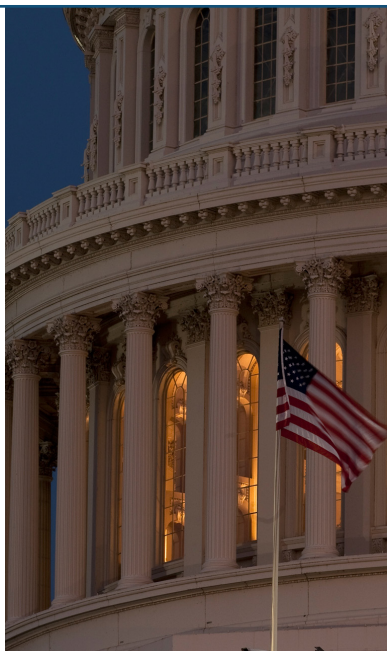




BRIEFING SERIES
March 2015



FOUR PRIORITIES IN THE ASIA-PACIFIC FOR THE 114TH CONGRESS

The 114th Congress has the opportunity to drastically restructure and modernize the U.S. rebalance to Asia over the next two years. Since the rebalance began in 2011, successfully navigating U.S. interests in the Asia-Pacific while upholding human rights and political self-determination has proved exceedingly challenging for U.S. policymakers. Add to this difficult equation the need to strengthen U.S.-China relations and simultaneously update U.S. alliances across the region, and Congress has had its work cut out for itself.

NBR's briefing series "Four Priorities in the Asia-Pacific for the 114th Congress" provides specific guidance on the most fundamental challenges facing Congress in 2015 and 2016: an outdated U.S. security strategy, serious and often overlooked human rights crises, the complicated U.S.-China relationship, and changing economic and trade realities affecting U.S. prosperity. The series' authors, Van Jackson, Frank Jannuzi, Charles Freeman III, and Derek Scissors, offer concise background information on these challenges alongside pragmatic recommendations for lawmakers and their staff.

On the security front, Congress must immediately address more frequent cyberattacks, declining U.S. technological superiority in the Asia-Pacific, and North Korea's nuclear program. Congress should strengthen the military capacity of U.S. allies and craft a cogent security cooperation policy. These efforts should avoid exacerbating a U.S.-China strategic rivalry. Instead, U.S. officials should take care to build trust with their Chinese counterparts while inviting China into an international order grounded in rules, territorial respect, and transparency.

Congress must also grapple with discouraging barriers to foreign investment in India despite Prime Minister Narendra Modi's recent overtures to the international community. In China, slowing economic growth, ongoing industrial espionage, and the marginalization of the U.S. business community and international financial institutions may be stalling trade and investment relations. Given these economic obstacles in Asia's most populous countries, Congress has the opportunity to prioritize strengthening trade relationships with Japan and Southeast Asia through the Trans-Pacific Partnership.

Finally, Congress must ensure that all U.S. economic and security initiatives respect human rights and civil society in the Asia-Pacific. Ethnic cleansing in Myanmar, widespread political repression across the region, and the 70th anniversary of the end of World War II necessitate strong congressional pressure for international reconciliation and the protection of ethnic rights and basic civil liberties.

Rachel Wagley, ed.
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Left to right above: Photo by Architect of the Capitol; Photo by Benson Kua; Photo by Wikimedia user Yumfruitbat



BRIEFING SERIES
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RESHAPING THE REBALANCE: HOW THE 114TH CONGRESS CAN ADVANCE U.S. ASIA STRATEGY

By Van Jackson

EXECUTIVE SUMMARY

This brief addresses three strategic challenges facing U.S. policy in the Asia-Pacific and identifies specific actions the 114th Congress can take to address them.

MAIN ARGUMENT

The 114th Congress has a crucial role to play in securing U.S. interests in the Asia-Pacific. U.S. influence and the preservation of a stable, liberal order in Asia will hinge on how Washington addresses three major long-term challenges: (1) maintaining military-technical superiority and countering asymmetric military strategies, (2) curbing North Korea's pursuit of a nuclear triad, and (3) adapting the network of U.S. allies and security partnerships in the region to meet the needs of the emerging strategic environment. Although the Obama administration acknowledges these problems, its strategy of "rebalancing" to Asia is not addressing them adequately. Congress thus should intervene in limited and very specific ways to shape U.S. Asia policy in a direction that better supports the country's long-term interests.

RECOMMENDATIONS FOR THE 114TH CONGRESS

- The U.S. military's technological advantages over potential adversaries is eroding in Asia, especially in relation to China. Surmounting this trend will require devoting a greater portion of the defense budget to advanced R&D and rethinking the Pentagon's current capability investment portfolio.
- As North Korea moves closer to developing a secure, retaliatory nuclear strike capability, the U.S. will need to start adapting contingency plans to consider the potential for limited war scenarios. It will also need to find ways to diversify North Korea's military relations away from sole reliance on China.
- To keep the U.S. alliance and security partnership network relevant as the region's strategic environment evolves, the U.S. will need to use its resources to build the military capacity of regional partners to maintain situational awareness, defend local borders, and deny adversaries' power-projection capabilities.

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During the Obama administration, U.S. policy toward Asia has been generally stable. Despite heightened tension on the Korean Peninsula and confrontations in the South and East China Seas, the Asia-Pacific has managed to avoid war, U.S. alliances have strengthened, and the United States has built new security partnerships. Moreover, the administration's strategy of "rebalancing" to Asia is widely popular across the region.¹

But this sheen of relative success obscures troubling undercurrents in Asia that threaten to upend the very goal of the U.S. rebalance: preserving not only U.S. influence in the region but a stable order with liberal features.² To date, the U.S. rebalance has avoided facing down the most difficult and dangerous challenges threatening U.S. interests:

- the loss of the U.S. military-technical edge relative to China and the rise of other Asian powers
- the consolidation and expansion of North Korea's nuclear program toward achieving a retaliatory strike capability
- the need to modernize the U.S. alliance and security partnership network to keep pace with a changing environment

Although there are many potential threats and risks across the region, some are better attended to than others, and some are of more obvious consequence. The three challenges identified here are being insufficiently addressed by the Obama administration and could disrupt the U.S. strategic position in Asia. The consequences of these challenges are unlikely to materialize in the near term, but decisions made during the 114th Congress and the defense budget cycles for fiscal years 2016 and 2017 will have a major impact on whether future U.S. administrations face a deteriorating security environment in Asia that limits the options available to policymakers. The following analysis offers brief

background on each of the three challenges and describes specific actions that Congress can take to reshape the U.S. rebalance in a way that better addresses them.

MAINTAINING MILITARY-TECHNICAL SUPERIORITY

Background

The U.S. military is losing its technical edge relative to rising middle and great powers in Asia. The ability to project power anywhere in the Asia-Pacific underwrites U.S. extended deterrence commitments to allies, deters adventurism by would-be aggressors, and consequently helps preserve stability in the world's most prosperous and populous region. U.S. power projection has always depended on what is sometimes described as "military-technical superiority," which refers to military technologies and doctrine that offer advantages over a competitor's military technologies and doctrine in the event of hostilities. Over the past decade, two factors have combined to erode long-standing U.S. military-technical superiority: (1) the rapid spread of advanced military technologies and (2) asymmetric competitor strategies to deny the U.S. military the ability to conduct operations in parts of Asia.³

The leading challenger to U.S. military-technical capability is China, which has developed a well-documented anti-access/area denial (A2/AD) operational concept of mating advanced and relatively inexpensive technologies with a military doctrine that uses those technologies to pin down U.S. forces already resident within Asia while simultaneously preventing the United States from being able to flow additional reinforcements from outside the region.⁴ This is a problem for the United States because a military strategy that employs A2/AD ostensibly benefits China politically: if successful, it would allow China to keep the United States at bay while coercing its regional allies and partners.

¹ Michael J. Green and Nicholas Szechenyi, *Power and Order in Asia: A Survey of Regional Expectations* (Washington, D.C.: Center for Strategic and International Studies [CSIS], 2014).

² Tom Donilon, "The United States and the Asia-Pacific in 2013" (remarks delivered at the Asia Society, New York, March 11, 2013).

³ Amy Chang, Ben FitzGerald, and Van Jackson, *Shades of Gray: Technology, Strategic Competition, and Stability in Maritime Asia* (Washington, D.C.: Center for a New American Security, forthcoming).

⁴ Evan Braden Montgomery, "Contested Primacy in the Western Pacific: China's Rise and the Future of U.S. Power Projection," *International Security* 38, no. 4 (2014): 115–59.

Both former secretary of defense Chuck Hagel and current deputy secretary Robert Work have called for the Department of Defense to develop a strategy that will offset the longer-term and growing vulnerabilities facing the United States as advanced technologies become cheaper and more accessible to actors with bad intentions.⁵ Yet a solution has so far proved elusive.

Priorities for Congress

The recommendations below do not assure U.S. military superiority in the long term; only continued investment, adaptation, and innovation can improve that prospect. They do, however, offer the best near-term chance to improve the United States' military position relative to would-be challengers relying on asymmetric A2/AD strategies.

Require the U.S. Air Force to implement the Joint Aerial Layer Network (JALN). U.S. power projection requires resilient communications, especially through satellites that are vulnerable to attack. JALN would create a layer of aerial communications relays to improve communications resilience across all airborne platforms, directly countering one of the pillars of Chinese military strategy.⁶ At present, operationalizing JALN requires creating two new programs of record: the "5th to 4th" program, which ensures fifth-generation and fourth-generation fighters can communicate with one another, and the Battlefield Airborne Communications Node, which ensures intact command and control between aircraft and ground stations.⁷

Expand investments in robotics R&D. Numerous studies have identified the operational benefits of unmanned systems,⁸ yet U.S. military investment in this area is declining at the same time that such technology is spreading quickly across the Asia-Pacific.

Even North Korea, for instance, now operates a drone fleet.⁹ Accelerating R&D in robotics may open new possibilities in operational approaches and military doctrine capable of countering A2/AD.

Fast-track railgun as a U.S. Navy program of record. Railgun is a low-cost, electric-powered weapon that fires target-destroying projectiles at a high velocity without the traditional need for explosive charges or chemical reactions. This weapon enables the United States to fire many more rounds of ammunition more quickly and at lower cost relative to munitions with comparable destructive power.¹⁰ Such technology potentially rectifies a major shortfall identified in simulated conflicts between the United States and China where U.S. forces face regular challenges in maintaining functional weapons inventory as a conflict proceeds.¹¹

Task the secretary of the U.S. Navy with reporting to Congress on the role of aircraft carriers in an A2/AD environment. Aircraft carriers remain the U.S. Navy's center of gravity, yet recent reports suggest that the limited U.S. inventory of aircraft carriers is highly vulnerable in A2/AD environments because adversary anti-ship missiles are far less expensive than the ongoing operations and maintenance costs of aircraft carriers.¹² The U.S. Navy needs to address how it envisions adapting aircraft carriers to engage adversaries armed with missile technology that exceeds the range of the longest-range carrier-based fighters (currently the F-35).

Task the Office of the Secretary of Defense with reporting to Congress on how the Defense Department will offset China's A2/AD concept. Every presidential administration during the Cold War benefited from the military-technical edge that the United States retained over the Soviet Union because this advantage

⁵ Chuck Hagel, "Defense Innovation Days" (keynote address at the Southeastern New England Defense Industry Alliance, Newport, September 3, 2014); and Robert Work, "A Technological Edge over Our Adversaries" (remarks at the National Defense University, Washington, D.C., August 5, 2014).

⁶ Anthony H. Cordesman, *Chinese Strategy and Military Power in 2014: Chinese, Japanese, Korean, Taiwanese, and U.S. Perspectives* (Washington, D.C.: CSIS, 2014).

⁷ George I. Seffers, "Joint Aerial Layer Network Vision Moves toward Reality," *Signal*, June 1, 2013, <http://www.afcea.org/content/?q=node/11123>.

⁸ Paul Scharre, "Robotics on the Battlefield—Part I: Range, Persistence, and Daring," Center for a New American Security, May 2014.

⁹ Van Jackson, "Kim Jong Un's Tin Can Air Force," *Foreign Policy*, November 1, 2014.

¹⁰ Jon Harper, "Navy Says 'Star Wars' Railgun Is Almost Ready for Primetime," *Stars and Stripes*, April 9, 2014, <http://www.stripes.com/news/navy-says-star-wars-railgun-is-almost-ready-for-prime-time-1.277018>.

¹¹ David Axe, "Think Tank: China Beats U.S. in Simulated Taiwan Air War," *Wired*, August 5, 2009, <http://www.wired.com/2009/08/think-tank-china-beats-us-in-simulated-taiwan-air-war>.

¹² See, for example, Henry J. Hendrix, "At What Cost a Carrier?" Center for a New American Security, *Disruptive Defense Papers*, March 2013.

expanded the range of policy options available to Washington at any given time. China's capabilities and doctrine directly challenge U.S. military-technical superiority, which will severely constrain the policy options available to future U.S. presidents in the event that they face a militarily aggressive adversary with an A2/AD strategy. China's A2/AD concept cannot be overcome by simply spending more on existing weapons platforms. The Department of Defense needs a vision for how it can offset the most advanced military technologies accessible to potential adversaries, and the requirement of reporting on this challenge to Congress will hold the department accountable for doing so.

DISRUPTING AND DEFENDING AGAINST NORTH KOREA'S NUCLEAR PROGRAM

Background

U.S. policy toward North Korea is in many respects a bipartisan failure that has worsened with time. For the past generation, the United States has pursued two overarching goals relating to North Korea: (1) preventing North Korea from becoming a nuclear state and (2) preventing the renewed outbreak of war on the Korean Peninsula.

The United States has acutely and visibly failed at the first goal: North Korea is not only now a *de facto* nuclear state, but the size of its arsenal is unknown, and Pyongyang is progressing toward its own version of a secure retaliatory nuclear strike capability.¹³ The second goal is increasingly at risk of failure because the first goal has failed. North Korea may now believe it has a free hand to engage in various forms of coercive violence and military adventurism precisely because it has a nuclear deterrent against major war.¹⁴ In 2010, North Korea aimed these acts of coercive violence directly at South Korea, triggering multiple military

crises in which U.S. and South Korean preferences for retaliation and conflict escalation vastly diverged. For decades, U.S. policymakers have grudgingly accepted small-scale North Korean violence as an alternative preferable to risking a larger conflagration.¹⁵ But as North Korea moves closer to a retaliatory nuclear strike capability, it also moves closer to being able to set the terms of conflict with South Korea. If South Korea deems the prospect of continuous small wars or repeated acts of coercion unacceptable—as it did in 2010—the United States will lose the ability to prevent war on the Korean Peninsula.

North Korea's cyber capability has received much attention after the country proved in 2014 that it could attack U.S.-based corporations, but this capability is only lethal in conjunction with other weapons systems. More disconcerting is North Korea's drone fleet, which has demonstrated the ability to repeatedly penetrate South Korean airspace undetected and, with modest payload improvements, could be configured as weapons delivery systems.¹⁶ Still more dangerous are developments in North Korea's ballistic missile program. It has been reported that North Korea's short-range Rodong ballistic missiles, once thought only useful for striking bases in Japan because of their range, have now been tested at new launch angles that allow North Korea to fire against South Korean targets as well.¹⁷ North Korea has also developed the KN-08, a mobile ballistic missile capability, which produces a unique problem for the United States: if North Korean missile launchers can fire, move, and then quickly fire again from a different location, U.S. intelligence assets may find it difficult to physically locate and target the missiles, leaving U.S. bases—and potentially U.S. territory—vulnerable.¹⁸ In addition to North Korea's fixed missile sites, drone fleet, and road-mobile missile

¹³ In the nuclear deterrence literature, a secure retaliatory strike capability implies that a nuclear power could not be fully disarmed by a first strike, which enhances the deterrent effect of a nuclear arsenal because a first strike would invite nuclear retaliation. When two nuclear powers each have a retaliatory strike capability, the condition of mutually assured destruction obtains, rendering the prospect of nuclear war—in theory—extremely low.

¹⁴ Wyatt Olson, "U.S. 'Strategic Patience' Policy toward North Korea Not Working, Analyst Says," *Stars and Stripes*, November 10, 2014, <http://www.stripes.com/news/us-strategic-patience-policy-toward-north-korea-not-working-analysts-say-1.313414>.

¹⁵ Brad Glosserman and David Santoro, "The 'Lynchpin' Grapples with Frustration and Distrust: The Fourth U.S.-ROK Strategic Dialogue," Pacific Forum CSIS, Issues & Insights, February 2012.

¹⁶ Van Jackson, "Kim Jong Un's Tin Can Air Force."

¹⁷ "NK's March Missile Test Aimed at Evading Interceptor Systems: Sources," Yonhap, June 19, 2014.

¹⁸ John Barry, "The Defense Secretary's Exit Interview," *Daily Beast*, June 21, 2011, <http://www.thedailybeast.com/articles/2011/06/21/robert-gates-interview-his-lingering-concerns-about-u-s-supremacy-nuclear-proliferation-and-more.html>.

capability, there are some indications that the country may also be developing long-range sea-launched ballistic missiles.¹⁹

Priorities for Congress

The collection of capabilities described above puts North Korea on a trajectory to achieve a survivable nuclear force. If that happens, the United States will have few, if any, alternatives to either beginning a process of political reconciliation with North Korea as a nuclear state or preparing to fight repeatable limited wars against a nuclear-armed adversary. In the meantime, the alarming trajectory of North Korean capabilities and the small prospect of significantly improved relations demand certain responses from the United States as a matter of prudence.

Task U.S. Pacific Command and U.S. Forces Korea with generating contingency plans for limited war. The next generation of Korean contingency plans should focus on limited war. For decades the U.S.-ROK alliance has been prepared to “fight tonight,” by which is usually meant readiness to defeat North Korea in a large-scale war. But manning, training, and equipping a military for limited war requires different plans, timelines, and resources than a total war. While the United States has been more than prepared for total war with North Korea, and increasingly prepared for a total collapse scenario as well,²⁰ there are few indications that it is prepared for limited war—that is, a short North Korean military campaign and partial seizure of territory, with limited aims.

Grant South Korea an exemption for long-range precision-strike munitions. As North Korea improves the ability to launch mobile missiles and penetrate South Korean airspace with self-described “kamikaze drones,” South Korean demand for cruise missiles and unmanned aerial vehicles will only increase.²¹

The United States—and Congress in particular—has historically blocked and discouraged South Korea from acquiring, developing, or exporting missiles with a range to payload ratio that would qualify as Category I systems under the Missile Technology Control Regime (300 kilometers to 500 kilograms).²² Given the acute and growing threat that North Korea poses to the South, Congress should consider authorizing a blanket exception for any South Korean requests for U.S. cruise missiles or unmanned aerial vehicles through the Foreign Military Sales or Foreign Military Financing program.

Press the White House to open a bilateral military dialogue channel with North Korea. For much of the past 60 years, the United States has sought to outsource management of North Korea to China. This strategy emerged as early as the Lyndon Johnson administration,²³ but it became central to U.S. North Korea policy during the Bill Clinton and George W. Bush administrations. The Obama administration has continued this approach of trying to shape North Korea by persuading and pressuring China.²⁴ With some modest exceptions, however, this policy of relying on China has failed.²⁵ Without any sanguinity about building a genuine friendship with a post-totalitarian nuclear state, the United States might offer North Korea the opportunity of military-to-military diplomatic engagement to diversify the Korean People’s Army’s relations away from only China’s People’s Liberation Army.²⁶ The status quo alternative of continuing to outsource North Korea policy to China empowers Beijing without delivering much for U.S. interests.

¹⁹ Julian Ryall, “North Korea Launches Soviet-Era Style Ballistic Missile Submarine,” *Telegraph*, November 3, 2014, <http://www.telegraph.co.uk/news/worldnews/asia/northkorea/11204667/North-Korea-launches-Soviet-era-style-ballistic-missile-submarine.html>.

²⁰ For a discussion, see Peter Hayes, “Thinking about the Thinkable: DPRK Collapse Scenarios Redux,” Nautilus Institute, NAPSNet Policy Forum, September 24, 2013, <http://nautilus.org/napsnet/napsnet-policy-forum/thinking-about-the-thinkable-dprk-collapse-scenarios-redux>.

²¹ J. Michael Cole, “Coming to a Warzone Near You: Kamikaze Drones,” *Diplomat*, October 15, 2012, <http://thediplomat.com/2012/10/kamikaze-drones-a-poor-mans-cruise-missile>.

²² Jung Ha-Won, “U.S. Oks Longer-Range Missiles for South Korea,” *Defense News*, October 7, 2012, <http://www.defensenews.com/article/20121007/DEFREG03/310070006/U-S-OKs-Longer-Range-Missiles-South-Korea>.

²³ Van Jackson, *Rival Reputations: Coercion and Credibility in North Korea-U.S. Relations* (Cambridge: Cambridge University Press, forthcoming).

²⁴ Jeffrey Bader, *Obama and China’s Rise: An Insider’s Account of U.S. Asia Strategy* (Washington, D.C.: Brookings Institution Press, 2012).

²⁵ For a discussion of a rare instance of success, see Christopher P. Twomey, “Explaining Chinese Foreign Policy toward North Korea: Navigating between the Scylla and Charybdis of Proliferation and Instability,” *Journal of Contemporary China* 17, no. 56 (2008): 401–23.

²⁶ Van Jackson, “Does Kim Really Run North Korea? Find Out with Military Diplomacy,” *Diplomat*, October 15, 2014, <http://thediplomat.com/2014/10/does-kim-really-run-north-korea-find-out-with-military-diplomacy>.

MODERNIZING THE NETWORK OF U.S. ALLIES AND PARTNERS

Background

The United States must be responsive to the evolving needs of its Asian allies and security partners in order to maintain regional influence, as well as continuing access to the bases and ports necessary to project military power should it need to do so. Two regional trends in particular offer insight about these needs: (1) strategic hedging and (2) military modernization. The hedging trend reveals that Asian states are uncertain about the future—U.S. staying power in the region, whether China's rise will be peaceful, and the intentions of neighbors.²⁷ The trend of military modernization is a symptom of this same angst about the future.²⁸ Irrespective of U.S. security commitments, Asian states are diversifying their security and economic relationships at the same time that they have begun upgrading their militaries with modern weapons systems ranging from ballistic missile defense and anti-ship cruise missiles to unmanned aerial vehicles and aircraft carriers.²⁹

Priorities for Congress

The United States should be anchoring its approach to Asian allies and partners in these trends. This means using military engagements and sales through the Foreign Military Sales or Foreign Military Financing programs to empower smaller states in the region to better defend themselves. It means lending the weight of U.S. moral authority to legitimating international law and Asia's many regional institutions, both of which hold the possibility of nonviolent resolution of the region's many territorial disputes. And it means helping like-minded states eliminate the military operational fog that obscures the distinction between

aggressors and defenders when ships and aircraft clash in disputed maritime spaces.

Require the Office of the Secretary of Defense and the State Department's Bureau of Political-Military Affairs to develop a security cooperation strategy that builds ally and partner local A2/AD capacity. Due to a confluence of competing authorities, priorities, and resource allocations within the executive branch, the United States has no coherent security cooperation policy. As a result, U.S. military sales, foreign education and training, and other forms of international assistance do not add up to any logically consistent policy outcome. The region-wide military modernization already taking place in Asia suggests that organic demand for enhanced military capacity is high. In the region's strategic environment, the military strategy that is most cost-effective and least antagonistic is a localized A2/AD strategy, akin to what China aims to be capable of doing against the United States. By building ally and partner coastal defenses through aerial and maritime surveillance, increased coast guard capacity, improved air defenses, and undersea mines, the United States would enable smaller powers in the region to prevent would-be aggressors from invading or occupying disputed territory. This could help alleviate some U.S. defense burden in the region while also providing an orienting focus for U.S. security cooperation resources.

Ratify the United Nations Convention on the Law of the Sea (UNCLOS). Part of U.S. strategy in Asia rests on legitimating peaceful means of dispute resolution. UNCLOS provides a legal and normative foundation for adjudicating disputes without the use of military force as well as potentially greater legitimacy if the United States needs to resort to military force in defense of the legal protections UNCLOS provides. The specific terms of the convention serve U.S. interests by protecting U.S.-flagged ships of all types when traversing the coastal waters of other nations; this is why both the George W. Bush and Obama administrations have advocated ratification. Even separate from the language that UNCLOS employs to offer legal protections for U.S. interests, failing

²⁷ Van Jackson, "The Rise and Persistence of Strategic Hedging across Asia: A System-Level Analysis," in *Strategic Asia 2014–15: U.S. Alliances and Partnerships at the Center of Global Power*, ed. Ashley J. Tellis, Abraham M. Denmark, and Greg Chaffin (Seattle: National Bureau of Asian Research, 2014), 316–42.

²⁸ Van Jackson, "The Rise and Persistence of Strategic Hedging across Asia"; and Chang, FitzGerald, and Jackson, *Shades of Gray*.

²⁹ Chang, FitzGerald, and Jackson, *Shades of Gray*.

to ratify the agreement undermines the U.S. moral argument in defense of a rules-based regional order and the adjudication of territorial claims on the basis of law rather than force of arms.

Require the Office of the Secretary of Defense and the Joint Chiefs of Staff to identify the resources and authorities needed to aid Asian allies and partners in building a multilateral common operating picture in the South and East China Seas. Despite low degrees of trust and high degrees of uncertainty among Asian states, most have proved willing to participate in consensual (that is, nonbinding) forms of cooperation like military exercises and voluntary regimes. The region needs a way to render transparent high-friction areas in the East and South China Seas, which both have hosted multiple military confrontations over the

past several years. A common operating picture—that is, an information-sharing regime that gives its users maritime domain awareness—provides one way of doing so. Constructing such a network requires organizational and limited technical cooperation among like-minded Asian states, but it does not require the degree of trust or vulnerability inherent in formal alliance treaties or other legally binding forms of cooperation. Given the U.S. military's advantage in intelligence, surveillance, and reconnaissance, the United States should perform a bridging and brokering role in the region to facilitate the construction of a common operating picture network. ~



BRIEFING SERIES
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THE 114TH CONGRESS AND HUMAN RIGHTS IN EAST ASIA

By Frank Jannuzi



EXECUTIVE SUMMARY

This essay addresses human rights issues in East Asia and identifies actions that the 114th Congress can take to address them.

MAIN ARGUMENT

Human rights is an important consideration for U.S. foreign policy in East Asia. First and foremost, the 114th Congress must address issues in the Democratic People's Republic of Korea (DPRK), with its egregious violations, and in the People's Republic of China, a country under special scrutiny with two congressional bodies devoted to examining its record on human rights and rule of law. Elsewhere in the region, the complex "history questions" bedeviling Japan's relations with neighboring China and Republic of Korea (ROK) will test Congress's diplomatic skills, while stalled reforms in Myanmar, a coup in Thailand, and the twentieth anniversary of the normalization of relations with Vietnam will further animate debate on democracy and human rights.

RECOMMENDATIONS FOR THE 114TH CONGRESS

- Congress should both pressure and engage the DPRK on human rights issues. On the engagement side, Congress should consider steps designed to improve the lives of the North Korean people, including backing the ROK's Northeast Asia Peace and Cooperation Initiative, and support multilateral engagement that aims to expose North Koreans to the outside world.
- As the world marks the 70th anniversary of the end of World War II, Congress should encourage Prime Minister Shinzo Abe to make efforts to heal the diplomatic rift that has opened between Japan and its neighbors over Japan's actions during World War II. Otherwise, human rights wounds from the past could imperil important steps forward for the U.S.-Japan alliance, including the Trans-Pacific Partnership and finalization of new alliance defense guidelines.
- Congress should carefully address issues of autonomy and human rights in Hong Kong and Taiwan, paying heed to the 1979 Taiwan Relation Act and the 1992 Hong Kong Policy Act.
- Congress should assess the trajectory of human rights in Myanmar, Thailand, and Vietnam and ensure that diplomatic and economic engagement supports further reforms.

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The 114th Congress will confront a raft of human rights issues in East Asia, from the Democratic People's Republic of Korea (DPRK), with its egregious violations, to the People's Republic of China (PRC), a country under special scrutiny with two congressional bodies devoted to examining its record on human rights and rule of law. Elsewhere in the region, the complex "history questions" bedeviling Japan's relations with neighboring China and Republic of Korea (ROK) will test Congress's diplomatic skills, while stalled reforms in Myanmar, a coup in Thailand, and the twentieth anniversary of the normalization of relations with Vietnam will further animate debate. This brief begins with an examination of the role of human rights in U.S. foreign policy before touching on six of the more compelling issues in East Asia likely to draw congressional attention: human rights in North Korea, Japan's World War II history, human rights and rule of law in China, Myanmar's political reforms, the military coup in Thailand, and the anniversary of the normalization of relations with Vietnam.

HUMAN RIGHTS AND FOREIGN POLICY

The U.S. State Department proclaims on its website, "The protection of fundamental human rights was a foundation stone in the establishment of the United States over 200 years ago. Since then, a central goal of U.S. foreign policy has been the promotion of respect for human rights, as embodied in the Universal Declaration of Human Rights."¹ This statement, however, is dubious at best. Advancing human rights has rarely been a "central goal" of U.S. foreign policy. It was not until the adoption of the Helsinki Final Act in 1975 that the United States and the Soviet Union embraced the notion that human rights issues were a legitimate subject of international relations.² At the

State Department, the Bureau of Democracy, Human Rights, and Labor and its annual human rights reports only exist because Congress demanded them in 1976. As Secretary of State Hillary Clinton candidly noted on the bureau's 35th anniversary, "It did have a rocky childhood, plenty of critics at post and in this building who thought you had no business pestering anybody about human rights. That would only get in the way of real diplomacy. Even getting an office on the seventh floor caused howls of protest."³

The United States formally integrated human rights into its foreign policy in the mid-1970s. Jimmy Carter was the first president to embrace advancing human rights as a central tenet of his foreign policy.⁴ He defined human rights broadly, drawing on the 1948 Universal Declaration of Human Rights and its associated binding covenants enumerating civil, political, economic, social, and cultural rights for inspiration. In this, he joined a chorus of domestic and international NGOs.⁵ President Carter acknowledged, however, that he might not always be able to put top priority on human rights: "We live in a world that is imperfect and which will always be imperfect—a world that is complex and confused and which will always be complex and confused."⁶

As the 114th Congress gets organized, it will discover, like those congresses before it, that it has only limited tools with which to advance human rights. These tools include moral suasion (often in the form of hearings, letters, and resolutions shining a spotlight on injustice); foreign assistance (for good governance, rule of law, education, and economic development); trade agreements (which increasingly include provisions mandating respect for labor rights and environmental protection); restrictions on assistance (to include especially limits on military training and arms sales

³ Hillary Rodham Clinton, "Celebrating the 35th Anniversary of the Bureau of Democracy, Human Rights and Labor" (remarks at the George C. Marshall Center, Washington, D.C., June 8, 2012), <http://www.state.gov/secretary/20092013clinton/rm/2012/06/191987.htm>.

⁴ Jimmy Carter, "University of Notre Dame—Address at Commencement Exercises at the University," American Presidency Project, May 22, 1977, <http://www.presidency.ucsb.edu/ws/?pid=7552>.

⁵ Amnesty International was awarded the Nobel Peace Prize in 1977 for its global human rights advocacy.

⁶ Carter, "University of Notre Dame."

¹ "Human Rights," U.S. Department of State, <http://www.state.gov/j/drl/hr>.

² The text of the Helsinki Final Act is available from Humanrights.ch, <http://www.humanrights.ch/en/standards/europe/osce/helsinki>.

in accordance with the Leahy Law and other legal provisions); and sanctions. The methods chosen will vary depending on the circumstances.

HUMAN RIGHTS AND EAST ASIA POLICY

The intersection of human rights and U.S. foreign policy in East Asia has long been imperfect. With his eyes fixed on detente with the Soviet Union and other geopolitical issues, Henry Kissinger did not utter the phrase “human rights” when negotiating the opening to China. Washington also maintained close relations with authoritarian governments in the ROK, Taiwan, and Indonesia during the Cold War, avoiding criticism when they infringed on basic rights, suppressed democratic freedoms, or, in the case of Indonesia, invaded and occupied a neighbor.⁷ In the post-Tiananmen Square, post-Cold War era, the United States has attached greater importance to advancing human rights, but Washington’s approach is multifaceted, animated only in part by a desire to advance democracy, good governance, and respect for human rights.

While it is always possible that new priorities will emerge—who predicted that East Timor would erupt in violence leading to UN intervention in 1999?—the issues discussed below will likely top the human rights agenda in East Asia for the 114th Congress.

North Korea: “Off the Scale”

For more than twenty years, the international community has struggled to rein in the nuclear ambitions of the DPRK and largely turned a blind eye to the suffering of the North Korean people. Congress elevated the humanitarian issues in 2004 with the passage of the North Korean Human Rights Act, but attention remained focused on denuclearization. However, with the publication in 2014 of the report

of the United Nations’ Commission of Inquiry on Human Rights in North Korea, and with North Korea allegedly directing a cyberattack against Sony Pictures to protest the release of a movie depicting a CIA-directed assassination plot against Kim Jong-un, human rights issues are now front and center.

The UN report documented a litany of abuses by North Korea. As Amnesty International commented, “the gravity and nature of human rights violations are off the scale.”⁸ The DPRK wasted no time denouncing the report and the distinguished Australian judge who led the inquiry, saying his mission was “to manipulate ‘evidence’ on the orders of Washington, lie about (North) Korea and oppose the republic under an international alliance that is controlled by the United States.”⁹ The DPRK’s responses to the UN report and Sony hacking charges demonstrate that Pyongyang is sensitive about its international reputation. As Secretary of State John Kerry said at the UN, “On some level, North Korea’s leaders do understand that their behavior brings shame on their country in the eyes of the world.”¹⁰

Congress now has a chance to be heard. A combination of pressure and engagement might have some effect. On the pressure side of the equation, Congress will consider new sanctions, including possible restrictions on dollar transactions modeled on the financial sanctions against Iran. However, given the weak implementation of existing sanctions—the North somehow manages to import not only cognac but also the sensitive dual-use components it needs to enrich uranium and build ballistic missiles—it is not clear how effective

⁷ William Burr and Michael L. Evans, “Ford and Kissinger Gave Green Light to Indonesia’s Invasion of East Timor, 1975: New Documents Detail Conversations with Suharto,” National Security Archive, George Washington University, December 6, 2001, <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB62>.

⁸ “North Korea: UN Security Council Must Act on Crimes against Humanity,” Amnesty International, February 17, 2014, <https://www.amnesty.org/en/articles/news/2014/02/north-korea-un-security-council-must-act-crimes-against-humanity/>.

⁹ James Pearson and Ju-min Park, “Fall 2014 Annual Report on Human Rights and Development of Law in China,” Congressional-Executive Commissions on China, Fall 2014, http://www.cecc.gov/sites/chinacommission.house.gov/files/documents/AR14Exec%20Summary_final.pdf.

¹⁰ John Kerry (remarks at an event on human rights in the DPRK, New York, September 23, 2014), <http://www.state.gov/secretary/remarks/2014/09/232014.htm>.

new sanctions would prove, especially if China fails to cooperate.

On the engagement side, Congress may consider the following steps designed to improve the lives of the North Korean people:

- Pressing China to cease the practice of forcibly returning DPRK refugees to North Korea
- Backing the ROK's Northeast Asia Peace and Cooperation Initiative, a process modeled on the Helsinki Final Act designed to promote security, economic ties, and human rights
- Providing modest, carefully monitored food aid or medical assistance, with an emphasis on reaching some of the estimated 120,000 men, women, and children incarcerated in North Korean prisons
- Resuming joint U.S.-DPRK recovery operations for the remains of U.S. servicemen left behind at the end of the Korean War
- Supporting broadcasting, Internet access, cell-phone coverage, people-to-people visits, and educational exchanges (given that the DPRK's efforts to seal its borders suggest that information may be Pyongyang's Achilles' heel)

Ultimately, multilateral engagement—the subject of congressional Helsinki Commission hearings in 2013—may offer the best hope of creating an environment conducive to peace and security and respect for human rights in North Korea. A generation of North Koreans who have more contact with the outside world and a deeper understanding of the failure of their own government to deliver justice and economic development might convince their leaders to change course.

Japan and History—Old Wounds Reopened

2015 marks the 70th anniversary of the end of World War II and the commencement of an era of peace between Japan and its neighbors. The year also marks the 50th anniversary of normalization of relations between Japan and the ROK, two U.S. allies who have much in common, including a commitment to democratic values, market economics, and human rights. But a long-simmering dispute

over Japan's conduct during the war has strained relations between Tokyo and Seoul. The core issue is the forced recruitment, at the instigation of Japanese authorities, of sex slaves, sometimes referred to as “comfort women,” to serve in brothels frequented by the Japanese military. The tiff has spilled over onto U.S. soil, where both the Japanese and ROK governments and civil society groups are debating everything from the content of high school history textbooks to the names of geographic features on maps. Japanese prime minister Shinzo Abe's controversial visits to the Yasukuni Shrine and his efforts to revise the interpretation of Japan's constitution to allow collective self-defense have brought fresh scrutiny from neighbors of his government's stance on Japan's wartime record.¹¹

Congress waded into the “history question” in 2007, when the House of Representatives unanimously approved HR 121 urging Japan to “formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Force's coercion of young women into sexual slavery.”¹² The Japanese government in 1993 acknowledged that women were coerced into sexual service against their will, and that the “Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women.”¹³ But Japan's neighbors have interpreted subsequent actions by Tokyo, including the Abe administration's decision to review the factual basis for the 1993 Kono Statement, as attempting to revise history and minimize Japan's culpability. Last fall, Prime Minister Abe created a special commission “to consider concrete measures to restore Japan's honor with regard to the comfort women issue,” further distancing his administration

¹¹ The Yasukuni Shrine is a private shrine that honors those who lost their lives in defense of Japan. In 1978 the shrine secretly added the names of fourteen Class-A war criminals, including General Hideki Tojo, to the list of souls honored, a move that drew bitter protest from China and South Korea in 1979 when this information became public. Emperor Hirohito protested by refusing to visit the shrine—a boycott continued by his son, Akihito, the current emperor.

¹² The text of HR 121 is available from GovTrack.us, <https://www.govtrack.us/congress/bills/110/hres121/text>.

¹³ “Statement by the Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of ‘Comfort women,’” Ministry of Foreign Affairs (Japan), August 4, 1993, <http://www.mofa.go.jp/policy/women/fund/state9308.html>.

from the more clear-cut acceptance of responsibility embodied in the Kono Statement.¹⁴

The debate over history may intensify as Congress moves to commemorate 70 years of partnership with Japan and as Tokyo and Washington finalize a historic Trans-Pacific Partnership and prepare to issue revised defense guidelines expanding the scope of the alliance. The expected visit to the United States by Prime Minister Abe in spring 2015 will likely be accompanied by heightened attention to this diplomatic rift between two of Washington's most important Asian allies. Without attempting to mediate between Japan and its neighbors, Congress should consider a resolution reminding all parties of the accomplishments of the past 70 years and stressing the importance of deepening cooperation and commitment to shared values, particularly on human rights.

China: Of Golden Geese, Canaries, and Black Swans

No country in East Asia presents a more profound and complex human rights challenge than does the People's Republic of China (PRC). The past 25 years since the Tiananmen Square crisis have seen both progress and setbacks on the human rights front, with an expansion of some basic freedoms—travel, information, worship, and certain forms of speech—coupled with intense efforts to construct a “great fire wall” on the Internet and stifle speech that questions the legitimacy or authority of the Chinese Communist Party. The imprisonment of Nobel Peace Prize winner Liu Xiaobo for his online democracy manifesto (Charter 08) and the arrest of Ai Weiwei for “subversive” art are only two of the more dramatic examples of the Communist Party's campaign to silence its critics. The party has also jailed human rights lawyers and imposed visa and travel restrictions on foreign journalists in an effort to deter criticism.

In October 2014 the Congressional-Executive Commission on China issued its most recent report on the conditions of human rights and rule of law in the

PRC.¹⁵ Its conclusions were sobering, finding little if any improvement. The United States and China periodically convene a human rights dialogue, but in recent years these conclaves have degenerated into tit-for-tat exchanges and cries of hypocrisy. There is mounting frustration as human rights advocates inside and outside China grasp for ways to influence Beijing's behavior on issues ranging from religious freedom and genuine autonomy for Tibet to the formation of independent labor unions.

China's troubled human rights record has been brought into stark relief on the streets of Hong Kong—a city normally thought of as a bastion of civil liberties. Hong Kong is a unique experiment in democratic governance, rule of law, and market capitalism inside China—part goose that lays the golden eggs, part canary in the coal mine.¹⁶ Last fall, and again in early 2015, protesters demanding broader democratic participation in the selection of the city's chief executive occupied Hong Kong's central business district. At issue is the interpretation of Article 45 of Hong Kong's Basic Law, which states that “the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.” Beijing has dictated a “broadly representative nominating committee” that effectively guarantees its ability to exclude candidates it deems undesirable—hence the fierce reaction by some in Hong Kong who aspire to greater self-rule. How this tug of war is resolved will do much to reinforce or undermine global confidence in China's ability to navigate its way toward a more open, democratic system that respects international norms.

Congress seems poised to join the fray but may be wary of doing anything to lend credence to Beijing's claims that unrest in Hong Kong is the result of foreign provocateurs. Congress could revive the scrutiny of Hong Kong called for in the 1992 Hong Kong Policy

¹⁴ “The Comfort Women and Japan's War on Truth,” *New York Times*, November 11, 2014, <http://www.nytimes.com/2014/11/15/opinion/comfort-women-and-japans-war-on-truth.html>.

¹⁵ Pearson and Park, “Fall 2014 Annual Report on Human Rights and Development of Law in China.”

¹⁶ Jeffrey Wasserstrom, “Hong Kong as Golden Goose and Coal Mine Canary,” *Newsweek*, October 18, 2014, <http://www.newsweek.com/hong-kong-golden-goose-and-coal-mine-canary-278211>.

Act.¹⁷ The act stipulates that the human rights of the people of Hong Kong “are of great importance to the United States and are directly relevant to United States interests in Hong Kong.” If the president determines that Hong Kong “is not sufficiently autonomous,” he can issue an executive order suspending Hong Kong’s privileges, including special trading rights, access to technology, and visa-free travel. In other words, if China unduly infringes on Hong Kong’s autonomy, Washington reserves the right to garrote the goose.

As important as Hong Kong is to the future of U.S.-China relations, the main event probably lies seven hundred kilometers north and east. Taiwan’s leaders have been edging closer to Beijing for years, but the people of Taiwan have explicitly rejected the “one country, two systems” formula Beijing favors as the basis for unification. Recent events in Hong Kong have set back Beijing’s efforts to court Taipei, providing evidence that Beijing cannot be trusted to respect the rights that the people of Taiwan won in arduous struggle against their own authoritarian regime.

This matters for U.S.-China relations because a cross-strait conflict remains one of the few fuses that could ignite a war between China and the United States. It is U.S. policy under the 1979 Taiwan Relation Act to consider any attempt to determine Taiwan’s future by other than peaceful means to be of “grave” concern to the United States.¹⁸ Moreover, the Taiwan Relations Act obligates the United States to provide “such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.” If Hong Kong chief executive officer Leung Chun-ying and his masters in Beijing fail to restore confidence in their management of Hong Kong affairs, they may not only imperil the goose and the canary but even summon a black swan, an unexpected and undesired confrontation between Beijing and Washington over the fate of Taiwan.¹⁹

Burma/Myanmar: Mission Not Accomplished

After decades of sanctions and political isolation, Myanmar has taken its first tentative steps along the path toward political and economic reform. But the country is not far down this path, and its progress has already proved reversible. Continued progress depends for now on the good will and political authority of President Thein Sein and his administration.

The United States has been carefully nurturing Myanmar’s transition from military dictatorship toward a more open, plural, and democratic society. The Obama administration has normalized diplomatic relations, opened a USAID office in Yangon, resumed direct contact with Myanmar’s military, and begun the process of unraveling the strict economic sanctions—including the JADE Act of 2008²⁰—imposed in an effort to coerce the nation’s military junta to yield power. But the enthusiasm that greeted the release of pro-democracy leader and Nobel Peace Prize winner Aung San Suu Kyi from house arrest in 2012, along with hundreds of other political prisoners, has been tempered by the realization that the country may take decades to develop genuine democracy and respect for human rights.

Myanmar faces many difficulties as it emerges from years of mismanagement and civil war. The once prosperous nation is among the poorest in East Asia, lacking even basic infrastructure, not to mention modern schools and healthcare facilities. Tens of thousands of refugees remain in camps in Thailand, and hundreds of thousands more remain internally displaced—reminders that Myanmar is an ethnically diverse nation long affected by conflict between the state and the country’s ethnic groups. A wide array of ethnic groups—Kachin, Karen, Karenni, Chin, Wa, Shan, Mon, and Rakhine—dot the map from Mytchina to the Irrawaddy Delta, many with both political and military arms.

During the 114th Congress, two issues to watch in Myanmar will be the plight of the Rohingya and efforts by the National League for Democracy to revise

¹⁷ The text of the United States–Hong Kong Policy Act of 1992 is available from the Consulate General of the United States (Hong Kong and Macau), http://hongkong.usconsulate.gov/ushk_pa_1992.html.

¹⁸ The text of the 1979 Taiwan Relations Act is available from the American Institute in Taiwan, <http://www.ait.org.tw/en/taiwan-relations-act.html>.

¹⁹ Ted Piccone, Steven Pifer, and Thomas Wright, “Big Bets and Black Swans,” Brookings Institution, January 2014, http://www.brookings.edu/~media/Programs/foreign%20policy/BBBS/BigBets_BlackSwans_2014.pdf.

²⁰ The text of the Tom Lantos Bock Burmese JADE (Junta Anti-Democratic Efforts) Act of 2008 is available from the U.S. Department of Treasury, http://www.treasury.gov/resource-center/sanctions/Documents/pl110_286_jade_act.pdf.

the nation's constitution. The Rohingya Muslims who reside in Rakhine State in western Myanmar are effectively stateless under Burmese law, and discrimination and violence are only spreading, imperiling the livelihoods of this community, economic development, and progress toward civilian rule. Separately, the National League for Democracy and its leader, Aung San Suu Kyi, want a chance to contest the upcoming presidential election, but the constitution blocks anyone whose spouse or sons are foreign citizens from leading the country. Suu Kyi's late husband was British, as are her two sons. International support for Myanmar's transition will erode swiftly if Suu Kyi—the face of the democratic opposition—is prevented from participating meaningfully in the nation's political institutions. Even as it considers steps to unravel the knot of sanctions that limit U.S.-Myanmar economic and security relations, Congress should preserve U.S. leverage by calibrating military-to-military relations to steps taken by Myanmar to reduce the military's role in politics and bolster civilian rule. Congress should also boost funding for groups providing training and capacity building on rule of law, with a special emphasis on minority rights and civil liberties.

Thailand: The Lingerin Coup

In Thailand the overthrow of a democratically elected prime minister and the imposition of martial law have set back human rights and tarnished the nation's reputation. Thailand has experienced numerous coups over its history, but this one seems different and has already lasted longer than most. General Prayuth seized power in May 2014, ostensibly to end simmering violence associated with the political impasse between Prime Minister Yingluck Shinawatra and her Pheu Thai Party and supporters of the opposition Democratic Party. Clashes between “red shirts” and “yellow shirts” had turned violent in 2013, with widespread property damage and loss of life in the capital of Bangkok.

Responding to the coup, Washington initially cut a small portion of military assistance and suspended joint training exercises with the Thai military. But Washington has walked a fine line, being wary of alienating the Thai masses or the monarchy and trying to avoid pushing Thailand into the arms of China. Daniel Russel, the assistant secretary of state for East Asian and Pacific Affairs, traveled to Bangkok in January 2015, where he reaffirmed U.S. support for the alliance even as he explicitly called for restoration of democratic rule and, to the dismay of the generals, met with the ousted prime minister Yingluck. Following Russel's visit, the Obama administration announced that it would proceed this spring with a slightly scaled-back version of the annual Cobra Gold multilateral military exercises hosted by Thailand. This decision coincided with the visit of China's defense minister Chang Wanquan to Bangkok and the announcement of enhanced Thai-PRC military cooperation.

General Prayuth and his caretaker government have laid out a “reform roadmap” that envisions restoration of civilian rule eventually, but the government has also banned public protests, arrested many of its critics, and generally stifled a once vibrant free press. Hovering over all of this is an awareness of the fragility of the world's longest-reigning monarch. Popular love for King Bhumibol, now 86, has given Thailand a measure of stability during past coups. But the king is hospitalized and is physically incapable of exerting much influence this time around. Crown Prince Maha Vajiralongkorn does not command the same loyalty that his father inspires, adding another ingredient of uncertainty into an already murky political stew.

The United States cannot dictate Thailand's political path, but Congress should consider targeted investments in the pillars of liberal constitutionalism, including rule of law and a free press. Even modest budget increases for organizations such as the Asia Foundation, the East-West Center, the National Endowment for Democracy, and other

groups investing in human capacity building would strengthen the capacity of the Thai people to safeguard their own freedoms and promote good governance.

Vietnam: At an Inflection Point?

While Thailand struggles to resume democratic governance and restore respect for human rights, nearby Vietnam also appears to be at an inflection point. This year, Vietnam and the United States are celebrating the twentieth anniversary of establishing diplomatic relations, and the sides are considering moves that could affect Vietnam's strategic direction for decades to come.

Vietnam's economic, security, and human rights conditions are in flux, and the next few years may prove decisive. Although Vietnam has developed rapidly since adopting the *doi moi* market reform policies in the late 1980s, growth has stalled, and analysts inside and outside the country have recommended further economic liberalization. Vietnam is one of eleven nations with which the United States is working to finalize the terms of the Trans-Pacific Partnership. The trade pact would require major changes to Vietnam's labor laws and would further open its economy to foreign investment and trade.

On the security front, Vietnam is locked in a bitter territorial dispute with China over portions of the South China Sea believed to be rich in oil, gas, and other natural resources. It is seeking closer security ties with its neighbors in the Association of Southeast Asian Nations (ASEAN), with Japan, and especially with the United States. In fall 2014, Japan provided six vessels to boost Vietnam's ability to patrol its coastal waters, while Washington partially lifted a ban on lethal weapon sales and is expanding training and other forms of military assistance.

On the human rights front, Vietnam has a new constitution that promises enhanced protection for basic rights. For the first time in 25 years, Hanoi welcomed a delegation from Amnesty International to discuss the country's human rights record and

the moves Hanoi could make to comply with international obligations.²¹ Vietnam has taken several concrete steps—such as releasing some political prisoners and moving to ratify the UN Convention against Torture—long called for by human rights activists inside and outside the country.

Still, according to the U.S. State Department, Vietnam's overall human rights record remains poor,²² and efforts to strengthen U.S.-Vietnam economic and security ties have drawn scrutiny from activists who worry that Washington may be moving too fast and squandering its leverage. The advocacy director of Human Rights Watch Asia, John Sifton, posed several questions following the partial lifting of the U.S. arms export ban:

Has Hanoi taken any meaningful steps or shown any real willingness to undertake legal reforms to remove penal code provisions criminalizing political speech? Have Vietnamese leaders taken any meaningful steps or shown any real willingness to undertake legal reforms to allow independent trade unions? Has Vietnam taken any meaningful steps or shown any real willingness to deregulate and decriminalize independent religious activity, or stop persecution of religious minorities? The answer to each of these questions is no.²³

As Congress commemorates the anniversary of normalization and prepares to consider the Trans-Pacific Partnership and other initiatives designed to more closely link the United States and Vietnam, it will make its own assessment as to Vietnam's trajectory on human rights and the role that the United States can play in encouraging Hanoi to follow a roadmap of continued economic and political reforms over the next twenty years.

²¹ The author was a member of the Amnesty International delegation. For more information about the delegation, see "Amnesty International Visits Viet Nam for Human Rights Dialogue," Amnesty International, Press Release, February 20, 2014, <http://www.amnesty.org/en/for-media/press-releases/amnesty-international-visits-viet-nam-human-rights-dialogue-2014-02-20>.

²² For the most recent State Department assessment, see U.S. Department of State, "Vietnam 2013 Human Rights Report," 2013, <http://www.state.gov/documents/organization/220456.pdf>.

²³ John Sifton, "Fixing the United States' Human Rights Misstep with Vietnam," *Diplomat*, October 9, 2014, <http://thediplomat.com/2014/10/fixing-the-united-states-human-rights-misstep-with-vietnam>.

Congress can help illuminate the path forward by increasing support for the engines of reform in Vietnam. Specifically, Congress should fully fund the new Fulbright University contemplated for Ho Chi Minh City. Building on the success of the existing Fulbright School, the new university would give future generations of Vietnamese access to a high-quality education unfettered by Communist ideological restrictions. Congress should also extend funding for the Vietnam Education Foundation, slated to cease operations in 2017, in order to ensure that the best and brightest from Vietnam continue to have a chance to pursue graduate studies in the United States, where they will be exposed to the benefits of a free society. ∞



BRIEFING SERIES
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U.S.-CHINA RELATIONS: CHALLENGES FOR THE 114TH CONGRESS

By Charles Freeman III

EXECUTIVE SUMMARY

This brief addresses key issues in the U.S.-China relationship and identifies specific actions that the 114th Congress can take to address them.

MAIN ARGUMENT

The 114th Congress has a crucial role to play in stabilizing the all-important U.S.-China relationship. There are few examples in history in which a de facto superpower like the U.S. faces a rising power like China and does not enter into direct conflict. The relationship with China has an undeniable component of competition. Glossing over disagreements and competing interests is thus not an option for policymakers. At the same time, the fact of competition should not be the predicate for a devastating self-fulfilling prophecy.

RECOMMENDATIONS FOR THE 114TH CONGRESS

- *Democracy and human rights.* The Chinese system does not share in many important U.S. values. Although “standing up” for values such as democracy and human rights is a *sine qua non* of U.S. diplomacy, Congress should be clear that promoting U.S. norms is not the same as seeking to undermine China’s political stability.
- *Economic relations.* The U.S. economic relationship with China has been the glue holding the countries together during difficulties in the overall relationship. Support for trade and investment has, however, frayed as the relationship has become more complex and internal dynamics have altered China’s support for the role of foreign institutions and investment in its economy. Recognizing these changed circumstances is important, but so too is acting to restore a healthy trade and investment relationship.
- *Strategic interaction.* China is not the Soviet Union, and the U.S. is trying neither to contain China nor begin a new Cold War. But the desire of other Asia-Pacific countries to avoid being bullied by a rising China is drawing the U.S. into a potentially hostile military posture with respect to China. Finding ways to ensure that U.S. interests are served in the relationship, rather than yielding uncritically to the interests of U.S. allies and partners in the region, is critical to reducing tensions with China.

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For decades, policymakers have struggled to define the U.S. relationship with China. Are we “partners”? “Strategic partners”? “Strategic competitors”? Is it, to quote Chinese president Xi Jinping, a “new kind of big power relationship?” Or, as President George W. Bush noted toward the end of his administration, is the relationship best described simply as “complex”?

The consensus among most U.S. China watchers in 2015 is that the United States and China are competitors. There is far less consensus, however, on what exactly the two countries are competing for. China is not a geostrategic rival like the former Soviet Union. Nor is China absolutely hostile to U.S. policy in the Asia-Pacific. Indeed, far from sowing open competition, U.S. engagement with China since the 1970s has sought to bring China into the ambit of U.S.-led global institutions and encourage Chinese support for a U.S. vision of global governance. That policy has yielded remarkable dividends: China has gone from being an isolated, poor country that was openly hostile to the United States and its vision of the global order to become one of the primary stakeholders in that order.

To many policymakers in Washington, U.S. engagement has perhaps been too successful. Few would have imagined that the economic backwater that was China in the 1970s might become the world’s biggest economy less than 50 years later. The miracle of China’s success thus has spawned an active effort in Washington to hedge against the possibility that China uses its newfound clout to undermine and destabilize the U.S.-led regional and global order in ways that lead to direct conflict. Such hedging has yielded a two-headed policy approach that seeks to draw China diplomatically and economically closer while preparing for a disastrous military contingency.

Viewed through this bifurcated policy prism, Beijing’s actions can simultaneously confound and confirm U.S. assumptions and suspicions of Chinese intentions. For all that the U.S. policy community

thinks it knows about the role China desires for itself on the global stage, it really is not sure. Why is China expanding its blue water navy, if not to challenge U.S. primacy on the high seas? Why did Beijing unveil an air defense identification zone in the East China Sea, if not to deny the ability of the United States and its allies to access and control China’s periphery? Why would Beijing engage in a charm offensive in other Asian capitals, if not to compete with Washington for their hearts, minds, and economic interests? Why would Beijing seek to create development institutions like an Asian Infrastructure Investment Bank that are separate and distinct from those established under the Bretton Woods architecture, if not to challenge the normative global leadership of the United States?

Beijing sees similar ambiguity in U.S. intentions. True, constructive engagement with the United States has been a key enabler of China’s rise. But U.S. activities on China’s periphery—the maintenance of northeast Asian alliances, military assistance to Taiwan, the strengthening of relationships with previously unfriendly countries in southeast Asia, and the warming of relations with that other Asian giant to the south, India—smack to many in Chinese policy circles of a Cold War-style containment policy. Moreover, the Obama administration’s “rebalance to Asia,” although articulated in terms that are at best neutral to China’s emergence, is frequently couched in the language of managing China’s rise, which is not, on its face, reassuring to Beijing about U.S. intentions.

The lack of clear understanding and trust between the two countries has hastened a drift toward a self-fulfilling prophecy of strategic rivalry, even as the economic and geopolitical stakes in U.S.-China cooperation become more deeply rooted and fundamental. The relationship is no longer as asymmetric as it was when the basic framework of U.S. policy toward China was formed, and the corresponding levers the United States could pull to channel Beijing’s behavior are no longer as available or effective. Yet the need to solve problems

in the relationship has never been more important, even as the United States faces a domestic political divide and grim fiscal realities affecting its ability to manage multiple global crises and China stands at an economic (and possibly political) crossroads in its own domestic development.

Rather than drawing China into the orbit of U.S. global leadership or “managing China’s rise,” the challenge for U.S. policymakers in the 114th Congress and beyond has become one of charting a path to peaceful coexistence: defining a world order in which U.S. and Chinese interests coincide as much as possible, and conflicts are managed with a view toward striking a balance between competing interests. This is no simple task, particularly given the natural inclination in both countries to sniff out evidence of accommodation as a sign of weakness in political leaders. The two sides must avoid a zero-sum approach that is neither wise nor tenable. The trick will be achieving meaningful compromise without sacrificing core values and interests, and that presents the 114th Congress with a number of critical normative, strategic, and economic challenges.

NORMATIVE DIFFERENCES: DEMOCRACY AND HUMAN RIGHTS

Hong Kong

The 114th Congress begins as China’s Hong Kong Special Administrative Region faces an ongoing predicament over the right of its citizens to directly participate in the election of the chief executive beginning in 2017. During the latter half of 2014, many Hong Kong citizens reacted negatively to the decision of the Standing Committee of the National People’s Congress to limit candidates for chief executive to a few preapproved “patriots.” A number of sites in Hong Kong became grounds for a pro-democracy protest movement dubbed “Occupy Central” that continued for weeks.

Despite any clear evidence of a U.S. or other official foreign instigation of the Occupy Central movement, suspicions in Beijing were that this was a U.S.-directed “interference in China’s internal affairs,” an effort to subvert Beijing’s oversight of Hong Kong. But the understanding of many in Hong Kong and the international community at the time Beijing and London negotiated the handover of the former British colony back to China was that Hong Kong would ultimately be accorded full democracy under China’s protection. Hong Kong now faces a dilemma: accept Beijing’s terms for the election and effectively resign itself to partial democracy, or continue to challenge Beijing and risk losing the partial benefits being offered.

In reality, the United States and other democratic countries can do very little to change Beijing’s mind on the Hong Kong election issue. Clearly, a perception in Beijing that Washington is orchestrating political change in a Chinese territory would not be helpful to the cause of democracy in Hong Kong. President Obama reportedly assured President Xi at the Asia-Pacific Economic Cooperation Summit in Beijing in November 2014 that the United States did not support the Occupy Central movement. But supporting the rights of people in Hong Kong and elsewhere to strive for universal suffrage is a core value of the United States. Striking a balance between calling for greater democracy in Hong Kong and respecting China’s sovereignty over the territory is an important task for Congress in the run-up to the 2017 election.

Taiwan

The Occupy Central protests and their aftermath also have had an impact on attitudes in Taiwan regarding its long-term relationship with Beijing. Beijing has long articulated a cross-strait policy that calls for reunification of Taiwan with the Chinese mainland based on a version of Hong Kong’s

“one country, two systems” model that would grant relative political autonomy for Taiwan. The election restrictions handed down by Beijing for Hong Kong did little for Beijing’s cause with the people of Taiwan. In spring 2016, Taiwan will hold presidential elections that will largely be a referendum on the policies of President Ma Ying-jeou, which have built closer economic ties between China and Taiwan. If, as many analysts predict, the opposition Democratic People’s Progressive Party candidate is successful in defeating the candidate of the ruling Kuomintang Party, that could signal a rechilling of relations between Beijing and Taipei, and tensions in the region could spike.

Taiwan has always been the biggest challenge to U.S.-China relations. The United States is obligated by the Taiwan Relations Act to provide Taiwan with the opportunity to acquire arms to defend itself in the event of an attack from the mainland. If the relationship between Beijing and Taiwan sours badly, U.S. arms sales to Taiwan will be closely scrutinized for the degree to which they embolden those who advocate *de jure* independence from Chinese rule. Congress will invariably be drawn into the debate on arms sales. It will be important for policymakers to understand and weigh in on what package of arms will contribute to stability across the Taiwan Strait. There is an element of symbolism to exactly what weapons Taipei requests (and what it actually purchases if those requests are approved). Getting the package right will take considerable technical and diplomatic skill.

Whatever the outcome of the Taiwan election in 2016, Congress should be at the forefront of international efforts to support the continued impressive evolution of democracy on this island of predominantly Chinese-origin citizens. In particular, the long history of inter-parliamentary relations between Congress and the Legislative Yuan in Taipei merits rekindling. More frequent exchanges between members of Congress and their counterparts in Taiwan would be an important demonstration of the U.S. commitment to democracy in a Chinese context.

Human Rights

Finally, but far from being of least consequence in the United States’ normative relationship with China, is the issue of U.S. support for the basic human rights of the people of China. In recent years, and particularly since President Xi came into office, the number of people imprisoned for political dissidence has increased dramatically. Many observers assert that rising political repression suggests that Beijing is increasingly concerned about political stability as the Chinese economy cools and issues such as official corruption, income inequality, and environmental degradation drive public disaffection. Regardless of the root causes of the crackdown on individual rights, it is not a good sign for the longer-term direction of Chinese Communist Party rule in China. The party at times makes feints in the direction of more transparency, inclusiveness, and pluralism, but it bristles when outsiders “interfere” in Chinese governance by calling out human rights abuses. This, however, should not stop Congress from taking a lead role in calling for greater protection of human rights in China.

ECONOMIC REFORM AND COMMERCIAL RELATIONS

China’s economy in recent years has begun to show the strain of its 30-year economic boom. The tools on which it has relied to fuel its growth—capital investment, improved productivity, and exports—are increasingly less effective in delivering the returns the country has counted on since the early 1980s. These factors are making the maintenance of the current Chinese growth model impossible, especially as demographic realities change the composition of China’s workforce.

These are matters of political life and death to the Chinese Communist Party, which has staked its legitimacy on the successful stewardship of China’s modernization. A failing economy is not a viable option for President Xi and his team, and they have outlined a path to reform that would rely on greater consumption

as a factor of growth, as well as on the development of new sectors—in particular, services and technology.

China has reformed its economy before, both in the late 1970s and again in the late 1990s, in order to launch and maintain its development. But the stakes involved and vested interests aligning against the reform efforts in previous eras are dwarfed by those facing the current leadership. President Xi has been flexing his muscles through a series of power plays—an anticorruption campaign and a recentralization of decision-making authority being chief among them—but whether these initiatives will be successful precedents to genuine economic reform is still far from certain.

Impact of Exports on Economic Reform

In earlier reform periods, China was less reliant than it is now on external markets for both commodities and exports. Modern China is inextricably linked to the outside world, and that creates certain vulnerabilities that complicate President Xi's domestic agenda. China does not, for example, currently have the capacity to secure sea lanes for the imported energy, particularly from the Middle East, that is the life blood of its economy. It relies on the U.S. Navy (and faith in projecting a benign external image) to ensure that others do not disrupt its trade with the outside world.

While China seeks to alter its economic growth model, exports still constitute a significant percentage of its GDP growth. On its face, the explosion in intra-Asian trade may suggest that the developed world is less important to China's trade agenda than it may have been in the past. However, many of the goods traded within Asia are intermediate goods traded between nodes in a supply chain that ends with exports from China to the developed world. At a time when the European Union, China's largest export market, is in the doldrums, the United States continues to be a critical market for goods manufactured in China.

Beijing is thus dependent on external stability to create a climate conducive to domestic reform,

and in this regard it is reliant, in significant part, on the cooperation of the United States. This is not a comfortable state of affairs for Beijing, which, as noted earlier, is suspicious of U.S. support for China's long-term success under its current political system.

International Financial Institutions and China's Reform Strategy

China's ambivalence about its relationship with the United States and skepticism of U.S. willingness to accommodate China's rise within the existing world order can lead to policies that seem to challenge U.S. primacy. For one thing, reliance on the U.S. dollar as the primary international currency has hastened Beijing's interest in developing the renminbi as an alternative. For another, China's championship of the Asian Infrastructure Investment Bank or a Brazil, Russia, India, China, and South Africa (BRICS) bank as a development institution separate and distinct from the Asian Development Bank and World Bank seems like a direct challenge to U.S. leadership under the legacy of the Bretton Woods agreements. But the failure of the United States and other countries to ratify changes to the International Monetary Fund (IMF) to accommodate Beijing's new economic clout seems, not without justification, like an effort to minimize Beijing's role within the existing architecture. Congress could help alleviate this problem in the interest of preserving the longer-term relevance of the international governance structure that has served U.S. interests so well for so long. For one thing, congressional approval of reforms to the IMF that reflect China's global economic clout is long overdue.

China has in the past used external pressure, such as that during the process of accession to the World Trade Organization, to push through difficult reforms over the objections of entrenched interests. There is some evidence that today's reformers are seeking to use external pressure from trade and investment negotiations with other countries to drive the internal

reform agenda. But there is also evidence to suggest that the Xi government is using foreign competition and dependence on foreign markets and firms as a bogeyman to drive reform efforts.

China's effort to stimulate reform of its innovation policies is a particular area of concern. China has long sought to develop a domestic technology base as a key plank in its development plans. Yet China is heavily reliant on foreign technology in its domestic economy. One long-time technology analyst in China recently commented: "I don't know of a single successful technology firm in China that does not employ a set of foreign-sourced technologies at its core."

This is a matter of great frustration to Beijing. As a result, many U.S. and other foreign technology firms are now finding themselves squeezed by a Chinese government that resents their dominance in the marketplace, even while no realistic alternatives currently exist. China is attempting to provide new enterprise capital and research funds to nascent Chinese technology companies, but similar efforts in the past have not borne much fruit. Perhaps most controversially, efforts emanating from China (whether or not with state sponsorship directed from the top in Beijing) to seize technology from foreign sources through industrial espionage, including cybertheft, have been remarkably successful, even if the stolen technologies have not as yet been widely deployed within China. Congressional attention to the matter, including creative legislation that encourages U.S. corporate victims of cybertheft to come forward to regulators and establishes U.S. trade remedies for deployment of stolen technologies, is more than appropriate.

Trade and Bilateral Investment

The U.S. business community has long been a primary champion of strong commercial and diplomatic relations with China. That support is fraying as a result of perceived bullying by Beijing and the cyberespionage scandals. Companies are no longer

as willing as they once were to speak out on behalf of China on Capitol Hill or in discussions with the administration. The assumption in Beijing seems to be that U.S. companies need China more than China needs them, or that the United States needs access to China more than the other way around. This is a miscalculation by Beijing, and Congress has a role to play in reminding China that support for open markets between China and the United States is not to be taken for granted.

The primary means of government-to-government discussions about problems in the commercial relationship have been the Joint Commission on Commerce and Trade and the Strategic and Economic Dialogue. These forums have in the past been successful in resolving disputes between the two countries, but in recent years their deliverables to U.S. commercial interests have come fewer and farther between. This may be due in part to the Chinese perception that accommodating U.S. requests is less important to China: China wants less from the United States, so it is willing to give up less.

Negotiations leading up to the signing of a potential bilateral investment treaty (BIT) present an important opportunity to stabilize U.S.-China commercial relations. China is genuinely interested in successfully concluding a BIT for two reasons: First, the standards in a BIT would provide useful external pressure within the Chinese economic reform process. Second, Chinese firms are increasingly investing in the United States, and a BIT would provide greater security for their investments. China is also carefully watching negotiations of the Trans-Pacific Partnership (TPP), with a view to possible accession if the TPP is not directed at building a trading bloc that excludes China.

Congress has a critical role to play not just in ratifying a BIT with China but in demanding the sorts of protections in the treaty that will benefit U.S. firms in China. Congress would also do well to reiterate that Chinese investment is welcome in the United States and that in most cases the existence

of Chinese investment in a given sector does not present unique national security risks. Finally, if the 114th Congress does take up trade legislation that ultimately approves the TPP, language that affirms the interest of Congress in providing for the ultimate membership of China under certain circumstances would be valuable. This latter goal may be difficult to achieve, especially because a critical part of the administration's legislative strategy may be to invoke the TPP as a tool to avoid losing economic ground to China.

THE U.S.-CHINA STRATEGIC RELATIONSHIP

U.S. Pivot to Asia

While there is no U.S. containment strategy toward China—if there is, Washington is doing a pretty lousy job of it—there are elements of truth in Chinese concerns. If the Obama administration's rebalance to Asia is not directed against China, the policy is certainly, at least in part, a response to concerns of countries on its periphery about China's rise. For much of the last ten years, Washington has been visited constantly by diplomats from nearly all of China's neighbors who wring their hands about the regional power balance. While these countries are benefiting greatly from their economic partnership with China, they are nervous about its strategic intentions and newly found coercive power. The rebalance to Asia in this regard is a somewhat unintended response to the requests of China's neighbors that the United States serve as a counterbalance to China's rise.

Whether China's neighbors are correct in being nervous about its longer-term strategic intentions, U.S. efforts to hedge against a potentially hostile China, coupled with squabbling over obscure territorial claims both between China and Japan and between China and a number of ASEAN countries, are increasingly drawing the United States into a

confrontational posture with China. U.S. military surveillance of China at its borders is increasing, as is the number of border patrols by the United States and its allies, even as China steps up its own efforts to control the seas near its borders. China's declaration of an air defense identification zone in the East China Sea, occupation of or military exercises near disputed territories, and increasing deployment of new power-projecting vessels can all be viewed as provocative. In China, however, these measures are viewed as reactive. In either case, opportunities for conflict by accident, such as the 2003 EP-3 episode in which U.S. and Chinese military aircraft collided, are on the rise.

Military-to-Military Relations

Key to managing this situation is ensuring that U.S. and Chinese militaries (and other militaries in the region) cultivate better direct relations and an ability to manage crises if and when they occur. The United States has been pushing for closer military-to-military relations for years and has made some good progress. However, efforts to create a structure based on conflict avoidance are hampered by a variety of factors, including the imbalance in objectives (China is not at this point seeking reciprocal ability to patrol the U.S. coast, for example); a fundamental lack of trust between military establishments; and the fact that the People's Liberation Army embraces nontransparency as a strategic tenet.

China will almost certainly continue to build a stronger military, including a stronger blue water navy, as well as nontraditional weaponry. That is natural for any growing country. It is also in part a prophetic self-fulfillment resulting from a reaction to U.S. strategic hedging, closer U.S. military relations with China's neighbors, and an increasing sense of vulnerability in China owing to reliance on external markets for energy and other commodities that drive its rapacious economy. The United States is not yet in an arms race with China akin to that with the Soviet

Union, but there are plenty of Chinese strategists who believe that U.S. capacity to compete for military superiority in Asia will be limited by both the United States' more global defense architecture and fiscal realities.

The 114th Congress will have the opportunity to set an important tone in military relations with China. Although a potential China threat is certainly worth guarding against, a defense policy that sets as a primary criterion the ability to meet all the hypothetical contingencies posed by China's rise would court an arms race that neither the United States nor China can afford. Congress should be wary of an appropriations program that overemphasizes the China threat. After all, the U.S. effort to bring China into a rules-based international order has been remarkably successful, even if China does not always seem to play by the rules. There are other international challenges to U.S. power and prestige that are openly hostile to the status quo in which both the United States and China have important stakes. ∞



BRIEFING SERIES
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HOW THE 114TH CONGRESS CAN ADVANCE TRADE ACROSS THE PACIFIC

By Derek Scissors

EXECUTIVE SUMMARY

This brief addresses four sets of trade challenges facing the 114th Congress and identifies specific actions Congress can take to address them.

MAIN ARGUMENT

It is critical that the 114th Congress carefully consider economic policy with Asia. Economic ties to Asia are large enough to influence American prosperity. For example, three of the top seven U.S. trade partners are in Asia—China, Japan, and Korea—with a combined volume of over \$1 trillion in goods and services trade in 2013. For the 114th Congress, the major U.S.-Asia economic issues include trade promotion authority (TPA), the Trans-Pacific Partnership (TPP), U.S.-India bilateral relations, and U.S.-China bilateral relations.

RECOMMENDATIONS FOR THE 114TH CONGRESS

- A good TPA deal, such as the Baucus-Camp-Hatch draft, should be passed by Congress as quickly as possible. TPA frames U.S. international economic policy.
- When finally completed, the TPP should be carefully vetted. Passing a sound TPP could be the most valuable action the 114th Congress takes. If unsound, the TPP must be rejected.
- Congress should show patience concerning U.S.-India economic relations, as India is a long way from fulfilling its economic potential.
- Congress should re-evaluate China, which faces serious economic problems. The top priority should be to stop Chinese theft of intellectual property.

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The scale of U.S.-Asia economic relations is enormous. Three of the top seven U.S. trade partners are in Asia—China, Japan, and Korea—with a combined volume of over \$1 trillion in goods and services trade in 2013.¹ The value of two-way direct investment in 2013 between the United States and Asia was about \$90 billion; those dollars will create jobs and generate income for years to come.² Three of the top six holders of U.S. Treasury bonds are in Asia. The recent changes in their holdings are minor, and their combined ownership of Treasuries exceeds \$2.5 trillion.³

There is no need to call the 21st century “Asia’s century,” or something equally trite, to know that economic ties to Asia are large enough to matter to U.S. prosperity. The private sector should and does take the lead, but there are also obvious roles for Congress. For the 114th Congress, the major U.S.-Asia economic issues involve trade promotion authority (TPA) for the U.S. president, the Trans-Pacific Partnership (TPP), U.S.-India bilateral relations, and U.S.-China bilateral relations.

TRADE PROMOTION AUTHORITY

It is extremely simple but worth keeping in mind: TPA is not solely or even primarily about President Obama. The next president will have more years under renewed TPA than the current one will. Further, while TPA is being conflated with the TPP, TPA is not solely about Asia either. TPA is about how Congress can shape U.S. international economic policy.

It is unfortunate that renewing TPA has been delayed while the TPP has been negotiated. Nonetheless, TPA can provide a measuring stick for an ensuing TPP vote. It would also guide the U.S. approach to a deal with Europe, any second round of TPP negotiations, and

any other trade opportunities that appear between now and 2020.

The only TPA bill on the table at the time of writing is the Bipartisan Congressional Trade Priorities Act of 2014, introduced by former Senate Finance Committee Chairman Max Baucus (D-MT), current Senate Finance Committee Chairman Orrin Hatch (R-UT), and former House Ways and Means Committee Chairman Dave Camp (R-MI).⁴ More than any other topic, this legislation emphasizes congressional access to information, a needed improvement. In terms of substance, agriculture receives the most attention in the text, with labor and environmental practices running second. The draft breaks some new ground, for example, in strengthening protections for cross-border data flows, which will enhance digital trade.

These are entirely reasonable priorities, but others are possible as well—for example, rules of origin and trade enforcement,⁵ which are noted in the Baucus-Camp-Hatch bill but in briefer sections. Most important, the 114th Congress can tell both this president and the next what main objectives must be met for an agreement to be passed.

The trade topic that has received perhaps the most consistent congressional attention over the past decade is currency manipulation. It is true that many Asian countries rely on competitiveness in the U.S. market and have intervened to prevent their currencies from rising. The question is whether this should qualify as a congressional priority.

Japan, for example, was frequently accused of being a currency manipulator 30 years ago, and it is sometimes still called a currency manipulator today. But no proposed definition of currency manipulator can include today’s Japan because the country has run aggregate trade deficits for more than two years (see

¹ U.S. Census Bureau, “U.S. International Trade in Goods and Services Report,” January 7, 2015, <http://www.census.gov/foreign-trade/data>.

² “Interactive Data,” U.S. Department of Commerce, Bureau of Economic Analysis, <http://www.bea.gov/itable/index.cfm>.

³ U.S. Department of the Treasury, “Major Foreign Holders of Treasury Securities,” table, January 16, 2015, <http://www.treasury.gov/ticdata/Publish/mfh.txt>.

⁴ “Baucus, Hatch, Camp Unveil Bill to Bring Home Job-Creating Trade Agreements,” U.S. Senate Committee on Finance, Press Release, January 9, 2014, <http://www.finance.senate.gov/newsroom/chairman/release/?id=7cd1c188-87f1-4a0b-8856-3fc139121ca9>.

⁵ Trade Facilitation and Trade Enforcement Reauthorization Act of 2013, S.662, 113th Cong. (2013), <https://www.congress.gov/bill/113th-congress/senate-bill/662>.

Figure 1).⁶ Arguments that Japan might run surpluses in the future miss the fact that, as an aging society, the country produces less and less at home. On exchange rates, Japan cannot qualify as a genuine concern for U.S. policymakers.

Attention to Japan may just be a proxy for concern about Chinese currency manipulation. Prior to 2005, China first depreciated and then refused to appreciate its currency. U.S. unemployment was low. When China finally began heeding demands and pushed its currency higher, U.S. unemployment rose.⁷ There is no evidence that currency manipulation, by itself, harms the U.S. economy. The way to make currency manipulation seem vital is to implicitly meld it with other issues, such as regulatory barriers that block U.S. goods and services. It is these issues, not exchange rates, that renegotiating TPA should focus on.

The Bipartisan Congressional Trade Priorities Act maintains existing language in previous U.S. trade legislation calling for an end to currency manipulation

but not mandating action. This is both consonant with the International Monetary Fund and a better approach than demanding trade sanctions in what are supposed to be free trade agreements.

Finally, delays in TPA should not mean it is conflated with the TPP (acronyms notwithstanding). TPA is about establishing congressional priorities in guiding the administration on trade issues. The TPP is about whether a specific deal matches congressional priorities even though the administration negotiated it without congressional guidance. It therefore could be entirely reasonable to switch from approving TPA to rejecting TPP, or the reverse.

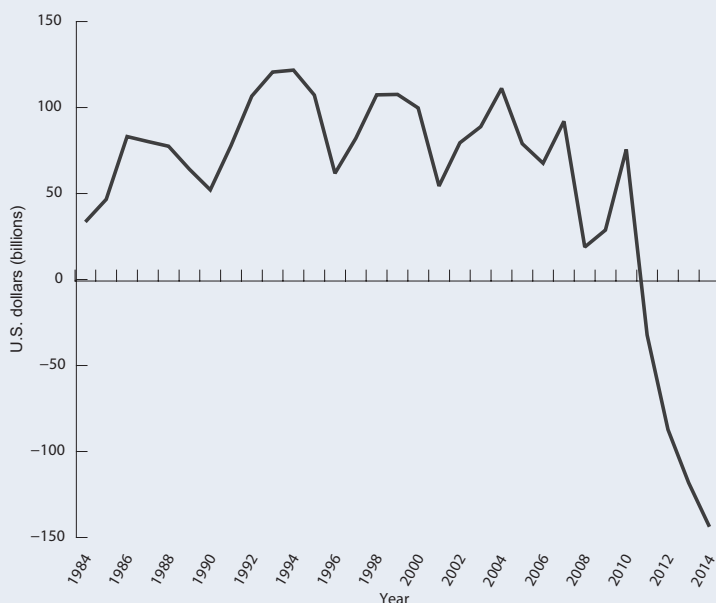
To address these issues, Congress should put its stamp on U.S. trade policy as soon as possible by introducing a reasonable TPA, such as the Bipartisan Congressional Trade Priorities Act of 2014.

THE TRANS-PACIFIC PARTNERSHIP

Overview of the TPP

Notwithstanding the inevitable hype from both the pro- and anti- camps, the TPP will not profoundly change the U.S. economy for years. The

FIGURE 1 *Japanese trade balance, 1980–2014*



SOURCE: World Trade Organization, "Trade Profile: Japan," Statistical Database, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=JP>; and Ministry of Finance (Japan), "Trade Statistics of Japan," http://www.customs.go.jp/toukei/info/tsdl_e.htm.

biggest payoff of the TPP comes in its potential role as a blueprint for reorganizing world trade, a process which will take a decade even if successful.

Many opponents of the TPP mistakenly argue important U.S. policies will change. But the United States is already open—the TPP is a means to try to further open our partners' economies. There are major disputes in intellectual property (IP), for example, but the TPP is highly unlikely to go too far in protecting IP, as the United States will have enough trouble bringing others close to its standard.⁸

On the flip side, short-term gains to the United States from the TPP will be minor. The negotiations involve three Asia-Pacific economies that are sizable players in U.S. trade, investment, and finance: Japan, Australia, and Singapore. The United States already has free trade agreements with Australia and Singapore. Short-term gains could only stem from Japan, and the fundamental market opening that Washington wants is very likely to be phased in over years, not pay off in 2016.

Looking toward 2017 and beyond, Japanese agriculture and services are areas for very large gains for the United States.⁹ In addition, Vietnam and Malaysia

have a combined population of almost 120 million people, and both economies could boast high growth for decades. Other payoffs from the TPP are potentially critical but also somewhat remote. A second round of TPP accession could include Taiwan (a major economic partner), the Philippines (a population of 100 million and sustained GDP growth over 5%), and others. A successful TPP will also serve as the template for later-starting trans-Atlantic negotiations.¹⁰ If those can be concluded, the United States will have, at worst, created a higher-standard trade group involving all the world's wealthy economies plus a number of others and, at best, pushed the entire world toward U.S. trade objectives.

Select TPP Issues

The current TPP negotiations involve dozens of issues, not all of which can be done justice here. A glance at trade data makes clear that the the United States' comparative advantage lies in agriculture and advanced products such as aircraft, organic chemicals, plastics, and now refined petroleum (see Table 1).¹¹ This reflects unmatched American capacity for innovation. Trade agreements that do not protect the legal rights of

⁸ "Frequently Asked Questions on Intellectual Property and Public Health Issues," Department of Foreign Affairs and Trade (Australia), <http://www.dfat.gov.au/fta/tpp/faq.html>.

⁹ Jeffrey J. Schott, "The United States, Japan, and the Trans-Pacific Partnership" (paper presented at a conference held by the High-Level Working Group on Japan-U.S. Common Economic Challenges, Washington, D.C., June 2, 2014).

¹⁰ European Commission, "EU Negotiating Texts in TTIP," January 7, 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>.

¹¹ U.S. Census Bureau, "U.S. International Trade Statistics," http://censtats.census.gov/cgi-bin/naic3_6/naicCty.pl.

TABLE 1 *Top U.S. export categories, January 2014–November 2014*

Description	FAS value basis (\$ billion)
Transportation equipment	249.0
Computer and electronic equipment	190.4
Chemicals	184.3
Machinery (except electrical)	139.4
Petroleum and coal products	109.6
Agricultural products	65.6
Food and kindred products	64.9
Subtotal	1003.2
Total U.S. exports	1489.6

SOURCE: U.S. Census Bureau, "U.S. International Trade Statistics," http://censtats.census.gov/cgi-bin/naic3_6/naicCty.pl.



genuine innovators and open agriculture markets are not worthwhile for the United States.

Agriculture and IP. Less than a decade ago, agriculture and IP were invariably sidelined in trade negotiations, greatly reducing the value of trade agreements to most Americans and undermining popular support for them. In the TPP, U.S. negotiations must pry open Japanese agriculture markets and set a precedent for open agriculture trade globally. The timeframe for this can be an extended one; the key is that major products such as wheat are fully liberalized.

Innovation is a more multifaceted topic, but raising the bar for IP protection in lagging countries such as Vietnam is an obvious goal. So is greater protection of trade secrets from predatory government behavior.¹² The TPP will not be and does not need to be perfect on innovation issues. But it must both make progress on multiple fronts and ensure that IP is a core part of future negotiations both regionally and globally.

Rules of origin. Among other TPP provisions, there are several that have not received enough attention. The starting point of all free trade agreements is rules of origin—what goods and services will be subject to the improved treatment in the agreement and what will be left out as coming from other parties. Rules of origin that are too loose mean countries that are not parties to the deal can free ride. Rules that are too tight create trade blocs. Perhaps most importantly, complex rules are ignored by business participants, neutering trade agreements entirely.¹³

Rules of origin have grown in importance with the increasing prominence of global supply chains. Some supply chains will shift if the TPP is implemented, as should happen with a truly liberalizing agreement. What should not happen is that rules of origin be turned into an instrument of protectionism by any TPP member. In late 2011, the TPP countries agreed on sound principles to govern rules of origin.¹⁴ Those should remain the baseline.

State-owned enterprises. An issue that has receded but could all too easily re-emerge is the advantages granted by governments to their state-owned enterprises (SOE). Ideally, SOEs would be banned, but this is plainly not achievable in the foreseeable future. One practical response is “competitive neutrality”—attempting to ensure that SOEs are not handed an overall competitive advantage versus private companies.

True competitive neutrality is impossible. For one thing, SOEs do not face the same threat from bankruptcy that private companies do. The variants of competitive neutrality adopted by some developed economies over the last decade are largely voluntary, reliant on governments recognizing the drawbacks of SOEs. Such an approach is woefully inadequate for the first round of the TPP, much less any expansion. TPP provisions should include both limitations on the number and scope of SOEs and mandatory restrictions on support of SOEs—for example, in purchasing or sales prices.¹⁵

U.S. market barriers. U.S. market barriers are an important topic that may be particularly unpleasant for Congress. While the TPP is primarily about lowering foreign market barriers, there are a few areas where U.S. barriers not only block trade but hand the United States’ partners a ready excuse for their own, more sweeping protectionist measures. U.S. quotas on sugar,¹⁶ for example, are constantly cited when the United States calls for more access for its corn or meat.

Cheap textile imports lower the price of clothing for the poor and can even create jobs in the United States on a net basis.¹⁷ The U.S. textile industry is very small and should not be allowed to derail trade liberalization. A similar story can be told about maritime services—the Jones Act sharply limiting foreign participation is outdated, harms the economy as a whole to benefit a few shipping companies, and hurts U.S. negotiating positions in the TPP and beyond.¹⁸

¹² Brian T. Yeh, “Protection of Trade Secrets: Overview of Current Law and Legislation,” Congressional Research Service, CRS Report for Congress, R43714, September 5, 2014, <http://fas.org/sgp/crs/secrecy/R43714.pdf>.

¹³ Akira Kotera, “What Is the ‘Spaghetti Bowl Phenomenon’ of FTAs?” Research Institute of Economy, Trade & Industry, May 23, 2006, http://www.rieti.go.jp/en/columns/a01_0193.html.

¹⁴ “Outlines of TPP,” Office of the United States Trade Representative (USTR), November 12, 2011, <https://ustr.gov/tpp/outlines-of-TPP>.

¹⁵ Derek Scissors, “Why the Trans-Pacific Partnership Must Enhance Competitive Neutrality,” Heritage Foundation, Background, no. 2809, June 6, 2013, http://thf_media.s3.amazonaws.com/2013/pdf/bg2809.pdf.

¹⁶ “Sugar,” USTR, <https://ustr.gov/issue-areas/agriculture/sugar>.

¹⁷ Derek Scissors, Charlotte Espinoza, and Terry Miller, “Trade Freedom: How Imports Support U.S. Jobs,” Heritage Foundation, Background, no. 2725, September 12, 2012, <http://www.heritage.org/research/reports/2012/09/trade-freedom-how-imports-support-us-jobs>.

¹⁸ Justin Lewis, “Veiled Waters: Examining the Jones Act’s Consumer Welfare

Investor-state dispute settlement. Other provisions, such as that concerning investor-state dispute settlement, are not especially important. While controversial, investor-state dispute settlement will most likely turn out to be a nonissue. No country—not the United States or its partners—will permit infringement of its sovereignty in the TPP or any other trade agreement. Critics concerned over this need not be, and businesses expecting a shield against foreign governments will very soon learn otherwise.

Congress should evaluate the TPP on the basis of whether it advances agriculture trade, protects IP, and expands competition. As the next step in this process, members of Congress should immediately request both full access to and permission to publicly discuss TPP chapters.

INDIA ON HOLD

In the U.S.-India bilateral relationship, the interests of American business diverge somewhat from the interests of the country. Business criticisms of India are usually justified. New Delhi inhibits progress at the WTO,¹⁹ is openly protectionist in agriculture when it can get away with it, frequently ignores IP in pharmaceuticals,²⁰ blocks foreign competition in banking for the sake of its state-owned banks, and takes other actions at odds with U.S. trade and investment goals.

The catch is that India is simply not that important economically—not now, not in the next two years, and even possibly not in the next twenty years. The population is huge but its buying power is very small. India presently accounts for less than 2% of total U.S. trade, and Indian wealth per household is less than 5% of U.S. wealth per household.²¹ It could take decades for India to matter economically to the United States.

If India's rise is to happen quickly, it will depend on wrenching economic reform that is purely internal to India. For instance, no country has ever become rich without clear individual rights to land, yet rural Indians are routinely denied these rights.²² Indian manufacturing is stunted because most companies cannot fire workers without government permission, so they decline to hire them.²³ India does not have a proper national economy; rather, it has a group of state economies that often discriminate against each other.²⁴

These are difficult, controversial matters on which a prickly India will resent any interference from the United States. In contrast, U.S. concerns in the relationship are peripheral, even a bit counterproductive. Should patent rights for U.S. pharmaceuticals come before land rights for impoverished Indians? Should Indian states be more open to U.S. goods and services than they are to each other?

The United States will benefit far more from internal Indian economic reform than from the improved treatment business seeks. It would be better to see the buying power of Indian consumers soar thanks to land ownership and job creation than to win a larger U.S. share of what remains a small market.

It is possible that internal and external reform could occur simultaneously, as long as the former is understood as always having priority. The Obama administration and its successor should negotiate a bilateral investment treaty (BIT) with India, but strictly as a long-term project, awaiting the changes India must make for a BIT to be realistic and valuable. If India cannot move forward, a BIT and other initiatives offer little. If India can sustain powerful reform, then the United States' negotiating objectives will shift considerably as the Indian economy evolves.

Effect," *Issues in Political Economy* 22 (2013): 77–107, <http://www.elon.edu/docs/e-web/students/ipe/volumes/Lewis%202013.pdf>.

¹⁹ David Brunnstrom and Tom Miles, "India's Demands Block \$1 Trillion WTO Deal on Customs Rules," Reuters, August 1, 2014, <http://in.reuters.com/article/2014/08/01/india-trade-wto-idINKBN0G02GV20140801>.

²⁰ Amy Kazmin, "India Assumes Frontline Position in Battles over Intellectual Property Rights," *Financial Times*, December 10, 2014, <http://www.ft.com/intl/cms/s/0/2cc8d306-6f3b-11e4-8d86-00144feabdc0.html#axzz3PfrxMnHL>.

²¹ "Village Households' Average Assets at Rs 10 Lakh," *Economic Times*, December 19, 2014, http://articles.economictimes.indiatimes.com/2014-12-19/news/57233399_1_rural-households-cent-india-debt.

²² Bikash Singh and Sutanuka Ghosal, "Tea vs. Rubber: Suspicion over Move to Amend the Tripura Land Reforms and Land Revenue Act, 1960," *Economic Times*, December 21, 2013, http://articles.economictimes.indiatimes.com/2013-12-21/news/45444364_1_tea-planters-tea-gardens-dhunseri-tea.

²³ Arvind Panagariya, "What India Must Do to Modernize," Centre for Economic Policy Research, Vox, January 15, 2008, <http://www.voxeu.org/article/why-india-lags-behind-china>.

²⁴ "West Bengal's Ban on Vegetable Exports Is Retrograde," *Economic Times*, November 4, 2013, http://articles.economictimes.indiatimes.com/2013-11-04/news/43658672_1_onion-crop-onion-market-onion-shortage.

Given domestic politics in India and the current state of bilateral relations, the 114th Congress should not anticipate major action on the U.S.-India economic relationship. Instead, Congress should practice patience with respect to India.

A DIFFERENT CHINA

In the 1990s, Congress faced a China that was not especially important economically but was rising quickly. In the 2000s, China was both big and fast. In this decade, China is a huge player, but its rise has slowed to the point of no longer being discernible. The way Congress thinks about China needs to change accordingly.

China is the second-largest U.S. trading partner after Canada. When indirect purchases through Belgium and the like are included, it is the largest foreign holder of Treasury bonds. Chinese investment in the United States outside of Treasuries is much smaller but on some counts has set new records for

three years running.²⁵ And all this has happened essentially in less than twenty years.

The next twenty years will be very different, however. With disposable income per person at \$3,300 in 2014, China is far from rich (see Figure 2).²⁶ Similar to Japan and Europe, and to a lesser extent the United States, its population is aging.²⁷ It has run up huge debts in a short period of time.²⁸ China has also abused its resource base.²⁹ The middle income trap, where countries move smartly out of poverty then get stuck, looms large on the horizon.³⁰

²⁵ Derek Scissors, "A Third Straight Record for Chinese Investment in the U.S.," Real Clear Markets, January 12, 2015, http://www.realclearmarkets.com/articles/2015/01/12/a_third_straight_record_for_chinese_investment_in_the_us_101475.html.

²⁶ "China's Economy Realized a New Normal of Stable Growth in 2014," National Bureau of Statistics of China, January 20, 2015, http://www.stats.gov.cn/english/PressRelease/201501/t20150120_671038.html.

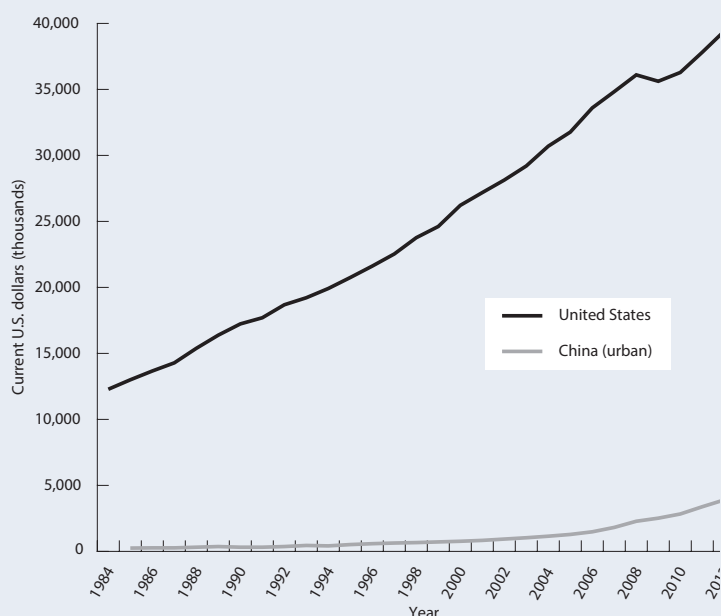
²⁷ Wang Xiaodong, "Family Support Planned for Aging Population," *China Daily*, December 4, 2014, http://www.chinadaily.com.cn/china/2014-12/04/content_19024750.htm.

²⁸ "The Great Hole of China," *Economist*, October 18, 2014, <http://www.economist.com/news/leaders/21625785-its-debt-will-not-drag-down-world-economy-it-risks-zombifying-countrys-financial>.

²⁹ Dexter Roberts, "Think the Air Pollution Is Bad? China Faces a Water Contamination Crisis," *Bloomberg Businessweek*, November 19, 2014, <http://www.businessweek.com/articles/2014-11-19/chinas-water-supply-is-contaminated-and-shrinking>.

³⁰ Barry Eichengreen, Donghyun Park, and Kwanho Shin, "Growth Slowdowns Redux: New Evidence on the Middle-Income Trap," National Bureau of Economic Research, Working Paper, no. 18673, January 2013, <http://www.nber.org/papers/w18673>.

FIGURE 2 *Disposable income per capita: United States vs. China, 1984–2013*



SOURCE: U.S. data is from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, "Disposable Personal Income: Per capita: Current dollars," Federal Reserve Economic Data, <http://research.stlouisfed.org/fred2/series/A229RC0#>; and U.S. Department of Commerce, Bureau of Economic Analysis. Chinese data is from National Bureau of Statistics of China, "11.2 Per capita Annual Income and Engel's Coefficient of Urban and Rural Households," <http://www.stats.gov.cn/tjsj/ndsj/2013/indexeh.htm>; and National Bureau of Statistics of China, "6.2 Reference Exchange Rate of Renminbi (Period Average)."

The solution is market-driven reform, the kind Beijing put aside in the previous decade.³¹ The Communist Party grandly announced a new reform program in late 2013, but the steps taken to date are completely inadequate to meet the scope of the challenges faced. An internal purge, known as the “anti-corruption campaign,” may or may not clear the decks for more intense reform. Setting aside regional security concerns, China will either stagnate or be preoccupied economically with internal change for some time to come.

As a trade competitor, China suffers from rising wages and apparently weakening productivity.³² It will no doubt still block access to its market for the sake of protecting SOEs. But this simply will not matter as much as in years past as Chinese competitiveness ebbs.

The action for Congress is outside of traditional trade issues. Cyber and other IP theft is by far the single biggest problem in the U.S.-China economic relationship.³³ As noted, IP is at the heart of the United States’ comparative advantage. Countries are supposed to respect IP more as they advance technologically and innovate on their own, but China has instead used

its improving technology to conduct commercial cybertheft on a huge scale.

Washington needs leverage in this area, and it has some. Partly due to the problems at home, Chinese firms are increasingly interested in investing in the United States. The individual investments have a voluntary U.S. partner, are good for the United States, and should not be hampered. However, sustained easy access to the country should be conditional on reduced Chinese commercial cybertheft.

There are multiple approaches to investment and cybertheft, but the best route is through the BIT negotiations now in progress.³⁴ A BIT will not transform China and should not be packaged as doing so. But the greater speed, transparency, and investment protection China seeks should only be granted to a good economic partner, and commercial cybertheft is the area where Beijing most needs to improve.

Congress should recognize that both China and the bilateral economic relationship have changed. As a first step forward, it needs to make clear to the administration that a BIT must effectively address cybertheft or it will be rejected. ∞

³¹ Derek Scissors, “Deng Undone: The Costs of Halting Market Reform in China,” *Foreign Affairs*, May/June 2009, <http://www.foreignaffairs.com/articles/64947/derek-scissors/deng-undone>.

³² Harry X. Wu, “China’s Growth and Productivity Performance Debate Revisited—Accounting for China’s Sources of Growth with a New Data Set,” Conference Board, Economics Program, Working Paper, January 2014, https://www.conference-board.org/pdf_free/workingpapers/EPWP1401.pdf.

³³ Commission on the Theft of American Intellectual Property, *The IP Commission Report* (Seattle: National Bureau of Asian Research, 2013), http://www.ipcommission.org/report/ip_commission_report_052213.pdf.

³⁴ “U.S.-China Economic Relations,” White House, Office of the Press Secretary, Fact Sheet, November 12, 2014, <http://www.whitehouse.gov/the-press-office/2014/11/12/fact-sheet-us-china-economic-relations>.

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