ICAS TRADE N TECH DISPATCH

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What's Been Happening

1 — Implications of Sanctions on Russia for U.S.-China Engagement — 1

[**In One Sentence**]

- The United States has issued export controls on technology items for "all of Russia" under its Foreign Direct Product rule.
- The U.S. also sanctioned several Russian financial institutions and prohibited new investments in Russia.
- Further sanctions were also imposed on the Russian government, certain officials, personnel and their families, as well as several state-owned and private enterprises.
- Current and former U.S. officials generally expect China to violate U.S. sanctions in support of the Russian military and have questioned the United States' ability to detect violations.
- U.S. Secretary of Commerce Gina Raimondo has warned Chinese companies against backfilling sanctions and exporting to Russia.
- China has consistently opposed unilateral sanctions, arguing that they have no basis in international law and tend to only escalate tensions.
- The Foreign Direct Product rule was initially deployed by the Trump administration to punish the Chinese tech company Huawei.
- The number of U.S. sanctions on China, especially those related to trade, has grown significantly since the Trump administration, with several new impositions under the Biden administration.
- China introduced the Anti Foreign Sanctions Law in 2021, allowing the Chinese government and private individuals to counter "discriminatory" foreign sanctions.

[**Mark the Essentials**]

- Under the new Foreign Direct Product rule, Chinese companies are prohibited from exporting any sophisticated (or other controlled) technology items to Russia that include U.S. content or are made with U.S. technology if the item has a military end use or end user. Exports that do not have a military end use or end user require a license which is granted but rarely. "Dual-use items" that can serve both a civilian and a military purpose are also prohibited.
- The United States has imposed property blocking sanctions, i.e., asset freezes, on Alfa Bank, the largest private bank in Russia, and Sberbank, a majority state-owned bank with a significant presence in both Russia and several European countries.

- Highlighting the semiconductor industry, Secretary Raimondo said that Chinese companies "have their own self-interest" to abide by U.S. sanctions. According to her, the U.S. could "essentially shut SMIC down" by denying the Chinese chip manufacturer U.S. equipment and software if it exports to Russia.
- Nazak Nikakhtar, formerly an acting head of the Commerce Department's Bureau of Industry and Security (BIS), cited China's Anti-Foreign Sanctions Law as a legal basis that China can use to reject the U.S.' and the West's unilateral sanctions on Russia.
- Commerce Department officials have expressed concerns over the United States' ability to detect Chinese violation of U.S. sanctions, highlighting the lack of BIS agents on the ground in China and increased difficulty to work with the Chinese government.
- China's Foreign Ministry has repeatedly stated that sanctions are ineffective in addressing the Ukraine situation, hamper attempts to advance peace talks, add to the turmoil of the Ukraine crisis, and will lead to spillover effects in broader regions of the world.
- The China Banking and Insurance Regulatory Commission (CBIRC) has specifically expressed its disapproval for the financial sanctions against Russia, noting that unilateral financial sanctions tend to be ineffective and lack basis in international law. CBIRC said China will not join the financial sanctions and will maintain normal financial and trading relationships with all relevant parties.
- Since the enactment of the Huawei sanctions by the U.S. government, some experts and commentators have speculated that the Foreign Direct Product rule will spill over to other China-related sanctioned entities.

[**Keeping an Eye On...**]

- The Russia-Ukraine war is the first instance in the post-Cold war era of the United States responding against the unlawful actions of a United Nations Security Council peer with its full array of non-military measures, including financial and central bank sanctions, export controls, embargoes, and revocation of trade privileges, among others. Washington and the West have veritably unleashed 'economic warfare' on Moscow, seizing control of the centralized chokepoints of the 21st century's global economic networks to asphyxiate the Russian economy. Moscow's ability to adapt and substitute for the loss of economic, financial and technological access will determine the cost of the imposed sanctions regime. Be that as it may, it has not gone unnoticed in Beijing as well as in other emerging economy capitals that the measures being inflicted on Moscow may one day be imposed, fully or in part, upon them. Indeed, a few of the measures taken by the United States against Russia have been attempted during the U.S.-China trade war and the ongoing trade and technology conflict. Should the various 'economic warfare' measures prove their worth against Moscow, the likelihood of many of them becoming the go-to 'non-military weapons' to be applied against China is high. As such, the measures offer a handy playbook—a proof of concept—of how economic warfare is prosecuted in the 21st century. What are its key nodes and chokepoints? What are the instruments of punishment and levers of control? Just as importantly, where are the carve outs and what do these carve outs signify? And foremost from Beijing's perspective, what policy reforms and actions must it take in order to be deemed to be a state 'too big to fail'—as in, a state that is too systemically important and too economically, financially and technologically interconnected within the global economic architecture to be unilaterally sanctioned by the United States and the West?

[**Expanded Reading**]

- Export Controls on Cutting-Edge Technology to Russia, The German Marshall Fund of the United States, April 13, 2022
- The New Arms Race: Sanctions, Export Control Policy, and China, Center for Strategic & International Studies, March 25, 2022

- [U.S. Government Imposes Expansive, Novel and Plurilateral Export Controls Against Russia and Belarus](), *Akin Gump*, March 8, 2022
- [Event Recap: "2022 Export Enforcement Priorities,"]() Silverado Policy Accelerator, February 24, 2022

2 — Washington's New Vision of Multilateralism — 2

[In One Sentence]

- U.S. Secretary of the Treasury Janet Yellen has proposed a new vision for global economic cooperation, favoring supply chain friend-shoring with "trusted countries".
- The next U.S.-EU Trade and Technology Council (TTC) meeting will include an increased focus on supply chain resilience.
- Several U.S. lawmakers urged the administration to negotiate market access agreements in the Indo-Pacific region.

[Mark the Essentials]

- Advocating for the "modernization" of the liberal economic order beyond economic efficiency concerns, Yellen argued for reducing reliance on certain countries for critical materials and securely extending market access only to trusted countries.
- Yellen cited the Russia-Ukraine war as the precise reason to address gaps in the international economic and financial system with trusted countries, touting the "multilateral" response among allies sanctioning Russia.
- According to European Commission Executive Vice President Margarethe Vestager, the Russia-Ukraine war has highlighted a number of foci for the TTC, including critical supply chain security and "friend-shoring".
- Referring to the Indo-Pacific Economic Framework, 11 House lawmakers asked the administration to start negotiating market access provisions with ASEAN and other Indo-Pacific countries as swiftly as possible.

[Keeping an Eye On...]

- Beware that 'vision thing'. Politicians usually trundle out their 'vision' statements when they have something extraordinarily ambitious to lay out or alternatively when they have substantively very little to deliver, and choose therefore to mask their lack of content behind an overarching 'vision'. Treasury Secretary Janet Yellen's vision of a reformed international monetary and financial order, coming as it did a few days before the IMF/World Bank spring meetings, falls into the latter category. There was no vision as such of a reformed monetary system—be it reform of solvency, liquidity or even governance processes; just the promise to offer a vision of the reform of the Bretton Woods institutions at an unspecified future date. On the other hand, countries—especially adversary countries—would be well advised to take heed of Secretary Yellen's admonition that the window is closing on the era of globalization wherein economic interdependencies could be separated from national security concerns. For a new era of globalization and multilateralism to prosper durably, it may be essential to limit certain critical sector economic activities to countries that exist within a circle of trust. Ms. Yellen's cautionary observations may be 'more talk than action' at this time but the continuous rhetoric against globalization and multilateralism could leave a lasting impact in shaping America's view of the current world order as well as its assessment of the bilateral relationship with other great powers, especially that with China. Worse, a bloc-based framework of international economic activity could be the precursor to military conflict—hot or cold, as was the case in the 1930s and again during the Cold War.

[**Expanded Reading**]

- Transatlantic Trade | US and Europe: April 4-15, 2022, *National Law Review*, April 18, 2022
- Special address by US Treasury Secretary Janet L. Yellen, Atlantic Council, April 13, 2022
- Murphy and Miller Lead Bipartisan Letter to USTR Urging Deeper Trade Ties between the U.S. and Indo-Pacific Nations, U.S. Congresswoman Stephanie Murphy Press Release, April 12, 2022
- Readout of Ambassador Tai's Meeting with European Commission Executive Vice President for a Europe Fit for the Digital Age Margrethe Vestager, Office of the United States Trade Representative, April 8, 2022

3 — U.S. Industrial Policy in Motion— 3

[**In One Sentence**]

- President Biden invoked the Defense Production Act to support domestic production of critical minerals.
- The Senate introduced a bill to counter China's dominance of critical mineral supplies by working with the Quad countries.
- Democratic Senators questioned the feasibility of passing the outbound investment screening provision in the House's America COMPETES Act.

[**Mark the Essentials**]

- The Department of Defense has been directed to support domestic mining, beneficiation and value-added processing projects as well as the relevant research and studies for critical materials.
- Supported by a bipartisan group of Senators from the Finance Committee, the bill aims to build a more reliable and secure supply chain by partnering and launching discussions with Australia, India and Japan.
- Senate Finance Committee Chair Ron Wyden called the outbound screening mechanism "a very, very good idea" but was concerned whether the provisions would get enough support from Republicans.

[**Keeping an Eye On...**]

- The Biden administration, to its credit, is 'walking the talk' on recharting a modern 21st century industrial strategy for America. The administration's industrial policy is framed in the context of its "extreme [strategic] competition" approach towards China. It is geared towards utilizing existing statutory authorities to encourage and expand the domestic advanced manufacturing base, especially for critical supply chain items (semiconductors, large-capacity batteries, critical minerals and materials, etc.). Among the existing statutory authorities, none is perhaps more powerful than the Defense Production Act (DPA). Enacted at the time of the Korean War, it confers extraordinarily broad authority to the President to intervene economically as s/he deems fit in order to expedite and expand the supply of resources from the U.S. industrial base to support national security goals. With economic security increasingly becoming an ever-greater facet of national security, the invocation of the DPA to expedite the domestic production of critical minerals is a prime example of the administration's readiness to deploy industrial policy tools to achieve national economic security ends. Beijing would be well-advised to take note too. Smart industrial policy preempts the need for reactive industrial policy investments, as has been the case for China in its basic scientific research and instrumentation as well as semiconductor sectors following the imposition of technology controls by the Trump and Biden administrations.

[**Expanded Reading**]

- Conference Games, Center for Strategic & International Studies, April 18, 2022
- Bill in US Senate to curb US' dependence on China for critical minerals, *Business Standard*, April 1, 2022
- Biden Invokes Cold War Statute to Boost Critical Mineral Supply, *The New York Times*, March 31, 2022 [Paywall]
- King, Colleagues Introduce Bipartisan Bill to Curb US Dependence on China's Minerals, U.S. Senator Angus King Press Release, March 31, 2022
- Memorandum on Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as amended, The White House, March 31, 2022