

## ECONOMIC LIBERALISM, THE CHINESE COMMUNIST PARTY, AND FREE SPEECH

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Those of us who remember the debate over whether the United States should grant China Permanent Normal Trade Relations (PNTR) status in 2000 also remember the ultimate justification for it: integrating China into the global economic order would promote democracy there. This line of thinking was spurred on by the collapse of the Soviet Union in 1989-1990. Works like Francis Fukuyama's *"The End of History?"* postulated that we might have reached the culmination of political evolution, and that political conflict would give way toward democracy --with economic liberalism as the driver. As Fukuyama noted, the imminent implosion of the Soviet Union seemed to be a "an unabashed victory of economic and political liberalism."<sup>1</sup>

Fukuyama himself had praised China's evolution toward liberalism as far back as 1989. At the time, he found little room for backsliding:

the pull of the liberal idea continues to be very strong as economic power devolves and the economy becomes more open to the outside world . . . . The People's Republic of China can no longer act as a beacon for illiberal forces around the world.<sup>2</sup>

Precisely because we assumed the march toward economic and political liberalism to be inexorable, we failed to contemplate that any other outcome was possible – or to construct rules that would prevent any other outcome from occurring. Because of it, we are now witnessing the outcome opposite to the one the PNTR proponents believed would occur.

As discussed further below, it is global economic integration that has given the Chinese government the economic leverage over the rest of us to advance an illiberal agenda. Thus, rather than having global economic integration incubate democracy and suppress autocracy, global economic integration has become a vector for autocratic suppression of democracy. Economic liberalism did not lead to political liberalism: it has led to political repression.

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<sup>1</sup> Francis Fukuyama, "The End of History?" *The National Interest*, Summer 1989, ([https://www.embl.de/aboutus/science\\_society/discussion/discussion\\_2006/ref1-22june06.pdf](https://www.embl.de/aboutus/science_society/discussion/discussion_2006/ref1-22june06.pdf))

<sup>2</sup> *Id.* at 10.

There are various ways to address the threat the behavior the Chinese Communist Party poses to the system. The most critical is to reduce the CCP's ability to engage in this kind of behavior. That means reducing the amount of economic leverage China has over us, and our trading partners.

More broadly, we must also reform the rules of globalization. The current reform proposals are woefully inadequate to address the scope of the problem. It is not clear that our allies yet share our concerns about the seriousness of threat. As a result, cooperation with allies alone is unlikely to suffice to address the problem, at least in the short-term.

### **Extraterritorial Suppression of Freedom of Speech**

With increasing boldness, the CCP – the Chinese government – has used its considerable leverage over global markets to attack the right to freedom of expression. For Americans, the most notorious examples have involved the NBA and South Park. Houston Rockets General Manager Daryl Morey had the temerity to support democratic protestors in Hong Kong, tweeting "Fight for freedom, stand with Hong Kong."<sup>3</sup> This statement, which would be anodyne to a secure, non-authoritarian state, set off the CCP. The Chinese government canceled broadcasts of pre-season NBA games in China and ominously indicated that it was reviewing its relationship with the NBA.<sup>4</sup> The Chinese broadcaster squarely addressed the free speech issue, stating that

We express our strong dissatisfaction and opposition to {NBA Commissioner} Silver's stated support of Morey's right to free speech. We believe any remarks that challenge national sovereignty and social stability do not belong to the category of free speech.<sup>5</sup>

Not surprisingly, the CCP's interpretation of the meaning of free speech is at odds with the very concept of it.

When the CCP was "offended" by a South Park episode, the creators had a different response. They used the government's attitude to mock it – and the Morley critics. "We, too, love money more than freedom."<sup>6</sup>

Though the apology was satirical, it drove home the issue: by doing business with China, Americans are too often forced to choose between money and freedom. This choice is

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<sup>3</sup> CNN Business, "The NBA Faces a No-Win Situation in China. Here's What It Stands to Lose," October 8, 2019 (<https://www.cnn.com/2019/10/08/business/daryl-morey-tweet-nba-china/index.html>)

<sup>4</sup> CNN Business, "China Won't Show NBA Pre-Season Games as Backlash Over Hong Kong Tweet Grows," October 8, 2019 (<https://www.cnn.com/2019/10/08/media/nba-china-hong-kong-morey/index.html>)

<sup>5</sup> Id.

<sup>6</sup> Katie Shepherd, "We Too Love Money More Than Freedom:" South Park Creators Issue Mock Apology Over Chinese Censorship," *Washington Post*, October 8, 2019 (<https://www.washingtonpost.com/nation/2019/10/08/south-park-creators-blast-china-nba-over-censorship/>)

fundamentally inconsistent with the premise under which Congress voted to give China PNTR. Economic liberalism was meant to pave the way for political liberalism, not to facilitate political repression through threats to withdraw market access.

Chinese efforts to control speech about Hong Kong are the most well-known, but the third-rail subjects are much broader. They range from the Uyghurs, to Tibet, to Taiwan, to the nine-dash line, to COVID-19. The episode with South Park should be no surprise: it has been an open secret for years that Hollywood cannot include Chinese bad guys in its movies. Judd Apatow explained how this came to be:

I think it happened very slowly and insidiously . . . . You would not see a major film company or studio make a movie that has story lines which are critical of countries with major markets or investors. The question becomes: what's the result of all of this? The result is, there are a million or more Muslims in reeducation camps in China, and you don't really hear much about it.<sup>7</sup>

The Chinese government is obsessed with controlling information, and deploying it in furtherance of an agenda that uses increasingly Orwellian tactics. 2020 is the year the Chinese government is set to execute its social credit system. The system is described as a “creepy” take on a credit score, where the government’s judgment of a citizen’s social conduct is baked into a social credit score. The consequences of a bad score range from slowing the person’s internet speed to banning him or her from flying to being named a bad citizen.<sup>8</sup> Coupling the social credit system with the Chinese government’s push into facial recognition, and the concept of being a private citizen will lose all meaning.<sup>9</sup>

For the time being, the social credit system seems to be a domestic enterprise. But if there was any doubt that the CCP is on the march to extend its control over domestic speech overseas, we need look no further than the revocation of the press credentials of three Wall Street Journal reporters.<sup>10</sup> As a sign of the extreme direction in which the Chinese Communist Party is headed, the newspaper noted that it is

the first time the Chinese government has expelled multiple journalists simultaneously from one international news organization since the country began re-engaging with the world in the post-Mao era.<sup>11</sup>

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<sup>7</sup> Evan Osnos, “The Future of America’s Contest with China,” *New Yorker*, January 6, 2020 (<https://www.newyorker.com/magazine/2020/01/13/the-future-of-americas-contest-with-china>)

<sup>8</sup> Alexandra Ma, “China Has Started Ranking Citizens with a Creepy Social Credit System,” *Business Insider*, October 29, 2018 (<https://www.businessinsider.com/china-social-credit-system-punishments-and-rewards-explained-2018-4>)

<sup>9</sup> Lily Kuo, “China Brings in Mandatory Facial Recognition for Mobile Phone Users,” *The Guardian*, December 2, 2019 (<https://www.theguardian.com/world/2019/dec/02/china-brings-in-mandatory-facial-recognition-for-mobile-phone-users>)

<sup>10</sup> Wall Street Journal, “China Expels Three Wall Street Journal Reporters,” February 19, 2020 (<https://www.wsj.com/articles/china-expels-three-wall-street-journal-reporters-11582100355>)

<sup>11</sup> Id.

The Chinese government's extraterritorial control of speech is not limited to Americans, either. The Swedes gave a freedom of speech award to a Chinese-born Swedish publisher under detention in China.<sup>12</sup> The Chinese government warned that Sweden would "suffer the consequences" for it.

Chinese diplomats have also escalated their decidedly undiplomatic barbs.<sup>13</sup> The double standard is jarring. Anyone commenting critically on the CCP's conduct is subject to accusations of "hurt feelings" and retaliation. In the meantime, Chinese diplomats insult other countries with increasing abandon.

The Chinese government's behavior takes on ever greater characteristics of the authoritarian heyday that Fukuyama believed was over.

Ironically, by concluding that the fall of the Soviet Union meant we need not worry about becoming deeply integrated with a Communist country, we have facilitated the very integration that gives the CCP the leverage to impose its authoritarian views all over the world.

How did this happen?

### **A Brief, Relevant History of the Negotiations to Create the GATT**

Our appreciation of the true roots of the multilateral global trading system is a bit rusty. We have a vague notion that there were tariff wars in the 1930s, and that the architects of peace felt that a rules-based global trading system would promote harmony.

What we remember less is that the Soviet Union was not part of that system. The Soviet Union was invited to join the talks but ignored the invitation.<sup>14</sup> Without this communist presence, the negotiations focused on the construction of a system that would promote free enterprise.

The architects, which included Franklin Roosevelt's lieutenants and the famous British economist John Maynard Keynes, did not, as is commonly understood, believe that tariff cuts alone would protect free enterprise. Instead, they believed the system needed a comprehensive set of rules that would promote fair competition in the global marketplace, ultimately reflected in the Havana Charter.<sup>15</sup> These rules included standard antitrust fare, such

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<sup>12</sup> The Guardian, China Threatens Sweden after Gui Minhai Wins Free Speech Award," <https://www.theguardian.com/books/2019/nov/18/china-threatens-sweden-after-gui-minhai-wins-free-speech-award>.

<sup>13</sup> The Straits Times, "Diplomatic Outbursts Mar Xi's Plan to Raise China on the World Stage, March 7, 2019, (<https://www.straitstimes.com/asia/east-asia/diplomatic-outbursts-mar-xis-plan-to-raise-china-on-the-world-stage>)

<sup>14</sup> C. Donald Johnson, *Wealth of a Nation*, 2018, at 343.

<sup>15</sup> United Nations Conference on Trade and Employment, Final Act and Related Documents, (Havana Charter), ([https://www.wto.org/english/docs\\_e/legal\\_e/havana\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/havana_e.pdf)).

as antimonopoly provisions, as well as provisions to prevent labor arbitrage, cheating through currency manipulation, and destabilizing behavior by foreign investors.<sup>16</sup>

These rules did not survive. The received wisdom is that they failed because Congress was in an isolationist mood and did not want to set up an International Trade Organization. But this received wisdom is incorrect. The rules failed because the American business community, including the Chamber of Commerce, the National Association of Manufacturers, and the National Foreign Trade Council, balked at the constraints on capital.<sup>17</sup> They wanted tariff cuts without disciplines on their own freedoms. Some of the objections were thought to come from businesses affiliated with pre-war German cartels<sup>18</sup> – and ridding the economy of cartels was one of the principal goals of the Charter drafters. As the United States explained in its 1945 trade proposal,

{t}rade may . . . be restricted by business interests in order to obtain the unfair advantage of monopoly . . . . These practices destroy fair competition and fair trade, damage new businesses and small businesses, and levy an unjust toll upon consumers. Upon occasion, they may be even more destructive of world trade than are restrictions imposed by governments.<sup>19</sup>

The Charter’s negotiators – successful businessmen themselves - were exasperated by the short-sightedness of the business community’s opposition. What the business community considered limitations on free enterprise, the negotiators considered essential elements of free enterprise. In advocating for the Havana Charter, which reflected the original U.S. trade proposal, State Department Adviser Will Clayton pointed out that:

There are two roads we can take here. One leads in the direction of free enterprise and the preservation of democratic principles. The other road leads in the direction of Socialism and state trading.<sup>20</sup>

Compare this more nuanced view to the one handed down over generations: it is not trade by itself that produces a social good, but trade as part of a system of free enterprise. And, critically, free enterprise was not synonymous with “laissez-faire,” but rather with a suite of rules designed to impose restraint on the excesses of capital that, for example, led to the 1929 crash. That the system designed by the post-war architects was based on *laissez-faire* is unthinkable in light of the fact that Keynes himself repudiated such a system in 1926 with his

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<sup>16</sup> Beth Baltzan, “The Old School Answer to Global Trade,” *Washington Monthly*, April/May/June 2019 (<https://washingtonmonthly.com/magazine/april-may-june-2019/the-old-school-answer-to-global-trade/>)

<sup>17</sup> C. Donald Johnson, *Wealth of a Nation*, 2018, at 414, 430.

<sup>18</sup> *Id.*, at 419.

<sup>19</sup> United States State Department, *Proposals for Expansion of World Trade and Employment*, November 1945 ([https://fraser.stlouisfed.org/files/docs/historical/eccles/036\\_04\\_0003.pdf](https://fraser.stlouisfed.org/files/docs/historical/eccles/036_04_0003.pdf))

<sup>20</sup> “Why and How We Came to Find Ourselves at the Havana Conference,” William L. Clayton, Adviser to the Secretary of State, *State Department Bulletin*, June 27, 1948.

essay *The End of Laissez Faire*.<sup>21</sup> Keynes celebrated the American proposal, deeming it “the blue prints for long term commercial . . . policy” and “the first elaborate and comprehensive attempt to combine the advantages of freedom of commerce with safeguards against the disastrous consequences of a laissez-faire system.”<sup>22</sup>

In describing the two paths that lay ahead, Clayton was referring to the Soviet Union. But his words ring true with respect to the CCP today. State capitalism is the direct descendant of Soviet state trading. It is less focused on command and control over every aspect of the economy, but any sector of the economy is subject to command and control if the Chinese government wants it to be. As finance scholar and Beijing resident Michael Pettis and his co-author Matthew Klein explain:

{T}he Chinese party-state has enormous power to tell companies what to do. Communist Party cells are embedded in most Chinese companies, even the subsidiaries of non-Chinese firms. Executives at many large companies, including those without direct government ownership, are party members, which makes them eligible for promotions and favors – and vulnerable to party discipline . . . . The legal academics Curtis J. Milhaupt and Wentong Zheng . . . note that private firms have ‘little autonomy from discretionary state intervention in business judgment’ because ‘the state exercises significant extra-legal control rights over private firms.’ . . . Executives can simply be told to pick Chinese suppliers over foreign ones . . . . The result is that, unlike most other countries, imports have become less and less important to the Chinese economy since the mid-2000s.<sup>23</sup>

When this approach is married with the corporate emphasis on short-term returns, it becomes easier to see how the Chinese government has achieved such leverage in the global marketplace that it can control the speech of private citizens thousands of miles away.

When China joined the WTO, its allure for manufacturers and service providers (mainly banks) was both the size of its market, and the size of its low-wage workforce. The combination – along with a chronic currency manipulation regime that made it even more lucrative to manufacture products in China and export them back to the United States - lured capital to China’s shores.

But it was not just the size of the market, or the cheapness of the labor that led to the rapid rise of China as an economic powerhouse after PNTR, shown in the graph below.<sup>24</sup>

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<sup>21</sup> John Maynard Keynes, “The End of Laissez Faire,” 1926 ([https://delong.typepad.com/egregious\\_moderation/2009/01/john-maynard-keynes-the-end-of-laissez-faire-1926.html](https://delong.typepad.com/egregious_moderation/2009/01/john-maynard-keynes-the-end-of-laissez-faire-1926.html)) “The phrase laissez-faire is not to be found in the works of Adam Smith {or} Ricardo.”

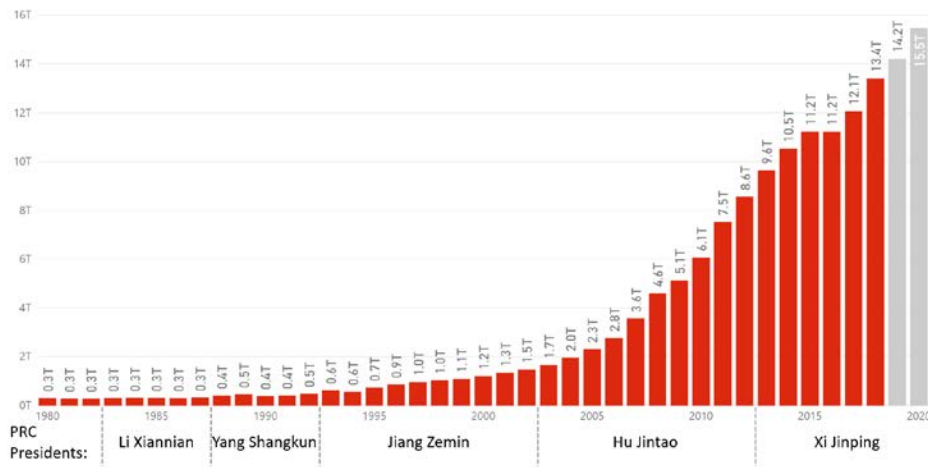
<sup>22</sup> Quoted in *Wealth of a Nation*, at 332-33.

<sup>23</sup> Matthew C. Klein and Michael Pettis, *Trade Wars are Class Wars* (Yale University Press 2020), at 122.

<sup>24</sup> Visual Capitalist, 70 Years of Economic Development and Policy in the People’s Republic of China, (<https://www.visualcapitalist.com/china-economic-growth-history/>) A time-lapse version is also available that shows China’s position in the global economy compared to others.

## China GDP

GDP in current prices (trillions of US dollars)



Data Source: IMF World Economic Outlook, April 2019

Data Analysis by: MGM Research

The interventionist nature of the Chinese government also played a critical, and underappreciated, role. It is typical to ascribe the Chinese economy's rise to the simple operation of Ricardo's comparative advantage. However, in exploring how China has risen to the top of the lithium ion battery industry, the Wall Street Journal has done an excellent job of demonstrating how incorrect that premise is.<sup>25</sup> The economic rise is not through comparative advantage, but a combination of subsidies and forced joint ventures. While the Journal's article was limited to batteries, the underlying model is prevalent. It has been used in other industries, and will be used in still others. The increasing awareness of the Made in China 2025 initiative is awakening policymakers and defenders of the global trading system to the comprehensive nature of the threat.<sup>26</sup>

Why do companies participate in these forced joint ventures? The size of the market and the size of the low-wage workforce.

If we examine the approach of the Chinese government to the global marketplace from a broader lens, we start to see the common thread across its behavior. China, Inc. is, at its core, a monopoly. It is not a monopoly of a particular company, or in a particular sector: it is a monopoly of a country that both wishes to be autarkic in terms of domestic consumption, and mercantilist in terms of taking advantage of export markets to generate revenue. This, of

<sup>25</sup> Trefor Moss, "The Key to Electric Cars Is Batteries. One Chinese Firm Dominates the Industry," *Wall Street Journal*, November 3, 2019 (<https://www.wsj.com/articles/how-china-positioned-itself-to-dominate-the-future-of-electric-cars-11572804489>)

<sup>26</sup> U.S. Chamber of Commerce, *Made in China 2025: Global Ambitions Built on Local Protections*, ([https://www.uschamber.com/sites/default/files/final\\_made\\_in\\_china\\_2025\\_report\\_full.pdf](https://www.uschamber.com/sites/default/files/final_made_in_china_2025_report_full.pdf))

course, is at odds with the very purpose of the multilateral trading system, which rejects both autarky *and* mercantilism.

### **But Japan**

Many trade experts remain relatively unconcerned by the behavior of the Chinese government. According to this view, similar arguments were made about Japan in the 1980s. The Japanese economy eventually sputtered; this is presumed to be the path Chinese economy will follow.

The increasing aggression of the Chinese government illustrates the radical differences between the Japan of the 1980s, and the China of the 2020s. Japan's ambitions in the 1980s, which were mercantilist in nature, centered around economic development. Like China, Japan used export-led growth to move through the manufacturing value chain, creating significant domestic wealth. That economic ambition was not, however, coupled with grand geopolitical ambitions.

By contrast, as its behavior in the South China Sea, Taiwan, and Hong Kong indicates, the CCP indeed does have grand geopolitical ambitions. Moreover, the size of China's economy is orders of magnitude larger than that of Japan. Japan's economy at its peak has been around \$5 trillion; China's today is nearly three times that size.<sup>27</sup>

Finally, a state capitalist economy with an authoritarian government is able to deploy subsidies of a size that would be more difficult to justify in a system with checks and balances. Authors Pettis and Klein, in describing CCP control over business, take the position that "the Chinese economy may be fundamentally incompatible with the spirit of any rules-based trading system."<sup>28</sup>

It is critical to factor in that the United States is now profoundly dependent on supply chains in China in a way that was not the case with Japan in the 1980s. COVID-19 has illustrated the point vividly, as Americans have been plagued with shortages of personal protective equipment because of a dependency on Chinese production.

It is not only PPE, however. One review of the transcripts at the USTR Section 301 hearings reveals an extraordinary list of products that witnesses claimed could not be made outside of China.<sup>29</sup> It is not simply that these goods cannot be made in the United States; it is that, according to these witnesses, they cannot be made anywhere *but* China. This is not a recent

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<sup>27</sup> *Id.*

<sup>28</sup> Klein and Pettis, *Trade Wars are Class Wars*, at 121-22.

<sup>29</sup> Matt Stoller, "Bible Lobbyist: We Can't Print Bibles in America Anymore," (<https://mattstoller.substack.com/p/bible-lobbyist-we-cant-print-bibles>)



development: supply chain concentration in China has been a problem for at least the better part of a decade.<sup>30</sup>

This situation is serious enough that it has gotten the attention of the Pentagon. In a report on the industrial base, the Department of Defense identifies areas in which we have become dependent on China as the sole source of some materials essential to national defense.<sup>31</sup> According to the report:

China is . . . the sole source or a primary supplier for a number of critical energetic materials used in munitions and missiles. In many cases, there is no other source of drop-in replacement material and even in cases where that option exists, the time and cost to test and quality the new material can be prohibitive – especially for larger systems (hundreds of millions of dollars each).<sup>32</sup>

Part of the reason we have not, historically, concerned ourselves with supply chains is because our approach to trade for decades has emphasized “efficiency” – low cost -- as virtually the only relevant value. But, as we are now finding out, efficiency is in fact not the only value in a global trading regime. Redundancy has value too. This is why information technology systems have backups. It is not necessarily “efficient” in a dollars-and-cents calculation – until the day the system crashes.

Trade policymakers are now in the process of finding out what IT workers have known for decades: redundancy is critical.

Because of the size of the Chinese economy, its geopolitical ambitions, our extreme supply chain dependency, and the Chinese government’s willingness to exert that power in ways inimical to the interests of democratic societies, the CCP poses a threat that is simply not analogous to Japanese economic ambitions in the 1980s.

### **Solutions**

The CCP’s leverage over the speech of American citizens comes in large part from its economic leverage over the United States. Abating the Chinese government’s economic leverage over us in turn abates its leverage over our exercise of our constitutional rights. There are different approaches that can be adopted to diminish that leverage.

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<sup>30</sup> Matt Stoller, “How America Could Collapse,” *The Nation*, July 21, 2011 (<https://www.thenation.com/article/archive/how-america-could-collapse/>); Barry Lynn, “A Glitch in the Matrix,” *Foreign Policy*, September 12, 2012 (<https://foreignpolicy.com/2012/09/12/a-glitch-in-the-matrix/>)

<sup>31</sup> Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States, Report to President Donald J. Trump, September 2018 (<https://media.defense.gov/2018/Oct/05/2002048904/-1/-1/1/ASSESSING-AND-STRENGTHENING-THE-MANUFACTURING-AND%20DEFENSE-INDUSTRIAL-BASE-AND-SUPPLY-CHAIN-RESILIENCY.PDF>)

<sup>32</sup> *Id.*, at 36.

Some of these approaches will involve coordinating with our allies, be it at the WTO or through other mechanisms. However, we must be cognizant that the WTO is a consensus-based organization. That means all WTO Members would be expected to agree to any new rules. As a Member, China has the ability to frustrate the negotiations, particularly if it has the backing of other like-minded Members (or Belt-and-Road beneficiaries). China has already rejected U.S. subsidy reform efforts.<sup>33</sup>

In addition, as many experienced American trade negotiators are aware, our allies are not necessarily as concerned – yet – about addressing the problematic behaviors of the CCP. Prior efforts to cooperate, including the Global Steel Forum, have produced little to nothing in the way of real results.

We cannot afford to rely exclusively on collaboration with allies to address the threat the CCP now presents. It will take a mix of strategies.

The following priorities stand out, though these are by no means exhaustive:

- Promote redundancy in supply chains. Although there are mixed feelings about the Section 301 tariffs, one benefit is that they have been moving supply chains out of China, and to other countries.<sup>34</sup> Among the countries benefiting are those with values more akin to our own, including Mexico.

We must be more deliberate, however. For example, building on the Pentagon’s efforts, we should examine supply chains and identify alternatives for those that are important to the U.S. economy and the welfare of the American people. We can then work to mitigate any outsized dependence on the Chinese government. In light of COVID-19, pharmaceuticals and PPE are areas that have emerged as a priority. In addition, Senators Cornyn and Warner have introduced legislation to restore semiconductor manufacturing in the United States.<sup>35</sup> In considering supply chain diversification, we can and should seek to collaborate with allies, so that we are not swapping one supply chain dependency for another.

Although the concept of industrial policy was out of vogue for the past 40 years, there was a strong bipartisan consensus in favor of it in the 1970s. Supporters included Pete

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<sup>33</sup> “China: U.S. Proposal Merely ‘Scene Setting’ for Desired Subsidy Rules,” Inside U.S. Trade (March 3, 2020) (<https://insidetrade.com/daily-news/china-us-proposal-merely-‘scene-setting’-desired-subsidy-rules>)

<sup>34</sup> Austen Hufford and Bob Tita, Wall Street Journal, “Manufacturers Move Supply Chains Out of China,” July 14, 2019 ( <https://www.wsj.com/articles/manufacturers-move-supply-chains-out-of-china-11563096601>)

<sup>35</sup> Creating Helpful Incentives to Produce Semiconductors for America Act (<https://www.cornyn.senate.gov/node/5599>)

Peterson, after whom the Peterson Institute is named,<sup>36</sup> and David Rockefeller.<sup>37</sup> Even Alan Greenspan considered that the United States might need to revive the wartime Reconstruction Finance Corporation; in the strange bedfellows department, the AFL-CIO agreed.<sup>38</sup> COVID-19, in exposing the depth of our dependence on the CCP, has reignited the discussion.

However, to ensure that we address the true scope of the problem, we must understand all the ways in which the trading system facilitates supply chain concentration in China. One area, for example, is the rules of origin in bilateral and regional trade agreements. TPP in some cases permits 70% of a good to come from China, yet the good trades preferentially under the agreement. In fact, there are goods in which the content is likely much higher. Even NAFTA, which has stronger rules (because it was written in the 1990s) allows significant Chinese content; this is equally true even of the new auto rules under the USMCA, which allow lithium ion batteries from China to be incorporated into a USMCA car. Senator Casey has introduced legislation to address the systemic flaw with our approach to rules of origin.<sup>39</sup>

- Negotiate comprehensive reforms to the rules of globalization to preserve competition. Even if we succeed in diversifying supply chains, it will be difficult to sustain that diversification unless the rules of globalization themselves are reformed. Otherwise, the same incentives that led to offshoring and concentration in the first place will lead to offshoring and concentration again. Therefore, reforms must address the fundamentally anticompetitive behaviors at the heart of the problem: monopolistic conduct, currency manipulation, and labor and environmental arbitrage.

To address monopolistic behavior, this paragraph from the Havana Charter is a useful starting point:

Each Member shall take appropriate measures and shall co-operate with the Organization to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade . . . .<sup>40</sup>

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<sup>36</sup> One Peterson Institute fellow, Simon Johnson, has coauthored a book that reexamines U.S. industrial policy during World War II, which sets out a detailed proposal for a modern version. See Jonathan Gruber and Simon Johnson, Jump Starting America, 2019.

<sup>37</sup> Judith Stein, Pivotal Decade, 2011, at 39, 75.

<sup>38</sup> *Id.*, at 103, 250.

<sup>39</sup> Market Economy Sourcing Act (<https://www.casey.senate.gov/download/market-economy-sourcing-act>)

<sup>40</sup> United Nations Conference on Trade and Employment, Held at Havana, Cuba, April 1948, at 63, ([https://www.wto.org/english/docs\\_e/legal\\_e/havana\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/havana_e.pdf)).

These rules cover both private and public commercial enterprises and allow us to avoid the pointless debate over whether a particular company is state-owned or not.

The Havana Charter also had rules to guard against labor arbitrage. With respect to currency manipulation, the Charter set out a mechanism for dispute settlement that included fact-finding by the International Monetary Fund.

- Rethink our asks of the CCP during the ongoing negotiations. Some of the priority asks of the CCP are at odds with the goal of reducing Chinese economic dominance and indeed would *increase* CCP leverage over us. For example, the Chinese government's lack of respect for intellectual property rights is one of the reasons companies choose *not* to produce there. By improving the investment climate in China, we are doubling down on our excessive dependence on a hostile authoritarian government. Democrats and Republicans both agreed to nearly eliminate investor-state in the new NAFTA, for example, under the rationale that it was not the role of U.S. trade policy to facilitate offshoring. The same rationale applies to intellectual property in China.

We should instead use the talks to discuss labor and environmental arbitrage.<sup>41</sup> It is not because labor and environmental issues are “social” issues, as has been the traditional perception. Rather, the Chinese government suppresses these rights in order to create a false comparative advantage, and that is bad for American workers and American businesses. Indeed, it is bad for every country in the world that has to compete with Chinese production of industrial goods. Part of the reason Mexico, for example, has a history of labor rights suppression is because its workers compete with Chinese workers. Mexico is our ally, and our neighbor; we should create a trading system that does not put Mexico at a disadvantage when it agrees to respect labor rights.<sup>42</sup>

And it is also bad for Chinese workers.

This is reason enough to revive the Charter's rules on labor rights, and to expand them to include environmental rights, as part of the WTO reform agenda. 54 countries agreed to enforceable labor rights in 1948. There is no reason not to support them today.

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<sup>41</sup> Andy Green and Daniella Zessoules, “U.S. Trade Policy in North American, China, and Beyond,” Center for American Progress, February 27, 2019 (<https://www.americanprogress.org/issues/economy/reports/2019/02/27/466705/u-s-trade-policy-north-america-china-beyond/>)

<sup>42</sup> Beth Baltzan and Jeff Kucik, “NAFTA's Replacement Gives Labor Some Shelter from Globalization's Storms,” *Foreign Policy*, January 16, 2020 (<https://foreignpolicy.com/2020/01/16/usmca-mexico-canada-trump-workers-democrats-naftas-replacement-gives-labor-some-shelter-from-globalizations-storms/>).

## Conclusion

The optimism that prevailed after the demise of the Soviet Union led some to believe that authoritarian state trading regimes would never surface again. According to Fukuyama, following his view that we were potentially reaching the end of history:

The state that emerges at the end of history is liberal insofar as it recognizes and protects through a system of law man's universal right to freedom, and democratic insofar as it exists only with the consent of the governed.<sup>43</sup>

Although the founders of the GATT had the foresight to devise rules to frustrate the ability of state trading systems to thrive, precisely because of the threat they pose to free enterprise and democracy, the American business community persuaded Congress to reject them. Our failure to know our own history – or the hubris of believing it did not matter – meant that we did not think to revive them either when the WTO was formed, or when China joined.

Ironically, then, we are now living through the very outcome the founders of the system sought to prevent. If the Chinese government continues on its present path, which is to bend others to its will, we may well end up with a global trading system that more closely resembles state capitalism than free enterprise. The loss of free speech we are witnessing seems merely to be a harbinger of the loss of other freedoms, too.

We are not powerless to act, but it does require us to part company with the theories of trade that have predominated over the past 25 years. Trade does not produce peace by itself. Rather, trade fosters peace when the rules are designed to promote peace.

Fukuyama has more recently revisited his views. Commenting that the “unregulated markets” associated with Thatcherism had in many ways a “disastrous effect,” he went on to comment that the only “plausible systemic rival to liberal democracy” is Chinese state capitalism.

The Chinese are arguing openly that {state capitalism} is a superior {model} because they can guarantee stability and economic growth over the long run that democracy can't.<sup>44</sup>

The system we thought would breed democracy has instead facilitated a rival ideology that threatens democracy itself. Fukuyama has the integrity – and the courage -- to revisit his assumptions, and to recognize his mistake.

We must do the same.

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<sup>43</sup> Fukuyama, “The End of History?” at 3.

<sup>44</sup>George Eaton, “Francis Fukuyama Interview: Socialism Ought to Come Back,” *The New Statesman*, 17 October 2018 (<https://www.newstatesman.com/culture/observations/2018/10/francis-fukuyama-interview-socialism-ought-come-back>)