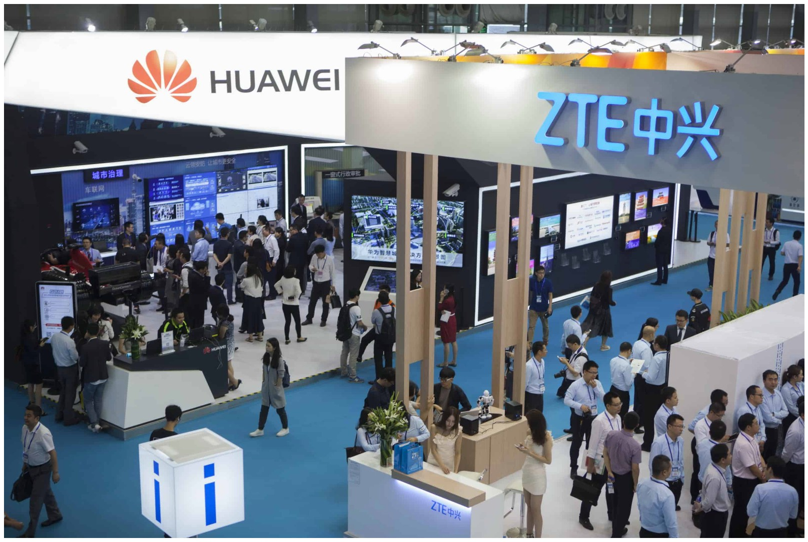
THE BIG PICTURE

Making Sense of Sanctions

The nature and severity of U.S. trade and business restrictions vary widely.

BY ELIOT CHEN — APRIL 24, 2022



Credit: Imaginechina via AP Images

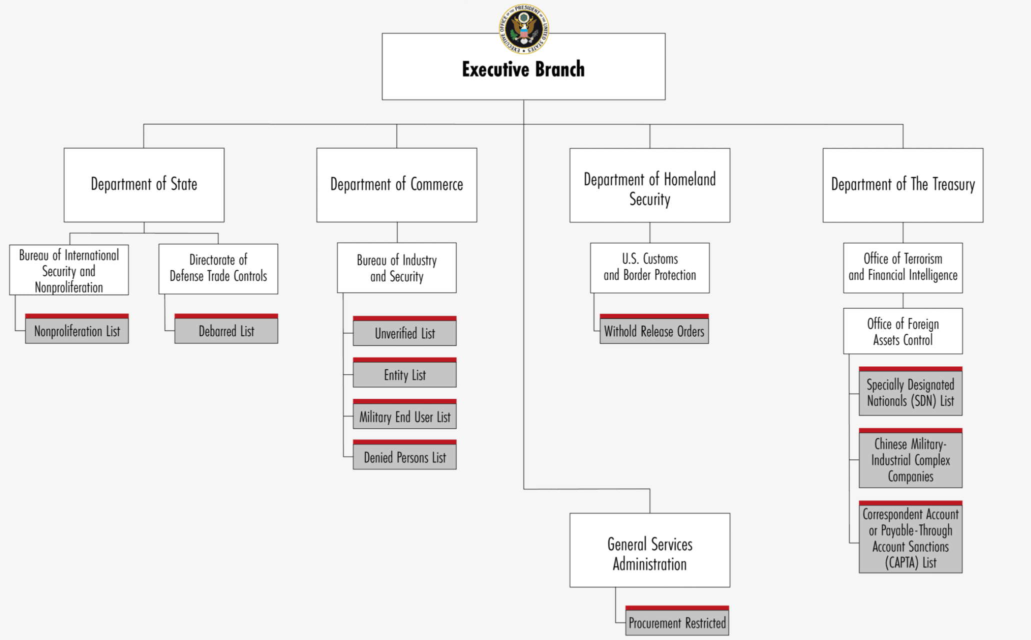
The United States has significantly increased its use of sanctions against Chinese companies in the last four years. Since 2019, when the Trump administration blocked the federal procurement of telecommunications equipment from Huawei and several other Chinese suppliers, a steady drip of new restrictions have made it harder to do business with hundreds of Chinese firms.

But how exactly does the sanctions system work? Headlines tend to lump together a variety of trade and business restrictions under the term 'sanctions,' but their nature and severity vary widely.

This week, *The Wire* takes stock of the U.S.'s China sanctions: who manages them, whom they target, and what they mean for the future of U.S. trade and business with China.

The Source of Sanctions

Many different U.S. government bodies have powers to restrict trade and investment with Chinese entities. These are some of the main sanctions lists that affect Chinese businesses, and the agencies that oversee them.



Data: U.S. government agencies

MANY LISTS

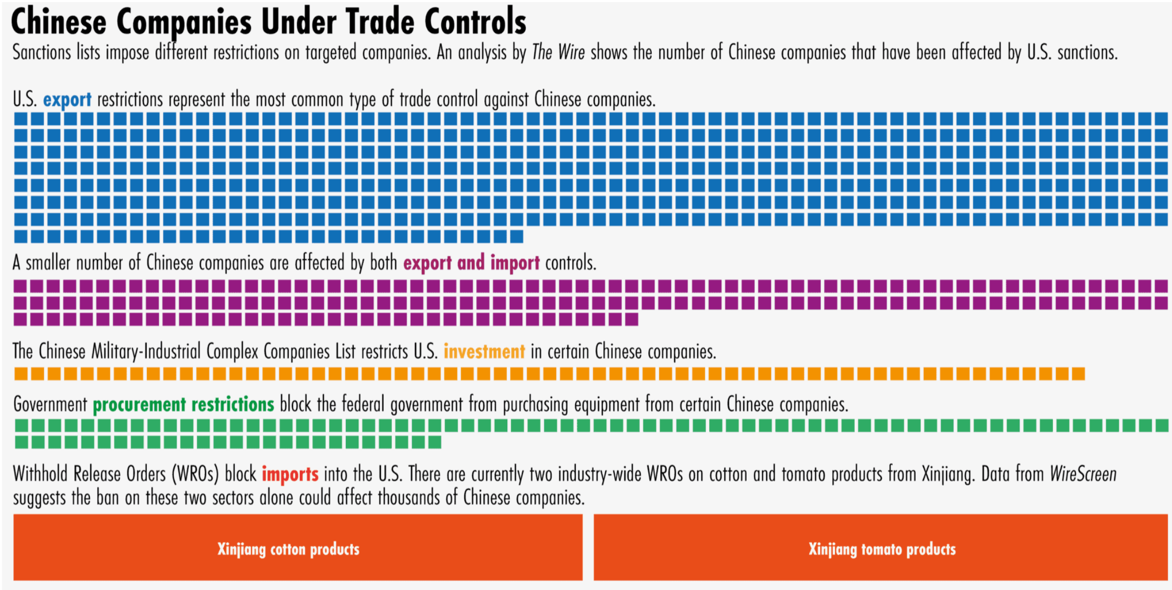
At least five federal agencies oversee the designation and enforcement of sanctions against Chinese companies. Those agencies manage multiple lists that impose different levels of restrictions on doing business. The lists equip the U.S. government with "a range of actions between putting a drag on a company's business versus maybe trying to shut them down," says Daniel Fisher-Owens, a partner at Berliner Corcoran & Rowe who specializes in sanctions and export controls.

Some of the harshest sanctions are administered by the Treasury Department's Office of Foreign Asset Control (OFAC). It manages the Specially Designated Nationals (SDN) list, which prohibits all trade and financial transactions with designated entities and individuals. Chinese officials that have been sanctioned for human rights abuses in Xinjiang and Hong Kong, for example, are added to the SDN list. OFAC sanctions include a '50 percent rule' stipulating that entities that are 50 percent or more owned by sanctioned entities are also blocked.

Other blacklists tend to have narrower restrictions: for example, the Commerce Department's Entity List imposes outbound export restrictions from the U.S. on target companies, but not import or investment limits. Export restrictions could hit Chinese firms that rely on U.S. inputs, but they don't block them from continuing to sell their products. Meanwhile, so-called 'withhold release orders', which are currently imposed on all cotton and tomato products from Xinjiang, prohibit imports into the U.S., while procurement restrictions block federal agencies — and in some cases contractors — from buying from targeted firms.

A sanctions coordinator at the State Department ensures that government agencies move in lockstep when implementing sanctions. "In general, there typically is a large consensus between departments before issuing a sanction," says Jason Bartlett, a research associate who tracks sanctions at the Center for a New American Security (CNAS), a Washington, D.C. think tank. That role, however, went unfilled during the Trump administration. "Part of the coordinator's job description is to work with U.S. allies on multilateral sanctions," he says.

"That was not the main approach of the previous administration, which could have been one of the reasons the roll was unfilled." The Biden administration's pick for the job was only approved by the Senate at the start of this month.



Data: WireScreen

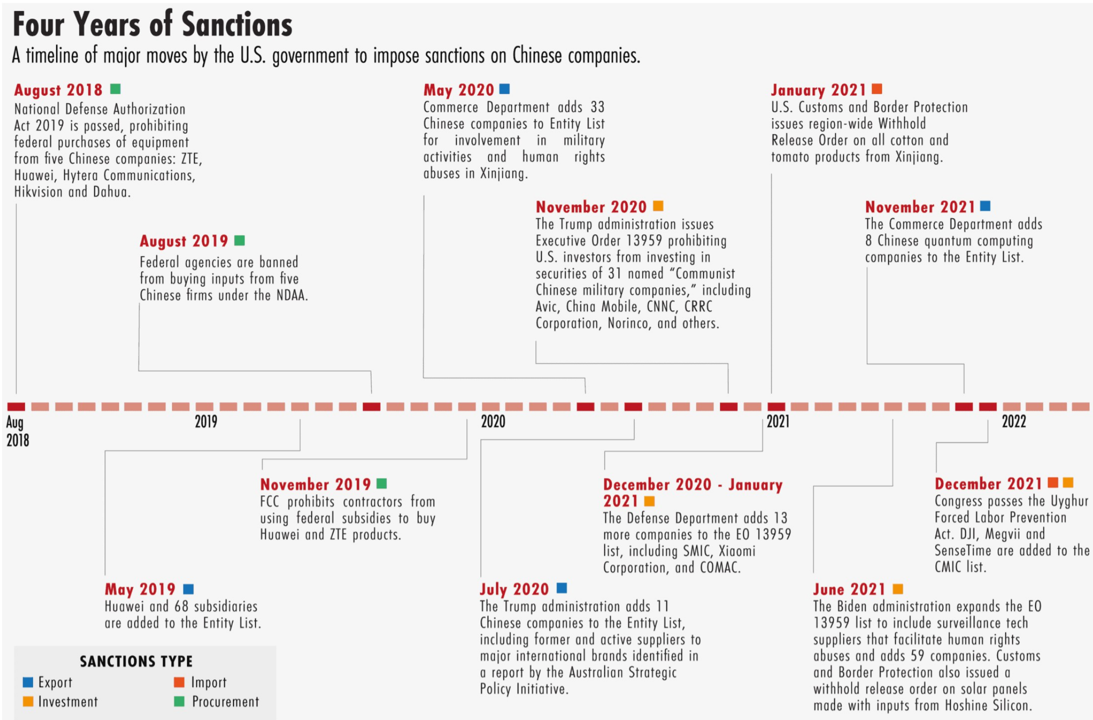
KNOCK-ON EFFECTS

The choice to block exports versus imports or investment often depends on the justification for sanctioning a firm. U.S. authorities have justified bans on exports or investment in terms of stopping American firms from aiding a target's growth; whereas import restrictions are justified in terms of preventing the consumption of goods deemed national security risks or unethically sourced, as in the case of the ban on Xinjiang products.

The federal government's separation of powers also explains different import and export controls. "Congress has more control over imports than exports," says Fisher-Owens, in part because outbound trade and investment is seen as a matter of foreign policy, which the White House is responsible for. Imports, particularly those related to government procurement, are seen as more closely linked to Congress' power of the purse. "That's why you see some of these [import restrictions] coming from the National Defense Authorization Act, because that's the money allocated to the military."

Sanctions lists can produce results beyond their intended effects, often thanks to reputational damage. For example, Chinese surveillance camera makers Dahua and Hikvision are subject to export controls and government procurement bans, but their products can still be sold in U.S. stores. Nonetheless, Best Buy and Home Depot stopped selling their cameras last year following media inquiries.

As these sanctions lists grow more prominent, there's also the risk of them being reappropriated and, at worst, misused. For example, regulators with at least one research grant-making agency have proposed using the Entity List, an export control blacklist, to evaluate the risk level of researchers' foreign affiliations.



Data: Federal Register, media reports

LONG TERM EFFECTS

On the question of whether U.S. sanctions work, experts caution against jumping to conclusions. "There's this misconception that sanctions are always imposed as a measure that's expected to change behavior," says CNAS's Bartlett. "They're just one of many tools that are supposed to advance the larger foreign policy of the United States." He notes that enforcement and cooperation with U.S. allies are equally important to ensuring a measure's success.

Some observers say that the successive rounds of sanctions against Chinese companies have allowed policymakers to hone their practices. Some of the Trump administration's early attempts to target firms like Huawei, for example, have informed how the government has executed recent sanctions against Russia for its invasion of Ukraine.

In the Huawei case, initial attempts to cut the company off from key inputs by adding it to the Entity List fell flat, in part because many of those inputs were manufactured outside of the United States. So Commerce Department officials amended the rules to include any companies that used capital equipment originating in the U.S., in effect expanding its jurisdiction to include foreign semiconductor makers such as TSMC. That change struck a significant blow to Huawei's business, which saw a 30 percent drop in revenue last year, and the precedent has been reapplied recently to target companies in Russia and Belarus.

But while the flurry of sanctions may be emboldening officials in Washington, American companies are being saddled with ever higher compliance costs. Increasingly, the onus is on the private sector to conduct due diligence and supply chain audits. New legislation, such as the Uyghur Forced Labor Prevention Act, sets the presumption that all goods produced in Xinjiang are made with forced labor, meaning companies must produce evidence to the contrary. Fear of running afoul of increasingly complex rules could lead more companies and financial institutions to pursue a strategy of 'de-risking' — terminating commercial relationships with Chinese parties rather than trying to manage the risk.

"It's not like the U.S. government is providing the resources. There's definitely been an increase in costs to the private sector," says Fisher-Owens. "Which, if you step back and think about it, if the policy is to try to decouple… simply increasing the cost of business with China makes you want to go to Vietnam."

Sanctions List	Restriction	Reason for Addition	Action Required
Specially Designated Nationals List	All Dealings	Designated terrorists, international criminals or officials and beneficiaries of authoritarian regimes.	U.S. nationals prohibited from dealing with named individuals and entities. Banks required to block transactions and freeze assets of entities on the SDN list.
Entity List	Export	Acting contrary to foreign or national security interests of the U.S., including involvement in human rights abuses, malicious cyber activity, procuring items to support China's military.	U.S. companies prohibited from exporting to listed entities.
Military End User List	Export	Military entity or heavily involved with military entities.	U.S. companies prohibited from exporting to listed entities.
Unverified List	Export	When the BIS is unable to verify that an entity is making legitimate and reliable claims about its end users or the end use of U.S. exported products.	U.S. companies must obtain a license and UVL statement to export.
Withhold Release Orders	Import	When there is evidence the company uses forced labor. Also includes all companies involved in cotton and tomato products from Xinjiang.	Shipments will be detained upon entry to the U.S.. Unless importer can prove the shipment is not made with forced labor, goods will be exported or seized.
Nonproliferation List	Import and Export	Supporting nuclear or biological weapons development in Iran, North Korea, Syria.	U.S. companies prohibited from exporting or importing from entities on the list. U.S. banks required to block transactions and freeze assets.
Debarred Parties List	Import and Export	Violating the U.S. Arms Export Control Act.	U.S. companies subject to export controls on defense articles are prohibited from doing business with listed entities. Listed entities are prohibited from being involved in the import and export of defense-related goods, data, or services in the U.S.
China Military-Industrial Complex Company	Investment	For operating in the defense or surveillance technology industry in China.	U.S. companies and individuals are prohibited from investing in the publicly listed securities of listed entities.
U.S. Government Procurement Restricted	Procurement	Engaged in illegal activities including fraud, corruption, and economic espionage.	Prohibited from participating in U.S. federal contracts or receiving federal financial assistance.

Data: U.S. government agencies

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COVER STORY

Pole Position

BY EYCK FREYMANN

In public, Chinese diplomats and climate negotiators deny that they see any link between climate change and geopolitics. But there is a deeply cynical consensus within China's academic and policy communities that climate change creates geopolitical opportunities that China can exploit — and must exploit before its rivals do. Greenland was the proof of concept for this strategy. And it caught the U.S. flat-footed.

THE BIG PICTURE

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BY GARRETT O'BRIEN

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Q & A

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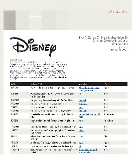
BY ANDREW PEAPLE

The EU Chamber of Commerce in China president talks about China's self-inflicted problems; how he gets away with being so outspoken; and why he believes in China's comeback gene.



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