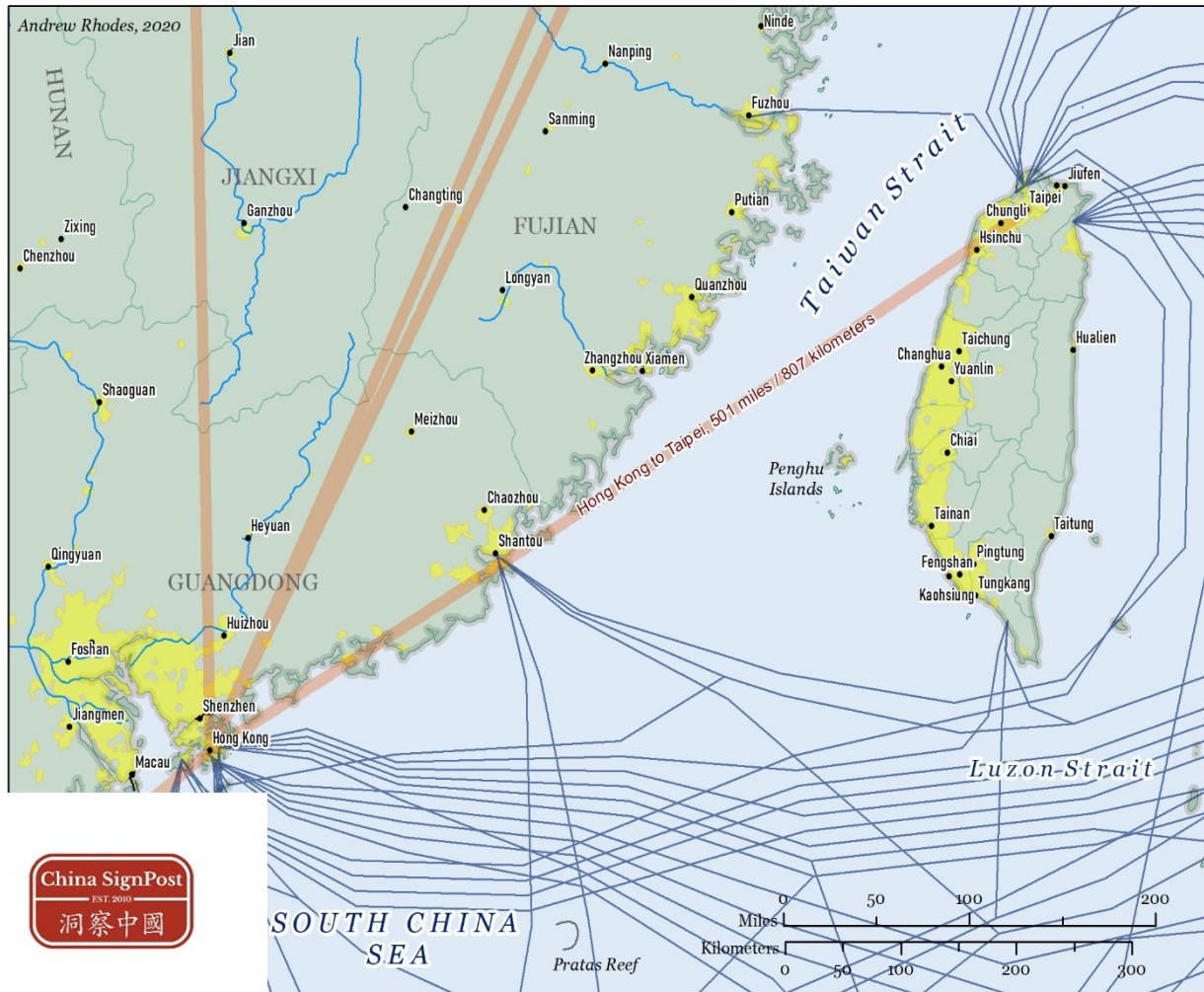


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# POLICY OPTIONS TO IMPOSE COSTS ON BEIJING'S COERCIVE ENVELOPMENT OF HONG KONG: VERSION 1.0

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Hong Kong's long-deteriorating situation has come to a head. On 30 June, Beijing railroaded through a popularly-opposed National Security Law negating the Special Autonomous Region's judicial system and cherished freedoms. Political opponents are vulnerable as never before; everyone is potentially at risk. Beijing has abruptly abandoned binding commitments and reassurances, which underwrote Hong Kong's handover from Britain in 1997, and its subsequent special treatment by the United States and other nations. Hong Kong's identity and status lies damaged and altered irrevocably. Key questions remaining are how bad things will get, and what to do in response. This policy report offers assessments and options for American decision-makers to address these challenging dynamics.<sup>i</sup>

**Gabriel B. Collins and Andrew S. Erickson, "Policy Options to Impose Costs on Beijing's Coercive Envelopment of Hong Kong: Version 1.0," *China SignPost*<sup>TM</sup> (洞察中国) 102 (30 June 2020).**

**Executive Summary:**

Beijing has chosen to breach legal commitments it made to assure Hong Kong's autonomy until at least 2047, most prominently through the sweeping national security law it is preparing to impose.<sup>ii</sup> PRC actions are part of a broader pattern of revisionist and destabilizing behavior across an arc stretching from the Himalayas to the East China Sea and deep into Southeast Asia. Beijing increasingly operates according to a "might makes right" approach that eschews institutional, legal, and normative constraints and instead relies on raw coercion. Such behavior undermines the regional diplomatic, economic, and security architecture that suppressed interstate warfare in the Asia-Pacific region and drove robust economic growth and improvements in human wellbeing over the past 70 years.

In disturbing ways, the spirit of Beijing's actions in Hong Kong echoes Russia's annexation of Crimea in 2014. PRC decisionmakers utilize more legal trappings, and otherwise place more velvet on their bayonets, than President Putin and his advisors did in 2014; but the blade nonetheless lies just beneath. Moreover, unless met with robust and sustained pushback that begins to shift the cost/benefit calculus, the blade likely will not stop in Hong Kong. Accordingly, this report presents a set of more than 15 calibrated response options that U.S. policymakers should consider utilizing to:

*(1) impose costs on Beijing’s ongoing coercive envelopment of Hong Kong and other malign behaviors;*

*(2) undermine China’s ability to exploit Hong Kong as a preferential channel/“white glove” (白手套) for economic power projection and influence operations abroad, and;*

*(3) signal resolve to U.S. allies and partners including, but not limited to, Japan, the Philippines, and Taiwan.*

U.S. partners and allies will want to see a nuanced approach from Washington that can be adapted in response to fluid circumstances. Accordingly, our analysis prioritizes measures that can be readily implemented as the first step in an overall, layered approach where pressure may need to be dialed up and down over time as actions and counter-actions evolve. It can serve as a “living document” that is updated and revised as events and initial policy formulation and implementation unfold.

### **Summary of Key Recommended Policy Measures**

1. Create safe havens in the United States and allied/partner countries to absorb Hong Kongers fleeing political persecution and other forms of repression as Beijing exerts power more directly over daily life and activities in Hong Kong.
2. Prohibit the export of semiconductor manufacturing equipment and support services, as well as other core dual-use technologies, to Mainland China and Hong Kong.
3. Amend Section 241 and other relevant portions of the Countering America’s Adversaries with Sanctions (“CAATSA”) law in order to leverage an effective and existing set of options for calibrated, targeted measures against selected PRC Mainland and Hong Kong entities and persons whereby pressure can be modulated in response to events.
4. Intensify Freedom of Navigation and presence operations to challenge illegal PRC maritime claims and land reclamation activities in the South China Sea and East China Sea.
5. Review and enhance finely-calibrated and-targeted aspects of the U.S. diplomatic, economic, and security relationships with Taiwan.

# **TABLE OF CONTENTS**

<b>Hong Kong Envelopment Reflects a Broad, Worrisome Pattern of Revisionist Actions by the PRC Government .....</b>	<b>4</b>
<b>The First Shoe is Already Dropping: Hong Kong’s Special Status vis-à-vis Washington .....</b>	<b>6</b>
Practical Realities .....	8
Given these complex circumstances, it would be wise to address problematic behavior by the PRC government and its facilitators across three layers. ....	11
<b>LAYER 1 RESPONSES—FOR IMMEDIATE AND SIMULTANEOUS IMPLEMENTATION ...</b>	<b>11</b>
Option 1: Create multiple U.S./allied & partner country safe havens for Hong Kongers, particularly those at elevated risk of suppression and political persecution .....	11
Option 2: Tighten export controls.....	13
Option 3: Tax-free repatriation of assets from Hong Kong into U.S. markets and assets.....	16
Option 4: Publish the assets of PRC officials associated with the erosion of Hong Kong’s autonomy, including, but not limited to, National People’s Congress delegates and Hong Kong officials who voted to impose Beijing’s national security law on the territory .....	17
Option 5: Close Macau Loophole.....	18
<b>LAYER 2 ACTIONS—POTENTIAL FOLLOW-ON ACTIONS .....</b>	<b>18</b>
Option 1: Amend Specific Sections and Provisions of CAATSA to Create Additional Policymaker Tools vis-à-vis PRC and Hong Kong Entities .....	20
Option 2: Intensify U.S. and allied/partner country investigation and enforcement of long-arm jurisdiction anti-corruption laws such as the U.S. Foreign Corrupt Practices Act and UK Bribery Act against Hong Kong entities with links to Beijing.....	23
Option 3: Require U.S. public pension funds and public university endowments to divest from the debt, equity, and other securities/assets of specified PRC firms linked to repression and human rights violations in Hong Kong. ....	23
<b>LAYER 3 RESPONSES: REGIONAL SECURITY, SUPPORT, AND SIGNALLING BEYOND HONG KONG IMPLEMENTED CONCURRENTLY WITH LAYER 1 ACTIONS IN HONG KONG.....</b>	<b>24</b>
Option 1: Selectively Exempt Hong Kong Entities, Target Those From PRC .....	24
Option 2: Hold the Line Beyond Hong Kong, Starting with Taiwan .....	24
Immediate Additional Actions to Support Taiwan .....	25
Option 3: Enhanced Freedom of Navigation and presence operations to challenge illegal Chinese maritime claims in the South China Sea .....	29
Option 4: Go “hands on” with definitive actions to help regional partners secure their maritime rights in the South and East China Seas .....	30

## **HONG KONG ENVELOPMENT REFLECTS A BROAD, WORRISOME PATTERN OF REVISIONIST ACTIONS BY THE PRC GOVERNMENT**

Beijing is unilaterally abrogating formal, binding legal promises the PRC made to Hong Kong and the world, despite the fact that the “one country, two systems” agreement still guarantees 27 years of protections for the people of Hong Kong.<sup>iii</sup> Hong Kong’s government has long branded its home “Asia’s World City,” with a London- and New York-class “Commitment to maintaining the rule of law, freedom of expression and association, the free flow of information, openness and diversity.”<sup>iv</sup> This was no temporary ad campaign but a core component of a set of explicit legal commitments to Hong Kong and enshrined in multiple binding agreements, including: (1) the Sino-British Joint Declaration, an important international treaty registered by the Chinese and British governments at the United Nations on 12 June 1985; (2) in the Basic Law, which Beijing’s National People’s Congress (NPC) ratified; and (3) even in the PRC’s own Constitution.

Today’s PRC leaders and their advisors no longer believe that they need to play by existing rules and can make their own (key example: One Country above Two Systems, a refrain that has reverberated since at least 2014, but came to the fore with the Extradition Bill in 2019).<sup>v</sup> Chinese commentators well-placed to understand official government positions do not acknowledge how jurisprudence and the independence of courts work in practice, which suggests that the Chinese Communist Party (CCP) refuses to be bound by law.<sup>vi</sup>

The PRC leadership’s abandonment of commitments regarding Hong Kong should not be viewed in isolation, but as part of a broader, increasingly worrisome pattern in which Beijing takes actions that flagrantly violate international law and normative principles and dares others to stop it. (See **Exhibit 1**, below.) For example, in the South China Sea, the PRC has built artificial features and deployed weapons on them despite President Xi explicitly promising no militarization during a joint White House press conference with President Obama in 2015.<sup>vii</sup>

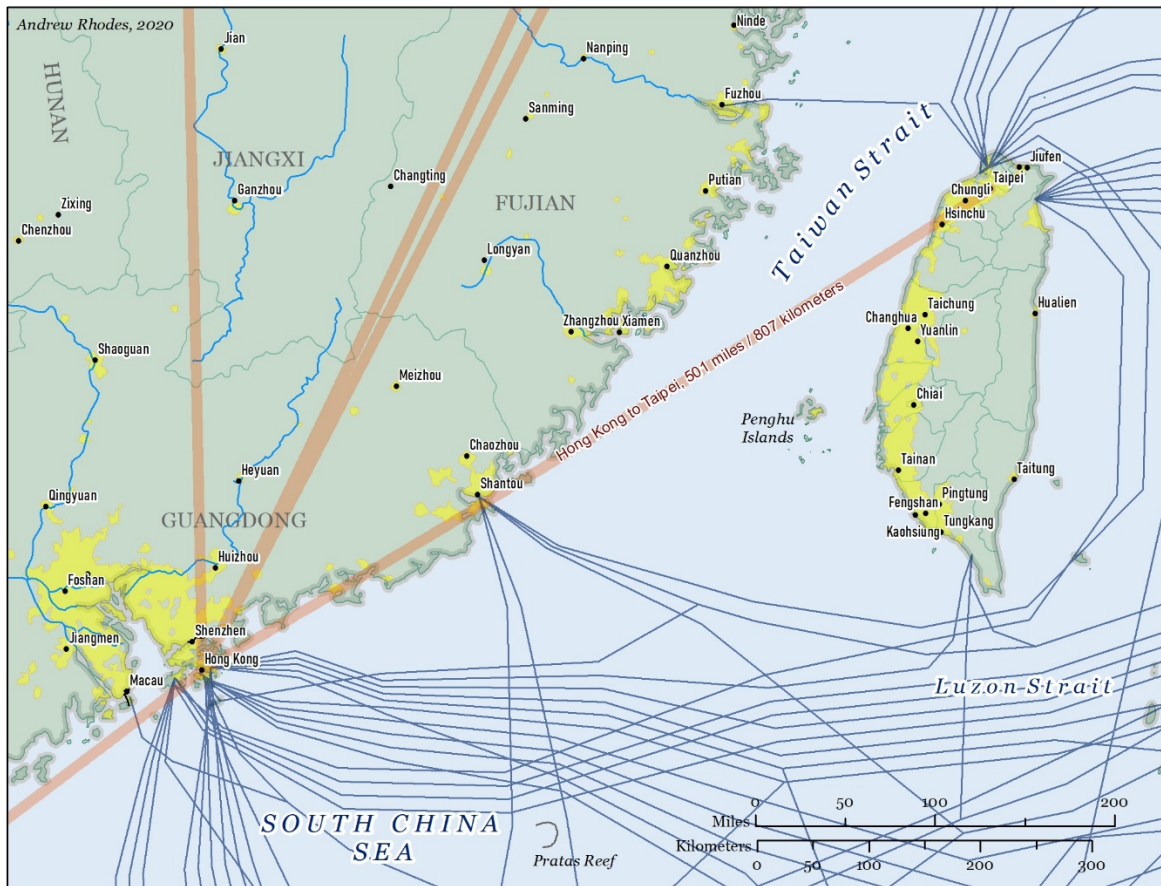
Beijing has additionally dismissed out of hand an arbitral tribunal ruling on the South China Sea features not being islands—despite the PRC being a signatory to the UN Convention on the Law of the Sea (UNCLOS).<sup>viii</sup> It has also sought to establish an enhanced Air Defense Identification Zone (ADIZ+) in the South China Sea even more extensive than the one it unilaterally imposed over the East China Sea.<sup>ix</sup> Other malign PRC actions include the militarization of the East China Sea and Yellow Sea, the use of lethal force in the intensifying border dispute with India; restriction of the Mekong River’s flow;<sup>x</sup> intensified air and naval intrusions into and around Taiwan’s airspace/waters; dredging in the Taiwan Strait; ramming of Taiwan coast guard vessels around Jinmen/Quemoy; harassment of Indonesian fishing vessels; and influence operations in Australia and elsewhere extending all the way to American soil, infrastructure, and cyberspace.<sup>xi</sup>



## Exhibit 1: China's First Ring of Coercive Envelopment

*Hong Kong, Macau, and Taiwan are all maritime, but only Taiwan has a sea-moat protecting it from the PRC*

*Note: the blue lines indicate the numerous submarine telecommunications cables connecting these economies as key conduits to world.*



*Map by Andrew Rhodes, 2020*

All this is happening nearly simultaneously. The PRC's move against Hong Kong is the latest indication that Beijing believes coercion trumps pre-existing legal commitments and norms of international behavior on any issue defined as a "core interest."<sup>xii</sup> Beijing's "core interest" seems to be a variable concept; hence appeasement (or even just acceptance or insufficient resistance) risks inducing the PRC leadership to expand what it views as "core interests," potentially accelerating ongoing revisionist actions. Conversely, if "core interests" are variable, Beijing can conceivably adjust them away from confrontation as well if PRC actions face sufficient pushback. The variability of "core interests" further suggests that the PRC's current pattern of predations will proliferate until external action persuades China's leadership that the costs of revisionist actions

have begun to exceed the perceived benefits. Accordingly, U.S. and allied country responses to PRC actions in Hong Kong will be critical to begin imposing costs for Beijing's revisionism.

## **THE FIRST SHOE IS ALREADY DROPPING: HONG KONG'S SPECIAL STATUS VIS-À-VIS WASHINGTON**

The long-standing blanket policy of treating Hong Kong as being substantively separate from mainland China is fast becoming untenable. Beijing's actions will legally obligate the United States to renounce the preferred status Hong Kong enjoyed under the U.S.-Hong Kong Policy Act (USHKPA) of 1992, which conferred special benefits to Hong Kong in certain areas not available to the PRC at the time. The USHKPA's provisions are reinforced by the Hong Kong Human Rights and Democracy Act of 2019 (HKHRDA), which explicitly requires that Hong Kong must "...remain sufficiently autonomous from the People's Republic of China to 'justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People's Republic of China.'"<sup>xiii</sup>

The PRC government's move to impose its national security law on Hong Kong severely undermines the territory's autonomy from the PRC. Readers should note that the loss of "autonomy" does not imply the PLA garrison marching through the streets and in fact much more likely to be a steady and subtle process akin to a vine strangling a tree. Consider, for instance, the ambiguous jurisdictional provisions of the new National Security Law whereby the Mainland authorities "may exercise jurisdiction over a tiny number of criminal cases that jeopardize national security under specific circumstances."<sup>xiv</sup>

Such language confers enormous discretionary latitude upon the Mainland law enforcement apparatus. This is troubling when one considers that to date, there are multiple instances of what in Hong Kong might previously been standard business activities being criminalized in the Mainland as "national security" concerns.<sup>xv</sup> The resulting uncertainty is likely to be chilling to business activity, because an activity that is permissible in one day's political situation can be deemed criminal the next—even retroactively. Beijing's tendency to criminalize routine business behaviors if it finds it expedient to do so will be particularly true in "commanding heights" sectors such as high-tech, energy, and certain commodities. It will also likely affect media and information businesses, a risk foreshadowed by the Causeway Books detentions in 2015 and 10-year prison sentence imposed upon Swedish citizen Gui Minhai by the PRC as part of that case.<sup>xvi</sup>

One of the first challenges to the new National Security Law could arise from Hong Kong-based entities writing future contracts with PRC entities to be governed by British, American, or Australian law and have those jurisdictions rather than Hong Kong be the venue for hearing any disputes that may arise under the agreement. A coercive (even if subtly so) PRC response to this rational adjustment by businesses fearing legal risk created by the National Security Law in Hong Kong would be one potential concrete lead indicator of further erosion of Hong Kong's autonomy.

The response may be an unofficial one where PRC officials use back channels to make clear to state-owned firms (and potentially others as well) that they must only sign agreements governed by Hong Kong law and with Hong Kong and the despite resolution venue. Or, a more overt

response would be for the PRC to try and grab jurisdiction away from the foreign court in the event of a dispute arising from activities in Hong Kong or attempt extra-legal means to override legitimate judicial processes taking place beyond the bounds of PRC control.

Through the dynamics described above, the National Security Law is also likely accelerating the impacts of pre-existing CCP self-injection into Hong Kong commercial affairs. In 2017, at least 30 Hong Kong-listed subsidiaries of PC state-owned enterprises with a combined market capitalization at the time exceeding \$1 trillion added language to their central documents that assure the CCP an integral role in corporate decision-making.<sup>xvii</sup>

With Hong Kong's loss of autonomy increasingly laid bare, Washington will likely move expeditiously, with the first broadly visible impacts emerging in coming days and weeks. Indeed, on 29 May 2020, President Trump declared, "I am directing my administration to begin the process of eliminating policy exemptions that give Hong Kong different and special treatment."<sup>xviii</sup>

Hong Kong's preferred status has long covered a broad range of important areas, including continued access to items export controlled under the Coordinating Committee for Multilateral Export Control (COCOM) and separate import quotas and certificates of origin.<sup>xix</sup> Hong Kong also has thus far been considered a separate customs territory from the Mainland and subject to lower tariffs on goods exported to the United States than would be the case for PRC-origin items.<sup>xx</sup> The law essentially preserves the treatment Hong Kong received as a British colony prior to its transfer to the PRC on 1 July 1997, so long as Hong Kong remains "sufficiently autonomous to justify" such treatment.

Hong Kong enjoyed preferred status vis-à-vis the United States in other areas as well. For instance, it has been treated as a full member of the WTO, regardless of the PRC's membership, status as well as granted permanent normal trade relations (PNTR). Beyond those areas, the United States recognizes commercial ships and airplanes registered and licensed in Hong Kong, and provides access to U.S. ports and airports, and visa applications by Hong Kong residents are treated separately from PRC visa applications (relevant for business and commercial relations).

Furthermore, Beijing's actions also jeopardize several bilateral agreements between the United States and Hong Kong that provide special treatment. The HKSAR government lists all the treaties and bilateral agreements to which it is a party at: <https://www.doj.gov.hk/eng/laws/treaties.html#mf>. In terms of the United States, this includes:

- A double taxation avoidance agreement (16 August 1989)
- An air services agreement (7 April 1997)
- A consular arrangement (1 July 1997)
- A surrender of fugitive offenders agreement (21 January 1998)
- A transfer of sentenced persons agreement (17 April 1999)
- A mutual legal assistance agreement (21 January 2000)
- A taxation information exchange agreement (20 June 2014)

Comparing these agreements with the ones Washington has with Beijing can suggest which ones might or might not be relevant now that the United States has formally recognized that Hong Kong



has been subsumed by the PRC's coercive envelopment. Now is also an ideal time to allow the long American tradition of lawmaking in a transparent manner to "signal" resolve to Beijing. Deterrence is key both in warfare and politics, and the United States has powerful instruments to wield. Many of the special treatment areas enumerated above benefit large business interests and high net-worth individuals in Hong Kong's economic elite, and so the prospect of their reduction or removal may prompt meaningful domestic pressure for Beijing to preserve more of Hong Kong's autonomy than might have otherwise been the case.

### **Practical Realities**

CCP leaders may believe that the United States is either unable or unwilling to execute actions that impose costs in any sustained way and will have to be disabused of this misperception. Hong Kong has been a practical, permissive "economic airlock" for accessing the global capital flows that have helped underpin China's meteoric economic rise over the past four decades; and previously sustain Maoist China as a unique conduit for external trade, technology transfer, and foreign currency. The CCP overlooked Hong Kong's ideological outlier status because the benefits of the status quo outweighed the benefits of overturning it, plus the costs of change were too high.

Now, because of hubris, over-confidence, desperation, or some combination thereof, the benefits of maintaining the status quo and the costs of change no longer seem prohibitive to Beijing. In focusing on Hong Kong's transition from accounting for nearly 20% of PRC GDP to the current 3%, PRC leaders likely underappreciate the importance of Hong Kong's legal and political autonomy as a key platform for facilitating financial flows in and out of Mainland China. Consider, for instance, recent remarks by Wu Xinbo, dean of the Institute of International Studies at Shanghai's Fudan University, who emphasized that Beijing sees Hong Kong as a "sovereignty" issue that plays a vital role in Chinese domestic politics and for President Xi's internal standing.<sup>xxi</sup> A clear implication is that the PRC leadership is likely willing to accept substantial damage to the broader U.S.-China relationship in order to establish more explicit political control over Hong Kong. But Beijing's cost acceptance is almost certainly finite; and mounting direct damage to PRC economic interests could prompt Beijing to rebalance its cost/benefit calculus.

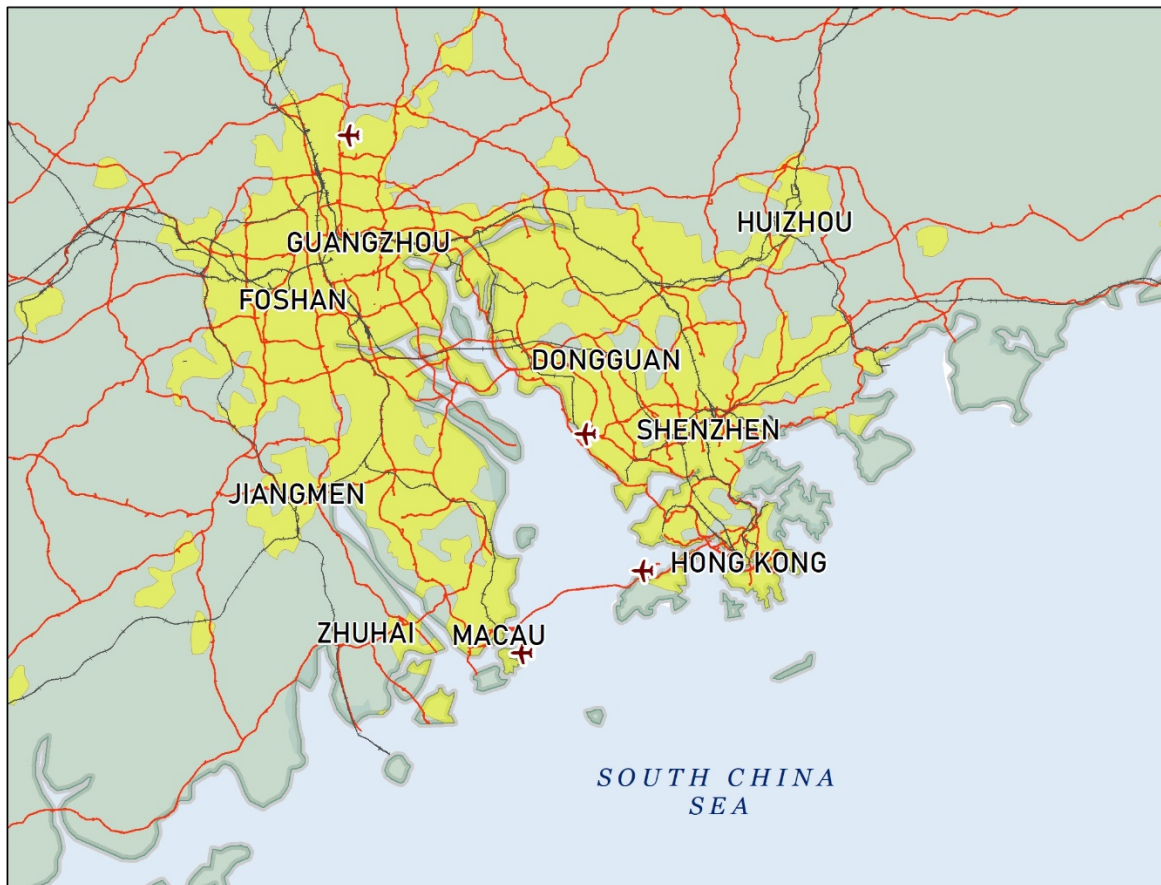
Beijing has worked hard to decrease Hong Kong's airlock role and subsume it as merely one location among nine cities and two Special Administrative Regions (SARs) in the Greater Bay Area of the Pearl River Delta.<sup>xxii</sup> (See **Exhibit 2**, below.) Yet Hong Kong's economic role is likely impossible for China to replace in the near-term or even in a comparably useful form (e.g., with Shanghai, let alone financial/human capital-limited Macau and Hainan). Indeed, even other non-PRC regionals hubs such as Singapore or Tokyo would for various reasons likely be unable to fully supplant Hong Kong.<sup>1</sup> Massive flows pass to and from the Mainland via Hong Kong. At year-end 2018, the stock value of utilized foreign direct investment from Hong Kong in mainland China was estimated at \$1.1 trillion by China's Ministry of Commerce, while the stock volume of non-financial outbound FDI from the Mainland into Hong Kong (i.e., capital outflows) was estimated to be \$622 billion.<sup>xxiii</sup>

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<sup>1</sup> What is likely to go over to Singapore and Tokyo are private assets, but they can possibly be managed and leveraged through U.S. money laundering regulations, given their global reach.

## Exhibit 2: The PRC’s “Greater Bay Area”

### *Suffocating and Subsuming Hong Kong within a Constellation of Mainland Cities*



*Map by Andrew Rhodes, 2020*

An estimated 60% of all FDI into China during 2018 came through Hong Kong—while Chinese banks hold more than \$1 trillion in assets in Hong Kong and Mainland companies raised 25% of their offshore U.S. dollar debt in the Hong Kong market.<sup>xxiv</sup> Furthermore, more than 400 PRC-origin firms are listed on the Hong Kong Stock Exchange and nine of the ten largest IPOs in Hong Kong since 1986 were Mainland companies.<sup>xxv</sup>

The magnitude of these flows and capital stocks—and their highly PRC-centric nature—strongly suggest that while Hong Kong is also of vital economic interest to the United States, if the territory ceases to function as an “economic airlock,” the downside may ultimately fall most heavily on PRC interests. Even as Beijing seeks to constrain Hong Kong’s agency, and may attempt to rebrand it as a service center oriented primarily toward Mainland firms,<sup>xxvi</sup> the reality remains that the territory’s primary commercial comparative advantage is as an entrepôt that can facilitate bidirectional capital flows between the PRC and global markets.

Hong Kong is in an increasingly challenging politically-tectonic position: it exists financially at the indulgence of the U.S. (and partner country) regulatory and financial systems and it exists physically at the indulgence of the PRC. Hong Kong has never enjoyed geostrategic or resource autonomy from China. In marked contrast to Taiwan (with approximately the same population as Australia and an economy larger than Poland, Thailand, or Sweden), it is too small, close, and thus highly vulnerable to losing the very factors that have made it such a vital open-access commercial hub. Beijing can easily envelop Hong Kong and is doing so now.

But losing that hub's previous advantages will likely pose larger than anticipated problems for Xi and his team, whose pattern of action during stock market declines and other financial turbulence suggests deep discomfort with free markets.<sup>xxvii</sup> Beijing's desire to consolidate political and economic control, but also maintain an internationally acceptable airlock as a capital access and egress point constitutes a major point of American and allied country leverage. The strong American stakes in Hong Kong include the security of its 85,000 citizens living there—more than the 72,000 that had been living in mainland China before the pandemic.<sup>xxviii</sup>

As Beijing recognizes Hong Kong's systemic economic importance and feels the pressure resulting from America rescinding Hong Kong's special status, it is likely to respond dynamically—and, potentially, quite aggressively. The U.S. government (USG) must thus maintain heightened vigilance regarding PRC retaliation toward U.S. companies and individuals, or even action in international organizations. Beijing has already proven willing to take drastic retaliatory actions against innocent foreign citizens and annual commerce flows worth billions of dollars against countries that acted decisively to uphold the rule of law.

Consider, for instance, the substantial (and law- and norm-violating) steps the PRC took in the wake of Huawei CFO Meng Wanzhou's December 2018 arrest in Vancouver. Two Canadian citizens in China were soon detained and in the words of former Canadian Ambassador to China David Mulroney “are being held hostage,” while a third had a fifteen-month sentence for drug smuggling upgraded to the death penalty after Meng's arrest.<sup>xxix</sup> The two detainees—Michael Kovrig and Michael Spavor—were charged by the PRC with espionage in June 2020 after a Canadian Court ruled that Meng's extradition process could proceed.<sup>xxx</sup> China has also significantly curtailed agricultural imports from Canada.<sup>xxxi</sup>

The prospect of such a severe backlash from Beijing may deter some American allies and partners from initially participating openly in the pushback against Beijing's envelopment of Hong Kong. As such, Washington should operate on the assumption that it may have to initially proceed unilaterally to get things moving, at which point partner countries may find it more tenable to publicly join the efforts. The United States may also need to (1) offer layers of participation as it has done with other security initiatives such as the Proliferation Security Initiative, and (2) offer assurances through action to convince partners that it has their back if China retaliates against them.<sup>xxxii</sup>

**Given these complex circumstances, it would be wise to address problematic behavior by the PRC government and its facilitators across three layers.**

- **Layer 1** is for immediate implementation and would focus on key individuals. Responses in this layer are designed to demonstrate to executors of PRC policies that their actions are being scrutinized and egregious acts in Hong Kong (and elsewhere) may prove costly. It also emphasizes the need to immediately curtail exports of certain key technologies.
- **Layer 2** would focus on corporate and business entities and entail more systematic actions broadly targeting key aspects of Hong Kong's financial system and creating legal risks to capital inflows and outflows. Some measures can be implemented relatively quietly too if need be, but the effects will be larger. Some would be much more public and escalatory in their effects.<sup>xxxiii</sup>
- **Layer 3** consists of actions to signal resolve to U.S. allies and partners in the Asia-Pacific. Given the broader regional import of Beijing's action against Hong Kong, their implementation should begin immediately.

Since the stakeholders affected by each level of action are often different, measures can be mixed and matched to increase friction among key actors if need be. Publicity and actors affected can be calibrated to control escalation and adjust for proportionality. This should provide options for the USG, even if it does not have to necessarily lead all of the potential actions outlined in subsequent sections. Layers 1 and 2, which pertain directly to Hong Kong would be implemented in sequentially. Layer 3—which applies to areas of concern beyond Hong Kong—should be set into motion concurrent with the commencement of Layer 1 actions in Hong Kong.

**LAYER 1 RESPONSES—FOR IMMEDIATE AND SIMULTANEOUS IMPLEMENTATION**

Options in this layer include sanctioning key officials and CCP-connected elites and targeting some of the most egregious trade abuses, such as illicit/coerced technology transfer. Many of them put a premium on government analytical capacity, but the United States already needs such significant capacity to handle China's overall challenges. Others, such as the first option, focus on specifically protecting Hong Kongers who face political persecution.

**Option 1: Create multiple U.S./allied & partner country safe havens for Hong Kongers, particularly those at elevated risk of suppression and political persecution**

Beijing's tightening grasp on the territory will likely prompt many Hong Kong citizens to emigrate. This presents the United States a chance to admit migrants or also facilitate their moves to Canada, the UK, Australia, New Zealand, or other destinations, should they prefer those destinations. Hong Kong has experienced several past waves of migration during and after periods of political turmoil, and the societies that admitted them saw real upside. Vancouver and Toronto in particular benefitted from an earlier wave of Hong Kongers justifiably worried about the 1997 handover. The

emigration numbers could prove substantial if even 5-10% of the population decamps, as 7.4 million people live in Hong Kong today.

In a strong historical parallel to migration from the USSR to Israel following the 1974 Jackson–Vanik amendment, PRC authorities are likely to ultimately allow Hong Kong dissenters to flee into self-exile.<sup>xxxiv</sup> So, where might these emigrants go? Taiwan is the physically closest potential destination, and in some ways is the key witness to the demise of the Basic Law in Hong Kong, and the remaining frontier of freedom within the major territories claimed as sub-entities by the PRC. But its ability to absorb refugees remains limited at this time—making the United States and certain other allied countries more likely destinations for large-scale migration from Hong Kong.<sup>xxxv</sup> Taiwan is linked to U.S. Hong Kong policy in important ways; and has other positive contributions to make centered on its own security and sustainment, as will be elaborated in Section 3.

The UK seems to be preparing to receive a large portion of current Hong Kong. London has stated that it is prepared to offer 12-month extendable visas to, at a minimum, the 350,000 Hong Kong citizens who currently hold British National Overseas (BNO) passports.<sup>xxxvi</sup> BNO passports were issued between 1987 and the July 1997 handover of Hong Kong from the UK to the PRC.<sup>xxxvii</sup> The passport confers limited rights and does not give holders British citizenship or a right of UK consular assistance, nor does British National (Overseas) status pass by default to one’s children.<sup>xxxviii</sup>

Prime Minister Boris Johnson stated in early June 2020 that if China imposes the national security laws ratified by the NPC, “the British government will change its immigration rules and allow any holder of these passports from Hong Kong to come to the UK for a renewable period of 12 months and be given further immigration rights including the right to work which would place them on the route to citizenship.”<sup>xxxix</sup> An ongoing political debate in the UK suggests the country could end up accepting a much larger number of Hong Kong refugees, potentially including the 2.5 million Hong Kongers eligible to apply for BNO passports.<sup>xl</sup>

For Hong Kongers who do not hold BNO passports or who are not eligible to apply for them, the United States, Canada, Australia, and New Zealand should create a meaningful number of priority immigration slots for those seeking to escape political persecution in Hong Kong. We acknowledge the difficult nature of the immigration debate in both the United States and some of our allies. Given how America already has a significant existing Hong Kong-origin community, the Washington could likely accommodate many immigrants from Hong Kong—should PRC repression induce large-scale migration.

The United States should now offer visa application pipelines for carefully-vetted Hong Kongers. The volume of emerging Congressional proposals is encouraging. In the House, Representatives Mike Gallagher and John Curtis are introducing legislation to designate Hong Kong citizens as Priority 2 Refugees and direct Secretary of State Michael Pompeo to coordinate their relocation among the United States and its allies.<sup>xli</sup> Senator Ben Sasse is similarly introducing a Hong Kong Asylum Bill.<sup>xlii</sup>



Admitting those seeking freedom from repressive regimes represents America at its best, and has served our Nation well – as recent examples illustrate, including communist Hungary (tens of thousands in 1956) and Cuba (thousands since 1959), fallen regimes like South Vietnam (hundreds of thousands post-1975), or religious persecution (half a million Soviet Jews and Pentecostal Christians in the 1970s and '80s).<sup>xliii</sup> Following the Tiananmen Massacre in 1989, Congressional pressure ultimately allowed PRC citizens already in United States to stay.

The United States has a special opportunity to welcome a wave of typically-younger and sometimes less-established individuals, who in most cases will not enjoy BNO status. At a time when slowing immigration and plummeting domestic birthrates are eroding America's heretofore exceptional demographics, thereby bringing the sustainability of entitlement programs and other budget outlays into question, here is a golden opportunity to bring in highly capable individuals whose development and English-language education is already fully paid for, yet have decades to contribute productively to society. A further demographic dividend awaits, from Hong Kongers desiring children but waiting to bear them, or having young children but anxious to raise them, in a place where they can have a good future. We must seize this unique opportunity, for their future and for America's alike.

Accepting what could ultimately be a substantial number of Hong Kong migrants is both the correct moral decision and would also have the practical impact of reassuring dissidents, journalists, and other civil society participants that if the situation truly deteriorates, they have a safe haven to retreat to. This can help incentivize a certain proportion of Hong Kong residents to push back harder against repression than they might if they felt there was no potential escape option. PRC citizens were allowed to remain in U.S. post-Tiananmen—a precedent worth revisiting.

As for related security precautions, America must have capabilities and vigilance to detect and handle transgressors anyway, on top of the PRC agents who have long operated under diplomatic cover, and the known intelligence operatives who have heretofore knowingly operated under the guise of state media personnel.<sup>xliv</sup>

## **Option 2: Tighten export controls.**

Hong Kong has historically enjoyed separate status from the PRC under U.S. export control regulations. Indeed, the 1992 USHKPA specifically notes that “*The United States should continue to support access by Hong Kong to sensitive technologies controlled under the agreement... ‘COCOM’ ...for so long as the United States is satisfied that such technologies are protected from improper use or export.*”<sup>xlv</sup> Hong Kong has likewise enjoyed different treatment from the PRC under The Committee on Foreign Investment in the United States (CFIUS).<sup>xlvi</sup> This has allowed more sensitive and advanced technology to move to Hong Kong, whereby it could be transferred into the PRC proper.

Deteriorating conditions in Hong Kong have rightly prompted Congress to begin revisiting the territory's special status. Specifically, with the 2019 HKHRDA, Congress amended the 1992 USHKPA with several export control concerns in mind. First, Congress asked the Departments of Commerce, Treasury, and State for the next seven years to submit an annual report on potential

violations of U.S. and UN export control laws occurring in Hong Kong, including whether the PRC is using Hong Kong as a permissive portal to acquire technologies Beijing would use to further its mass surveillance and social credit initiatives.<sup>xlvii</sup>

Additionally, Congress has already asked the Department of Commerce and other relevant agencies to consider adjusting U.S. export controls to prevent “the supply of crowd control and surveillance equipment that could be used inappropriately in Hong Kong.”<sup>xlviii</sup> At this juncture, Hong Kong’s waning insulation from malign PRC influence suggests additional items should face stiffer export controls. Semiconductor manufacturing equipment and related items would be an especially high-impact addition to the export restricted list. Finally, any hosting of data centers or research centers in Hong Kong should be more closely vetted to limit the outflow of sensitive technology. The hosting of global data centers in Hong Kong is now untenable.

### **1. Semiconductor Manufacturing Equipment**

One of the most important technological force multipliers today and moving forward is the ability to fabricate state-of-the-art chips. Despite massive investments, PRC-based fabricators remain significantly behind their competitors in North America, Europe, Japan, and Taiwan, in critical part because mainland China must import the highly specialized semiconductor manufacturing equipment (SME) and operational expertise that lies at the heart of cutting-edge production. The United States should thus lead a multilateral effort to immediately begin imposing strict SME export controls on PRC-domicile firms and their affiliates.

One of the most critical sets of manufacturing equipment for high-end chips is extreme ultraviolet photolithography equipment,<sup>xlix</sup> which is produced and sold by a single firm worldwide—Netherlands-based ASML.<sup>1</sup> Keeping this equipment out of chip fabrication facilities (“fabs”) controlled by PRC entities means the country must basically choose to either (1) remain at least a generation behind the U.S./Taiwanese/South Korean leading edge or (2) import cutting-edge chips from these places.

As Saif Khan and Carrick Flynn of Georgetown University’s Center for Security and Emerging Technology indicate, “SME export controls imposed by the United States, the Netherlands, and Japan could decisively maintain China’s continued dependency on democratic states for chips at or near state-of-the-art.”<sup>li</sup> Khan and Flynn note that “If SME export controls successfully reduce China’s chip fab capacity, the United States, Taiwan, and South Korea—the only remaining economies with significant near-state-of-the-art chip fab capacity—could coordinate on further, targeted end-use and end user controls to advance the cause of human rights and global stability.”<sup>lii</sup> This point is of special relevance as Beijing wraps the tentacles of its security apparatus more tightly around Hong Kong civil society.

At least one *ad hoc* U.S. export control action has demonstrated PRC entities’ vulnerability to export controls that focus on critical technology inputs. On 30 October 2018, the Commerce Department added Fujian Jinhua Integrated Circuit Company (“Jinhua”) to its restricted entity list due to alleged theft of designs for dynamic random access memory (DRAM) integrated circuits from Micron, a U.S. firm.<sup>liii</sup> The listing meant that any exports of controlled commodities, software, or technologies to Jinhua would require a license and that license applications would be

“reviewed with a presumption of denial.”<sup>liv</sup> ASML and other critical technology vendors pulled employees from the nearly-finished Jinhua chip plant within days, essentially destroying the company as a viable commercial entity.<sup>lv</sup>

## **2. Heightened Protections for Sensitive Data, Data Center Use, and Key Software**

There is also a case that personal and business data, cloud hosting on colocation and proprietary data centers, fiber optic cable security vetting, and software used to manage sensitive data in both enterprises and data centers should also be more tightly restricted. These steps derive from the risk that the Hong Kong security services are now much more likely to be influenced by and subsumed into Beijing’s surveillance and social control apparatus. Furthering that point, the absorption and ensuing loss of the due process and procedural protections provided under pre-June 2020 Hong Kong law may not become fully apparent until well after the fact. This increases the importance of taking action now under the assumption that certain sensitive data channels potentially accessible to Hong Kong’s disciplined services have already been compromised by Mainland agencies.

Multiple firms listed in the United States and its allies operate data centers in Hong Kong—including NTT Communications (Japan), Cyxtera Technologies (U.S.), Equinix (U.S.), Microsoft (U.S.), and Rackspace (U.S.).<sup>lvi</sup> Given recent events, it may now be appropriate to require that entities wishing to operate in the American market and participate in USG procurement activities certify explicitly that: (1) that they are not voluntarily participating in efforts by Hong Kong or PRC security bodies to obtain personal or business information that could be used to facilitate human rights violations or otherwise be utilized in contravention of the policy objectives the 1992 USHKPA aims to support and (2) if they become aware of attempts by Hong Kong or PRC security and law enforcement authorities to obtain data from data centers on Hong Kong territory, such attempts must be immediately reported to the USG. Some years ago, Apple separated its PRC data center operations from its data center operations elsewhere. That could be a model to encourage for firms that still wish to risk doing business in China.<sup>lvii</sup>

Similar protections should be applied to sales of “dual use” software packages with ostensibly permissible uses that could also be used to facilitate human rights violations and/or repression in Hong Kong. Given the sensitive personal, commercial, and other information that could be exchanged, programs for network analysis, AI processing of video footage, and video conferencing should be particularly scrutinized for such risks.<sup>lviii</sup> One way to accomplish this would be through an export licensing program in which prospective software sellers would need to certify that their proposed customers are not linked to restricted entities through corporate structures or other reasonably foreseeable linkages—such as board seats occupied by known CCP officials or Hong Kong authorities linked to repression activities.

Where universities store research and data should likewise be examined, particularly if they receive USG funding.<sup>lix</sup> Finally, PRC tech firms offering products on the U.S. market should be subject to greater scrutiny. This affects privacy and data security as well. WeChat, TikTok, and Zoom should be examined for potentially allowing access by the PRC into the IT systems of American companies and citizens, as well as those of U.S. allies.

### **Option 3: Tax-free repatriation of assets from Hong Kong into U.S. markets and assets**

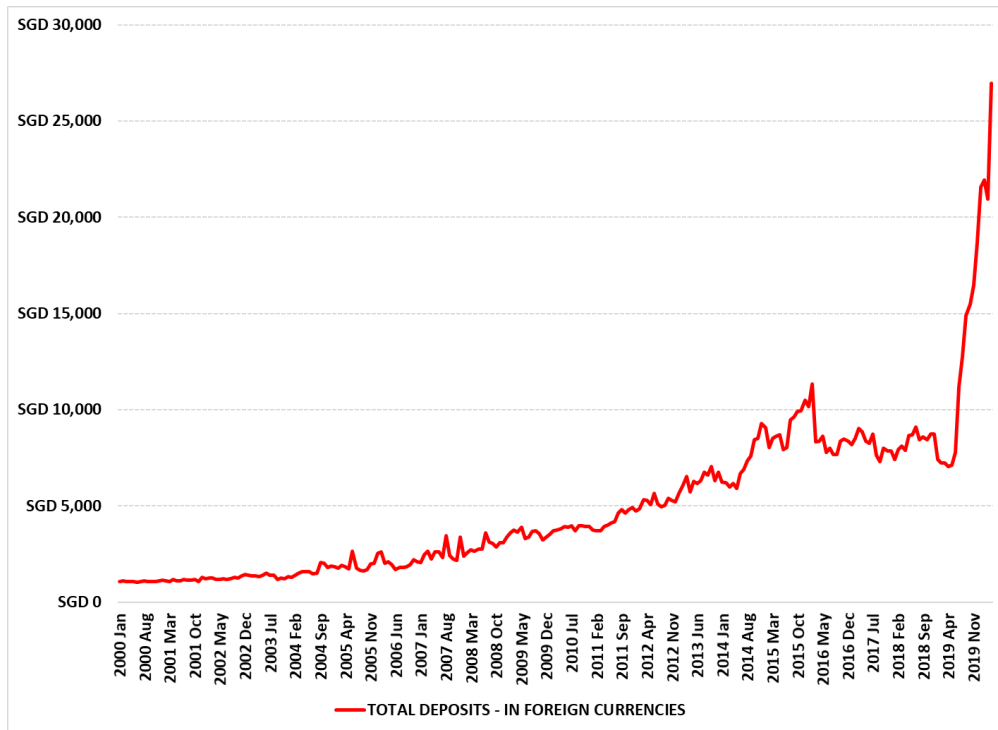
Hong Kong's foreign direct investment stock in 2018 was nearly US \$2 trillion, according to Santander Bank.<sup>lx</sup> U.S. FDI stock in Hong Kong during 2018 was estimated at \$82.5 billion, according to the USTR.<sup>lxi</sup> While FDI inflows do not directly necessarily correlate with FDI/capital stocks in a given jurisdiction, they likely provide at least a rough sense of who holds what general proportion of capital stock. In 2017, the three largest sources of FDI inflows into Hong Kong according to Santander Bank were: British Virgin Islands (38.2%), Mainland China (20.8%), and the Cayman Islands (18.8%).

With 80% of inbound FDI flows emanating from either Mainland China or offshore havens frequently used by Chinese private and red chip companies, it is a good bet that a substantial portion of the volume derives from the round tripping of capital in and out of the PRC through the "economic airlock" that Hong Kong provides. The fact that more than one in every five dollars of inbound FDI come from Mainland China also points to Hong Kong's role as a warehouse in which funds can be stored beyond the reach of Mainland capital controls and thus be rapidly deployed at scale without having to seek permission from foreign exchange regulators in Beijing.

Nevertheless, there is a strong case for leaving the airlock open for a while insofar as outbound capital movement is concerned in order to allow capital flight from Hong Kong as the Mainland authorities clamp down. The increasingly uncertain legal environment described early in this report from the duality being introduced into the Hong Kong legal system via the National Security Law is likely to catalyze outbound movement of capital from Hong Kong. Furthermore, as the suffocating vine of the Mainland's "political control at nearly any cost" mentality creeps deeper into Hong Kong life, capital flight will likely accelerate.

Data from the Monetary Authority of Singapore (MAS) show substantial increases in foreign currency deposits held within Singapore's banking system beginning in July 2019 (**Exhibit 3**). The MAS stated in early June 2020 that with respect to the capital inflows, "No single region or country source dominates."<sup>lxii</sup> Nevertheless, the upswing correlates closely with rising unrest in Hong Kong and also triangulates with anecdotal news stories about Hong Kong tycoons beginning to move substantial amounts of assets offshore in 2019 to keep them out of Beijing's reach.<sup>lxiii</sup>

**Exhibit 3: Dramatic Increases in Foreign Currency Deposits Held in Singapore Coincide With Unrest and Prospect of Greater Mainland Involvement in Hong Kong (Million Singapore Dollars)**



Sources: MAS, Authors’ analysis

**Option 4: Publish the assets of PRC officials associated with the erosion of Hong Kong’s autonomy, including, but not limited to, National People’s Congress delegates and Hong Kong officials who voted to impose Beijing’s national security law on the territory**

Multiple former officials have recently advanced an excellent and timely idea: investigating the assets of CCP officials.<sup>lxiv</sup> Key officials include NPC delegates; as well as individuals on the Chinese People’s Political Consultative Conference (CPPCC), a United Front entity. Such investigations should also include family members and close associates whom officials might use as proxies. Asset freezes and other sanctions actions that can be brought against designated persons pursuant to the 2019 HKHRDA potentially trigger protracted legal battles and can take substantial time to implement. But publishing assets of CCP officials involved in Hong Kong repression and human rights rollback can be done more quickly and have immediate impact. It also would present evidence that contradicts the Party’s official line of virtue and rectitude.

U.S. public diplomacy efforts should thus emphasize corruption within China’s ruling establishment by publicizing financial activities of key PRC officials and their close associates. The issue is a sensitive point for the Chinese leadership, as evidenced by censorship of discussions related to the Panama Papers, as well as pressure on *Bloomberg* for publishing a 2012 exposé on finances of Xi Jinping’s extended family shortly before he became paramount leader.<sup>lxv</sup> Moreover, building a comprehensive list of assets held either directly by CCP officials or by their relatives



helps facilitate multiple options discussed below by mapping the list of assets and persons that would potentially be targeted under a sanctions regime.

USG agencies logically equipped to handle asset tracking and targeting may be overtaxed given recent events such as the ongoing coronavirus pandemic and North Korea's ongoing sanctions violations coupled with renewed belligerence. If this be the case, one possible way to jump start the initiative would be to leverage the substantial pre-existing private sector expertise in mapping PRC industrial and military infrastructure, entity structures, and personnel and turn this toward asset tracking.<sup>lxvi</sup> Subject matter experts could be supported with USG grant funds and potentially also collaborate with attorneys and accountants with knowledge and experience in locating financial and real property assets whose owners seek to hide.

The USG should also consider potential ways of indirectly facilitating the activities of investigative journalism organizations, such as the International Consortium of Investigative Journalists (ICIJ).<sup>2</sup> The ICIJ is highly capable, as proven by its Panama Papers scoop in 2016 and Paradise Papers reporting in 2017.<sup>lxvii</sup> It also already does substantial China -focused reporting, including on the abusive surveillance state Beijing has built throughout Xinjiang. Another independent journalist organization is Bitter Winter, which has done excellent investigative reporting on abuses in Xinjiang, including on supply chains of large multinationals.<sup>lxviii</sup> Think tanks in allied countries could be a resource too, with the Australian Strategic Policy Institute (ASPI) offering a strong example.<sup>lxix</sup> This process can also uncover financial links with key persons in other parts of the world that can be involved in PRC influence operations.

### **Option 5: Close Macau Loophole**

In pursuing the above countermeasures, it is important to make sure that Macau does not become a loophole in U.S. efforts to manage financial flows to and from the PRC via Hong Kong. Capacity constraints prevent Macau from fully replacing Hong Kong in any scenario, but has some advantages over areas inside the PRC proper. Indeed, Macau has historically leveraged its exceptional position to profit from activities banned elsewhere. In some respects, casinos provide an even easier venue to move cash around. Macau is a loophole that needs to be closed as well, and the United States has experience dealing with Macau and the financing there with respect to the DRPK.

## **LAYER 2 ACTIONS—POTENTIAL FOLLOW-ON ACTIONS**

Layer 2 actions combine a range of economic pressure measures and law enforcement actions. Most powerfully, the United States can leverage a tool already created for competition with

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<sup>2</sup> One potential approach would be for the IRS to temporarily treat private donations to independent investigative journalism organizations as being tax-deductible, perhaps even at an enhanced level (for instance a \$0.50 tax offset for each \$1 donated). One would also need to expect that certain USG officials would become investigative targets as attractive in some ways as senior PRC officials. The key difference of the investigations' potential effects lies in each society's respective system. Certain U.S. officials may be non-transparent about their wealth and its origins, but at the high-level, are likely better able to survive disclosure of wealth or offshore accounts. In an ostensibly Communist system like the PRC's, with its official emphasis on rectitude, such disclosures could prove much more damaging.

revisionist powers: the Countering America's Adversaries Through Sanctions Act (CAATSA). CAATSA, which was enacted in 2017, provides a broad range of sanctions authority and options for imposing costs on Iranian, North Korean, and Russian entities engaged in various types of malign activity. It is a powerful weapon to be used with restraint and discretion. Potential use against PRC or Hong Kong entities would also be enormously complex because those entities are often systemically important on a global level in a way that most entities from Iran, North Korea, or Russia simply are not. Policymakers must also be prepared for the PRC to take retaliatory actions against U.S., and potentially, partner country entities as well.

Amending CAATSA has multiple advantages over creating new statutes from scratch. First, CAATSA's existing framework for approaching Iran, North Korea, and Russia incorporates a high degree of ability to calibrate actions, including some with very high impact.<sup>lxx</sup> Second, Section 254 of CAATSA contains positive assistance provisions that could prove extremely useful for assisting civil society groups in Hong Kong and for helping bolster Taiwanese readiness in the face of rising coercion by the PRC. Third, USG agencies and partner country entities are familiar with the law's provisions and implementation.

Fourth, using CAATSA as the baseline framework for exerting economic pressure on selected Mainland PRC and Hong Kong entities would leverage existing legislation that had strong bipartisan support. Working with a proven existing statute can also reduce legislator and staff workloads—an important strategic consideration during a time when multiple critical issues including coronavirus pandemic responses, anti-racism actions, and policing reform are competing with China policy for attention on Capitol Hill. Finally, changes to CAATSA—even as few as several dozen key words and phrases—would signal American seriousness about holding the line in Hong Kong and beyond. The subsequent discussion outlines CAATSA's potential impact factor, as well as four specific ways the statute could be amended to impose costs on Beijing's revisionist actions vis-à-vis Hong Kong.

In a strictly legal sense, Congressional actions such as CAATSA amendment are not necessary and the White House could take direct executive action to avail itself of sanctions tools. If the President were to declare a national emergency arising from the threat that PRC coercive envelopment of Hong Kong to U.S. economic, national security, and/or foreign policy interests, he would then acquire the legal basis to take a range of punitive actions similar to those enumerated in CAATSA and other statutes that enable sanctions.<sup>lxxi</sup>

However, given the momentous economic and strategic stakes implicated in confronting Mainland PRC entities and their Hong Kong collaborators, we believe Congressional action is very important. Buy-in from Congress would demonstrate bi-partisan support for economic actions that might be taken against certain PRC and Hong Kong entities. It would also clearly demonstrate to Beijing that key U.S. political constituencies have consented to a campaign that could last for years and sustainably transcend Presidential administrations, thus amplifying the deterrent message even before concrete actions are taken.

## **A. CAATSA Offers High Impact Tools to Policymakers**

In September 2018, the Departments of State and Treasury sanctioned China's Equipment Development Department (EDD) and its director, Li Shangfu, for the 2017 purchase of SU-35 combat aircraft and the 2018 purchase of S-400 surface-to-air missile system equipment from Rosoboronexport, a sanctioned entity.<sup>lxxii</sup> The sanctions got the PRC government's attention, with law firm Baker McKenzie noting in a client update on the matter that "China's Ministry of Foreign Affairs reportedly summoned the US Ambassador to China to protest their imposition."<sup>lxxiii</sup>

In the case of EDD, the sanctions were primarily a signaling action since that entity is in practical terms substantially air-gapped from global capital markets and does not need to access and periodically interact with the U.S. financial system to conduct basic business activities. But that would very likely not be the case for commercial entities—even subsidiaries of state-owned enterprises—which require access to global market environments that could be severely curtailed if the United States imposed primary sanctions on the entities and raise the specter of applying secondary sanctions to any counterparties that facilitated their transactions and business activities.

The case of Russian aluminum producer Rusal, which was listed as a blocked entity by the U.S. Treasury Department in April 2018, illustrates how catastrophic such a designation can be. Rusal's stock (which, incidentally, is listed on the HKEX) immediately plunged by more than 40%, while counterparties in multiple jurisdictions worldwide were forced to halt and unwind transactions with the company.<sup>lxxiv</sup> The Office of Foreign Assets Control (OFAC) eased the sanctions within weeks due to protestations from U.S. allies and systemic disruptions to the global aluminum market and delisted the entities less than a year later.<sup>lxxv</sup> Nevertheless, the episode illustrates the truly global reach of sanctions imposed under CAATSA as well as the devastating consequences they can create for the targeted entities.<sup>lxxvi</sup>

### **Option 1: Amend Specific Sections and Provisions of CAATSA to Create Additional Policymaker Tools vis-à-vis PRC and Hong Kong Entities**

**1. Change TITLE II of CAATSA from "SANCTIONS WITH RESPECT TO THE RUSSIAN FEDERATION AND COMBATING TERRORISM AND ILLICIT FINANCING" to instead read "SANCTIONS WITH RESPECT TO THE RUSSIAN FEDERATION, PEOPLE'S REPUBLIC OF CHINA, HONG KONG SAR, AND COMBATING REVISIONIST ACTIVITIES, TERRORISM AND ILLICIT FINANCING"**

**2. Amend Section 241 of CAATSA to enable mapping of key business and political persons and PRC parastatal entities.**

Section 241 requires the Treasury and State Departments, along with the Director of National Intelligence to submit a report on senior political figures and oligarchs in Russia, including ties to Vladimir Putin and other members of Russia's ruling elite, net worth, and other data points. Section 241 also requires the agencies to map Russia's parastatal entity ecosystem and assess U.S. economic exposure to them, as well as the likely effects of imposing debt and equity restrictions on these entities and/or adding key personnel to the OFAC Specially Designated Nationals list and the likely effects of imposing secondary sanctions pertaining to these entities. China presents a

larger and far more complex entity target set, but the existing framework used for assessing key Russian economic players per CAATSA requirements should be generally adaptable to the PRC. The USG will also be able to leverage substantial pre-existing private sector and academic knowledge of multiple dimensions of the Chinese economic system.

### **3. Add a section to Title II, Part 2 of CAATSA to prohibit Restrictions on Directors & Officers' insurance policies for directors and officers of designated PRC/Hong Kong entities**

Hong Kong is a global insurance hub, with dozens of the world's leading providers incorporated there. Amend CAATSA to prohibit U.S. persons from (1) transacting with any entity that writes director and officers ("D&O") insurance policies<sup>lxxvii</sup> for board members and officers and (2) accepting "in kind" indemnification from entities affiliated with, or operating on behalf of, a designated entity.

As U.S.-China economic tensions rise, there is a substantial probability that PRC/Hong Kong entities could follow a playbook used by Russian parastatal energy firms as they sought to project an image of greater international legitimacy during the 2000s. In perhaps the starkest example, the Nord Stream project consortium that imports Russian gas to Germany via an undersea pipeline and seeks to complete another hired former German Chancellor Gerhard Schroeder as the Chairman of its Shareholders' Committee, a position he has held since 2006.<sup>lxxviii</sup> Additionally, Rosneft (Russia's largest oil producer) named Schroeder Chairman of its Board of Directors in 2017.<sup>lxxix</sup>

PRC/Hong Kong entities are frequently far better resourced than their Russian counterparts and can also operate much more sophisticated commerce-enabled influence activities, should they choose to do so. Therefore, dis-incentivizing key high-profile U.S. and allied country persons from serving as "legitimizers" for such activities should be a policy priority. Furthermore, given the complex, often family-based networks that wield great influence over certain commercial activities in East and Southeast Asia, the policy outlined above puts the primary diligence onus on the insurance firms that seek to underwrite D&O policies globally but also (presumably) consider the U.S. marketplace and American clients to be high commercial priorities.

### **4. Amend Title II, Part 2 of CAATSA to prohibit direct and indirect correspondent banking account use by PRC and Hong Kong persons implicated in human rights violations and repression in Hong Kong**

A correspondent account is defined as "*an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution.*"<sup>lxxx</sup> Foreign financial institutions including virtually all PRC banks and red chip companies utilize such accounts to process U.S. dollar transactions. Accordingly, denial of access to correspondent accounts would effectively cut affected entities off from the dollar and U.S. financial system. For commercially-oriented entities, this would cause severe direct impacts on their ability to raise funds and do business.

The legislative template for such an amendment already exists. Specifically, Congress could draw upon the designation language contained in Section 104 of the North Korea Sanctions and Policy Enhancement Act of 2016 (specifying more than 20 types of prohibited conduct) and operationalized by Section 321 of CAATSA. Sec. 104 of the North Korea Sanctions and Policy Enhancement Act of 2016 aims to prevent WMD proliferation and various malign activities by the North Korean regime, but the basic intellectual and legal framework would be highly transferrable for imposing costs on actors who facilitate Beijing’s coercive envelopment of Hong Kong.

For full practical effect, a CAATSA amendment targeting correspondent account use by certain PRC and Hong Kong persons would likely need to seek direct prohibitions against these persons using such accounts, as well as prevent U.S. persons from doing business with such sanctioned parties. The resulting counterparty risk would help reduce the probability of sanctioned parties using intermediaries to indirectly access dollar clearing services.<sup>lxxxix</sup>

### **5. Amend Section 254 of CAATSA to allow Coordinating Aid and Assistance Across Europe, Eurasia AND the Asia-Pacific Region**

This amendment would tap into CAATSA’s positive side—the ability to fund capacity-building and relationship-strengthening. The existing language focuses geographically on Europe and Eurasia, but the underlying matters of concern embodied in the Russian behavior CAATSA seeks to deter—such as cyberattacks, disinformation, use of economic and physical aggression to coerce smaller neighbors, and corruption/influence operations—are also hallmarks of Mainland PRC actions toward Hong Kong, Taiwan, and other regional neighbors.

The existing language’s broad provisions for supporting critical infrastructure protection and capacity building would also be broadly relevant in the Asia-Pacific. Protection from malign cyber activity by PRC actors is highly important to Taiwan and offers a ready engagement point, while support for civil society organizations is relevant in both the Hong Kong and Taiwan contexts.

We do not profess to know precisely how much additional funding would be needed to fully breathe practical life into an expanded Section 254 of CAATSA. If such amendments were made with the implementation of the Layer 3 recommendations of this analysis in mind, \$100 million per fiscal year would likely enable the robust commencement of multiple actions to bolster Hong Kong civil society (to the extent it remains) and especially, to bolster the U.S. relationship with Taiwan.

### **6. If U.S.-China tensions intensify sufficiently, add a section to CAATSA that parallels existing Section 232, but that rather than Russian export pipelines, instead sanctions offshore RMB transaction clearing by the Bank of China (Hong Kong)**

Hong Kong plays a critical role in Beijing’s attempts to internationalize the RMB. It uses Hong Kong as an airlock where the Bank of China’s local branch clears offshore RMB transactions, allowing parties abroad to use RMB but without having to directly expose domestic Mainland RMB exchange rates to the pressures of the market. For China, internationalizing the RMB is seen in part as a way to reduce global reliance on the U.S. dollar, and thus undermine the economic and



strategic benefits Washington reaps from the dollar's omnipresence in multiple key financial and commodity markets.

Data from SWIFT show that over the past 3 years, approximately 75% of offshore RMB payments in any given month are made through Hong Kong.<sup>lxxxii</sup> The Bank of China (Hong Kong) is the clearing bank for offshore RMB activities in Hong Kong,<sup>lxxxiii</sup> and selective sanctions imposed under CAATSA on the bank would thus likely be a major setback to the PRC's capacity to promote the RMB as an alternative currency to the US dollar.

**Option 2: Intensify U.S. and allied/partner country investigation and enforcement of long-arm jurisdiction anti-corruption laws such as the U.S. Foreign Corrupt Practices Act and UK Bribery Act against Hong Kong entities with links to Beijing.**

As Beijing deepens its control over Hong Kong and potentially turns the territory into a more narrowly PRC-oriented "permissive portal," there is a risk that Hong Kong-based entities and money flows could be increasingly used to facilitate actions that undermine rule of law. One policy option to push back against this would be to intensify scrutiny of Hong Kong-origin deals in places such as Southeast Asia, Africa, and Latin America by the U.S. DOJ and UK Serious Fraud Office. Greater investigative attention would help keep the portal clean, create barriers to using it as a window for PRC economic power projection, and maintain its vitality as a commercial hub for the benefit of Hong Kong's population. If investigations did begin to turn up problems, the relevant authorities should not hesitate to bring FCPA and UKBA cases.

**Option 3: Require U.S. public pension funds and public university endowments to divest from the debt, equity, and other securities/assets of specified PRC firms linked to repression and human rights violations in Hong Kong.**

Chinese entities are incorporated into global funds; they are collateralized into diverse and widely-used financial instruments. Nevertheless, specified firms could be targeted either (A) on a binary "complicit or not complicit" basis or (B) according to their degree of participation in, or facilitation of activities that violate Hong Kongers' human rights and reduce the city's political and economic autonomy. Degree ranking would be more resource and evidence-intensive to implement but would potentially provide a greater degree of calibration and ability to differentially pressure the offending firms. The U.S. entities would from the date of designation be restricted to \$200 million in asset ownership for firms in the lowest risk class, but which had a nexus to activities that contravene human rights, political, and economic freedoms in Hong Kong. For Class II violators, the ownership limits would be \$50 million in securities/asset holdings—collective across the named entity and all affiliates. For the most serious Class III violators—for instance, firms that supplied lethal equipment to security authorities in Hong Kong that was then used in repression actions—U.S. public pension funds and university endowments would be banned outright from holding any assets. Divestment actions would need to provide investors with a grace period in which to act—180 days from the date of notification, for instance.

## **LAYER 3 RESPONSES: REGIONAL SECURITY, SUPPORT, AND SIGNALLING BEYOND HONG KONG IMPLEMENTED CONCURRENTLY WITH LAYER 1 ACTIONS IN HONG KONG**

It is important to emphasize what measures and messages Washington intends to send beyond the PRC and Hong Kong—in support of Taiwan (a vital partner, as enshrined in the Taiwan Relations Act),<sup>lxxxiv</sup> as well as U.S. treaty allies Japan, the Philippines, Australia, and Canada, among others. All have been subject to direct pressure by the PRC and will see mismanagement of Hong Kong as threatening. And all might expect to face challenges from Beijing in coming months and years, emanating from Hong Kong and in the South China Sea, trade, and other areas as well.

### **Option 1: Selectively Exempt Hong Kong Entities, Target Those From PRC**

Although Washington is working to address the ways that China has forced a change in Hong Kong's status, that doesn't mean that we cannot attempt to influence behavior inside Hong Kong. The Trump Administration's successful insistence on bilateral reciprocity with PRC airlines (while not involving Hong Kong airlines like Cathay Pacific) offers a potential example. Such effort could be made conditional on whether Hong Kong firms actively support malign developments like the National Security Law. They could also be designed to nudge important non-Hong Kong firms with a large Hong Kong footprint (for instance, the HSBC and Standard Chartered banks).

Such microtargeting will be challenging because much of the PRC's infringement on Hong Kong rights—at least in the coming 2-3 years—will be the measures that are erosive, but generally speaking, marginally or non-actionable on an individual basis. One example is the PRC's August 2019 move to review staffing of Cathay Pacific flights transiting Chinese airspace and bar those with crew or staff who participated in pro-democracy demonstrations in Hong Kong.<sup>lxxxv</sup> But compounded over time across a hitherto free economic, political, and legal system, such acts will likely coalesce into serious negative impacts.

Whether the USG uses CAATSA or another statute as the legal basis for targeted actions against certain PRC entities, it will likely need to broadly define sanctionable actions in order to reduce the risk that the PRC engages in “salami slicing” that is cumulatively erosive to Hong Kong's status, but where any individual action generally falls below a sanctionable threshold. One possible response is to ensure that enabling legislation for sanctions and other actions incorporates a “totality of circumstances” standard that more effectively captures the effect of salami slicing and enables incremental PRC coercion to be met with decisive action.

### **Option 2: Hold the Line Beyond Hong Kong, Starting with Taiwan**

Xi's increasing pressure and suppression of Hong Kong and related messaging appears intended in part to intimidate Taiwan. Washington should reject such pressure on Taipei, and instead link it to both ensured and judiciously increased support for Taipei in a carefully calibrated manner. Taiwan has many advantages: nearly 24 million citizens, undeniably sustaining an autonomous capitalist democracy, buffered by over 100 miles of water and airspace. Washington should hold a strong defensive line there in this new era of great power competition, while supporting Hong Kong as well as possible in light of enduring and emerging realities.

One of the best ways to deter Beijing from smothering Hong Kong is to show that such aggressive actions will generate progressive American interactions with, and defenses of, Taiwan that will be self-defeating to PRC expansionism thereto. Here is an opportunity to complicate the PRC's propaganda and outreach efforts. Part of the message that the PRC is sending is essentially that what is happening to Hong Kong is Hong Kong-specific, since Hong Kong is part of the PRC. This has obvious implications for Taiwan but is designed to make it easy for other U.S. allies and key partners to write-off valid concerns. Of course, the subtext is that going against PRC wishes will incur significant costs.

The way to complicate this message is to highlight the direct implications of a hobbled Hong Kong for other actors in the region. This should be possible given that businesses and sovereign wealth funds and other funds have a lot of exposure to Hong Kong. This is an effort to turn PRC leverage against it. Another part of this counter should be to highlight that standing up to PRC excessiveness is less costly than standing up to the PRC collectively. After all, the PRC will probably find it more difficult and trickier to punish a variety of actors simultaneously.

Public diplomacy efforts should also highlight the example that Taiwan presents of a successful democracy in a place that is culturally Chinese amid great diversity and that successfully transitioned from authoritarianism. Emphasizing those two vital dimensions of what Taiwan demonstrates can help illustrate the alternative, positive path available to the PRC in the longer run if political reforms occur, while complicating Beijing's near-term efforts to link Chinese culture with submission to the PRC's Controlocracy.

One of the PRC's approaches has been to isolate targets and make examples of them. A U.S. approach emphasizing the interconnections between events in Hong Kong, and the interests of Taiwan and other regional actors, can force the PRC to fight on multiple fronts concurrently, thus imposing greater diplomatic and financial costs.

### **Immediate Additional Actions to Support Taiwan**

The following measures to enhance U.S.-Taiwan relations align clearly with American values and interests and follow logically from well-established policies. As such, the United States should pursue them immediately and publicly.

#### **a. Enter a bilateral free trade agreement, deepen Taiwan's role in measures to diversify critical supply chains away from the PRC**

The United States should actively pursue a bilateral trade agreement with Taiwan. This can take the shape of either a formal Free Trade Agreement (FTA)<sup>lxxxvi</sup> such as several other nations are pursuing, or a series of agreements that, taken together, are the functional equivalent of an FTA. To establish a bilateral trade agreement, it would be natural the USG to announce new bilateral trade talks and send relevant officials to Taiwan for that purpose. Each side brings strong comparative advantages to the table. For its part, American agricultural exports can help bolster Taiwan's food security.<sup>lxxxvii</sup> Taiwan, meanwhile, can help reduce American overdependence on PRC supply chains, particularly for critical pharmaceuticals, medical devices, and IT products and services. We offer detailed recommendations concerning what such efforts should look like in an April 2020 Baker Institute policy report.<sup>lxxxviii</sup> Efforts should include the involvement of

Taiwanese entities in third country locations beyond Taiwan, including projects in the United States. An ideal example of such cooperation would be the establishment of a new latest-generation chip fab (3 nanometer) by a top company like TSMC in the United States.

Both economies have much to gain from such a long overdue initiative. This will resolve a long-running contradiction in U.S. Taiwan policy by both strengthening Taiwan in the security and helping to improve its economic competitiveness. With Taiwan confronting the diminishing demographics of a severely aging society and enduring political obstacles to increasing the defense share of government spending,<sup>lxxxix</sup> increasing government revenues through sustainable economic growth is one of the best possible investments in Taiwan's future as a free, friendly partner for the United States.

#### **b. Move USG-sponsored Mandarin language study programs to Taiwan**

In the less-formal cultural sphere, the USG could fund a massive Mandarin-language and cultural immersion program in Taiwan and greatly expand American overall public diplomacy efforts there, which are currently very modest. Under the Obama administration the USG funded a massive people-to-people effort with the PRC. Since the USG has already moved its Chinese-language programs across the Strait to Taiwan, the USG could now do the same—or better—people-to-people effort with Taiwan. The bipartisan, bicameral Taiwan Fellowship Act offers an excellent example human capital investment promising excellent yields. Similar efforts could increase educational programs linking Taiwanese and American universities. As conditions worsen in Hong Kong and mainland China, some U.S. non-governmental organizations (NGOs) working in Asia should be helped to set up shop in Taiwan, especially those facing concerted harassment.<sup>xc</sup> Direct commercial flights could be encouraged between Washington, DC, and Taipei—perhaps initially on a weekly basis to help underpin commercial viability.

#### **c. Increased intelligence cooperation, especially on cyber issues**

The USG should also encourage Taiwan to follow Japan's positive example in modernizing protocols and processes safeguarding classified material and the management of cleared access thereto. This, in turn, would allow the deepening and normalization of civilian and military information and intelligence sharing. Across the military and civilian domains, the United States should simultaneously strengthen cooperation with Taiwan in cybersecurity, an area in which Taiwan has considerable relevant knowledge and capabilities.<sup>xcii</sup>

#### **d. More robust and overt support for Taiwan in international organizations**

In the diplomatic sphere, the PRC can functionally block Taiwan's participation in nearly every major international organization, greatly limiting American options to help Taiwan in this regard. With the United States having withdrawn from the World Health Organization (WHO), it is left for Japan to push for Taiwan regaining its observer status at the World Health Assembly (WHA). The United States should use its influence to allow Taiwan more space within accessible international fora and specialized security fora (e.g., the Halifax International Security Forum/HISF<sup>xciii</sup>). Moreover, as long as Taiwan is barred from participating at UN specialized institutions, the United States and its allies and other partners should consolidate alternative mechanisms for information-sharing with Taiwan. The United States should keep expanding the

Global Counter-Terrorism Forum (GCTF),<sup>xciii</sup> widen its visibility, encourage other democracies to join, increase exchanges and secondments, bringing in more partners to the workshops.

**e. Increased, higher-level, more public meetings between U.S. and Taiwanese officials**

In the diplomatic sphere, the United States could increase the seniority of U.S. officials visiting Taiwan, and vice versa. It could fully complete ongoing gradual efforts to remove longstanding limits on Taiwanese officials entering U.S. government buildings. In particular, if the PRC steals away more of Taipei’s diplomatic allies, and when pandemic progress allows travel once again, Washington could invite President Tsai and other Taiwanese officials to visit, rather than transit, the United States. Higher-level U.S. officials, such as the Deputy National Security Advisor, could visit Taiwan for relevant discussions.

As a basis for these actions, the United States should build on recent legislation, including the Taiwan Travel Act<sup>xciv</sup> signed into law by President Trump on March 16, 2018; the Asia Reassurance Initiative Act signed by President Trump in December 2018; Taiwan Allies International Protection and Enhancement Initiative (TAIPEI) Act of 2019;<sup>xcv</sup> and the Taiwan Assurance Act introduced in Congress in March 2020. For example, the Taiwan Travel Act states, “the United States Government should not place any restrictions on the travel of officials at any level of the United States Government to Taiwan to meet their Taiwanese counterparts or on the travel of high-level officials of Taiwan to enter the United States to meet with officials of the United States.” Of note, neither the Taiwanese equivalents of the U.S. National Security Advisor or Deputy National Security Advisor are among the five top officials of Taiwan—the democratically-elected president and vice-president, the prime minister, the defense minister, and the foreign minister—whom State Department guidelines have historically prevented from visiting Washington, DC to meet with their American counterparts.

**f. Strengthened, expanded military cooperation between the United States and Taiwan, potentially including allied/partner countries at a later date**

The military domain is arguably both the most well-established, straightforward, and pressing area where deeper U.S. engagement can help ensure Taiwan’s security and deter PRC adventurism against it. The United States must maintain the best possible plans and capabilities for responding to various types of PLA campaigns against Taiwan. To succeed, the United States must be creative and practical in identifying and addressing campaigns both at and below the threshold of high-intensity kinetic operations between the U.S. and Taiwanese militaries and the PLA. This requires engaging in what some experts term “counter-coercion planning.”

The premise here is that Beijing does not have to choose between accommodation and war because it has diligently prepared a spectrum of hostile steps it can take towards Taiwan, including hybrid warfare measures taken in the “gray zone” that fall below traditional kinetic action, but still exert real strategic effect. Accounting for gray zone actions will be essential in coming years, as the PRC’s preferred response to Taiwan under President Tsai will likely involve a multi-faceted campaign of coercion short of overt violence that attempts to undermine the confidence and collective identity of Taiwan’s leaders and citizenry.



These efforts should include the further development of ways for both Taiwan alone, and the United States and Taiwan acting together, to counter various types of PRC coercion short of kinetic conflict. For example, careful scrambling to counter PLA Air Force and PLA Navy Aviation intrusions into Taiwan's airspace is an important tool of counter-coercion, primarily because it increases public confidence in the military (which needs significant shoring up).

The United States should continue to help Taiwan improve its own defenses. To enhance force multiplication of Taiwan's limited active duty numbers, the United States should help support the reform of Taiwan's Reserve Forces. It is also important to increase the capacity of the civilian side of Taiwan's civil-military relations to avoid any possible misperceptions that Taiwan's Ministry of National Defense (MND) is pursuing a non-transparent monopoly over defense policy.

Washington should continue to review and approve appropriate requests for defense articles and services for sale to Taiwan.<sup>xcvi</sup> In keeping with the terms of President Reagan's Six Assurances, Washington should not consult Beijing in advance of any arms sales to Taiwan.<sup>xcvii</sup> Also consistent with the Six Assurances, the United States should make it clear that threatening or coercive behavior toward Taiwan is a reason for enhanced U.S. military and technical support for Taiwan.

The United States should simultaneously continue to strongly encourage Taiwan's government (both executive and legislature) to increase defense spending. To help ensure the maximum effectiveness of whatever spending is achieved, the United States should continue to encourage and help Taiwan's MND to implement an asymmetric defense strategy, which has made encouraging strides, but remains a work in progress.<sup>xcviii</sup>

To ensure the security of the 79,000 American citizens in Taiwan<sup>xcix</sup> in any potential contingency, including a Noncombatant Evacuation Operation (NEO), the United States should strengthen its defense section and Marine Security Guard detachment at the American Institute in Taiwan (AIT) in Taipei.

As for specific deliverables, the U.S. Navy and Taiwan's Navy (officially still called the Republic of China Navy), as well as their respective Coast Guards, together with other relevant services, should hold humanitarian assistance and disaster relief (HA/DR) exercises. Units involved could include U.S. Marine Corps (USMC) personnel based nearby in Okinawa, which would be responsible for contributing to any regional security maintenance. Such exercises should emphasize Taiwan's exemplary anti-Coronavirus capacity and competence, as well as the necessity of protecting civilians from the typhoons and earthquakes endemic to the region. Additionally, the U.S. Navy should invite its Taiwanese counterpart to participate in the next Rim of the Pacific (RIMPAC) exercise in Hawaii. The United States should likewise seek to have active duty military officers participate in Taiwan's annual *Han Kuang* exercises.

## **2. Further—and Potentially Contingent Options—vis-à-vis Taiwan**

There are many further actions and communications that U.S. decision-makers could consider vis-à-vis Taiwan; particularly in response to negative PRC behaviors, including the further coercive envelopment, suppression, and weaponization of Hong Kong. We assess these based in their likely impact on the cross-Strait military balance, as well as the intimately correlated escalatory impact they would likely have on thinking in Beijing.

Given the inherent opportunities and challenges, any such efforts might best be considered in conjunction with a USG review of Taiwan policy. This has not been done since before Taiwan transitioned to a liberal democracy more than 25 years ago. As part of this review, the USG could consider modifying and updating the interpretation or application in practice of currently operative Taiwan-related State Department guidelines; as well as consider modifying and updating the guidelines themselves. A simple place to start would be retiring clunky government-speak terms—like using “Taiwans” to mean “Taiwanese people” or “citizens of Taiwan”—that sound unnatural to speakers of plain American English and arguably even unintentionally dehumanizing.<sup>c</sup>

**Moderate Impact and Escalatory Effect:** The United States could send active duty personnel to Taiwan’s service schools, command schools, and National Defense University as both students (particularly for Chinese language) and instructors. Small units could be sent as advisors, trainers, and liaison officers.

**Moderate Impact and Escalatory Effect:** The United States could endeavor to integrate Taiwan into regional military exercises, possibly starting with search and rescue (SAR), and HA/DR; particularly using Coast Guard personnel.<sup>ci</sup> It could also “greenlight” closer defense/security collaboration between Taiwan and Japan. Low-key cooperation with regional allies such as South Korea and Australia, as well as other partners, could help to build support for U.S. efforts, improve burden sharing, and prepare for contingencies. The sea and air around and above Taiwan are important for Korean trade with Southeast Asia, South Asia, the Middle East and Europe, including energy imports.

**Moderate Impact and Escalatory Effect:** A variety of ship and aircraft visits could be considered. Bilateral training and exercises at the relevant facilities in the United States and Taiwan could include anti-submarine warfare (ASW), special forces/urban warfare, anti-landing, anti-air, missile defense. Such activities could begin subtly, but then become public later after they are routine and established.

**High Impact/High Escalatory Effect:** The military realm abounds with further options. The United States could consider offering to deploy conventional anti-ship missiles on or near Taiwan’s main island and/or offshore islands in the South China Sea such as the Pratas, including ground-launched long-range conventional missiles as they become available following Washington’s withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty.<sup>cii</sup> Additionally, the United States could consider working to pursue the integration of Taiwan’s missile defense into a regional network.

### **Option 3: Enhanced Freedom of Navigation and presence operations to challenge illegal Chinese maritime claims in the South China Sea**

Washington should take the lead in helping allies and partner countries (to the extent they invite U.S. assistance) positively assert their maritime rights. One prong would entail U.S. freedom of navigation operations (FONOPS) that in most cases are unilateral activities, but which may increasingly involve allies and partner states. U.S. naval forces conducted nine FONOPS in 2019.<sup>ciii</sup> Maintaining or exceeding this pace and type of operations would be a “demonstrative” action to show Washington’s resolve in the face of excessive PRC maritime claims. This can

include helping allies with training exercises to defend/re-take islands (e.g., through amphibious operations), and complicating efforts to dominate an area, including through gray-zone activities.

The U.S. Navy and Air Force should also consider enhancing their freedom of transit operations. Potential options that could be used, but to our awareness have not yet been include:

- 1) **Calibrating FONOPs** to coincide with dredging/resupply of artificial features.
- 2) **Simultaneous FONOPS.** For instance, have three vessels pass by three disputed reefs in a single 24-hour period.
- 3) **More flybys.** Run more flight routes through disputed SCS and ECS zones. Potentially change aircraft types and numbers—for instance, use a flight of 4-to-8 F-15Es from a regional base or multiple F/A-18 Super Hornets from a carrier strike group operating in the area.
- 4) **Intensified ASW patrols.** Greater presence of P-8 Poseidon ASW aircraft would send a strong message about the U.S. Navy building familiarity with a potential battle space while introducing Phase Zero pressure on PLAN submarine operations from Hainan.

**Option 4: Go “hands on” with definitive actions to help regional partners secure their maritime rights in the South and East China Seas**

The U.S. Navy and Coast Guard should also begin engaging in “definitive” actions that affirm a readiness to go “hands on” in challenging PRC activities in the South and East China Seas that violate international and local law. **Exhibit 4** (below) outlines six feasible actions that could be taken in short order as the situations presented themselves.<sup>civ</sup>

**Exhibit 4: Definitive Actions to Support Allies and Partners in Maritime East Asia**

<i>Maritime Rights of Allies</i>	<i>“Definitive” U.S. Actions</i>
Sovereign access to their offshore rocks and reefs	Escort fishing vessels from allied nations. If necessary, use nonlethal means to protect them
Sovereignty to fish within their own waters	Escort fishing vessels from allied nations. If necessary, use nonlethal means to protect them
Sovereignty to explore and exploit seabed resources in their own waters	Escort fishing vessels from allied nations. If necessary, use nonlethal means to protect them

Sovereignty to prevent poaching within their own waters	Help allies arrest and charge Chinese poachers. Protect allies' law enforcement vessels from Chinese harassment.
Sovereign right to prevent foreign theft of their seabed resources	Help allies board Chinese ships and charge Chinese companies for operating illegally in allies' waters. Protect allies' law enforcement vessels from Chinese harassment.
Sovereignty to conduct military exercises in their own waters	Conduct joint exercises with allies in their waters.

A range of actors thus has a variety of stakes in opposing the PRC's unacceptable maritime behavior. Maritime rights of allies apply to allies South Korea and Japan, close partner Taiwan, and the regional states of Vietnam, Indonesia,<sup>cv</sup> Malaysia, and the Philippines. As a tactical action, the United States should help provide these regional states with more advanced technology and training capabilities to better enable them to detect, report, and use non-lethal means to repel unwelcome PRC gray zone operations and incursions. Examples of key stakeholders the right to freedom of navigation and access include Australia, the UK, Singapore, and India. Trade with and in East Asia, including the East and South China Seas, is important to all of them. Even if they are unable to provide sustained military presence or support, their combined diplomatic and political weight can be another cost imposed on the PRC to encourage good behavior.

## Conclusion

The policy measures outlined above are not just about saving Hong Kong, its people, way of life, and unique entrepôt role. Beijing has already smothered those flames such that the previous fire can likely never be revived. U.S. and partner country actions with respect to Hong Kong proper will likely increasingly entail a combination of selective targeting of discretely identifiable malign actors, while salvaging remaining economic value and providing outlets for victims of political repression and others seeking refuge from the PRC's smothering tech-enabled Controlocracy. The core importance of U.S. actions focused on Hong Kong now increasingly far transcends the territory and instead entails taking a strong stance to demonstrate to Beijing that revisionism has real costs and to signal to allies and partners that Washington will stand with them in the face of coercive pressure from the PRC. This will complicate CCP propaganda messaging and demonstrate that Chinese and other Asian societies in fact have different choices available to them. Taiwan in particular can offer a powerful example not only to mainland China, but also to defuse PRC claims about "Chinese" cultural determinism leading to submission to the CCP regime.

Robust action today can help prevent the PRC from undermining confidence in the present regional architecture and creating a fait accompli that disadvantages everyone in the region aside from

Beijing. The response package outlined in this analysis is a set of defensively-oriented protective measures designed to impose costs so that Beijing ceases and desists from destabilizing revisionist actions. The goal is to preserve—and ultimately, improve upon—a status quo that China accepted for most of the past 40 years and has continued to benefit from to this day even as it seeks to undermine it. The options package incorporates multiple off-ramps. The onus for escalation thus lies with the PRC. This recognizes an important reality: the greatest danger that Beijing poses to the United States and its allies and partners is not power in capabilities *per se*, but rather how it is using those capabilities. There is more Washington can do to shape behavior than it can Beijing's capabilities. Focusing clearly on behavior also provides a more tangible and realistic measure of what needs to change.

Moving forward, Washington will need to calibrate its policies in light of evolving events. Particularly important will be further tests of Hong Kong's remaining autonomy by PRC- and affiliated-entities. The key indicator will not be daily patterns so much as what happens when Beijing and its representatives want something vis-à-vis Hong Kong that the territory's laws, regulations, and system previously should have been expected to prohibit. Here, under the National Security Law, economic and state security will likely be conflated as never before, with significant implications for economic transactions and far more. As U.S. decision-makers take stock of Hong Kong's further-compromised system and react accordingly, they should pay particular attention to lawsuits in Hong Kong courts against PRC-registered State Owned Enterprises and princeling-run firms. Both uncertainty and the certainty of oppression are bad for business. China's coercive envelopment of Hong Kong will incur mounting, ever-wider costs. If Beijing refuses to honor a major treaty that it signed and registered with the UN, how can it be trusted to live by other, often less formal, agreements? PRC actions regarding Hong Kong have severely compromised trust. China under Xi and his Party is aggressively pursuing self-defined national unification in increasingly costly and disruptive ways. Now is the time to push back before the damage spreads drastically.

Protecting the structures now that helped the Asia-Pacific become a global engine for growth and human development is the first critical step to making them even stronger in the future. But getting to that future requires imposing costs on PRC revisionism today, holding our ground, and inspiring others to stand with us. This response options package offers part of the foundation we can stand on as this multi-year course of action unfolds.

*\*\*This report is based solely on the authors' personal views and not the positions of any organizations with which they are affiliated. It is designed to offer potential policy ideas, not advocate for specific private sector outcomes. The authors greatly appreciate extremely generous inputs from a wide range of anonymous experts. Neither author has a financial stake involved, or any conflict of interest pertaining to the subjects discussed. Contact information: [gabe.collins@rice.edu](mailto:gabe.collins@rice.edu) and [andrew\\_erickson@fas.harvard.edu](mailto:andrew_erickson@fas.harvard.edu).*



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- <sup>xxix</sup> Chris Hall, “Our Dismal Relationship With China Just Got a Whole Lot Worse,” *CBC News*, 28 May 2020, <https://www.cbc.ca/news/politics/china-meng-wanzhou-extradition-kovrig-spavor-1.5587636>; Andy Blatchford, “Canada Braces for Consequences from China After Huawei Exec Loses Bid to Dismiss Extradition to U.S.,” *Politico*, 27 May 2020, <https://www.politico.com/news/2020/05/27/canada-consequences-china-huawei-extradition-us-284779>.
- <sup>xxx</sup> Mark Katkov, “China Charges 2 Canadians with Espionage in Case Tied to U.S. Prosecution Of Huawei,” *National Public Radio*, 19 June 2020, <https://www.npr.org/2020/06/19/880741322/china-charges-2-canadians-with-espionage-in-case-tied-to-u-s-prosecution-of-huaw>.
- <sup>xxxi</sup> Dominique Patton, Julie Gordon, “China Widens Ban on Canadian Canola Imports to Second Firm, Viterra,” Reuters, 26 March 2019, <https://www.reuters.com/article/us-china-canada-trade-canola-idUSKCN1R713S>.
- <sup>xxxii</sup> The U.S. can also discuss layers of publicity by allied and partner countries to afford them options to manage their risks while bringing pressure to bear on the PRC. Multiple layers of participation in PSI and Container Security Initiative (CSI), for instance, provide some precedent. “Statement on Proliferation Security Initiative,” 4 September 2003, Statement by the White House Press Secretary, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/09/20030904-10.html>.
- <sup>xxxiii</sup> Note that this report does not recommend interdicting certain PRC and Hong Kong financial bodies, including China Securities Depository and Clearing Corporation, HK Securities Clearing Corporation, China Central Depository Clearing Corporation, Shanghai Clearing House Corporation, and Hong Kong Interbank Clearing Limited. The key reason for this is that the calibration potential of CAATSA and its broad reach make it a primary action vehicle. Targeting specific financial entities and clearing houses in a systemically important economies like the PRC and Hong Kong does not, in our assessment, deliver sufficient leverage to offset the downsides, including the potential for stimulating substantial Wall Street opposition in the United States.
- <sup>xxxiv</sup> Other suggestions of such allowances include long-established policies to bring in Mainlanders to become Hong Kong citizens and statements expressing desire to transform the SAR’s demography in a “patriotic” direction.

<sup>xxxv</sup> Nick Aspinwall, “For Hong Kong Refugees, New Life in Taiwan Means Traversing a Legal Twilight Zone,” *Washington Post*, 24 February 2020, [https://www.washingtonpost.com/world/asia\\_pacific/for-hong-kong-refugees-new-life-in-taiwan-means-traversing-a-legal-twilight-zone/2020/02/23/c924a4d4-4648-11ea-91ab-ce439aa5c7c1\\_story.html](https://www.washingtonpost.com/world/asia_pacific/for-hong-kong-refugees-new-life-in-taiwan-means-traversing-a-legal-twilight-zone/2020/02/23/c924a4d4-4648-11ea-91ab-ce439aa5c7c1_story.html).

<sup>xxxvi</sup> Patrick Wintour and Helen Davidson, “Boris Johnson Lays Out Visa Offer to Nearly 3m Hong Kong Citizens,” *The Guardian*, 3 June 2020, <https://www.theguardian.com/world/2020/jun/03/britain-could-change-immigration-rules-for-hong-kong-citizens>. To be sure, Beijing has publicly promised consequences for the UK for allowing Hong Kong residents to relocate, seeing it as an infringement on its right to domestic jurisdiction. The question is whether Beijing will carry out this threat. Along with Taiwan, dialogue and coordination with the UK could prove helpful and informative.

<sup>xxxvii</sup> David Vetter, “What is a British National (Overseas) Passport and What Is a Holder Entitled To?” *South China Morning Post*, 1 August 2018, <https://www.scmp.com/news/hong-kong/politics/article/2157756/what-british-national-overseas-passport-and-what-holder>.

<sup>xxxviii</sup> Ibid.

<sup>xxxix</sup> Patrick Wintour and Helen Davidson, “Boris Johnson Lays Out Visa Offer to Nearly 3m Hong Kong Citizens,” *The Guardian*, 3 June 2020, <https://www.theguardian.com/world/2020/jun/03/britain-could-change-immigration-rules-for-hong-kong-citizens>

<sup>xl</sup> Ibid.

<sup>xli</sup> Dennis Romboy, “Utah Rep. John Curtis Proposing to Give Hong Kong Residents Priority Refugee Status as China Asserts Control,” *Deseret News*, 28 May 2020, <https://www.deseret.com/utah/2020/5/28/21273539/china-hong-kong-protests-national-security-law-john-curtis-refugees>.

<sup>xlii</sup> “Sasse Introducing Hong Kong Asylum Bill,” 30 May 2020, <https://www.sasse.senate.gov/public/index.cfm/2020/5/sasse-introducing-hong-kong-asylum-bill>.

<sup>xliii</sup> Jeff Jacoby, “Open America’s doors to refugees from Hong Kong,” Op-Ed, *Boston Globe*, 2 June 2020, <https://www.bostonglobe.com/2020/06/02/opinion/open-americas-doors-refugees-hong-kong/>.

<sup>xliv</sup> The PRC/CCP has likewise used student groups and native place associations to mobilize and police citizens, former citizens, and even other people with ethnic Chinese heritage in the United States and elsewhere. Protecting civil liberties are an important American value; but it is also important to protect against these channels of CCP influence and United Front work. Countermeasures should usually be restrained but decisive where necessary. Relevant examples include Australia’s experience with such organizations and the Chinese Students’ Association at Columbia University, which was shut down some years ago. See <https://www.forbes.com/sites/jnylander/2015/03/25/columbia-university-closes-chinese-student-organisation/#1ad1fc741a7d>, <https://www.aspistrategist.org.au/the-party-speaks-for-you-foreign-interference-and-the-chinese-communist-partys-united-front-system/>, and <https://www.news.com.au/finance/economy/australian-economy/china-is-infiltrating-australia-on-multiple-fronts-from-politics-to-business-via-its-powerful-and-covert-united-front-agency/news-story/9318c7799e540164dd0b985b9e8969c2>.

<sup>xlv</sup> S.1731 - United States-Hong Kong Policy Act of 1992 (Sec.103, Subpart 8), Congress.gov, <https://www.congress.gov/bill/102nd-congress/senate-bill/1731/text>.

<sup>xlvi</sup> *The Committee on Foreign Investment in the United States (CFIUS)* (Washington, DC: Congressional Research Service, 26 February 2020), <https://crsreports.congress.gov/product/pdf/RL/RL33388>.

<sup>xlvii</sup> <https://www.congress.gov/116/plaws/publ76/PLAW-116publ76.pdf>

<sup>xlviii</sup> Ibid.

<sup>xlix</sup> Harry J. Levinson, *Principles of Lithography*, 4<sup>th</sup> ed. (SPIE, the international society for optics and photonics, 2019); Vivek Bakshi, *EUV Lithography*, 2<sup>nd</sup> ed. (SPIE, 2018); Chris Mack, *Fundamental Principles of Optical Lithography: The Science of Microfabrication* (Wiley, 2007); Patrick Naulleau, “Optical Lithography,” in David L. Andrews, Robert H. Lipson and Thomas Nann, eds., *Comprehensive Nanoscience and Nanotechnology* (Second Edition), 2019.

<sup>l</sup> “Big Steps in Tiny Patterns,” ASML, <https://www.asml.com/en/technology>.

<sup>li</sup> Saif M. Khan and Carrick Flynn, “Maintaining China’s Dependence on Democracies for Advanced Computer Chips,” Brookings Institution, April 2020, [https://www.brookings.edu/wp-content/uploads/2020/04/FP\\_20200427\\_computer\\_chips\\_khan\\_flynn.pdf](https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_computer_chips_khan_flynn.pdf).

<sup>lii</sup> Ibid.

<sup>liii</sup> “Addition of Fujian Jinhua Integrated Circuit Company, Ltd (Jinhua) to the Entity List,” U.S. Department of Commerce, 29 October 2018, <https://www.commerce.gov/news/press-releases/2018/10/addition-fujian-jinhua-integrated-circuit-company-ltd-jinhua-entity-list>.

<sup>liv</sup> Ibid.

<sup>lv</sup> “The Chip Maker Caught in US Assault on China’s Tech Ambitions,” *Bloomberg* (via *South China Morning Post*), 26 November 2018, <https://www.scmp.com/tech/big-tech/article/2175031/chip-maker-caught-us-assault-chinas-tech-ambitions>

<sup>lvi</sup> “Hong Kong Data Center Market,” Baxtel, <https://baxtel.com/data-center/hong-kong>; Rita Ngai, “Microsoft Asia’s Biggest Datacenter Pair: Hong Kong and Singapore,” Microsoft, 28 November 2018, <https://news.microsoft.com/en-hk/2018/11/28/microsoft-asias-biggest-datacenter-pair-hong-kong-and-singapore/>

<sup>lvii</sup> See <https://www.datacenterknowledge.com/apple/apples-icloud-china-set-move-state-controlled-data-center>.

<sup>lviii</sup> Protection of personal data is particularly important, since breaches into databases of the U.S. Office of Personal Management and health insurance firms seem to aim at allowing trawling of data to find vulnerabilities to exploit.

<sup>lix</sup> During the past academic year, for instance, one of the authors has learned, a PRC firm was offering a free set of social science research tools at a top-tier research university in the United States, in exchange for researchers sharing their data and methodologies. Some collaboration is necessary and important, but such sharing should be deliberate and done with care, not simply out of convenience or expedience.

<sup>lx</sup> See <https://santandertrade.com/en/portal/establish-overseas/hong-kong/foreign-investment>.

<sup>lxi</sup> See <https://ustr.gov/countries-regions/china-mongolia-taiwan/hong-kong>.

<sup>lxii</sup> “Growth in Singapore’s Foreign Currency Deposits Comes From Diverse Sources: MAS,” *Channel News Asia*, 7 June 2020, <https://www.channelnewsasia.com/news/business/mas-foreign-currency-deposits-growth-singapore-hong-kong-12813418>.

<sup>lxiii</sup> See, for instance: Greg Torode, “Exclusive: Hong Kong Tycoons Start Moving Assets Offshore as Fears Rise Over New Extradition Law,” Reuters, 14 June 2020, <https://www.reuters.com/article/us-hongkong-extradition-capitalflight-ex-idUSKCN1TF1DZ>. This article quotes an unnamed Hong Kong-based financial adviser as saying “The fear is that the bar is coming right down on Beijing’s ability to get your assets in Hong Kong. Singapore is the favoured destination.”

<sup>lxiv</sup> Paul Wolfowitz and Frances Tilney Burke, “Hong Kong Sanctions With Teeth,” *The Wall Street Journal*, 2 June 2020, <https://www.wsj.com/articles/hong-kong-sanctions-with-teeth-11591119841>.

<sup>lxv</sup> “Panama Papers: China Censors Online Discussion,” BBC, 4 April 2016, <https://www.bbc.com/news/world-asia-china-35957235>; “Bloomberg Sites Blocked in China Days after Xi Family Wealth Story,” Reuters, 4 July 2012, <https://www.reuters.com/article/us-china-censorship-bloomberg-idUSBRE86306820120704>.

<sup>lxvi</sup> See, for example, “Open Arms: Evaluating Global Exposure to China’s Defense-Industrial Base,” C4ADS, 2019, <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5d95fb48a0bfc672d825e346/1570110297719/Open+Arms.pdf>; Gabriel B. Collins, “Foreign Investors and China’s Naval Buildup,” *The Diplomat*, September 9, 2015, <https://thediplomat.com/2015/09/foreigninvestors-and-chinas-naval-buildup/>.

<sup>lxvii</sup> “All Our Investigations,” International Consortium of Investigative Journalists, <https://www.icij.org/investigations/>.

<sup>lxviii</sup> See <https://bitterwinter.org> and <https://bitterwinter.org/ccp-stepping-up-the-pace-of-uyghur-forced-labor-into-inner-china/>.

<sup>lxix</sup> See <https://www.aspi.org.au/>.

<sup>lxx</sup> Specific relevant actions would include:

Corporate/entity level

- 1) denial of export licenses;
- 2) a prohibition on foreign exchange transactions under U.S. jurisdiction;
- 3) a prohibition on transactions with the U.S. financial system; and
- 4) blocking of all property and interests in property within U.S. jurisdiction;

Personal level

- 1) a prohibition on foreign exchange transactions under U.S. jurisdiction;
- 2) a prohibition on transactions with the U.S. financial system;
- 3) blocking of all property and interests in property within U.S. jurisdiction; and

a visa ban.

<sup>lxxi</sup> See “50 U.S. Code § 1702.Presidential authorities,” Legal Information Institute, <https://www.law.cornell.edu/uscode/text/50/1702>

<sup>lxxii</sup> “Sanctions Under Section 231 of the Countering America’s Adversaries Through Sanctions Act of 2017 (CAATSA),” U.S. Department of State, 20 September 2018, <https://www.state.gov/sanctions-under-section-231-of-the-countering-americas-adversaries-through-sanctions-act-of-2017-caatsa/>.

<sup>lxxiii</sup> Kerry B. Contini, Inessa Owens, and Daniel Andreeff, “US Government Sanctions Chinese Entity for Engaging in Transactions with Russian Defense Sector Under CAATSA Section 231 List, Clarifies CBW Act Waiver, and Extends Expiration of General Licenses Related to RUSAL and EN+ Group,” Baker McKenzie, 24 September 2018,



<https://sanctionsnews.bakermckenzie.com/us-government-sanctions-chinese-entity-for-engaging-in-transactions-with-russian-defense-sector-under-caatsa-section-231-list-clarifies-cbw-act-waiver-and-extends-expiration-of-general-licenses-rela/>.

<sup>lxxiv</sup> Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity, U.S. Department of the Treasury, 6 April 2018, <https://home.treasury.gov/news/press-releases/sm0338>; “Rusal shares plunge over 40 percent on U.S. sanctions,” Reuters, 8 April 2018, <https://www.reuters.com/article/us-usa-russia-sanctions-rusal-stocks-idUSKBN1HG04H>.

<sup>lxxv</sup> “OFAC Delists En+, Rusal, and EuroSibEnerg,” U.S. Department of the Treasury, 27 January 2019, <https://home.treasury.gov/news/press-releases/sm592>

<sup>lxxvi</sup> In contrast, Washington should not consider broader sanctions against international tax havens such as the Cayman Islands that facilitate PRC entities’ foreign transactions. This would be hugely complicated, and is impracticable on many levels. It is better to leave these windows open as avenues of capital flight from the PRC. However, key individuals’/organizations’ assets going to these tax havens can be highlighted, including through support of investigative journalism.

<sup>lxxvii</sup> D&O insurance policies offer liability cover for company managers to protect them from claims which may arise from the decisions and actions taken within the scope of their regular duties. As such, D&O insurance has become a regular part of companies risk management. “D&O Insurance Explained,” Allianz, <https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/d-o-insurance-explained.html> (accessed 6 June 2020).

<sup>lxxviii</sup> “Our Shareholders’ Committee,” Nord Stream, <https://www.nord-stream.com/about-us/our-shareholders-committee/>.

<sup>lxxix</sup> “Board of Directors,” Rosneft, <https://www.rosneft.com/governance/board/item/187923/>.

<sup>lxxx</sup> See 31 CFR § 1010.605(1)(i).

<sup>lxxxi</sup> There is also precedent under the Magnitsky Act. Conversely, there can be protection of U.S. assets of people politically persecuted. This follows along the lines of the U.S. SPEECH Act. This can help protect entities like HKDC and even Apple Daily, which help to expose what is going on in Hong Kong, and that the PRC state is likely to want to target. Beijing will continue to retaliate against U.S. businesses, as it already has against the NBA. To the extent that U.S. firms are encouraged and supported to withstand such retaliation, their effects can be minimized. See, for example: <https://www.govinfo.gov/content/pkg/PLAW-111publ223/html/PLAW-111publ223.htm> and <https://www.congress.gov/bill/111th-congress/senate-bill/3518/text>.

<sup>lxxxii</sup> “RMB Tracker June 2020,” RMB tracker document centre, SWIFT, <https://www.swift.com/our-solutions/compliance-and-shared-services/business-intelligence/renminbi/rmb-tracker/document-centre?tl=en#topic-tabs-menu>.

<sup>lxxxiii</sup> International Financial Centre, HKMA Annual Report 2019, 137, [https://www.hkma.gov.hk/media/eng/publication-and-research/annual-report/2019/15\\_International\\_Financial\\_Centre.pdf](https://www.hkma.gov.hk/media/eng/publication-and-research/annual-report/2019/15_International_Financial_Centre.pdf).

<sup>lxxxiv</sup> *Taiwan: Issues for Congress* R44996 (Washington, DC: Congressional Research Service, 30 October 2017), <https://crsreports.congress.gov/product/pdf/R/R44996>; Shirley A. Kan, *China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei* (Washington, DC: Congressional Research Service, January 5, 2015), <https://shirleykannet.files.wordpress.com/2019/10/one-china-policy.pdf>; Jeffrey W. Hornung and Scott W. Harold, “Should the U.S. Move to Strengthen Ties with Taiwan?” Op-Ed, *The Hill*, 5 June 2020, <https://thehill.com/opinion/international/501343-should-the-us-move-to-strengthen-ties-with-taiwan>.

<sup>lxxxv</sup> Trefor Moss, “China Orders Cathay Pacific to Remove Employees Involved in Hong Kong Protests From Mainland Flights,” *The Wall Street Journal*, 9 August 2019, <https://www.wsj.com/articles/china-orders-cathay-pacific-to-remove-employees-involved-in-hong-kong-protests-from-mainland-flights-11565360471>.

<sup>lxxxvi</sup> For specific FTA ideas, see Daniel Blumenthal and Michael Mazza, *A Golden Opportunity for a U.S.-Taiwan Free Trade Agreement* (Arlington, VA: Project 2049 Institute, February 14, 2019), [https://project2049.net/wp-content/uploads/2019/02/US\\_TW\\_Trade\\_Blumenthal\\_Mazza\\_P2049\\_021419.pdf](https://project2049.net/wp-content/uploads/2019/02/US_TW_Trade_Blumenthal_Mazza_P2049_021419.pdf).

<sup>lxxxvii</sup> Leading with USDA-certified organic and all natural products could help pave the way.

<sup>lxxxviii</sup> Gabriel B. Collins and Andrew S. Erickson, *Economic Statecraft: Options for Reducing U.S. Overdependence on Chinese-supplied Materials and Medications* (Houston, TX: Baker Institute for Public Policy, Rice University, 23 April 2020), <https://www.bakerinstitute.org/media/files/files/000f91f7/bi-report-042320-ces-statecraft.pdf>.

<sup>lxxxix</sup> See, for example, Andrew S. Erickson, “The Michael Chase Bookshelf: Leading-Edge Research on China’s Rocket Force and Strategic & Cross-Strait Security Issues,” *China Analysis from Original Sources* 以第一手资料研究中国, 17 December 2017, <https://www.andrewerickson.com/2017/12/the-michael-chase-bookshelf/>.

<sup>xc</sup> Potential organizations to support include the National Democratic Institute (NDI), the National Endowment for Democracy (NED), and the International Republican Institute (IRI).

<sup>xc</sup>i Matthew Ha, “Let’s Get Serious About US-Taiwan Cybersecurity Cooperation,” *Washington Examiner*, May 19, 2020, <https://www.washingtonexaminer.com/opinion/op-eds/lets-get-serious-about-us-taiwan-cybersecurity-cooperation>.

<sup>xc</sup>ii See <https://halifaxtheforum.org/>.

<sup>xc</sup>iii See <https://www.thegctf.org/About-us/Background-and-Mission>.

<sup>xc</sup>iv See <https://www.congress.gov/bill/115th-congress/house-bill/535/text>.

<sup>xc</sup>v See <https://www.congress.gov/bill/116th-congress/senate-bill/1678/text>.

<sup>xc</sup>vi Scott W. Harold, “Making Sense of US Arms Sales to Taiwan,” *Institute Montaigne*, 23 July 2019, <https://www.institutmontaigne.org/en/blog/making-sense-us-arms-sales-taiwan>.

<sup>xc</sup>vii Russell Hsiao and Marzia Borsoi-Kelly, “The Taiwan Relations Act at 40: Reaching a New Optimal Equilibrium in U.S.-Taiwan Policy,” *Foreign Policy Research Institute*, <https://www.fpri.org/article/2019/04/the-taiwan-relations-act-at-40-reaching-a-new-optimal-equilibrium-in-u-s-taiwan-policy/>.

<sup>xc</sup>viii See, for example, Andrew S. Erickson, “The Prof. William Murray Bookshelf: Keen Insights into China’s Military Buildup & Taiwan’s Defense Options,” *China Analysis from Original Sources* 以第一手资料研究中国 28 November 2017, <https://www.andrewerickson.com/2017/11/the-prof-william-murray-bookshelf-keen-insights-into-chinas-military-buildup-taiwans-defense-options/>.

<sup>xc</sup>ix “Ian Easton on Taiwan: Why the U.S. defends Taiwan,” *Taipei Times*, Op-Ed, September 16, 2019, 6, <http://www.taipeitimes.com/News/editorials/archives/2019/09/16/2003722357>.

<sup>c</sup> While the authors lack access to a comprehensive, authoritative list, based on public sources—including comparison of the following websites <<https://www.state.gov/countries-areas/china/>> and <<https://www.state.gov/countries-areas/taiwan/>>—they understand the relevant guidelines to have historically included some version of the following:

- 1) Meetings between USG officials and Taiwan authorities outside the United States must be held outside USG and Taiwan offices (e.g., at private meeting rooms or restaurants).
- 2) Embassy personnel may accept invitations to private functions hosted by Taiwan representatives either in restaurants or in their homes, but not in residences of Taiwan’s principal representatives or ambassadors.
- 3) U.S. Embassy and Consulate personnel may host Taiwan representatives at private functions in restaurants or in their homes, but not in U.S. Chief of Mission residences. Taiwan representatives may not be invited to U.S. functions of an official nature or to functions held on official U.S. premises.
- 4) U.S. Government representatives should not correspond directly with authorities from Taiwan, but rather should send letters through AIT-TECRO channels. Individuals from Taiwan whom U.S. Executive Branch officials contact are generally referred to by name, title, and city without use of international nomenclature (e.g., Director General Chang, Civil Aviation Bureau, Taipei). Correspondence to these individuals is prepared on plain white stationery and signed with a personal name without a USG title.
- 5) All Executive Branch personnel (of rank of Senior Foreign or Executive Service or military equivalent) who plan to travel to Taiwan for work-related reasons must have prior concurrence from the State Department’s office of Taiwan Coordination before requesting travel clearance from AIT Taipei. USG personnel travel to Taiwan in the capacity of consultants to AIT. Official travel is not permitted for State or Defense officials above the rank of Office Director or for uniformed military personnel above the level of 06 (Colonel, Navy Captain) without the written permission of EAP/TC. For personal travel, senior Executive Branch officials at or above the level of Assistant Secretary or three-star flag officers must obtain clearance from EAP/TC. All travel by Executive Branch personnel to Taiwan or transiting through Taiwan must be on a regular (tourist) passport. Diplomatic and official passports should not be used for travel to Taiwan.
- 6) Guidelines on Taiwan Military Uniforms and ROC Flags: In keeping with the unofficial nature of our relations with Taiwan and the fact that the United States does not recognize Taiwan as an independent, sovereign state, military representatives of the authorities on Taiwan should not wear their uniforms while in the United States or on U.S. premises overseas, and the “ROC” flag should not be displayed on USG premises.

<sup>ci</sup> Emphasizing such Maritime Law Enforcement professionals, generally considered civilian in nature, would allow more calibration, taking a page from the PRC playbook of leveraging salami slicing and semantics.

<sup>cii</sup> Gabe Collins, “Time to Put China’s Rocketeers on Notice,” *The National Interest*, 8 February 2017, <https://nationalinterest.org/feature/time-put-chinas-rocketeers-notice-19372?page=0%2C1>.

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<sup>ciii</sup> John Power, “U.S. freedom of Navigation Patrols in South China Sea Hit Record High in 2019,” *South China Morning Post*, 5 February 2020, <https://www.scmp.com/week-asia/politics/article/3048967/us-freedom-navigation-patrols-south-china-sea-hit-record-high>.

<sup>civ</sup> Ryan D. Martinson and Andrew Erickson, “Re-Orienting American Seapower For The China Challenge,” *War on the Rocks*, 10 May 2018, <https://warontherocks.com/2018/05/re-orienting-american-sea-power-for-the-china-challenge/>.

<sup>cv</sup> Indonesia is in an unusually complex position. China and Indonesia both claim they do not have overlapping claims. Yet, Indonesia is taking umbrage to increasingly aggressive Chinese fishing and law enforcement (Coast Guard) activities in its Exclusive Economic Zone.