

## Keep Your Frenemies Close: Proposed China Sanctions and the Price of Escalation

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On August 30, 2015, the [Washington Post](#) broke a story that the Obama administration is developing a package of economic sanctions that will target Chinese companies and individuals who have benefitted from cybertheft. The new sanctions would come at a time when commerce between the two countries is thriving, but political relations are strained. As the United States and China have expanded their economic interdependence, they have also continued to ratchet up their economic competition. They are partners in an ungainly pas-de-deux. The two countries cannot afford to take swings at one another but, at the same time, neither can afford to have its partner picking its pockets.

The Chinese government flatly denies responsibility for the recent string of cyber-breaches. Taking that position, China could argue that new U.S. sanctions constitute unwarranted economic aggression. China could then decide to retaliate against American businesses.

The spark of possible sanctions touches off a salvo of questions for businesses. How will China respond? How far will the struggle escalate? How can businesses plan and prepare for the countries' measures and countermeasures?

### The Cybertheft Sanctions

It remains to be seen whether the contemplated China sanctions will actually be implemented. But an existing presidential [executive order](#) sets out the framework for sanctions against any party "engaging in significant malicious cyber-enabled activities." The Post says its sources indicated it is more a question of when, not if, the order will be used against China.

The order authorizes the Secretary of the Treasury, in consultation with the Secretary of State and Attorney General, to impose sanctions against companies, individuals, and organizations whose cyber-enabled activities contribute to a threat to national security, foreign policy, or the economic stability of the United States.

The sanctions available under the executive order include asset freezing, blocking commercial transactions, and restricting visas so that sanctioned persons would not be allowed to enter the United States. A White House Official was quoted as saying that the administration will use a comprehensive strategy to combat cyber attacks, including a number of options other than sanctions. However, with the intense trend of cyber attacks on U.S. government and business, it is likely not the last time this executive order will be invoked.

Commentators are divided over the wisdom of imposing sanctions against China, but Washington may believe it has no choice but to act. Although China is not the only country to engage in cyber-related industrial espionage against American companies, it is the most active. [According to the NSA](#), Chinese hackers have breached U.S. cyber-security more than 600 times. The information stolen includes nuclear power plant designs, search engine source code, and companies' negotiating positions.

### Your Business: Preparing and Responding

With China's President Xi Jinping visiting the White House this month, it is unlikely that the sanctions will be rolled



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out immediately. This gives businesses time to prepare to comply with any new U.S. sanctions, and to deal with potential Chinese retaliation.

As a compliance matter, the proposed U.S. sanctions should be relatively straightforward. Unlike the sectoral sanctions implemented against Russia last summer, the China sanctions will likely name a list of individuals and companies that will be designated as SDNs or otherwise prohibited from financial dealings with U.S. persons. Companies doing business in China or with Chinese companies will need to review their transaction partners to screen out any designated parties. Under the sanctions, all U.S. persons would be prohibited from doing business with the designated parties without a license. License applications will likely be subject to a general policy of denial.

China's response may be more difficult for U.S. businesses to prepare for. China has long restricted the activities of foreign companies in China, including U.S. businesses. China restricts foreign companies' access to many sectors of its domestic markets, and in some cases even requires that foreign companies surrender proprietary information and technology as a prerequisite for doing business in the country. If sanctions are imposed against individuals, companies, or particularly against Chinese government-controlled entities, China may further shut out U.S. business or require that companies give up even more as a price of operating in China.

As the situation develops, whether escalating or calming, smart U.S. companies will keep an eye on the changes to U.S. policy and regulation as well as Chinese government rules and enforcement. They may also do well to keep their compliance attorney's phone number handy.

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