
China, the United States, and the Rivalry Over the Imposition of Unilateral Trade Sanctions

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China has long maintained that trade sanctions imposed unilaterally by one or more countries outside the scope of the United Nations Security Council, where China enjoys veto power as one of the five permanent members, are illegal and not binding on China or any Chinese entity or individual.

China has, however, not been averse to imposing de facto sanctions on entire countries and jurisdictions or large segments of their economy for treating Taiwan as an independent nation rather than a part of China, receiving the Dalai Lama which China regards as implicit support for the independence of Tibet, award of the Nobel Peace Prize to a Chinese dissident, engaging in territorial disputes with China, installing military equipment which China deems a threat to its territory, or restrictions on trade with or investment by China.¹ By threatening and in some instances implementing such de facto sanctions, China seeks not only to deter and if necessary punish a counterpart for transgressing China's vital interests and deterring others from engaging in such conduct, while at the same time preserving China's formal policy of opposition to unilateral sanctions.

Despite China's public opposition to the imposition of unilateral sanctions by other countries, China's Ministry of Commerce ("MOFCOM") adopted the Provisions on the Unreliable Entity List (the "UEL List", 不可靠实体清单规定)² in 2020 which authorizes MOFCOM to investigate and place particular foreign companies on the UEL List based on their endangerment of China's national development, sovereignty or development interests, and the damage which they inflict on the legitimate rights and interests of Chinese parties, compliance with internationally accepted economic and trade rules, and other relevant facts.

Comparable in general to the Specially Designated Nationals List ("SDN List") maintained by the Office of Foreign Assets Control ("OFAC") in the United States, the UEL List has been populated infrequently and so far only with respect to subsidiaries of United States companies supplying, armaments and defense technologies to Taiwan:

UEL List

Company Name	Date Added to List
Lockheed Martin Corporation (洛克希德·马丁公司)	February 16, 2023
Raytheon Missiles & Defense (雷神导弹与防务公司)	February 16, 2023
General Atomics Aeronautical Systems (通用原子航空系统有限公司)	May 20, 2024
General Dynamics Land Systems (通用动力陆地系统公司)	May 20, 2024
Boeing Defense, Space & Security (波音防务、空间与安全集团)	May 20, 2024

Additionally, MOFCOM has placed Caplugs on its watch list, alleging that the company has circumvented China's UEL regulations by transferring goods procured from China to entities listed on the UEL. MOFCOM has urged Caplugs to take immediate action to ensure that goods, technology, services, and other items procured from China are not transferred to foreign entities on the UEL.

Although such United States companies have not welcomed inclusion on the UEL List, they reportedly have not been deterred from engaging in business in Taiwan, in part because they themselves or their listed subsidiaries do not have substantial business or assets in Mainland China. The UEL List may, however, have had a deterrent impact on defense technology companies domiciled in Europe or elsewhere as well as their governments.

Frustrated by the imposition by the United States of unilateral sanctions or organization of multilateral sanctions which hamper Chinese foreign trade and travel and otherwise harm China's interests, China has proceeded to adopt additional legal measures in an effort to further legitimize its position, provide a stronger foundation for Chinese parties to disregard such sanctions, and impose penalties against foreign parties which benefit from such sanctions in order to deter other countries from imposing sanctions impacting China's interests.

In particular, the Ministry of Commerce on January 9, 2021 promulgated the Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (the "Blocking Rules", 阻断外国法律与措施不当域外适用办法),³ and then on June 10, 2021 the Standing Committee of the National People's Congress enacted the Anti-Sanctions Law (the "ASL", 中华人民共和国反外国制裁法)⁴ on an expedited basis after only two rather than the normal three readings.

The Blocking Rules are intended to block the extraterritorial effect of unilateral foreign sanctions banning or restricting Chinese parties (including Chinese citizens, legal persons and other organizations) from transacting with their business counterparts in third countries or regions.

The ASL goes beyond the Blocking Rules in three respects:

1. the ASL conveys more authority as a law rather than the Blocking Rules which have the force only of a ministerial regulation;
2. while the Blocking Rules seek to protect Chinese parties in engaging in transactions with sanctioned parties by blocking unilateral foreign sanctions, the ASL directly targets and penalizes the principal parties and others deemed by China to be involved in the drafting, approval or active facilitation of the implementation of restrictive measures against China and Chinese parties; and
3. any party deemed to have been involved in such sanctions against China may then be subject by particular Chinese government departments to countermeasures, such as restrictions on the conduct of business in or with China, travel restrictions to China, and/or freezes of assets in China.

China to date has been very cautious in imposing countermeasures. It has largely acted not through direct actions against companies or individuals participating in the adoption or active facilitation of the imposition of sanctions against China or Chinese parties. It has instead confined its actions against subsidiaries of foreign multinationals which engage in business with Taiwan, in particular national defense armaments and munitions and the technologies associated therewith, as well as entities and individuals who are deemed by China to interfere in China's internal affairs, undermine China's sovereignty and territorial integrity, or infringe upon China's interests. Such countermeasures do not directly address sanctions imposed by other countries and moreover have had limited effect to date because China has generally confined the scope of such measures to particular subsidiaries of larger corporate entities. Such subsidiaries reportedly do not themselves engage in much business with China because of trade restrictions imposed by the United States or other countries on transactions with China, or because of China's own concerns over national security and drive for self-sufficiency.

Such actions taken in the name of anti-sanctions measures may apply not only to organizations and individuals but also to spouses and other immediate family members, senior managers or actual controllers of such organizations, organizations in which the listed individuals serve in senior management positions, and organizations in which the listed individuals are actual controllers of the organization's establishment or operations.

More broadly and more recently, the Foreign Relations Law enacted in 2023 provides in Article 33:

"The People's Republic of China has the right to employ corresponding countermeasures or restrictive measures against acts that violate fundamental principles of international law or international relations and harm the sovereignty, security, or development interests of the People's Republic of China.

The State Council and its departments are to draft necessary administrative regulations and departmental rules, establish corresponding work systems and mechanisms, strengthen inter-departmental coordination and cooperation, and determine and implement related countermeasures and restrictive measures.

Decisions made on the basis of the first and second paragraphs of this Article are final

decisions.”⁵

All of the above are in addition to export and import restrictions and other measures over goods for which China is the leading source, including raw materials like ores and processed minerals.⁶

The final paragraph of Article 33 signifies that there are no avenues for judicial review once the State Council or the relevant administrative department(s) have made a decision, although the ASL and the UEL authorize the administrative department(s) to suspend or revoke a countermeasure if there is a change in circumstances.

Although China’s measures taken in response to sanctions imposed by other countries may be considered self-serving and disregard China’s own imposition of comparable measures under different names, the utility of sanctions imposed against China also raises questions regarding their feasibility, effectiveness and cost.

Larger Chinese financial institutions, including state-owned banks under central government supervision, are reluctant to engage in transactions, especially transactions with Russia but also transactions with Iran and North Korea, to avoid sanctions imposed by the United States because China remains heavily dependent on CHIPS to execute approximately 96% of China’s overseas trade.⁷ Violations by any particular Chinese financial institution may expose them to secondary sanctions and result in penalties including a ban from CHIPS access which could cripple such institution and jeopardize the careers of its leading officials. Even smaller banks are vulnerable, forcing Russia and China in particular to resort to slower, more cumbersome and more expensive workarounds, including reliance on smaller and less sophisticated banks, breaking transactions into smaller transactions in an effort to avoid triggering scrutiny, and barter trade. Yet even smaller banks are at risk of being found to be in violation of United States sanctions, as shown by the experience of the Bank of Kunlun found in 2012 to be in violation of Security Council or United States sanctions regarding trade with Iran.⁸

The rise of China’s global importance, diplomatic, economic and military, raises broader questions about the efficacy of sanctions directed against China. Under what circumstances do the benefits outweigh the costs, whether measured in terms of damage to one’s own economy or diplomatic standing versus the changes actually made by China in response.

1. For a list of such de facto sanctions threatened or imposed against particular countries or Taiwan since 1992, see Ketian Vivian Zhang, *Just Do It: Explaining the Characteristics and Rationale of Chinese Economic Sanctions*, Texas National Security Rev., 7:3 Summer 2024, 16-38 at 24, <https://tnsr.org/2024/06/just-do-it-explaining-the-characteristics-and-rationale-of-chinese-economic-sanctions/>.

2. <https://m.mofcom.gov.cn/article/b/c/202009/20200903002593.shtml>

3. https://www.gov.cn/zhengce/2021-01/09/content_5712399.htm

4. https://www.gov.cn/xinwen/2021-06/11/content_5616935.htm
5. 中华人民共和国对外关系法, June 28, 2023, https://www.fmprc.gov.cn/wjb_673085/zfxxgk_674865/zcfg/fl/202306/t20230628_11105189.shtm
6. For a chart showing the frequency of different types of such trade restrictions, see Rhodium Group, Figure 1, Economic Coercion and Targeting of Multinational Companies (2010-H1 2023), China Corporate Advisory, Aug. 17, 2023.
7. Bloomberg News, China Banks Tighten Curbs on Russia After US Sanctions Order, Jan. 16, 2024, <https://www.bloomberg.com/news/articles/2024-01-16/china-banks-tighten-curbs-on-russia-after-us-sanctions-order>; The calculations will be broken down into components, <https://www.kommersant.ru/doc/6691892>.
8. <https://ofac.treasury.gov/faqs/207>; <https://ofac.treasury.gov/faqs/213>.

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