Here Comes the Sun: ESG and Dirty Solar Supply Chains

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> *Here's the good news: economies of scale have enabled cost reductions that many experts predict will lead to solar energy meeting 60% of the world's energy needs by 2050. This will help reduce greenhouse gas emissions and go a long way to address climate change.*
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> *But here's the bad news: the manufacturing of solar cells is an energy and labor-intensive process. That's why 80% of the world's solar panels are made in the coal-rich Xinjiang region of China, which is not only home to the world's two biggest coal-fired power plants but also Ground Zero of the CCP's genocide of the Uyghurs, who are used as slave labor.*
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> *The technological battleground of solar energy illustrates the consequences of the CCP's "Power Doctrine." China's systematic deployment of IP theft, subsidies, non-market reciprocity, forced labor, low environmental standards, non-transparent accounting practices, bribery, as well as vast amounts of ESG capital has tilted the economies of scale in their favor, and ultimately decimated the American solar industry.*
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> *History has taught us that energy security is national security. Wars are begun and lost because of energy. Unless drastic action is taken, we will find ourselves at China's mercy for our energy needs, just as Germany is at Russia's.*
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> —Keith Krach, July1, 2022
> Military and Xinjiang behind China's Solar Industry[1]

Over the past five years, there has been explosive growth in environmental, social, and governance (ESG) investment. There is also a growing consciousness that unfettered investment in China's economy has serious consequences for America's economic and national security. It is increasingly clear that ESG investment in Chinese entities are in oxymoronic conflict, and nowhere is this conflict more evident than the supply chain for solar panels. Investors, consumers, and voters rightly want "clean" supply chains with clean labor practices for clean energy. But the ESG investment industry has failed to deliver them. Instead, as ESG investment has increased, the supply chain for solar panels has become deeply entangled in the ongoing genocide against the Uyghurs and other Turkic Muslim peoples.

China's Solar Energy Monopoly

According to some estimates, solar power will provide nearly 60%-75% of the world's energy needs by 2050.[2] Solar energy is seen by many as a pathway to a "clean" future which will help reduce greenhouse gas emissions and significantly address climate change. However, some say that what's seen as a clean, modern, and relatively high-tech alternative to fossil fuels has become another example of the Chinese Communist Party's (CCP) strong-arm approach to systematically dominating an industry by malign monopolistic practices. Many US national security experts are worried that China's monopoly of the solar energy industry will leave America at China's mercy for its future energy needs.

China's solar energy business began in the 1990s as an exports-oriented industry, designed to meet the demands of European countries. Countries like Germany and Italy had passed legislation to encourage the use of solar energy, and domestic manufacturers could not keep up. It was outsourced to Chinese suppliers. Since then, the industry has grown dramatically, and China has become the undisputed world leader in solar technology. China has achieved this dominance of the global solar industry through a combination of predatory practices such as forced technology transfers, intellectual property (IP) theft, regulatory arbitrage, and massive state subsidies.

Despite the consistent growth in US solar deployment over the past two decades, solar panel production in the United States—where this technology was invented and developed—has nearly disappeared. Since 2011, more than 750 solar companies have liquidated or closed, most notably Solyndra, which failed despite the backing of the Obama administration.[3] In addition to harming US producers, China's effort to dominate the global solar industry has effectively driven out producers in both developed economies with stricter environmental and worker protections, and in developing countries that lack the means to subsidize industry at the same scale.

China also strategically owns the most critical commodity that represents the beginning of the solar supply chain: polysilicon, a highly pure form of silicon that is vital to the photovoltaic supply chain.[4] (Exhibits A) In the year 2000, the United States dominated the polysilicon industry. China saw its potential and decided to implement a long-term plan for taking over the industry. Over the last twenty years, through a systematic set of non-market state policies, forced labor, state financing, IP theft, as well as unlimited amounts of capital from the government that tilted the economies of scale in their favor, China has put itself in a position to dominate more than 90% of the polysilicon industry in the near future.[5] During the past decade, China's share of global production of polysilicon increased from 26% to 82%, while the US share decreased from 35% to 5%.[6] Of the top ten polysilicon manufacturers, seven were Chinese as of 2021.

Polysilicon is also vital to the production of semiconductors.[7] That means that in the past twenty years, China has positioned itself, via polysilicon, to hold the world hostage for energy and chips—both of which will be vital to the global economy of the 21st century.

The World Capital of Solar Energy—Xinjiang

The widespread availability of cheap Chinese-made solar panels has transformed the renewable energy market. Given the carbon emissions projections of nearly every country's 2030 net-zero plans, it is likely that demand for Chinese solar panels will continue to grow. In the meantime, some contend we should settle for “dirty” solar energy solutions—by which they mean solar energy at the cost of environmental, human rights, and corporate governance abuses. The reality is the Chinese solar panels and polysilicon the world depends on are primarily produced in the coal-rich Xinjiang region of China, where the US, France,[8] the UK,[9] and a growing number of other governments have officially declared[10] the Chinese government’s abuses of the Uyghurs as genocide consistent with the United Nations Convention on the Prevention and Punishment of Genocide.[11] So far, the UN has remained silent on any punishment for the Uyghur genocide in Xinjiang.

In 2016, only 9% of the world’s solar-grade polysilicon came from Xinjiang. By 2020, 45% of the world’s supply—nearly half—was being produced there.[12] Because Xinjiang polysilicon is blended with polysilicon from other regions, for any single solar panel in the world the “mathematical probability is relatively high”—more than 95% according to one expert—that it contains polysilicon from Xinjiang.[13]

There are three primary reasons for why Xinjiang became the manufacturing hub for the solar and polysilicon industries.

First, creating solar panels and polysilicon is an energy-intensive process. Most solar panels require approximately as much energy to build as they will produce in 3-4 years.[14]As an energy-intensive industry, the availability of a reliable supply of cheap, coal-powered electricity creates a strategic advantage for polysilicon manufacturers to locate facilities to Xinjiang. Coal is by far the cheapest source of energy, and Xinjiang is home to the largest coal mines in China and two of the largest coal-fired power plants in the world. The Xinjiang Zhundong coal mine alone contains 7% of the whole country’s coal reserves. It can also provide high calorific value coals by open-pit coal mining. This can massively cut the production cost of solar panels. (Exhibit C)

Second, the labor cost in Xinjiang is low. Chinese solar companies moved production to Xinjiang to take advantage of lower labor costs and other subsidies offered as part of the government’s “poverty alleviation” and “counter terrorism” initiatives. Factories are co-located within the system of internment camps that have sprung up across the region and are believed to hold upwards of 1 million Uyghurs and other Turkic Muslims.[15] Official Chinese government documents from November 2020 cite the “placement” of 2.6 million people into factory jobs within Xinjiang through state-sponsored “surplus labor” initiatives.[16] The average salary is about $700 per month in Xinjiang’s capital, a fraction of that in Shanghai. Workers in the United States or Europe simply cannot compete.

Third, many of the solar and polysilicon companies in Xinjiang seem to be private corporations on the surface, but actually have deep ties to the CCP and the People’s Liberation Army, while others are owned by one of the largest central state-owned enterprises in China, the Golden Concord Holdings Limited, or GCL Group. A conglomerate that specializes in renewable energy, GCL Group ranked number 3 in a 2017 list of the top 500 global new energy enterprises. Both types of companies have the benefit of receiving substantial subsidies, opaque operations, and are protected by the government from any significant audit on the part of investors.

Financing China's Solar Industry Under the ESG Banner

The well-documented problem of Uyghur forced labor in China's solar and other supply chains raises challenges for investors and policymakers. One is the growing tension between ESG investing and unfettered investment in China. The ESG investment community has historically prioritized access to low-cost solar panels over acknowledgement and remediation of concerns about China's corporate governance or human rights issues. This unsustainable and—in the case of forced labor—immoral tradeoff, is under increasing scrutiny from a range of policymakers, civil society advocates, and investors. They are demanding economic and national security policies that ensure Americans are not financing the CCP's grave human rights violations in the name of ESG investing. The fact that many leading proponents of ESG are also among the biggest China market "bulls" has prompted charges of hypocrisy, "greenwashing," violation of fiduciary duties, enabling genocide, and endangering national security. Climate activists' willingness to look past extensive evidence that Uyghur forced labor is pervasive in the solar energy supply chain exacerbates these tensions.

To a large degree average American investors have been unknowingly financing China's rise in and domination of the solar business by passively investing in ESG funds through pension plans or investment accounts. The original purpose behind the ESG movement was twofold: reward companies that abide by a set of environmental, social (i.e., human rights), and corporate governance principles (the "E," the "S," and the "G"), and enable conscientious investors to invest their money in companies who don't violate their values and contribute to making the world a better place. According to some, many of the largest asset managers are willfully blind to China's monopolistic practices of modern-day slave labor, cheap coal-fired energy, and lack of accounting scrutiny by prizing their "green" portfolios over US energy security and ethical principles. As a result, socially conscious investors who participate in ESG precisely in order to avoid supporting such abuses are nonetheless placed in the position of funding them and have effectively been co-opted by the CCP's infiltration of US capital markets.

ESG investment in Chinese solar supply chains that likely involve institutionalized forced labor of Uyghurs and other minorities necessitate trade-offs between environmental and human rights concerns. To date those trade-offs have favored environmental imperatives, but the landscape is changing due to regulatory, legislative, geopolitical, and public opinion shifts. Issues raised in this case include: financialization of ESG investing; relative weighting of environmental and human rights concerns within ESG; the ambiguous/lack of defined standards for ESG; principal-agent problems of ESG for investment managers; problems of Chinese corporate governance and regulatory arbitrage; and potential legislative, regulatory and policy responses to reduce moral hazard.

ESG Trade-offs—Opposing Views

In early 2020, as COVID-19 began to spread, the Chinese government's behavior became the focus of everyone's attention. People around the world saw the CCP's concealment of the virus, its co-option of Hong Kong's free institutions, and its coercion of the Uyghurs in Xinjiang, and they didn't like it. It was against this backdrop that policy makers, lawmakers, and regulators started looking for a solution as they began considering the tradeoffs between economic growth, energy needs, capital market stability, the environment, and national security. As average American investors looked on, Wall Street firms, environmental activists, human rights groups, corporations, universities, and civil society organizations began to jockey for position. Some of them were backed by a powerful Chinese lobby with plenty of money. At stake was the future of US energy security, the integrity of the ESG movement, trillions of dollars of investment, and billions of dollars of profit.

Two individuals with polar-opposite views of the ESG dilemma began to emerge—BlackRock Chairman and CEO Larry Fink, and US Under Secretary of State for Economic Growth, Energy, and the Environment, and former DocuSign Chairman and CEO, Keith Krach.

Larry Fink runs the largest money-management firm in the world with more than $10 trillion in assets under management.[17] In this position, he wields enormous power over the global financial system.[18]

Prior to his government service, Keith Krach was the CEO and Chairman of DocuSign, where he transformed the Silicon Valley startup into the industry giant by building the DocuSign Global Trust Network with more than one million companies and one billion users in 188 countries. During his tenure, DocuSign became a verb, and the global standard for trust in digital transactions.

Fink and Krach were both successful in business—one in finance, the other in technology. However, on the critical issues of ESG investing, China, and solar energy, they could not be more different.

Larry Fink

Fink has been called the leading member of the country's financial oligarchy. He manages trillions of dollars of investment accounts and retirement funds for millions of Americans and oversees the investments of scores of institutions around the world, from state and local governments to college endowments.[19] As Chairman and CEO of BlackRock, Fink is responsible for channeling more investor money into China than anyone else in the world. Fink is also in charge of one the world's largest fossil fuel investment portfolios, and his company has profited significantly from global deforestation.[20] In December 2021, BlackRock teamed up with a Saudi asset manager to pay $15.5 billion to buy, then lease back pipelines to Saudi Aramco.[21]

Despite these actions, Fink has been vocal about companies taking action on climate change, and in one of his open letters stated: "Every company and every industry will be transformed by the transition to a net-zero world. The question is, will you lead, or will you be led?"[22] But according to Forbes, Fink does not walk the carbon reporting talk.[23] BlackRock's enormous and growing influence and its sheer size—too big to fail, some say—has begun to raise questions. "It's like the Blackwater of finance, almost a shadow government," says one senior bank executive, referring to the mountain of government contracts awarded to the firm. Fink's longstanding relationships with senior government officials have led to questions about potential conflicts of interest regarding government contracts awarded without competitive bidding.[24] BlackRock's contracts allowed Fink to cultivate relationships with President Obama's first Treasury Secretary, Tim Geithner, and other cabinet members.[25] In 2016, Fink himself hoped to become part of the federal government as Hillary Clinton's Treasury Secretary.[26]

Fink has consistently pushed for increased capital investment in the Chinese market. He's been a proponent of increasing the weighting of Chinese equities across the indices that drive Exchange-Traded Funds (ETF) trading. Genocide notwithstanding, BlackRock has invested in companies involved in repression, including entities directly controlled by the Xinjiang government.[27] Despite extensive and credible reports[28] that nearly every major Chinese solar firm and the entire polysilicon supply chain are implicated in Xinjiang's institutionalized forced labor scheme or some other aspect of the genocide, his investment managers continue to categorize these and other Chinese solar industry holdings as ESG investments based on their role in providing cheap solar panels that lower downstream net carbon emissions.

Millions of Americans unwittingly hold shares in these firms because they are embedded in indexes that shape emerging markets ETFs and other funds. For instance, BlackRock is the largest institutional shareholder in Daqo,[29] the third largest institutional shareholder of Jinko,[30] and holds millions of shares of GCL-Poly[31] and other Chinese solar firms through ETFs focusing on solar, renewable energy, and emerging markets. As a result, US capital markets continue to provide millions of dollars of capital—including in ESG labelled funds—to Chinese firms that benefit from an ongoing genocide in the name of environmental benefit. As Elizabeth Levy of the ESG investment firm Trillium puts it, "We're not going to be able to solve climate change without the involvement of solar panels…[T]he expectation is that a solar company, at some level, is working to save the world. So, either they get a pass and people don't look too closely at what they're doing…or they're held to a higher standard…"[32]

Keith Krach

Keith Krach has been an outspoken advocate for international standards and human rights since the Silicon Valley veteran became an unanimously confirmed Under Secretary of State.[33] During his confirmation hearing, Krach didn't mince words[34]: "Both sides of the aisle truly understand that our rivals are playing the long game, and they are playing for keeps—a four-dimensional game of economic, military, diplomatic, and cultural chess. Worst of all, they believe they're above the rules with little respect for human rights, property, international law, transparency, the environment, or the sovereignty of other nations." To combat China's economic aggression, Krach stated that his strategic focus would be: "harnessing 3 powerful areas of competitive advantage: strengthening our partnerships with friends and allies, leveraging the innovation and resources of the private sector, and amplifying the moral high ground of our American values and enduring optimism to advance peace and prosperity for our country and for the world."

When he assumed office, Krach gave his team the mission to develop and operationalize the first ever Global Economic Security Strategy to not only deliver tangible results in the short term but provide a framework for many years to come.[35] Krach and his team created the "Trust Doctrine" based on democratic values, to strategically de-position China's "Power Doctrine" based on coercion, co-option, intimidation, and deception. The Trust Doctrine formed the basis for the Global Economic Security Strategy, which consisted of three pillars: (1) Turbo-charge economic competitiveness and innovation; (2) Safeguard American assets, such as intellectual property and the financial system; and (3) Form a network of trusted partners comprising like-minded countries, companies, and civil society that operate by a set of Trust Principles across all areas of economic collaboration.

The Trust Principles are ideals that protect our freedoms and form the basis of trust: integrity, accountability, transparency, reciprocity, and respect for the rule of law, property, human rights, the environment, and national sovereignty. As Krach put it[36]:

> We believe in free trade. But when somebody doesn't play by the rules, the market is no longer free. Think about it. If I'm competing against you, and you can steal my intellectual property, utilize slave labor, engage in bribes, subsidize your own companies, increase the use of coal-fired power plants, and never have to be transparent, the level playing field that the rules-based international order and globalization depend on is gone. You have become the law, which means you're going to win every time. This is what China has been doing for forty years to give itself a strategic advantage, and there is not a shred of evidence that Xi is going to slow down anytime soon. That isn't a free market—that's a fool's market.

The Trust Doctrine turned the tables on the Power Principle by drawing a clear distinction between the two opposing principles based on trust while retaining the moral high ground and dealing from a position of strength and solidarity.

In early 2020, Krach deployed the Trust Doctrine for the first time on arguably the most urgent and strategic technological threat from an authoritarian regime in recent history, the CCP's master plan to control 5G communications. The Chinese tech and telecom company Huawei was a CCP "national champion," and the backbone of its surveillance state. The company looked unstoppable with the aid of its government's non-market state policies, subsidies, state financing, massive IP theft, systematic bribing of foreign officials, and the CCP's strong arm tactics. Nobody wanted to imagine a world where an authoritarian regime controlled the 5G infrastructure that was becoming increasingly vital to everything from utility grids, power generation systems, sanitation systems, and manufacturing processes, to the Internet-of-Things. Both sides of the political aisle were hitting the panic button. Everybody thought it was about technology. But Krach understood it was all about trust, and after his 60 bilateral meetings with senior officials from other countries, a common theme emerged— "nobody trusts China." It also became clear most countries and telcos were terrified of China's intimidation and retaliation. To confront the CCP threat in 5G, Krach and his team built the Clean Network Alliance of Democracies. (Exhibit E)

The Trust Doctrine cracked the code. In less than a year, and during the worst period of the pandemic, the Clean Network grew to 60 Clean Countries representing two thirds of the world's global GDP, 200+ Clean Telcos, and a host of industry leading Clean Companies. According to former US National Security Advisor, General H.R. McMaster, "The Clean Network's defeat of the CCP's masterplan to control 5G communications was the first time a U.S. government-lead initiative proved that China's economic warfare is beatable because it exposed their biggest weakness: nobody trusts them."[37]

ESG Comes Under the Microscope

In March 2020, the Trump administration began escalating actions to highlight and combat the Chinese government's atrocities against the Uyghurs in Xinjiang. Congressman Jim McGovern (D-MA) and Senator Marco Rubio (R-FL) introduced the Uyghur Forced Labor Protection Act (UFLPA), which had the potential to not only transform the solar industry but also had broader implications for US investment in China. Soon after, the Departments of State, Treasury, Commerce, Labor, Homeland Security, and the Office of the US Trade Representative published the Xinjiang Supply Chain Business Advisory highlighting the risks for businesses with supply chain links to entities complicit in forced labor and other human rights abuses in Xinjiang and throughout China. Action continued to escalate, with the Commerce Department adding dozens of Chinese firms to its Entity List, and the Treasury and State Departments sanctioning several Chinese government individuals and entities.

By July 2020, the United States designated the Xinjiang Production and Construction Corps (XPCC) subject to Global Magnitsky sanctions on the grounds of its involvement in gross violations of human rights in Xinjiang.[38] However, the Treasury Department's Office of Foreign Assets Control (OFAC), which is responsible for sanctions enforcement, has taken no significant steps to investigate the XPCC's relationships with these or other companies. Horizon Advisory described Daqo New Energy Corporation's polysilicon operations as "intertwined" with the XPCC.[39] Horizon also found that products made by JinkoSolar, LONGi Green Energy Technology and other major producers included polysilicon from Daqo. Daqo (DQ) and JinkoSolar (JKS) are listed on the New York Stock Exchange. GLC-Poly shares are available on the US "over the counter" (OTC) market.

The atrocities in Xinjiang exposed a gap between the high-minded rhetoric of ESG investing and the reality of dependence on China's abusive, authoritarian government for both financial returns and key technologies like solar. At the same time, ESG investment was also criticized as a form of hypocritical corporatism, practiced by unaccountable financial firms that push a progressive agenda on unwitting clients. This was especially true for firms that espouse ESG standards while also advocating expanded investment in Chinese equities. By virtue of its size and high-profile CEO, BlackRock was becoming a poster child for problematic ESG investment, beset by critics on all sides. For the last several decades, China has become a source of endless profit for numerous Wall Street and other financial firms. This has encouraged many to turn a blind eye to the egregious pollution, human rights abuses, and governance issues with many Chinese companies. BlackRock and other ESG proponents were now about to be accused of violating their fiduciary duty by using investors' funds to pursue political and social agendas instead of focusing on investor returns.[40]

For decades, the ESG movement and its antecedents occupied an investing niche under different names: corporate social responsibility (CSR), socially responsible investment (SRI), impact investment, and sustainable investment, to name a few. In the early days, the main actors pushing these agendas—progressive civil society groups, faith-based communities, activists in developing countries, and other non-governmental and non-business actors—operated primarily in opposition to the business community and financial sector. They were relatively small scale, and often relied on antagonistic campaigns to pressure targeted businesses into considering non-financial issues in decision-making.

This began to change as the United Nations focused on the potential of global capital markets to finance growth in the developing world. In 2000, UN Secretary General Kofi Annan announced the formation of the UN Global Compact[41] to better align the private sector with certain core human rights and development principles and harness its resources towards those ends.[42] This led to a 2005 report, *Who Cares Wins*, that was endorsed by twenty-two of the world's largest financial institutions.[43] This report coined the term "ESG investment" to describe the concept that embedding environmental, social, and governance factors in allocating capital not only leads to more sustainable development, but also makes good business sense.[44]

Engagement with the financial sector ultimately led to the Principles for Responsible Investment (PRI), which the UN launched at the New York Stock Exchange in 2006. In many ways, the PRI represented a watershed: a unique fusion of the UN's global development platform, a progressive civil society agenda from across the developed and developing world, and the world's largest and most profitable multinational corporations. The PRI benefited from growing global attention to climate change, including the adoption of the Paris Accords. But compared to the Global Compact, the PRI was vague and self-referential, repeatedly referencing ESG investing without ever defining the term or linking it to international law.[45]

But as ESG has morphed from a niche strategy for conscientious investors to a profit center for the financial services industry, its integrity has suffered. What started as a grassroots niche occupied by committed environmental, social justice, and human rights activists has become the fastest growing sector of the financial services industry. By 2021, PRI counted 4,375 firms globally as signatories, representing a reported $121 trillion in assets,[46] making ESG roughly a third of global assets under management (AUM) at $40 trillion. The financial services industry has enthusiastically adopted the rhetoric of ESG investing, and ESG funds are currently their fastest growing category of AUM. (Exhibit B)

Inconsistent Standards

For all practical purposes, if any investment involves a stake in a company that is a major source of pollution (environment), utilizes forced labor in its supply chain or enables human rights abuses in any way (social), and does not follow generally accepted accounting principles or cannot have its financial records transparently audited (governance), it must not be considered an ESG investment. However, when it comes to ESG and the solar industry, there is a great deal of inconsistency. Many firms engage in what has been called "greenwashing," which has been described as "making unsubstantiated or misleading claims about the sustainability characteristics and benefits of an investment product."[47]

A major reason greenwashing is pervasive in ESG investing is the lack of agreed definitions and standards. Given that ESG ratings are unregulated and largely opaque,[48] it is no surprise that "scoring systems are nonsensical, third-party data providers operate with no benchmarks, and the lack of transparency makes it impossible for ethical investors to know where their money is really invested."[49] An investigative report on MSCI's ESG ratings noted: "The most striking feature of the system is how rarely a company's record on climate change seems to get in the way of its climb up the ESG ladder—or even to factor at all."[50] Without agreed standards and transparent ratings systems, there are strong incentives for fund managers to set up funds that passively track a secretive index, market them as ESG, and charge an inflated fee.

Unlike ESG investment, there is a clear and widely recognized framework available to measure corporate performance on human rights. The UN's *Guiding Principles on Business and Human Rights* (UNGP),[51] adopted by the UN Human Rights Council (UNHRC) in 2011, are linked to established international human rights instruments such as the *Universal Declaration of Human*

Rights (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR). Like the PRI, they are voluntary and aspirational. Unlike PRI, the *Guiding Principles* were adopted in the UNHRC through a resolution voted on by member states, reifying their core principle that corporate actors have a duty to respect the fundamental human rights of those they interact with, including workers, customers, and the communities where they operate. Global human rights, labor, and other civil society organizations are strong proponents of the UNGP.

Credible organizations such as Business for Social Responsibility seek to cooperate with the financial services sector to track and evaluate implementation and compliance. There are legitimate challenges to the full integration of human rights into the ESG framework, and adherence to human rights is arguably more subjective and difficult to quantify than carbon emissions. But even on relatively straightforward issues, such as prevention of forced labor and modern slavery, there has been a marked disparity of attention and initiative when compared to climate change. As a result, companies often use the environmental angle for marketing ESG, while human rights standards are only applied erratically in their investment strategies, if they are considered at all.[52]

Conflicts of Interest

ESG investing has attracted a growing ecosystem of consultants, ratings agencies, lawyers, auditors, journalists, researchers, and assorted other experts who make their living helping companies complete risk assessments, supply chain audits, reporting requirements, and other ESG activities.[53] Investment managers have enthusiastically embraced ESG as a welcome addition to their portfolio of services, not least because they can charge substantially higher fees for ESG branded funds over what they charge for "vanilla" benchmark funds with nearly identical holdings.[54] It is an open secret in the financial services industry that many ESG-branded funds are little different from regular "quality" funds in terms of their holdings, especially exchange traded funds (ETFs) linked to ESG indices.[55] As a result, investors who are paying a premium for "virtuous" ESG funds are often getting little more than a lightly screened market index that does nothing to advance global sustainability and human rights, while paying up to three times the fees.

Thus, at every level, there are conflicts of interest between applying ESG criteria in a meaningful way, as opposed to simply sticking the ESG label on a fund to make it more profitable. When there is no explicit direction from the investor to consider non-financial issues, including ESG standards, the motive and decision-making analysis historically used to ascertain whether investment managers are meeting their fiduciary duty becomes very fuzzy. The culture of a firm—especially messages coming from leadership and peers—can have a powerful impact on money managers' decision-making.

There is also debate about materiality and fiduciary duties in ESG investing among and within the financial, economic, and corporate governance communities. As one commentator on the SEC's noted: "Money managers face pressure from social peers, individual politicians, and activists to show that they are on the 'right side' of current political issues…Fund managers also face pressure from their own employees to incorporate ESG principles into investment decisions. These pressures are intended to, and may, lead fund managers who value the quiet life to fall in line with ESG principles even if they are not persuaded, they are in the beneficiaries' interests."[56]

Given the increasingly polarized and political nature of this dispute in the United States, questions of materiality and the scoping of investment managers' fiduciary duty around ESG investment started becoming a highly contested policy space.[57] Even as the buzz around ESG investing continued to grow, there were growing indications that it was becoming a victim of its own success. While many investors undoubtedly have a sincere desire to align their values with investment performance, there is strong evidence that investment managers and firms were engaged in "greenwashing" when it comes to their ESG portfolio.

Fink and BlackRock have tried to claim that ESG funds outperform non-ESG funds, asserting that the growth in ESG funds will create a long-term virtuous circle that will bend the arch of the market towards sustainability over time. In marketing materials for its sustainable ETFs, BlackRock-owned iShares puts "performance" of the funds ahead of both "risk and opportunity" and "impact" as reasons to go sustainable.[58] However, recent studies have found that the strong performance of ESG funds is primarily due to a combination of the ESG rating acting as a proxy for "quality" in asset selection and the level of attention to these funds, including froth in the market from investment managers and financial firms driving clients towards these products.[59] After correcting for the lack of risk adjustment and a selection bias towards periods with higher levels of attention in twenty four studies that found ESG outperformance, there was no appreciable level of outperformance by ESG investment strategies.[60]

The argument that ESG investment will create a virtuous circle that will drive value changes at the market and firm levels likewise appears to confuse correlation and causation.[61] This is particularly true with BlackRock, whose sheer size means its investment decisions can move or even create markets. Nowhere does the issue of ESG become thornier with respect to all its various "E," "S," and "G" standards than China.

With the growing importance of ESG investments, and their role in funding of China's human rights abuses, Under Secretary Krach and his team developed the Clean Capital Markets Strategy to address China's infiltration of American capital markets. This plan, based on the Trust Doctrine, was part of the second pillar of his Global Economic Security Strategy, which called for safeguarding the assets of the United States, and the free world more broadly.[62] The main objective of the Clean Capital Markets Strategy was to protect the average American investor from unknowingly funding the Chinese military and the CCP's abuse of human rights and the environment through their investment accounts and pension funds—often via entities like Larry Fink's BlackRock.

Clean Capital Markets Playbook

To address this massive issue, Krach and his team determined that the Clean Capital Markets Strategy necessitated a multi-faceted campaign involving Wall Street, major corporations, civil society, American universities, and consumers. (See Exhibits F-I) When it came to ESG, this strategy presented one of the most comprehensive models for addressing the inconsistent application of ESG standards—not just on solar, but every industry under the sun. Clean Capital Markets Strategy consisted of four prongs: (1) calling out the CCP's egregious behavior; (2) unveiling China's financial ruses; (3) championing investors; and (4) taking action.

Prong 1—Calling Out CCP's Egregious Behavior

The first prong's objective was to alert the market that investments in Chinese companies are used by the CCP for destructive purposes and demonstrate why the CCP could not be trusted. It simply entailed stating the truth about the CCP's malign behavior—which up to that point in time many US government officials had been hesitant to do—and then utilizing the power of the media to develop an ecosystem of amplifiers.

Prong 1 was designed to be synergistic with the Clean Network team's efforts by leveraging the same five factors indicating the CCP could not be trusted: (1) genocide of Uyghurs; (2) exportation of surveillance state; (3) exploitation of the environment; (4) utilization of Military-Civil Fusion; and (5) deployment of technological authoritarianism.

While Prong 1 focused on the "E" and the "S" of "ESG," Prong 2 would be totally dedicated to "G" for three reasons: (1) it was more complex and unknown to average investors; (2) it creates tremendous financial risk to investors; and (3) it forms the basis for disqualifying every Chinese company from the ESG standards. The power of the Trust Doctrine enabled Krach's team to maximize the synergy between the Clean Network strategy and Clean Capital Markets Strategy.

Krach's opening salvo came on America's Independence Day when he became the first government official to label the CCP's human rights abuses in Xinjiang a "genocide."[63] Krach believed that the Chinese government's ongoing atrocities against the Uyghurs, fitting the UN's definition of "punishable genocide," would clearly qualify as a violation of ESG's "S" criteria. One way to "punish" the CCP would be to close the enormous gaps in ESG rules that allowed massive investment in China despite its atrocious human rights record. Krach would later explain his view of "punishable genocide" in a Newsweek column, writing[64]:

> The truth is we've been silent for decades. The free world not only looked the other way from Communist Chinese crimes, but we financed them by providing access to our capital markets. We not only sent over a treasure trove of our best investment bankers, lawyers, money managers, private equity investors and venture capitalists, but we funded "China Inc." through our pension funds, university endowments, foundations, mutual funds, and bond portfolios. We all did. Now, we must do something about it.

When it came to the environment, Krach considered China's destruction of the environment contrary to ESG's "E" criteria. The world's dependence on its "dirty solar" production only exacerbated the glaring dissonance. In November 2020, Krach published an op-ed entitled "The Free World Must Stand Up to China's Assault on the Environment," where he outlined the gravity of Beijing's environmental abuses.[65] China is the world's largest coal producer and largest emitter of greenhouse gases—twice the amount produced by the US—which amounts to nearly one-third of global emissions.[66] China's Belt and Road Initiative (BRI)—its massive infrastructure project spanning Asia, Europe, and Africa, with the hope of connecting all of them to China as the new nexus of global trade—lacks clear environmental guidelines and safety protections. While the PRC extols its "global leadership" in renewable energy technologies, the BRI shows otherwise. Across BRI's 147 countries, China was involved in 240 coal plants as of 2016.[67]

Prong 2—Unveiling China's Financial Ruses
The second prong focused on the most fundamental aspect of the "G" (Governance) component of ESG—financial accountability. Its main objective was to educate the market on why investments in Chinese companies carry tremendous risks by exposing China's deceptive practices and lack of transparency. Under Secretary Krach's senior advisor, and former CFO at Ariba, Ed Kinsey, identified seven tactics used by China to infiltrate US capital markets for its strategic advantage: (1) the opaqueness of financial records and audits with respect to CCP-backed companies; (2) these companies' evasion of the Sarbanes-Oxley law and standard accounting practices; (3) their duplicitous variable-interest-entity (VIE) ploy; (4) their scheme to obtain American investors as passive investment; (5) their utilization of deceptive subsidiaries; (6) their co-option of decision makers, including the Public Company Accounting Oversight Board (PCAOB), the federal government, and various regulators; and (7) the conflict of interests faced by various financial professionals, such as asset managers, venture capital, bankers, lawyers, exchanges, and index funds.

Krach believes that all Chinese companies should be disqualified from ESG labeling due to their noncompliance with sound "G" standards. He agrees with investor and philanthropist George Soros' assessment that the Chinese companies' governance model is non-transparent, deceptive, government owned, and accountable to only one man, the CCP General Secretary Xi Jinping. Under Xi, Chinese law prevents Chinese companies from providing complete financial disclosures in accordance with auditing standards, which completely shuts down the transparency needed for investors to evaluate risks. Chinese stocks do not have to comply with US securities laws while American companies spend millions to comply with Sarbanes-Oxley (SOX) alone.

Prong 3—Championing the Investors
The next Clean Capital Markets playbook objective was to send a series of direct communications to four major sets of targeted investors with a clear message about the dangers of investing in Chinese stocks and ESG funds that include Chinese companies: (1) American citizens; (2) American businesses; (3) university endowments; and (4) pension holders.

Krach alerted American investors through various press remarks, op-eds, and media appearances by saying that everyday citizens can be the biggest difference makers in ending the genocide of Uyghurs in Xinjiang[68]:

> The ultimate lever is voting with your pocketbook. The sound of emptying the cash register will be heard loud and clear on the other side of the world. If you are invested in an ETF, ask if they follow ESG investment guidelines for human rights abuses and check if they disclose their Chinese investments.

In July 2020, based on his perspective as a former CEO of public companies, Krach sent a letter to all American CEOs[69] reminding them of their duty to establish governance principles to keep their investments and supply chains free from Chinese companies that violate human rights, profit from forced labor, build advanced weaponry, and/or contribute to the erosion of Hong Kong's autonomy and freedoms.[70] (Exhibit F) Then, in August 2020, he followed up with a letter to the governing boards of American universities, notifying them of the threat to their endowments posed by CCP companies on the Commerce Department's Entity List,[71] or that contribute to human rights violations.[72] Krach advised that divesting from these CCP controlled companies would be prudent. (Exhibit G)

Also, as the former chairman of Purdue, he reminded university board members of their moral obligation, and perhaps even their fiduciary duty, to ensure that their institution had clean investments and clean endowment funds. A year later, Krach's persistent advocacy inspired a student-run Athenai Institute to start a nationwide divestment movement on college campuses, with the backing of many prominent individuals and organizations. Krach's letter also proved to be a catalyst for a number of prominent lawmakers to target universities having the largest endowments.

In December 2020, Krach sounded the alarm for pension holders by issuing a State Department fact sheet titled "US Investors Are Funding Malign PRC Companies on Major Indices,"[73] which listed Chinese firms on the Commerce Department's Entity List and Defense Department's list of Communist Chinese Military Companies (CCMCs). Krach described the pension funds, which account for $10.7 trillion in assets spread across 5,000 US pension systems using emerging market funds, as the "motherlode" when it came to Chinese investment in US capital markets.

Krach also sent a letter to the Secretary of Labor, who has responsibility for pension funds, urging him to issue a business advisory warning to all pension fund managers holding Chinese stocks. Even though Krach's December fact sheet had forewarned about potential Stock Exchange delisting of China's three telecommunications companies, the letter was never sent. On January 7, 2021, the New York Stock Exchange (NYSE) announced the delisting of three large Chinese companies, China Telecom, China Mobile, and China Unicom, whose shares dropped 9.4%, 7.2%, and 11% respectively.

Prong 4—Taking Action

The final prong was to create enough momentum to catalyze a divestment movement. The sequenced series of actions included: (1) triggering a lead domino; (2) spearheading capital market sanctions; (3) tracking index providers; (4) cautioning financial institutions; and (5) inspiring civil society groups.

The team's first move was to tip the lead divestment domino, to be followed by others. Senior advisor Ed Kinsey worked with interagency officials on the Thrift Savings Plan's (TSP) governing board to divest from Chinese stocks by dropping the MSCI emerging index fund from the federal government's pension fund. The precedent-setting TSP case led other pension funds to take notice and helped catalyze a Presidential Executive Order for capital market sanctions against certain Chinese companies.

In January 2021, Krach issued another State Department fact sheet listing 44 parent-level CCMCs with 1,109 subsidiaries that were now prohibited from US investment and required divestment.[74] Krach's team was now tracking index providers, including the MSCI, FTSE, and Bloomberg emerging market index funds.[75] The fact sheet delivered a strong message to boards, CEOs, and compliance officers of financial institutions regarding mitigating risks for their clients' Chinese holdings:

> Ample warning has been given to public and private equity compliance officers and risk managers to understand and disclose to their constituents the material risk associated with investments identified in the Executive Order. CEOs and their boards now have a legal duty to implement and be in full compliance. They also have a fiduciary duty to take decisive action to minimize any negative effect on their clients' holdings due to the imminent divestment of malign Chinese companies. Best practices in material risk mitigation, disclosure, and transparency are essential to proper corporate governance.

Krach sent his final letter as Under Secretary of State to all civil society leaders (Exhibit H), including ESG-oriented groups, reminding them that they had always been vanguards of exposing the world's inequities and injustices. Krach said:

> You remain at the forefront of the shared effort to secure the free world against the CCP's rising authoritarianism and genocide. Linking the various dimensions of authoritarian risks, combining the actions of the social, education, business, and government sectors, and uniting under the global Clean Network Alliance of Democracies creates a network effect that has the power to be an exponential force for good in promoting democratic principles over authoritarianism. Your organizations have the ability to codify clean values into governance principles that will serve as an example to others throughout the world.

ESG and Solar Heat Up

On January 14, 2021, in his last press conference as Under Secretary of State and less than a week before being sanctioned by China for his national security initiatives, Krach urged the media to encourage the American people to confront asset managers, including BlackRock, about using them as fundraising tools for China's authoritarian state(see Exhibit I):

> Please tell American citizens who are investors and pension holders that their fund manager should notify them if their investments are contributing to the Chinese Party's military buildup, the surveillance state, and human rights abuses. If you have not been notified by January 30th, call them. Ask them if you are exposed. If you are exposed, ask them the name of the companies, the amount and when you will be divested. Then ask them why they do not directly and clearly disclose to you. If they do not get a satisfactory answer, best to find a new fund manager.[76]

After a year of Krach's escalating warnings to CEOs, university boards, civil society leaders, and fund managers of the dangers of doing business with Chinese firms, the White House issued Executive Order 13959, declaring that the flow of US capital to Chinese enterprises supporting the People's Liberation Army's (PLA) modernization efforts represented a national emergency.[77] It opened a new front in a battle that was a long time in coming. On January 19, 2021, and six months after Krach first went on national television to label the human rights abuses in Xinjiang a genocide, Secretary of State Mike Pompeo issued an official determination that the Chinese government was committing genocide. At his confirmation hearing that same day, the Biden Administration's nominee for Secretary of State Antony Blinken agreed with the designation.

A week after Krach's press conference, Larry Fink used his 2021 annual letter to CEOs to double down on "stakeholder capitalism," writing: "As we move forward from the pandemic, facing tremendous economic pain and inequality, we need companies to embrace a form of capitalism that recognizes and serves all their stakeholders."[78] Fink emerged as a leading proponent of ESG investment—especially the "E" component. He also positioned himself as a leading advocate for US investment in China, eliding the apparent contradictions with his ESG advocacy. Fink's 2021 letter was heavy on ESG (4 mentions). While the COVID-19 pandemic (10 mentions) and racial issues (2 paragraphs) were highlighted as concerns, most of the text was dedicated to a single topic: climate, which received 27 mentions.[79] The words "China" and "human rights" did not appear at all.

All Show and No Go

The bipartisan Xinjiang genocide designation triggered both houses, in early 2021, to re-introduce the Uyghur Forced Labor Protection Act (UFLPA). This time, the Senate passed the bill overwhelmingly, but it languished in the House despite continued broad bipartisan support. For months, reports swirled that the Biden administration had joined prominent US businesses in lobbying against the bill behind the scenes.[80] Meanwhile, there were growing reports of infighting over China policy inside the Biden administration, highlighting the ambivalence and inconsistency of its approach, especially where climate and human rights were concerned.[81]

The Office of the United States Trade Representative (USTR) renewed Section 201 tariffs on solar cell imports but retained an exemption for bifacial panels and raised the tariff-rate quota from 2.5 to 5 gigawatts.[82] However, the US imported a record 3 gigawatts in 2021, meaning most—if not all—imports will fall below the tariff-rate quota, making the tariff meaningless. In May 2022, the Biden administration announced it would dramatically expand support for domestic production even as it waived tariffs on certain imported solar panels for 24 months. On July 13, 2021, the Biden administration issued an updated Xinjiang Supply Chain Business Advisory that highlighted the dangers of forced labor in the solar industry.[83] The strongly worded but non-binding Advisory followed underwhelming action to limit imports of tainted solar goods.

At the same time, the Biden administration increased demand for investment in ESG funds, like BlackRock's. It refused to enforce the Department of Labor's 2020 rule on ESG investment for retirement accounts, which took a traditional view of materiality, holding that under the Employee Retirement Income Security Act (ERISA), investors managing pension funds were required to act "solely in the interest" of plan participants, and could only incorporate ESG considerations if they had a "material effect on the return and risk of an investment."[84] Instead the administration pushed the Securities and Exchange Commission (SEC) regulations to make considerations of a firm's climate impact material, and thus capable of compelling extensive mandatory disclosures.[85]

BlackRock Lambasted

On August 16, 2021, BlackRock recommended that investors triple their allocations in Chinese assets.[86] "The Chinese market represents a significant opportunity to help meet the long-term goals of investors in China and internationally," BlackRock Chairman Larry Fink wrote in a letter to shareholders.[87] US index providers such as MSCI responded by expanding their China portfolios almost immediately. ESG ETFs are particularly susceptible to principal-agent issues because investment managers rather than the asset owners themselves engage with firms on a range of non-financial issues about which the manager cannot possibly know or aggregate the views of the asset owners.[88] There is a vigorous and increasingly political debate about materiality and fiduciary duties in ESG investing.

In an August 30, 2021, Financial Times op-ed, "Investors in Xi's China Face a Rude Awakening," seasoned investor, philanthropist, and staunch supporter of progressive liberal causes George Soros succinctly described the effect of BlackRock's move on people's pensions[89]:

> Pension fund managers allocate their assets in ways that are closely aligned with the benchmarks against which their performance is measured. Almost all of them claim that they factor environmental, social, and corporate governance (ESG) standards into their investment decisions. The MSCI All Country World Index (ACWI) is the benchmark most widely followed by global equity asset allocators. An estimated $5tn is passively managed, which means that it replicates the index. A multiple of this amount is actively managed, but it also closely tracks the MSCI index. In BlackRock's ESG emerging market exchange-traded funds, Chinese companies represent a third of total investments. These indices have effectively forced hundreds of billions of dollars belonging to US investors into Chinese companies whose corporate governance does not meet the required standard—power and accountability is now exercised by one man who is not accountable to any international authority.

Again, a week later, Soros lambasted BlackRock's foray into China as a "tragic mistake" that would "damage the national security interest of the U.S. and other democracies" in a Wall Street Journal op-ed, "BlackRock's China Blunder."[90] This time, he warned of the implications to investors and US national security:

> Pouring billions of dollars into China now is a tragic mistake. It is likely to lose money for BlackRock's clients and, more important, will damage the national security interests of the U.S. and other democracies. Earlier efforts could have been morally justified by claims that they were building bridges to bring the countries closer, but the situation now is totally different. Today, the U.S. and China are engaged in a life and death conflict between two systems of governance: repressive and democratic. The BlackRock initiative imperils the national security interests of the U.S. and other democracies because the money invested in China will help prop up President Xi's regime, which is repressive at home and aggressive abroad.

On Oct. 27, 2021, Consumers' Research launched a multi-million-dollar campaign highlighting the ties between BlackRock and the Chinese government, including BlackRock's investment of billions of American pension dollars into China's economy, propping up its Communist leaders, and funding companies the Chinese government uses to extend its control both at home and abroad. The "Betting on China" campaign exposed Fink's close connections with the Chinese Communist Party, and his role in taking American money and betting it on China.

"The idea that an American company is taking billions of dollars and using it to bet on China's success is extremely concerning," said Will Hild, Executive Director of Consumers' Research. "We cannot allow this to continue. Funneling Americans' hard earned retirement savings to China is unsafe from both a national security and financial perspective."[91] (See Exhibit J)

Congress Steps Up

Soros' prediction came true. BlackRock's triple allocation most likely cost US investors millions, considering subsequent losses across Chinese equities from the Evergrande debt crisis, the party-state's crackdown on the tech and for-profit education sectors, the disappearance of prominent billionaires, and other acts that exposed the opaqueness and irregularity of Chinese corporate governance and regulation.[92] By December 2021, the tsunami-like ripple effect was starting to impact Americans' portfolios and pension funds. It was time to dig in.

Rep. Mike McCaul, Chairman of the Congressional China Taskforce, asked Krach, now the Chairman of the Krach Institute for Tech Diplomacy at Purdue, to brief legislators on *The National Security Imperative for Mastering Tech Statecraft and Executing a Clean Capital Markets Strategy*. (Exhibit K) On December 8, 2021, Krach presented the Tech Statecraft model of integrating Silicon Valley strategies with foreign policy tools by using the Clean Network as a case study and asserting its Trust Doctrine could be used for all areas of China's techno-economic competition, including solar. Krach then walked the task force through the multi-pronged Clean Capital Markets Playbook with the following additional recommendations to secure US capital markets:

- Secretary of Labor to issue a business advisory warning all pension fund managers about the dangers and reputational/legal risks of investing in Chinese equities.
- Eliminate the MSCI emerging index fund from the Pension Benefit Guaranty Corporation (PBGC), just like TSP.
- Require the SEC to define a company's domicile in China a "material risk."
- Rationalize sanctions lists to ensure that companies that are implicated in human rights abuses or threaten US national security lose access to US capital markets.
- Require asset managers to align with international human rights frameworks that are far clearer than ESG.
- Instruct the PCAOB to utilize the 30-day cancellation clause to terminate MOUs from Chinese companies on US exchanges.
- By default, include companies and their subsidiaries on the commerce Entity List on the OFAC list, and vice versa.
- Place companies using slave labor on the OFAC List (process has begun).
- Add the most important surveillance and military AI companies—Baidu, Alibaba, Tencent—to the Entity and OFAC Lists.
- Eliminate all investments in Chinese state-owned enterprises.
- Exclude Chinese domiciled firms from ESG designated funds.

Krach offered his support to the Uyghur Forced Labor Prevention Act (UFLPA) and agreed with Soros about the need for a bipartisan bill that explicitly requires asset managers to invest only in companies where actual governance structures are both transparent and aligned with stakeholders.

This would give the Securities and Exchange Commission the tools it needs to protect American investors, including those who may be unaware of their passive ownership of Chinese stocks and Chinese shell companies. He also stated it should apply to the performance benchmarks selected by pensions and other retirement portfolios.

Cleaning Up Dirty Solar

By the end of December 2021, as Congress was finishing its work for the year, Senator Rubio attempted to attach the UFLPA as an amendment to the must-pass annual National Defense Authorization Act (NDAA). For months, reports had swirled that the Biden administration had joined prominent US businesses in lobbying against the UFLPA behind the scenes.[93] As Rubio held up the must-pass defense bill, the Washington Post confirmed that Biden administration officials were actively pressuring the Democratic congressional leadership to water down or stall passage of the legislation.[94] After these reports surfaced, Speaker of the House Nancy Pelosi quickly moved the ULFPA through to final passage.[95] President Biden signed it into law on December 23, 2021.

The UFLPA's key feature is the establishment of a rebuttable presumption, which requires producers to prove that goods produced in Xinjiang are not implicated in forced labor. It will be virtually impossible for Chinese polysilicon manufacturers to overcome the burden of proof that their products are free from forced labor, making the solar industry an early and important test case for this landmark legislation. UFLPA implementation could provide the necessary spur for additional legislative and executive branch action to support rebuilding the US solar industry supply chain end-to-end. The Solar Energy Industry Association has reiterated its call for the US to accelerate onshoring of solar supply chains (see Exhibit D). The Biden administration, which has been aggressively supporting accelerated deployment of solar, has begun taking steps to encourage domestic production, but it continues to send mixed messages overall.[96]

In response to concerns about the impact UFLPA implementation will have on solar adoption rates, groups such as the Coalition for a Prosperous America (CPA) are pushing bipartisan approaches that support American manufacturers across the entire renewable energy supply chain.[97] Their polling indicates strong public support for an ethical US solar supply chain that is free of forced labor, and strong opposition to using US tax dollars to support installation of tainted Chinese solar panels.[98] The Biden administration has announced additional subsidies to support US manufacturing, and Senator Ron Wyden (D-OR) has proposed legislation that would redirect the existing federal solar panel installation credit to US manufactured products.[99] There could also be bipartisan support for a more limited set of credits targeting US producers working on ultra-low carbon solar panel technology that does not use polysilicon.[100]

The UFLPA has the potential to broadly transform not just the solar industry, but the US approach to investment and trade with China as a whole. Together with other recent US and Chinese regulatory actions impacting US-listed Chinese firms, the negative attention on forced labor in the solar supply chain is forcing the ESG investment community to confront and address its China human rights problem. This effort has lessons that can be applied to the broader imperative of improved accountability across the ESG landscape.

Finding Common Ground on ESG

Cleaning up "dirty solar" would seem to be a natural fit for ESG. But given China's dominance of the industry, and infiltration of US capital markets under the veneer of ESG investing, it would appear ESG is perhaps too compromised to enforce a higher standard on solar. Ultimately, this creates a conflict of interest in which the spectacular profits earned by a marketing strategy that touts "E" becomes reliant on increasingly turning a blind eye to Chinese companies that not only violate "E," but "S" and "G" as well. Major investment managers like BlackRock remain bullish on China overall and continue to promote greater US capital markets access for and exposure to Chinese firms. Despite growing concerns about the financial, legal, national security, moral, and reputational hazards of investing in Chinese firms, the prospect of attractive returns in and from China remains the dominant driver for Wall Street.

An effective use of political, legislative, and regulatory tools to clean up solar supply chains is also instructive for those working across the broader ESG investment ecosystem to address the underweighting of human rights and other moral hazards of the financialization of ESG. The driving force has been a bipartisan public policy effort to ensure US consumers are no longer forced into a false choice between affordable solar energy and refusing to subsidize genocide.

While some will keep questioning ESG investment's underlying probity and seek to roll back the concept altogether, others will continue working to remediate greenwashing, the human rights/climate imbalance, and other moral hazards. This diverse set of actors has been using a variety of means to expose and resolve these issues, including efforts to "level up" human rights issues; more robust and mandatory ESG standards and other regulations; sanctions and legislation targeting forced labor in Xinjiang; targeting law-proof Chinese firms listed on US exchanges; public relations shaming campaigns targeting BlackRock and others; and proxy votes and other shareholder actions. While working from opposite ends of the political spectrum, these efforts are raising awareness across the board, but are mostly focused on tackling discrete parts of the problem. This raises the question of whether a more strategic, comprehensive, and coordinated effort is available that would address the underlying pathologies of ESG investment while ensuring new regulatory actions do not make the problem worse.

The Uyghur Forced Labor Prevention Act shows that bipartisan support for meaningful action is possible where human rights concerns, accountability, and US economic and national security interests intersect.[101] While critics of ESG investment come from diverse perspectives, effective and lasting impact will occur where disparate actors can coalesce on a solution and act. This would indicate against approaches such as aggressive regulatory schemes that force firms to comply with ideologically disputed criteria, such as the approach the Federal Reserve, SEC, and others are currently pursuing on ESG and climate. An effective strategy for improving ESG should focus on common ground and identify a set of core principles that an ideologically diverse coalition of stakeholders can rally around. The Trust Doctrine's deployment of the Clean Network provides a potential model for this approach.

The Trust Doctrine's Clean Network Model

The Clean Network was created in response to a similar collective action problem around 5G and China's masterplan to control it. The United States and its democratic partners knew that Huawei had stolen tech riddled with security vulnerabilities, but those products were inexpensive, good quality, and ready to deploy in an area of critical infrastructure. As a result, many had given up on the possibility that another option could emerge to compete with the Chinese 5G juggernaut. Under Secretary Krach, however, saw the opportunity to leverage the urgency of the situation into creating an enduring, replicable model to counter China's aggressive "Power Principle" based on intimidation, retaliation, and brute force, with Krach's Trust Doctrine, which was grounded in democratic trust, or Trust Principles, such as integrity, accountability, transparency, reciprocity, and respect for the rule of law, property, labor, sovereignty, human rights, and the planet.[102]

Krach deployed the Trust Doctrine to defend against tech authoritarianism, safeguard global economic security, preserve Taiwan's democracy, and protect human rights, for which he was nominated for the 2022 Nobel Peace Prize.[103] Furthermore, he did it in a unifying manner. "The Clean Network's success in countering China's 5G plan serves as a powerful, nonpartisan model for rallying our allies, leveraging the private sector, and amplifying democratic values based on trust," observed Bob Hormats, Krach's predecessor in the Obama administration.

The Trust Doctrine's bipartisan model ended up providing continuity of policy between Republican and Democratic administrations. It was the basis for the Biden administration's launch of the *Declaration for the Future of the Internet* together with 60 countries around the globe.[104] As the Biden administration's Coordinator for Indo-Pacific Affairs on the National Security Council, Kurt Campbell, would later attest, "One of the rarest things in government is continuity of programs because when a new government comes in, they think I've got a better idea and I am going to do it differently. Almost all the work that Keith did at the State Department, including trusted networks, the Blue Dot initiative, etc., have been followed on in [the Biden] administration and, in many respects, that's the highest tribute."[105]

Krach's Trust Principles are fully consistent and complimentary with the UN's Guiding Principles on Business and Human Rights, as well as the foundational concepts of the Universal Declaration of Human Rights and are thus firmly rooted in the international human rights lexicon. As such, the Trust Doctrine's Trust Principles are well suited to address the moral, regulatory, and financial hazards of the current ESG investment model. By leaning into international human rights standards and basic democratic values, the Trust Principles appeal to a broad and ideologically diverse audience. Because China has not been held to these minimum standards to access US capital markets, there is a direct through-line from the financialization of ESG and the continuing ability of firms like BlackRock to steer investor capital into solar companies complicit in genocide while audaciously labeling themselves ESG champions.

"Clean Capital Markets"

Rather than replicating the convoluted EU regulatory approach that likely will serve as a brake on innovation and investment, US policymakers should look to the Clean Capital Markets approach. Instead of controversial and complicated new disclosure schemes, policymakers should focus on targeted, achievable goals. At a minimum, the US and other democratic countries should close legal, regulatory, and other loopholes that benefit countries and companies that cannot or will not comply with existing requirements for accountability, transparency, and other Trust Principles. For instance, the Holding Foreign Companies Accountable Act (HFCAA) applies the Trust Principles of integrity, transparency, accountability, reciprocity, and respect for the rule of law to the problem of law-proof Chinese firms, forcing them to meet the same standards as US firms. Far from harming the US economy, as some predicted, HFCAA has highlighted the risky governance structures of many Chinese firms listed on US exchanges and forced Chinese regulators to the negotiating table.

As part of his broad push to protect the average American investor from unknowingly financing the CCP's malign intentions, Krach developed the multi-pronged Clean Capital Markets Playbook to address the distortions that have arisen under the current system. The playbook's targeted, common-sense recommendations may also have the added benefit of leveling the playing field for companies that play by the rules, do not benefit from slave labor, and lack the backing of a predatory party-state whose actions undermine the global trading system.

The market seems to be stepping up to the spirit of Krach's Clean Capital Markets Playbook by offering investors better options than the corrupted ESG emerging markets funds. One example is the Freedom 100 Emerging Markets Index (FRDM), which excludes authoritarian companies such as China.[106] Founder Perth Tolle formed the index in 2019 for "investors who believe in the long-term benefits of freedom to be able to express those preferences in their emerging markets allocations."[107] The fund intentionally steers clear of the ESG label because Tolle feels the brand has been tarnished by investment in China and other abusive regimes.[108] With no exposure to China or Russia, FRDM has not been hit by the losses in those markets that lowered returns on other emerging market funds in 2021 and the first quarter of 2022.[109]

Time to Clean Up ESG?

Developing and deploying "Clean Capital Markets" and related strategies strongly rooted in fundamental human rights would harness and coordinate the moral authority, creativity, financial power, and regulatory reach of those who value transparency, accountability, and respect for fundamental human rights that should—but currently do not—define the ESG movement. Strategies that ignore the problematic incentive structures driving the current ESG investing bubble and China-specific ESG challenges will likely increase greenwashing and escalate skepticism towards ESG investment. Market-based approaches such as the Freedom 100 index are part of the solution, especially for investors who want to ensure they are not supporting human rights violators.

In order to fundamentally change current incentive structures, policy changes are likely necessary to limit access to US markets for problematic Chinese firms. To the extent regulation seeks to steer capital, it should be guided by core principles—such as the Trust Principles behind the Clean Network and the Clean Capital Markets Playbook—that advantage well-governed companies that are subject to the rule of law, accountable to shareholders, and foster respect for basic human rights. Such companies are more likely to take a long-term view that will benefit both their bottom line and the planet as well as the people on it, leading to better outcomes on earnings, climate change, and human rights. As currently constructed, ESG investment's excessive focus on environmental metrics at the expense of human rights creates irreconcilable moral hazards, especially with businesses tied to the Chinese market.

If proponents of ESG investment are sincere, they should rethink their commitment to heavy-handed, controversial regulatory and disclosure regimes that reinforce these moral hazards, and instead work to attract diverse, bipartisan support for the kind of principled, trust-based policy responses that can lead to genuine sustainability. Linking the various authoritarian risks associated with ESG, and combining the power of the social, education, business, and government sectors into a set of unifying bipartisan actions under the Trust Doctrine umbrella has the potential to create an exponential force for good.

A New Sense of Urgency

As the world watches the unprovoked and bloody invasion of Ukraine, more than 300 of the West's most prominent corporations are frantically curtailing or withdrawing their business from Russia.[110] But for a far broader set of companies, there's a much more dangerous threat looming on the horizon: Russia's closest military and economic ally—China. On February 4, 2022, the two countries signed a mutual letter saying their "friendship has no limits, there are no 'forbidden' areas of cooperation."[111] Ominously, it also said that Russia "confirms that Taiwan is an inalienable part of China and opposes any forms of independence of Taiwan."

Twenty days later, Russia began its savage attack on Ukraine, which could mean a Chinese attack on Taiwan sooner rather than later—even though China stopped short of openly supporting Putin's military campaign by abstaining from the UN Security Council's vote condemning Russia's invasion of Ukraine.

China's attempt to portray itself as a misunderstood and well-intentioned global partner has failed. Companies doing business with China have endured parasitic joint ventures, blatant thievery of intellectual property,[112] a worldwide bullying spree, and the coerced collection of proprietary information that has been exploited for China's commercial advantage.[113]

Xi's recent crackdown on private industry,[114] and the real probability of an attack on Taiwan (which China has refused to rule out), has further exposed the gap between ESG investing and the risks of dependence on aggressive, authoritarian governments as reliable partners in the transition to a low-carbon economy.[115] Many respected board members in corporate America and Europe are beginning to demand a China contingency plan from their CEOs.

In April 2022, as the co-chair of the Global Tech Security Commission, Krach penned an article in Fortune "Present your China contingency plan at the next board meeting," in which he called for just that thing[116]:

> Boards increasingly understand doing business with, in, or for China represents tremendous risk. The world saw the Ukrainian attack coming, knowing full well that Putin is not in the habit of bluffing. Neither is Xi. The free world has come to learn that, just like Putin, General Secretary Xi is not to be trusted.
>
> You can't afford to get caught off guard on this one. So, prepare now. When that moment comes, and you're not ready, it will already be too late. When the dreaded becomes inevitable, you no longer need to fear it. You must develop a plan and execute it.

EXHIBITS

Exhibit A: Silicon Production Worldwide (2020)

Major countries in silicon production worldwide in 2020

(in 1,000 metric tons)

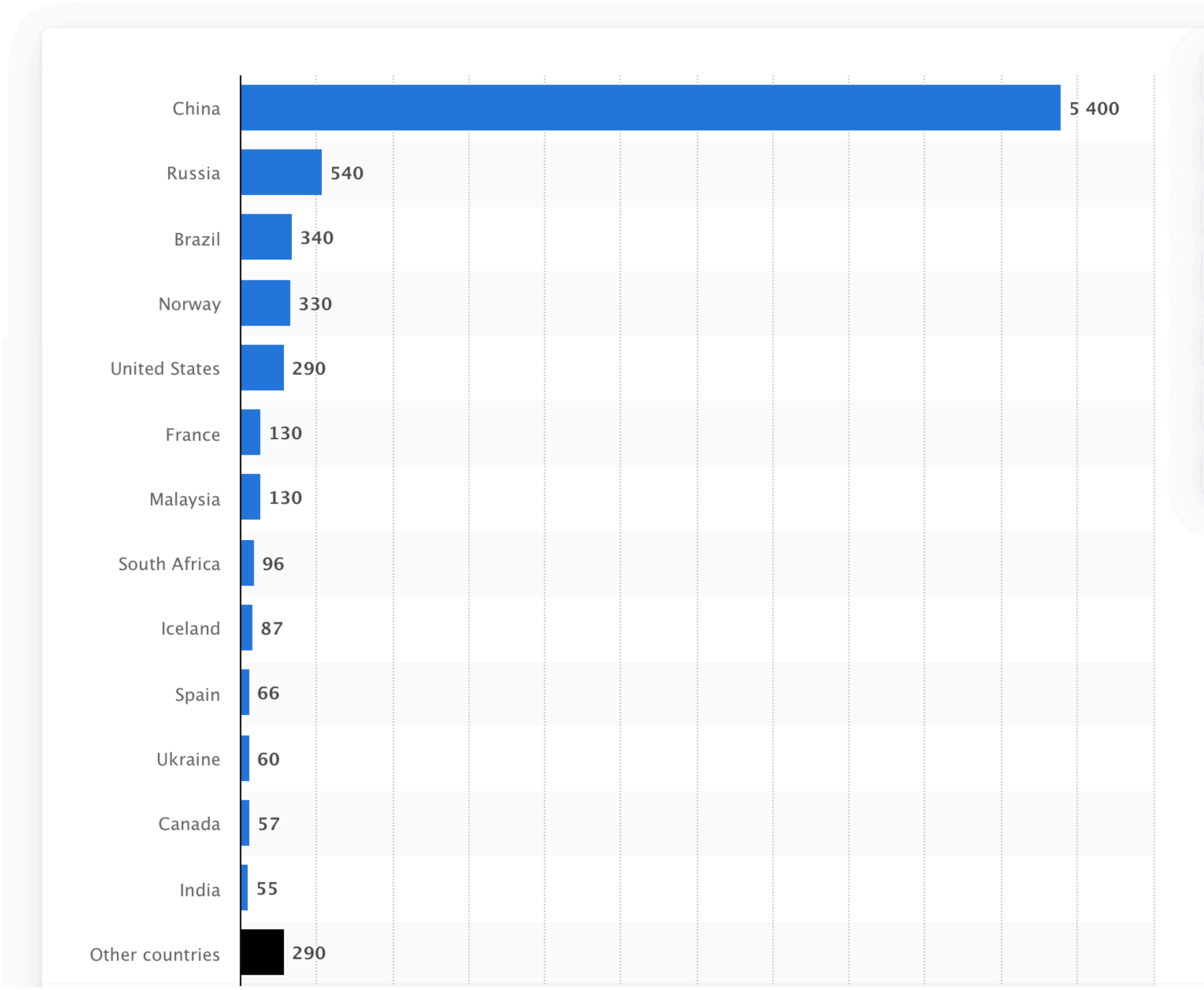


Exhibit B: Sustainable Investing in the United States

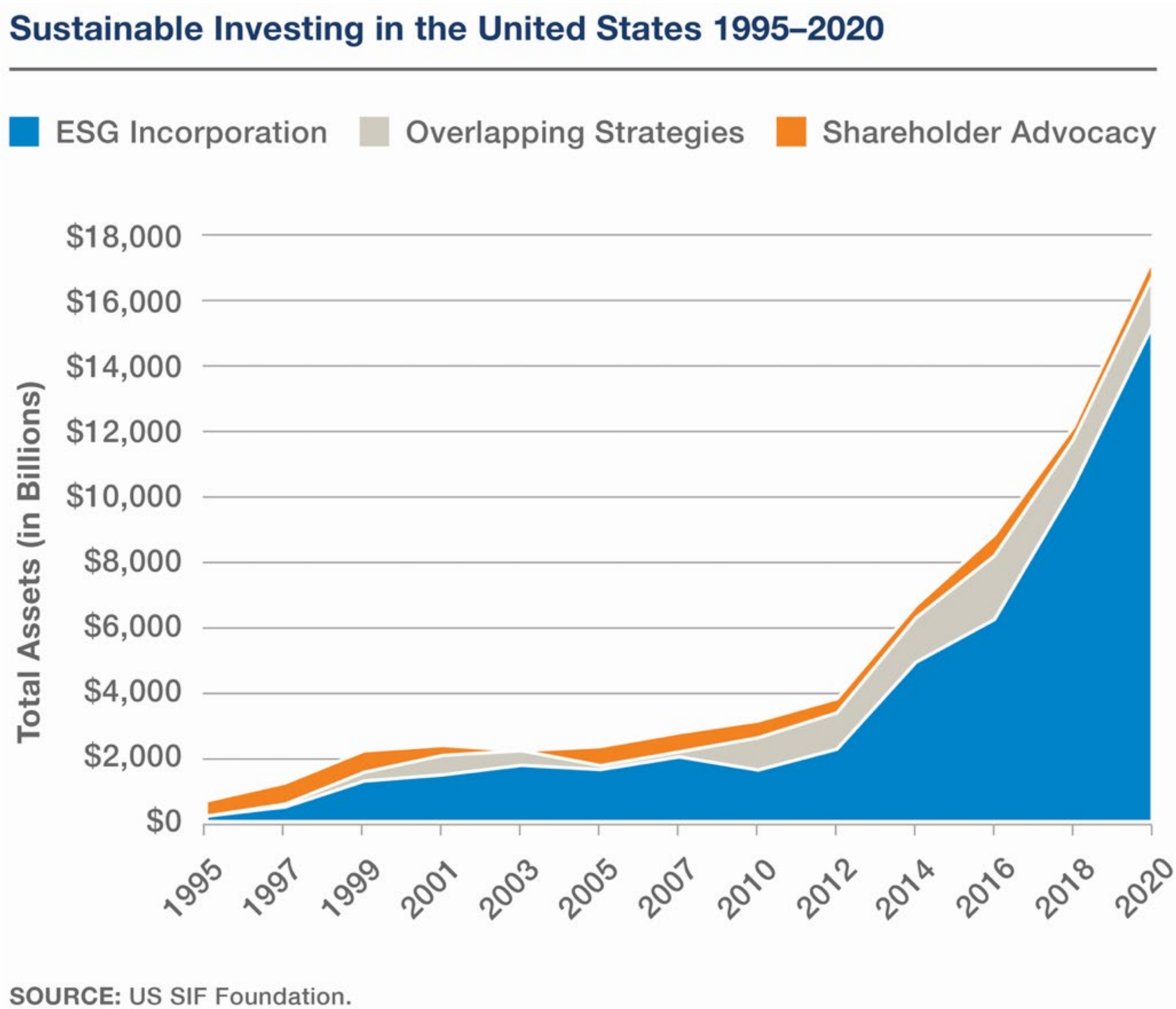


Exhibit C: United States Solar Imports (Q4, 2020)

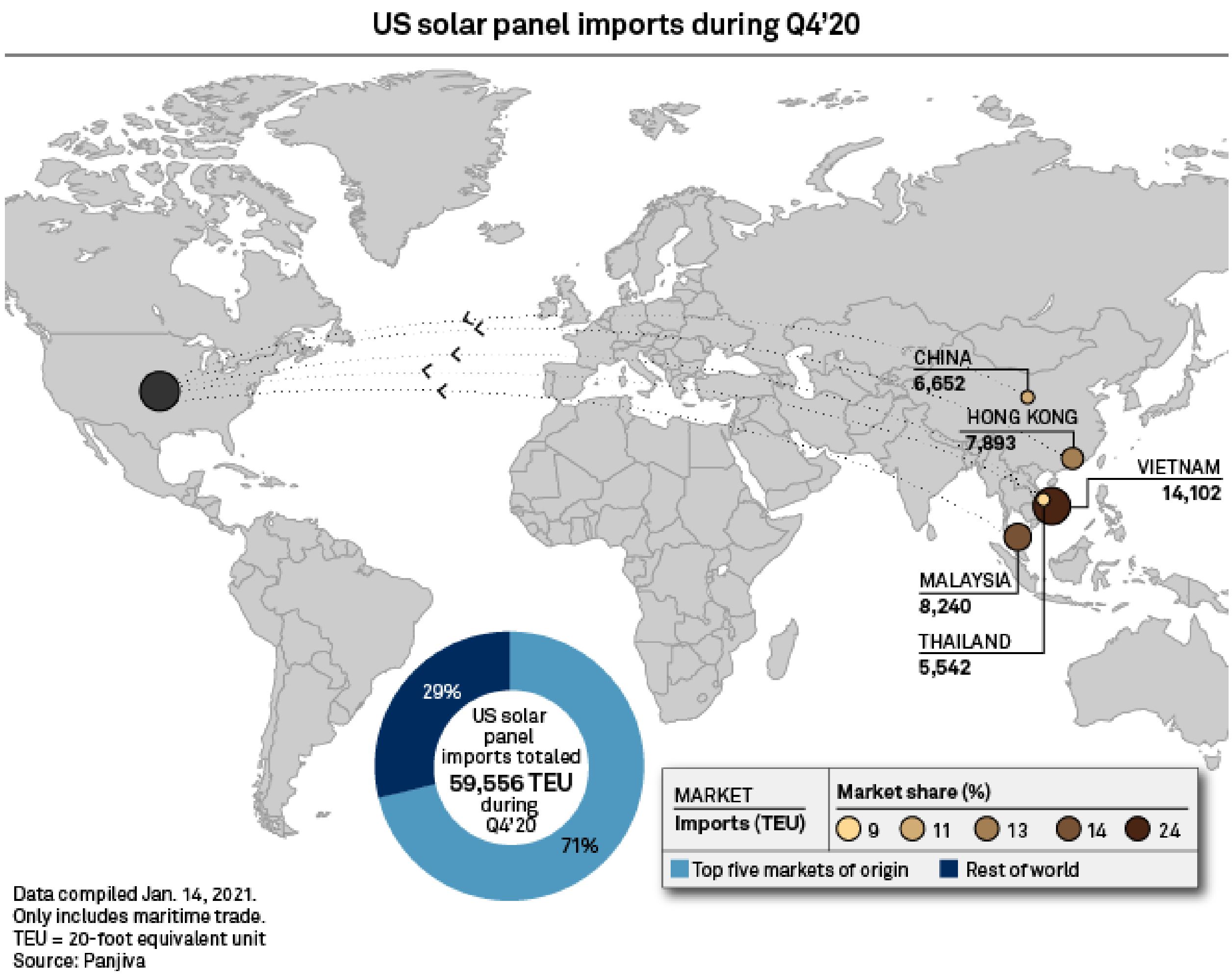


Exhibit D: Solar Energy Industries Association Letter (December 8, 2021)

SEIA Solar Energy Industries Association®

December 8, 2021

Chair Kathy Castor
U.S. House of Representatives Select Committee on the Climate Crisis
Washington, DC 20515

Ranking Member Garrett Graves
U.S. House of Representatives Select Committee on the Climate Crisis
Washington, DC 20515

Dear Congresswoman Castor and Congressman Graves:

I appreciate the opportunity to share with you the steps the Solar Energy Industries Association (SEIA) and our members have taken to prevent the use of forced labor in the solar supply chain and reduce our reliance on solar imports by growing U.S. solar manufacturing. SEIA, on behalf of the more than 231,000 American workers employed by the domestic solar industry, is committed to ensuring that no products made from forced labor should enter the United States and we support efforts to address forced labor in China's Xinjiang Uyghur Autonomous Region (Xinjiang).

SEIA has been calling on the industry to relocate supply chains from Xinjiang since October 2020. On December 8, 2020, International Human Rights Day, SEIA announced the Solar Industry Forced Labor Prevention Pledge and restated our recommendation to industry participants to move their supply chains. Since then, 300 companies representing the majority of solar panels sold in the U.S. market have signed the pledge. In addition, SEIA has updated its Solar Industry Commitment to Environmental & Social Responsibility to ensure the industry is adequately and proactively addressing evolving environmental and social responsibility issues. SEIA also partnered with leading experts in solar supply chain transparency to establish a comprehensive Traceability Protocol. The protocol will serve as an important compliance tool and give solar companies the ability to accurately determine the source of key components in a solar panel.

Leading solar panel suppliers are already taking steps to ensure the traceability of key inputs. Among those steps is to ensure that suppliers are relocated in regions where companies can conduct independent third-party audits. As this issue highlights, there are significant policy benefits associated with increasing domestic supply of solar products. Though some critical solar components are already made in the United States, bolstering our domestic manufacturing capacity throughout the entirety of the solar value chain would help promote transparency, reduce the need to rely on imported products and create good-paying jobs here at home.

Indeed, SEIA is leading the way to an American solar manufacturing future. In May 2019, SEIA modified its bylaws to create a new Manufacturing Division and Board of Directors seat dedicated to representing domestic solar manufacturing interests. Later that year, SEIA hosted a Solar+ Manufacturing Summit attended by nearly 100 solar leaders from across the nation. This summit served as the basis for SEIA's September 2020 Manufacturing White Paper, which set a goal of 100GW of domestic solar and storage manufacturing capacity by 2030.

As first articulated in SEIA's Manufacturing White Paper, our country needs a new approach to growing U.S. solar manufacturing. As we have said for many years, and as has been validated time and again, tariffs are ineffective at growing solar manufacturing capacity. What our industry requires is a suite of long-term federal investments, including:

1. Demand drivers such as a long-term extension of the solar investment tax credit with direct pay and related bonus credits for meeting certain domestic content thresholds.
2. Ongoing domestic production support, i.e., the Solar Energy Manufacturing for America Act (SEMAA), as our manufacturers and their suppliers scale operations in a hyper-competitive global environment; and
3. Incentives for private sector investments in manufacturing capacity, i.e., a refundable 48C manufacturing tax credit.

Importantly, all three categories of federal investments are required if we hope to truly compete as a nation in solar manufacturing. We need to recognize that the United States is competing for private sector investments against not only China but other countries as well. Importantly, as we grow our domestic solar manufacturing base here at home, we must also recognize that it will take time to scale operations and reduce our reliance on imports.

SEIA is committed to preventing forced labor in the solar supply chain, and we would appreciate the opportunity to lend our expertise and work constructively with both Congress and the administration to uphold U.S. law and prevent the importation of products made with forced labor.

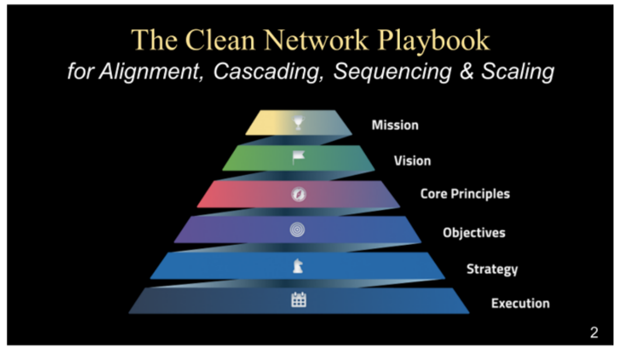
We are eager to meet with you and members of your respective staffs to discuss our efforts to stamp out forced labor. That work will ensure a vibrant and safe global supply chain, which will be critical as we scale up a domestic manufacturing base. We also would like to discuss specific policies to support strong U.S. manufacturing and the massive demand for solar in the U.S. that will be needed to expand domestic supply chains, create jobs and fuel economic growth.

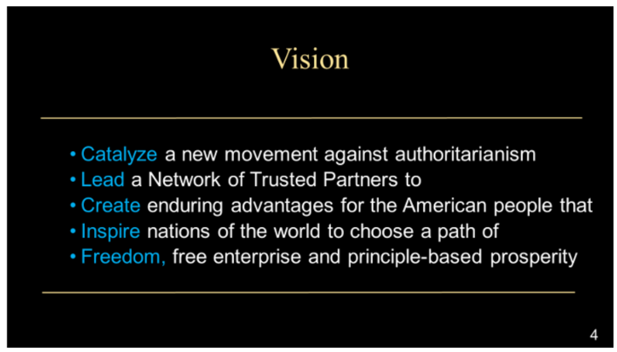
Sincerely,
Abigail Ross Hopper President & CEO

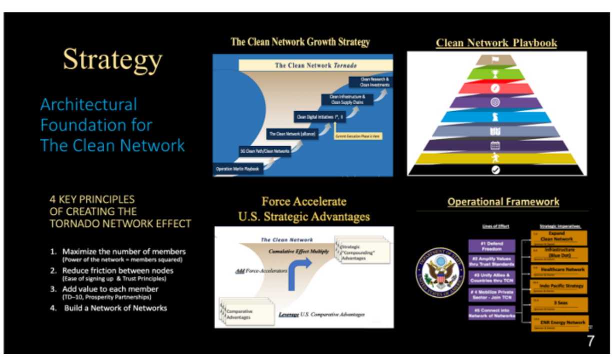
Solar Energy Industries Association (SEIA©) | 1425 K Street, N.W. | Suite 1000 | Washington, D.C. | 20005 Building a Strong Solar Industry to Power America | **www.seia.org**

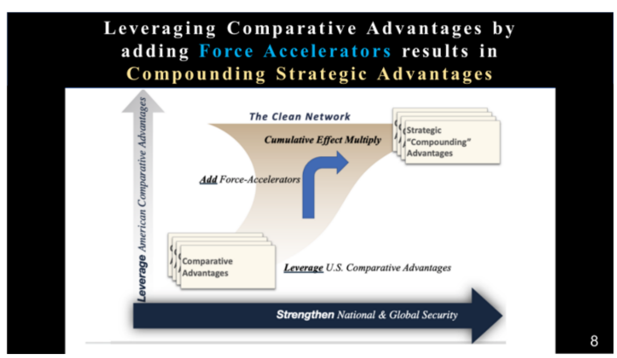
Exhibit E: The Clean Network

CLEAN NETWORK OVERVIEW









Source: Public materials from Keith Krach presented early 2020 at the beginning of the Clean Network Initiative, https://www.slideshare.net/KeithKrach/clean-network-overview, accessed January 27, 2021. Previously referenced at Michael Mink. "How the Clean Network Alliance of Democracies Turned the Tide on Huawei in 5G." Life & News. December 2, 2020. https://www.lifeandnews.com/articles/how-the-clean-network-alliance-of-democracies-turned-the-tide-on-huawei-in-5g/. Accessed April 6, 2021.

Bloomberg Businessweek

U.S. Policy on China May Move From 'America First' to America & Co.

Tech Entrepreneur U.S. Under Secretary of State Keith Krach Is Using Network Theory to Counter Chinese Pressure.

By Peter Coy– Bloomberg Businessweek – December 9, 2020

Silicon Valley veteran Keith Krach is harnessing the power of Metcalfe's Law to build a network of nations to counter China – **a notable change in tone** after years in which the administration pursued a go-it-alone, "America First" strategy.

Under Secretary of State Krach coined the term Clean Network and leads the initiative, which keeps telecom gear made by Huawei out of networks in democratic nations. Krach describes the **Huawei effort as a "beachhead" in a wider battle** to unite against Chinese economic pressure in everything from investment to strategic materials.

Krach highest-ranking State Dept Official since 1979 in Taiwan

THE WALL STREET JOURNAL.

U.S. Set Out to Hobble China's Huawei, and So It Has

Big maker of telecom gear and phones is short of advanced chips and facing customers who heed sanctions or doubt company's technical reliability

By Dan Strumpf – October 7, 2021

Huawei is in a deep slump. As recently as the start of last year, the world's largest maker of telecommunications equipment was increasing market share in 5G rollouts. Now, its revenue has dropped for three straight quarters. Its global telecom market share is shrinking as it loses out in key markets, a result of U.S. pressure designed to halt the spread of Huawei's 5G technology. Rarely, if ever, has the U.S. directory taken on such a big overseas company and had such an impact.

Huawei founder and CEO Ren Zhengfei spoke at a press briefing in Taiyuan in Shanxi province in February.

THE WALL STREET JOURNAL.

China's Huawei Reports 38% Revenue Drop

Revenue declines deepen amid U.S. restrictions, pressure on buyers

By Dan Strumpf – August 6, 2021

The drop marks the third straight decline in quarterly revenue for Huawei, the world's largest maker of telecom equipment and formerly one of the world's biggest smartphone sellers, and the declines have accelerated since the end of 2020.

The decline marked a sharp acceleration from the 16.5% revenue drop in the first quarter and an 11.2% drop in the fourth quarter of 2020. Eric Xu, deputy chairman, acknowledged the impact of Washington. "We've set our strategic goals for the next five years," Mr. Xu said. "Our aim is to survive and to do so sustainably."

Men lifted a Nokia antenna during work to replace Huawei on a mobile network in U.K.

The Clean Network of Trusted Partnership

The **Clean Network** (CN) is comprised of like-minded countries, companies, and civil society that operates by a set of trust principles for all areas of collaboration. It is an alliance of democracies built on the idea that strong partnerships advance shared prosperity. By harnessing the innovation, resources and synergies of its members, the CN creates a unifying and equitable global framework for trusted geo-economic partnerships.

It enables a set of shared principles that form the basis of trust. It does so in pursuit of three long term goals: Ensuring sustained economic growth and prosperity for all partners; Expanding fair, transparent, and reciprocal collaboration and trust principles to all aspects of economic partnering; and Creating a level playing field for companies, economies, and countries based on integrity, reciprocity, accountability, transparency, and fairness.

Trust Principles

A Series of Trust Standards based on:

Respect for:

- Rule of Law
- Property
- Sovereignty of Nations
- Labor
- The Planet
- Human Rights

- Integrity.
- Accountability
- Transparency
- Reciprocity
- Liberty

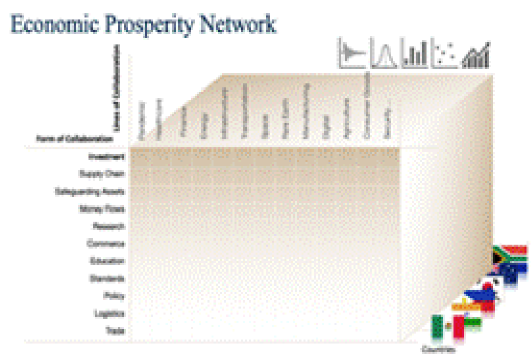
The CN partnerships are grounded in democratic values and shared Trust Principles that form the basis of trust: integrity, accountability, transparency, reciprocity and respect for the rule of law, property, and sovereignty. These Trust Principles which form the basis for sector and industry specific Trust Standards will enable fast, frictionless, and secure collaboration in areas critical to our shared future.

CN partners need to demonstrate and operate under the same set of shared trust principles, in order to ensure a high-integrity, level playing field for reliable transactions between trusted members. The commitment to these trust principles will offer private and public members of the network greater confidence to invest in long term prosperity of each partner and the network itself.

Lines of Collaboration – A Network of Networks

The **Clean Network** is a collection of networks that consists of multiple forms and lines of economic collaboration organized by sectors, regions and industries. Forms of collaboration include commerce, investment, supply, chains, money flows, research, safeguarding assets, research, logistics, procurement, trade, policy, and standards. The lines of collaboration include sectors such as energy, healthcare, digital, agriculture, manufacturing, transportation, minerals, infrastructure, finance, space and security.

Trust standards are tailored to fit the various forms and sectors of collaboration and built upon existing global norms such as those established by the Blue Dot Network (Infrastructure), Prague Proposals (5G), and the Energy Resource Governance Initiative (critical minerals) and the new Healthcare Prosperity Network. The CN also creates an umbrella network for existing regional initiatives such as the Indo-Pacific Strategy, Transatlantic Partnership, 3 Seas Initiative, EU-Asia Connectivity Initiative and American CRECE.



Strength Through Shared Principles and Solidarity

Some but not all the networks that comprise the CN have or are evolving structures by which countries, companies and civil society organizations may join. Opportunities will surface through establishment of traditional diplomatic partnerships (bi-laterals, tri-laterals and multi-laterals), agreements such as those related to economic development, direct foreign investment, trade, the environment or humanitarian endeavors. Creating and executing viable opportunities for investment and stable economic growth builds the network and validates contributors as members.

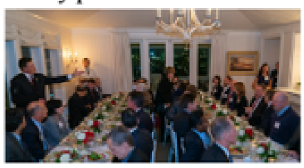
The U.S. is committed to fostering the Clean Network comprised of like-minded countries, economies, companies, investors, institutions, and civil society organizations that adhere to the set of Trust Principles. The goal is to include all countries and organizations as participants.

Countries that currently do not abide by the Trust Principles will be excluded from CN membership until they reform problematic practices and laws. No nation is excluded forever, and the CN does not require a country to choose between partnership with the U.S. and any other nation.

By forming this alliance of democracies, members have strength in numbers and solidarity to stand up to any nation that seeks to undermine our prosperity and basic freedoms. The power of the network is a product of the members' collaboration and mutually beneficial actions.

Rolling Thunder: Clean Network Timeline

January 12-15, 2020 Silicon Valley partner tour.

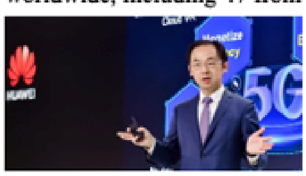


January 20-24, 2020 Davos country leaders' partner meetings.

January 28, 2020, UK's decision to allow Huawei into its 5G network sparks tensions with U.S.

February 14, 2020 Nancy Pelosi warns letting Huawei into Europe is to "choose autocracy over democracy."

February 20, 2020 Huawei president Ding boasts, "91 5G contracts worldwide, including 47 from Europe."



March 3, 2020 Chuck Schumer (D-NY) urges UK to reject Huawei.

March 5, 2020, Krach's E team gets authorities for semiconductors and 5G.

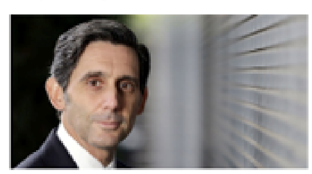
March 8-10, 2000, Semiconductor Equipment partner meetings in Silicon Valley.

April 29, 2020, Clean Path initiative is announced.

May 18, 2020, the 5G Trifecta crucial onshoring of TSMC's semiconductors.

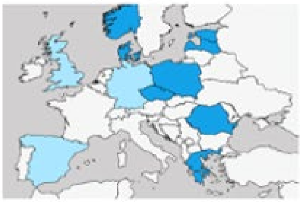
June 3, 2020, Canadian telcos lock Huawei out of 5G build.

June 24, 2020, Telefónica CEO María declares, "Telefónica is proud to be a 5G Clean Network company."



Rolling Thunder: Clean Network Timeline

June 25, 2020, Krach welcomes the Czech Republic, Norway, Poland, Estonia, Romania, Denmark, Greece, New Zealand, Japan, Australia, Israel, and Latvia into Clean Network.



June 29, 2020, Huawei Loses Out in Singapore 5G Bid. Nokia and Ericsson chosen as Singapore's 5G network providers.

July 14, 2020, UK bans Huawei from future 5G networks.

July 4, 2020, Krach warns about genocide and slave labor in China on "Cavuto Live."

July 15, 2020, US hails Britain's move to ban Huawei and join Clean Network.

July 22, 2020, French authorities effectively ban telecom operators from using Huawei gear once licenses expire.

August 5, 2020, Clean Network expands to include more tech areas.

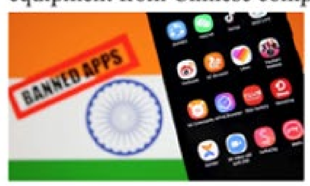
THE Clean NETWORK

Clean CARRIER | Clean APPS | Clean STORE

Clean CLOUD | Clean CABLE | Clean PATH

August 10, 2020, Clean Network grows to 30 Countries and Territories along with largest telcos: Orange (France), Reliance (India), Telstra (Australia), SK and KT (Korea), Cosmote (Greece), NTT (Japan), O2 (UK) and all telcos in Canada, Norway, Vietnam, and Taiwan.

August 24, 2020, India phases out equipment from Chinese companies.



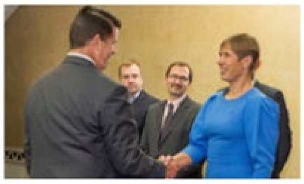
September 17, 2020, Krach arrives in Taipei, becomes highest-ranking State Department official to visit since1979.

September 18, 2020, Krach attends service for President Lee Teng-hui, starts new economic dialog, welcomes Taiwan to Clean Network.

Rolling Thunder: Clean Network Timeline

September 22, 2020, European Clean Network tour begins, with goal of building a Transatlantic Clean Network.

September 23, 2020, Krach meets with Estonian President Kaljulaid, who commits to EU 5G Clean Toolbox and 5G Clean Path.



September 28, 2020, Krach and Austrian Federal Minister Köstinger elevate U.S.-Austria partnership and safeguard 5G from "high-risk" vendors through the Clean Network and the EU 5G Clean Toolbox.

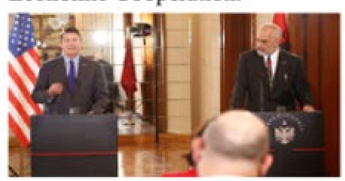
September 30, 2020, Krach and EU Commissioner Breton issue statement on synergies between Clean Network and EU 5G Clean Toolbox.

September 30, 2020, NATO Deputy Secretary General Geoana seeks 5G Clean NATO Network citing need for non-fractured alliance.

October 1, 2020, Portugal commits to EU 5G Clean Toolbox, joins Clean Network.

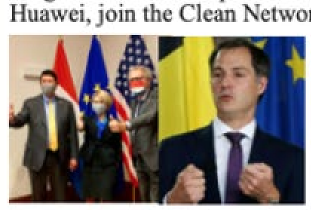
October 2, 2020, Spain's Secretary for Telecoms, Sánchez commits to EU 5G Clean Toolbox, joins Clean Network.

October 3, 2020, Albania's Prime Minister Rama commits to 5G Clean Path. Krach and Finance Minister Denaj sign Memorandum of Economic Cooperation.



October 4, 2020, Germany prepares legislation that will effectively ban Huawei from its 5G network.

October 8, 2020, Luxembourg and Belgium announce replacement of Huawei, join the Clean Network.



Rolling Thunder: Clean Network Timeline

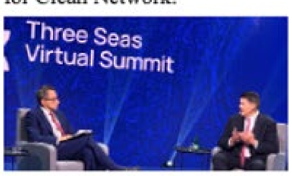
October 14, 2020, Clean Network grows to over 40 Clean Countries, and 50 Clean Telcos.

October 17, 2020, Clean Network adds Oracle, HP, NEC, Fujitsu, Cisco, NTT, Siemens and VMware.

October 19, 2020, Krach visits Ericsson innovation center in Tallinn, Estonia.

October 20, 2020, Cyprus joins Clean Network. Krach and Cyprus Minister for Digital Policy, Kokkinos, sign MOU.

October 21, 2020, Three Seas Initiative announces support for Clean Network.



October 23, 2020, Slovak Republic signs Joint Declaration on 5G Security, joins Clean Network.

October 23, 2020, Krach signs Clean Network agreements with North Macedonia, Kosovo, and Bulgaria.

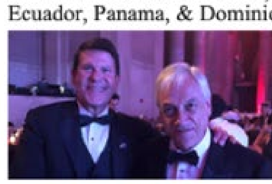
October 25, 2020, US certifies two out of three Bahrain telecom operators "totally clean."

October 31, 2020, Clean Network reaches 49 countries, 2/3 world GDP.

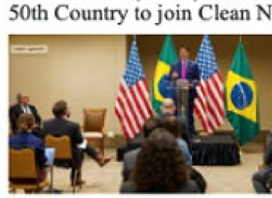
Bloomberg:

"The success of the Clean Network has taken all the momentum away from Huawei, six months ago it looked like Huawei was unstoppable."

November 7-17, 2020, Clean Network Latin America tour to Brazil, Chile, Ecuador, Panama, & Dominican Republic.



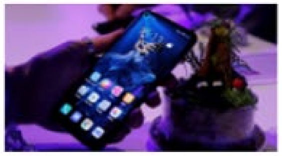
November 11, 2020, Brazil becomes 50th Country to join Clean Network.



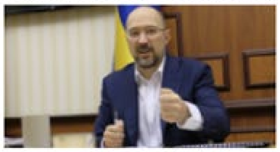
November 14, 2020, Ecuador joins Clean Network. -- Fernando Flores, President, Committee on Natl Security.

November 17, 2020, President Abinader announces Dominican Republic joins Clean Network.

November 18, 2020, Huawei Sells Honor Phone Business to a state-led consortium as U.S. sanctions bite.



December 22, 2020, "Ukraine joins NATO, EU, OECD, and 3 Seas on the Clean Network," Prime Minister Shmyhal.



January 12, 2021, Nauru President Aingimea: "The Clean Network provides a trusted foundation to secure the most sensitive information."

January 13, 2021 "Palau is excited and proud to join the Clean Network." President Remengesau.

January 14, 2021, US, Georgia sign Clean Network MOU on 5G cooperation.

The Clean Network Today

Wall Street Journal: Though its success has been a quiet one, Clean Network could turn out to be the administration's **most enduring foreign-policy legacy**. It has become an **undisputed success** and it looks likely to stick. Neither Biden nor foreign leaders appear interested in reversing it. Nobody will want to tear it up and rebuild.

Bloomberg: Silicon Valley veteran Keith Krach harnessed the power of Metcalfe's Law to build a network of nations to counter China – a **notable change in tone** after years in which the administration pursued a go-it-alone, "America First" strategy. "In contrast to a somewhat more confrontational style at the beginning of the administration, the Clean Network bears the hallmarks of **'good old fashioned' diplomacy**," The Clean Network's effort to create a united economic front is to China what George Kennan's "long telegram" of 1946 was to the Soviet Union.

Epoch Times: Krach coined the term Clean Network and led the initiative to take away Huawei's momentum by unifying allies. This triumph seemed unthinkable at the beginning of this year, as the Chinese giant Huawei seemed unbeatable. Within a few months, the Clean Network's momentum garnered overwhelming international support and bipartisan backing. Huawei's vaunted 90 deals have dwindled to just 12 outside of China.

Life & News: The Clean Network **turned the tide on the CCP's 5G master plan**. By building an alliance of democracies built on democratic values embodied in its Trust Standards. It **proves that China Inc. is beatable** and, in the process, exposed its **biggest weakness – lack of trust**. The Clean Network demonstrated a rare genius for building **effective public/private sector partnerships** that leverage the innovation and resources of the world's business leaders and entrepreneurs.

Senior researcher Mary Brooks: "The Clean Network is some of the **first real coordinated action** we've seen from the US government to secure supply chains, ensure the use of trusted vendors, and build consensus around what safe and trustworthy technology should look like."

Exhibit F: Letter from Under Secretary Krach to Business Leaders (July 1, 2020)

Exhibit G: Letter from Krach to American Universities (August 18, 2020)

Exhibit H: Letter from Under Secretary Krach to Civil Society Partners (January 18, 2021)

Exhibit I: Under Secretary Keith Krach Press Conference (January 14, 2021)

Press Business Employees Job Seekers Students Travelers

U.S. DEPARTMENT *of* STATE

POLICY ISSUES COUNTRIES & AREAS BUREAUS & OFFICES ABOUT

Under Secretary Keith Krach's Remarks to the Press on Communist Chinese Military Companies

REMARKS

KEITH KRACH, UNDER SECRETARY FOR ECONOMIC GROWTH, ENERGY, AND THE ENVIRONMENT

JANUARY 14, 2021

Thanks for joining me today. I'd like to update you on the latest developments related to the Executive Order on financing Communist Chinese military companies, and a couple of other newsworthy items.

Clean Network

As the Wall Street Journal recently mentioned, the Clean Network is an undisputed success and the most enduring foreign-policy legacy of the last 4 years. The Clean Network now includes 60 countries representing nearly 2/3rds of the world's GDP (that's including China). We're also up to 200 Telcos and dozens of the world's industry leading companies. In just a few months, the Clean Network has become a global movement to secure 5G from Huawei and the Chinese Communist Party's surveillance state. The tide has turned and is gaining momentum at a rapid clip. We've expanded the Clean Network to include Clean Cloud, Clean Apps, Clean Store, Clean Cable, Clean Currency, Clean Things, Clean Drones. It means much more than just Clean Technology. We have a great start on Clean Infrastructure with Clean Financing with the Blue Dot Network, Clean Energy with Clean Minerals with Energy Resource Governance Initiative (ERGI). It also includes Clean Supply Chains with Clean Labor Practices.

Taiwan

There is also our progress with Taiwan. Since September when I was honored to be the highest-ranking State Department official to visit Taiwan since 1979, we have made years' worth of diplomatic advances in just a few months. On November 20, following on a commitment made during my trip, we hosted the inaugural U.S.-Taiwan Economic Prosperity Partnership Dialogue here in Washington and signed a five-year memorandum of understanding regarding economic security and cooperation. And on December 14, we signed a Science and Technology Agreement expressing the U.S. and Taiwan's shared commitment to values like trust, transparency, innovation, the rule of law, intellectual property protection, research integrity, and respect for human rights. These are moral and strategic victories in addition to diplomatic victories. Taiwan is a great partner, a great friend, and a magnificent role model of democracy for the region, and I am humbled to have been dubbed "Taiwan's number one friend."

Malign Chinese Companies in U.S. Capital Markets

And that leads me to our marquee topic today: the Chinese Communist Party's incursion into U.S. financial markets. As you know, on July 1, 2020, I sent a letter to all U.S. financial institutions stating that they have a duty to establish governance principles when it comes to investing in entities that directly or indirectly facilitate human rights abuses.

The boards of these institutions have a moral duty, and perhaps even a fiduciary duty to divest from companies that contribute to human rights violations. Pension funds, university endowments, indexes, mutual funds, insurance companies, venture capital firms, institutional investors, and particularly emerging index funds, at a minimum, should disclose to their constituents the Chinese companies they invest in. Chinese companies' financial practices are opaque for a reason. Chinese companies on U.S. stock exchanges do not comply with Sarbanes-Oxley transparency provisions, which puts all investors at risk. I am confident that our business community will reject any involvement or association with the oppression in Xinjiang—first, because it is the right thing to do, and second, because of the significant legal and business risks involved.

On August 18, I also sent a **letter** to the governing boards of American universities, alerting them to the threats the Chinese Communist Party poses to academic freedom, to human rights, and to university endowments. I said, "the boards of your institution's endowment funds have a moral obligation, and perhaps even a fiduciary duty, to ensure that your institution has clean investments and clean endowment funds. I urge you to divest from companies that are on the Entity List or that contribute to human rights violations. I also ask that you strongly consider publicly disclosing to your campus communities immediately all **People's Republic of China (PRC) companies that your endowment funds are invested in**, especially the PRC companies in emerging markets index funds. Studies have shown that most of the U.S. university endowment fund portfolios own PRC stocks listed on American exchanges either directly or indirectly through emerging markets index funds.

Most Americans have no idea that their own money—held in pension funds, 401Ks, and brokerage accounts—is financing Chinese companies that support the People's Republic of China's (PRC's) military, security, and intelligence apparatus, as well as human rights abuses on an epic scale, such as those in Xinjiang. You all know about **Executive Order 13959**—*Addressing the Threat from Securities Investments that Finance Communist Military Companies*—released on November 12, 2020. It prohibits purchases by U.S. persons in publicly traded securities, or any securities that are derivative thereof, of companies listed by the Department of Defense or Treasury, regardless of the percentage ownership. Treasury's guidance states that divestment must be completed by November 11, 2021.

Ample warning has been given to public and private equity compliance officers and risk managers to understand and disclose to their constituents the material risk associated with investments identified in the Executive Order. CEOs and their boards now have a legal duty to implement and be in full compliance with the Executive Order. They also may have a fiduciary duty to take decisive action to minimize any negative effect on their clients' holdings due to the imminent divestment of CCMCs. Best practices in material risk mitigation, disclosure, and transparency are essential to proper corporate governance.

The **Defense Department had publicly listed** 44 parent-level corporations as CCMCs, including **China Mobile, China Telecom, and China Unicom**. Today, the Defense Department publicly listed an **additional nine** parent-level corporations as CCMCs, plus nearly 140 subsidiaries from the first 35 as CCMCs in their own right. CCMCs conduct business through a network of subsidiaries sometimes running into the dozens designed to conceal money flows to the PRC military, intelligence, and security services.

U.S. investors—including banks, pension funds, foundations, insurance companies, and university endowments—have for years unknowingly funded these 44 CCMCs because of their opaque network of at least 1,109 subsidiaries, many dozens of which are tracked by MSCI, FTSE, and other indexes in thousands of financial firms' products. The Treasury Department has **noted** that the Executive Order applies to the ownership of any CCMC shares, as well as any of their 50 percent or greater majority-owned subsidiaries, or any other controlled entity, that are publicly listed by the **Treasury** or **Defense** Departments. The Executive Order **prohibits** Exchange Traded Funds, mutual funds, and index funds like those managed by BlackRock, Vanguard, and others from investing in CCMCs. This State Department **Fact Sheet** shows hundreds of CCMC and subsidiary stocks, which may be eligible for listing under E.O. 13959 and that continue to be listed on some major index funds.

Why is this important?

PRC stocks directly affect the pension assets of American workers and retirees There are **more than 5,000** public pension systems in the United States, according to the United States Census Bureau. $10.7 trillion invested in the private pension plans is covered by the Employee Retirement Income Security Act (ERISA).

The Thrift Savings Plan's governing board study revealed that most pension funds use the MSCI emerging market index as their investment guide, including:

- The 401k's of all 10 largest publicly traded U.S. companies.
- All 10 of the top federal contractors.
- All 20 of the largest state pension plans.
- All six of the largest target-date mutual-fund providers with holdings of $1.9 trillion as of June 2019.
- The Pension Benefit Guaranty Corporation (PBGC), with $131 billion in pension insurance reserves.
- Numerous Insurance Funds.
- Numerous University and College Endowment Funds.

While we welcomed the recent decisions by MSCI, FTSE Russell, and S&P Dow Jones to remove certain entity listed PRC companies from their Indices, the truth is that these removals represented—at best—a good start. They have taken action on only a sampling of the worst offenders on the Defense Department's list of parent-level "Communist Chinese military companies," but those companies are the tip of an iceberg of more than 1,000 subsidiary companies—dozens of which are still tracked by MSCI, FTSE, and other indices. ***As long as these subsidiaries retain access to America's capital markets, the PRC's military will continue to be financed on the backs of American workers.***

All American indices, financial institutions, and investors have a legal duty to comply with the new Executive Order by divesting any Chinese companies implicated in these malign activities. It is an essential matter of national security to ensure that the American people are not used as fundraising tools of an authoritarian state hostile to U.S. interests. American investors are being forced to support companies that produce technologies for the surveillance of Chinese civilians, and the repression of Uyghurs and other Muslim minority groups in Xinjiang. This ends now.

There is important work to be done on continuity of policy in aligning the Defense Department list of CCMCs with the Commerce Department Entity List, and the Military End User list.

The U.S. Government maintains several lists of foreign companies of concern. Companies on these lists pose a risk to U.S. national security and/or foreign policy interests. Inclusion on the Commerce Department's Entity List means that a foreign company cannot receive U.S. exports of certain dual-use items without a license. Inclusion on the Defense Department's list of Communist Chinese military companies means that U.S. persons cannot invest in their securities or any securities that are derivative thereof. These lists have different legislative and regulatory origins designed for different purposes.

In technology-speak, that means they are non-interoperable. They don't talk to each other. I believe that the next Administration—to protect U.S. national security, ensure continuity of policy, and to fully address the unprecedented scale of the challenge that we are facing—must find a way of harmonizing all these diverse lists and marrying them up together. If a company is of such great national security concern that it is barred from receiving U.S. investment, then it probably shouldn't be able to receive sensitive technology either. And vice versa.

In my experience, the effectiveness of U.S. policy is undercut when we add a company like Huawei to the Entity List, but then still issue licenses to them. Sure, there is an effect on U.S. companies' profits, and sure we should do this in better coordination with our allies in Korea, Japan, and Europe. But what's more important? Profit, or our national security from the Chinese Communist Party? The Communist Party could not be any clearer about its strategy for military-civil fusion, bringing its leading technology companies in to support its military, intelligence, and security apparatus. Military-civil fusion is not a secret. It's one of President Xi Jinping's signature initiatives. What's shocking is that Communist Party and government leaders in Beijing talk about military-civil fusion openly and publicly all the time.

Exhibit J: Criticisms of BlackRock

CONSUMERS' RESEARCH
Consumer Warning

BLACKROCK: TAKING YOUR MONEY, BETTING ON CHINA

What is Your Pension Funding?

WARNING: U.S. Consumers should be wary of investments managed by BlackRock Investment Management Company. Seeking profits with no regard for consequences, BlackRock is taking your money and betting on China. BlackRock is knowingly using investments funded by hard-working Americans to support companies directly tied to the Chinese Communist Party (CCP). These investments made with Americans' retirement savings are strengthening the Chinese economy and enhancing the Chinese military.[1]

COMPANY PROFILE:

BLACKROCK

Blackrock (BLK)

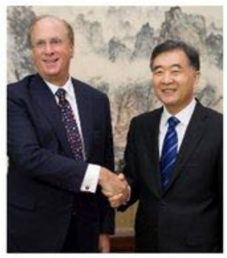
Industry:	Global Investment Manager
Founded:	1988
Headquarters:	New York City, NY
CEO:	Larry Fink
CFO:	Gary Shedlin
2020 Net Income:	$5.2 billion
Assets Under Management:	$9.5 trillion

BLACKROCK IS ALL IN ON CHINA:

BlackRock's connections to China are deep and troublesome.

Today, BlackRock has nearly $10 trillion under its management

Today, BlackRock has nearly $10 trillion under its management including the retirement and savings of countless Americans across the country.[2] BlackRock's investment dollars are riddled with examples of the company using American investments for the betterment of the CCP. Beyond just its investment portfolio, BlackRock CEO Larry



Chinese Vice Premier Wang Yang (R) shakes hands with Laurence D. Fink, chairman and Chief Executive Officer of BlackRock Inc., during their meeting in Beijing, capital of China, Feb. 18, 2014.

"I continue to firmly believe China will be one of the biggest opportunities for BlackRock over the long term, both for asset managers and investors"

Larry Fink
BlackRock CEO

Fink has concerning ties to the China's leadership, including aiding the CCP in negotiations[3] with the United States during recent trade talks. However, this is not a new relationship. Their ties go back many years. In 2008, BlackRock opened an office in Beijing in an attempt to "expand its business into China," saying the office would "help establish local contacts."[4] Since then, BlackRock expanded investments into companies like Baidu, Pinduoduo, Xiaomi, and China National Offshore Oil Corporation (CNOOC)[5] which reportedly have ties to the CCP. BlackRock has poured money into Chinese tech and telecommunication companies like Baidu and Xiaomi that have displayed their CCP allegiance by launching internal Communist Party committees within their companies to gain favor.[6] Pinduoduo has contributed hundreds of millions to Chinese Communist Party initiatives within the country.[7] BlackRock investments in CNOOC have helped aid the CCP's efforts to expand its influence across the globe.[8]

1. *Financial Times: BlackRock and Vanguard face heavy burden of US sanctions on China*
   Business Insider: BlackRock says investors should triple their allocations in Chinese assets despite increasing regulatory risks
2. *The Wall Street Journal: BlackRock Closes In on the Once Unthinkable, $10 Trillion in Assets*
3. *The Wall Street Journal: China Has One Powerful Friend Left in the U.S.: Wall Street*
4. *MarketWatch: BlackRock opens Beijing office; seeks to expand in China*
5. *CNN: Baidu Inc Shareholders*
   CNN: Pinduoduo Inc Shareholders
   Financial Times: Shares in China's Xiaomi tumble after US investment ban
   Reuters: United States adds China's SMIC and CNOOC to Defense blacklist
6. *Financial Times: Chinese tech groups display closer ties with Communist party*
   SCMP: China's largest smartphone maker Xiaomi sets up Communist Party committee
7. *Nikkei Asia: China's Big Tech vows to give back as Xi touts 'common prosperity'*
8. *The Globe and Mail: The dual loyalties behind CNOOC's push for global growth*

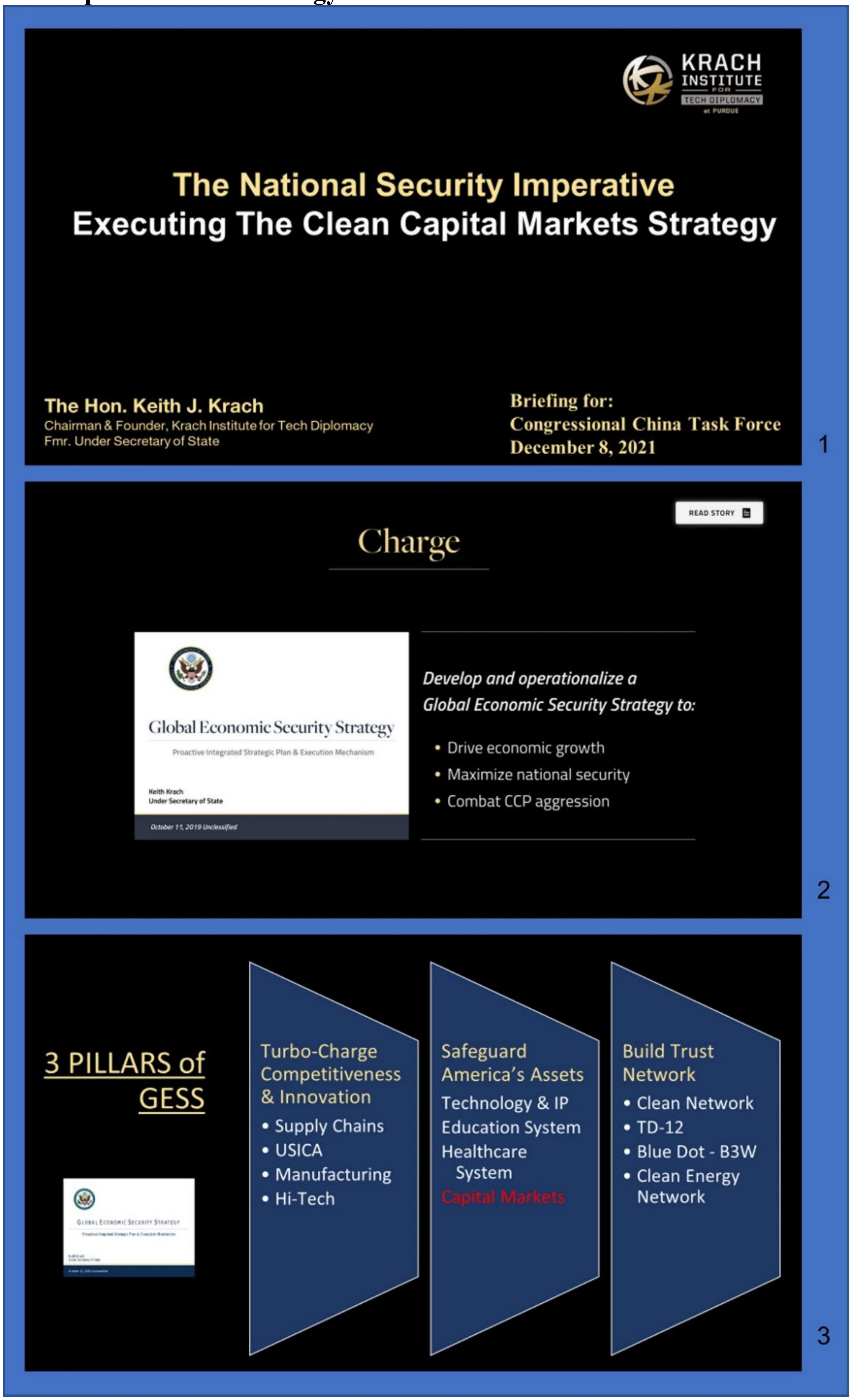
Consumer Warning


BlackRock
Our Enemy, Their Ally
BlackRockLovesChina.com
PAID FOR BY CONSUMERS' RESEARCH


BLACKROCK
TAKING YOUR MONEY
BETTING ON CHINA
Learn More At ConsumersResearch.org
PAID FOR BY CONSUMERS' RESEARCH


FEP FREE ENTERPRISE PROJECT
"Mr. Fink, you have indicated that BlackRock will support a number of left-leaning ESG initiatives that would add enormous costs to companies amidst the backdrop of the worst economic crisis since the Great Depression. At the same time, you simultaneously insist on investing BlackRock's funds and those of others in Communist China, which has a deplorable ESG record. Given that, how do you square punishing American companies with increased ESG costs with your Chinese investments?"
– Justin Danhof
Free Enterprise Project
the conservative shareholder activism arm of the
NATIONAL CENTER FOR PUBLIC POLICY RESEARCH
STOP the Liberal Corruption & Hostile Takeover of Corporate America.
Follow us at Facebook.com/FreeEnterpriseProject.
BlackRock
Larry Fink, CEO

Exhibit K: Clean Capital Markets Strategy and Articles




READ STORY
Leveraged Growth Strategy
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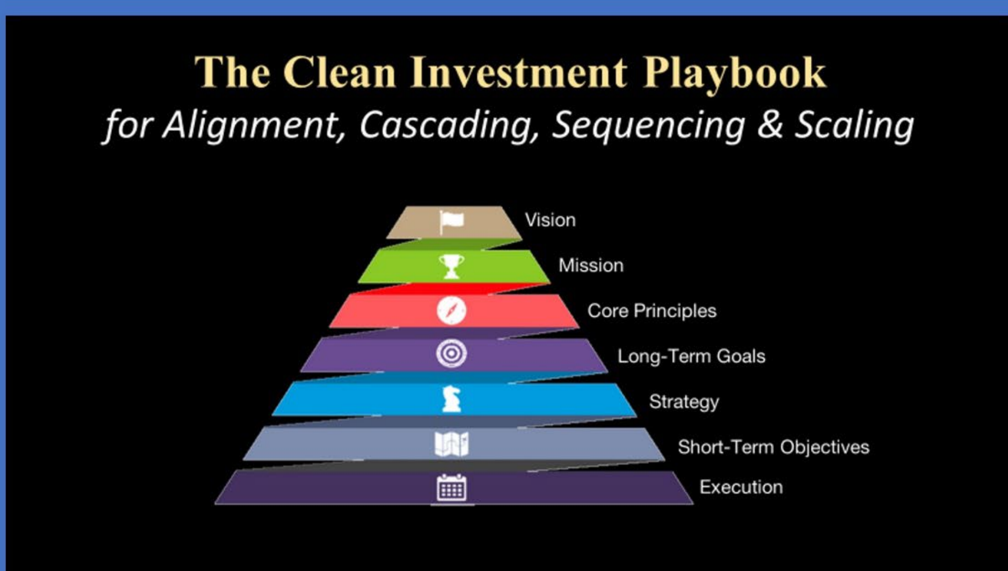
Leveraged Growth Strategy
Silicon Valley
The Clean Network Tornado
Leverage
Clean Investments
Clean Currency
Clean Energy
Clean Infrastructure
Clean Digital Initiatives
5G Clean Path Network
Global Strength

4


Clean Capital Markets Playbook
Congressional Action
5 Prong Strategy
Capital Markets
Safeguard US Assets
3 Pillars
GESS
Team

5


The Clean Investment Playbook
for Alignment, Cascading, Sequencing & Scaling
Vision
Mission
Core Principles
Long-Term Goals
Strategy
Short-Term Objectives
Execution

6

Vision

Lead a network of trusted partners
to create a transparent, reciprocal, and
level capital markets playing field that
eliminates China's unfair and malign practices

7

Mission

Develop and operationalize a proactive integrated capital markets strategy to protect investors from the risk of financing China's military machine, surveillance state and human rights abuses and creates a level playing field for US companies.

8

Trust Principles

Respect for:

- *Rule of Law*
- *Property*
- *Sovereignty of Nations*
- *Labor*
- *The Planet*
- *Human Rights*

\+

- *Accountability*
- *Integrity*
- *Transparency*
- *Reciprocity*

= **TRUST**

9

Objectives

Protect	Boost	Secure	Inhibit
Protect US investors from Unknowing Funding the CCP's Malign Practices	Boost the Competitive Position of US Value Creation Companies	Secure the Gold Trusted Standard of the American Financial System	Inhibit the Capital Flow to CCP's Military Machine and Surveillance State

10

The Clean Capital Market Strategy

11

Prong 1 – CALL OUT CCP's EGREGIOUS BEHAVIOR

Human Rights Abuses

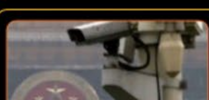
➢On the Fourth of July called out genocide in Xinjian on network television and tied Wall Street financing of companies to directly enabling punishable genocide

Surveillance State

➢Laser focused on Huawei as the backbone of the surveillance state with the Clean Network and expanded the lines of effort with focus on its appendences with Clean Cable, Clean Cloud, Clean Apps and Clean Carrier.

Military-Civil Fusion

➢Intellectual property theft & National Intelligence Law



Technological Authoritarianism

Extends China's Great One-Way Firewall

12

Prong 2 - **Unveil China Inc.'s 7 Financial Ruses**

Deceptive Accounting and Financial Practices

- Opaqueness of financial records and audits
- Averts Sarbanes-Oxley and standard accounting practices

Duplicitous VIE Ploy

Offshore scheme with no true ownership of underlying security and no legal recourse for investor. Huge exposure for American Investors.

Passive Investment Scheme

Deceptive subsidiary sham > Bury in Emerging Index Funds> Asset managers Mutual Funds & ETFs> $11.7 Trillion American Pension Funds

Co-opts Decision Makers

- Co-opts PCAOB/Federal Government/Regulators/lobbyists
- Conflicts the professionals - Asset Managers/VC's/ Bankers/Lawyers/Exchanges/Index Funds

13

Prong 3 – **CHAMPION THE INVESTORS**

Alerting American Citizens

6/1/20: Commenced campaign to protect the average American from unknowingly funding the CCP malign interests through a web of subsidiaries, index funds, financial products, and lack of disclosure

Advising U.S. Businesses

7/1/20: Sent a letter to all U.S. CEOs, asserting duty to establish governance principles for investing in malign Chinese entities and counseled pension funds, mutual funds, insurance companies, VC firms, institutional investors, and index funds to disclose Chinese investments.

Notifying University Endowments

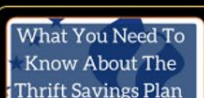
8/18/20: Sent letter to university endowments and governing boards, alerting to risks Chinese financial practices, recommended disclosing PRC companies in emerging index funds and advised divesting is prudent in likelihood of delisting due to enhanced listing standards.

Informing Pension Holders

10/8/20: Publicized malign PRC companies financed by $10.7 trillion in 5,000 pension funds of emerging market index funds, including all 401k's of 10 largest companies; top 10 federal contractors; all 20 of largest state pension plans

14

Prong 4 – **TAKE ACTION**



Trigger a Lead Domino

Used Thrift Savings Plan (TSP) as lead domino to to set a precedent that Chinese stocks were not off limits by working quietly to put pressure on decision maker to divest from MSCI emerging index fund or else.

Spearheading Capital Market Sanctions

12/8/20: Issued State Department fact sheet "US Investors Are Funding Malign PRC Companies on Major Indices" Worked with DOD to get 35 parent-level "Communist Chinese Military Companies" (CCMCs) to get financially sanctioned and identified 71 Chinese affiliates.

	MSCI China A Index	MSCI EM Index	MSCI ACWI Index	FTSE Emerging Index	FTSE All World Index
CCMCs and Affiliates Identified	36	59	61	74	76
Deletions Announced to Date	6	10	10	10	10

Tracking Index Providers

Listed 13 PRC firms on **Entity List for** and 35 parent-level CCMCs and 71 affiliates on Pentagon List on MSCI, FTSE and Bloomberg emerging market index funds.

Cautioning Financial Institutions

1/14/21: Issued State Department fact sheet "Communist Chinese Military Companies Listed Under E.O. 13959 Have More Than 1,100 Subsidiaries," stressing ample notice given to compliance officers/risk managers about material risk to disclosure and warning boards about full compliance legal duty to take decisive action to minimize negative effects on clients' holding

15

Prong 5 – **BUILD A COALITION**

Enlisting the Press

Enlisted journalists to shine light on CCP's efforts to use American people as fundraising tools and to tell US investors to call their fund managers to guard against potential losses due to immanent divestment.

Inspiring Civil Society

Sent a letter to civil society leaders to be an exponential force for good in promoting democratic principles over rising authoritarianism and genocide by utilizing protest divestment.

Ensuring Consistency of Government Policy

Advocated for continuity of policy by harmonizing the various agencies' adversaries' lists asserting if a company is barred sensitive technology, it should not be financed. Example: of the 500 Chinese companies on the Commerce Entity List less than 10 are on the OFAC list.

Enlisting the Allies Leveraging the Clean Network

The Clean Network's powerful alliance of democracies acts as a security blanket for governments/CEOs standing up to the CCP and a platform for coordinating investors from unknowingly financing the biggest threat to democracy.

Recommendations – **CREATE TRANSPARENCY**

Urge Labor Secretary to issue Business Advisory

Business Advisory would warn all pension fund managers about the danger that comes with investing in Chinese stocks, plus involved reputational/legal risks.

- Secretary of Labor runs The Employee Benefits Security Administration and responsible for administering and enforcing the provisions of ERISA covering most private sector pension plans. Secretary of Labor also owns Pension Benefit Guaranty Corporation, which should divest of their significant holdings of the MSCI emerging index fund.

Fix export controls license review process

Currently if the interagency votes are 2 to 2 (Energy, State, DOD and Commerce), Commerce gets an outsized vote and so its vote swings the outcome. Every agency should have one vote of equal weight. If there's a split vote, it should go to a special NSC committee to make the final license decision.

Create a searchable export license and deemed exports database for Congress

This already exists at Commerce/BIS through the "Automated Export System"

Declassify info on malign CCP involvement in US companies, universities, think tanks

Shine the light of transparency on IP theft, censorship, accounting fraud, influence peddling.

Recommendations– **ENFORCE TRANSPARENCY**

Eliminate ESG classification from funds that include Chinese stocks

S requires no forced labor, human rights abuses or genocide.
G requires accounting transparency and full financial reporting for good corporate governance.

Require asset managers to align with international human rights frameworks

70% of the world's largest asset managers, representing $47 trillion in assets, do not have a policy to exclude companies out of line with guidelines, such as the United Nations Guiding Principles on Business and Human Rights.

Require SEC "material risk" disclosure

Compel the SEC to acknowledge in a rule change, or another official venue, that Chinese corporate national security and human rights violations – especially those already sanctioned by the U.S. – constitute a "material risk" to prospective American investors that must be disclosed in prospectuses, bond offering circulars and other SEC filings.

Instruct PCAOB utilize the 30-day cancellation clause to terminate MOU

Left unaddressed, the MOU stands out as a façade that is a shining example of sacrificing our values to the CCP.


Recommendations – STRENGTHEN OFAC LIST
Synch Commerce Entity and OFAC Lists
If a company is bad enough to be denied sensitive technology, US investors should not be financing it on US exchanges. Include in NDAA
Ensure all subsidiaries of Sanctioned Companies are on OFAC List
The bill would prohibit Chinese companies, plus their subsidiaries and/or parent companies included on the Commerce Entity or OFAC Lists, from accessing the U.S. capital markets and American investor capital worldwide, including index funds, mutual funds, federal investment funds and retirement funds.
Put companies using slave labor on OFAC List
Biden Administration identified these companies using slave labor:
• Hoshine Silicon Industry Co., Ltd.: FTSE (EM) Index
• Xinjiang Daqo is subsidiary of Daqo New Energy Corp: NYSE: MSCI (EM) Index
• Xinjiang GCL New Energy Material Co sub of GCL New Energy Holdings: S&P BMI Index
Create "Chinese Corporate Human Rights Abusers List"
Create a new official "Chinese Corporate Human Rights Abusers List," administered by the State Department, to automatically trigger capital markets sanctions on the OFAC List.
19

THE WALL STREET JOURNAL.

State Department Urges Universities to Disclose China Stocks Held in Index Funds

Keith Krach, whose office steers policies related to economic growth, also encouraged universities to sell their Chinese stocks

“Boards have a moral obligation, and perhaps a fiduciary duty, to ensure that your institution has clean investments that are free from human-rights violations.”

Krach pointed out that when he was Chairman of the Board of Trustees at Purdue, he had no idea how widespread the CCP’s intimidation and censorship had been at Purdue and on campuses across America. That’s why as Under Secretary of State, he sent a letter to all universities about the real and urgent threat posed by the CCP to academic freedom, issued a forceful defense of human dignity, and called for the protection of university endowments, and safeguarding intellectual property.

Search **Bloomberg** W

U.S. Warns Colleges to Divest China Stocks on Delisting Risk

- Endowment boards told taking action 'would be prudent'
- Move could hit billions of dollars invested in Chinese stocks

Photographer: Adam Glanzman/Bloomberg

By Kevin Cirilli and Shelly Banjo
August 18, 2020, 3:35 PM EDT *Updated on August 19, 2020, 4:53 AM EDT*

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The U.S. State Department is asking colleges and universities to divest from Chinese holdings in their endowments, warning schools in a letter Tuesday to get ahead of potentially more onerous measures on holding the shares.

"Boards of U.S. university endowments would be prudent to divest from People's Republic of China firms' stocks in the likely outcome that enhanced listing standards lead to a wholesale de-listing of PRC firms from U.S. exchanges by the end of next year," Keith Krach, undersecretary for economic growth, energy and the environment, wrote in the letter addressed to the board of directors of American universities and colleges, and viewed by Bloomberg.

THE HILL

US Businesses Must Take A Stand Against China's Human Rights Abuses

BY KEITH KRACH AND KEN CUCCINELLI— 07/17/20

Many American brands have become household names around the globe, renowned for their exceptional quality and value. But with that visibility and consumer trust come great responsibility. American companies increasingly realize that corporate responsibility isn't just social responsibility, it is also national security. As part of this, companies must perform human rights due diligence and ask themselves tough questions to make sure their foreign deals do not, in the words of Secretary of State Pompeo, "tighten a regime's grip of repression."

This is particularly true when it comes to doing business in the People's Republic of China (PRC), given its authoritarian surveillance practices and egregious human rights abuses against its citizens, particularly against Uyghurs and members of other Muslim minority groups in Xinjiang.

Businesses, countries, and citizens around the world are waking up to the truth about the Chinese Communist Party (CCP) and its efforts to coopt intellectual property and technology systems for their own pernicious ends. We have seen this from the COVID-19 pandemic to the crackdown in Hong Kong, to the skirmish at the Indian border. Now more than ever, U.S. companies that do business with Chinese companies must make sure their investments do not enable and perpetuate the PRC's human rights abuses.

To help our companies navigate this difficult landscape, the State Department and Department of Homeland Security have joined with Treasury and Commerce to issue a business advisory on the risks and considerations for businesses with potential supply chain exposure to entities engaged in forced labor and genocide in Xinjiang. By following this guidance, businesses can be more confident that they are not contributing to human rights abuses in China. Specific to Xinjiang, we see at least three major risks for U.S. companies.

First, businesses may inadvertently assist the PRC government in developing surveillance tools for use in abusive practices. While most attention in recent months has focused on the million-plus Uyghurs and members of other Muslim minority groups held in internment camps, we must also remember that millions more living in the region are effectively prisoners in what can best be described as a vast, open-air detention center. These individuals are under constant watch from ubiquitous cameras that use artificial intelligence-based facial and gait recognition technologies, while local authorities monitor internet activity and collect DNA samples. There is no escape and no due process. Big Brother is always watching. And what he sees determines who goes to the camps.

A second risk is relying on labor or goods sourced in or from Xinjiang from entities implicated in the forced labor of individuals in their supply chains. The Australian Strategic Policy Institute reported that 27 factories in nine Chinese provinces — collectively claiming to be part of supply chains of more than 80 global brands — have placed Uyghurs in "potentially abusive labor transfer programs" since 2017. In early May, reports show PRC was dramatically expanding this program far beyond its original limits. To reduce unwanted exposure, businesses can look for indicators of forced labor and other abuses from Chinese business partners including very few employees paying into social security, the hiring of workers through government recruiters, and connections to cotton manufacturing.

This introduces the third risk. Hard currency is the lifeblood of the CCP. It is not difficult to imagine how companies that do business in China may have unknowingly funded the CCP's authoritarian machine, entirely unbeknownst to their shareholders. Your boards at a minimum should disclose to your constituents the Chinese companies in which you invest and consider divesting from or exiting businesses that pose a risk of financing China's human rights violations. The repressive environment in Xinjiang presents unique challenges to conducting human rights due diligence. Businesses should consider the risks and determine if it is possible to mitigate them. Any U.S. business with potential supply chain links to Xinjiang should implement reasonable human rights due diligence in line with the UN Guiding Principles on Business and Human Rights guidance.

Earlier this year when talking about the China challenge, Secretary Pompeo told Silicon Valley tech executives that it is critical that American principles and values are not sacrificed for profits. This is advice worth remembering. Ask yourself: With whom am I dealing? And with whom are they dealing? What is a true risk-return calculus to doing business in Xinjiang, or China writ large? Am I educating my senior executives, my board, my employees, and most of all my shareholders and investors about the choices my company faces?

What is my moral obligation and perhaps even a fiduciary duty to: a) disclose investments or involvement in Chinese companies that may be complicit in human rights abuses and b) divest from or exit these businesses? Do human rights due diligence. Get the answers. Businesses can reaffirm corporate America's role as a powerful force for good around the world. Your companies can make a profound and enduring difference in this human rights tragedy.

Keith Krach is Under Secretary of State for Economic Growth, Energy and the Environment. Ken Cuccinelli is Acting Deputy Secretary of Homeland Security.

POLITICO

In August 2020, the US State Department asked American colleges and universities to divest their holdings of Chinese companies.

"The boards of your institution's endowment funds have a moral obligation, and perhaps even a fiduciary duty, to ensure that your institution has clean investments and clean endowment funds," Keith Krach, then undersecretary for economic growth, energy and the environment, wrote in a letter to the colleges.

“I’m old enough to know about the anti-apartheid movement in South Africa … [and] the divestment movement that got started at Berkeley and then spread through campuses,” Krach said. “I really wanted [my divestment proposal] to be kind of a catalyst to create a movement … there’s nothing that can be more effective and have more passion and ground forces than students.”

That groundswell of student action has coalesced in the nonprofit Athenai Institute, dedicated to prodding U.S. universities into divesting their endowments of any Chinese Communist Party-linked investments. Athenai’s strategy is to use university divestment of problematic Chinese investments as a roadmap for the private sector to purge its balance sheets of similar holdings.

“University endowments … [are] a substantial pool of money to create momentum for [wider] divestment,” said Athenai’s president, John Metz. “As the pool of university endowment funds and other institutional investor funds which can’t be invested in certain Chinese companies [grows] … it becomes harder for Wall Street to look away.”The Yale Daily News, the Yale University student newspaper, reported on Wednesday that the committee would investigate whether the companies were suitable for such investment.

ENDNOTES

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> As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time).
> We also recognise that applying these Principles may better align investors with broader objectives of society. Therefore, where consistent with our fiduciary responsibilities, we commit to the following:
> **Principle 1:** We will incorporate ESG issues into investment analysis and decision-making processes.
> **Principle 2**: We will be active owners and incorporate ESG issues into our ownership policies and practices.
> **Principle 3**: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
> **Principle 4:** We will promote acceptance and implementation of the Principles within the investment industry.
> **Principle 5**: We will work together to enhance our effectiveness in implementing the Principles.
> **Principle 6:** We will each report on our activities and progress towards implementing the Principles.
> The Principles for Responsible Investment were developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The process was convened by the United Nations Secretary-General.

> In signing the Principles, we as investors publicly commit to adopt and implement them, where consistent with our fiduciary responsibilities. We also commit to evaluate the effectiveness and improve the content of the Principles over time. We believe this will improve our ability to meet commitments to beneficiaries as well as better align our investment activities with the broader interests of society.
> We encourage other investors to adopt the Principles."

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