

Moving to Formality and Openness? An Analysis of China's New Two-Tiered Sanctions Policy

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Abstract

For a long time, China has relied on an informal and covert approach to sanctions in its foreign relations. The past few years, however, have witnessed quite significant changes in Beijing's sanctions policy, as most notably seen in the promulgation of various new domestic regulations and laws as well as official announcements of tit-for-tat punitive measures against Western countries. Why did China so significantly change its sanctions policy? Has China's approach to sanctions moved from informality to formality and from covertness to overtness? And given China's growing zeal in protecting its overseas interests, what are the implications for China's foreign policy? This article attempts to address these questions by analyzing China's latest sanctions behavior. Our findings suggest that China's move was motivated by not only external challenges, particularly sanction pressures from the United States, but also by China's domestic political dynamics including the emphasis in Xi's thoughts on international competition. In reality, China's new sanctions policy and its broader application may be constrained by three factors: China's rhetorical traps, potential market uncertainties, and insufficient asymmetric leverages. It is likely that

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Beijing may pursue a two-tiered sanctions policy, an explicit counter-sanctions regime against the U.S. and its allies on one hand and an old-style informal sanctions policy towards other countries on the other hand.

Since the beginning of the 21st century, China has developed a great concern over the protection of its expanding overseas interests. For example, at the 18th National Congress of the Chinese Communist Party in 2012, the former Chinese President Hu Jintao announced, “We will take solid steps to ... protect China’s legitimate rights and interests overseas.”¹ Two years later, at a central conference on work related to foreign affairs, Chinese President Xi Jinping highlighted, “We should protect China’s overseas interests and continue to improve our capacity to provide such protection.”² Although the phrase “China’s overseas interests” has frequently appeared in various official documents and speeches, the Chinese leaders have not provided any specific clarifications, and as a result, the concept remains vague and expandable, despite increasing interest among Chinese policy analysts in studying this subject.³

Protecting interests beyond a state’s physical territory is a major challenge faced by all aspiring great powers.⁴ In this regard, China is no exception, particularly in the context of growing Chinese investment under the Belt and Road Initiative and the intensifying Sino-U.S. strategic competition, which is manifested in many sanctions that Washington imposed on Chinese companies and individuals. These U.S. sanctions were aimed at addressing growing economic and technological challenges from China, criticizing China’s Hong Kong and Xinjiang policies, and punishing relevant Chinese entities that violated U.S. sanction laws and regulations. Worried that the United States’ increasing scope of sanctions will lead to adverse economic, political, and security consequences for China, Beijing believed that it was time to make a major move to establish a formal and legal sanctions system to protect its interests.

In September 2020, China’s Ministry of Commerce (MOFCOM) released the Provisions on the Unreliable Entity List (the UEL) shortly after the Trump administration issued executive orders against WeChat and TikTok. Similar to the U.S. trade blacklist, the UEL targets foreign entities that suspend normal transactions with Chinese entities for non-commercial reasons. Four months later, the MOFCOM publicized the Rules on Counteracting Unjustified Extra-Territorial Application of

Foreign Legislation and Other Measures (the Rules). These efforts culminated in the decision by the Standing Committee of the National People's Congress (NPC) to pass the Anti-Foreign Sanctions Law (AFSL). The AFSL provides a legal framework that enables Beijing to weaponize its sanction toolkits, protect Chinese entities, and counter foreign interference in its domestic affairs.

All these major changes can be contrasted with China's historical distaste for sanctions or unilateral punitive measures.⁵ In the past, Beijing has consistently opposed unilateral sanctions because of its experience of being at the receiving end of sanctions. These recent developments in China's sanctions policy are also notably different in comparison to what it has been doing since 2010, when China became the second-largest economy and when it began to employ export blocks, import suspensions, tourism restrictions, and other restrictive measures to bring economic costs to other states for political reasons. In those previous sanction cases, China heavily relied on informal tactics such as safety and quality inspections of foreign goods and unannounced mass boycotts. Besides, the Chinese government rarely acknowledged the link between its punitive economic measures and foreign policy disputes. Informality and covertness thus characterized China's sanctions approach in the past.

In light of the above observations, some puzzling questions arise: why does China make this major policy transition on sanctions? Will the new policy orientation completely replace the previous implicit sanctions practice or will there be a coexistence of two approaches in parallel? Given that sanction has an increasingly significant role in China's foreign policy, we should also ask the following questions: (1) How will China employ sanctions? (2) What approaches will it adopt? (3) What implications does China's engagement in the sanctions games have for international relations? This paper addresses these questions to build a better understanding of China's new sanctions policy in the context of contemporary Chinese foreign relations, especially Sino-U.S. relations.

This article is divided into four parts. In the next section, we examine the existing literature on sanctions in Chinese foreign policy studies. We suggest that little attention has been paid to the context of deteriorating Sino-American relations and the economic and financial asymmetric relations between a rising China and the United States.⁶ Section two provides an overview of the tit-for-tat sanctions between the United States and China in recent years. In section three, we also try to analyze the internal political factors that have driven China's adoption of a new

sanctions policy. Section four highlights the hindrances to China's broader application of those new statutes. Our findings suggest that China's new policy move was motivated by not only external challenges but also by China's domestic political dynamics including President Xi's thoughts on international competition. China's new sanctions policy and its broader application may be constrained by three factors: China's rhetorical traps, potential market uncertainties, and inadequate asymmetric economic leverages. It is likely that Beijing may pursue a two-tiered sanctions approach, a new explicit countersanctions regime against the U.S. and its allies on one hand and an old-style informal sanctions policy towards other countries on the other hand.

1. Reviewing Sanctions in Chinese Foreign Policy

a. China as a Latecomer on Sanctions

According to various scholars, sanctions have two categories: positive/inducive sanctions and negative/punitive sanctions.⁷ We mainly focus on the negative/punitive aspects of a sanction, understood as government-directed economic threats or actual punishments on targets to achieve various political and security objectives.⁸ During the inter-war period, international liberalists who aspired to prevent war and maintain world peace believed that the use of sanctions was preferable because it would be less devastating than military force and more potent than diplomatic measures.⁹ Since World War II, western developed countries have generally treated sanctions as an alternative and legitimate foreign policy instrument,¹⁰ despite controversies about the legality, morality, and efficacy of sanctions.

In contrast, for a long time, China and many other developing countries have argued that only the United Nations Security Council can be a legal source of sanctions, a position that reflects their fundamental views on issues concerning sovereignty and interference. Unlike the traditional sanction initiators, China was reluctant to use economic sanctions to address foreign policy disputes, partly because of its own experience and a lack of economic prowess. For decades, China felt bitter about the diplomatic isolation imposed by Western countries in the aftermath of the Tiananmen crackdown in 1989. Also, before China's recent economic resurgence, it had insufficient economic and technological advantages to use coercive measures to punish other states.

However, China has now become a vital trading partner and destination for investment for many countries as a result of more than four decades of reform and opening up. Its rapid economic growth and attractive domestic market have created economic leverage for it to induce or punish targets. With the expansion of “core interests” (核心利益 *hexin liyi*), China has taken a carrot-and-stick approach to achieve its political, security, and strategic goals in recent times. Many researchers focus on the “carrot” (e.g., trade, investment, foreign aid, and infrastructure projects) partly due to the Chinese government’s emphasis on multilateral economic cooperation and massive projects supported by the Belt and Road Initiative and the Asian Infrastructure Investment Bank.¹¹ Rhetorically, China is still an opponent of unilateral sanctions, but in reality China is increasingly interested in using the “stick”—the sharp-edged economic statecraft tool—to punish other developing countries under certain circumstances.¹²

This has already been happening. According to a report by the Center for a New American Security (CNAS), China unilaterally employed seven cases of economic coercion against smaller countries between 2010 and 2018.¹³ For example, in 2010, during a maritime standoff near the disputed Senkaku or Diaoyu islands, China’s restrictions on rare earth exports to Japan¹⁴ resulted in economic costs to Japan. After the Nobel Committee awarded the 2010 Nobel Peace Prize to Chinese dissident Liu Xiaobo, China retaliated by reinforcing the safety inspection of Norwegian salmon and curtailing its imports to China.¹⁵ Similarly, in 2017, China responded to the U.S.-South Korean Missile Defense System Deployment by restricting group tours to South Korea and targeting its entertainment industry.¹⁶ In the past few years, Beijing also used quite significant punitive trade measures against Australia in the midst of worsening relations. These sanction activities have been regarded as a remarkable signal of China’s increasingly assertive and aggressive foreign policy.¹⁷ Clearly, China is a latecomer in the international sanctions game, but it is becoming an active player in this game now. Its engagement raises speculations and merits discussion. The international society is concerned that China will increase its use of sanctions for political, strategic or security purposes.

b. Existing Perspectives and Characteristics of China's Sanctions Behavior

Much of the existing literature shows that China's sanctions behavior has three core characteristics. First, unlike the United States, China rarely practices formal, legal, and publicized sanctions; instead, China tends to rely on informal or extra-legal means, such as product safety regulations and mass boycotts. This informality is a key characteristic of China's sanctions behavior, and it makes China's sanctions stealthier.¹⁸ Second, China rarely announces sanctions against other countries; this implicit and covert approach enables Beijing to deny any linkage between foreign policy disputes and punitive measures. Third, informal economic sanctions initiated by the Chinese government often target unrelated industries and sectors. In general, when multinational corporations engage in activities that may challenge China's internal politics or its fundamental positions on the Taiwan issue, the Chinese government primarily relies on the state media to incite nationalism and popular boycotts. These characteristics raise an interesting and important question: why is China inclined to adopt such an informal and covert approach?

Scholars have provided three explanations in response to this question. First, the constructivist perspective assumes China's perception or reaction to sanctions can be attributed to its experience, history, and culture.¹⁹ Immediately after the Tiananmen crackdown, Beijing was diplomatically isolated and restricted in the import of dual-use technologies and arms.²⁰ In the 1990s, China had to very painfully grapple with Western economic pressures that very often were linked to China's human rights conditions. Despite the limited effect of these sanctions in changing the political regime in China or curbing China's rapid economic growth, this experience reinforced China's victim mentality and led Beijing to denounce the futility of using sanctions to "undermine fundamental security interests or domestic political structure."²¹ Having reiterated the illegality and ineffectiveness of using sanctions to settle international differences,²² the Chinese government consistently "opposes the willful use or threat of unilateral sanctions in international relations."²³

The second explanation suggests that China's rhetoric against unilateral economic sanctions (UES) plays a significant role in limiting the negative impact of China's sanction behavior on the international audience.²⁴ A victimhood discourse enables China to maintain its positive image and credibility while relying on informal UES to achieve its foreign policy objectives at the expense of other countries' economic losses.²⁵ The

third explanation is more pragmatic and related to flexibility and international arbitration. In the absence of formality and openness, Beijing has two advantages. Beijing could choose to strengthen or weaken sanctions without changing its domestic law and regulations or strictly following rules and legal enforcement procedures. Also, if China takes a legal and formal approach and acknowledges the linkage between punitive measures and international disputes, it may likely encounter condemnation and pressures for violating the World Trade Organization's rules.²⁶

These existing perspectives and characterizations shed light on China's previous sanctions behavior. However, they might be either outdated or insufficient in explaining China's actual behavior, particularly over the past few years. First, the existing perspectives are mainly derived from China's sanctions against developing countries with weak economic resilience. From a methodological point of view, these erstwhile cases will limit the application of existing findings to the recent tit-for-tat sanctions between China and various developed countries. Second, in the literature, little attention has been paid to the target countries and their responses and how they respond and counter sanctions. Third, it is quite apparent that China has begun to move away from its past sanctions approach to something significantly different. These new developments need to be seriously studied. Fourth, it would be useful to examine how Beijing tries to reconcile the emerging legalistic approach with its traditional practice of employing sanctions in an implicit and vague manner.

Some analysts may argue that China's use of sanctions is still relatively constrained and the impact of Beijing's economic coercion should not be exaggerated.²⁷ It is certainly true that China's new sanctions policy is still at a nascent stage and some articles in the regulations and law are somewhat vague. However, examining and analyzing these new dynamics will enhance our understanding of the evolution of Chinese domestic and foreign politics and the role of sanctions in China's international politics.

2. China's New Sanctions Policy in the Context of Sino-U.S. Relations

It is well known that as a main international sanction initiator, the United States has employed economic sanctions more than any other country.²⁸ For instance, during the Trump administration, the United States employed a record of economic sanctions three times a day, more than that of any other administration.²⁹ While rigorously punishing U.S.

entities for violating U.S. sanction laws and regulations, the U.S. sanctions policy also included extraterritorial provisions that apply severe punishments on foreign entities.³⁰ The laws and regulations empower the United States to deprive the sanctioned entities access to the international financial system, market opportunities, and U.S. technologies. Such U.S. sanction activities have particularly targeted China in the past few years.

After the Trump administration announced sweeping tariffs on Chinese imports and accused China of high-tech theft in 2018, Sino-American conflict began to escalate and expanded beyond the economic aspect. The United States exercised its extraterritorial jurisdiction and blacklisted some Chinese entities based on domestic laws such as the Export Administration Regulations (EAR) or executive orders. Chinese entities were sanctioned and punished for three key reasons: (1) involvement in activities contrary to U.S. national security or foreign policy interests, (2) facilitation in human rights abuses, and (3) attempt to undermine democratic values. The U.S. sanctions against China were executed under one of the following: the Entity List, Unverified List, and the Military End-User List of the U.S. Department of Commerce and the Specially Designated Nationals List (SDN List) under the U.S. Department of Treasury. According to the latest official data, the Bureau of Industry and Security under the Department of Commerce added a total of 484 Chinese entities to its Entity List.³¹ The U.S. Department of Treasury administered China-related sanctions programs, including the Chinese Military Companies Sanctions and Hong Kong-Related Sanctions.³²

Chinese companies have also been targeted by U.S. secondary sanctions. These sanctions date back to the early 1990s, when Chinese businesses were penalized by the United States for transferring missile technology to Pakistan and for weapons transactions with Iran. In 2012, the Bank of Kunlun was the first Chinese financial institution hit by the United States for providing financial services to designated Iranian banks.³³ One year later, the United States sanctioned other five Chinese companies for selling items to Iran banned under U.S. laws.³⁴ In 2018, the U.S. Department of Commerce decided to punish ZTE and prevented the company from buying components from American suppliers.³⁵ The sanction eventually ended with ZTE paying a US\$1 billion fine and allowing U.S. enforcement officers inside the company to monitor its actions.³⁶ In the same year, the United States alleged that Huawei and Meng Wanzhou (the chief financial officer of Huawei) violated the U.S. trade sanctions against Iran.³⁷ In May 2019, the U.S. Commerce

Department announced the addition of Huawei and its 68 non-U.S. affiliates to the Entity List,³⁸ prohibiting U.S. companies from exporting, re-exporting or transferring all items subject to the EAR to Huawei and its affiliates without the approval of the U.S. government.

In this context, China became seriously concerned about the growing risks of U.S. sanctions interference and long-arm jurisdiction for China's commercial interests and domestic politics. Chinese companies were more likely to suffer from U.S. penalties because they were heavily reliant on American technology and market or had various demands from other actors on the U.S. blacklists or included American products in their supply chains. After the U.S. government restricted Huawei's business operations, China's Ministry of Commerce spokesperson Gao Feng said:

Those foreign enterprises, organizations and individuals that fail to comply with market rules, violate the spirit of contract, block or cut supplies to Chinese firms for non-commercial purposes, and seriously damage the legitimate rights and interests of Chinese enterprises, will be added to the UEL.³⁹

These strong words suggest that the Chinese leaders were determined to retaliate against actions taken by the U.S. government. A day after the Trump administration prohibited U.S. payment and transactions using WeChat and TikTok, China's Ministry of Commerce released the UEL that mirrored the U.S. Commerce Department's Entity List. The UEL laid out consequences for foreign entities that are deemed to be:

- (1) endangering national sovereignty, security or development interests of China
- (2) suspending normal transactions with an enterprise, other organization, or individual of China or applying discriminatory measures against an enterprise, other organization, or individual of China, which violates normal market transaction principles and causes serious damage to the legitimate rights and interests of the enterprise, other organization, or individual of China.⁴⁰

However, the United States continued to blacklist more Chinese entities. In November 2020, the Trump administration responded to the threat posed by the Chinese military-industrial complex (CMIC) by signing an executive order to prohibit U.S. investments in CMIC. The Biden administration further strengthened this executive order by targeting Chinese surveillance technology companies and blacklisting 59 entities that

contributed to “the surveillance of religious or ethnic minorities or otherwise facilitated repression and serious human rights abuses.”⁴¹ Two months later, the MOFCOM issued the Rules for “counteracting the damage on China caused by the unjustified extraterritorial application of foreign legislation and other measures.” Because of these new domestic regulations, many observed that China had begun to introduce EU-like blocking laws to counter foreign sanctions and long-arm jurisdiction.⁴²

The application of sanctions on Chinese organizations and individuals on the ground of controversies in China’s internal affairs is another major external trigger of a change in China’s new sanctions policy. Regarding the human rights issue, U.S. allies such as the United Kingdom and Canada also criticized China’s Xinjiang policy, leading to intensified international criticism against China and the diplomat boycott of Beijing’s 2022 Winter Olympics. In response to Beijing’s imposition of national security law in Hong Kong, President Trump signed the Hong Kong Autonomy Act of 2020 and a Hong Kong-related executive order, which President Biden extended for one year. According to the latest record, the Executive Order 13936 (The President’s Executive Order on Hong Kong Normalization) program has 42 mainland and Hong Kong officials on the SDN list.⁴³ The Chinese government announced several rounds of sanctions in response to the sanctions issued by the United States or European Union. But these sanctions were not backed by law. Amid the domestic call for foreign-related laws and regulations to counter sanctions, interference, and long-arm jurisdiction, the Standing Committee of the NPC eventually passed the AFSL in June 2021. Together with the UEL and the Rules issued by the MOFCOM, the AFSL indicated Beijing’s ambitions and desires to take a formal and legal approach to its sanction policy. Clearly, the imperative of coping with foreign sanctions has been a crucial factor behind Beijing’s decision making in revamping its own sanctions regime.

3. Internal Triggers Behind China’s Actions

a. Domestic Political Considerations

The actual implementation of China’s countersanctions against the United States and its allies shows that the Chinese government is still relatively cautious about applying the new statutes to target profit-oriented companies. China’s sanction announcements against foreign

businesses in relation to the UEL and the Rules have been made in general and vague terms. To date, China only threatened to sanction countries which interfered in affairs concerning Hong Kong, Xinjiang, and Taiwan, which China regards as domestic in nature (See Table 1). This fact demonstrates that domestic political considerations are very important in Beijing's decision in recalibrating its sanctions policy. Chinese leaders seem to be more concerned about external challenges to their domestic political legitimacy and authority than the harms that foreign sanctions may entail for Chinese business actors.

Between 2019 and 2021, the Chinese government imposed several rounds of sanctions on some U.S. organizations or individuals in response to the U.S. criticism or interference in China's Hong Kong policy. In December 2019, soon after the U.S. Congress passed the Hong Kong Human Rights and Democracy Act, the Chinese government announced sanctions on five U.S.-based organizations that were charged for involvement in the 2019 Hong Kong protests. According to Hua Chunying, the MFA spokesperson, these organizations "bear great responsibility for the current chaos in Hong Kong" and they "deserve to be sanctioned, and they must pay the price for it."⁴⁴ In August 2020, after the United States passed the Hong Kong Autonomy Act and imposed sanctions on 11 Chinese officials for undermining Hong Kong's democracy, the Chinese government responded by announcing sanctions on 11 U.S. officials.⁴⁵ When Washington placed sanctions on four more Hong Kong officials, Beijing took tit-for-tat measures in late 2020. In January 2021, the U.S. Department of Treasury issued Hong Kong-related sanctions programmes to implement the Hong Kong-related executive order issued by President Trump.⁴⁶ After China's NPC passed the AFSL in June 2021, the Chinese government initially announced AFSL sanctions against the United States in response to U.S. financial sanctions on seven Hong Kong officials. However, the Chinese government did not provide details about these reciprocal sanctions or retaliatory measures. It also failed to prevent the United States from criticizing or interfering in Hong Kong's affairs.

Similarly, in response to international criticism of China's Xinjiang policy, the Chinese government did not hesitate to publicly announce countersanctions on foreign organizations and individuals who took a leading role in the criticism. After the U.S. imposed sanctions on a Chinese government department and four officials in Xinjiang, the Chinese government imposed sanctions on one organization and four officials in the U.S.⁴⁷ Similar to its previous announcement, the Chinese

government did not provide details on its imposition of sanctions against U.S. entities involved in interfering in Xinjiang affairs. Nevertheless, after the MOFCOM published the Rules, the Chinese government initially mentioned specific measures to impose corresponding sanctions against the EU entities and personnel. In March 2021, China announced its decision to sanction ten individuals and four entities of the EU on the ground that they had hurt China's sovereignty and spread lies and disinformation; the individuals concerned and their families were prohibited from entering China and restricted from doing business with China.⁴⁸ A few days later, in another MFA's announcement to sanction relevant individuals and entities from the United Kingdom, United States or Canada, China added property freezing as another retaliatory measure.⁴⁹ Again, in December 2021, China imposed its second series of AFSL sanctions on another four U.S. officials in response to U.S. sanctions on four Chinese officials. The reciprocal countermeasures included (1) entrance ban, (2) business restriction, and (3) capital freezing, similar to those taken in Beijing's March sanctions.

China's tough stance and strong condemnation of the U.S. arms sales to Taiwan are not brand-new and could date back to early 2010. After the United States announced arms sales worth US\$6.4 billion to Taiwan in January 2010, the Chinese government expressed its strong indignation and threatened the United States with sanctions on companies involved in arms sales. However, in this strong sanction announcement, Beijing did not mention the monetary sum of sanctions and any names of American companies. In the eye of one prominent Chinese IR scholar Yan Xuetong, it is because the Chinese government wanted to "send a clear message of conciliation to the United States."⁵⁰ It was after 2020 that the Chinese government started to mention the name of companies or individuals involved in arms sales while not providing any details of countersanction measures. Despite the Chinese government's criticism and threats of sanctions, the U.S. military-industrial companies did not stop participating in arms sales to Taiwan. Instead of sending a clear message of conciliation to the United States, Beijing's reaction is more about expressing its anger and reiterating its red line. Since 1989, these U.S. companies have not maintained significant business relations with China. It is thus doubtful whether Beijing can execute punitive measures and bring economic costs to these American entities.

Table 1: China's Tit-for-Tat Countersanctions Against Western Countries Over the Past Decade

Year-Month-Date	Disputes	Sanctions by Western Powers (Mainly the U.S.)	China's Responses and Targets	Countermeasures
2019-12-02		The U.S. signed into the Hong Kong Human Rights and Democracy Act.	<ul style="list-style-type: none"> Five U.S. NGOs Includes National Endowment for Democracy, the National Democratic Institute for International Affairs, the International Republican Institute, Human Rights Watch and Freedom House 	<ul style="list-style-type: none"> Suspend reviewing requests of U.S. military vessels and aircraft to visit Hong Kong No sanction details published
2020-08-10		The U.S. Department of the Treasury imposed sanctions on eleven officials of China's Central Government and the HKSAR government for undermining Hong Kong's autonomy.	<ul style="list-style-type: none"> Eleven individuals Includes Marco Rubio, Ted Cruz, Josh Hawley, Tom Cotton, Pat Toomey, Chris Smith, Carl Gershman, Derek Mitchell, Daniel Twining, Kenneth Roth, and Michael J. Abramowitz 	<ul style="list-style-type: none"> No sanction details published
2020-11-30	Hong Kong-related	The U.S. State Department and Department of the Treasury imposed sanctions on four Chinese officials of the central government and the HKSAR over their alleged role in "suppressing dissent" in Hong Kong.	<ul style="list-style-type: none"> Four individuals Includes John Knaus, Manpreet Anand, Crystal Rosario, and Kelvin Sit Tak-O 	<ul style="list-style-type: none"> No sanction details published
2021-07-23	AFSL sanction	The U.S. Treasury Department's Office of Foreign Assets Control imposed financial sanctions on seven deputy directors of the Liaison Office of the Central People's Government in HKSAR by adding them to its list of Specially Designated Nationals.	<ul style="list-style-type: none"> Seven individuals and entity Includes Wilbur Louis Ross, Carolyn Bartholomew, Jonathan Stivers, DoYun Kim, Adam Joseph King, Sophie Richardson, and Hong Kong Democratic Council 	<ul style="list-style-type: none"> No sanction details published
2021-12-30	AFSL sanction	The U.S. Department of State and Department of the Treasury added five deputy directors of the Liaison Office of the Central People's Government in Hong Kong.	<ul style="list-style-type: none"> Five individuals Includes Wilbur Louis Ross, Carolyn Bartholomew, Jonathan Stivers, DoYun Kim, and Adam Joseph King 	<ul style="list-style-type: none"> Entrance probation Business restriction Capital freezing

Year-Month-Date	Disputes	Sanctions by Western Powers (Mainly the U.S.)	China's Responses and Targets	Countermeasures
2020-07-13		The U.S. State Department and Treasury imposed sanctions on a Chinese government department and four officials in Xinjiang based on U.S. domestic laws.	<ul style="list-style-type: none"> • One entity and four U.S. individuals • Includes the U.S. Congressional-Executive Commission on China, Sam Brownback, Marco Rubio, Ted Cruz and Chris Smith • Four entities and ten individuals • Includes Reinhard Butikofer, Michael Gahler, Raphaël Glucksmann, İlhan Kyuchyuk, Miriam Lexmann, Sjoerd Wiemer Sjoerdsma, Samuel Cogolati, Doviile Sakaliene, Adrian Zenz, Björn Jerdén, Political and Security Committee of the Council of the European Union, Subcommittee on Human Rights of the European Parliament, the Mercator Institute for China Studies in Germany, and the Alliance of Democracies Foundation in Denmark • Four Entities and nine individuals 	<ul style="list-style-type: none"> • No sanction details published • The first time provides details of sanction measures • Entrance prohibition • Business restriction
2021-03-22		The European Union imposed unilateral sanctions on relevant Chinese individuals and entity, citing the so-called human rights issues in Xinjiang.		
2021-03-26	Xinjiang-related	The United Kingdom imposed unilateral sanctions on relevant Chinese individuals and entity, citing the so-called human rights issues in Xinjiang.	<ul style="list-style-type: none"> • Includes Tom Tugendhat, Iain Duncan Smith, Neil O'Brien, David Alton, Tim Loughton, Nusrat Ghani, Helena Kennedy, Geoffrey Nice, Joanne Nicola Smith Finley, China Research Group, Conservative Party Human Rights Commission, Uyghur Tribunal, and Essex Court Chambers • One entity and three individuals • Includes Gayle Manchin, Tony Perkins, Michael Chong, and the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development of the House of Commons of Canada • Four individuals • Includes Nadine Maenza, Nury Turkel, Anurima Bhargava and James W. Carr 	<ul style="list-style-type: none"> • Entrance prohibition • Business restriction • Capital freezing • Entrance prohibition • Business restriction
2021-03-27		The United States (U.S.) and Canada imposed unilateral sanctions on relevant individuals and entity in Xinjiang.		
2021-12-21		The U.S. Department of State and Department of the Treasury imposed sanctions on four Chinese officials citing "human rights abuse" in Xinjiang pursuant to its domestic law.		<ul style="list-style-type: none"> • Entrance prohibition • Business restriction • Capital freezing
AFSL sanction				

Year-Month-Date	Disputes	Sanctions by Western Powers (Mainly the U.S.)	China's Responses and Targets	Countermeasures
2010-01-30		The U.S. announced a \$6.4 billion arms deal with Taiwan.	<ul style="list-style-type: none"> U.S. companies involved in arms sales to Taiwan 	<ul style="list-style-type: none"> Suspend military exchanges with the U.S. No sanction details published No specific companies mentioned
2015-12-17		The U.S. approved arms sale package worth \$1.83 billion for Taiwan.	<ul style="list-style-type: none"> U.S. companies involved in arm sales to Taiwan 	<ul style="list-style-type: none"> No sanction details published No specific companies mentioned
2019-07-12		The U.S. announced its plan to sell \$2.22 billion worth of arms to Taiwan.	<ul style="list-style-type: none"> U.S. enterprises involved in arms sales to Taiwan 	<ul style="list-style-type: none"> No sanction details published No specific companies mentioned
2019-08-21		The U.S. planned to sell \$8 billion worth of 66 F-16 fighter jets and provide relevant equipment and support to Taiwan.	<ul style="list-style-type: none"> U.S. companies involved in arms sales to Taiwan 	<ul style="list-style-type: none"> No sanction details published No specific companies mentioned
2020-07-14		The U.S. State Department approved a request from Taiwan to reclassify its Patriot Advanced Capability-3 missiles for an estimated cost of \$620 million on July 9.	<ul style="list-style-type: none"> One U.S. companies Lockheed Martin 	<ul style="list-style-type: none"> The first time mentions the name of the company involved in sales No sanction details published
2020-10-26	Taiwan-related	The U.S. State Department approved arms sales worth of about \$1.8 billion to Taiwan on October 21.	<ul style="list-style-type: none"> U.S. companies involved in the arms sales to Taiwan and relevant individuals and entities Includes Lockheed Martin, Boeing Defense, Space & Security (BDS) and Raytheon 	<ul style="list-style-type: none"> No sanction details published
2022-02-21		The U.S. announced a plan to sell \$100 million worth of arms to Taiwan on February 7.	<ul style="list-style-type: none"> Two military companies Includes Raytheon Technologies and Lockheed Martin 	<ul style="list-style-type: none"> The first time imposes sanctions on commercial companies in accordance to the AFSL No sanction details published
2022-08-05		Speaker of the U.S. House of Representatives Nancy Pelosi visited Taiwan, which China claims as part of its own.	<ul style="list-style-type: none"> One individual Includes Nancy Pelosi and her immediate family members Two individuals 	<ul style="list-style-type: none"> No sanction details published
2022-09-26		The U.S. announced a planned arms sale worth \$1.106 billion to Taiwan on September 2.	<ul style="list-style-type: none"> Includes Gregory J. Hayes (Chairman and Chief Executive Officer of Raytheon Technologies Corporation) and Theodore Colbert III (President and Chief Executive Officer of Boeing Defense, Space & Security) 	<ul style="list-style-type: none"> No sanction details published

Note: The information sorted in the table by the authors is primarily collected from the Ministry of Foreign Affairs of the People's Republic of China, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/.

b. Xi's Campaigns on Rule of Law and International Competition

Clearly, China's countersanctions are closely related to its leaders' domestic political concerns. But this perspective does not entirely explain why Beijing would adopt a much more legalistic and formal approach as compared to its past practices of using policy announcements and behind-the-scenes mobilization of the society. As the following analysis will show, two factors—China's attempted campaign on the rule of law and President Xi's thoughts on international competition—are also significant.

Years before U.S. sanctions on ZTE and Huawei, many Chinese policy analysts had already stressed the need to counter U.S. economic pressures and urged the Chinese government to take action to protect Chinese entities through legal means. Such proposal began to gain real attraction only after the 18th Party Congress in 2012, when the Party emphasized the need to promote the rule of law and to increase its ability to safeguard its national interests and the safety of Chinese people overseas. In the subsequent years, President Xi started a national campaign to strengthen the socialist rule of law and he regarded this campaign to be one of his key political programs. Inevitably, such campaign would have an impact on China's foreign policy circle. Foreign policy elites began to argue that the establishment and improvement of foreign-related laws and regulations would be vital in China's foreign relations. In 2020, the domestic call to counter foreign sanctions through legal measures reached its peak.⁵¹ China's sanctions legislation took place in such macro domestic political context despite the fact that the campaign for rule of law has not produced any substantive improvement to China's law enforcement sector.

In addition to external challenges and domestic push for advancing the rule of law, Xi's thoughts on international competition have also played a very important role in China's transformation of its sanctions policy. According to Xi,

The world has entered a period of turbulence and change, and international competition is increasingly manifested in disputes over systems, rules, and laws. We must strengthen the construction of foreign-related laws and regulations, improve the efficiency of foreign-related law enforcement and judicial affairs, and resolutely safeguard national sovereignty, security, and development interests.⁵²

There are good reasons to believe that the tit-for-tat sanctions between China and the United States, to a large extent, originated from this thought. In the eyes of Chinese policy elites, the United States has a well-established sanctions system for exerting its influence worldwide and the use of sanctions has become an integral part of Washington's full-fledged strategic containment against China. In this context, the Chinese leaders believe that they must "further improve the laws and regulations of anti-sanctions, anti-interference and counter-long-arm jurisdiction, and promote the construction of the legal system applicable outside [their] country's jurisdiction."⁵³

4. Challenges and Constraints

Now there is already an emerging new Chinese sanctions regime. To what extent can Beijing use it to effectively achieve its international policy objectives? To assess and evaluate the potential impact of China's new sanctions policy, we must consider the following questions: (a) How does China's actual sanction behavior fit into its long-standing rhetoric? (b) Is China economically capable of countering the U.S. sanctions or proactively targeting the existing hegemon? (c) What implications does the change have for China's future foreign policy? (d) And what constrains its sanctions approach in the future? This section attempts to address these questions.

a. China's Rhetorical Traps

Although China has taken the first step to establish a sanctions system through regulatory and legal means, it continues to express "its opposition to the wanton use of unilateral sanctions or threat of sanctions" and considers sanctions to be a component of blatant power politics and hegemonic bullying.⁵⁴ China's critical views on sanctions are particularly targeted at the United States. According to its state-owned media, "for a long time, unilateral sanctions have been an important tool used by the U.S. to bully other countries."⁵⁵ Such rhetoric suggests that the new legal means for sanctions designed to retaliate against Western countries might not become an affirmative foreign policy instrument for defending China's broader national interests in the near future. Meanwhile, almost no signal indicates that China tends to change its policy preference for informal sanctions against other vulnerable countries. This phenomenon

limits the application of China's new statutes within a specific scope and requires the Chinese government to rhetorically develop a dual-track strategy for the justification of its sanctions behavior.

Such limitation comes from what is called "rhetorical traps." When one cares about one's reputation and credibility while being reluctant to abandon or even continue to adhere to its original rhetoric, one will unlikely do anything inconsistent with the rhetoric. To escape the trap, one needs skills for plausible deniability, acting stealthily, and denying publicly. This behavior was apparent in China's use of sanctions against a few countries under the informal and covert approach in the past. An alternative method is to modify the old rhetoric or adopt new rhetoric that may sound compatible with the previous one.

China is now developing a new rhetorical strategy that distinguishes between sanction/offensive sanctions and countersanction/defensive sanctions. Chinese officials argue that a unilateral sanction represents an offensive action, while a countersanction is a self-defensive action triggered by external challenges. They contend that recent foreign sanctions have had direct negative consequences for Chinese companies and individuals and undermined China's sovereignty, internal affairs, and international influence. Beijing thus maintains that it needs to adopt proactive measures to help nullify the effects of those foreign sanctions, especially those coming from the United States. China also argues that these sanctions undermine the rules-based international order and distort the market mechanisms. As a responsible rising power, China has the obligation to defend international order/justice and free market. Beijing notes that its measures through the AFSL and other statutes to resist U.S. and EU pressures on China over trade, technology, and internal affairs are defensive in nature.⁵⁶ In the words of Zhang Yesui, the NPC spokesperson, "China's Anti-Foreign Sanctions Law is a defensive measure to counter containment and oppression and is essentially different from the unilateral sanctions pursued by some countries."⁵⁷

No matter how China amends its rhetoric on sanctions, there will be constraining effects on the application of its new laws and regulations in China's foreign relations. Unilaterally and proactively imposing sanctions on other countries would appear to be immoral and unjustifiable. And if China considers sanctions from stronger countries offensive, its unannounced sanctions against weaker ones will no longer be perceived as defensive. Therefore, China cannot escape from its own rhetorical traps which can be a major constraining factor in its broader application of the

new laws and regulations. It also makes China's imitation of the U.S. sanctions system more controversial if it is reluctant to formalize and legalize its sanctions against developing countries.

Notably, China's new sanctions policy has begun to mirror Washington's secondary sanction in its recent treatment of Lithuania and Taiwan. China has gone beyond trade with Lithuania and targeted non-Chinese and non-Lithuanian companies to increase the pressure on third parties and Lithuania. Beijing did not do so through domestic laws and regulations. Instead, it did so by maintaining an informal and covert sanction approach and by denying the linkage between punitive measures and disputes.⁵⁸ Apparently, Beijing has not abandoned its informal mechanisms against weaker targets, and it might not apply domestic laws and regulations to target smaller countries because of the constraints from its own rhetoric. China will continue to deny its unannounced sanctions against weaker countries. Chinese diplomats note, for instance, that "the accusation of 'economic coercion' cannot be labelled against China"; and as for its recent punishment against Lithuania, "so-called China's coercion of Lithuania is groundless and distorts facts."⁵⁹ It is quite likely that Beijing may feel comfortable in adopting a two-pronged sanctions strategy: strong countersanctions against Western powers particularly in association with issues deemed by Beijing as its domestic political affairs and an informal/covert sanctions policy towards other weaker parties.

b. Potential Market Uncertainty

As a significant part of Beijing's new sanctions system, the AFSL empowers the State Council to enact sanctions on foreign individuals and organizations that directly or indirectly participate in discriminatory restrictive measures against China's citizens and organizations or interfere with China's internal affairs. According to the AFSL, responsive measures include assets freezes, visa bans or deportation, and business and transfer prohibitions. As discussed, under the AFSL, the Chinese government has employed several rounds of sanctions on foreign politicians and value-oriented organizations, despite uncertain implementation and ineffective deterrence.⁶⁰ This target-specific approach could at least partially benefit the Chinese government in two ways. First, it avoids targeting non-related entities and prevents bringing broader economic costs to both sides. Second, it enables Beijing to send a more explicit diplomatic message to foreign politicians and warn the world not to cross

its “red line”. A crucial question, however, is whether Beijing will target profit-oriented companies.

This is a valid and genuine question. Several provisions in the Articles of the AFSL have attracted attention because of the uncertainty they bring to the market and business operations. First, entities within China’s territory are required to enforce the countermeasures employed by the State Council. Second, the AFSL prohibits organizations and individuals from enforcing or assisting in discriminatory restrictive measures issued by foreign countries. Organizations and individuals who violate the provisions and enforce foreign sanctions can be subject to lawsuits in China’s courts. Once activities are charged as violating the new laws and regulations, top executives at multinational corporations in China will be under pressure to decide whether to follow foreign sanctions or comply with China’s laws and regulations.

Many signs suggest that Beijing is likely to be relatively cautious when targeting foreign companies. China has a strong desire not to let the AFSL jeopardize its business environment. To address growing concerns over the impact of AFSL on foreign investment, the spokesperson of China’s MFA, Zhao Lijian, stated: “The law provides a predictable legal environment and a stable and predictable business environment for companies from all countries to develop in China.”⁶¹ Soon after the promulgation of the AFSL, the Chinese government announced that the AFSL would also be applied in Hong Kong. Former Chief Executive of Hong Kong Carrie Lam also noted that the Hong Kong government would support the inclusion of the AFSL in Annex to the HKSAR Basic Law III.⁶² But Beijing eventually decided to take more time to assess and evaluate the impact of applying the law to Hong Kong. The delay, to some extent, illustrates how potential market risks can constrain China’s sanctions policy. Until more details are revealed, the Chinese government would need more time and effort to consider potential market outflow and the impacts on commercial actors.⁶³

China will also need time to fine-tune the new laws and regulations to make them more targeted, precise, and in line with international norms as some articles in these documents remain vague.⁶⁴ For example, with reference to Articles 3 and 4 of the AFSL, it is unclear how Beijing will identify actors or foreign countries that “hurt its interests” and whether it should use countersanctions and proactively employ sanctions in response to these situations.⁶⁵ Ambiguities in these Chinese statutes may bring additional challenges to foreign investors’ decision-making in the China market.

c. Insufficient Asymmetric Leverages

Although China has begun to establish its own sanctions system by issuing domestic laws, legislation alone may not mitigate the impact of foreign sanctions. The very essence of sanction, as noted, is determined by relative economic capability and coterminous with asymmetric relations. The United States can employ many sanctions because of several main reasons: dominance of the U.S. dollar and financial institutions, the size and attractiveness of the market, and the role of U.S. companies in global supply chains.⁶⁶ China's relationship with the United States lacks "the necessary asymmetric dependence elements that would enable China to exercise coercive leverage effectively,"⁶⁷ particularly in the financial and technological domains. The U.S. dollar accounts for 88 percent of foreign exchange transactions, far outpacing the *yuan's* 4.3 per cent.⁶⁸ In the foreseeable future, it would be difficult for China's *yuan* to challenge the credibility of the U.S. dollar hegemony and achieve the status of a dominant currency.⁶⁹ Although the Chinese government can use statutes to force foreign companies to choose between the Chinese market and the Western one and also penalize those entities that threaten China's national interests or business, these companies might be inclined to choose the U.S. market because they need the U.S. dollar for their international transactions, business operations in the U.S., and American technologies.

In this context, it is quite challenging for Beijing to use its newly released regulations and laws to sanction or countersanction companies from the United States and other major Western countries. China also understands that a worst-case scenario, a forced decoupling from the United States and its allies in certain sectors, may become a reality. Lacking sufficient financial and technological levers, China appears to be more interested in adopting an independence and self-reliance strategy, as seen in Beijing's much touted dual circulation strategy. Western sanctions against Russia in the context of Russia's invasion of Ukraine further convinced Chinese policy makers of the significance of their country's self-reliance and economic autonomy.

5. Conclusion

China's policy statements, sanctions behavior, and enactment of new laws and regulations in recent years all indicate that China's sanctions policy

has moved from informality to formality, from covertness to openness. This policy shift has been driven by both external and internal factors. Externally, the U.S. strategic pressure against China, especially Washington's sanctions on China, has made it almost inevitable that Beijing would make the decision to come up with a comprehensive and effective response mechanism. China also had to respond with tit-for-tat countermeasures, particularly regarding those foreign criticisms and pressures that would be consequential to the Chinese Communist Party's domestic legitimacy and authority, given the significant growth of authoritarianism and Xi's political instruction on "struggle." China's decision to take the legal turn in the recent revision of its sanctions policy, a long overdue issue, also took place in the tide of political campaign on the rule of law in the country.

Chinese policy elites continue to recognize the inconsistencies between the new emerging sanctions paradigm and their traditional positions on sanctions. That is why Beijing is trying to work on a new set of sanctions rhetoric that attempts to distinguish offensive sanctions and countersanctions. The new rhetorical strategy has two significant implications. First, China can both retain its continuous condemnation of Western sanctions and justify its official tit-for-tat retaliation, steadily moving to establish a legal and formal sanctions system. Second, it enables the Chinese government to maintain an informal and covert approach when targeting other countries with a weaker economy. From these vantage points, it is quite likely that China may practice a two-tiered sanctions policy in the future, one formal and legalist approach in response to Western countries and the other informal and implicit set of punitive economic measures against other countries.

In addition to rhetoric traps, other elements that may constrain China's sanction behavior include potential market uncertainty and asymmetric economic relations. The promulgation of these statutes has raised concerns and speculation about potential political risks among commercial actors in the Chinese market. Beijing understands that if commercial actors are forced to choose between China and the U.S., their rational calculation to minimize costs and maximize profits may not necessarily benefit Beijing. This is exactly why in the past years Beijing has been relatively cautious when applying the AFSL and other statutes to target major foreign companies.

The third constraining factor is intuitive. It lies in the asymmetric economic relations between a rising China and the hegemonic United

States. Despite attempts to internationalize the *yuan* or the *yuan*-based global commodity trade system, China has not managed to shake the world's confidence in the U.S. dollar and to reduce the existing global economic system's reliance on the U.S. dollar. The Chinese government has refrained from both tightening exports on some components of the global supply chain and using Chinese-shared global ports to influence shipping flows and trade. As the largest economy in the world, the United States could find alternative markets and hasten the decoupling of China from the global value chain in some sectors. Unlike the United States, China still does not possess the technological advantages to inflict significant costs to the economies of the developed countries.

All these constraints notwithstanding, China's sanctions policy has turned a new page. In the past decade or so, Beijing has become more assertive in using economic coercion and punishment as a policy tool for the pursuit of political and security objectives in its relations with a few countries, for instance Japan, South Korea, Australia, Canada, and Lithuania. The tit-for-tat countersanctions against the United States and EU countries are a significant new development in its sanctions behavior. With the promulgation of various new policy and legal documents, it is quite likely that Beijing will continue to move towards a more open and formal approach in its employment of sanctions.

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