

ALERT

# China Retaliates Against U.S. Export Restrictions, Adopts New Blocking Rules

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On Saturday, China announced new rules banning Chinese firms and citizens from complying with “unjustified” foreign laws and sanctions. The order also allows Chinese firms to sue in Chinese courts companies that comply with such “unjustified” extraterritorial foreign laws.

Although it is not yet clear how broadly the new rules will be interpreted and applied, they potentially could put U.S. companies with operations in China in an impossible position of having to decide whether to comply with U.S. law in violation of Chinese law, or vice versa. In the coming weeks and months, the incoming Biden Administration ultimately will need to decide if it will continue the course charted by the Trump Administration or pursue a new or different China strategy.

While the Chinese rules do not name specific laws or sanctions, they follow a series of efforts by the Trump Administration to crack down on Chinese companies. These efforts include the Commerce Department’s expanded military end use/user rule announced in April 2020 – which restricts exports of low-level electronics, mass market encryption hardware and software (such as laptops and smartphones), and parts and components for commercial aircraft without an export license if such items are destined for a military end use or end user in China – and the subsequent creation of a Military End User list in December 2020.

Separately, last month, Commerce banned exports to dozens of Chinese companies, including semiconductor and drone manufacturers, by adding them to the Entity List. Additionally, in November 2020, the administration issued an Executive Order on

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## Practice Areas

Export Controls and Economic Sanctions  
International Trade

“Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies;” and in August 2020, the administration ratcheted up export restrictions on Huawei and its affiliates.

With Saturday’s move, the Chinese government followed through on its promise that it would retaliate against U.S. restrictions and take steps to safeguard the interests of Chinese companies (link in Chinese). The move is similar to sanctions blocking statutes, such as the Canadian blocking statute aimed at U.S. sanctions on Cuba and the European Union’s (EU) blocking statute (Council Regulation (EC) No 2271/96), which attempts to nullify the effect of U.S. secondary sanctions, such as those targeting Iran, that the EU considers to be extraterritorial. The EU blocking statute prohibits EU operators from complying with “any requirement or prohibition based on the specified foreign laws.”

In a press release (link in Chinese) describing the new measure, the Chinese Ministry of Commerce noted that it drew on UN resolutions dating back to the 1990s calling for the abolition of unilateral laws and measures that have extraterritorial effects and specifically cited the EU blocking statute as influencing the effort.

Under the new rules, the Chinese government can issue orders stating that certain foreign laws cannot be observed. Chinese companies that incur losses because of another party’s compliance with extraterritorial laws can sue to recover in Chinese courts. Because Chinese courts are ultimately answerable to the Communist Party, it appears that such cases would likely result in victory for the Chinese plaintiffs.

Depending on how expansively China’s rules are interpreted and implemented, the order could create problems for U.S.-headquartered companies, which do not have much of a choice about whether to comply with U.S. law, including U.S. export restrictions and sanctions. It also remains to be seen whether Chinese companies that cooperate with U.S. export licensing efforts (*i.e.*, a U.S. company applying for a license because its Chinese customer is on the Military End User List or Entity List) would be viewed as unlawfully observing and/or complying with an extraterritorial law in violation of the new Chinese legislation.

Wiley continues to closely monitor the U.S. government’s efforts to address the growing political, economic, and military competition from China and the impact of such efforts on U.S. and non-U.S. companies.

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*Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this alert.*