

# A comparative study of blocking laws between China and EU

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**Abstract.** In recent years, the United States has frequently imposed sub-economic sanctions on other countries, which has seriously disrupted the regular order of the world economic and trade market. Since the Trump administration took office, China has gradually become the target of the United States, and the economic and trade friction between China and the United States has been constant. To counter the long-arm jurisdiction of the United States, China's Ministry of Commerce issued the Blocking Measures with Chinese characteristics on January 9, 2021. Its legislative model draws lessons from the European Union Blocking Law and adopts the combination of public enforcement mechanisms and private law relief mechanisms. As the legislative experience of China's blocking law is a little insufficient, the construction of the blocking law system still needs to be improved. Therefore, this paper selects the currently mature EU blocking law as the reference object, aiming to further enhance the system of China's blocking law by drawing on its legislative practice experience. This paper sorts out the legislative process of EU blocking law and analyzes its three major defects: weak enforcement, no clear criteria for violating the obligation of "prohibition of compliance" and insufficient punishment. Then, by combing the legislative process of China's blocking law, comparing and analyzing the institutional differences between China and Europe, and referring to the defects of the EU blocking law system, it summarizes the shortcomings of China's blocking law in four aspects: legal effect, the scope of application, exemption system and punishment measures, and takes them as China's blocking measures.

**Keywords:** blocking system; Economic sanctions; Secondary blocking.

## 1. Introduction

Since late World War II, the United States began to use economic sanctions to suppress the corresponding countries. In recent years, economic sanctions have gradually become the core tool of the American government's foreign policy and an important means of American hegemonic expansion. With the deepening of economic globalization, the model of American economic sanctions has gradually evolved from primary sanctions to secondary sanctions, and the objects and scope of sanctions are constantly expanding. According to the statistics of the U.S. Treasury Department, in the past two decades, the listed entities in the U.S. sanctions list have soared from 912 in 2000 to 9,421 in 2021. The so-called primary sanctions mainly target Americans and non-Americans who have "connection points" with Americans (such as whether or not to use US dollars, whether or not American companies or American personnel are involved in international business, etc.), but this kind of sanctions is subject to the economic strength of the United States and the degree of active cooperation of the international community and has little impact on the sanctioned countries. Therefore, in recent years, the United States has more often used "atypical primary sanctions", that is, applying economic sanctions to third countries through "connecting points". Secondary sanctions refer to "prohibiting a third country and its individuals and entities from engaging in certain specific contacts with the target country, which is intended to force the third country to take the same sanctions measures against the target country as the United States, and forcibly transform unilateral sanctions into multilateral actions". Compared with the typical primary sanctions, the "atypical primary sanctions" and the secondary sanctions have greater influence and degree. However, with the escalation of sanctions, trade activities with or without American "connection points" will be affected by American sanctions.

The successful extraterritorial application of American law is largely due to the special "long-arm jurisdiction" of the United States, that is, the United States has adopted the policy of abusing extraterritorial jurisdiction and unilaterally imposing jurisdiction on other countries' entities or

individuals according to domestic laws. The implementation of primary sanctions in the United States relies on the principle of "minimal connection", which applies laws and regulations related to economic sanctions to individuals and entities in third countries connected with them, to better implement "atypical primary sanctions". With the gradual expansion of its "long-arm jurisdiction", the practical principle has also developed from the "least connection principle" to the "effect principle", that is, no matter whether the actor has American nationality or domicile, or whether the act is legal under the evaluation of American law, as long as the act produces "effect" in the United States, American courts can exercise jurisdiction. Based on the "effect principle", the United States also applies its economic sanctions to individuals and entities in third countries that are not directly related to it, resulting in the implementation of secondary sanctions.

Because the United States explained its territorial relationship excessively broadly, expanded the object and scope of its economic sanctions, and broke the restriction of "territorial jurisdiction" in traditional international law, it was opposed and resisted by many countries and international organizations such as the European Union, Canada, Australia, and China. To some extent, the U.S. economic sanctions have destroyed the normal order of the international trade market and damaged the interests of many countries and enterprises. To protect the legitimate rights and interests of domestic entities and individuals from the impact of U.S. economic sanctions, European Union, China, and other countries have gradually developed blocking laws that prohibit the application of foreign laws with extraterritorial effects within their jurisdiction and eliminate their impact to counter the impact of escalating secondary sanctions of the United States on their own countries.

Although other countries, such as Russia and Iran, have introduced the Blocking Act based on their national conditions because of America's "extraterritorial jurisdiction", considering that compared with the European Union, the closeness and frequency of economic and trade exchanges with the United States, the trade volume and the right to speak in the world economic and trade market are far from those of the European Union, and the political color attached to the European Union's Blocking Act is even stronger. China also has close economic and trade exchanges with the United States, and is the head player in the world economy and trade like the European Union, enjoying a high position in the world economy and trade market. Therefore, this paper selects the EU Blocking Law as the reference object, which is of great reference value to the legislative practice of China's Blocking Law. By comparing the differences between China and Europe in the system of blocking law, we can provide some referential suggestions for the further improvement of China's blocking law.

## 2. Analysis of EU Blocking Law System

The blocking mechanism of the EU Blocking Regulations is a relatively mature legislative blocking mechanism in which public and private blocking mechanisms cooperate. The so-called public enforcement mechanism is the law enforcement way that the national public power organs set up the restrictions of their people to abide by foreign laws and punish the illegal and private subjects; The relief mechanism of private law is carried out by authorizing the private subject to bring a civil action in the domestic court against the other party who benefits from the judgment of the foreign court. The public enforcement mechanism is embodied in the implementation of the EU Blocking Regulation, which mainly focuses on the punishment of EU private subjects' compliance with foreign-related sanctions laws that will harm the EU's interests or adversely affect the EU's economy and trade flows. For example, Article 5 of the Blocking Regulation stipulates that without the authorization of the Council of the EU, nationals, enterprises of EU member countries, and anyone in the EU are not allowed to comply with foreign laws and regulations with extraterritorial jurisdiction listed in the appendix. France's DecreeNo. 68-678 and Mexico's to make the private subjects who have suffered economic losses get due compensation, the Blocking Regulations further endow the private subjects with the right of recourse in litigation. For example, Article 6 stipulates that if the nationals and enterprises of EU member states suffer losses due to the laws and regulations of foreign

countries with extraterritorial jurisdiction listed in the appendix, they can sue the natural person or entity that caused the losses to recover the losses.

## **2.1 The development process of EU blocking law system**

In 1996, the Council of the European Union promulgated the Regulation Against the Extraterritorial Application of Legislation of Third Countries for the first time (hereinafter referred to as the "Blocking Regulation"), which kicked off the European Blocking Law. The main purpose of this regulation is to block the impact of a series of economic sanctions laws promulgated by the United States against Cuba, Iran, Libya, and other countries on EU entities at that time, and to prevent EU entities from being forced to implement the secondary sanctions of the United States, to protect them from the extraterritorial impact brought by the secondary sanctions of the United States.

However, the Blocking Regulation was not tested by practice at that time, because shortly after its publication, the EU made full use of the Blocking Regulation as a negotiation tool and actively started the dispute settlement mechanism of the World Trade Organization (WTO), and quickly launched several rounds of negotiations with the United States. Finally, in 1998, a political agreement was reached with the Clinton administration, and the two sides reached an understanding. The President of the United States announced to suspend the application of the Helms-Burton Act and the D'Amato Act to EU entities and promised to limit the effect of some sanctions on EU entities. So far, the Blocking Ordinance has no room to play for the time being, and this sanctions storm soon came to an end.

The period when the EU Blocking Regulation went into tit-for-tat with US extraterritorial sanctions was in 2018. On May 8, 2018, Trump, then President of the United States, unilaterally announced the withdrawal of the U.S. government from the Iranian nuclear agreement, and on November 5, fully restored the economic sanctions abolished by the Iranian nuclear deal. While the EU maintains a good attitude towards Iran. The secondary sanctions resumed by the United States have extraterritorial effects, seriously affecting the interests of relevant entities in the European Union. The European Union quickly countered by incorporating the laws and regulations on which the United States imposed secondary sanctions on Iran into the annex of the Blocking Regulations, expanding the scope of application of the regulations and officially taking effect on August 7, 2018. From 2018 to now, it is the stage of a fierce game between EU blocking law and US "long-arm jurisdiction".

Although the EU Blocking Law has been promulgated for a long time, it has not been strictly enforced due to various factors. Under this background, the case of Melli Bank of Iran v. Deutsche Telekom Ltd. (hereinafter referred to as "Melli Bank of Iran") in May 2021 implemented the obligation of "prohibition of compliance" in the EU Blocking Regulations in a relatively strict way, which provided a strict path for the implementation of the Blocking Regulations in judicial practice in the future.

In this case, Melli Bank of Iran was directly sanctioned by the United States and listed on the SDN list. Deutsche Telekom GmbH believes that if it continues to trade with Melli Bank, it will be at risk of secondary sanctions from the United States, so it sends a notice to Melli Bank, informing that all contracts between the two parties will be terminated immediately. Therefore, Melli Bank sued Deutsche Telekom in Hamburg District Court, Germany, for violating the European Union's Blocking Regulations, and requested the court to judge Deutsche Telekom to maintain the original contract. In this case, the European Court of Justice made strict and compulsory regulations on triggering application and liability for violation of the law, which marked the beginning of the successful application of the EU Blocking Regulation in judicial practice.

## **2.2 The defects of the EU blocking law system**

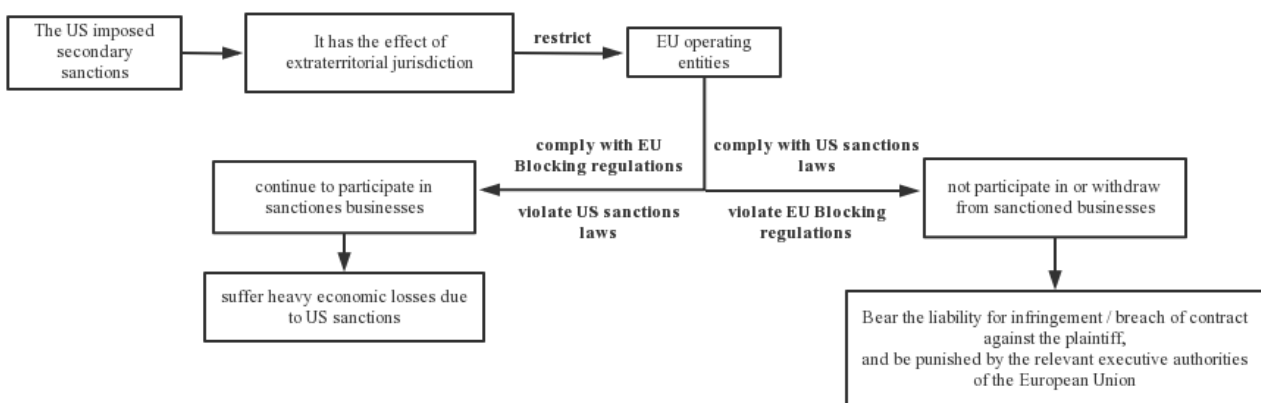
### **2.2.1 The enforcement of EU blocking law is not strong**

Although the European Union's Blocking Regulations have formulated a series of effective measures to deal with the sub-economic sanctions imposed by the United States, due to the

comprehensive consideration of its alliance with the United States and the deterrence of the strong economic strength of the United States, the EU has so far exposed the problem of insufficient enforcement in the specific practice of the Blocking Regulations. Although the European Union has repeatedly threatened the United States to use the Blocking Regulations to punish the relevant subjects of economic sanctions in the process of negotiations with the United States, there are very few cases actually implemented in concrete practice.

**2.2.2 It is easy for EU business entities to face a dilemma**

The game between the EU's blocking law and America's extraterritorial sub-sanctions will easily make the relevant stakeholders fall into the dilemma of forcibly "choosing sides". Mainly from the core obligation under its legal system-the "prohibition of compliance" obligation. This obligation will make EU enterprises face the application of two opposing legal systems at the same time, that is, EU business entities are faced with the choice of violating US sanctions laws or EU Blocking Regulations because they are restricted by the extraterritorial jurisdiction of the United States. Once the EU business entities choose to continue to participate in the business sanctioned by the United States, they will be retaliated by the United States, which may cause significant economic losses; Similarly, if they choose not to participate in or withdraw from the sanctioned business, the affected enterprises or individuals may appeal to the European Court of Justice for damages caused by the sanctions, and demand to recover the losses. These entities that violate the EU Blocking Regulation will be liable for infringement/breach of contract to the plaintiff and will be punished by the relevant EU executive authorities. The game process is shown in Figure 1. This kind of "dilemma" faced by the parties is essentially a game between the risks and losses that the parties may bear, and finally, choose to obey the party whose losses are relatively small.



**Figure 1.** Game process of "dilemma"

There are two main reasons for the "dilemma" of the EU Blocking Regulation:

First, there is no clear standard for the determination of a violation of the obligation of "prohibition of compliance". Article 5, paragraph 1, of the EU Blocking Regulation, is its core clause, which explicitly prohibits the object of the EU Blocking Law from "actively or intentionally negligently, directly or indirectly through subsidiaries or other intermediaries, complying with any requirements or prohibitions based on or arising from the foreign laws listed in the annex, including the requirements of foreign courts." The clause does not clearly define the criteria for determining the violation of the obligation of "prohibition of compliance", and the definition of the concept of "active or intentional negligence" is rather vague. At the same time, according to the relevant provisions of the contract law of EU member states, enterprises can terminate the contractual relationship without any reason and normally as long as they comply with the notice period. It is not difficult to see that, based on not clearly defining the standards for breach of obligations, these relevant regulations will obviously greatly reduce the cost of violating the obligation of "prohibition of compliance" when enterprises comply with American secondary sanctions directives, greatly weaken the effectiveness of the blocking law, and make it more difficult to implement the Blocking Regulations in practice.

Second, the punishment of the EU Blocking Regulation is insufficient. The penalty result for violating the EU Blocking Regulation is relatively light, and only tens of thousands of euros will be fined. Only a few countries stipulate that the subject who violates the Blocking Regulation will be criminally liable for up to several months. But in contrast, in the United States, American judicial and law enforcement agencies usually impose high fines or even personal imprisonment on foreign parties who refuse to abide by American laws. In 2019, the U.S. government imposed a total penalty of \$1.289 billion in 26 cases of violation of the International Emergency Economic Rights Act. Therefore, once the actual losses suffered by the parties in violation of the Blocking Regulations are insignificant compared with those in violation of the US sanctions laws, the parties will choose to abide by the US sanctions laws for the sake of "rational economic man" to avoid the known costly punishment.

### 3. Analysis of China's Blocking Law System

China's "Blocking Measures" is a kind of domestic law and also a kind of conflict law. It is a general name of a kind of domestic law that prohibits the application of foreign laws with extraterritorial effects within the jurisdiction of the country and eliminates its impact when there is a conflict of jurisdiction. Blocking law can be divided into narrow sense and broad sense. The narrow sense of blocking law refers to the law that directly prohibits some foreign laws with extraterritorial effects from being applied in China. The Blocking Regulation of the European Union is the most typical one. The generalized blocking law also includes laws that can block the application of foreign laws in China. For example, confidentiality laws and personal privacy laws of various countries. As the "Blocking Measures" promulgated by China this time only make prohibitions around foreign laws that improperly prohibit or restrict normal economic, trade, and related activities, it should belong to the narrow category of blocking laws. From the specific content of the law, China's "Blocking Measures" mainly draws lessons from the EU's "Blocking Regulations", and it also adopts the form of combining public enforcement mechanism with private law relief mechanism in legislation. The Blocking Measures stipulate a series of specific measures to implement the locking mechanism, such as active reporting, evaluation, issuing the ban, exemption from the ban, judicial relief, support, and countermeasures.

The specific procedure of China's "Blocking Measures" is designed that Chinese citizens, legal persons, or other organizations that are improperly prohibited or restricted from engaging in normal economic, trade, and related activities with third countries (regions) and their citizens, legal persons or other organizations shall report to the competent commerce department within 30 days (Article 5), and the working mechanism of the competent commerce department shall evaluate and confirm that there is improper extraterritorial application of relevant foreign laws and measures. It can be decided that the competent department of commerce under the State Council will issue a ban (hereinafter referred to as the ban) that cannot be recognized, enforced, or observed by foreign laws and measures (Article 7), and the working mechanism also reserves the right to decide to suspend or revoke the ban. Finally, Chinese citizens, legal persons, or other organizations may, according to the actual situation, consider that there are special difficulties in complying with the ban, and may apply to the competent commerce department under the State Council for exemption from complying with the ban. From this, it can be seen that an important premise triggered by China's "Blocking Measures" is the relevant ban issued by the competent commerce department of the State Council after evaluation. As the key node of China's blocking law implementation, the ban issued by the competent department reflects the modesty of China's blocking law enforcement.

#### 3.1 The development process of China's blocking law system

In recent years, with the rapid development of China's economy, China has become the second-largest economic entity after the United States, and its influence in the national trade market is also expanding, which leads to the gradual decrease of the share of the American economy in the global

economy. After Trump, the former US president, took office, his government repeatedly withdrew from international multilateral mechanisms, which made American diplomacy more "introverted". At the same time, influenced by his government's ideas of "making America strong again" and "giving priority to America", China gradually became the target of the United States.

In 2018, the United States unilaterally provoked Sino-US economic and trade friction. Subsequently, many Chinese entities and individuals were continuously subjected to various economic sanctions by the United States. More and more Chinese enterprises were listed as the targets of primary sanctions by the United States, and a large number of Chinese entities were included in the "Entity List" and "SDN List (Special Designated Nationals List)". For example, in May 2019, Trump, then President of the United States, officially signed the executive order "Ensuring the Security of Information and Communication Technology and Service Supply Chain". On the same day, BIS announced that Huawei of China would be added to its list of entities with sanctions. At present, the United States has issued two special sanctions against China, namely "China's military-industrial enterprise's sanctions" and "Hong Kong-related sanctions". For example, because the human rights of the people in Hong Kong are very important to the United States and directly related to the interests of the United States in Hong Kong, the United States cancels the special treatment in Hong Kong and imposes economic sanctions on relevant leaders and enterprises. In addition, on the grounds of protecting human rights and safeguarding national security, sanctions were imposed on China in Xinjiang and the South China Sea to exert pressure on China. Not only that but also some Chinese enterprises have been greatly affected by the "atypical primary sanctions" imposed by the United States. The "Meng Wanzhou case" is because Huawei used the US dollar clearing service in its Iranian business. Therefore, Ms. Meng Wanzhou was accused by the United States of committing 13 crimes, including bank fraud, government fraud, and violation of the US sanctions against Iran under the International Emergency Economic Authorization Act. At the same time, Chinese enterprises that have no connection with the United States are also facing the threat of secondary sanctions. In the U.S. sanctions against Iran, Chinese entities and individuals were also included in the sanctions. In July 2019, China Zhuhai Zhenrong Group was included in the SDN list for importing crude oil from Iran, thus becoming the target of secondary sanctions by the United States. Such economic sanctions are still appearing more and more frequently.

With Biden's coming to power and Biden's government's strategy of uniting allies to sanction China, these economic sanctions not only tend to be further strengthened but also the possibility that the United States will join other western countries to launch joint sanctions or even comprehensive sanctions against China will not be ruled out in the future. The report "Responding to the Challenges of Sub-sanctions" issued by the European Council on Foreign Relations also pointed out that the United States may continue to weaponize its economic dependence in the future, and target countries that are more important to the European economy, such as China and Russia.

At present, China is building a new development pattern of "double circulation" with the domestic big circulation as the main body and the domestic and international double circulation promoting each other. China has always adhered to the foreign policy of multilateral trade. However, at present, many countries along the "the belt and road initiative" (such as Iran) are the targets of economic sanctions imposed by the United States. As the initiator of the "belt and road initiative" initiative, China's economic and trade exchanges with them are inevitable. The economic sanctions imposed by the United States not only seriously damaged China's sovereignty, but also caused great obstacles to the promotion of China's "double-cycle" strategic pattern. To form a balance with the US economic sanctions against China as soon as possible, counter the US economic sanctions, and protect the interests of Chinese individuals and entities, the CPC Central Committee has accelerated the construction of the extraterritorial application system of Chinese laws. With the approval of the State Council, the Ministry of Commerce of China issued the Measures for Blocking Improper Foreign Laws and Measures (hereinafter referred to as the Blocking Measures) on January 9, 2021, and it came into effect on the date of promulgation. China's "Blocking Measures" innovatively put forward countermeasures of "long-arm jurisdiction" with Chinese characteristics based on fully absorbing and

drawing lessons from the legislative experience of the European Union and other countries. For example, Article 11 of the Blocking Measures stipulates that "if Chinese citizens, legal persons or other organizations fail to comply with the relevant foreign laws and measures according to the prohibition, and thus suffer heavy losses, the relevant government departments may give necessary support according to the specific circumstances". The government has compensated Chinese individuals and entities for their losses in the "dilemma" to a certain extent through "support". This clause builds the prototype of the Chinese government's collective defense mechanism, is the first measure in China to block the legal system, and may also develop into a model of state aid and collective mutual assistance with Chinese characteristics in the future. It can also be used for reference to other countries' legislation systems of blocking laws. The promulgation of the "Blocking Measures" aims to block the adverse effects of improper extraterritorial application of foreign laws and measures on the legitimate interests of Chinese enterprises, and at the same time shows China's attitude toward actively responding to and countering foreign economic sanctions against China.

### **3.2 The defects of China's blocking law system**

Compared with the European Union's Blocking Regulations (Article 4 of the Blocking Regulations), China's Blocking Regulations do not directly prohibit Chinese individuals and entities from complying with the judgments and orders of foreign courts and administrative organs, which is a big difference in content between China's Blocking Laws and other countries' Blocking Laws. There may be a big controversy in the judicial application of the blocking law, and China needs to make a clear and strict judgment in future judicial practice.

At the same time, it should be noted that, unlike the European Union, which mainly strengthens the Blocking Regulations through the legislative model of "legislation+guide" Core obligations, as well as some common law countries, have adopted a more targeted and accurate model of "prohibition plus punishment". For example, Canada's Foreign Extraterritorial Measures Act stipulates that any party who violates the prohibition made by the Attorney General will be prosecuted, facing penalties including but not limited to fines and imprisonment. The provisions of China's "Blocking Measures" are still vague, and there is no clear and specific enumeration of countermeasures against relevant foreign laws and measures, and its specific scope of application is only broadly summarized in Article 6. Of course, some experts and scholars think that the purpose of such legislation may be to ensure its universality and flexibility in the process of application and implementation. The specific system comparison will be carried out in detail below.

## **4. Comparison between China's Blocking Law and EU's Blocking Law System**

Different from the current European Union's Blocking Law, which has a relatively complete system and a high popularity, the judicial approach of China's Blocking Law needs to be further refined and improved. Here, by combing the differences between China's and Europe's Blocking Law in terms of legislative system, we will explore the improvement direction of China's Blocking Law.

### **4.1 Comparison of legal effects**

Although China's "Blocking Measures" has been "approved by the State Council", its essence still belongs to departmental rules, and the ban system adopted is also based on the relevant ban issued by the competent commerce department of the State Council. It is still uncertain whether it can be used as the basis for adjudication in specific cases in people's courts. Compared with specific laws and regulations, it has obvious shortcomings of low legal rank, and it can't provide very strong support and guarantee for the rule of law. Foreign scholars believe that the blocking law constitutes a mandatory norm in private international law because of its public welfare nature, so it can be directly applied in foreign-related civil relations... However, according to China's Law on the Application of Foreign-related Civil Relations and its judicial interpretation, although China's Blocking Measures involve China's social and public interests, it cannot be recognized as a mandatory norm because it

does not fall within the scope of laws or administrative regulations. This will not help the Blocking Measures to play its role in foreign-related civil and commercial cases in the future.

The EU Blocking Regulation is the highest-level law in the EU-"Regulation", which is universally applicable to all its member states, and there is no need for member states to transform it into domestic laws for application through legislatures. Its rank is similar to Chinese laws, obviously stronger than the legal effect of administrative regulations and departmental rules, and its enforcement is stronger than the Blocking Measures.

## **4.2 Comparison of scope of application**

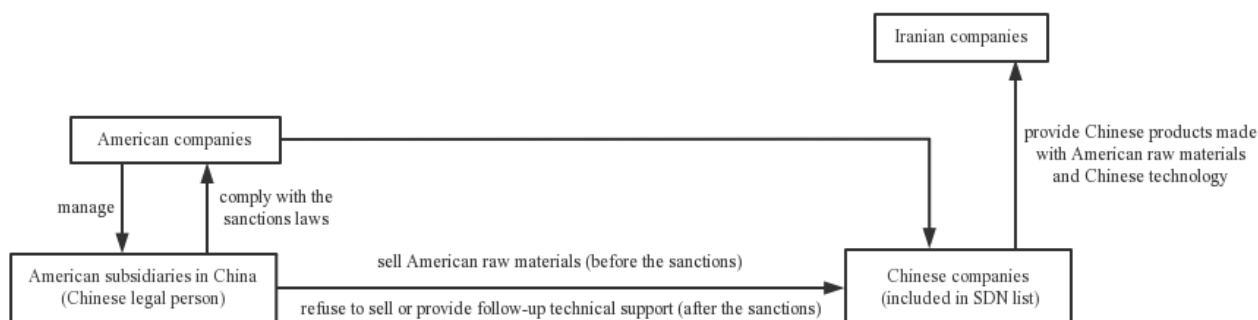
### **4.2.1 Definition of Blocking Object**

Article 2 of China's "Blocking Measures" defines the scope of application, that is, these Measures apply to situations where the extraterritorial application of foreign laws and measures violates the basic norms of international law and international relations and improperly prohibits or restricts Chinese citizens, legal persons or other organizations from engaging in normal economic, trade and related activities with third countries (regions) and their citizens, legal persons or other organizations. The premise here is whether it violates international law and the basic norms of international relations, and the scope of activities is "normal economic, trade and related activities", which has a certain generality and flexibility. At the same time, it also gives the Chinese competent authorities a certain discretion and can make a flexible ruling according to the specific circumstances of the case. However, it also has certain fuzziness. Once the degree of discretion is not well grasped, it will lead to unfair judicial punishment, thus damaging the interests of Chinese entities.

The EU Blocking Regulation directly attaches the object of blocking as an annex, and its appendix lists the secondary sanctions legislation and administrative orders of the United States., clearly defines the blocking objects of the Blocking Regulations, and can change its scope of application by directly updating the contents of the attachment, which also has a certain flexibility. At the same time, from the perspective of the international environment, the EU has never been directly listed as the object of economic sanctions imposed by the United States since modern times, but it is only adversely affected by the secondary sanctions imposed by the United States. Under such circumstances, it is logical for the EU to only block the sanctions that restrict the economic and trade exchanges between the EU and third countries.

### **4.2.2 Definition of applicable objects**

In the Blocking Measures, the important concept of "Chinese citizens, legal persons or other organizations", which runs through the whole measures, is not clearly defined. For example, do Chinese people working abroad or subsidiaries of Chinese companies abroad belong to the scope of "Chinese citizens, legal persons"? And whether the "other organizations" include branches of illegal persons, etc. At the same time, Article 9 stipulates that if a party complies with foreign laws and measures within the scope of the prohibition and infringes upon the legitimate rights and interests of Chinese citizens, legal persons or other organizations, Chinese citizens, legal persons or other organizations may bring a lawsuit to the people's court according to law and demand the party concerned to compensate for the losses. The provisions of this clause are rather general, especially the concept of "party" is not clearly and specifically explained. Due to the ambiguity of the concept of applicable object, it is easy to cause the following confusion in judicial practice: Is the prohibition applicable to foreign entities? Does the prohibition apply to the situation where the economic and trade relationship itself does not involve "Chinese entities and third-country entities", but indirectly leads to the obstruction of normal economic and trade activities between Chinese entities and third-country entities? (The path is shown in Figure 2)



**Figure 2.** Possible applicable path of prohibition

According to Article 8 of the Blocking Measures, Chinese citizens, legal persons, or other organizations can apply to the competent department of commerce under the State Council for exemption from the ban. Defining the application object as Chinese citizens, legal persons or other organizations here seems to indirectly indicate that the subject to be controlled should be Chinese entities, and if foreign entities are also subject to the Measures, it means that the Blocking Measures also have certain extraterritorial jurisdiction effect, which seems to be inconsistent with the original intention of the Blocking Measures. However, if combined with the legislative purpose of "protecting the legitimate rights and interests of Chinese citizens, legal persons or other organizations" in these Measures, and if only the "parties" are interpreted as Chinese citizens, legal persons, or other organizations, it means that the effect of the ban cannot reach third-country entities other than China and the United States, and the losses of Chinese entities caused by their termination of cooperative relations with Chinese entities will be difficult to recover, and the situation of Chinese entities will be difficult to improve.

Article 11, paragraph 3, of the EU Blocking Regulation, clearly defines the applicable objects, that is, European residents and European nationals, including subsidiaries of American companies in Europe, but excluding American subsidiaries of European companies and European branches of American companies. As a result, a third-country enterprise (Melli Bank of Iran) sued a local enterprise (Deutsche Telekom) in the European Union, as in the case of Melli Bank of Iran. At the same time, the Blocking Regulation also explains the jurisdiction of multinational enterprises in the form of questions and answers in the Official Guide. This makes it easier to define the scope of application in judicial practice, thus effectively avoiding some disputes.

#### 4.2.3 Comparison of illegal determination of "prohibition of compliance" obligation

The obligation of "prohibition of compliance" is the core obligation in the China-Europe Blocking Law. In the case of Melli Bank in Iran, the legal opinion issued by the European Court made it clear that the determination of a violation of the obligation of "prohibition of compliance" in the Blocking Regulations is a subjective judgment standard, that is, if an enterprise can prove that its intention to terminate the trade contract with the sanctioned country is not to comply with the secondary sanction instruction of the United States and that its motive is justified by the court, it will not. However, according to Article 7 of China's Blocking Measures, it can be seen that the determination of the scope of the obligation of "prohibition of compliance" is linked to the evaluation and release procedures of Chinese competent authorities, which does not reflect the consideration of the motivation of enterprises, nor does it require enterprises to prove the legitimacy of their actions, so it should be an objective standard. Because once the subjective standard is adopted in China, the authority of the ban will be challenged, which is not conducive to the realization of the restriction effect of the Blocking Measures. At the same time, of the disadvantages of inflexible objective standards, China also has the exemption system to play the role of "covering the bottom", leaving some room for enterprises' actions.

### 4.3 Comparison of exemption systems

To avoid forcing enterprises to "stand on the sidelines by force", China's Blocking Measures and EU Blocking Regulations both stipulate the exemption system, which allows relevant subjects to obtain an exemption from the blocked foreign laws and regulations through application procedures under special circumstances. However, there are differences between them in terms of preconditions and specific application procedures for applying for exemption.

Article 8 of China's "Blocking Method" explains the subject of the exemption application, the content of the written application, and the time limit for acceptance by the competent commerce department under the State Council, but there are no clear provisions on the judgment criteria of "exemption" itself, including the preconditions of the exemption application, the application procedure and the judgment criteria of whether the exemption is granted or not. The broad concept leads to the lack of predictable rules for private subjects in China, which will aggravate the reporting obligations and potential risks of enterprises.

Article 5 of the EU Blocking Regulation stipulates that if the relevant subject fails to comply with foreign specific laws, it will seriously harm the interests of the subject or the EU, and the relevant subject can apply to the European Commission, thus being allowed to fulfill the obligations of foreign specific laws in whole or in part. It is stipulated that the precondition of applying for exemption is "serious damage to the interests of the subject or the EU". In addition, the EU also made clear the criteria for judging whether it constitutes "serious damage" in the Regulations on Applicable Standards promulgated by the Blocking Regulations in 2018. At the same time, it also stipulates that, according to the procedures stipulated in Articles 7 and 8, when there is sufficient evidence that non-compliance will cause serious damage to natural or legal persons, the European Commission shall promptly submit an appropriate draft measure to the Committee mentioned in Article 8. The EU Blocking Regulation not only limits the degree of damage to the preconditions of the application but also further stipulates the basic procedures of the application. At the same time, it also clarifies the specific criteria for judging whether the exemption permit requirements are met. To avoid enterprises blindly choosing to comply with the instructions of the US sanctions law, the application conditions for exemption must be relatively strict, otherwise, it will easily cause a large number of private subjects to abuse their application rights in an attempt to escape the losses caused by the US secondary sanctions, which is why the EU Blocking Law requires "serious damage" as the premise.

Through the comparison of the blocking law system between China and Europe and referring to the defects of the blocking law system in the European Union, this paper summarizes some shortcomings of China's "Blocking Measures", which need to be improved in the following directions.

First, China's "Blocking Measures" has a low legal effect, which can't provide a very strong legal support and guarantee in judicial practice.

Second, the scope of application of China's "Blocking Measures" is unclear, and there is no clear definition of blocking objects, applicable objects, applicable preconditions, and scope of activities. This will lead to the abuse of discretion in the process of judicial and law enforcement.

Third, In China's Blocking Regulations, the scope of application of the franchise exemption system is not clearly defined, and the lack of foreseeable rules not only aggravates the reporting obligations of enterprises but also easily leads to the abuse of the right to apply and aggravates the judicial burden.

Fourth, In China's Blocking Regulations, there is no severe punishment that can be expected in advance for the illegal consequences of violating the obligation of "prohibition of compliance", which will be detrimental to the full play of the deterrent effect of the Blocking Law and weaken the counter-effect of the Blocking Regulations.

## **5. Direction of improvement of China's Blocking Measures**

### **5.1 Strengthen the legal effect of the Blocking Measures**

As a departmental regulation, although the legal level is not high, "Blocking Measures" is in line with the practice of general administrative legislation in China where departmental regulations take the lead. However, in order to enhance its application effectiveness, it can be directly quoted in future judicial practice, and the State Council should upgrade it to a regulation when necessary, according to the applicable situation.

### **5.2 To limit the discretion in the process of judicial and law enforcement**

To a certain extent, the "Blocking Measures" gives the Chinese authorities greater discretion in the process of law enforcement and justice. The main reason lies in the vague definition of the scope of application in the Blocking Measures, which needs to be further refined in terms of blocking objects, applicable objects, applicable preconditions, and scope of activities, to limit the discretion of the competent authorities and promote judicial efficiency.

First, A flexible range of blocking objects should be defined. As the "Blocking Measures" adopts the system of prohibition, it is impossible to directly attach the blocked object as the attachment of the European Union. At the same time, China advocates "multilateral diplomacy follows the policy". At present, China does not intend to intensify the strategic competition between China and the United States, but hopes to move in the direction of "co-existence of cooperation and competition". Therefore, it will not directly include the specific sanctions laws and regulations of the United States in the blocking scope. However, the extraterritorial jurisdiction of foreign legislation, law enforcement, and judicature can be completely blocked in the overall legislation, and the scope of the blocking object can be clearly defined, such as foreign sanctions laws and regulations, administrative rules, law enforcement measures, court decisions and arbitral awards of arbitral tribunals that may cause damage to the interests of Chinese entities.

Second, Specific applicable objects. The "Blocking Measures" need to explain whether the "parties" referred to in Article 9 are limited to Chinese citizens, legal persons, or other organizations, or can also include overseas related entities, which requires further explanation by legislation. We can refer to Article 11 of the Blocking Regulation of the European Union, and make a clear cut on Chinese and foreign entities, which is conducive to the promotion and implementation of the measures.

Third, Explain the applicable preconditions and scope of activities. The Blocking Measures should further explain "violation of international law and basic norms of international relations" and "normal trade and related activities", and define the concepts of "basic norms", "normal", and "related". However, it should be noted that the limited scope should not be too small, and a broader scope should be framed based on not affecting understanding. This is more conducive to protecting the legitimate rights and interests of most Chinese citizens, legal persons, or other organizations that conform to the purpose of the legislation and also protects the flexibility of judicial application.

### **5.3 Clarify the scope of application of the franchise exemption system of blocking law**

The exemption system often plays an important role in dealing with the "dilemma" and can better safeguard the interests of Chinese enterprises. Compared with the European Union's Blocking Regulations, China's Blocking Measures are still unclear in terms of the exemption system, so it should be further refined and improved in the subsequent legislation. It is necessary to further clarify the preconditions of applying for an exemption system and the specific criteria for judging whether an exemption can be obtained, to prevent the abuse of the right to apply, which also provides a certain basis for the final judgment in judicial practice and improves judicial efficiency. At the same time, the application procedure for exemption should be further stipulated, and the applicant must make clear the specific laws and corresponding clauses for exemption and bear the corresponding burden of proof. Based on clarifying the application procedure, we should further optimize the administrative

procedure, and try our best to shorten the review procedure period to cope with the complicated situation of frequent unilateral sanctions in the United States. To make timely adjustments and responses.

#### **5.4 appropriately increasing part of criminal responsibility in the punishment measures**

Based on the "dilemma" of the implementation of the EU's blocking law, China's "Blocking Measures" also face the same dilemma. Once an enterprise chooses to comply with the sanction law after weighing the advantages and disadvantages of both parties, and thus violates the Blocking Measures, China's Blocking Measures will lose its blocking effect on these enterprises. At this time, punishing these enterprises will only further aggravate the losses of Chinese enterprises, which conflicts with the vision of these measures aimed at protecting domestic enterprises. From this, we can find that the establishment of a blocking law is far more important to the deterrent effect of private subjects in our country in advance than the punishment afterward. At present, China's existing administrative punishment is mainly set for civil liability, and the punishment is mostly in the form of fines, which is not enough to protect the implementation effect of this method. If more powerful punishment measures are not attached to their obligations, it is difficult to guarantee the enthusiasm of Chinese private subjects to actively fulfill their prescribed obligations. At the same time, too principled and unpredictable punishment regulations are not conducive to the formation of a strong deterrent to private subjects. Therefore, to better realize the purpose of this legislation to protect the legitimate rights and interests of private subjects in China, we should appropriately add some explicit criminal responsibilities and punishment measures to the punitive measures in the Blocking Measures, thus playing a certain deterrent role.

## **6. Conclusion**

Although in the current judicial practice, there are still a few cases in which the European Union's Blocking Regulation has been applied, and its actual effect needs to be considered. However, it is undeniable that the EU's Blocking Regulation is an important weapon in the political and economic negotiations between the EU and the United States. It has played a deterrent role to a certain extent, and both internal and external countermeasures have produced positive results. Compared with the European Union, China is facing a more severe background of economic sanctions, which determines that China can't just imitate the EU's sanctions measures. When further improving the Blocking Measures, we should take into account China's "multilateral diplomacy" and the multiple factors of its direct sanctions by the United States on the basis of the successful experience of the European Union, and build a blocking law system in line with China's national conditions.

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