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Attorney General Barr to U.S. CEOs: “You Might Be Lobbyists for China”

*By Jeffrey J. Hunter**

The author of this article discusses speeches given by several high ranking U.S. government officials escalating United States-China discord, which suggest the administration is more likely to take further action to counter what it sees as improper influence campaigns by a hostile power than retreat from the hard line stance taken by the officials in the speaker series.

In a recent speech, Attorney General William P. Barr put American business leaders on notice. He warned that acting in China’s favor may require registration under the Foreign Agents Registration Act of 1938¹ (“FARA”): “America’s corporate leaders might not think of themselves as lobbyists,” but promoting People’s Republic of China (“PRC”) policies in the United States “could implicate” this law enacted to control Nazi propaganda.² He declared the PRC’s ambition is to “raid the United States,” not to “trade with the United States.”³ FARA requires a U.S. person acting on a foreign government’s behalf to register with the Department of Justice for attempting to influence U.S. audiences, or otherwise serving the public or political interests of a foreign government. FARA does not block political speech; instead, it requires full disclosure of foreign influence to inform policymakers and the general public who is representing the foreign interest, and often why.

THE SPEECHES

Attorney General Barr called out Google, Microsoft, Yahoo, Apple, and Cisco by name, declaring they “have shown themselves all too willing to collaborate with the CCP [Chinese Communist Party].”⁴ Examples he cited include: “Cisco helped the Communist Party build the Great Firewall of

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¹ Foreign Agents Registration Act of 1938, 22 U.S.C. § 611 *et seq.*, available at <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title22/pdf/USCODE-2009-title22-chap11-subchapII.pdf>.

² William P. Barr, Attorney General, “Attorney General William P. Barr Delivers Remarks on China Policy at the Gerald R. Ford Presidential Museum,” July 16, 2020, pg. 5, at www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-china-policy-gerald-r-ford-presidential (“Barr Speech”).

³ Barr Speech at 3.

⁴ Barr Speech at 5.

China”; Apple “removed the news app Quartz from its app store in China, after the Chinese government complained about coverage of the Hong Kong democracy protests” and the company’s transfer of iCloud data to Chinese servers “would give the CCP easier access” to American data. The nation’s senior U.S. law enforcement officer described his view plainly: “The CCP has launched an orchestrated campaign, across all of its many tentacles in Chinese government and society, to exploit the openness of our institutions in order to destroy them.”⁵

Attorney General Barr’s speech is best understood as part of Secretary of State Michael R. Pompeo’s goal of explaining the “different facets of America’s relationship with China, the massive imbalances in that relationship that have built up over decades, and the Chinese Communist Party’s designs for hegemony.”⁶ It is also one part of four coordinated appearances by senior administration officials on this issue.⁷ National Security Advisor Robert O’Brien focused on the PRC’s ideology, quoting the Chinese Communist Party’s policy to permit “absolutely no opportunity or outlets for incorrect thinking or viewpoints to spread.”⁸ Federal Bureau of Investigation (“FBI”) Director Christopher A. Wray addressed espionage, combating China’s “effort to become the world’s only superpower by any means necessary.”⁹ He tells us the FBI is investigating over a thousand cases of Chinese activities in the United States through all of its 56 field offices, opening a new case every 10 hours.¹⁰ China is “cheating twice over” by stealing American intellectual property and using it “to compete against the very American companies it victimized.”¹¹

⁵ Barr Speech at 6.

⁶ Michael R. Pompeo, Secretary of State, “Communist China and the Free World’s Future,” July 23, 2020, pg. 4, *available at* www.state.gov/communist-china-and-the-free-worlds-future/ (“Pompeo Speech”).

⁷ Robert C. O’Brien, National Security Advisor, “The Chinese Communist Party’s Ideology and Global Ambitions,” June 24, 2020, pg. 2, *available at* www.whitehouse.gov/briefings-statements/chinese-communist-partys-ideology-global-ambitions/ (“O’Brien Speech”), Pompeo Speech at 4.

⁸ O’Brien Speech at 4.

⁹ Christopher A. Wray, Director of the Federal Bureau of Investigation, “The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States,” July 7, 2020, pg. 4, *available at* www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states/ (“Wray Speech”).

¹⁰ Wray Speech at 3, 5.

¹¹ Wray Speech at 4.

Director Wray addressed PRC influence campaigns in the United States as using “open, naked economic pressure and seemingly independent middlemen to push China’s preferences on American officials.”¹² He sums up PRC influence campaigns as building a “policymaking environment in which Americans find themselves held over a barrel by the Chinese Communist Party.”¹³ Examples from this speaker series include:

- CCP demands to walk back the Houston Rockets general manager’s tweet supporting the Hong Kong protesters;
- Demanding U.S. hotel chains and airlines to remove all Taiwan references from their websites;
- Using Beijing’s “financial might and market access to pressure Hollywood into self-censorship,” including “*Maverick*” and the “*Red Dawn*” remake; and
- Hacking U.S. citizens’ data to “blackmail individuals to say and do things that serve the Party’s interests.”¹⁴

Attorney General Barr’s remarks followed this recitation of the PRC’s bad acts and influence campaign. He predicted the American people “will increasingly call out corporate appeasement” of the Chinese Communist Party.¹⁵ His words, “collaborate” and “appeasement,” evoke cold war rhetoric. Secretary Pompeo describes the last 40 years of U.S.-Sino relations as “We opened our arms to Chinese citizens, only to see the Chinese Communist Party exploit our free and open society. China sent propagandists into our press conferences, our research centers, our high schools, our colleges, and even into our PTA meetings.”¹⁶ Solving the equation Secretary Pompeo and Attorney General Barr put on the national chalkboard requires a whole-of-society effort to “resist [CCP] domination and to win the contest for the commanding heights of the global economy.”¹⁷

ADMINISTRATION ACTION

The Trump Administration has focused on this task, particularly following the U.S. arrival of the “Wuhan virus,” as the National Security Advisor

¹² Wray Speech at 8.

¹³ Wray Speech at 10.

¹⁴ O’Brien Speech at 5–6.

¹⁵ Barr Speech at 6.

¹⁶ Pompeo Speech at 7.

¹⁷ Barr Speech at 8.

describes the pandemic.¹⁸ But without Congress, it can use only the tools already in its toolbox. It has, for example:

- Restricted PRC telecoms Huawei and ZTE from access to semiconductors;
- Designated the U.S. operations of nine PRC state-owned media outlets as “foreign missions;”
- Imposed export restrictions on PRC government entities and companies involved in its repression of the Uyghurs;
- Withdrew the United States from the U.N. Human Rights Council and the WHO;
- Limited students from universities affiliated with the People’s Liberation Army from attending U.S. universities;
- Halted federal retirement fund investments in PRC companies;
- Submitted a Department of Defense list of companies operating in the United States with links to the People’s Liberation Army;¹⁹ and
- Banned TikTok and WeChat in the United States by executive order, prohibiting all transactions with these apps or their corporate owners or affiliates (presumably including app downloads and use) after September 20, 2020.²⁰

National Security Advisor O’Brien closed his recitation of U.S. responses to PRC affronts by saying “these steps are just the start . . . there is more to come.” But what else can this administration do in the near term, during the pandemic, with Congress unlikely to pass legislation on this topic in the final months before the election?

OTHER TOOLS

The Department of Justice and FBI have some hammers. The administration, based on the Attorney General and FBI Director’s remarks, appears likely to use them. They can, for instance, arrest PRC spies and their U.S. sources, publicize American companies’ “kowtowing” to China, impose more sanctions and tariffs, bar classes of PRC travelers from U.S. entry, and enhance Committee on Foreign Investment in the United States scrutiny of PRC acquisitions.

¹⁸ O’Brien Speech at 5, 7.

¹⁹ O’Brien Speech at 7–8.

²⁰ Exec. Order on Addressing the Threat Posed by TikTok (Aug. 6, 2020), Exec. Order on Addressing the Threat Posed by WeChat (Aug. 6, 2020), *available at* <https://www.whitehouse.gov/presidential-actions/>.

FARA stands out as one tool the Department of Justice may use now to further the administration's China policy. The Attorney General closed his remarks on this point, warning executives they may be "lobbyists" for China who must register under FARA in between reciting CCP influence over U.S. corporations and research facilities and Hollywood studios. Placing this FARA warning in his speech's peroration lends additional emphasis, recapitulating his main points and urging them earnestly, with all the force of his office. It is also consistent with the Department's "China Initiative," announced in 2018 to counter threats from China and reinforce the administration's national security policy. "Apply[ing] the Foreign Agents Registration Act to unregistered agents seeking to advance China's political agenda, bringing enforcement actions when appropriate" is one of the China Initiative's 10 goals.²¹ Escalating U.S.-PRC discord suggests the administration is more likely to take further action to counter what it sees as improper influence campaigns by a hostile power than retreat from the hard line stance taken by three cabinet officers and the FBI director in this speaker series.

²¹ U.S. Department of Justice, "Information About the Department of Justice's China Initiative and a Compilation of China-Related Prosecutions Since 2018," updated Aug. 4, 2020, *available at* <https://www.justice.gov/opa/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

