

The Impact and Response of Trade Sanctions

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Abstract: As China-U.S. relations become more complex, the United States considers China a major competitor and employs various means to impose trade sanctions, exerting pressure on Chinese enterprises. Among these measures, export controls in the high-tech and communication sectors are prevalent, often justified under the banner of "national security." The U.S.'s sanctioning behavior reflects its concerns about China's rise in these fields, attempting to maintain its technological advantage by controlling the export of crucial technologies and curb the development of China's technology and communication industries. The frequent use of U.S. export controls in recent years has had a significant impact on Chinese enterprises. In this context, it is essential to delve into the characteristics of U.S. trade sanctions to comprehensively understand their impact on Sino-U.S. trade. Additionally, understanding China's responses to these sanctions is crucial for our country's enterprises to more effectively navigate and counteract the measures imposed by the United States.

Keywords: Trade sanctions; Export controls; National security; Countermeasures

1 Introduction

In the intricate tapestry of 21st-century Sino-American relations, the United States has increasingly framed China as a primary competitor, deploying a multifaceted strategy of trade sanctions to exert pressure on Chinese enterprises. A significant focal point of these sanctions lies in the high-tech and communication sectors, where the U.S. frequently resorts to export control measures, often cloaked under the guise of "national security." These sanctions stand as tangible manifestations of the U.S.'s concerns about China's growing prominence in these critical domains, attempting to safeguard its technological superiority by tightly regulating the export of key technologies and curbing the advancement of China's technology and communication industries.

The repercussions of these U.S. sanctions have reverberated across various sectors, posing considerable challenges for Chinese enterprises. Against this backdrop, a nuanced and comprehensive analysis of the distinct characteristics of U.S. trade sanctions becomes imperative. Such an analysis not only deepens our understanding of their intricate impact on Sino-American trade dynamics but also serves as a foundation for devising effective strategies for Chinese businesses to navigate and counteract these sanctions effectively. At the heart of the U.S. export control regime is the 2018 Export Control Reform Act, a sophisticated legal framework meticulously

crafted to regulate the export of dual-use products and technologies. The act's intricate structure revolves around the meticulous control of goods, software, and technology with applications in both civilian and military domains. Complementing this legislative foundation, the U.S. Department of Commerce has meticulously developed the Export Administration Regulations, a comprehensive set of rules that include various lists such as the Entity List, Unverified List, Denied Persons List, and the Ultimate Consignee, End-User List. These lists are pivotal tools for the U.S. government to exert control over transactions involving entities subjected to export restrictions, considering factors such as their intended use, end-use, and end-users.

The prevailing U.S. export control system has metamorphosed into a sophisticated form of what can be termed "legal warfare" directed at China. This warfare extends beyond mere control over exported goods, strategically encompassing a broader spectrum aimed at constraining the global activities of Chinese enterprises. Simultaneously, it aligns with other U.S. sanctions, signifying exponential growth post-Cold War and underscoring the evolving nature of interstate conflicts. The heightened reliance on these economic tools reflects the broader trend wherein major powers leverage economic prowess as a formidable instrument of governance.

In the current geopolitical landscape, characterized by uncertainty and shifting power dynamics, a nuanced understanding and interpretation of the U.S. export control system emerge not merely as an academic exercise but as a strategic imperative. Such insights are invaluable for businesses, policymakers, and scholars, offering a holistic perspective on the intricate dance of power between two global heavyweights and the consequential impact on international trade dynamics.

2 The Long Arm of U.S. Trade Sanctions

2.1 Characteristics of U.S. Trade Long-Arm Sanctions

Firstly, the nuanced application of the United States' "long-arm sanctions" underscores the strategic adaptability employed across diverse industries. These sanctions are rooted in distinct regulatory frameworks and pretexts, allowing the U.S. to selectively target various entities based on the perceived violations. In sectors such as commerce and agriculture, the U.S. frequently utilizes allegations of "forced labor" as a pretext for imposing sanctions on other nations. This results in the sweeping prohibition of foreign agricultural and commercial products, preventing their entry into the U.S. domestic market (Shen, 2021).

Contrastingly, within the realm of high-tech products, the U.S. adopts a more intricate strategy. Rather than outright blocking the import of foreign high-tech goods, the focus is predominantly on restricting the export of sophisticated products from the U.S. to other countries. This strategy is justified under the guise of "national security," ostensibly aimed at curbing the technological and economic advancement of other nations. The targeted and nuanced nature of this approach highlights the U.S.'s ability to tailor specific sanction measures based on the unique characteristics of different product categories, showcasing a flexible and adaptive approach in its deployment of sanctions.

Besides, the all-encompassing nature of U.S. sanctions extends not only to specific targeted entities but also to a wide array of subjects. In the realm of agriculture and commerce, the U.S. imposes sanctions on a variety

of products, including but not limited to agricultural and commercial goods (Wang and Li, 2022). For instance, the U.S. Customs, under the pretext of "forced labor," has implemented bans on agricultural products from Xinjiang, covering not only the products themselves but also the entire spectrum of related products in the supply chain. This extensive reach showcases the comprehensive impact of U.S. sanctions in different sectors.

Moreover, this trend extends to the industrial sector. The U.S. Export Administration Regulations and Commerce Control List establish controls over items with "civilian and military" dual-use applications. The scope of regulated items encompasses both tangible goods and intangible technologies, resulting in a broad and intricate regulatory framework. This comprehensive approach reflects the meticulousness of the U.S. sanctions regime, illustrating its nuanced strategy for influencing global dynamics across diverse industries.

2.2 Cases of U.S. Sanctions Against Chinese Entities

2.2.1 Sanctions on ZTE and Huawei

On March 7, 2016, the official website of the U.S. Department of Commerce disclosed internal documents obtained by its investigators from ZTE Corporation. The documents revealed that ZTE had ongoing projects in five embargoed countries, including Iran, Sudan, North Korea, Syria, and Cuba, all of which relied to some extent on the U.S. supply chain. The U.S. Department of Commerce imposed export restrictions on ZTE, citing its "violation of U.S. export control regulations." In response, the Chinese Ministry of Commerce expressed "strong dissatisfaction and firm opposition" as usual. In March 2017, ZTE was forced to reach an agreement with the United States and paid a hefty fine of \$1.19 billion.

Huawei's experience parallels that of ZTE. In 2019, the U.S. Department of Commerce alleged that Huawei violated U.S. "technological network security" and accused Huawei of selling its products to Iran, violating U.S. sanctions against Iran. As a result, the United States placed Huawei and its 70 subsidiaries on its "Entity List" for export control, prohibiting the export of materials used for production, such as semiconductor materials,

to Huawei. The U.S. sanctions made it challenging for Huawei to produce chips, dealing a significant blow to its supply chain.

2.2.2 Sanctions against TikTok and Wechat

The imposition of sanctions on TikTok and WeChat by the United States is deeply rooted in concerns regarding national security and data flow. This contentious decision was formalized in August 2020 when the then-President Trump signed two executive orders, explicitly instructing the prohibition of transactions involving TikTok and WeChat due to their perceived threat to national security.

Concerning TikTok, the executive order mandated its parent company, ByteDance, to divest TikTok's U.S. operations within a strict 45-day timeframe to mitigate potential data breaches and align with national security imperatives. A failure to secure a deal by the stipulated deadline would result in TikTok facing a ban on its operations within the United States.

Similarly, for WeChat, the executive order placed restrictions on transactions involving its parent company Tencent, encompassing a wide spectrum of activities related to WeChat within the U.S., including payments, communication, and various other services. The executive order invoked national security concerns, positing that WeChat might be exploited for the collection of personal information, posing an imminent threat to the nation's security.

The aftermath of these executive orders, issued during the Trump administration in 2020, saw the contentious practice of using "national security" as a pretext for sanctioning foreign entities, triggering widespread international debate. Key issues encompassed trade liberalization and the broad application of national security concerns. Despite subsequent legal interventions where U.S. courts temporarily halted the enforcement of these executive orders, the landscape of this matter remains in constant flux.

These cases underscore a recurrent theme where the U.S. leverages the justification of "national security" to intervene in China's electronic technology and instant messaging industries. The overarching goal is to impede China's progress in these sectors, subjecting Chinese

enterprises to arbitrary and obstructive measures.

3 The trade impacts of the U.S. "national security" long-arm sanctions

3.1 The impact on China-U.S. trade

Firstly, the U.S. prohibition on selling goods, software, and technology to China directly resulted in Chinese companies being unable to purchase raw materials from the U.S. for production. Taking chips as an example, domestic enterprises like ZTE and Huawei had a significant dependence on U.S.-made chips, and the U.S. sanctions led to a disruption in the chip supply chain. Once the existing stock of U.S.-made chips was exhausted, domestic companies couldn't continue purchasing from the U.S., severely impacting their production. This, in turn, affected the export activities of domestic enterprises, resulting in a decline in export volume.

Since China is classified as a D:1 group country under the regulation, it is unquestionable that Chinese enterprises importing controlled items of U.S. origin need to obtain a license exception. Even for non-U.S. origin goods, technologies, and software, if the production process involves U.S. technology, reaching a threshold of 25%, it is still subject to the regulation. Currently, companies are attempting to substitute with domestically produced chips or purchasing through multiple layers of agents in the U.S. The former faces efficiency differences, while the latter encounters significant legal risks. In general, regulated enterprises are unable to import chips, technology, etc., from the U.S., hindering technological cooperation and introduction. This obstruction poses a significant challenge to their production and operation, increases potential input costs for innovation, and delays technological progress.

Beyond imposing limitations on its own export products, the United States strategically wields its international influence to erect multiple barriers, impeding the importation of Chinese products and systematically eroding the export vibrancy of Chinese enterprises. This calculated approach not only hampers the global outreach of Chinese businesses but also encapsulates a broader ambition of constraining their overseas operations. Once

a Chinese enterprise finds itself ensnared within the confines of the Entity List and the End-User List, the repercussions reverberate across the globe, with global suppliers and clients preemptively severing ties due to the looming specter of potential U.S. sanctions, particularly concerning transactions related to controlled items.

The Bureau of Industry and Security's (BIS) discernment that Huawei engaged in collaboration with Iran triggered a sequence of two sanctioning waves, precipitating a substantial downturn in Huawei's worldwide market share for smartphones. Furthermore, when the United States relegated iFlytek to the Entity List, an initially prospective collaboration between iFlytek and an Irish enterprise was abruptly forsaken. This move not only brought the intended partnership to a standstill but also disrupted iFlytek's meticulously laid-out corporate strategy for market expansion in Ireland. The intricate interplay of these sanctions showcases the depth of their impact on both individual enterprises and the broader economic landscape.

Furthermore, the trade sanctions implemented by the United States under the pretext of "national security" wield substantial influence on American enterprises. In September 2022, the U.S. mandated Nvidia and AMD to cease chip sales to China. Both companies highlighted that 30% of global chip sales are directed to mainland China, emphasizing that refusing chip exports to China could result in Nvidia losing nearly \$400 million in revenue for the current quarter. This illustrates that the consequences of U.S. sanctions not only detrimentally affect Chinese enterprises but also diminish the export vigor and interests of American businesses.

3.2 The Impact on Global Trade

In the contemporary era of heightened global trade, the United States strategically utilizes the sanction rationale of "national security" to steer the trajectory toward "anti-globalization" initiatives (Zhang, 2020). The multifaceted measures it has undertaken are poised to exert dual impacts on the global economic landscape. Firstly, a resurgence of trade protectionism emerges, imposing constraints on the methodical development of economies across nations. Secondly, the prevailing dominance

of unilateralism acts as a hindrance to the seamless progression of global economic and trade integration (Zhu, 2022). This dynamic scenario underscores the intricate interplay between national interests and the intricate web of global economic relations.

The implementation of trade protection measures and unilateralism under the pretext of national security has reverberating implications for the landscape of global trade. In the first instance, this approach has not only heightened but significantly escalated tensions between nations, markedly amplifying the potential for trade disputes. Countries, driven by the imperative to safeguard their national security interests, may resort to unilateral imposition of trade restrictions, thereby precipitating the eruption of trade wars and plunging the intricate global trade system into a state of heightened turmoil and pervasive uncertainty.

In the second instance, trade protectionist measures leveraging national security as a justification tend to manifest a pronounced proclivity towards unilateralism. This not only undermines the bedrock of multilateralism but also erodes the very foundations of international cooperation. The dynamics of global trade necessitate collaborative efforts among nations through mutually beneficial strategies. However, an undue emphasis on national security considerations can impede the attainment of consensus among nations, disrupting the delicate equilibrium of the multilateral trade system and impinging on the trajectory of international cooperation.

Moreover, this approach exacerbates the inherent instability of global supply chains. Given the intricate interdependencies of global supply chains spanning multiple countries, the unilateral imposition of trade protection measures poses a significant risk of disrupting the seamless flow of critical products and services. This, in turn, exposes the global economy to heightened vulnerabilities, injecting an element of increased risk and volatility into the equation.

Finally, trade protectionism grounded in national security imperatives is predisposed to diminishing the trust quotient among trading partners. The imposition of trade restrictions by countries on each other, particularly

under the guise of national security considerations, not only fosters an atmosphere of suspicion but also sows the seeds of mistrust among trading partners. This, in turn, constitutes a formidable impediment to the organic evolution and flourishing of international trade relations.

The noteworthy aspect is that the shift in U.S. trade policy toward protectionism isn't a fleeting trend but a deliberate policy measure taken after comprehensive assessment. Since the aftermath of World War II, the United States has consistently upheld the principles of free and fair trade, engaging in cooperative trade endeavors with other nations. However, its trade policy toward competitors has been dynamic. For instance, in the 1970s, the ascendancy of the Japanese economy posed a threat to the hegemonic position of the U.S. economy. To counter Japan's growth, the United States implemented a series of import and export restrictions and sanctions, eventually leading to the collapse of the Japanese economy. The current situation with China mirrors that of Japan in the last century. U.S. trade protectionism is directed at competitors such as China. However, this trade protectionism against competitors inevitably exerts coercive effects on its allies and other countries.

In today's increasingly globalized international society, changes in the policies of one country are likely to trigger imitative actions by multiple countries, ultimately causing a chain reaction. Taking the example of U.S. export controls on China, in recent years, U.S. allies have also implemented extensive export control measures against China. Countries such as the United Kingdom, Japan, the Netherlands, among others, have strengthened their export control measures, and objectively, these policy tightenings are influenced by the U.S. export control measures on China. The tightening of export controls by many countries and unilateral sanctions against violations of export control policies also hinder the progress of global economic and trade integration, posing challenges to the interconnectedness of the world economy.

Furthermore, the United States has consistently championed trade liberalization and facilitation. In the domain of digital trade, France took the lead in introducing a digital services tax, prompting the United

States to conduct a Section 301 investigation, citing it as an impediment to trade liberalization. However, in its approach to trade with China, the United States has implemented a series of trade sanctions using "national security" as a pretext. On one hand, these sanctions diverge significantly from the trade liberalization advocated by the United States. On the other hand, within the globally integrated supply chain system, imposing trade sanctions on several Chinese companies under the justification of "Chinese companies may collect personal information, posing a risk to national security" does not effectively prevent damage to "national security."

4 China's Response to U.S. "National Security" Trade Sanctions

4.1 The domestic legislative level

In response to the sanctions imposed by the United States, China has taken proactive measures by introducing the "Anti-Foreign Sanctions Law" in 2021. This legislative move, notably outlined in Article 6, delineates three distinct categories of countermeasures available to China. However, the rapid enactment of this law has resulted in a somewhat hasty and conceptual framework, lacking the detailed specifications necessary for a comprehensive interpretation and effective implementation. Despite these challenges, the swift establishment of such legislation underscores China's commitment to addressing and countering foreign sanctions through its legal system. This strategic initiative signifies a deliberate approach aimed at safeguarding its interests in the face of external pressures.

In terms of legal interpretation, the "Anti-Foreign Sanctions Law" does not provide detailed explanations regarding the nature of "sanction actions," potentially leading to challenges in determining such actions. As mentioned earlier, while the U.S. export control measures against China may have political inclinations, it cannot be denied that they possess legitimacy and legal attributes at the institutional design level. Based on this, it is crucial to assess whether an export control sanction imposed by the U.S. constitutes unwarranted restraint and discriminatory suppression against China. If the U.S. enforces export control sanctions on China solely under the pretext of

"national security" with the aim of unjustly politically suppressing and economically restraining China, then China has grounds to implement countermeasures. However, if the items subject to U.S. export control are genuinely dual-use items related to "national security," justified under the WTO rules through the "security exception" principle, China should exercise caution in implementing countermeasures against the U.S. to avoid the misuse of the "Anti-Foreign Sanctions Law."

On the operational level of law, although Article 10 of the Anti-Foreign Sanctions Law establishes the conceptual mechanism of work coordination, it lacks detailed provisions on how various departments should coordinate and allocate responsibilities. This omission could potentially hinder efficient organization and coordination among departments during the countermeasure process, leading to ineffective implementation. In the context of U.S. export control sanctions, collaborative efforts among multiple departments have enhanced the breadth and specificity of sanctions against Chinese entities. For instance, the U.S. utilizes coordinated measures involving the Bureau of Industry and Security (BIS), the Department of State, the Department of Commerce, Customs, and others, enhancing the effectiveness of sanctions on Chinese entities.

In contrast, China's anti-foreign sanctions system is still in its early stages of development. Drawing inspiration from the U.S.'s "combination punch" strategy in relevant fields could have a reciprocal effect. The Ministry of Commerce of China, as the implementing authority for anti-foreign sanctions, should collaborate with other departments to establish an effective multi-departmental coordination mechanism. In response to U.S. sanctions on China under the pretext of "national security," the Ministry of Commerce could coordinate with public security authorities to restrict the issuance of visas for specific individuals or expel them from the country. Additionally, joint actions with banks to seize, confiscate, or freeze assets, both movable and immovable, within China could be implemented. Collaborative efforts with customs could be employed to prohibit specific organizations and individuals from engaging in

transactions involving relevant items in China.

Additionally, in September 2021, the Ministry of Commerce issued the "Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures." These measures outline the implementation and exemptions regarding the blocking of extraterritorial sanctions, enabling China to confine the impact of U.S. sanctions beyond its borders and mitigate the adverse effects of such sanctions(Xu, 2021). However, in the implementation of the "Blocking Measures," it is essential to exercise caution in the extent to which foreign measures are blocked. For instance, in certain situations, allowing companies to compensate the United States or accept U.S. export control sanctions may be a wise and efficient choice compared to completely blocking U.S. export control measures from affecting China. Unilaterally preventing U.S. export control measures could escalate tensions between the two countries, which is not conducive to subsequent negotiations or interactions(Ye, 2022).

In addition, in 2020, China promulgated and implemented the "Export Control Law of the People's Republic of China." As the first comprehensive export control law in China, it addresses the shortcomings of lower-tiered export control laws, aiming to safeguard national security and counteract the export control measures imposed by the United States on China.

4.2 International Litigation Aspect

The trade sanctions implemented by the United States are fundamentally considered acts of a sovereign nation, thereby subject to constraints under international law. The U.S. measures restricting the export of corresponding products to China are evidently in violation of Article 11 of the General Agreement on Tariffs and Trade (GATT), which specifically mandates the "elimination of quantitative restrictions of a general character." In light of this, China could utilize this violation as grounds to initiate a request for a comprehensive review by a panel of experts convened by the World Trade Organization (WTO).

Throughout the course of this review, it is anticipated that the United States may assert the "security exception"

to justify the perceived legitimacy of its actions. However, this argument is noticeably precarious. Notably, a San Francisco court previously conducted a trial addressing the ban on WeChat imposed by the Trump administration within U.S. borders. The court concluded that the ban did not constitute a necessary measure for preserving national security, leading to an order to rescind the ban. This domestic legal perspective within the United States, coupled with adherence to WTO regulations, further compounds the challenges for the acceptance of such sanction actions.

4.3 Enterprise Compliance and Talent Development

Furthermore, it is crucial for domestic enterprises to proactively engage in their compliance initiatives to navigate potential sanctions from the United States. As part of this initiative, firms should extensively familiarize themselves with the U.S. Export Control Regulations and stay informed about documentation from the Bureau of Industry and Security (BIS) pertaining to export controls. This involves a comprehensive evaluation to ascertain whether their product line falls within the regulatory scope of U.S. export controls (Wang, 2022).

Moreover, the establishment of an internal compliance framework within enterprises is paramount. This not only demands legal departments to be well-versed in U.S. export controls and economic sanctions laws, regulations, and procedures but also requires the seamless integration of these requirements into the day-to-day operations of the enterprise. Ensuring that frontline business personnel consistently adhere to these regulations in their routine transactions is of utmost importance.

Lastly, enterprises should place a significant emphasis on scrutinizing the qualifications of upstream raw material suppliers. This involves maintaining real-time awareness of updates to the U.S. export control list and verifying that products sourced from these suppliers do not feature on the export control list at the time of raw material procurement. This meticulous approach helps fortify the compliance posture of domestic enterprises against potential challenges arising from U.S. sanctions.

In response to sanctions imposed by the United States,

enterprises should proactively and assertively enhance their legal strategies. This involves utilizing local judicial channels to wield the law as a potent tool in safeguarding their legitimate rights and interests. A notable precedent is the case where WeChat users in the U.S. filed a lawsuit against the Trump administration. Through a comprehensive analysis of evidence presented by both sides, the court ultimately deemed the administration's ban on WeChat, justified by concerns about data collection compromising national security, as unreasonable. Consequently, the injunction against WeChat was lifted. Enterprises facing similar challenges must adopt a vigilant approach, leveraging legal avenues to challenge and counteract unwarranted sanctions. This proactive stance not only strengthens their legal position but also contributes to the broader discourse on the justifiability of such measures.

In addition to strengthening compliance and litigation capabilities within enterprises, it is imperative for China's education system to enhance the training of professionals well-versed in international law, particularly those with a deep understanding of the U.S. legal system. Cultivating a pool of talents proficient in U.S. law becomes pivotal when confronted with sanctions. Individuals possessing such expertise can systematically analyze the irrational aspects of sanctions, strategically employ this understanding in legal proceedings within the U.S., and ultimately champion China's interests in legal disputes. This strategic investment in legal education not only equips individuals with the knowledge to navigate complex legal landscapes but also positions China to respond effectively to legal challenges, especially those arising from international sanctions. By fostering a cadre of experts in U.S. law, China ensures it has the intellectual resources needed to proactively engage with legal issues and safeguard its interests in the global arena.

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