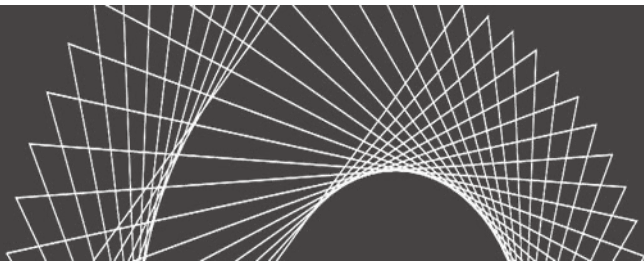


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Update on U.S.-China Tensions: How the U.S. Government is Using Various Tools to Exert Pressure on China



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Agenda

- Background on U.S.-China Trade War
- Overview of U.S. Export Controls, Sanctions, and Foreign Investment Regime
- Recent Regulatory Developments and Enforcement Actions and
- Key Take-Aways

Today's Presenter



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Key Experience

- Counsels clients on the extra-territorial impact of U.S. law and policy affecting international trade and business.
- Represents clients in U.S. government investigations, internal investigations, and compliance matters, including with respect to U.S. sanctions, export controls and anti-corruption issues.
- Manages national security reviews by the Committee for Foreign Investment in the United States (CFIUS).

Tatman focuses her practice on the application of U.S. law to non-U.S. entities and operations, particularly with respect to global investigations and compliance with U.S. sanctions, export controls and anticorruption laws.

Tatman provides compliance counseling and support to clients on a range of issues related to export control, sanctions, and anticorruption laws. In this regard, she helps clients evaluate and meet their compliance obligations by analyzing legal requirements and trade policy initiatives that intersect with her clients' business interests. She also assists clients with preparing license applications, advisory opinion requests, classification requests and commodity jurisdiction requests to relevant U.S. government agencies.

In addition, Tatman has significant experience conducting compliance reviews to assess the exposure of companies in relation to international trade laws. In connection with undertaking compliance assessments, Tatman works with both U.S. and non-U.S. companies to design, build, improve, and implement compliance programs that are tailored to address the areas of legal risk presented by their business operations. She also develops training presentations and seminars on a variety of international trade control topics, which she has delivered throughout the Asia Pacific region, including in China, Hong Kong, India, Indonesia, Japan, Singapore, and Taiwan.

Background on U.S.-China Trade War

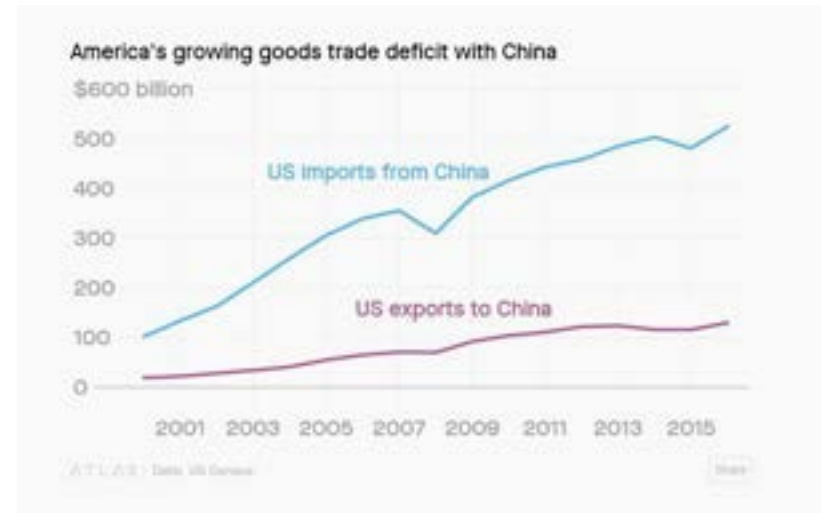
Current Trends in U.S. Trade Policies

President Trump's position on trade (“America First”)

- Focus on trade deficits and job creation
- Focus on America's manufacturing base
- **Focus on countering China's “Made in China 2025” industrialization plan**
- Focus on short-term deals and leverage rather than long-term goals and principles
- Preference towards tariffs as trade enforcement tool
- Sovereignty and bilateralism over multilateralism
- Presumption of U.S. strength

What does this mean?

- More U.S. protectionism
- Increased enforcement
- Trade has become highly politicized and controversial
- Lack of trust in the WTO or other multilateral forums
- Intersection of U.S. economic and foreign policy measures targeting China



U.S.-China Trade War

- **Section 301 of the Trade Act of 1974:** Authorizes the Office of the U.S. Trade Representative (“USTR”) to impose trade sanctions against foreign nations for violation of trade agreements and other unfair trade practices.
 - August 14, 2017: President Trump directs USTR to consider a Section 301 investigation into China’s laws, policies, practices, and actions related to intellectual property, innovation, and technology.
 - March 22, 2018: USTR investigation shows that Chinese government practices restrict U.S. trade and have resulted in about \$50 billion in losses to the United States.



Overview of U.S. Export Control, Sanctions, and Foreign Investment Regime

Related U.S. Trade and Investment Regimes Relevant to China

Foreign Investment (CFIUS) –

restrictions on foreign investment in the United States, based on national security concerns

- New CFIUS reform law expands CFIUS jurisdiction to cover certain non-controlling investments and to make filings mandatory in certain instances
 - “critical technologies”
 - transaction in which a foreign government has a “substantial interest”

Export Controls –

controls on the international movement of goods, software, and technology (collectively, “items”) and sometimes services.

- May be commercial/dual-use or military.
- Typically focused on strategic items, but some controls on embargoed countries can apply to *any* item.
- More than one set of rules may apply to a single transaction (*e.g.*, U.S., EU and Chinese controls).

Economic Sanctions –

restrictions on dealings (not necessarily involving items) with other countries, persons or entities based on security or policy concerns.

- Not limited to goods / software / technology.
- Coverage may include financial transactions, commercial agreements, or assistance more broadly.
- More than one set of rules may apply to a single transaction (*e.g.*, U.S. and EU)

U.S. Export Control Laws:

Why Do U.S. Export Controls Matter in Asia?

- U.S. export controls laws primarily administered by Department of Commerce, Bureau of Industry and Security (BIS) and Department of State
- Global Reach
 - U.S. Export Controls apply both inside and outside of the United States / **“Follow the item”**
- U.S. Export Controls apply to exports, re-exports and transfers of:
 - U.S.-origin items (goods, software, and technology)
 - Certain items manufactured or developed outside of the U.S. if:
 - The item incorporates certain levels of controlled U.S.-origin content;
 - The item is produced from certain controlled U.S.-origin software or technology.
- Enacted August 13, 2018, the Export Control Reform Act (ECRA) requires BIS to lead an interagency process to identify and add controls on “emerging” and “foundational” technologies that are “essential to the national security of the United States”
- Enforcement: Financial penalties and denied/restricted party lists

Transactions can be subject to U.S. export controls even if no U.S. person or U.S. company is involved in the transaction

U.S. Sanctions Laws:

Why Do U.S. Sanctions Laws Matter in Asia?

- U.S. sanctions laws administered by Department of Treasury, Office of Foreign Assets Control (OFAC)
- Global Reach
 - U.S. Economic Sanctions apply both inside and outside of the United States / **“Follow the person”**
- Overview of Jurisdiction
 - Applies to “U.S. persons,” defined to cover:
 - U.S. citizens and permanent residents, wherever located;
 - Companies organized under U.S. law (including foreign branches of U.S. companies); and
 - Any person to the extent located in the U.S.
 - May apply to non-U.S. persons:
 - Non-U.S. persons may not conspire with, aid or abet, or cause the violation of U.S. sanctions laws by a U.S. person
 - So-called **“secondary sanctions”** under some sanctions programs
- Enforcement: Financial penalties and denied/restricted party lists

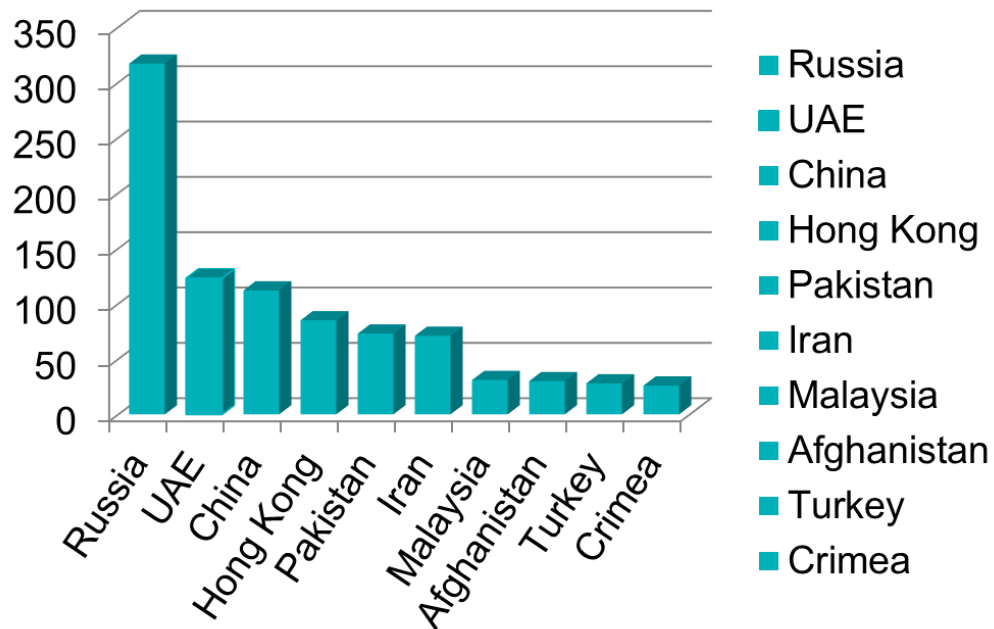
Transactions undertaken by non-U.S. companies may be subject to U.S. economic sanctions in many instances

Snapshot of Recent Export Control and Sanctions Cases

	Company	Industry	Fine	Year
1	BNP Paribas	Financial Services	\$8.97 Billion	2014
2	ZTE Corporation	Telecommunications	\$2.59 billion	2017 and 2018
3	Commerzbank AG	Financial Services	\$1.45 Billion	2015
4	HSBC Bank	Financial Services	\$1.256 Billion	2012
5	Crédit Agricole	Financial Services	\$787 Million	2015
6	Standard Chartered Bank	Financial Services	\$667 Million	2012
7	Standard Chartered Bank	Financial Services	\$639 Million	2019
8	ING Bank N.V.	Financial Services	\$619 Million	2012
9	UniCredit Bank AG	Financial Services	\$553 Million	2019
10	Credit Suisse AG	Financial Services	\$536 Million	2009
11	Royal Bank of Scotland N.V.(formerly ABN AMRO Bank, N.V.)	Financial Services	\$500 Million	2010
12	BAE Systems PLC	Defense Services	\$400 Million	2010
13	Barclays Bank PLC	Financial Services	\$298 Million	2010
14	Mitsubishi UFJ	Financial Services	\$259 Million	2013
15	Deutsche Bank	Financial Services	\$258 Million	2015
16	Weatherford International	Oil Services	\$253 Million	2013
17	Schlumberger Oilfield Holdings, Ltd.	Oil Services	\$233 Million	2015

List-Based Designations for China

Top 10 Countries on Entity List, by Number of Entries



Denied / Restricted Party List	Number of Chinese Individuals/ Entities
Entity List	112
Denied Persons List	2
Unverified List	49
Specially Designated Nationals List	150 (with at least one address in China)

U.S. Foreign Investment Regime

- The Committee on Foreign Investment in the United States (**CFIUS**) is an inter-agency panel authorized to conduct national security reviews of transactions that could result in foreign control of a U.S. business (“**covered transactions**”).
 - CFIUS has the authority to require mitigation measures, suspend transactions and recommend that the President block a pending deal or order divestiture in a completed transaction.
 - Parties submit a voluntary notice to obtain clearance (“safe harbor”) for the transaction to proceed.
 - The Committee consists of several agencies, with the Department of Treasury serving as Chair.
- Enacted August 13, 2018, the **Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)** “reforms” the CFIUS process and will result in several important changes, including:
 - **Expanded jurisdiction** over additional types of covered transactions, including (i) certain real estate transactions, and (ii) certain noncontrolling investments in U.S. businesses involving critical infrastructure, critical technology, or sensitive personal data of U.S. citizens.
 - **Mandatory reporting requirements** for certain investments in critical technology companies or transactions where foreign government has “substantial interest.”
- **Pilot Program** announced on October 10, 2018. Most other FIRRMA measures will not go into effect until final regulations are implemented, which must occur by February 2020.

Recent Regulatory Developments and Enforcement Actions

Summary of Key Developments

- March 2016 – June 2018: ZTE case, which resulted in ZTE paying over \$2.5 billion in penalties.
- August 2018: National Defense Authorization Act
 - CFIUS reform measures (FIRRMA), U.S. export control reform measures (ECRA), and future ban on executive agencies from purchasing or procuring telecommunications equipment from certain Chinese companies
- September 2018: U.S. government imposed sanctions on Chinese entity Equipment Development Department (EDD) and its director, Li Shangfu, for engaging in “significant transactions” with Russian defense company Rosoboronexport.
- October 2018: Department of Commerce names Fujian Jinhua to the Entity List.
 - *“Jinhua is nearing completion of substantial production capacity for dynamic random access memory (DRAM) integrated circuits. The additional production, in light of the likely U.S.-origin technology, threatens the long term economic viability of U.S. suppliers of these essential components of U.S. military systems.”*
- November 2018: Department of Justice announces (i) the indictment of Fujian Jinhua, United Microelectronics Corporation, and several individuals for charges, including economic espionage and theft of trade secrets, and (ii) China Initiative to identify priority China trade theft cases.
- December 2018: Jerih Group enters into settlement agreements with BIS and OFAC, resulting in \$3.4 million in penalties.
- Ongoing development in the Huawei case (see next slide).
- April 2019: BIS added 37 Chinese entities to the Unverified List (UVL).
- May 15, 2019: EO on telecom security -> provides the U.S. Secretary of Commerce broad authorization to block any transaction involving “information and communications technology or services designed, developed, manufactured, or supplied by” a designated “foreign adversary.”

Key Case: Huawei

Timeline



Oct. 2012

- U.S. Congress investigates Huawei and ZTE, calling them “a security threat to the United States”



Aug. 2018

- Australia banned use of Huawei and ZTE from 5G network
- U.S. banned executive agencies from purchasing / procuring telecom from ZTE or Huawei



Dec. 2018

- Arrest of Meng Wanzhou in Canada
- Japan discusses restricting use of certain tech products (including some from Huawei and ZTE) in government procurement



Jan. 2019

- Indictments of Huawei, Skycom, and Meng
- EU, Germany, and UK discuss blocking Huawei products in 5G development



Mar. 2019

Huawei sues the U.S. government over product ban



May 2019

- EO on telecom security
- Entity List designation of Huawei and 68 affiliates
- BIS issues TGL with limited authorizations

Key Take-Aways

Take-Aways From Recent Regulatory Developments and Enforcement Actions

- Increased use of denied and restricted party lists by the U.S. government
 - Both as penalty action and as leverage in investigations.
- Confluence of U.S. economic and national security policy objectives and priorities
 - Broader context of export controls with sanctions, CFIUS, EO on telecom security, and trade war.
- Unprecedented penalties and compliance measures
- Multiple agencies engaged in enforcement matters
- Secondary sanctions enforcement

Questions?

