org/2023/05/milwaukee-tool-gloves-chinese-prisoners/>

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claimed they were forced to produce goods for renowned brands.

### Dragged into glove production

In the summer of 2019, Lee said he noticed many inmates pivoting away from other work to sew work gloves for Milwaukee Tool. He said the following year, he became part of the production line of hundreds of prisoners.

Lee said the 90-plus hour weeks they produced Milwaukee Tool gloves violate China's laws and regulations, including [Chinese Ministry of Justice](#) guidance to limit prison labor to 40 hours per week. The guidance also states prison labor products should be sold only within China.



Lee Ming-che addresses an audience at an event held by Amnesty International Taiwan, in Taipei, on Dec. 3, 2022. Lee, a Taiwanese college administrator, was convicted in China of "subverting state power" in 2017 and released in 2022. He says he was forced to make Milwaukee Tool glove models under grueling conditions while incarcerated at Chishan Prison in China's central Hunan Province. (Courtesy of Lee Ming-che)

But Chinese law prohibits work refusal by incarcerated people who have the ability to work. [Prisoners can be sent to solitary confinement](#) for refusing work, not working hard enough or "intentionally destroying tools of production."

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“Everything we know about the prison system in China indicates that prisoners do not have any meaningful choice in terms of engaging in labor,” said Nicholas Bequelin, former Asian-Pacific Regional Director at Amnesty International and a visiting fellow at Yale Law School.

“There just is no evidence that prisoners can refuse to work. And so, to that extent, that would be considered slavery.”

### Mixed results of self-regulatory tools

Techtronic Industries Company Limited, Milwaukee Tool’s parent, says it uses compliance tools and third-party auditors to ensure its 2,825 direct suppliers, including 1,165 in Asia, comply with its [policy](#) against modern slavery and forced labor.

“The supplier relationship will be terminated if major compliance issues are not corrected to meet set standards,” the company said in a [2022 Environmental, Social, and Governance](#) report.

But self-regulatory tools used by many multinational companies are flawed and often unable to detect forced labor, research shows.

For a 2021 book, Professor Sarosh Kuruvilla, a labor policies expert at Cornell University, examined more than 40,000 factory audits from 2011 to 2017 spanning 14 industries and 12 countries, including China. He found 45% were based on unreliable or falsified information. Audits in China were unreliable more than half the time.

Li Qiang, the founder of the New York-based nongovernmental organization China Labor Watch, said suppliers falsify information in multiple ways, such as faking data related to workers, products and salaries.

A 2018 study co-published by the University of Sheffield [found](#) audit systems tend to focus on the workforce of first-tier suppliers and neglect subcontracted portions, where the risks of forced labor are “highest.”

The study argued big brands squeeze suppliers by imposing short-term contracts, penalties and fees for late or low-quality orders while demanding razor-thin margins from the bottom of the supply chain.

Pressure to balance their own books and fear of jeopardizing contracts pushes suppliers to deceive auditors.

Li said subcontracting is common in China — especially for suppliers who cheaply fulfill orders from American buyers. Under these circumstances, the suppliers outsource part of the order without necessarily

<https://wisconsinwatch.org/2023/05/milwaukee-tool-gloves-chinese-prisoners/>

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Milwaukee Tool: Former Chinese inmates speak out

recording it, he said.

“When a supplier is placed to produce 10,000 pairs of gloves but subcontracts half, it is too hidden for auditors to find it out during the on-site audits,” Li added.

### Suffering ‘survivor guilt’

Back in Taiwan, Lee continues to speak out about his years in Chishan Prison. He calls forced labor a menace to human rights and global free trade.

“I certainly feel that I have the obligation to prove the thing happened there,” Lee said.



Milwaukee Tool "Performance" gloves are seen at a Home Depot in Madison, Wis., on Feb. 5, 2023. Two men say they were forced to make "Demolition" gloves and other Milwaukee Tool glove models under grueling conditions while incarcerated at Chishan Prison in China's central Hunan Province. (Zhen Wang / Wisconsin Watch)

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Milwaukee Tool: Former Chinese inmates speak out



Shi Minglei, the wife of an imprisoned Chinese human rights activist Cheng Yuan, fled to the United States in 2021 and now lives in Minnesota's Twin Cities. She launched a change.org petition in November calling for Brookfield-Wis.-based Milwaukee Tool to stop sourcing gloves made from forced prison labor in China. A Milwaukee Tool spokesperson says the company has "found no evidence to support" allegations about forced labor. Shi is shown in Minneapolis on Feb. 19, 2023. (Ariana Lindquist for Wisconsin Watch)

Shi said she suffers from "survivor guilt" as she lives relatively comfortably in the United States while pushing to improve conditions for her husband in China.

After Chinese officials arrested Cheng in July 2019 on subversion charges, Shi and her 3-year-old daughter were placed under house arrest for 180 days on suspicion of financing his activities. Shi said five Chinese security police officers interrogated her after she posted the family's struggles on Twitter — threatening to take her daughter away if she continued posting.

That prompted Shi to flee to the Twin Cities, where she plans to keep pressing Milwaukee Tool to stop benefitting from forced labor. In fact, Shi and her attorneys are gearing up for a lawsuit against the company for the use of forced labor.

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Milwaukee Tool: Former Chinese inmates speak out

“We hope Milwaukee Tool will acknowledge it, apologize for it, and stop it,” Shi said. “We won’t surrender.”

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STATEMENT OF ROGER W. ROBINSON, JR., IN PARTNERSHIP WITH  
THE COALITION FOR A PROSPEROUS AMERICA

Mr. Chairman, I am grateful for this opportunity to submit the statement before you today as the former Chairman of the U.S.-China Economic and Security Review Commission, Chairman and Co-founder of the Prague Security Studies Institute, and an advisor to the Coalition for a Prosperous America. As a former international banker, a senior White House official and founder of a successful business and think tank, it is a privilege to bring my over forty-five years of experience in national security and global finance to the table in seeking to enrich these important proceedings.

The topic of this hearing is very timely, as the CCP's economic aggression towards our nation has been a driving force—and funding engine—for most other forms of its malign behavior and hostile actions. Without sufficient economic and financial resources and influence from Western businesses, the CCP would be unable to accomplish their overarching strategic goals and inflict more immediate harm to the human rights and well-being of all people groups, but notably those living under the oppressive regime of the CCP.

We are talking about multi-faceted economic aggression here, going well beyond traditional trade and commercial topics. For the most part, the Commission is well aware of the various iterations of China's economic aggression, and they need not be repeated here. That said, the CCP's economic and financial warfighting is, in no small part, dedicated to ensuring that it continues to attract massive annual dollar and other financial flows from the U.S. and allied capital markets.

My testimony will focus on this last point, as absent China's continued, and largely unfettered, access to the U.S. debt and equity markets alone, most, if not all, of their economic predations globally would be severely hobbled, if not made impossible. The Commission would likely benefit from an improved understanding of the inordinate financial risks facing American investors associated with holding Chinese corporate securities and sovereign bonds, the monumental national security and human rights concerns being funded and/or facilitated by these CCP corporate proxies and potential policy solutions that, in my view, should be enacted forthwith.

#### **Potential Policy Solutions**

Rather than postponing a discussion of such potential policy solutions to later in this testimony, I believe there is merit to outlining them at the outset.

Chinese CCP-controlled companies should be delisted and de-registered from U.S. exchanges (including the Over-the-Counter market)—and excised from U.S. indices, and the investment products benchmarked against these indices—as soon as practical (i.e., in no more than 180 days) and American persons worldwide should be prohibited by law from holding these Chinese corporate securities, if these companies are found to be:

1. Non-compliant with any U.S. federal securities laws and regulations;
2. Sanctioned or blacklisted by any agency of the U.S. government for actions counter to U.S. security or foreign policy interests and/or human rights violations or abuses;
3. Refusing to permit American shareholders from holding the actual shares of Chinese publicly traded companies via scandalous, “shell company” substitutes like Variable Interest Entities (VIEs)—domiciled in the Cayman Islands or other off-shore locations—rendering American investors without adequate legal protections, minority shareholder rights or actual Chinese shareholdings;
4. Moving the shares of non-U.S. regulated, non-transparent Chinese companies from domestic Chinese exchanges directly into U.S. indices and investment products benchmarked against them, notably thousands of so-called “A-share” companies;
5. Associated in any way with the PLA or PLAN, and/or CCP security or intelligence services;
6. Reliably reported to be engaged in human rights violations, such as aiding and abetting genocide, trafficking in forced labor, equipping concentration camps and helping build Beijing's surveillance state;
7. Helping arm, equip, or otherwise provide economic support for, the malevolent activities of adversaries of the U.S., such as Russia, Iran, and North Korea;
8. Participating in activities that disrupt the established, rules-based international order, such as building and militarizing illegal islands in the South



China Sea; impeding freedom of navigation in international waters and violating international environmental standards;

9. Utilizing illegal means to manipulate international organizations, data, and groups to advance the CCP's global agenda;
10. Not subject to the rule of law;
11. Failing to safeguard minority shareholder rights;
12. Not engaged in adequate material risk disclosure and standard corporate governance practices;
13. Subject to Article 7 of China's National Intelligence Law which requires, on demand of the CCP, the weaponization of Chinese companies for espionage, military activities, and other strategic purposes; and
14. Permitting the establishment of Chinese Communist Party cells in their senior management structures.

Moreover, the issuance of dollar-denominated Chinese sovereign bonds (which I term "Anti-Liberty CCP Bonds"), which provides billions of dollars annually in discretionary cash directly to the Communist Party, should be prohibited by law.

#### **How Does China View the Capital Markets Landscape and Define Success?**

- China experiences success when greatly expanding its access to hard currency financing and income, particularly via the sale of securities of CCP-controlled enterprises in Western capital markets and as a sovereign borrower.
- The CCP likely has no better American friend than Wall Street firms in protecting it from being meaningfully penalized by the U.S. government for its malevolent behavior in the form of capital markets sanctions and restrictions—arguably Beijing's worst fear. Maintaining this formidable, "elite capture" shield against financial decoupling by the U.S. is essential and constitutes a major victory to date for the CCP.
- Having some 5,000 Chinese companies traded on U.S. exchanges (including as many as 4,000 "A-share" companies listed only on domestic Chinese exchanges) represents a highly successful "force multiplier" in the funding of the CCP to the tune of trillions of dollars over the past decade or two.
- Listing—or even just trading—on U.S. exchanges imbues thousands of Chinese CCP-controlled enterprises with the equivalent of an American "Good Housekeeping Seal of Approval", stimulating other global exchanges to grant such market entry. Moreover, it sends a U.S. signal that could well end up relaxing strict regulatory compliance in allied capital markets and probably giving their regulators and asset managers a "green light" to add the securities of "bad actor" Chinese companies to the investment portfolios of millions of their retail investors.

As for metrics, the publicly available numbers tell part of the tale and, hence, China's "success" in our markets can be measured to a certain extent. It is also important to track the progress of BlackRock, J.P. Morgan Chase, and others in their pursuit of at least one of their "holy grails"—selling wealth management, mutual funds, ETFs and other investment products and services directly to Chinese retail and institutional investors. The CCP has mastered the technique of moving the goal lines of such Wall Street "holy grails" closer to realization during periods of uncertainty and Chinese funding shortfalls.

The CCP counts on the Treasury Department, the Securities and Exchange Commission, the National Economic Council and, to a lesser extent, the Commerce Department as well as some on the House Financial Services and Senate Banking Committees to, in effect (and perhaps unknowingly), take Wall Street's side (read the CCP's side) during policy debates inside and outside of the Executive Branch and shape the "fine print" regarding the scope and substance of sanctions, enforcement actions, waivers and the deliberate creation of loopholes.

Other factors concerning how China defines its success in the capital markets include:

- Acceptance of Chinese sovereign debt in global capital markets via the inclusion and growth of Chinese bonds in major global bond indexes (e.g., FTSE World Government Bond Index, JP Morgan Global Aggregate Bond Index, Bloomberg Barclays Global Aggregate Index), and the volume and size of China Interbank Bond Market.
- Capital formation with minimal loss of shareholder voting rights via market capitalization of Chinese companies versus shareholder voting rights granted to foreigners.

- Development of a modern financial services industry, without creating dependence on Western companies via progress in implementing eight main tasks of Fintech Development Plan for 2022-2025; growth of wealth management AUM; shift from traditional retail holdings of individual securities, real estate, and bank deposits to mutual funds and other pooled investment vehicles; and M&A activity in Chinese investment banks.
- Creation of a NASDAQ-style capital markets system that can support a leading technology via company listings and market capitalization of ChiNext (Shenzhen Stock Exchange) and STAR Market (Shanghai Stock Exchange), and the number of large, high-profile IPOs in mainland markets instead of U.S. and Europe.
- Stability of major financial institutions, including China's Big Four publicly traded banks, via their total assets and market capitalization.

### **China's Strategy and Financial Market Ambitions**

In my view, China likely must achieve annual economic growth of 5% or more to avoid slow-motion economic and financial implosion. Last year, China grew by some 2% (as the 3% figure is regarded by many experts as deliberately exaggerated). The country's real estate disaster, a massive debt burden, relatively low consumer spending as a percent of GDP and a host of other indicators makes clear that China is now somewhat adrift—seeking to cobble together a new growth model given that their traditional model of infrastructure development and debt stimulus has finally hit the wall.

In short, China must access hundreds of billions of dollars annually to remain a going concern over time (read continued CCP rule). There is no “going elsewhere” for such large amounts of capital when the U.S. controls as much as 60% or more of the world's dollar liquidity, the world's reserve currency and capital markets that are nearly the size of the rest of the world's combined. Capital markets sanctions are Beijing's single greatest non-military fear because—like the Soviet Union before them—the CCP knows that it is predominantly about the money (read access to trillions of dollars of American funds under management).

Other factors concerning how China views the capital markets include:

- Beijing taps global capital markets to finance enhanced economic development and growth.
- China sees capital markets development as necessary to help blunt U.S. financial tools, including sanctions regimes and potential dollar weaponization against the PRC.
- China does not view the financial services industry as an industry that should be developed for its own sake; they are not pursuing financialization of their economy in the style of the U.S. and U.K.
- China is not interested in creating an independent financial services constituency that could challenge the existing power structure (witness the train of events following the cancellation of the Ant Financial IPO on the eve of its initial public offering).

China's strategy is to use its command economy (at least when it comes to finance and the markets) to manipulate the global financial system to serve its funding, lobbying, and other strategic interests. Given the CCP's total control over Hong Kong, this task has been made considerably easier. The large-scale inclusion of CCP-controlled companies in the U.S. and allied capital markets—in terms of both listing and trading—is a major “validator” for China. The spikes and surges in bilateral tensions have flown right over China's capital markets penetration activities like storm clouds that pass over and do no harm. This fact alone constitutes quite an amazing success for the CCP.

Not that long ago, at a time when there were some 1,260 Chinese companies on the Commerce Department's Entity List for egregious corporate national security and human rights abuses, of that number only 16 were listed on the Treasury Department's OFAC List (i.e., the NS-CMIC List), impeding their ability to raise funds on the U.S. capital markets. Beijing has also, thus far, escaped any “sanctions harmonization” efforts in the Executive Branch, whereby a U.S.-sanctioned Chinese company by any relevant government agency would automatically cost the company access to U.S. exchanges and the ability of American persons to hold its securities. These are examples of how China achieves its key strategic objectives and ambitions—at U.S. expense.

With respect to the types of Chinese CCP-controlled enterprises which are presently listed or traded on U.S. exchanges, it is not pretty. Examples include: Chinese companies that are equipping concentration camps in Xinjiang; trafficking in forced

labor; aiding and abetting genocide; constructing the “surveillance state”; militarizing China’s illegal islands in the South China Sea; building advanced weapons for the PLA, including components for its last two aircraft carriers and first hypersonic glide vehicle; providing lethal and non-lethal aid to Russia in its war of aggression against Ukraine; and the list goes on. Indeed, many of the Chinese companies traded in the U.S. capital markets are presently under various U.S. sanctions regimes. It is an epic understatement to say that these malign Chinese corporate activities are impacting negatively on democratic societies and economic competitiveness, especially our own.

As mentioned above, China primarily relies on its perceived allies in the Executive Branch to do the heavy lifting on its behalf, with the priority being resisting, diluting, and otherwise eviscerating any capital markets sanctions directed its way. Whether it involves a waiver of federal securities laws via, for example, the Public Company Accounting Oversight Board’s MOU with the China Securities Regulatory Commission in May 2013, or waiving enforcement of President Biden’s Executive Order 14032, China has been able to largely count on the cooperation of the Treasury Department, the Securities and Exchange Commission, the National Economic Council and other senior Executive Branch decision-makers in the financial space to calm the waters and discreetly build the loopholes.

Most often it is a sad testament to the “revolving door” between Wall Street executives and key officials in the economic and financial agencies of government that gives rise to direct or indirect conflicts of interest, particularly with regard to capital markets sanctions designed to protect our national security, fundamental values, and the fiduciary interests of U.S. retail investors.

Congressional Committees with jurisdiction over this issue portfolio are likewise subject to intense Wall Street and Executive Branch lobbying or interventions that have often diluted and narrowed the legislative intentions of Committee members and staff (e.g., large-scale political donations).

The bilateral financial relationship is largely dominated by a relatively few large U.S. asset managers (e.g., Black Rock, Vanguard, State Street, etc.) and index providers (e.g., MSCI, FTSE–Russell, etc.). Firms such as Sequoia and KraneShares are also reportedly factors in maintaining a steady flow of U.S. investor capital into the coffers of the CCP.

### **CCP Strengths in the Capital Markets**

- As the world’s second largest economy perceived to be flush with cash and a potential market of 1.3 billion consumers, China has harnessed, directed and manipulated Western greed to advance its strategic aims to an unprecedented, perilous degree.
- Never in memory has this ominous level of “elite capture” within the U.S. by our foremost adversary been achieved.
- Despite the relatively near-term prospect of a shooting conflict with the United States over Taiwan that could largely wipe out U.S. investors in Chinese securities, there appears to be no one in the Executive Branch that can answer the straightforward question: What is the total amount of U.S. investor risk exposure to some 5,000 Chinese companies traded in the U.S. capital markets, including passive investment products? This reality alone is emblematic of China’s strength in dissuading the U.S. government from even questioning this massive, asymmetric financial risk to our country and its citizens, much less viewing the CCP—as many Americans do—in roughly the same league of adversary as the former Soviet Union and Nazi Germany.
- China has prospered by knowing that it largely continues to receive all of the benefits of an open, free-market U.S. economy and the rules-based international trading and financial systems, without abiding by the rules.
- Pay-offs, corruption, intimidation, covert action and extortion have been hallmarks of China’s wholesale penetration of U.S. society—and the capital markets are no exception.
- At a time of growing market saturation in the U.S. and ever finer spreads, American asset managers, index providers, and other market players are fairly desperate to replicate their U.S.-based successes in the relatively virgin territory of the Chinese domestic financial system, individual’s savings and still-nascent markets. China is acutely aware of these Wall Street cravings and has exploited them masterfully.
- As an authoritarian police state, China can turn on a dime when deemed necessary—witness the near overnight end of its coveted zero-Covid policy. This “command” system provides Beijing with greater agility to exploit targets of op-

portunity than their Western counterparts, such as cornering world markets in rare earths, cobalt, lithium, and other key resources for future economic competitiveness and global influence. Ironically, Beijing often attracts funding in the U.S. capital markets for the Chinese CCP-controlled enterprises mandated to secure these strategic objectives.

- The phenomenon of “national champions” and the ability to pick winners to receive massive government subsidies, priority resources, and other competitive advantages—without any regard to corruption safeguards and other Western constraints—often permits Beijing to win strategic contracts and “buy off” countries, regions, and even continents (e.g., Africa), sidelining the U.S. and our allies.
- China has achieved a virtual free pass—absent meaningful U.S. penalties—in its ability to collaborate with the world’s most heinous regimes and has successfully forged an updated “axis of evil” with Russia, Iran, and North Korea. To date, there has been virtually no serious sanctions for these malign activities in the U.S. capital markets.
- China has submitted an avalanche of patent applications, particularly concerning technologies which connect to the internet. State-directed efforts such as these are not just designed to unfairly enhance Chinese competitiveness, but also for the malevolent purpose of denying cutting-edge technologies to the U.S. and its allies. Worse still, China is attracting the funding to develop these technologies often from the U.S. debt and equity markets.

Other CCP market strengths include:

- A centralized regulatory regime that can enact reforms quickly inside China’s relatively young capital markets industry.
  - China is enacting reforms and plans to steadily develop its capital markets with internal and external capital.
  - Beijing has focused its capital markets on boosting small and mid-sized enterprises, especially in the technology sector.
- China has room to grow, with retail investors largely untapped, compared with the relatively saturated financial industry in the U.S. and Europe.
  - It is encouraging development of a wealth management industry.

China is exacting concessions and favors from major U.S. and European financial firms in exchange for relatively limited access to its retail investment market.

#### **CCP Weaknesses in the U.S. and Allied Capital Markets**

- Not one of the roughly 5,000 Chinese companies listed or traded on U.S. exchanges is compliant with U.S. federal securities laws, including Dodd-Frank.
- 95% of Chinese enterprises listed on the NYSE and NASDAQ are scandalously structured as Variable Interest Entities (VIEs), involving substituting the actual shares of Chinese companies with the shares of shell company contracts in the Cayman Islands with no actual Chinese stock changing hands, no minority shareholder rights and very limited, if any, legal recourse for U.S. investors.
- China engages in little, if any, material risk disclosure, corporate governance, risk management or the rule of law—standard requirements for their American and other Western corporate counterparts. The CCP is also stepping up harassment of American and allied diligence and research firms and auditors, such as Bain and Co., the Mintz Group, Deloitte and others. The CCP is likewise shutting down Western access to traditional Chinese databases like Wind Information and Capvision and seeking to blind further U.S. asset managers, index providers and U.S. investors by criminalizing standard market diligence and research activities by Western firms. Even the U.S. Chamber of Commerce has stated that this recent Chinese offensive against Western professional services firms “dramatically increases the uncertainties and risk of doing business in China”.
- Article 7 of China’s National Intelligence Law of 2017 permits the “weaponization” of all Chinese enterprises for strategic purposes, such as espionage and PLA activities, at the discretion of the CCP. This entirely negates the view that Chinese companies can be considered purely commercial, benign entities.
- The CCP has required all companies in China to establish Communist Party cells in their senior management structures, possibly including foreign-owned Chinese firms, which completely refutes the long-held argument that China possesses true “private sector” companies.

- China's real estate crisis—implicating some 30% of GDP, as much as half of the annual revenues of the provincial governments, some 40% of all bank lending and roughly 80% of the net worth of the Chinese population—remains an asymmetric risk to Western investors with little transparency on how this ticking economic bomb will be defused, if it is even possible.
- China's economic growth model of infrastructure investment and a massive accumulation of debt to stimulate demand has largely run out of gas and cannot be offset by relatively anemic consumer spending as a percent of GNP (some 50% versus more than 70% for most G-7 countries). In short, China will likely not be able to grow its way out of a debt overhang of more than 300% of GDP, putting U.S. retail investors at greater risk.
- China is a malevolent, "bad actor" country—witness its "no-limits" partnership with Russia and client state relationships with North Korea and Iran—that will likely take more aggressive actions against the U.S. strategic interests in the Pacific (e.g., the South China Sea) as well as move ahead with the forced reunification with Taiwan in the relatively near term. Accordingly, the CCP's "old friends" on Wall Street are having an increasingly difficult time justifying their large-scale risk exposure to Chinese securities, including those of U.S.-sanctioned enterprises. For over two decades, China and its U.S. financial supporters have avoided any granular policy scrutiny by the national security community, the Congress, the media and others. Hopefully, these days are rapidly coming to an end.
- Over the course of 2023 and 2024, Beijing, Wall Street and certain conflicted American government regulators will likely be subject to the introduction of bipartisan Congressional legislation designed to make it illegal to: 1) hold the securities of "U.S. adversaries" (including Chinese publicly traded companies) in the International Fund of the federal Thrift Savings Plan; 2) continue China's use of Variable Interest Entities as vehicles to list on U.S. exchanges; 3) continue including non-U.S. regulated Chinese "A-share" companies in U.S. indices and the investment products benchmarked against them; 4) continue the issuance of Chinese dollar-denominated sovereign bonds, directly funding the CCP via the proceeds of these "Anti-Liberty" bonds; and 5) hold U.S.-sanctioned Chinese companies in U.S. investment portfolios.
- President Xi Jinping continues to serve as a one-man wrecking ball for the CCP, particularly vis-à-vis China's relationships with its U.S. and allied capital markets facilitators. His deep distrust and paranoia toward all things viewed to be threats to the primacy of the CCP and its hold on power will likely negate a number of measures designed by some of his more market-wise colleagues to elevate the comfort level and risk appetite of U.S. and allied investors (witness the new CCP effort to criminalize standard diligence and business information-gathering) by Western professional services companies.

Other weaknesses include:

- Reliance on dollars, euros, yen and pounds for foreign exchange reserves caused by a lack of internationalization of renminbi.
- An undeveloped corporate debt market.
- An undisciplined and erratic retail investor base.
- Overleveraged and overinvested in the real estate market.
- CCP reluctance to allow "national champions" that could one day challenge its hold on power.
- CCP unwillingness to adopt GAAP and PCAOB standards.
- An undue reliance on U.S. know-how for capital markets execution.
- A Chinese government tendency to intervene and manipulate market outcomes.
- A "low-trust" culture which pervades Chinese capital markets and the perceived and real risk of fraud.

#### **Framework for Viewing China's Presence in the U.S. Capital Markets**

- China has largely perfected leveraging U.S. and allied greed and the quest for profits, jobs, exports and market share. It will likely continue to achieve notable successes in achieving its strategic aims through the skillful employment of these and other tools of persuasion—including intimidation and extortionary practices that have a proven track record. Although Beijing occasionally goes overboard with its immense espionage campaign against the U.S. and its allies (e.g., secret police stations in major U.S. cities to round-up and/or track Chinese

dissidents), it has yet to pay any material price for these malevolent undertakings in the U.S. capital markets.

- China has engaged in over two decades of economic and financial warfare against the United States with no meaningful opposition, or even an announced recognition that such warfare is underway. Multilateral institutions have been recruited and, in effect, weaponized to adopt China's brand of standards and norms, and to provide friendly cover for some of its most heinous human rights abuses and national security violations. The U.S. has, to date, foolishly underwritten this enormous tab over the course of many years with the witting, and unwitting, transfer of trillions of investment dollars from scores of millions of U.S. retail investors to the coffers of the CCP and the Party's corporate proxies.

*In my view, it is not possible to identify a strategic-level, financial scandal of any-where near this scale in modern history, whereby a democracy (notably our own) has engaged in the multi-trillion-dollar underwriting of an authoritarian police state (read China) bent on undermining our values and way of life, aided and abetted by some fiduciarily malleable Wall Street firms and other fund managers, and certain conflicted U.S. government regulators at the top levels of the Treasury Department, the SEC and the National Economic Council.*

#### **Threats to the United States**

- The prospect of an upcoming U.S.-China military conflict over Taiwan (if Taiwan's DPP party wins the Presidential election early next year) is probably the greatest threat the CCP faces of being electrocuted in the U.S. capital markets—not because of Wall Street's revulsion, but a more militant, bipartisan consensus in Congress and among the American people.
- The PLA and its Navy are veritably intoxicated by the array of advanced weapon systems they have brought online, including hundreds of new surface combat ships, several classes of submarines, lasers, sophisticated cyber capabilities, hypersonic glide vehicles and missiles, rail guns and new generation ICBMs. The desire to deploy and make use of these military capabilities against U.S. and allied assets is intense and perilous. A shooting, ramming, blinding or other incident in the South China Sea or elsewhere would now likely impact China's access to U.S. capital markets for the first time.
- China's efforts to restrict further the access of professional Western market research and diligence firms seeking to gather standard, risk-related information will likely complicate its ability to attract adequate amounts of U.S. and allied capital, particularly when Congress better understands the dimensions of the U.S. financial “free-lunch program” for the CCP, described above.

#### **Assessing the Counter-Arguments—The Prospective Costs of Financial Decoupling**

- The cost to American investors of a sudden financial decoupling from China (e.g., an armed conflict with the U.S.) would likely be quite severe, but ultimately manageable.
- It appears that no U.S. officials have talked publicly (and perhaps not even privately) about the total financial risk exposure of American institutional and retail investors to thousands of Chinese corporate securities, but it is likely well over a trillion dollars and likely some multiple of that number. We just do not know. Accordingly, the U.S. appears to have done frighteningly little in the way of “national financial risk management” with respect to China, and some of the probable “downside” outcomes referenced are likely to result in serious financial losses for average Americans that could be avoided, *if the Congress acts now*, preferably on a veto-proof basis.
- A more gradual financial decoupling could mean a good deal of market volatility over a several-month-period, a highly workable circumstance.
- Just as the interruption and restructuring of China-based supply chains entails costs, so too does the potential loss of Chinese investment in Treasuries and the excising of thousands of unfit Chinese companies from U.S. investment portfolios.
- For China, any meaningful contraction of access to the U.S. capital markets would likely have disastrous consequences over time, given the non-convertibility of its currency and fairly desperate need for hundreds of billions of dollars annually to fuel even its diminished economic growth rates. A more serious cut-off of access to the American capital markets would likely prove the death knell of CCP rule over a relatively short number of years, given China's massive

“overhead” requirements to service its population and maintain reasonable living standards to keep the peace at home.

- The cost of doing nothing and maintaining the status quo could mean the loss of American competitiveness in a number of key technologies and industrial sectors, including those vital to 21st century security. In a very short number of years, the U.S. could likewise lose the capability to prevail in an armed struggle over Taiwan, or even the South China Sea, and could be, in effect, compelled to cede regional hegemony to the PLA and the CCP, not to mention stimulate the nuclearization of Japan, South Korea, and Australia.

### Overarching Considerations

As things stand at this writing, China continues to enjoy largely unfettered access to the U.S. and allied capital markets. There are no meaningful capital markets sanctions in place on either side of the Atlantic and the CCP and its publicly traded corporate proxies continue to defy gravity—with the cooperation of Wall Street and certain conflicted official regulators—with respect to investor protection, national security concerns and corporate human rights abuses.

Even in the tunnel-vision American financial community, there should be a growing recognition that the CCP is an avowed adversary of the U.S. comparable in many ways to the former Soviet Union and Nazi Germany. The preferential treatment and massive American funding which China is presently pocketing would be far more difficult, if not unthinkable, were this new “Cold War” mindset to become official U.S. policy—a Cold War begun decades ago, and prosecuted daily, by the CCP.

Wall Street firms have publicly made clear that they will continue to engage in undisciplined “business as usual” with Chinese publicly traded companies until such scandalous market activities are made illegal. Accordingly, as stated earlier, the Congress will almost surely need to pass legal prohibitions on a range of Chinese funding and trading activities in our capital markets. A number of specific recommendations in this regard have been cited earlier in this testimony, but include: American holdings of notorious, unregulated “A-share” companies; Chinese enterprises embedded in the International Fund of the Thrift Savings Plan; the listing or trading of U.S.-sanctioned Chinese companies; continued use of near-fraudulent VIEs; the exclusion of Chinese companies not in compliance with federal securities laws; and a number of other prudent measures that we expect—and require—of other foreign participants in our markets. There is also a need for U.S. legislation that prohibits any Communist Party cells from being established in the China-based operations or joint ventures of U.S. asset managers, banks, and other financial institutions.

Finally, the leadership at BlackRock, and perhaps others on Wall Street, have exhorted American investors to triple their risk exposure to Chinese publicly traded companies from the already outrageous and perilous level that it is today. To me, this not only screams fiduciary malfeasance, but, intended or not, also reflects greed in its most calloused and irresponsible form.

Moreover, contrary to the arguments often used by these market players to justify their China-related investment decisions on our behalf, such holdings often involve considerably higher risks and lower returns than elsewhere in their investible universe. Merely one example is the Tennessee Consolidated Retirement System (TCRS). For the last 10 years TCRS has not invested in China, Russia or a host of smaller emerging countries due to the results of a screening methodology that the TN Treasury uses to evaluate nations eligible for investment in the emerging market portfolio.

Annually, the TN Treasury evaluates each investable emerging market country using a “Global Democracy Index,” developed by the Economist magazine in combination with an index of corruption called the “Corruption Perceptions Index,” created by Transparency International. Countries which score badly on the combination of corruption and democracy are eliminated as possible investment options. Tennessee has been using this screening method for more than a decade and in that time not once has China scored well enough to merit investment. Regarding returns, at the one-year mark, the Tennessee Emerging Markets Portfolio—as of Dec. 2021—had a 7.71% return, compared to the MSCI-EM return of -2.5%. At the 5-year mark, as of Dec. of 2021, TCRS had a 10.16% compared to MSCI-EM which was 9.9% and the MSCI-EAFE (followed by the Thrift Savings Plan for the I-Fund baseline) which was only a return of 9.5%.

### **“A-Shares” and Passive Investments Not Covered by the *Holding Foreign Companies Accountable Act***

Congress, the media, and independent regulators like the SEC have recently focused on the risks posed to U.S. investors from Chinese companies directly listed on U.S. stock exchanges. While I initially welcomed this focus and encourage further action, it does not address the bulk of “bad actor” Chinese companies that are still present in American passive investment products. Their presence is in the form of nearly 4,000 A-share and H-share companies found throughout passive investment funds, such as Exchange Traded Funds (ETFs) and mutual funds and has received little or no regulatory scrutiny or fiduciary diligence. Tens of millions of Americans are unwittingly exposed to these notorious “A-shares” in their investment portfolios and retirement accounts.

The financial industry will not lead. Congress must do so. To ensure against further American investment dollars flowing to Chinese companies that pose investor protection, national security, and human rights concerns, Congress should take the following actions:

- Pass legislation that requires index providers and asset managers to address the risks posed by A-share and H-share companies;
- Require a proper implementation of the Holding Foreign Companies Accountable Act (HFCAA) such that its December 2022 agreement with the Chinese regulatory authorities is actually enforceable, or that non-compliant Chinese companies are immediately delisted and de-registered from U.S. exchanges;
- Expand the HFCAA to cover Chinese companies traded in the United States via passive investment products, despite not being directly listed on U.S. exchanges, to ensure that ETF products traded on U.S. exchanges are PCAOB-compliant, consistent with the investor protection imperatives of the Act;
- Compel the SEC to require further disclosures and issue new rules for index providers as it pertains to oversight of proper diligence (including the security-minded and human rights-related variety) and risk management—both almost entirely missing today;
- Compel the SEC and other U.S. Government agencies to require more information for investors and fiduciaries with regard to the geographic location of companies, their industries or sectors, their linkages to foreign governments or foreign actors, the presence of companies on U.S. sanctions lists and other national security, human rights, or political risk factors;
- Require index providers to reevaluate their index inclusion criteria, which currently expose U.S. investors to material and reputational China-specific risks and further require them to justify continued inclusion of any such risky China securities;
- Harmonize U.S. sanctions policy against Chinese companies in order to close current gaps that exist between different sanctions lists. This will assist index providers, asset managers and investors in their compliance and due diligence processes;
- Establish a new, official list of known Chinese corporate human rights abusers, so that these enterprises can be denied access to our debt and equity markets and prohibited by law from their securities being held by American persons worldwide;
- Enact a national policy to prohibit U.S. investors from investing—either here or abroad—in the securities of Chinese companies which have established CCP cells in their management and/or decision-making structure.

### **A-Shares in U.S. Index Funds: Just How Massive Is U.S. Risk Exposure?**

In May 2018, after three years of deliberation and negotiations with Chinese regulatory authorities (and considerable arm-twisting from Beijing), major index provider MSCI released a list of large-cap China A-shares to be included in the MSCI China Index, Emerging Markets (EM) Index, and All Country World Index (ACWI) beginning in June that year. The MSCI EM Index previously only included shares of Chinese companies listed in Hong Kong or the United States. As of June 2018, MSCI had over \$1.8 trillion in assets benchmarked globally to its Emerging Markets Index suite, 30.99% of which was comprised of China-based securities.

By November 2019, MSCI had increased and expanded its index exposure to mainland Chinese companies significantly by including mid-cap China A-shares and quadrupling the inclusion ratio of China A-shares in the MSCI EM Index from 5% to 20%. The total index weighting of China A-shares jumped from 0.7% to 3.3%, drawing in an estimated \$80 billion in foreign inflows to the Chinese market. As



of August 2020, the overall weight of China A-shares in the MSCI EM Index had risen to 5.1%, where it currently remains.

FTSE Russell followed in MSCI's footsteps and was the second major index provider to include China A-shares in its indices. In June 2019, FTSE added 1,097 China A-shares into its FTSE Global Equity Index Series (GEIS, which covers the FTSE Emerging and All-World Indices) in the first stage of inclusion (20%), drawing an expected \$10 billion from U.S. passive investors. As of June 2020, China A-shares represented approximately 6% of the FTSE Emerging Index. Roughly 4,000 China A-shares are available to U.S. investors at this point through their inclusion in indices.

#### **Undisclosed Risks to Investors**

Index providers neglect to consider the full range of China-specific material risks to investors when determining index constituents and weighting. These include considerations of reputational risks relating to national security, export controls and sanctions regimes, human rights violations, political factors, or even full consideration of traditional environmental, social, and governance (ESG) factors.

Retail and institutional investors are exposed to a wide range of publicly traded Chinese companies involved in developing weapons systems, new "dual-use" technologies, and building infrastructure in support of China's military modernization goals; and companies involved in facilitating the ongoing genocide of Uyghurs and other Turkic Muslims in Xinjiang, the systematic intimidation and coercive assimilation of Tibetans, and the mass surveillance and government interference in people's lives in Hong Kong. Beyond these, additional risk factors to consider include U.S. sanctions designations and any other blacklists that may signify a material reputational and financial risk to investors.

As of at least June 2022, a look at five of the larger mutual funds offered by industry leaders—Fidelity Emerging Markets Index Fund (FPADX), State Street Emerging Markets Equity Index Fund (SSEKX), BlackRock iShares MSCI Total International Index Fund (BDOKX), Vanguard Emerging Markets Stock Index Fund (VEMAX), DFA Emerging Markets Core Equity I (DFCEX)—(which happen to be included in the new Mutual Fund Window available to TSP beneficiaries)—includes at least 14 underlying companies directly linked to China's military-industrial complex and listed on either the Department of Defense's Section 1260H list or the Treasury Department's NS-CMIC List or both, in just these five funds. This is in addition to several companies on the Commerce Department's BIS's Entity List and others with documented links to the oppressive Chinese surveillance state and connected to Uyghur forced labor.

#### **Federal Government's Thrift Savings Plan Investing in Our Adversaries**

The U.S. Government is facilitating the investment of billions of taxpayer dollars in CCP-controlled companies via the federal workers' retirement system, the Thrift Savings Plan (TSP). The Thrift Savings Plan is the largest defined contribution pension system in the world, with more than \$730,000,000 in assets. In June 2022, the TSP's administrators on the Federal Retirement Thrift Investment Board (FRTIB) enabled TSP participants to invest up to 25% of their savings (a minimum of \$10,000) in more than 5,000 mutual funds via a new platform called the "Mutual Fund Window." The TSP's Mutual Fund Window initiative was launched in June of last year and has already received more than \$47 million in investments. No due diligence or screening has been performed to ensure the mutual funds included in the new TSP platform exclude U.S.-sanctioned or other Chinese corporate "bad actors."

Participants are unable to determine what mutual funds are included in the Window until after they have transferred a minimum of \$10,000. The Coalition for a Prosperous America's (CPA) research has demonstrated that the Window's largest emerging markets funds include problematic CCP-controlled companies in their investment portfolios.

CPA's research also found that five of the largest international funds in the Window had an average weight of 22 percent toward Chinese companies, and all five funds held companies listed on the U.S. Department of Treasury's list of Chinese Military-Industrial Companies, the Department of Commerce Entity List, the Commerce Department's Unverified list, or the Department of Defense Chinese Military Companies list. Companies are placed on these lists because they threaten U.S. national interests, have been involved in serious technology theft, and/or are implicated in the genocide of the Uyghur people.

The FRTIB claims it has neither the time, expertise, nor the resources to research the mutual funds offered to current and retired federal employees, military personnel, and veterans in the interest of ensuring that CCP-controlled corporate bad

actors are excluded from their portfolios. The FRTIB also claims they are not obligated to restrict investment in problematic Chinese companies. For example, the FRTIB has not fulfilled its 2020 public pledge to remove Chinese companies from the TSP's International Fund (I Fund).

Worse still, in May 2020, the Department of State notified Congress that the passage of the Beijing-drafted National Security Law obviated the distinction between Hong Kong and the People's Republic of China, and that Hong Kong could no longer be considered autonomous. Despite this determination, the FRTIB has refused to remove 32 Hong Kong-based Chinese companies from the International Fund of the TSP.

Through the research conducted by CPA and its allies, several Chinese Communist Party-owned companies were found in the funds, including the Aviation Industry Corporation of China (AVIC), China General Nuclear Power Group (CGN), and COSCO Shipping—all PLA-linked enterprises. The funds also included companies under scrutiny for forced labor practices, as well as those involved in China's growing surveillance state.

By some estimates, American investors have provided as much as \$2-\$3 trillion or more in investment capital to Chinese companies over the past decade (including passive investment vehicles). This is, in no small part, due to a May 2013 bilateral MOU between U.S. and Chinese securities regulators, whereby U.S.-listed Chinese companies enjoy preferential access to U.S. capital markets because they are not required to meet the same requirements as U.S. public companies. U.S. capital markets have funded China's unprecedented military build-up; its Belt and Road Initiative; gross violations of human rights, including genocide and crimes against humanity; predatory and market distorting trade practices; and the wholesale theft of American technology and intellectual property.

The U.S. Government has sanctioned hundreds of Chinese companies for their role in enhancing the threats to our national security posed by the PLA and egregious human rights violations, but they still benefit hugely from largely unrestricted access to U.S. capital markets and are held by hundreds of widely available mutual funds, public pension funds, and university endowments. In 2019, BlackRock—as the lead asset manager of the investment portfolio of the Thrift Savings Plan—advised the FRTIB to increase the TSP International Fund's exposure to CCP-controlled firms. BlackRock continues to be one of the most vocal investment managers encouraging expanded investment in China, and in 2021 became the first U.S. investment management firm to provide investment products directly to Chinese retail investors—perhaps as a reward.

To be clear, no U.S.-listed Chinese-domiciled companies held by either the core TSP funds, or the Mutual Fund Window, are compliant with federal securities laws and regulations, such as legally mandated audit requirements designed to protect American investors. Due to the negligence of the TSP's managers, American servicemen and women, and other government employees may be unwittingly funding their country's leading adversary—including companies involved in the PLA's modernization efforts or the CCP's genocide against the Uyghur people.

We should be able to all agree that CCP-controlled companies should not be financed through the retirement savings of U.S. government employees. The FRTIB should not be allowed to abdicate its due diligence and fiduciary responsibilities to our military and federal workforce. At a minimum, the FRTIB should take steps to ensure that the TSP Mutual Fund Window publicly discloses: 1) which TSP regular or mutual funds hold Chinese-domiciled companies, including those based in Hong Kong; 2) whether any such company has been sanctioned or otherwise listed by an agency of the United States government; and 3) whether any such companies are non-compliant with U.S. securities laws and regulations, including PCAOB audit requirements.

### **Harmonizing Government Sanctions—How to Guide Investors Away from Bad Actor Chinese Companies**

Capital markets sanctions have been scarcely utilized to date, despite being a highly effective tool to advance America's national security, fundamental values, investor protection and other national goals. Polling conducted by CPA shows an overwhelming majority of Americans are concerned about investing in risky Chinese companies and support stricter investment requirements and safeguards. A poll conducted by Morning Consult shows sixty-two percent of voters are troubled that Americans can invest in Chinese and Russian companies that have been sanctioned by the U.S. government or have not complied with U.S. securities and other laws.

To accomplish the mission of ramping down U.S. capital investment in unfit Chinese companies, three Executive Orders have been promulgated by both Republican and Democratic presidents in an effort to selectively enforce capital investment bans

on Chinese companies in critical industries and linked to the CCP's military and military-civil fusion operations. The first two EOs, enacted by President Trump—EO 13959 (now amended by EO 14032) and EO 13974 (now rescinded)—focused on Chinese enterprises on the U.S. Department of Defense's Chinese Military Company List (as called for by the annual NDAA) and required that they be placed on the Treasury's Office of Foreign Assets Control (OFAC) list. If a company were on the DOD list, then it was automatically slated for a prohibition on the buying and selling of its securities within a certain window of time.

Under the Biden administration, these policies were updated with a new EO, 14032. This EO expanded the scope of capital markets sanctions beyond the DOD list and now includes what are known as surveillance technologies companies. This new EO, however, rescinded the concept of forced divestment by canceling out EO 13974, and created a new list within OFAC, as opposed to the DOD-only list. Now OFAC can add a broader swath of companies across more categories to its Non-SDN Chinese Military Industrial Complex Companies List (NS-CMIC List).

Regrettably, but true to form, the Treasury Department is reluctant to engage in the process of making additions to its list, despite commitments from the White House to update the list on a rolling basis. Indeed, the list is basically just gathering dust at this writing. This Committee and others need to try to compel Treasury to follow through on sanctions updates at regularized intervals and in alignment with broader U.S. policy aims and priorities. Rather than adding companies to this list and updating the EO's annex, Treasury issued some squishy guidance at the one-year mark of the Biden EO and basically undercut the White House's own intentions by releasing a contradictory and intentionally vague FAQ sheet, which reads in part, regarding the concept of "divestment":

"U.S. persons are not required to divest their holdings of CMIC securities during the relevant 365-day divestment period and may continue to hold such securities after the divestment period. E.O. 13959, as amended, permits purchases or sales made solely to effect the divestment of CMIC securities, but only during the 365-day divestment period. Accordingly, any such purchase or sale is prohibited after the 365-day divestment period, absent OFAC authorization."

Further, in addition to this highly—and deliberately—confusing FAQ, Treasury has failed to add new sanctioned entities, not yet releasing one new tranche of sanctioned entities since the initial EO (though a few companies were added when a rule in the Federal Register clarified the intermingling of the Trump-era EO list, the DOD list, and the new, updated Biden-era EO, which allowed for less than ten additional companies to be added to the NS-CMIC list annex).

As of October of 2022, the Commerce Department's well-known Bureau of Industry and Security (BIS) Entity List contained 1,167 listed entities, while the NS-CMIC list contained only 68. While we understand that these lists are not the same and require different legal standards and thresholds for listing, common sense and U.S. policy would indicate these lists should be in complete or near-complete alignment. *Tragically, but again not surprisingly, only 16 Chinese corporate wrongdoers are on both lists.* This means that only 1.4% of those companies being subject to specific licensing requirements for the export, reexport and/or transfer (in-country) of specified equipment and technologies are likewise being denied fundraising privileges in the U.S. capital markets.

As stated on the Commerce Department's BIS website, "Since its initial publication, grounds for inclusion on the Entity List have expanded to activities sanctioned by the State Department and activities contrary to U.S. national security and/or foreign policy interests." It would stand to reason, therefore, that these same concerns regarding sanctioned activities and corporate behavior contrary to U.S. national security and/or foreign policy interests would also apply to attracting capital in our markets which easily could facilitate the means of production of the very goods the U.S. is supposedly concerned about. Also, when a company is added to the NS-CMIC List, subsidiary or parent companies must also be considered and included.

*There is much room left to institutionalize and utilize capital markets sanctions as a powerful new force and tool kit in economic and financial statecraft as well as to help clean up our heavily soiled capital markets.*

One key area for inclusion is the concept of sanctions harmonization. Better than the notion of sanctions reciprocity, sanctions harmonization links up current lists run by various U.S. Government departments and agencies in an interlocking process such that being sanctioned or listed by one enables the other to undertake sanctions action as well, and ultimately lead to—at long last—increased listings by OFAC and more rigorous routine reviews.

Current U.S. Government arrangements provide little transparency on why some Chinese companies are selected to be on one list, but not another. Across the U.S. Government, there are dozens of reports, lists, advisories, or sanctions tranches issued on a recurring basis. Some of these include: the U.S. Commerce Department's Bureau of Industry and Security (BIS) Entity List, the Military End User List, the Unverified List, the Department of Defense's 1260H or CMC List (formerly 1237 CCMC List), the new Uyghur Forced Labor Prevention Act Entity List maintained by the Department of Homeland Security, the OFAC NS-CMIC List, and more.

There is an urgent need to put in place a process by which agencies responsible for enforcing and implementing sanctions better communicate with each other and the Congress to ensure that every company that is listed by any agency goes through a review by all agencies for inclusion on each individual sanctions list. To that end we support draft legislation Congress is currently considering to address this very issue. The goal is to require the agencies that maintain malign entity lists (Departments of Commerce, Treasury, Defense, and Homeland Security) to better coordinate, review listing decisions of other agencies, and decide on listing such entities on their respective lists. The bill requires that agencies reviewing a company or entity that was listed by another agency provide a legal justification to Congress (affirmative or negative) and notify the public. Moreover, Global Magnitsky Act sanctions must be included in this policy arena, requiring some necessary updates to separate out human rights accusations from those of corruption, enabling further actions and sanctioning to take place by Treasury.

Additionally, the State Department must be included at the table as the U.S. government's preeminent authority on human rights. State Department warnings such as the one issued on December 8, 2020, on bad actors present in U.S. capital markets or the Hong Kong or Xinjiang Business Advisories must be issued and updated on a recurring basis and linked to sanctions from Treasury, notably inclusion on the NS-CMIC List.

While both houses of Congress unanimously passed legislation to require a report annually to be produced by Treasury—in consultation with DOD, State, and the intelligence community—on the presence of malign Chinese companies in the U.S. capital markets, the measure failed to be included in the final China bill voted on this summer. To properly tackle ending the CCP's abusive exploitation of the U.S. capital markets (and Wall Street's facilitation of same), Congress must have the necessary information. This can be done in consultation among Treasury, the SEC, the State Department, the Department of Defense, the National Security Council, and others to ensure that Congress has better information with which to make informed decisions to protect our capital markets, investors, and nation from the CCP's financial predations.

As an illustration of the challenge facing the U.S., the federal government has recently implemented the CHIPS Act and export controls designed to prevent China building advanced semiconductors with military capabilities. Yet financial industry data shows that last year, U.S. investors provided \$8.8 billion to Chinese semiconductor startups, more than six times greater than the \$1.3 billion invested in comparable U.S. startups. Much of those 8.8 billion dollars came from U.S.-based public and private investment funds. *Why are we supposedly working hard to prevent Chinese access to advanced U.S. semiconductors, while simultaneously permitting multi-billion-dollar American funding of Beijing's development of such dangerous, militarily relevant capabilities?*

Another telling anecdote is that of CSSC Holdings Ltd. As of June 2022, household names in the investment world—BlackRock and Vanguard—are providing Exchange-Traded Funds (ETFs) and other investment products to consumers that track indices containing Chinese companies building and modernizing the Chinese Communist Party's military. CSSC Holdings Ltd. was listed as a constituent of the MSCI Emerging Markets, MSCI ACWI, FTSE Emerging, and FTSE All-World indices. These indices are tracked by trillions of dollars of assets under management globally through associated ETFs.

Most Americans are not positioned to analyze the indices tracked by their ETFs, or to have a handle on which Chinese companies are in their ETFs and other index funds. This is, in part, what is desperately wrong with this picture. What happened to fiduciary responsibility along the trail? Do these prominent U.S. asset managers fully understand and appreciate the risks to *their* corporate reputations and brands once a large swath of the empirical facts and evidence are made available to the American people? Have those Members of Congress who have, to date, fulsomely supported the positions taken by these asset managers concerning China's presence in our capital markets thought through how this is ultimately going to play out politically? Apparently not.

On June 17, 2022, the People's Liberation Army Navy (PLAN) successfully launched its third aircraft carrier from Shanghai's Jiangnan Shipyard. The new carrier enables PLAN to launch a wider variety of aircraft and is reportedly equipped with technology furthering PLAN blue water naval capabilities. Jiangnan Shipyard, where the Fujian was built, is a commercial and naval shipbuilding facility.

Jiangnan was wholly acquired in 2019 as a subsidiary of China State Shipbuilding Corporation Holdings Limited (CSSC Holdings Ltd.). CSSC Holdings Ltd. is the publicly traded arm of China State Shipbuilding Corporation Ltd., a Chinese state-owned enterprise carrying out shipbuilding and repairs for cargo customers and PLAN military vessels and is included in some of the world's most prominent investment indices. Foreign capital flowing into Jiangnan Shipyard directly via its commercial business or indirectly via CSSC Holdings Ltd. securities, may both directly and indirectly support PLAN modernization.

Development of the PLAN's fourth aircraft carrier is reportedly underway at Jiangnan Shipyard, with the carrier's launch expected between 2025 and 2027.

CSSC was designated as a Non-SDN Chinese Military Industrial Complex Company (NS-CMIC) on June 3, 2021. This listing, under Executive Order 13959 (as amended by President Biden in Executive Order 14032), prohibits U.S. persons from purchasing or selling any securities of companies deemed to be supporting China's military-industrial base. This prohibition does not apply to subsidiaries, like CSSC Holdings Ltd. or Jiangnan Shipyard, that are not also explicitly designated by the Treasury Department's Office of Foreign Assets Control (OFAC). Correspondingly, CSSC was designated by the Department of Defense as a Chinese Military Company operating directly or indirectly in the United States by the Biden Administration in June 2021, in accordance with the FY21 NDAA's section 1260H.

As of June 2022, CSSC Holdings Ltd. was listed as a constituent of the MSCI Emerging Markets, MSCI ACWI, FTSE Emerging, and FTSE All-World indices. These indices are tracked by trillions of dollars of assets under management globally, for example, through the associated Exchange-traded funds (ETFs). The primary ETF providers include BlackRock's iShares products and Vanguard's UCITS products, respectively.

In addition to issuing yuan-bonds, as of 2015, the CSSC corporate family has raised nearly \$2.6 billion through euro- and dollar-denominated debt placement via markets such as the U.S. Over-the-Counter market, Frankfurt, and Bank Sarasin (Switzerland) markets and JP Morgan bond-focused ETFs, among other debt markets. Nearly all of this was underwritten by Western banks, most commonly Barclays and Société Générale. Four of CSSC's euro- and dollar-bonds have yet to mature.

These cases underscore why greater transparency and more robust disclosure must be required of U.S. index providers and fund managers. U.S.-sanctioned and known bad actor Chinese companies must be prohibited from investment exposure by Americans through the imposition of targeted capital markets sanctions. Considering the recent spy balloon incident and CCP-led aggression against Taiwan, American investors must stop funding the People's Liberation Army and Navy and enabling their military modernization via the manufacture of advanced weapons systems. It is sadly ironic that Americans are simultaneously financing our own military modernization *and* that of the CCP.

### **Recommended Policy Actions**

To reinforce the policy recommendations enumerated at the outset of this testimony, there are three basic pillars to consider when assessing the status and suitability of Chinese publicly traded companies to list or trade in the U.S. capital markets: national security, human rights, and investor protection. Thus far, China must receive a failing grade in the category of investor protection by any reasonable measure. It has been also amply demonstrated that a disturbing array of sanctioned and other Chinese corporate national security and human rights abusers are included in America's most popular international indices and investment products. These are the facts of the case. Chinese enterprises have been receiving preferential treatment by the U.S. government—notably the Public Company Accounting Oversight Board (PCAOB)—since well before the May 2013 bilateral MOU which enshrined this preferential treatment for Chinese public companies over American market participants. Congressional action is clearly warranted here, given the glaring shortcomings of the well-meaning Holding Foreign Companies Accountable Act (HFCAA).

CCP-controlled Chinese companies must retain largely unfettered access to the U.S. capital markets—period. The reverse is not true. Our capital markets constitute arguably the most powerful non-military lever and sanctions tool that the U.S. possesses in its economic arsenal. Although it is preferred that the exercise of

such leverage be in concert with U.S. allies, it is not a requirement, given America's dominant position in the global financial domain.

In comparison, Chinese equity markets are regarded by most market experts as glorified casinos, largely manipulated by Chinese leadership (e.g., witness the equities market meltdown in the summer of 2015). Like its equity markets, China's huge bond market is largely non-transparent and comprised of the securities of "black box" enterprises. Hong Kong has been all but snuffed out—courtesy of Communist Party repression—as a credible global financial hub and it is now just another Chinese city. There exists precious little reciprocity with regard to the treatment and latitude accorded U.S. and allied financial sector companies in China's capital markets and financial system. Indeed, the stunning lack of reciprocity alone can only be described as scandalous and unsustainable.

Concerning capital markets diplomacy, there are basically zero existing joint efforts underway among the U.S. and its partners and allies with respect to the glaring shortfalls and abuses in investor protection norms and national security and human rights concerns by Chinese companies in Western capital markets. The principal reasons for the absence of such urgently needed cooperation among allies are a concerted effort to preserve Wall Street and other market fees, the lure of selling investment and wealth management products to average Chinese institutions and citizens, and the often-conflicted policy positions of the economic and financial agencies of government.

Few policymakers appear mindful of the devastating consequences for the cause of freedom resulting from the trillions of dollars that have thus far been transmitted from the investment portfolios of scores of millions of unwitting American and allied investors to the bank accounts of the Chinese Communist Party and its proxy enterprises. Tragically, this explains, in no small part, how China has been able to: 1) achieve near parity militarily with the U.S.; 2) construct its elaborate surveillance state; 3) establish control over vital global resources and technologies; 4) vacuum up much of the world's strategic business, military and personal data and many other malevolent activities. That said, all one hears in the halls of the Pentagon is "it's [the capital markets] not in our lane".

In addition to the aforementioned U.S. Government actions, below is a mere sampling of what else should be happening among partners and allies. This includes:

- A permanent G-7 working group on the national security, investor protection and human rights dimensions of the Chinese corporate and sovereign presence in each nation's capital markets;
- A revival of the now-moribund Economic Secretariat of NATO to do the same, with a concentration on military and security concerns;
- The harmonization of security-minded regulatory regimes among the allies;
- The authorization—and institutionalization—of an array of capital markets sanctions tools and policy options to push back against, or respond to, the actions of malign publicly traded Chinese companies as well as the CCP's ongoing efforts to penetrate and undermine our societies and way of life;
- The passage into law of a number of legislative initiatives (some enumerated above) in the U.S. Congress, and its allied counterparts, designed to make illegal the kind of Chinese government abuses listed above in the "Strengths" section of this testimony;
- The allied establishment of permanent senior interagency or inter-ministerial groups, reporting directly to the Head of State, on the massive Chinese funding, espionage and other unfair and/or malign activities in the U.S. and allied capital markets;
- The standing up of Economic and Financial Warfare Centers in the U.S. and allied countries (e.g., within the Indo-Pacific Command of the United States) to counter the various forms of such financial and related warfare being waged by the CCP and its corporate proxies against Western countries on a daily basis for over two decades;
- The establishment of a "*Sixth Domain*" of American and allied warfighting—notably the "*Economic and Financial Warfighting Domain*" (joining the land, sea, air, cyber and space domains)—to end, at long last, this scandalous multi-trillion-dollar U.S. and allied underwriting of the Chinese Communist Party's police state and the PLA, courtesy of Beijing's clever and successful weaponization of *our* capital markets.

## Conclusion

Mr. Chairman, in closing, I would like to address what we, as individual investors can do to safeguard our hard-earned retirement and investment dollars, our country, and our fundamental values.

There are probably well over 100 million of us, Mr. Chairman, holding the stocks and bonds of U.S.-sanctioned and other Chinese corporate “bad actors”. Do we really believe that the American people would have wanted to be holding—unwittingly—the securities of Soviet companies or those supporting Nazi Germany? Do we really believe that my former boss, President Reagan, would stand by and permit the multi-trillion-dollar American funding of those that would destroy our democracy and everything we hold dear? As his NSC Senior Director of International Economic Affairs, I was in a position to know, and I can assure you that he would not—not for a moment.

Accordingly, I call upon the members of this Committee, and the Congress more broadly, as well as my fellow American retail investors to go to their fund managers, stockbrokers, financial advisers, pension system administrators, college endowments, corporations, unions, and others, and say the words: “Not with my money. Take me out of Chinese companies, particularly those buried in my Exchange-Traded Funds, mutual funds, and other passive investment products.” Nancy Reagan captured this sentiment succinctly in her anti-drug campaign in the 1980s, “Just say no!”.

If the Congress passes the necessary laws recommended in my testimony; if we take a stand as individual Americans in defense of where our money is going and how it is being used by Wall Street firms and other supposed financial gurus who often cannot see further than their quarterly quotas and bonuses, we can not only set free some 300 million people without a shot fired—as was the case with the Soviet Union—but some 1 billion 300 million Chinese nationals living under the fear, repression and brutality of a fascist dictatorship.

*Remember always, money often kills in the hands of authoritarian police states.*

We must act now before it is too late and scores of millions of our nation’s investors face material, if not debilitating, financial losses. For example, more likely when, not if, the first shots are fired in the Taiwan Strait—as soon as next year—it will be too late. We cannot wait another day. Let us together make the American “defunding” of the Chinese Communist Party the 21st century equivalent of our “finest hour”.

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## STATEMENT OF SARAH COOK

### EMERGING PRESSURES ON U.S. BUSINESSES AND RISKS OF COMPLICITY WITH BEIJING’S CENSORSHIP AND PROPAGANDA

Thank you for the opportunity to submit a written statement for today’s hearing. This brief submission focuses on several recent developments and incidents in China and globally that may affect the business and human rights landscape in the coming years as it relates to the information space, drawing on research from Freedom House and other sources.

Legislative changes adopted in China since 2021, additional regulatory shifts, and specific incidents that have occurred and been documented by Freedom House in our *China Media Bulletin* and *Beijing’s Global Media Influence* projects point to the following circumstances as potential risks and scenarios that U.S. businesses and policymakers should be aware of and prepared for:

#### **1. Shifting red lines and arbitrary enforcement of laws related to permissible versus criminalized speech or information sharing**

In recent months, China’s security and propaganda apparatus has turned its sights on foreign consulting and auditing companies, conducting coordinated raids, detaining employees, broadening an espionage law, and airing slickly produced “special reports” about its crackdown on state television. The campaign has sent waves of alarm across the international business community. Notably, recent prison sentences against high- and low-profile civic activists serve as a reminder that the private-sector cases are just one piece of a much larger pattern of politicized prosecutions in China, one whose examination can provide insight into what further targeting of U.S. businesses and employees by Chinese security forces may entail. A review by Freedom House in May 2023 of over two dozen cases that had gained public visibility in the prior three months provided some sense of the scale of the problem, the sorts of behavior being punished, and the profound flaws in the legal sys-

tem that enable such prosecutions. The article provides a full analysis and numerous cases involving political and religious prisoners, shedding light on how even seemingly minor infractions—which would be tolerated or even praised in a democracy and some of which were deemed permissible within China in the recent past—can now yield harsh punishments.

Under the revisions to the Espionage Law that came into effect on July 1, foreign businesses and their employees may be at greater risk than previously of overstepping these boundaries. Even prior to the change, implementation rules to the law adopted in 2017 and described in a post by Chinese law expert Jeremy Daum outline various “non-espionage conduct” that could still be encompassed. Reading between the lines, such conduct includes various human rights causes and persecuted communities whose members are routinely prosecuted and subjected to long prison terms after questionable trials: political activism deemed “subversion of state power,” investigative reporting perceived as “distorting facts,” advocacy for Uyghur or Tibetan minority rights deemed “separatism,” or peaceful practice of faiths like Falun Gong or certain forms of Christianity being deemed to be carrying out activities “endangering national security.”

The case of Dong Yuyu, a journalist for the Chinese state-owned newspaper *Guangming Daily*, is one example of how previously routine engagements between respected individuals, even journalists at state-run outlets and foreign diplomats, could now be suspect in the current political and legal context in China. Dong, a savvy observer of international relations, was widely known among foreign journalists, business executives, and diplomats. Sensing the regime’s growing sensitivity to such interactions, he had become more circumspect in his writings and careful in his meetings with foreigners, but his precautions were apparently insufficient. He was detained in February 2022, three months before retiring, on espionage charges after meeting with a Japanese envoy. Dong’s case is now moving to trial and is perhaps the most chilling for the business community, given that raids on consulting and auditing firms have also been linked to the enhanced espionage law.

Recent restrictions on the information available from academic databases or collections of judicial verdicts—content that was previously easily available to foreign researchers, journalists, and corporations—could also add to the narrow path for those seeking to better understand what is happening in China beyond CCP-approved narratives in traditional and social media. If an individual were to obtain the same information now that had previously been openly available through an innovative workaround or Chinese contact, that person could reasonably be deemed as attempting to access “state secrets” or engaging in espionage and be subject to prosecution.

## **2. Growing pressure to self-censor corporate speech**

The Chinese government is adept at using foreign business investment, market access, and the legal risks facing firms and their employees in China as leverage to dictate speech outside China’s borders. Examples of this development are the incidents in 2018 related to drop-down menus of hotel chains and airlines or the deletion of a Mercedes Benz post on a foreign social media platform. Besides government pressure, Chinese state media and vocal nationalist netizens (whose detractors are more heavily censored on Chinese platforms) have also been known to apply pressure on foreign companies to say—or not say—certain things regarding human rights conditions in China. The recently released 2023 survey results from the American Chamber of Commerce cited such pressure. Seventy-two percent of U.S. companies in China reported facing pressure in 2022 to make (or not make) statements on politically sensitive issues and 45 percent cited an increase in pressure compared to previous years. Among these businesses, 57 percent of respondents reported that the pressure came from the Chinese government and 37 percent from Chinese media, although the wording of the question conflates pressure to speak—or to self-censor—and is vague about what topics fall under “politically sensitive” items. As pressure from Chinese state entities grows alongside the legal risks for firms and employees, businesses are more vulnerable to feeling forced to concede to such requests and to omit publicly that they were done under pressure.

## **3. Pressure to infringe on the speech or privacy of others**

This type of action is arguably more problematic than self-censorship of corporate statements themselves, but not often disaggregated in discussions of corporate complicity with CCP diktats. Yet it is profoundly impactful and a known deployment of the various leverage points possessed by Beijing to co-opt or coerce foreign businesses into restricting speech and access to information inside and outside China. The lengths the regime is willing to go to are evident as far back as 2007 when a NASDAQ employee in China was detained by state security, resulting in a Chinese



dissident television station being denied the ability to report from the exchange's headquarters in New York. More recently, in February 2023, Apple removed within days the Damus social media app from its store in China at the demand of the Cyber Administration of China, with it joining hundreds of other applications omitted from the store (including those of U.S.-based news outlets). Just last month, in the latest example of censorship pressure vis-à-vis the arts, the Chinese embassy urging a Polish venue to cancel an exhibit by a dissident Chinese artist. These incidents are only a small sample of cases from around the world in the corporate, media, and cultural sectors.

Hundreds of incidents that have occurred globally over the past decade demonstrate that once the CCP—or a company, media outlet, or owner with close ties to the Party—gains a foothold within an information dissemination channel, manipulation efforts inevitably follow. This may not occur immediately, but can evolve over time or be activated as soon as a test case with sufficient significance to Beijing emerges. At that point, CCP leaders, diplomats, and other state-linked actors will not hesitate to use previously acquired economic and political leverage to impose their will. While most such incidents that have gained public attention involved censorship or other manipulation, demands on foreign firms in China to provide government agencies access to user data upon request is also a risk. Last September, the CAC urged firms to improve the “traceability” of users. Any foreign company providing digital technology services in China will inevitably face such a request, compliance with which would risk landing a user in prison over internationally protected speech on political, religious, or social topics.

#### 4. Expanding demands from Hong Kong authorities

Following the adoption of the National Security Law, the Hong Kong government has been increasing demands on foreign companies, especially technology firms, to enforce limits on speech or access to information, both within Hong Kong and globally. Apple has come under growing pressure to remove certain apps from its store in Hong Kong, with one December 2022 report finding that 53 Virtual Private Network apps had been made unavailable in the territory after adoption of the National Security Law. Also in December, Hong Kong-based users noticed that the “safe browsing” feature on the Apple-owned web browser Safari had temporarily blocked the website GitLab, which has been censored in China. In 2021, Hong Kong authorities ventured further afield and asked a website-hosting company in Israel to shutter a pro-democracy website, warning that refusal could result in fines or prison time for employees under the territory's National Security Law.

#### 5. Enticement to aid Beijing with its foreign media influence efforts

As the CCP, Chinese diplomatic missions, and their proxies invest more and more resources in influencing foreign media environments and reaching overseas audiences, the funds also available to businesses—including public relations (PR) firms—who assist them is notable. Country case studies and other research from a recent Freedom House report, *Beijing's Global Media Influence*, reveal the extent to which PR firms have been working to get Beijing's message out and to co-opt local voices in countries as diverse as the United States, Panama, Taiwan, and Kenya. In at least some cases, the effort involves covert, coercive, or potentially corrupting activities. Last month, Freedom House published a detailed analysis of this phenomenon, drawing on recent filings under the Foreign Agents Registration Act (FARA) and shedding light on millions of dollars in potential profits per year flowing to this sector.

But while a wide range of corporations and governments—authoritarian and democratic—make use of PR firms' services to encourage sympathetic coverage and counter negative reporting, there are several factors that arguably make Beijing's practices both notable and potentially problematic. The first is the sheer scale of resources devoted to media influence efforts by the Chinese Communist Party (CCP) and large China-based corporations with close party ties. The potential for enormous and long-term profits entices international PR firms, creates economic dependencies, and discourages work with other clients that might threaten those relationships. A second factor is Beijing's layered use of intermediaries and proxies, which makes it harder for foreign interlocutors to fully appreciate who is behind a particular submission, invitation, or request. And lastly, some actions by PR firms and their Chinese clients have veered from ordinary public relations into censorship, intimidation, disinformation, or circumvention of local laws.

### **Opportunities for resisting censorship requests and the role of counter-pressure from headquarters, investors, and foreign regulators**

On a more positive note, as evident from some of the above examples and others, it is not a foregone conclusion that requests from the CCP to restrict access to information or cancel events will yield their desired outcome. The dissident artists' exhibit in Poland has continued as scheduled. Google has not ceded to demands to alter its search results for Hong Kong's anthem after they apparently contributed to a pro-democracy protest song being played at international sporting events instead of China's national anthem. And the above-mentioned Israeli website vendor, after initially complying with the demand, reversed course and reinstated the site.

Moreover, even as U.S. businesses in China are eager to please Chinese consumers and stay on the good side of the government, they may also yield to pressure related to their global reputation, talent recruitment, or from corporate headquarters, investors, and foreign regulators. One striking finding from the AmCham survey was that 80 percent of U.S. businesses in China had introduced or were planning to implement Environmental, Social, and Governance (ESG) strategies in China, including as a result of requests from these sources. Such strategies may run into conflicts with other business prerogatives in the country, but external actors could potentially push firms to stay true to those principles.

### **Conclusion**

The CCP's growing repression at home and brazenness in its foreign relations has contributed to heightened tensions with the United States and poses a risk to U.S. citizens and businesses in the country. Recent news reports and the AmCham survey point to the growing recognition of these risks and to actions some businesses are taking in response, including reducing investment in China. But the risks are not only to profit margins. In a political system as tightly controlled, arbitrary, and brutal as China's is today, the risk of complicity in suppressing the rights of innocent Chinese citizens or of putting a company's employees in danger is high. And with Beijing's growing global footprint in the information space, even leaders of businesses with no presence in China are likely to face visits from Chinese embassy officials with requests for censorship or opportunities to polish Beijing's image.

Anyone engaged in the media or corporate space should acknowledge these possibilities and be prepared in advance for how to resist when pressure to adjust content in Beijing's favor inevitably emerges. It is these individual choices that will not only help uphold free speech but also protect at least some innocent people—foreigners and Chinese nationals alike—from languishing in Chinese prisons.



**United States House of Representatives  
Congressional-Executive Commission on China**

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**Date**

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*Witness Biographies***Robert Silvers, Under Secretary for Strategy, Policy, and Plans, Department of Homeland Security; Chair, Forced Labor Enforcement Task Force (FLETF)**

Robert Silvers was confirmed by the Senate as the Under Secretary for Policy on August 5, 2021. He is responsible for driving policy and implementation plans across all of DHS's missions. Mr. Silvers also serves as Chair of the interagency Forced Labor Enforcement Task Force (FLETF). Mr. Silvers previously served at the Department of Homeland Security during the Obama administration as Assistant Secretary for Cyber Policy. In that role he oversaw private-sector engagement, Federal Government incident response, and diplomatic outreach pertaining to cybersecurity and emerging technology. Mr. Silvers also previously served as DHS's deputy chief of staff, managing execution of policy and operational priorities across the entire department.

**Isaac Stone Fish, Visiting Fellow, Atlantic Council**

Isaac Stone Fish is the author of *America Second: How America's Elites Are Making China Stronger*, a book about American political and business leadership's deep ties to Beijing. A Mandarin speaker and formerly a Beijing correspondent for Newsweek, Mr. Stone Fish spent seven years living in China, and has visited every Chinese province, municipality, and special administrative region. He serves as a visiting fellow at the Atlantic Council, a contributor to CBS News, an adjunct at New York University's Center for Global Affairs, and a columnist on China risk at Barron's. Mr. Stone Fish is the founder and CEO of Strategy Risks Corp., which quantifies corporate exposure to China.

**Aynne Kokas, C.K. Yen Professor, Miller Center, University of Virginia**

Aynne Kokas is the C.K. Yen Professor at the Miller Center, the director of the University of Virginia East Asia Center, and an associate professor of media studies at the University of Virginia. Kokas's research examines Sino-U.S. media and technology relations. Her award-winning book *Trafficking Data: How China Is Winning the Battle for Digital Sovereignty* highlights how Silicon Valley data governance practices help China build infrastructures for global tech oversight. Her book *Hollywood Made in China* argues that Chinese investment and regulations have transformed the U.S. commercial media industry. Dr. Kokas is a non-resident scholar at Rice University's Baker Institute of Public Policy, a life member of the Council on Foreign Relations, and a fellow at the National Committee on United States-China Relations' Public Intellectuals Program.

**Shi Minglei, advocate and wife of Chinese human rights defender Cheng Yuan**

Shi Minglei, a Chinese Christian, became a human rights advocate after her husband Cheng Yuan, a prominent rights defender, was arrested by the Chinese National Security Bureau in July 2019. Due to his influential and successful work, he was secretly sentenced to five years in prison. To date, he has been arbitrarily detained for almost four years and is jailed in China's Chishan prison. After learning that her husband was subject to forced labor in prison, Ms. Shi began publicly spearheading awareness campaigns and preparing civil lawsuits against participating businesses. She aims to expose global supply chains benefiting from the forced labor of Chinese political prisoners.

**Enes Kanter Freedom, human rights activist and former NBA basketball player**

Enes Kanter Freedom is a human rights activist, professional basketball player, and Nobel Peace Prize nominee. Since the 2021 NBA season, Mr. Freedom has used his global platform to advocate for the rights of Uyghurs, Tibetans, Hong Kongers, Taiwanese, and others facing the Chinese Communist Party's oppression. In February 2022, he was traded from the Boston Celtics to the Houston Rockets, who ultimately waived him. Mr. Freedom lost his NBA career for speaking out against human rights violations in China.

