LEGALIZING CHINA'S ECONOMIC COERCION TOOLKIT

Robert O'Brien

Abstract

China is in the late stages of developing a Central Bank Digital Currency (CBDC), which is essentially a digital, sovereign currency lacking convertibility to physical cash. This initiative is a significant innovation in currency systems, not yet implemented by any other country. China will face unique challenges in its CBDC project. As a first mover in this space, Chinese leaders are no longer able to study the successes and failures of other nations who have previously attempted to launch a CBDC. Yet, Beijing leadership may draw on experiences from its own prior reforms and governance challenges. This article will highlight three governance principles, developed through the reforms of the twentieth and twenty-first centuries, that will give Beijing a unique advantage as a first mover in the CBDC race: (1) dual-track transition systems, (2) regional experimentation, and (3) rapid construction of regulatory systems. This paper hopes to show how China is taking a distinct approach to the initiative compared to competing states, an approach that is engrained in China's governance experience since the late 1970s. In conclusion, I argue that China's recent experience in a variety of transformation initiatives provides its leadership and institutions unique principles that will advantage China's CBDC project, especially when compared to competitors working to establish their own CBDC such as the United States and European Union.

About the Author

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I. Introduction

As a member of the J.D. class of 2022, my entire law school experience coincided with the US-China trade war. Sometime in late September 2020, I read headlines announcing that China's Ministry of Commerce issued provisions on something called the "Unreliable Entity List." I was curious how the People's Republic of China was constructing a legal framework for its own economic coercion tools.

How will the legalization of China's economic coercive toolkit change the way Beijing exercises economic coercion, if it all? I will be using the US economic coercion toolkit as a comparison. I argue that China's new laws do not constrain, nor signal a reduced willingness, of Beijing's ability to employ extralegal tools. Rather, legalization allows

Beijing to expand its toolkit in ways that provide more complex tools, such as sanctions and export control programs.

After defining terms, disclaiming parameters, and acknowledging research limitations in the Introduction, Part I will provide an overview of the US economic coercion toolkit. Part II will discuss the Chinese economic coercion toolkit, looking at recent trends in economic coercion and new laws. Part III will compare the US and China to draw insight into Beijing's intentions in legalizing economic coercion and ramifications for Beijing's future use of economic coercion. I argue that the legalized portions of China's economic coercion toolkit display three themes: retaliatory framing, amoral application, and operational flexibility. China has tailored its economic coercion toolkit to counteract US coercion designed to slow Chinese expansionism and development of emerging technology, largely effectuated through the US sanctions and export control. Future application of China's coercive tools depends on the aggressiveness of US economic coercion against China, US policy towards Chinese expansionism, and US interference in Chinese domestic affairs.

A. *Definitions and Usage*

Throughout this paper, I use terms that warrant definition, some of which are particular to this paper. These terms are (1) economic coercion, (2) legalized economic coercion, (3) extralegal economic coercion, and (4) economic coercion toolkit.

The late Barry E. Carter, who served on the National Security Council and as Deputy Undersecretary for Export Administration at the Department of Commerce,[1] defines economic coercion as:

> [T]he use, or threat to use, 'measures of economic—as contrasted with diplomatic or military—character taken to induce [a target state] to change some policy or practices or even its governmental structure' . . . The State or other entity that is the object of the economic measure is sometimes called the target, while the State(s) that engage in these activities is sometimes termed the sender(s).[2]

This paper will use the terms "target" and "sender" to respectively reference the recipient and the agent of economic coercion. Additionally, Carter's definition of economic coercion allows for nonstate targets (such as foreign policymakers, businesses, nongovernmental organizations, and parastate factions), a nuance which some extant definitions lack.[3]

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1. Bart Barnes, Obituary, *Barry E. Carter, Georgetown law professor*, Washington Post (Jan. 25, 2014), https://www.washingtonpost.com/local/obituaries/barry-e-carter-georgetown-law-professor/2014/01/25/3174de90–8544–11e3–8099–9181471f7aaf_story.html [https://perma.cc/96XN-9KB2].

2. Barry E. Carter, *Economic Coercion*, *in* Max Planck Encyclopedia of Public International Law (Rudiger Wolfrum ed., 2009).

3. *See, e.g.*, Elena V. McLean, *Economic Coercion*, *in* Oxford Handbook of International Political Economy (Jon C. W. Pevehouse & Leonard Seabrooke eds, 2021).

In my effort to analyze the legalization of China's economic coercion, this paper necessarily differentiates between legalized forms of economic coercion and other forms of economic coercion that exist in some amorphous zone outside of "legality." I divide these two categories into "legalized" economic coercion and "extralegal" economic coercion, where specific measures or actions available to the sender are "tools." This paper defines "toolkit" as the collection of tools available to a particular sender.

"Legalized economic coercion" is the attempt by a sender to exercise economic coercion against a target using a tool that finds legitimate foundation in the domestic legal system of the sender. Typically, a legalized tool is made available by a sender's legislative body and operationalized by its executive agencies. For senders with independent judiciaries, detrimentally affected parties may successfully challenge the application of a tool within the courts and administrative fora of the sender.

"Extralegal economic coercion" is the use of a tool that lacks basis in the sender's legal system. While the term seems to merely rely on negation—that somehow the extralegal tool exists outside the realm of law—there are some common themes about extralegal economic tools. Tools may be extralegal in nature because they are informal, ad hoc, or products of governments that fundamentally rely on rule by decree. The description of a tool as extralegal is not derogatory or dismissive. Nor does such description necessarily speak poorly of a sender's legal system. Likewise, extralegal tools are not necessarily inferior to legalized tools; extralegal tools provide the sender's policymakers the advantage of flexibility, deniability, and the liberty to craft tools bespoke to circumstances.[4]

Extralegal tools do have drawbacks, though. Potential targets may receive less deterrence signal compared to legalized tools, because extralegal tools are not codified. Even if the target is aware of impending economic coercion, the target will struggle to predict the uncodified extralegal tool eventually applied. This inhibits the target, and adversely affected parties, from assessing the costs and benefits of their current conduct.

Legalized and extralegal tools are notionally exclusive, but economic coercion is a messy business that lends itself poorly to the binary categorization of coercive conduct. I hope these terms function fluidly to characterize coercive conduct, rather than rigidly categorize such conduct into two separate buckets.

B. *Parameters*

The twenty first century has so far shown precipitous growth in the both the amount of economic coercion and the number of countries engaging in such behavior—perhaps due to increases in cross-border

4. For example, see the discussion of US economic coercion of the UK during the 1956 Suez Crisis *infra* Part A.

economic activity and the proliferation of the internet facilitating greater awareness of human rights violations occurring far from domestic constituencies, who then demand moral condemnation from their governments. Likewise, the twenty first century has shown a corresponding growth in the amount of commentary on the impact of economic coercion and its efficacy in altering the target's conduct.[5] This paper does not contribute to either topic. Rather, this paper strives to contextualize the recent wave of legalization of China's economic coercion toolkit, with the aim of explaining why China has legalized some tools and how it intends to use legalized tools within its toolkit.

C. *Limitations*

This paper faces limitations that hamper the quality of analysis and hypothesis. I have no knowledge of Chinese, and therefore cannot directly access Chinese laws without official or unofficial English translation, let alone crucial Chinese commentary on the topic. Second, this topic is evolving, with developments emerging at a bimonthly pace. This paper is challenged to stay current and accurate.

II. Overview of US Economic Coercion Toolkit

A. *Historic Cases of US Economic Coercion*

US economic coercion dates to the nation's founding. In 1805, in the face of harassment of US vessels during the Napoleonic Wars, Congress passed an embargo against manufactured goods from Great Britain.[6] The US later expanded the policy to block US ships from departing to foreign ports.[7] These measures damaged the US economy, particularly the northern maritime-oriented states, and eventually led to the War of 1812.[8]

During the Suez Crisis (1956), the Eisenhower Administration exercised its position in the international monetary system and global oil market to coerce the UK into withdrawing military forces from the Suez Canal, thereby undermining the tripartite alliance of France, Israel, and the UK against Egypt. Seeking additional foreign exchange reserves in order to maintain the value of the British pound, the British Chancellor of the Exchequer petitioned the International Monetary Fund (IMF) to allow withdrawal of British foreign exchange deposits, which apparently required the approval of the US, acting through the Secretary of the Treasury. The

5. *See, e.g.*, US Gov't Accountability Off., GAO-20–145, Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness (2019).

6. Douglas A. Irwin, Clashing Over Commerce 100 (2017); Prohibition of the Importation of certain Goods and Merchandise from the Kingdom of Great Britain, &c, Pub. L. No. 9–29, 2 Stat. 379 (1806).

7. Irwin, *supra* note 6, at 102; Embargo Act of 1807, Pub. L. No. 10–5, 2 Stat. 451 (1807).

8. Irwin, *supra* note 6, at 103–20.

Secretary blocked the withdrawal, a decision attributed to President Eisenhower, until British Forces withdrew from the Sinai.[9] The blocking of IMF funds resembles extralegal coercion, as there were no IMF rules governing the withdrawal reserves of an ongoing member. Professor Pnina Lahav describes US obstruction of the IMF withdrawal during the Crisis as "not based on strict rules" and based upon "executive discretion."[10]

Second, the Suez Crisis disrupted European access to oil shipments otherwise transiting the Suez Canal. Faced with European requests to increase production of US oil, President Eisenhower again exercised an extralegal tool by conditioning US oil production relief on British withdrawal from the Suez. After British withdrawal, the Eisenhower Administration increased production from US oil companies and provided US dollar credit for British oil purchases in the Western Hemisphere.[11] The Suez Crisis provides one of the few examples where US economic coercion has successfully achieved the sender's goal, despite the extralegal and ad hoc nature of coercive measures applied during the crisis.[12]

These two examples show how even rule of law-based governments exercise a blend of legal and extralegal coercion. The coercive measures applied by the US leading up to the War of 1812 were constitutionally valid legislative acts by Congress. In contrast, coercion during the Suez Crisis emphasized extralegal measures, characterized by executive discretion in withholding crucial assistance to the coercive target.

B. *US Economic Coercion Toolkit*

The US wields the widest variety of economic coercion tools available to any government or intergovernmental actor. These tools include economic sanctions, export restrictions, inbound investment restrictions, tariff measures, and import restrictions.[13] It is difficult to identify a list of extralegal tools because extralegal measures are often scenario-specific and informal.

1. US Economic Sanctions

The US maintains a complicated and evolving economic sanctions system, with restrictions administered by the Office of Foreign Assets Control (OFAC) in the Department of Treasury. Sanctions typically render targets unable to enter the US (and with any pre-existing visa revoked), with assets under US jurisdiction frozen, and unable to transact

9. Pnina Lahav, *The Suez Crisis of 1956 and Its Aftermath: A Comparative Study of Constitutions, Use of Force, Diplomacy and International Relations*, 95 Boston U. L. Rev. 1297, 1345 (2015).

10. *Id.* at 1345–1346.

11. *Id.* at 1347–1348; Patrick C. Bratton, *When is Coercion Successful*? 58 Naval War Coll. Rev., no. 3, 2005, at 99, 113.

12. *See, e.g.*, Daniel W. Drezner, *The United States of Sanctions: The Use and Abuse of Economic Coercion*, Foreign Aff., Sept.-Oct. 2021 at 142, 144.

13. Elizabeth Rosenberg et al., Ctr. for New Am. Sec., A New Arsenal for Competition 11 (2020).

with US persons.[14] Because the two primary inter-bank US dollar settlement systems execute their transactions in New York (Fedwire and the US Clearing House Interbank Payments System), OFAC has tended to view all US dollar transactions, regardless of the location of the transacting parties, as subject to US sanctions jurisdiction.[15] For Syria, Iran, and North Korea, OFAC effectively administers a comprehensive economic embargo against their entire economies, with some exceptions provided by general licenses to allow some basic goods and services transactions.[16]

Under the International Emergency Economic Powers Act (IEEPA),[17] the President may declare a national emergency regarding "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."[18] Thereafter, the President may exercise a variety of powers to deal with the IEEPA national emergency, including restrictions on payments connected to countries and persons related to the national emergency, restrictions on property under US jurisdiction connected to a country or person involved in the national emergency, and even confiscation of property in instances of "armed hostilities."[19] Based on my count, there are at least 36 continuing national

14. Summary of typical restrictions drawn from Michael A. Weber & Edward J. Collins-Chase, Cong. Res. Service, The Global Magnitsky Human Rights Accountability Act (2020).

15. Karen Yeung, *How the US uses the dollar payments system to impose sanctions on a global scale*, S. China Morning Post (Aug. 25, 2020), https://www.scmp.com/economy/china-economy/article/3098691/how-us-uses-dollar-payments-system-impose-sanctions-global [https://perma.cc/QJA6–9CYZ].

16. 31 C.F.R. § 560.530 (2021).

17. International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1708.

18. 50 U.S.C. § 1701(a).

19. 50 U.S.C. § 1702(a).

emergencies invoked under IEEPA by executive order,[20] with the oldest one dating to 1979.[21]

In addition to the sanctions generated by IEEPA Executive Order, Congress has legislated specific sanctions programs, such as the Nicaragua Human Rights and Anticorruption Act of 2018,[22] the Iran and Libya Sanctions Act,[23] and the Countering America's Adversaries Through Sanctions Act.[24] The Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act) authorizes the President to sanction targets involved in human rights abuses and corruption.[25]

OFAC claims that there are around 6,300 on the SDN List.[26] As of November 2021, the SDN List is a 1604-page PDF.[27] By April 2022, the

20. Executive Orders invoking IEEPA: Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979);Exec. Order No. 12938 59 Fed. Reg. 59099 (Nov. 15, 1994); Exec. Order No. 12947, 60 Fed. Reg. 5079 (Jan. 23, 1995); Exec. Order No. 12957, 60 Fed. Reg. 14615 (Mar. 17, 1995); Exec. Order No. 12978, 60 Fed. Reg. 54579 (Oct. 24, 1995); Exec. Order No. 13067, 62 Fed. Reg. 59989 (Nov. 3, 1997); Exec. Order No. 13219, 66 Fed. Reg. 34775, (June 26, 2001); Exec. Order No. 13222, 66 Fed. Reg. 44025 (Aug. 17, 2001); Exec. Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001); Exec. Order No. 13288, 68 Fed. Reg. 11457 (Mar. 6,2003); Exec. Order No. 13303, 68 Fed. Reg. 31931 (May 22, 2003); Exec. Order No. 13338, 69 Fed. Reg. 26751 (May 11, 2004); Exec. Order No. 13405, 71 Fed. Reg. 35485 (June 16, 2006); Exec. Order No. 13413, 71 Fed. Reg. 64105 (Oct. 27, 2006); Exec. Order No 13441, 72 Fed. Reg. 43499, (Aug. 1, 2007); Exec. Order No 13466, 73 Fed. Reg. 36787 (June 26, 2007); Exec. Order No 13536, 75 Fed. Reg. 19869 (Apr. 12, 2010); Exec. Order No 13566, 76 Fed. Reg. 11315 (Feb. 25. 2011); Exec. Order No 13581, 76 Fed. Reg. 44757 (July 24, 2011); Exec. Order No 13611, 77 Fed. Reg. 29533 (May 16, 2012); Exec. Order No 13660, 79 Fed. Reg. 13493 (Mar. 6, 2014); Exec. Order No 13664, 79 Fed. Reg. 19283 (Apr. 3, 2014); Exec. Order No 13667, 79 Fed. Reg. 28387 (May 12, 2014); Exec. Order No 13692, 80 Fed. Reg. 12747 (Mar. 8, 2015); Exec. Order No 13694, 80 Fed. Reg. 18077 (Apr. 1, 2015); Exec. Order No 13818, 82 Fed. Reg. 60839 (Dec. 20, 2017); Exec. Order No 13848, 83 Fed. Reg. 46843 (Sept. 12, 2018); Exec. Order No 13851, 83 Fed. Reg. 61505 (Nov. 27, 2018); Exec. Order No 13873, 84 Fed. Reg. 22689 (May 15, 2019); Exec. Order No 13882, 84 Fed. Reg. 37055 (July 26, 2019); Exec. Order No 13892, 84 Fed. Reg. 55239 (Oct. 9, 2019); Exec. Order No 13936, 85 Fed. Reg. 43413 (July 14, 2020); Exec. Order No 13959, 85 Fed. Reg. 73185 (Nov. 12, 2020); Exec. Order No 14014, 86 Fed. Reg. 9429 (Feb. 10, 2021); Exec. Order No 14024, 86 Fed. Reg. 20249 (Apr. 15, 2021); Exec. Order No 14046, 86 Fed. Reg. 52389 (Sept. 17, 2021).

21. Exec. Order No. 12170, 44 Fed. Reg. 65,729 (Nov. 14, 1979).

22. Nicaragua Human Rights and Anticorruption Act of 2018, Pub. L. No. 115–335, 132 Stat. 5019 (2018).

23. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104–172, 110 Stat. 1541 (1996).

24. Countering America's Adversaries Through Sanctions Act, Pub. L. No. 115–44, 131 Stat. 886 (2017).

25. National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114–328, § 1263, 130 Stat. 2533, 2534 (2016) (Hereinafter this section is referred to as the Global Magnitsky Act or Global Magnitsky Human Rights Accountability Act).

26. *Where is OFAC's Country List? What countries do I need to worry about in terms of U.S. sanctions?*, U.S. Dep't of the Treasuryhttps://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/where-is-ofacs-country-list-what-countries-do-i-need-to-worry-about-in-terms-of-us-sanctions [https://perma.cc/LN6W-8QM6].

27. Off. of Foreign Assets Control, *Specially Designated Nationals and Blocked*

SDN List had grown to 1746 pages.[28] OFAC also maintains a collection of "non-SDN" lists with different associated restrictions, gathered into OFAC's Consolidated Sanctions List.[29] An industry has sprouted of companies offering compliance software scanning a companies' transactions for detection of questionable parties.[30]

2. Export Control

In addition to economic sanctions, the US can block targets from acquiring US goods via the export control system. In some instances, the US can block targets from acquiring third-country goods if the product's manufacture relies on certain US software or technology (the infamous "Foreign Produced Direct Product" rule).[31]

The US maintains a system of regulations governing the export of military goods, dual use goods,[32] and items connected to nuclear, chemical, and biological weapons development and delivery. The export control system for dual use goods, administered by the Bureau of Industry and Security (BIS) under the Department of Commerce, finds statutory authority in the Export Control Reform Act of 2018 (ECRA).[33] The export control system for military goods and services, administered by the Directorate of Defense Trade Controls (DDTC) under the Department of State, finds statutory in the Arms Export Control Act of 1976.[34] The US also coordinates its export control regime under multilateral efforts such as the Wassenaar Arrangement.[35]

Essentially, export restrictions depend on the classification of the specific goods by Export Control Classification Number (ECCN),

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Persons List (May 9, 2022), https://www.treasury.gov/ofac/downloads/sdnlist.pdf. [https://perma.cc/W3SL-7BPZ].

28. *Id.*

29. *See Consolidated Sanctions List (Non-SDN Lists)*, U.S. Dep't of the Treasury (updated Apr. 29, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/consolidated-sanctions-list-non-sdn-lists[https://perma.cc/M4H5-RP6B].

30. *See* BAE Sanctions Screening Software, BAE Sys., https://www.baesystems.com/en-financialservices/solutions/banking-compliance/sanctions-and-pep-screening?cmp=PPCFCCOM&gclid=CjwKCAiAqIKNBhAIEiwAu_ZLDsn6bh6TbC1hkbKrIDAYWX3bUSi1f34tH4PpyZRkf7lZxKiNH9HjmhoCUb0QAvD_BwE [https://perma.cc/P7CA-7YMC]; LexisNexis Risk Solutions Services, LexisNexis, https://risk.lexisnexis.com/financial-services/financial-crime-compliance/watchlist-screening [https://perma.cc/S87L-B89A].

31. General Prohibition No. 3: Foreign Produced Direct Product Rule, 15 C.F.R. § 736.2 (2021).

32. "Dual use" goods are items that may be used for military or non-military purposes.

33. Export Control Reform Act of 2018, Pub. L. No. 115–232, 132 Stat. 2208 (2018). ECRA updated the US dual use export control system previously codified under the Export Administration Act of 1979, which lapsed in 1994 and was extended by the President under IEEPA emergency powers. *See also* Export Administration Act of 1979, Pub. L. No. 96–72, 93 Stat. 503 (1979).

34. Arms Export Control Act of 1976, 22 U.S.C. § 2751 et seq.

35. Ian F. Fergusson & Paul K. Kerr, Cong. Rsch. Serv., R41916 The U.S. Export Control System and the Export Control Reform Initiative 8(2020).

requiring the exporting party to navigate a matrix of item classification and destination to find whether their item is restricted. Each ECCN will indicate the reason for control and in some cases the subcategory within the reason of control.[36] Once the exporter has identified the ECCN, they must reference the Commerce Country Chart to learn whether an export license is required.[37] In some cases, a license exception may waive licensing requirements for an export good or destination country. Lastly, there are heightened restrictions for parties listed on the Entity List which require an export license for exports, reexports, or in-country transfers of all items subject to the EAR, where license applications are subject to a presumption of denial.[38]

3. Investment Restrictions

The US maintains restrictions on inbound foreign investment for acquisitions of US entities sensitive to national security under the Committee on Foreign Investment in the United States (CFIUS).[39] CFIUS was established by executive order on May 7, 1975 by President Ford.[40] Congress recently reformed CFIUS under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA).[41]

FIRRMA expanded the scope of CFIUS by redefining "covered transactions" and "critical technologies." It also mandated that CFIUS review (1) noncontrolling investments in US businesses in critical technology, critical infrastructure, or handling sensitive data on citizens, (2) changes in foreign investor rights, (3) investments in which a foreign government has a direct or indirect substantial interest, and (4) investments designed to evade CFIUS review.[42]

To date, CFIUS has blocked at least six transactions, at least three of which involved would-be Chinese investors.[43] This is a low number given the length CFIUS operation and frequency of filings. In numerous other cases, transactions break down due to CFIUS objections prior to final decision. Additionally, transactions initially received critically by

36. 15 C.F.R. § 744, Supp. 4 (2022). ECCN 4A001 is the ECCN for "Electronic computers and related equipment having any of the following, "electronic assemblies" and "specially designed components".).

37. 15 C.F.R. § 738, Supp. 1 (2022).

38. 15 C.F.R. § 744, Supp. 4 (2022).

39. James K. Jackson, Cong. Rsch. Serv., RL33388, The Committee on Foreign Investment in the United States (CFIUS) (2020).

40. Exec. Order No. 11858, 40 Fed. Reg. 20263, (May 7, 1975).

41. Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Pub. L. No. 115–232 (2018) (codified as amended at 31 U.S.C. §§ 800–802).

42. Jackson, *supra* note 39 at 2; 50 U.S.C. § 4565(a)(4) (2021).

43. Jackson, *supra* note 39, at intro (lists five blocked transactions); For the sixth blocked transaction, see Jonathan Babcock et al, *CFIUS Prepares To Block Semiconductor Sale To Chinese Entity* JDSupra (Sept. 3, 2021); https://www.jdsupra.com/legalnews/cfius-prepares-to-block-semiconductor-5407154 [https://perma.cc/RAY4-F4CU].

CFIUS may successfully conclude once parties have agreed to abide by conditions to protect national security.

4. Punitive Tariff Measures and Quantitative Import Restrictions

The President is equipped with import-related coercive tools under Section 232 of the Trade Expansion Act of 1962 (Section 232) and Section 301 of the Trade Act of 1974 (Section 301). Under Section 232, the US has power to restrict the import of goods that "threaten to impair national security."[44] Specifically, the statute allows for the President to freeze an otherwise planned reduction in tariffs,[45] to implement heightened import restrictions,[46] and likewise take measures to increase domestic production of the scrutinized good to counteract the impact import restrictions on domestic supply.[47] However, prior to enacting restrictive measures under Section 232, the Secretary of Commerce executes an investigation upon petition by any US agency, interested party, or the initiative of the Secretary of Commerce.[48]

The US employed Section 232 investigations and enforcement at a frequent pace from 1963 to 2001, with roughly half of Section 232 investigations resulting in a negative finding, barring employment of import restrictions.[49] Section 232 lay dormant within the US economic coercion toolbox from 2001 until 2017, until the Trump Administration formally initiated five investigations against Mexico, Canada, the EU, China, and Japan, which all resulted in positive findings allowing for Section 232 import restrictions.[50]

Under Section 301 of the Trade Act of 1974, the US may retaliate against a foreign country's unfair trade practices by imposing trade barriers against goods and services imported from said foreign country.[51] Section 301 obliges mandatory retaliation where USTR determines that US rights under a trade agreement are infringed or a foreign country unjustifiably burdens US commerce.[52] Section 301 also offers USTR and the President discretionary retaliation when a foreign country is merely being "unreasonable or discriminatory and burdens or restricts" US commerce.[53] In 1988,[54] Congress amended the Trade Act of 1974 to direct USTR in providing a yearly report on global intellectual property

44. 19 U.S.C. § 1862(a).
45. *Id.*
46. 19 U.S.C. § 1862(c)(3).
47. 19 U.S.C. § 1862(d).
48. For the Section 232 investigation process, see 19 U.S.C. § 1862(b).
49. Rachel F. Fefer et al., Cong. Rsch. Serv., R45249, Section 232 Investigations Appendix B (2021).
50. *Id.*
51. 19 U.S.C. § 2411.
52. 19 U.S.C. § 2411(a).
53. 19 U.S.C. § 2411(b).
54. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, § 182, 102 Stat. 1107 (1988).

enforcement, where countries identified in the most severe "priority watch list" category have 12 months to remedy their IP enforcement according to a USTR action plan before the President may, on a voluntary basis, apply retaliatory Section 301 measures.[55]

III. Overview of Chinese Economic Coercion Toolkit

The recent emergence of Chinese economic coercion and the construction of a legalized economic coercion toolkit reflects China's newfound position as the world's second-largest economy.[56] Modern China's legalized toolkit is a nascent collection of seemingly disconnected laws, legislated by the National People's Congress (NPC) and the NPC Standing Committee. Regulations and issued by the State Council[57] and various ministries such as the Ministry of Commerce (MOFCOM), Ministry of Foreign Affairs (MOFA), and the National Development and Reform Commission (NDRC).

A. *Recent History of Economic Coercion*

The modern Chinese economic coercion is a recent phenomenon dating to 2010, when China retaliated against Norway after the Nobel Committee awarded the Peace Prize to a Chinese activist.[58] Policymakers prefer using extralegal measures such as customs delays, implicit market access denial, arbitrary import inspections, phytosanitary objections, and popular domestic boycotts.[59] These informal measures confer the advantage of deniability[60] and make the prospect of challenging such measures

55. 19 U.S.C. § 2242(g).

56. The World Bank reports China's 2020 GDP as US$14.7 trillion, surpassed only by the US with a 2020 GDP of US$20.9 trillion. *GDP (current US$)*, Data, World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true (last visited Nov. 22, 2021).

57. The State Council of the People's Republic of China is comparable to the Cabinet of the US government, but with seemingly more governing agency in its own right. The State Council issues some decrees or regulations under its own authority, rather than a specific ministry. The State Council is led by the Premier and seats the leaders of 35 ministries and government agencies. *See, The State Council*, People's Daily Online, http://en.people.cn/data/organs/statecouncil.shtml [https://perma.cc/XJ3K-AWG5] (last visited Nov. 22, 2021).

58. *See, e.g.*, Bonnie S. Glaser, *Time for Collective Pushback against China's Economic Coercion*, Ctr. for Strategic & Int'l Stud. (Jan. 13, 2021) https://www.csis.org/analysis/time-collective-pushback-against-chinas-economic-coercion [https://perma.cc/Z4FV-32QD]; Wendy Cutler and James Green, Opinion, *Collectively calling out China on trade aggression*, Straits Times (Nov. 24, 2020), https://www.straitstimes.com/opinion/collectively-calling-out-china-on-trade-aggression [https://perma.cc/YMC8-ZHTF]; Peter Harrell et al., Ctr. for a New Am. Sec., China's Use of Coercive Economic Measures (2018).

59. Pratik Jakhar, *China's Economic Coercion is More Bark Than Bite*, Foreign Pol'y (Oct. 5, 2021), https://foreignpolicy.com/2021/10/05/china-economic-coercion-taiwan [https://perma.cc/Z5VT-YRUC]

60. For example, a spokesman for MOFCOM official denied Chinese embargo of rare earths to Japan in 2010. *See, China denies banning rare earths exports to Japan*, *infra* note 94

via the WTO difficult.[61] Appendix B provides a representative chart of recent Chinese economic coercion.

B. *China's Economic Coercion Toolkit*

China's legalized toolkit is new. With the exception of China's punitive tariff and quantitative restrictions (originating in the Foreign Trade Law of 1994), China's legalized tools are, at most, five years old. How will China's use such tools? Will they sanction targets as aggressively as the US? Who will the targets be? The proceeding years will be precedent-setting.

1. Anti-Foreign Sanctions Law and Unreliable Entity List

China wields two major economic sanctions tools: (1) the Anti-Foreign Sanctions Law (AFSL),[62] which the NPC Standing Committee promulgated on June 6, 2021, and (2) the Provisions on the Unreliable Entity List (UEL), promulgated by the State Council and MOFCOM on September 19, 2020.[63] China has yet to employ either tool. Both tools frame their application as retaliatory, where the application is a rightful response to foreign interference with Chinese economic and national security interests. For example, UEL Article 2 places the following conditions on its use:

> The State shall establish the Unreliable Entity List System, and adopt measures in response to the following actions taken by a foreign entity in international economic, trade and other relevant activities:
>
> Endangering national sovereignty, security or development interests of China;
>
> Suspending normal transactions with an enterprise, other organization, or individual of China or applying discriminatory measures against an enterprise, other organization, or individual of China, which violates normal market transaction principles and causes serious damage to the legitimate rights and interest of the enterprise, other organization or individual of China.

The conditions above do not reference any principles of international human rights and stability, which contrasts with the parallel laws of the US. But the amoral framing of the UEL reflects the realpolitik nature of China's foreign policy, which Beijing has contrasted with what

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61. *Id.*

62. Anti-Foreign Sanctions Law of the People's Republic of China, (promulgated by the Standing Comm. of the Nat'l People's Cong., June 6, 2021), unofficial translation available at: https://www.chinalawtranslate.com/en/counteringforeignsanctions [https://perma.cc/MC5U-ZQXC] (last visited Nov. 22, 2021) (China). Official Chinese text is available at: http://www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml (last visited Nov. 22, 2021).

63. MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List (promulgated by Ministry of Com., Sept. 19, 2020), http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml [https://perma.cc/TUZ2–2KBH] (China) (hereinafter Unreliable Entity List).

it describes as misguided US imperialism justified by ideals of democracy and human rights.[64]

The UEL cites the Foreign Trade Law of 1994 as the relevant statutory authority authorizing MOFCOM to issue this regulation.[65] The regulation does not identify a primary agency to administer the UEL, but merely references "The State" generally throughout regulation. Commentators have framed the UEL as a parallel to BIS' Entity List, but with a stronger focus on retaliating against businesses boycotting China.[66] Beijing has yet to add any party to the List.

The NPC Standing Committee promulgated the AFSL on June 10, 2021. Under AFSL Articles 4 and 5, relevant State Council departments may sanction persons or organizations that participate in the drafting, decision-making, or implementation of restrictive measures against China. The AFSL also provides for a private right of action for parties harmed by the extraterritorial application of third-country sanctions. Like the UEL, China has not used the AFSL against any person to date. Observers remain uncertain about Beijing's intention for the AFSL and UEL.

2. Export Control Law

Prior to the enactment of China's Export Control Law (ECL)[67] by the NPC Standing Committee in October 2020, China maintained an export control regime scattered across its Customs Law, Criminal Law, and Foreign Trade Law.[68] The ECL resembles the US dual use export control system while also expanding regulatory coverage to services exports.[69] (Articles 23 to 27 establish an export control system for military items parallel to the US AECA.) Like the US dual use export control

64. *See, e.g.*, the Twitter account of the Chinese MOFA spokesperson, particular a retweeted post on November 25, 2021: "The #US [sic] is obsessed with imposing the "democratic model" of the West on others and even seeks regime change. It wants to make democracy a tool for advancing global strategies and geopolitical interests. This in itself is the great damage to democratic values" Lijian Zhao (@zlj517), Twitter (Nov. 25, 2021, 6:28 AM), https://twitter.com/zlj517/status/1463862270404882437.

65. Unreliable Entity List, *supra* note 63, at art. 1.

66. *See, e.g.*, Yuanyou Yang, *China Implements its Long-Awaited Unreliable Entities List Mechanism*, China Bus. Rev. (Oct. 7, 2020), https://www.chinabusinessreview.com/china-implements-its-long-awaited-unreliable-entities-list-mechanism [https://perma.cc/6CGL-CN8N]; King & Wood Mallesons, *Four Key Issues on China's Unreliable Entity List*, China L. Insight (Oct. 16, 2020), https://www.chinalawinsight.com/2020/10/articles/u-s/four-key-issues-on-chinas-unreliable-entity-list [https://perma.cc/C7L8–2XR4].

67. Unofficial translation available at: https://www.chinalawtranslate.com/en/export-control [https://perma.cc/P4H4-NMWL]. Official text available at: http://www.xinhuanet.com/politics/2020–10/18/c_1126624518.htm [https://perma.cc/LP93-K5ZV].

68. Karry Lai, *PRIMER: China's new Export Control Law*, IFLR (Jan. 27, 2021), https://www.iflr.com/article/b1q9nrcty39csc/primer-chinas-new-export-control-law [https://perma.cc/4QKJ-NYFP].

69. Karen M. Sutter, Cong. Res. Service, China Issues New Export Control Law and Related Policies 1 (2020).

system, the ECL assesses export restriction according to end use, end user, and destination country. In another similarity to the US, MOFCOM issued an updated list of sensitive technologies subject to heightened export restrictions in August 2020;[70] in the US, ECRA requires BIS to identify "emerging and foundational technologies" for heightened export control scrutiny.[71] Compared to the US export control laws for dual use items (ECRA) and military items (AECA), commentators find that the ECL remains vague and inoperable without any further implementing regulations.[72]

3. Investment Restrictions

The NPC passed the Foreign Investment Law (FIL) in March 2019, with implementation on January 1, 2020.[73] The NDRC adopted implementing regulations for the FIL in November 2020, entitled "Measures for Security Review of Foreign Investments" (FIL Measures).[74] Together the FIL and FIL Measures envision a standing review body, the Operational Mechanism, and a procedure similar to CFIUS. However, the FIL Measures provide vague guidance on how the Operational Mechanism will work, with far less detail than CFIUS procedure.[75]

4. Punitive Tariffs and Quantitative Restrictions

The Foreign Trade Law of 1994 provides Beijing with legalized tools to impose tariffs and quantitative restrictions against certain goods and services imports and exports where such restrictions are to preserve national security, social interests, or public interests.[76] However, there is no record that Beijing has used the Foreign Trade Law's economic

70. Adjustments to the Catalogue of Technologies Prohibited and Restricted from Export in China (promulgated by the Ministry of Com.) (China). Chinese text available at http://www.gov.cn/zhengce/zhengceku/2020–08/29/5538299/files/135c5cdd6baa46a986ac5e51a1a49ac3.pdf [https://perma.cc/94SQ-BZP2]; Paraphrase of critical technologies list available at *Id.* at 2.

71. 50 U.S.C. 4801; Identification and Review of Controls for Certain Foundational Technologies, 85 Fed. Reg. 52,934 (Dec. 26, 2020).

72. CK Tan, *China's export control law to become 'key dynamic' in US relations*, Nikkei Asia (Dec. 1, 2020), https://asia.nikkei.com/Economy/China-s-export-control-law-to-become-key-dynamic-in-US-relations [https://perma.cc/2LPH-J88Z].

73. Foreign Investment law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2019, effective Jan. 1, 2020), unofficial translation available at https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html [https://perma.cc/9PAX-LBEF] (China).

74. Measures for Security Review of Foreign Investments (promulgated by the Nat'l Development and Ref. Comm'n, Nov. 27, 2020, effective Jan. 18, 2021) arts. 16, 17, 24, and 25, unofficial translation available at https://www.bakermckenzie.com/-/media/files/insight/publications/2021/01/foreign_investment_security_review_measures.pdf?la=en. [https://perma.cc/9B5H-RCN5] (China).

75. CFIUS procedure is detailed under 31 C.F.R. § 800 (2022).

76. Foreign Trade Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., May 12, 1994, effective July 1, 1994), English translation available at https://www.wto.org/english/thewto_e/acc_e/chn_e/wtaccchn43_leg_1.pdf (China).

coercion tools against a target. Nevertheless, Articles 16, 17, 24, 25 provide Chinese policymakers with coercive tools similar to US Section 301 and Section 232 measures.

IV. Comparing Toolkits and Chinese Themes

China's legalized economic coercion toolkit remains in its formative years. While new tools are now "on the books" in the form of laws and regulations, they remain inoperably vague, often lacking enforcement agencies. For example, China's inbound investment restrictions, constructed through the FIL and FIL Measures, vaguely reference an "Office of the Operational Mechanism" as the designated review body. However, internet searches for any such Office of the Operational Mechanism (alternatively "Working Office") or Chinese language searches (Gōngzuó jīzhi or 工作机制) indicate that no such agency exists. Beijing's newly constructed export control and sanctions regimes remain in similar states of under development.

In comparison, the US economic coercion toolkit is in a mature yet evolving state. Recent legislation has reformed the dual use export control and inbound investment review regimes (ECRA and FIRRMA in 2018). Continuous Congressional legislation and IEEPA executive orders add to OFAC's portfolio of sanctions programs, such as the RENACER Act[77] in response to the 2021 Nicaraguan general election and the IEEPA-created Ethiopia sanctions program in response to the Ethiopia Civil War.[78]

A. *Retaliatory Framing*

The sanctions and export control laws of China have a retaliatory framing compared to the US. At its heart, China's AFSL is more of a blocking statute—a measure designed to protect Chinese individuals and companies from the extraterritorial application of third country sanctions—rather than an outright affirmative sanctions law. Article 3 of the AFSL, according to an unofficial translation, reads in part:[79]

> Where foreign nations violate international law and basic norms of international relations to contain or suppress our nation under any kind of pretext or based on the laws of those nations to employ discriminatory restrictive measures against our nation's citizens or interfere with our nation's internal affairs, our nation has the right to employ corresponding countermeasures.

Consequently, the AFSL bears a closer resemblance to the EU's Blocking Statute[80] than any US sanctions or countersanctions law. Like

77. Reinforcing Nicaragua's Adherence to Conditions for Electoral Reform Act of 2021 (RENACER Act), Pub. L. No. 117–54, 135 Stat. 413.

78. Exec. Order No. 14,046, 86 Fed. Reg. 52,393 (Sept. 21, 2021).

79. AFSL, *infra* note 100, at art. 3.

80. Council Regulation 2271/96, 1996 O.J. (L 309) 1, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:01996R2271–20180807&from=EN [https://perma.cc/3UWJ-FXE2].

the EU Blocking Statute, the AFSL also provides for a private cause of action for Chinese plaintiffs to recover for damages incurred by foreign sanctions,[81] which will seemingly work in conjunction with a separate MOFCOM regulation issued in January 2021.[82]

However, unlike the EU Blocking Statute, the AFSL enables Beijing to compile a list of individuals and organizations involved in third country sanctions against China.[83] In this way, Beijing policymakers have constructed a tool that resembles a blocking statute but functions, in part, as an affirmative sanctions program.

Similarly, the UEL warns that MOFCOM can add entities to the List when said entity has wrongfully deviated from normal commercial relations. Under Article 2, the grounds for an entity's addition to the List require that the entity commit an initial wrongful action by suspending normal commercial relations or endangering Chinese national sovereignty, security, or development interests. For example, Article 2 may target a German firm after the firm suspended commercial relations with Chinese parties or endangered Chinese interest. Accordingly, the List justifies its coercion in a retaliatory nature.

To be clear, the retaliatory framing of China's legalized tools does not mean that their application is more ethical than US economic coercion. If nothing else, the retaliatory nature of the AFSL and UEL affords Beijing policymakers with a superficial legitimacy in economic coercion. Meanwhile, Beijing will have ample opportunity to respond to US coercion in-kind while claiming that it is merely retaliating justifiably to US misconduct.

B. *Amoral Pretexts*

Chinese sanctions laws do not claim to target persons and entities adverse to any principles such as international human rights, anti-corruption, or rule of law. Instead, the hortatory articles of the AFSL and UEL claim to uphold principles of non-interference. MOFCOM's English translation of the UEL claims, under Article 3, that the "Chinese Government pursues an independent foreign policy, adheres to the basic principles of international relations, including mutual respect for sovereignty, *non-interference in each other's internal affairs*, and equality and mutual benefit" (emphasis added). Articles 2 and 3 of the AFSL proclaim similar ideals.

In contrast, US sanctions often justifies application under international ideals. For example, Section 3 of the Global Magnitsky Act enables the President to impose sanctions against any foreign person responsible

81. AFSL, art. 12.

82. MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, (promulgated by the Order of the Ministry of Commerce of the People's Republic of China, Jan. 9, 2021), http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml [https://perma.cc/ES7X-B6RV] (China).

83. AFSL, art. 4–6.

for violations of internationally recognized human rights and government officials and their associates involved in corruption.[84]

The amoral pretext of China's legalized coercive toolkit mirrors the non-interventionist foreign policy rhetoric of Chinese government representatives, particularly from MOFA representatives, top leaders, and fundamental laws. For example, the Preamble of the Constitution of the People's Republic of China proclaims that China upholds the principle of "non-interference in each other's internal affairs."[85] The amoral pretext signals that China does not intend to deploy against international humanitarian "bad actors" which could otherwise be viewed as interference in another state's domestic affairs.

C. *Operational Flexibility*

China's legalized tools exhibit a pattern of refraining from designating a lead agency. While observers may explain such a phenomenon as a symptom of the immature state of the Chinese regulatory apparatus, observers may also see a level of intentionality from policymakers in authoring tools that delegate to multiple agencies without hierarchy. Vagueness in delegation allows for flexible operation, and accommodates for shifting roles, responsibilities, and power between various ministries of the State Council, particularly MOFA, MOFCOM, and NDRC.

Indeed, the FIL,[86] AFSL,[87] and ECL[88] all exhibit the pattern of delegating authority to multiple ministries without naming the primary agency. Article 9 of the AFSL states that "[t]he Ministry of Foreign Affairs or *other relevant departments of the State Council* are to issue orders [pertaining to countermeasures]" (emphasis added). In contrast, US economic coercion tools designate a lead agency when delegating tasks. Under 50 U.S.C. § 4813, US dual use export control law distinguishes between the lead department (DOC) and secondary agencies by providing that "[i]n carrying out this [export control reform act] on behalf of the President, the Secretary [of Commerce], *in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the heads of other Federal agencies as appropriate*, shall [perform key dual use export control functions]" (emphasis added).

Where a Chinese law seems to designate a purpose-built agency for the administration of the law, the relevant ministry has yet to establish the relevant agency. For example, the FIL provides for the creation of the "Office of the Operational Mechanism" (Gōngzuó jīzhi) to administer the inbound foreign investment review process. English-language commentary has yet to show that the NDRC has established such an office.

84. Global Magnitsky Human Rights Accountability Act, Pub. L. No. 114–328, 130 Stat. 2533 (2016).

85. Const. of People's Republic of China Preamble (1982) (China).

86. FIL, art. 3.

87. AFSL, art. 9.

88. ECL, art. Article 5.

By retaining flexibility, Beijing can wait for a more strategically opportune moment to unveil its economic coercion bureaucracy.

D. *Thematic Takeaways*

By constructing legalized economic coercion tools that are retaliatory, amoral, and flexible, policymakers provide hints as to their future use. By framing tools in a retaliatory manner, China has tailored its new tools with the purpose of employing legalized coercion only against actors who themselves attempt to exercise economic coercion (thus allowing for a retaliatory narrative). These laws stand near-ready[89] to mobilize against the US, and secondarily the EU and UK. These laws also allow for the targeting of persons and entities caught between US and Chinese coercion, primarily the AFSL and UEL. For example, China may coerce Taiwanese semiconductor businesses to continue relationships with mainland entities, while recent US coercion has disrupted Taiwan-China ties. In May 2019, BIS disrupted the ability of Taiwan Semiconductor Manufacturing Company (TSMC) to supply products to Huawei by adding the Chinese telecommunications giant to the Entity List.[90]

With amoral coercive tools, China does not intend to employ these legalized tools against targets connected to human rights abuses or corruption who otherwise bear no significant threat to Chinese interests. The chances that China sanctions a human rights violator in a low-income country under its AFSL countermeasures list (反制清单 or Fǎn zhì qīngdān) are near-zero.

By authoring tools without clear delegation of authority and implementation responsibility, lawmakers have deferred to stakeholder ministries, MOFA, MOFCOM, NDRC, and the Central Military Commission, to decide who will lead the administration of sanctions, export control, and investment review. Dismissive observers may claim that the vague delegation of duties is a symptom of the poor rule of law environment across the Chinese regulatory apparatus. However, these theories are by no means mutually exclusive. The method by which the NPC has authored China's new economic coercion laws would certainly not pass muster in the US Congress. At the end of day, Chinese policymakers likely prefer that ministries determine between themselves how best to implement new laws, rather than the NPC delineating roles ex ante.

Conclusion: The Future of Chinese Economic Coercion

What does the future look like for the Chinese legalized economic coercion toolkit? Currently, China's legalized tools remain unused. This will change. Most of China's legalized tools are in their infancy, such as the FIL (2019), the ECL (2020) and the AFSL (2021). China has had reason to let these tools lay dormant before the Beijing 2022 Winter Olympics,

89. Pending the establishment of relevant sub-ministry implementing agencies and issuance of further operational regulations.

90. 15 C.F.R. § 744, Supp. 4 (Aug. 19, 2019).

perhaps so as to a increasing the odds of a diplomatic or commercial boycott (although such boycotts did ultimately occur).[91] Moreover, Beijing policymakers continue testing the Biden Administration's willingness to depart from the policies of the Trump Administration.[92]

The future of China's legalized economic coercion will depend largely on US policy adverse to Chinese interests. China's new sanctions and export control laws seem ready to retaliate against future US coercion, US policy towards Chinese expansion (most importantly towards Taiwan), and US interference in Chinese domestic affairs. China will likely test out its legalized economic coercion tools in the middle of 2022. As US policy continues to support Taiwan self-determination and the Biden Administration shows little willingness to adopt a more acquiescent stance, the likelihood increases that China will deploy its newly minted legalized economic coercion toolbox.

Appendix A: Acronyms

AECA: Arms Export Control Act
AFSL: Anti-Foreign Sanctions Law
BIS: Bureau of Industry and Security
CAATSA: Countering America's Adversaries Through Sanctions Act
CFIUS: Committee on Foreign Investment in the United States
DDTC: Directorate of Defense Trade Controls
DOC: United States Department of Commerce
DOD: United States Department of Defense
DOS: United States Department of State
EAR: Export Administration Regulations
ECCN: Export Control Classification Number
ECL: Export Control Law of 2020
ECRA: Export Control Reform Act of 2018
IEEPA: International Emergency Economic Powers Act
IMF: International Monetary Fund
ITAR: International Traffic in Arms Regulations

91. Patrick Wintour, *West weighs up costs of boycotting China's Winter Olympics*, Guardian (No. 22, 2021,), https://www.theguardian.com/world/2021/nov/22/west-weighs-up-costs-of-boycotting-china-beijing-winter-olympics [https://perma.cc/UK76-HNMU]; Anthony Galloway & Eryk Bagshaw, *Australia considers an unofficial boycott of Beijing Winter Olympics*, Sydney Morning Herald (Nov. 25, 2021), https://www.smh.com.au/politics/federal/australia-considers-an-unofficial-boycott-of-beijing-winter-olympics-20211123-p59bbo.html [https://perma.cc/MS6S-62JY].

92. Asma Khalid, *Biden is keeping key parts of Trump's China trade policy. Here's why*, NPR (Oct. 4, 2021), https://www.npr.org/2021/10/04/1043027789/biden-is-keeping-key-parts-of-trumps-china-trade-policy-heres-why [https://perma.cc/7UWN-M7X7]; Jacob Fromer, *Lack of specific on US' China policy frustratres those seeking change from Trade Representative Katherine Tai*, S. China Morning Post (Oct. 4, 2021), https://www.scmp.com/news/china/article/3151189/us-trade-representative-katherine-tais-lack-specifics-china-policy [https://perma.cc/8H3D-W6C6].

MOFA: Ministry of Foreign Affairs, People's Republic of China
MOFCOM: Ministry of Commerce, People's Republic of China
NDRC: National Development and Reform Commission (China)
NPC: National People's Congress
OFAC: Office of Foreign Assets Control
USTR: Office of the United States Trade Representative
WTO: World Trade Organization
FIRRMA: Foreign Investment Risk Review Modernization Act

Appendix B: Modern Practice of Chinese Economic Coercion[93]

Year	Target	Reason for Coercion	Coercive Measures Applied
2010–2012	Japan	Maritime Standoff over disputed Senkaku/ Diaoyu islands	Restrictions on rare earth exports, later denied by MOFCOM[94]
2010–2016	Norway	Norwegian award of Nobel Peace Prize to Chinese dissident	Restrictions on salmon imports on phytosanitary grounds[95]
2012–2016	The Philippines	South China Sea dispute	Reduction of agricultural imports on phytosanitary grounds[96]
2016	Taiwan	Taiwanese Election of anti-unification President Tsai	Reductions in Chinese tourism to Taiwan[97]
2016	Mongolia	Retaliation for Dalai Lama visit	Border crossing delays, tariff hikes, and suspension of loan negotiation[98]
2016–2017	South Korea	US deployment of missile defense system in South Korea	Reduction in Chinese tourism to South Korea[99]

93. The list is adopted from Harrell et al., *supra* note 58, at 18.

94. *China denies banning rare earths exports to Japan*, Reuters (Sept. 22, 2010), https://www.reuters.com/article/us-china-japan-minerals/china-denies-banning-rare-earths-exports-to-japan-idUKTRE68M0PF20100923 [https://perma.cc/DV5C-E83R].

95. James Wright, *New restrictions on Norway salmon entering China now under way*, SeafoodSource (Mar. 24, 2015), https://www.seafoodsource.com/news/supply-trade/new-restrictions-on-norway-salmon-entering-china-now-under-way [https://perma.cc/XL93–3BTB].

96. Andrew Higgins, *In Philippines, banana growers feel effect of South China Sea dispute*, Wash. Post (June 10, 2012), https://www.washingtonpost.com/world/asia_pacific/in-philippines-banana-growers-feel-effect-of-south-china-sea-dispute/2012/06/10/gJQA47WVTV_story.html [https://perma.cc/EKM9-V2UH].

97. Elizabeth Shim, *China restricting tourism to Taiwan after elections*, UPI (Feb. 23, 2016), https://www.upi.com/Top_News/World-News/2016/02/23/China-restricting-tourism-to-Taiwan-after-elections/1471456255035 [https://perma.cc/JNW9-QEJ7].

98. *China 'blocks' Mongolia border after Dalai Lama visit*, Al Jazeera (Dec. 10, 2016), https://www.aljazeera.com/economy/2016/12/10/china-blocks-mongolia-border-after-dalai-lama-visit [https://perma.cc/684Z-4G3M].

99. Rachel Premack, *A Row With China Over U.S. Missiles Is Devastating South Korea's Tourism Industry*, Time (Apr. 11, 2017), https://time.com/4734066/south-korea-tourism-china-thaad [https://perma.cc/TCX5-JYQF].

Appendix C: Comparing US and Chinese Legalized Economic Coercion Toolkits

Tool	*Relevant US Law*	*Relevant US Department/s*	*Relevant Chinese Law*	*Relevant Chinese Department/s*
Economic and Trade Sanctions	International Emergency Economic Powers Act; Iran and Libya Sanctions Act of 1996; Magnitsky Act (2012) et al.	OFAC	Anti-Foreign Sanctions Law (2021); Provisions on Unreliable Entity List	MOFCOM; "Relevant Departments of the State Council;"[100]
Dual Use Export Control	Export Control Reform Act of 2018; Export Administration Regulations (EAR)	BIS	Export Control Law (2020)	National Export Control Authorities designated by the State Council and Central Military Commission; MOFCOM
Cryptography Control	Wassenaar Arrangement as implemented in ECRA and EAR	BIS	Commercial Encryption Regulations (export); Catalogue of Technologies Subject to Import Prohibition and Restriction (import)[101]	State Cryptography Administration; MOFCOM
Military Goods Export Control	Arms Export Control Act (1976); International Traffic in Arms Regulations	DDTC	Export Control Law (2020)	National Export Control Authorities as Designated by the State Council and Central Military Commission

100. Multiple Articles of the Anti-Foreign Sanctions Law delegate functions vaguely to "relevant departments of the State Council." See Articles 4 and 5 for example. Anti-Foreign Sanctions Law of the People's Republic of China (adopted by the Standing Comm. Nat'l People's Cong., June 10, 2021), art. 4–5 (China), *translated in Law of the PRC on Countering Foreign Sa*nctions, China Law Translate (June 10, 2021), https://www.chinalawtranslate.com/en/counteringforeignsanctions [https://perma.cc/7QZM-XFMX] (click the United States flag above the image for the English translation).

101. Frank Pan & Tina Li, *MOFCOM Issues New Encryption Import Control Effective Immediately*, Baker McKenzie: Sanctions & Export Controls Update (Nov. 11, 2021), https://sanctionsnews.bakermckenzie.com/mofcom-issues-new-encryption-import-control-effective-immediately [https://perma.cc/X2X4-FBNV].

Tool	*Relevant US Law*	*Relevant US Department/s*	*Relevant Chinese Law*	*Relevant Chinese Department/s*
Inbound Investment Restrictions	Foreign Investment and National Security Act of 2007; Foreign Investment Risk Review Modernization Act of 2018	CFIUS	2011 Circular;[102] Measures for Security Review of Foreign Investment;[103] Foreign Investment Law[104]	"Office of the Operational Mechanism" under NDRC and MOFCOM
Outbound Investment Restrictions	None; Draft legislation pending[105]	N/A/	Opinions on Further Guiding and Regulating Outbound Investment[106]	NDRC, MOFCOM, People's Bank of China, MOFA
Trade Barrier Restrictions	Section 232 of the Trade Expansion Act of 1962;[107] Section 301 of the Trade Act of 1974[108]	DOC for Section 232; USTR for Section 301	Articles 16, 17, 24, and 25 of the Foreign Trade Law of 1994	Relevant member of the State Council; presumably MOFA and/or MOFCOM

102. Formally titled Circular of the General Office of State Council on the Establishment of Security Review for the Merger and Acquisition of Domestic Enterprises.

103. Measures for Security Review of Foreign Investments (Adopted at the 13th Commission Affairs Meeting of the National Development and Reform Commission on November 27, 2020. Issued by the National Development and Reform Commission and the Ministry of Commerce on December 19, 2020) (China), *translated by* Baker McKenzie, https://www.bakermckenzie.com/-/media/files/insight/publications/2021/01/foreign_investment_security_review_measures.pdf?la=en (last visited Nov. 23, 2021).

104. Foreign Investment Law of the People's Republic of China, (Adopted by the Nat'l People's Cong., Mar. 15, 2019) (China).

105. National Critical Capabilities Defense Act of 2021, S. 1854, 117th Cong. (2021).

106. For an unofficial translation of the regulations, see *Opinions on Further Guiding and Regulating the Dire*ctions of Overseas Investments, Paul Weiss (Aug. 2, 2017), https://www.paulweiss.com/media/3977255/ruletranslation_082217.pdf.

107. 19 U.S.C. § 1862.

108. 19 U.S.C § 2411.