



US/China trade tensions: a tipping point?

The use of sanctions and counter-sanctions in the US/China trade conflict intensified significantly in early 2021. The measures, and the scrutiny of related commercial operations, have impacted a large number of companies in multiple sectors, as well as international supply chains. Does the intensity of these recent development signal, absent a rapprochement, a tipping point in trade relations and its impact on business? Are companies prepared for the legal, regulatory and reputational issues that may arise from even indirect exposure to competing trade measures?

The issues of Hong Kong, Xinjiang, and technology remain at the center of the, predominantly, US trade measures. Of particular note, in March 2021 alone:

- The EU and UK have imposed sanctions on China for the first time since 1989;
- The United States has continued, under the Biden presidency, the Trump era approach to imposing trade restrictions on China across all three of these central issues; and
- China has adopted wide-ranging counter-sanctions (including on business) and stands poised to implement the legal toolkit that it has been expanding in the past 6 months (including the Unreliable Entity List, the Blocking Rules and the Export Control Law).

While China's response to US and other Western trade measures has been muted to date, recent events signal a potential escalation.

This briefing puts the recent measures in the context of the tensions since 2018. The timeline below tracks the key sanctions, export control, and trade events, as well as the adoption of enabling legislation by both the United States and China. Even without mapping the general and targeted measures and counter-measures adopted related to tariffs, dumping, and intellectual property, the timeline shows the increasing intensity of measures relating to the three central issues identified above, and the increasingly wide-ranging impact on businesses and supply chains.

The direction of travel is clear, and companies should be cognisant of the emerging strategic and practical challenges posted by US/China trade tensions. To discuss how your business can navigate the increasingly complex landscape, please contact your usual Freshfields contact or any of the contacts below.

US/China trade tensions chronology

Western Measures

22 March 2021

UK, EU, Canada, US imposed sanctions on 4 senior Chinese officials of the Xinjiang Uyghur Autonomous Region (XUAR) and a Chinese state-run security body (the Public Security Bureau of the Xinjiang Production and Construction Corps). The measures imposed an asset freeze and a travel ban.

Information and communications technology and services (**ICTS rule**) takes effect; Commerce has yet to issue a prohibition determination.

17 March 2021

US sanctioned 24 Chinese and Hong Kong officials under EO 13936 on "Hong Kong Normalization." The US State Department named the officials in a report to Congress made pursuant to section 5(a) of the Hong Kong Autonomy Act. The measures were stated to be a response to the adoption by the National People's Congress on 11 March 2021 of the Decision on improving the electoral system of Hong Kong.

The US Commerce Department issued subpoenas to several Chinese companies in furtherance of the ICTS rule.

10-11 February 2021

The Biden Administration requested that the courts hearing cases on the WeChat and TikTok bans place a hold on the proceedings. The Biden Administration stated that it needed time to review the proposed bans, which had been imposed by former President Trump.

19 January 2021

US issued an interim final **ICTS rule** to implement authority in the EO 13873 to block, unwind, or condition certain "transactions" involving information and communications technology and services designed, developed, manufactured, or supplied by persons owned, controlled, or subject to the jurisdiction of "foreign adversaries."

15 January 2021

US sanctioned 6 Chinese and Hong Kong officials under EO 13936, US Secretary of State citing the arrest by Hong Kong police of 53 people on 5 January 2021 under the Hong Kong National Security Law.

14 January 2021

US added China National Offshore Oil Corporation Ltd. (**CNOOC**) to the Entity List, prohibiting exports of most but not all items subject to the US Export Administration Regulations. Allows continued operation of joint ventures with persons from certain countries that do not operate in the South China Sea.

12 January 2021

UK and Canada announced new measures on supply chains and Xinjiang.

5 January 2021

US President Trump issued Executive Order 13971: "**Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies.**" EO 13971 prohibits transactions (to be determined by the Secretary of Commerce) with targeted Chinese payment applications.

Chinese Measures

29 March 2021

Sanctions imposed targeting US and Canadian politicians in response to the UK, EU, and Canada's sanctioning of Chinese officials on 22 March. The measures prohibit Chinese persons from doing business with the designated persons and impose a travel ban.

26 March 2021

Sanctions imposed on 9 British nationals and four entities, including politicians, a barrister, an academic and a set of barristers' chambers, in response to the UK's imposition of sanctions on Chinese officials on 22 March. The measures impose an asset freeze, prohibit Chinese persons from doing business with the designated persons, and impose a travel ban.

22 March 2021

Sanctions imposed on ten EU individuals and four EU entities. The measures prohibit Chinese persons from doing business with the designated persons, and impose a travel ban.

20 January 2021

Sanctions imposed on 28 US politicians for having "seriously violated China's sovereignty" and for their involvement in the imposition of sanctions against China. The measures prohibit Chinese persons from doing business with the designated persons and impose a travel ban.

9 January 2021

China adopted the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (the **Blocking Rules**). The Blocking Rules are designed to protect against and counteract the effects of the extraterritorial application of foreign law where such law, in China's view, harms the interests of China or those of its nationals and companies. The Rules seek to protect Chinese companies from sanctions, export controls or other restrictive measures imposed by foreign countries, principally the United States.

<p>18 December 2020</p> <p>US added 60 companies to the export control Entity List. These included SMIC, a major Chinese semiconductor producer. The designations were made on numerous bases, including due to the companies' alleged involvement in (i) human rights abuses and (ii) the Chinese military industrial complex (in the case of SMIC and others).</p>	<p>11 December 2020</p> <p>China announced (unspecified) sanctions in response to the US sanctions of 8 December 2020.</p>
<p>8 December 2020</p> <p>US sanctioned 14 senior Chinese officials under EO 13936.</p>	
<p>12 November 2020</p> <p>US President Trump issued Executive Order 13959: "Addressing the Threat From Securities Investments That Finance Communist Chinese Military Companies" (i.e., CCMC sanctions). Effective 11 January 2021, the CCMC sanctions in EO 13959 restrict US persons from engaging in certain transaction in publicly-traded securities of 44 Chinese companies. These companies operate in a wide range of sectors (including aerospace, shipbuilding, construction, technology and communication), and further designations have been made since.</p>	<p>1 December 2020</p> <p>China announced sanctions against 4 US nationals and entities in response to the US sanctions on 9 November 2020.</p>
<p>9 November 2020</p> <p>US sanctioned 4 Chinese and Hong Kong-based officials under EO 13936.</p>	
<p>14 October 2020</p> <p>US Secretary of State reports to Congress under section 5 of the Hong Kong Autonomy Act: 10 individuals identified.</p>	<p>17 October 2020</p> <p>China adopted its first comprehensive and unified Export Control Law, introducing various control mechanisms that resemble certain aspects of the US export control regime. The Export Control Law took effect on 1 December 2020.</p>
<p>17 August 2020</p> <p>US revised the Foreign Direct Product Rule, further restricting exports to Huawei and its affiliates on the Entity List. On the same day, the US added 38 additional non-US Huawei affiliates to the Entity List.</p>	<p>21 September 2020</p> <p>China adopted rules to establish an Unreliable Entity List regime, establishing a framework by which blacklisted companies or individuals can be restricted or banned entirely from trading with China. These rules were announced one day after the ban on transactions with WeChat and TikTok was to go into effect.</p>
<p>7 August 2020</p> <p>US sanctioned 11 Hong Kong officials, including Hong Kong's Chief Executive Carrie Lam, under EO 13936 for "undermining Hong Kong's autonomy and restricting the freedom of expression or assembly of the citizens of Hong Kong."</p>	<p>10 August 2020</p> <p>China announced sanctions on 11 US nationals for "egregious behaviors on Hong Kong-related issues" and in response to the US sanctions on 7 August 2020.</p>
<p>6 August 2020</p> <p>US President Trump issued executive orders to ban certain transactions related to WeChat and TikTok. The bans are slated to become effective on 20 September 2020 but US courts ultimately enjoin the restrictions before they take effect.</p>	
<p>31 July 2020</p> <p>US imposed sanctions under the Global Magnitsky Act on Xinjiang Production and Construction Corps and 2 Chinese officials for their alleged activities in Xinjiang.</p>	
<p>22 July 2020</p> <p>US added 11 Chinese companies to the export control Entity List for alleged activities in Xinjiang.</p>	
<p>14 July 2020</p> <p>US adopted the Hong Kong Autonomy Act (HKAA). The HKAA established a stepped process under which the executive branch has broad discretion to target individuals and "foreign financial institutions."</p>	

US President Trump issued **Executive Order 13936: "The President's Executive Order on Hong Kong Normalization."**

In EO 13936, the President determined that Hong Kong was no longer sufficiently autonomous to justify special treatment under US law, due to the implementation on 1 July 2020 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region. UK announced that it would begin implementing a ban on Huawei in UK 5G mobile networks and eventually other networks.

9 July 2020

US imposed sanctions under EO 13818 (implementing the Global Magnitsky Human Rights Accountability Act) on four Chinese officials and the Chinese State-owned entity Xinjiang Public Security Bureau (XPSB) for their alleged activities in Xinjiang.

1 July 2020

US issued a **"Xinjiang Supply Chain Business Advisory."**

30 June 2020

The US Federal Communications Commission designated Huawei and ZTE as national security risks, thereby effectively cutting them off from the FCC's Universal Service Fund.

24 June 2020

US Department of Defense released a list of 20 major Chinese companies that it has determined to be owned or controlled by China's military. The list did not (at the time) impose sanctions or export controls on these companies.

17 June 2020

US adopted the **Uyghur Human Rights Policy Act**, which requires the US President to provide a list of senior Chinese government officials responsible for alleged serious human rights abuses in Xinjiang.

5 June 2020

US added 9 Chinese companies to the export control Entity List for alleged activities in Xinjiang.

20 May 2020

US passed the **Holding Foreign Companies Accountable Act**, which could potentially result in the future delisting from US exchanges of companies whose auditors cannot be inspected by the US Public Company Accounting Oversight Board (PCAOB) because a foreign governmental authority is prohibiting the inspection.

Prior to the enactment of this legislation, the NASDAQ had also filed three proposed rulemakings that would make its listing requirements more restrictive for companies principally administered in China and other emerging markets, for reasons including if the auditor cannot be inspected by the PCAOB.

7 October 2019

US added 28 Chinese companies, including Dahua Technologies and Hikvision, to the export control Entity List for alleged activities in Xinjiang. A number of listed companies are involved in artificial intelligence research and surveillance technology.

21 August 2019

US added 46 additional non-US Huawei affiliates to the Entity List.

16 May 2019

US added **Huawei and 68 of its non-US affiliates to the Entity List**, essentially prohibiting Huawei from buying parts

15 May 2019

US President Trump issued Executive Order 13873: **"Securing the Information and Communications Technology and Services Supply Chain."** EO 13873 authorizes restrictions on certain ICTS transactions, to be defined later by the Secretary of Commerce.

13 July 2018

US lifted the denial order on ZTE, terminating the US export control restrictions specific to ZTE.

16 April 2018

US issued a **denial order against ZTE**, effectively prohibiting it from participating in any transaction involving US-export controlled items for 7 years.

13 July 2020

China announced sanctions on 3 US politicians, a US diplomat, and a US governmental agency in response to the US sanctions of 9 July 2020.

Contacts



William Robinson

Partner, London
E william.robinson@freshfields.com



Nabeel Yousef

Partner, Washington
E nabeel.yousef@freshfields.com



Aimen Mir

Partner, Washington
E aimen.mir@freshfields.com



Kim Zelnick

Partner, New York
E kim.zelneck@freshfields.com



Stephanie Brown Cripps

Counsel, New York
E stephanie.cripps@freshfields.com



Alexander Dmitrenko

Head of Asia Sanctions, Tokyo
E alexander.dmitrenko@freshfields.com



Xin Liu

Lead China Dispute, Hong Kong
E xin.liu@freshfields.com

freshfields.com

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