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How to Retaliate against a “Bully”: China’s Weaponisation of Law in the US-China Rivalry

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SYNOPSIS

China’s enactment of the Anti-foreign Sanctions Law and other legal instruments shows that Beijing can impose countermeasures against a broad scope of foreign actions that it perceives as harming its interests. Nevertheless, the impact of China’s economic sanctions must not be overstated.

COMMENTARY

We are entering what appears to be a geoeconomics-driven world order, characterised by great power rivalry between the United States and China and their frequent use of geoeconomic tools to achieve strategic goals. Among these tools, the use of economic coercion is increasing in intensity and scale.

Owing to the increasing security risks posed by economic interdependence, Washington now routinely relies on sanctions, export controls and other forms of coercion to counter China’s economic and technological influence, e.g., including Huawei in the so-called Entity List and banning Chinese companies such as TikTok and WeChat. Driven by the Trump administration’s sweeping coercive measures against Chinese companies and businesses, Beijing launched a series of countermeasures from 2019, including the Unreliable Entity List, Export Control Law, Measures for the Security Review of Foreign Investment, and Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation.

More recently, the sanctions imposed on China by a democratic coalition (the United States under the Biden administration, the European Union, Britain and Canada)

singling out Beijing's alleged human rights abuses in [Xinjiang](#) triggered a [domestic debate](#) within China on the need to protect the national interest by coming up with China's own sanctions-specific legislation. Both the Chinese leadership and Chinese citizens perceive the Western sanctions as the handiwork of ["hostile foreign forces" bent on defaming China and curtailing China's rise](#). With public support, China then passed its Anti-foreign Sanctions Law (hereafter, the Law) in June 2021. The passing of this law — China's first sanctions-specific law — calls for examining the impact of China's weaponisation of law on Sino-US competition.



Uighur demonstrations in Washington, DC, in a climate of Western objections to Chinese actions and opposite Chinese retaliation.
Photo by Kuzzat Altay on Unsplash.

Impacts of China's Legal Weaponisation

China's strategic use of economic statecraft is not a new phenomenon. Among other things, Beijing has applied implicit punishments to deter arms sales to Taiwan, applied trade pressure on its neighbours over disputes involving the East and South China Seas, clamped down on the Korean entertainment industry and pressurised international brands such as Zara on their stances relating to the One China Policy. Despite its growing propensity to use economic coercion against its economic partners, China's previous ["sanctions with Chinese characteristics"](#) were found to be defensive, short-lived, ad-hoc and sometimes self-defeating.

Now, with the support of the legal framework embodied in the Law and the other instruments adopted since 2019, China's sanctions regime appears more explicit, specific and focused. For example, Beijing enacted the introduction of the Unreliable Entity List to target firms that cut off supplies to Chinese companies for non-commercial purposes. The Export Control Law could restrict exports of goods for national security reasons.

More importantly, the Law allows Beijing to punish companies for "discriminatory restrictive measures". In particular, it rejects extraterritorial jurisdiction and interference deemed to "contain and suppress" ([Article 3](#)) China in international business. Those who impose discriminatory measures against Chinese entities and individuals will be punished with measures such as freezing of assets, denial of border

entry, and restrictions on doing business in China ([Article 6](#)). For instance, in July 2021, Beijing imposed retaliatory sanctions on seven individuals, including former Commerce Secretary Wilbur Ross, in response to US sanctions on Chinese officials over the Hong Kong issue. Under [Article 12](#) of the Law, Chinese entities or individuals are given the right to sue for compensation if they are subject to discrimination by a company's compliance with foreign sanctions.

What is alarming in the Law is the open-ended interpretation of the threats to Chinese "sovereignty, security and development interest" ([Articles 1, 13 and 15](#)). The vague definition of threat shows that Beijing can impose countermeasures against a broad scope of actions that it perceives as harming its interests. Beijing's interpretation of its interests ranges from core interests — involving sovereignty and territorial integrity with regard to Taiwan, Xinjiang and Hong Kong — to peripheral interests, such as reputation and image. For instance, [Beijing's imposition of curbs or tariffs on selected food](#) imports from Australia in 2020 was believed to have been intended as retaliation against Canberra's call for investigating the origins of the Covid-19 pandemic. With a legal and institutional framework, Beijing now has more in its toolkit to deter foreign criticism or actions contrary to China's interests.

[Some argue](#) that the Law eventually will support the extraterritorial application of China's domestic laws, just as its rival, the United States, has done with its own laws. The US style of extraterritorial application of laws enables the extension of primary sanctions to third parties doing business with the target state, in what are known as secondary sanctions. If China adopts extraterritorial sanctions, the outcome will place business, non-governmental and other actors in an extremely difficult situation, considering that they already face challenges in the Sino-US trade war and US sanctions on China's technology industry. If China applies the Law outside its borders, the world economy and international supply chain will have to be split into two separate systems eventually, forcing firms and associated activities to choose between the two, each operating on different rules in trade, finance and governance.

Lifting a Rock That May Fall on One's Own Feet?

The impact of China's economic sanctions must not be overstated though. First, Beijing can ill afford to undermine its economy, which prospers on international engagement. Self-reliance is the [main component of China's so-called dual circulation strategy](#), a move announced in early 2020 that places greater emphasis on fuelling economic growth through domestic consumption. But Chinese leaders are aware of the long-term benefits of international engagement and the dual circulation strategy does not abandon the country's export-oriented growth strategy. To continue with international engagement, Beijing has not only implemented [domestic reforms aimed at opening up its economy](#) but also signed onto various international arrangements, e.g., it has joined and ratified the Regional Comprehensive Economic Partnership. According to [Chinese experts](#), the new legal framework allows China to support a globally integrated economy by reducing the impacts of primary and secondary sanctions aimed at China. The countermeasures that the Law provides for will help Beijing to undertake further reforms and open up to the international economy: they will enable Beijing to show foreign investors that it is determined to protect its business interests and break efforts to block access to China's economy and its technology.

Second, Beijing does not have the financial prowess to impose US-like extraterritorial measures. To fully utilise economic sanctions, Beijing needs to equip itself with the internationalisation of its currency, the Renminbi (RMB). Although the RMB officially joined the IMF's Special Drawing Rights (SDR) currency basket in 2016, it is still not regarded as an internationally preferred currency. According to [China's central bank](#), the market share of the RMB in foreign exchange trading was 4.3% in 2019 while its market share as a global payment currency in the same year was 1.76%. Owing to the continued dominance of the US dollar in the global financial system, China's sanctions and punitive measures have yet to make an impact. For instance, despite China's sanctions on Boeing in 2010 for its arms sales to Taiwan, the company resumed doing business in China after a short period of pause.

Third, China's fine-tuned non-interference principle still drives its foreign policy, implying that China's economic sanctions will still be defensive and will not be enacted unless provoked. Historically, China has considered unilateral sanctions to be intrusive and interfering as it has been a victim of Western sanctions for decades. For instance, Beijing was subject to a US trade embargo after the student protests at Tian'anmen. Because of such experiences, Beijing has regularly used its veto power as a permanent member of the UN Security Council to oppose sanctions against countries like North Korea. As a developing country, China feels it has a strong obligation to ["reform the \[unfair\] international system"](#). China's recent passing of the Law demonstrates the Chinese leadership's call for ["using the law as a weapon and occupy\[ing\] the moral high ground"](#) in upholding international justice and opposing intrusive extraterritorial sanctions.

Unless the Biden administration provokes China like President Trump did, Beijing will stay within boundaries, avoiding escalations with the United States in the power competition. The reason is simple. A Chinese spokesman likened the imposition of sanctions by the United States to [lifting a rock only to drop it on their \(Americans'\) own feet](#). Beijing, for its part, would be wary of lifting a rock that may well drop on its own feet.

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