

Counter "Long-Arm Jurisdiction" and Enrich the "Toolbox" of Foreign-Related Laws—From the Interdiction Measures to the Anti-Foreign Sanctions Lawabstract

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Abstract: At a time of "profound changes unseen in a century", the rapid rise of emerging economies poses a huge challenge to the international order and pattern dominated by Western countries. In order to safeguard its interests in the international governance system, the United States continues to use economic sanctions as its main foreign policy tool and adheres to the international strategy of "the rule of law". In order to safeguard its interests in the international governance system, the United States continues to use economic sanctions as its main foreign policy tool and adheres to the international strategy of unilateralism and hegemony. As one of the representatives of emerging economies, China has actively promoted peaceful development at bilateral, regional and multilateral levels to realise the concept of "sustainable development of an open economy" and continuously promote the concept of "sustainable development". As one of the representatives of emerging economies, China has actively promoted peaceful development at bilateral, regional and multilateral levels to realise the concept of sustainable development of an open economy and continuously enhance its voice in international exchanges. In terms of legal design to deal with the unilateral economic sanctions of the United States, the EU's blocking law model is weak in terms of protection and cannot meet the needs of the current situation of unilateral economic sanctions of the United States. In terms of legal design to deal with the unilateral economic sanctions of the United States, the EU's blocking law model is weak in terms of protection and cannot meet the needs of the current situation of unilateral economic sanctions of the United States, while Russia's anti-sanction law model is more proactive and more in line with the In the context of the current Sino-US relations entering a comprehensive competition, China is learning from the experience of the EU and the US.

1. Introduction

In practice, China should improve the implementation system that is compatible with the Anti-Foreign Sanctions Law, establish a special organisation to be responsible for coordinating and implementing the anti-sanctions measures, further clarify the relief rights brought by countermeasures, clarify the rules of extraterritorial jurisdiction, and step up the improvement of the relevant contents

of countermeasures. China should clarify the rules of extraterritorial jurisdiction, and step up the improvement of the relevant contents of countermeasures. Counter "long-arm jurisdiction" and enrich the "toolbox". Counter "long-arm jurisdiction" and enrich the "toolbox" of foreign-related laws.

2. China's Dilemma in Coping with Economic Sanctions

2.1 Status of Sanctions in China Today

2.1.1 U.S. Economic Sanctions against China Continue to Increase

Since the trade dispute between China and the United States broke out in 2018, the rivalry between China and the United States has escalated. The U.S. has adopted unilateral economic sanctions and cracked down on many Chinese individuals, companies, and even branches of the military. On 20 May 2020, the US White House released the US Strategic Approach to China, declaring that it would use competition to curb China's expansion in the political, military and economic spheres in order to safeguard US interests. Subsequently, the Biden administration did not slow down its economic sanctions against China when it took office, continued to crack down on China's development in the fields of economy, science and technology, human rights, and education, and pressurised China by continuing to invest in innovative technologies within the United States in order to maintain its economic advantage.

In the current global landscape, China is facing unprecedented pressure to expand outside the United States. It is clear to observe that recent cases fully illustrate the seriousness of the problem. For example, under the pretext of "safeguarding human rights", the United States enacted the Uyghur Forced Labour Prevention Act ^[1] to crack down on China's import-export trade and attempted to curb area dominant industries, such as cotton, tomatoes and solar photovoltaics. In addition, the U.S. has imposed sanctions on Huawei for reasons of national security, restricting Huawei's products from entering the U.S. market, pressuring other countries worldwide to ban Huawei's participation in the construction of local 5G networks by "cutting off the supply of chips and operating systems"^[2], and even requesting Canada to detain and extradite Huawei's Chief Financial Officer Meng Wanzhou.

Looking back at history, it can be found that this is not the first time that the United States has imposed sanctions on Chinese high-tech companies. ZTE Corporation was twice sanctioned by the United States in 2016 and 2018, prohibiting U.S. companies from selling parts, software and technology to it, which seriously affected ZTE's development in the U.S. market. In addition, the United States cut off China's Bank of Kunlun from the U.S. financial system over its dealings with Iranian banks ^[3], and required any financial institution holding accounts with Bank of Kunlun to close those accounts within 10 days. The United States has continued and further imposed sanctions on China, and the number of Chinese companies subject to economic sanctions continues to grow, with nearly 1,000 entities and individuals now on various sanctions lists. In light of this, individuals, businesses and governments in China are forced to face the reality of these sanctions.

2.1.2 The dilemma of China's sanctioned subjects

Currently, most businesses, especially multinational corporations, are still subject to the economic sanctions imposed by the United States, and these companies are unable to do business with United States individuals and entities or use the United States dollar in their transactions. Economic sanctions have hit businesses extremely hard. United States sanctions have had a limited impact on existing transactions, but have severely limited the formation of new transactions. Countermeasures by other countries usually require domestic enterprises to continue to honour contracts they have already signed, but they do not force them to enter into new transactions. Given that the United States has

placed specific individuals or enterprises on sanctions lists, there is little willingness on the part of enterprises in other countries to enter into transactions with them at the risk of being sanctioned. According to the information, about two thirds of the surveyed companies have given up investment opportunities of about \$1.9 billion in Iran and Libya within a year of the implementation of the US D'Amato Act ^[4].

Multinational corporations are often faced with conflicts over foreign economic sanctions between the two countries, which result in them having to choose between violating U.S. law and Chinese law. When in areas where China has not taken countermeasures, these companies compare the value of their U.S. market and their share of the overall business to the value of transactions subject to U.S. restrictions as a way of deciding whether to comply with U.S. sanctions^[5]. This situation is relatively ideal. However, if China explicitly adopts countermeasures in certain areas, then the sanctioned company will need to consider more complex factors. Not only do they have to consider the trade-offs of commercial interests, but also their business reputation, and are caught in a dilemma where they must violate a country's laws.

2.2 Separation of China's position from that of the West

At present, the United States has developed the most comprehensive and aggressive legal system of cross-border economic sanctions in the world. Major Western countries and groups of countries, such as the United Kingdom, Germany, France, Canada, Australia and the European Union, on the one hand, faced with the pressure of U.S. economic sanctions have to take countermeasures; on the other hand, they are also copying the U.S. practice, expanding the scope of their own sanctions on the field of the outside world, so as to create a "countermeasures-oriented, both offensive and defensive "This has led to the creation of an extraterritorial jurisdiction system for economic sanctions.

2.2.1 Western counter-sanctions positions: the European Union as an example

In 2003, the EU issued Guidelines for the Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Security and Foreign Policy, in which the EU explicitly condemned the secondary sanctions legislation of other countries and strongly objected to the imposition of penalties on EU entities and individuals by those countries under the relevant legislation. The EU also stated that it would never introduce similar regulatory instruments that violate international law^[6]. It is evident from the facts that at that time the EU considered the secondary sanctions imposed by the United States to be in violation of international law and was firmly opposed to them. In addition, the US secondary sanctions seriously harmed the interests of EU companies abroad, so the EU repeatedly enacted laws and regulations to counter the US secondary sanctions^[7]. However, after the introduction of the US Comprehensive Iran Sanctions Act, the extraterritorial jurisdiction of the US was further expanded. Not only did the EU change its position on secondary sanctions, but soon after Obama signed the Act, the European Commission took synchronised measures with the US to impose sanctions on Iran. The introduction of this regulation broke the EU's long-standing opposition to the U.S. position on extraterritorial jurisdiction, which shows that the U.S. and the EU have reached a certain degree of consensus on secondary sanctions, at least in the convergence of positions on the issue of Iranian nuclear power. Since then, the EU has converged with the United States on the extraterritoriality of economic sanctions and has gradually established its own sanctions system.

2.2.2 China's anti-sanctions position: the Anti-Foreign Sanctions Act

The Chinese Government differs from the European Union in its position, and the Chinese side has on several occasions made it clear publicly that it does not accept cross-border jurisdiction over

Chinese entities and individuals under United States economic sanctions laws. In response to the U.S. Department of Justice's indictment of Chinese citizens and companies for collusion in connection with North Korea sanctions, Hua Chunying, a spokeswoman for the Ministry of Foreign Affairs, said that China opposes the U.S. implementation of "long-arm jurisdiction" over Chinese entities and individuals under domestic law, and that this position is firm and clear. In order to safeguard national sovereignty and protect the legitimate rights and interests of Chinese citizens and organisations, China published and implemented the Anti-Foreign Sanctions Law on 10 June 2021 in response to sanctions imposed by other countries. This law, together with the Export Control Law of the People's Republic of China, which has already entered into force, the Ministry of Commerce's Provisions on the List of Unreliable Entities, and the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures, constitute China's anti-sanctions laws and regulations.^[8]

According to the statistics, China has significantly increased the number of sanctions imposed on foreign countries between 2020 and 2021. From 1949 to the present, nearly 30 sanctions have been initiated. Of these, in the time period from 1949 to 2019, China initiated 15 sanctions; while in just one year from 2020 to 2023, the number of sanctions is as high as 16, almost equal to the total number of sanctions in the past 60 years. Most of these sanctions have been imposed as countermeasures to foreign interference in internal affairs, which demonstrates China's strongly expressed willingness to counteract in the recent past. However, unlike the United States, which imposes its will and standards on others, China has always firmly pursued a position of genuine multilateralism, insisting that there should exist in the international community only a set of rules based on the purposes and principles of the Charter of the United Nations; an international order based on international law; and an international system based on the United Nations.

3. China's push to counter "long-arm jurisdiction"

3.1 Deficiencies in China's anti-sanctions legal system

On 10 June 2021, China's first legislation on counter-sanctions, the Anti-Foreign Sanctions Law (AFSL), differed from the European Union's Blocking Measures in that the focus of the legislation was not on "blocking" but on countering^[9] sanctions. In fact, counter-sanctions are no different from sanctions in the sense that they are responded to by the same means, and essentially constitute unilateral sanctions under international law. Together with the relevant provisions on counter-sanctions in the Law of the People's Republic of China on Export Control, the Provisions on the List of Unreliable Entities, and the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures, the Law should constitute China's counter-sanctions legal system.^[10] However, the current situation shows that China's counter-sanctions legal system is in its early stages of formation, and that a number of issues have yet to be resolved.

3.1.1 Inadequate harmonisation of the Anti-Foreign Sanctions Act with existing laws

There are three laws in China's current legislative system: the Anti-Foreign Sanctions Law, the Foreign Trade Law of the People's Republic of China and the National Security Law of the People's Republic of China. All three laws can be used to implement counter-sanctions measures. However, it should be noted that the competent authorities and enforcement agencies under these three laws are different, which may lead to contradictions in the behaviour of the agencies^[11]. In practice, therefore, there is a need to coordinate the actions of the agencies to ensure consistency in counter-sanctions measures and to avoid possible conflicts of behaviour.

3.1.2 Absence of normative documents for counter-sanctions efforts

On the basis of the improvement of laws and departmental regulations, it is also necessary to strengthen the formulation of administrative regulations and other normative documents to ensure that the specific details of counter-sanctions work are regulated. Because the rules of the legal system should be hierarchical and progressive, only a limited number of legal provisions such as the Anti-Foreign Sanctions Act cannot cover all the details, and a large number of normative documents are needed to clarify the counter-sanctions measures^[12]. At the moment, there has been no response from the competent counter-sanctions authorities, which increases the urgency of developing normative documents.

3.1.3 Lack of procedural safeguards remedies for sanctioned parties

It is extremely difficult for a sanctioned party to obtain safeguards under the Chinese legal framework, with a lack of specific channels of redress, and appropriate procedural safeguards are even more difficult to obtain; with this in mind, and in conjunction with the relevant provisions of article 8 of the Anti-Foreign Sanctions Act, individuals or organisations targeted by counter-sanctions initiatives are granted the right to submit an application to the relevant authorities in the event that there is a doubt or a change in the relevant facts. Once the relevant authority has conducted an examination and made a determination, the countermeasure may be reasonably adjusted. Such a measure would provide the sanctioned parties with more possibilities to exercise their rights and ensure that they are duly safeguarded.

3.2 From the Blocking Scheme to the Anti-Foreign Sanctions Act

In addition to the countermeasures legal regime, there is a need to insist on improvements to the blocking approach. While the "blocking approach" cannot completely avoid the risk of extraterritorial jurisdiction, it can provide a buffer mechanism for sanctioned individuals or entities, thereby mitigating to some extent the unforeseen and discretionary damage caused by United States foreign economic sanctions. For example, the EU's blocking legislation provides for the cancellation of the enforceability of any foreign court judgement in the EU, providing EU businesses engaged in legitimate international economic dealings with immunity from specific extraterritorial legislation^[13]. In addition, the legislation gives EU businesses the right to recover damages in the European Court of Justice for losses arising from foreign sanctions^[14].

It is true that anti-sanctions legislation adopted by a single country can hardly be effective in curbing the hegemonic behaviour of the United States with regard to foreign economic sanctions. Although the blocking legislation implemented by the EU over the years has been able to exclude the sanctions of other countries from taking effect in the EU, it is still unable to fully protect the interests of EU nationals outside its borders^[15]. Moreover, it is not possible to establish a legal regime against sanctions overnight. The United States has taken a long time to build its own system, and it is unrealistic for China to rely on one or two new laws to counter the systematic foreign sanctions of the United States. Legislative jurisdiction is the basis for judicial and enforcement jurisdiction, so regardless of the effectiveness of the legislation, China should have a higher-ranking law to make its position clear and ensure that the enforcement and judicial authorities are not left in an insoluble dilemma when dealing with sanctions-related matters. It is for this reason that the Anti-Foreign Sanctions Act has provided a positive and effective start to the establishment of an anti-sanctions legal system in China.

4. Improvement of China's foreign-related legal "toolbox"

Since the eighteenth congress, comrade xi for the core of the CPC Central Committee attaches great importance to the foreign rule of law. The 13th session of the standing committee of the National People's Congress in-depth implementation of xi important indicator spirit and the CPC Central Committee decision deployment, to speed up the pace of foreign legislation amendment, around the anti sanctions, anti-interference, counter "long arm jurisdiction", enrich the response The NPC Standing Committee has also strengthened its legal "toolbox". For dealing with challenges and preventing risks, and promoted the formation of a systematic and complete system of foreign-related laws and regulations, so as to provide a strong safeguard under the rule of law for the promotion of the modernisation of the country's governance system and capacity and the construction of a modern socialist country in an all-round manner.^[16]

The Law of the People's Republic of China on Countering Foreign Sanctions was adopted on 10 June 2021 and entered into force on that day. The Law provides strong legal protection for China's response to foreign sanctions, provides a clearer legal basis for the countermeasures previously taken by China and the Provisions on the List of Unreliable Entities and the Blocking Measures promulgated by the Ministry of Commerce, and is a powerful response and an inevitable choice for China to deal with unilateral economic sanctions imposed by the United States. However, as the Anti-Foreign Sanctions Act was introduced in haste and its provisions are relatively brief, some problems have arisen in the process of its concrete implementation that need to be resolved.

4.1 Establishment of a specialised counter-sanctions body to coordinate and implement counter-sanctions measures in a unified manner

China's National Security Law, Foreign Trade Law and Anti-Foreign Sanctions Law all contain enabling provisions to counter foreign economic sanctions^[17]. According to Article 59 of China's National Security Law, "the State will establish a system and mechanism for national security review and supervision in order to review foreign investments, specific items and key technologies, network information technology products and services, and construction projects involving national security matters that have or may have an impact on national security, and to effectively prevent and resolve national security risks." Taking China's Foreign Trade Law as an example, it stipulates that "if any country or region imposes discriminatory prohibitions, restrictions or other similar measures on the People's Republic of China, the People's Republic of China may take corresponding measures in accordance with the actual situation." Article 1 of the Measures on Blocking Measures promulgated by the Ministry of Commerce of China clearly stipulates that "[t]his Measures are formulated in accordance with the National Security Law of the People's Republic of China and other relevant laws and regulations, in order to block the adverse impacts brought about by the improper application of foreign laws and measures to China, to safeguard the sovereignty, security and development interests of the State, and to protect the lawful rights and interests of Chinese citizens, legal persons or other organisations.^[18]" In addition, the Ministry of Commerce has also issued a series of relevant regulations such as the Provisions on the List of Unreliable Entities, the Foreign Trade Law of the People's Republic of China and the National Security Law of the People's Republic of China. Therefore, it can be seen that there are quite a number of authorising provisions in China's relevant laws and regulations aimed at responding to foreign sanctions, but there is still a need for further co-ordination between these laws and regulations to ensure their effective implementation, and the relationship between China's Anti-Foreign Sanctions Law and other existing laws and regulations still requires further co-ordination and integration.

4.2 Further Clarification of the Right to a Countermeasure Remedy

Under article 7 of the Anti-Foreign Sanctions Act, decisions made by the relevant departments of the State Council are considered final and are adjudicated in accordance with the provisions of that article. However, decisions made under the Foreign Trade Law, the National Security Law, the Customs Law, the Securities Law and other laws may be subject to reconsideration or prosecution procedures in accordance with the provisions of the Administrative Compulsory Law, the Administrative Reconsideration Law and the Administrative Procedure Law. However, if the relevant department intends to circumvent the administrative reconsideration or administrative litigation procedures by invoking the Anti-Foreign Sanctions Act, will it deprive the person concerned of the right to judicial remedy under other laws? For example, if the relevant department has acted unlawfully in taking seizure, detention or freezing measures under the Anti-Foreign Countries Sanctions Act, can the executed person lodge a complaint, institute legal proceedings or apply for state compensation? As to this question, the law does not clearly provide for it.

4.3 Additional amendments to the rules on extraterritorial jurisdiction of the Code of Civil Procedure

According to Article 265 of China's Civil Procedure Law, the people's courts may have jurisdiction over lawsuits arising from contractual disputes or other disputes over property rights and interests against a defendant who does not have a residence in China if one of the following conditions is met, namely, that the contract is concluded or performed in China, that the subject matter of the lawsuit is located in China, that the defendant has property in China that can be seized, and that the defendant has a representative office in China. However, if organisations and individuals outside China are involved in implementing or assisting in the implementation of discriminatory restrictive measures imposed by a foreign country on China, but do not satisfy the jurisdictional factors stipulated in Article 265 of the Civil Procedure Law, the courts in China are unable to accept such claims. It is therefore necessary to add a "long-arm jurisdiction clause" to the Civil Procedure Law, whereby the people's court in the place where the damage occurs may exercise jurisdiction as long as the acts of the foreign organisations and individuals have caused damage within the territory of China.

5. Reach a verdict

Considering the increasing intensity of United States sanctions against China, China has not yet been able to respond effectively. The U.S. has been implementing foreign economic sanctions in an offensive posture. Given the experience of other countries in counter-sanctions, China should build its own extraterritorial jurisdiction system under the existing system of sanction rules; on the one hand, it should establish a "shield" that can effectively protect Chinese entities and individuals, and curb the extraterritorial jurisdiction of the U.S.; on the other hand, it should make use of Chinese law to become a "spear", and carry out international cooperation in compliance with international law. On the other hand, it should make use of Chinese law as a "spear" to carry out international cooperation on the premise of complying with international law. In terms of legislative jurisdiction, improve the legal system for countering sanctions while expanding the scope of application of Chinese law abroad; in terms of enforcement jurisdiction, make full use of the Government's advantages to differentiate between different types of sanctions and expand the exercise of extraterritorial enforcement in appropriate areas; and in terms of judicial jurisdiction, Chinese courts should promote the construction of an extraterritorial jurisdiction system in their judicial practice, and learn from it while defending themselves against it.

In addition, given the unique nature of economic law, consideration could be given to adopting a

conflict-of-laws approach to resolving conflict of laws on economic sanctions and going beyond the traditional conflict-of-laws notion of bilateralism by responding to unilateralism in a unilateralist manner, thus weakening the jurisdiction of the United States economic sanctions law in the international context.

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