

Recommendations for the Improvement of China's Counter-sanctions Legal System under the Guidance of the Anti-foreign Sanctions Act

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Abstract

In recent years, the United States has regarded China as its most important strategic competitor in the future, and has illegally interfered in China's internal affairs in the political, economic and trade, scientific and technological fields, in blatant violation of the basic principles of international law, and has frequently abused undue unilateral sanctions against party and government organs, multinational enterprises, scientific research institutes and other institutions within China's borders, to the serious detriment of China's national interests, as well as the interests of the relevant organizations and individuals. For this reason, the National People's Congress has enacted and promulgated the Anti-Foreign Sanctions Law, which adopts "defensive" and lawful countermeasures at the legislative level against unilateral sanctions against foreign countries for their violent interference in China's internal affairs, fully utilizes international law as a means to safeguard China's national security and interests, and protects the lawful rights and interests of enterprises and individuals going to the sea, and also links up with other laws and regulations on anti-sanctions that have already been issued in the field of anti-sanctions. Starting from the legal normative documents in the field of counter-sanctions, such as departmental regulations, and combining them with the actual economic development of China, we will find effective legal countermeasures and suggestions for solving the worsening unilateral sanction dilemma faced by China, and establishing a counter-sanctions implementation mechanism with clearly defined powers and responsibilities, a sound system, and precise law enforcement.

Keywords

Counter-sanctions; Blocking Laws; Institutional Improvements.

1. Analysis of the Realities and Patterns in the Field of Counter-sanctions in Our Country

The world is experiencing a major change not seen in a century, and the issue of the vulnerability of the world economy continues to stand out. Some Western countries ignore the basic principles of international law, adhere to unilateralism, abuse long-arm jurisdiction, adopt double standards towards China, and continuously adopt so-called "sanctions" against China and its related organizations or individuals. Since the ZTE incident in 2016, the U.S. Departments of Commerce and Finance have frequently taken sanctions against Chinese government enterprises, institutions of higher education and scientific research institutes by restricting the entry and exit of Chinese enterprises, technology transfers, and product exports through the U.S. Export Control Entity List (BIS List) and the List of Specially Designated Nationals and Blocked Persons (SDN List) on the grounds of national security and protection of intellectual property rights. The number and scope of United States sanctions against entities and individuals involved in China have continued to expand, and as of June 2023, the SDN List

alone had exceeded 479, making the situation in the area of counter-sanctions in China grim, and already involving China's national security and major economic development interests.

The Chinese Government has always endeavored to replace division with unity and confrontation with cooperation, and has attached great importance to the maintenance of national security and the expansion of opening to the outside world. In the past three years, it has successively introduced and improved the existing relevant laws and regulations in the field of international trade or investment, such as the Foreign Trade Law of the People's Republic of China and the Regulations of the People's Republic of China on the Administration of Import and Export of Technology, etc. In June 2021, the National People's Congress formally introduced the Anti-Foreign Sanctions Law from the height of the legislative level, which builds up a toolbox of legal barriers for anti-sanctions in China from the legal level. Combined with the establishment of a framework of foreign-related laws, regulations and systems for sanctions and counter-sanctions, including the Measures for Blocking the Improper Extraterritorial Use of Foreign Laws and Measures and the List of Unreliable Entities System and other individual laws and departmental regulations that have already been introduced in our country, we have initially constructed a counter-sanctions system barrier with blocking and counter-sanctions as the main components, providing theoretical support and legal weapons for safeguarding our national security, sovereignty and development interests.

2. Problems Faced at the Institutional Level in the Field of Counter-Sanctions in China

2.1. China's Anti-sanctions Regime Faces Serious Problems and Urgently Needs the Introduction of Complete Laws, Regulations and Normative Documents

This is partly due to China's rapid economic and trade development in recent years and the development of cutting-edge high-tech level. According to the International Monetary Fund (IMF) calculations, in 2022, China's total GDP to the United States GDP accounted for from 56.8% ten years ago to 71.1%, and this trend has the possibility of further expansion. In the field of high-tech areas, China in the quantum communications, microelectronics, chip manufacturing, space station and a number of great powers of the rapid introduction, China's comprehensive national power is rapidly rising. Similar to Japan's plaza agreement in the 1990s, the United States and other developed countries in the West have begun to take all kinds of sanctions and restrictions on China in order to maintain their dominant position in the industrial chain of various industries, occupy the two ends of the smile curve of the high-value-added sectors, and firmly control their own pre-eminent advantageous position by technological hegemony, so China's future counter-sanctions will be more and more pressure in the field of counter-sanctions, which requires a sufficiently complete, systematic and sound system. This requires the establishment of a fully complete and sound anti-sanctions system.

2.2. Ineffective and Fragmented Regimes in the Area of Counter-sanctions, Which Make it Difficult to Respond to the Realities of the Situation

At present, the normative and institutional framework of China's current legislation in the area of counter-sanctions is characterized by fragmentation, dispersion and a low level of effectiveness. Legislation in the field of counter-sanctions in various countries around the world mainly consists of two types of "blocking laws", which are aimed at blocking the connection and application of laws in foreign countries to their own territories, and "counter-sanctions", which are aimed at adopting reciprocal retaliatory measures against foreign countries that have imposed sanctions on them directly. In the field of counter-sanctions in China, the Anti-Foreign Sanctions Act is the main law, supplemented by departmental regulations such as entity lists, and in the area of blocking, there are only normative documents mainly based on the blocking

measures, which are not high in level of effectiveness in general. However, due to the new problems, complexity of types and continuous expansion of the scope of the situation faced by the field of counter-sanctions at present, there are problems in China's counter-sanctions legislation that can be formulated and issued in a timely manner, and there is a need to develop and implement laws, regulations and normative laws.

2.3. Inexperienced Capacity of Chinese Subjects to Respond to Counter-sanctions

In recent years, the total number of entities and individuals sanctioned by developed Western countries, led by the United States, has been growing, the scope of sanctions has been expanding, the sanctions measures have been deepening, and the list of sanctions has involved officials of the State Government of China, universities and colleges, high-tech enterprises, military-industrial enterprises and scientific research institutes, and even the main persons in charge of the enterprises and their technicians have also been included in the sanctions lists. In addition to this, there are also provisions to restrict the export of products and products traded to China, prohibit relevant technical personnel and some professional foreign students from restricting their entry and exit, etc., and the types of sanctions taken against China are becoming increasingly complex. In response to these dimensions, the Anti-Foreign Sanctions Law provides for the protection of sovereignty, security and development interests in the macro-area such as national security in response to foreign sanctions, and the Entity List and Blocking Measures also counteract the sanctioning behavior of foreign sanctions to a certain extent. However, due to the fact that all parties, especially enterprises, are often in a disadvantageous position in the face of national sanctions, if they rely only on the existing protection system, enterprises have a long time to defend their rights, the cost of silence is high, and the motivation to strictly comply with the ban on blocking and anti-sanctions is insufficient, and it is more necessary for the state organs and local governments to intervene and protect in the light of their own local realities and industrial structure.

2.4. Domestic Management Mechanism in the Field of Counter-sanctions is Single and Lacks the Right to Speak in International Rule-making.

At present, the scope of cross-border sanctions and counter-sanctions is expanding and the field is deepening, but the current governance experience and response management mainly rely on a single government department, and there are deficiencies in the field of regulating sanctions against large-scale corporate entities and individual citizens. Relevant individuals, organizations related to intellectual property rights and rights protection awareness still needs to be improved, there is an urgent need to have industry experience and the field of various subjects in the formation of industry consortiums, with government organizations, professionals, social groups to international trade organizations and other organizations to defend their rights and interests, to build an international competitive and orderly, benign coordination of the market environment. However, due to the current industry organizations have not yet effectively formed a scale effect, the lack of corresponding legal authorization, the internal resolutions of the relevant enterprises and industry conventions are difficult to provide the appropriate remedies and penalties, so that the international defensive anti-sanctions cooperation has not been the industry inside and outside of the effective assistance, the management system and mode is more solidified single, the lack of a comprehensive anti-sanctions in the field of institutional norms and implementation of the mechanism.

Since there is still a lack of cooperation and consensus among countries in the area of counter-sanctions, and there are differences in attitudes towards intellectual property policy, industrial policy and the security of cross-border data flows and transmissions, the domestic legal systems of various countries tend to adopt restrictions of varying degrees of severity on industrial, financial and technological cooperation, thus making it difficult to build up a unified

system of international cooperation in the near future. At the same time, the legal system and the actual national conditions of different countries are different, on the issue of sanctions and counter-sanctions there is a major conflict of views and concepts, which is contrary to the current situation of increasingly serious anti-globalization. Due to the significant market economic advantage of Europe and the United States for cutting-edge science and technology and high value-added industry chain, firmly grasp the right to speak in the field of international rule-making. Developing countries, including my country, lack the right to formulate and implement sanctions and counter-sanctions, which is an important factor hindering my country's development into an economic, scientific and technological power. China has always advocated international cooperation and common governance to maintain the goal of cross-border data governance, and actively participated in the formulation process of international cross-border data governance-related agreements, and stipulated the relevant content of anti-sanctions linkage international cooperation in domestic legislation and international agreements such as the Regional Comprehensive Economic Partnership Agreement (RCEP), but compared with developed countries such as the European Union, Japan, and the United States, there is a large gap between China and other developing countries in the field of cross-border cooperation and governance, which seriously affects China's development towards an economic and scientific and technological power. However, compared with developed countries such as the European Union, Japan and the United States, there is a large gap in the field of cross-border cooperation and governance, which seriously affects the actual effectiveness of China's domestic and international governance in the field of interdiction and anti-sanctions, and makes it difficult to effectively cover the protection of the rights and interests of entities and individuals affected by the anti-sanctions field, social and economic benefits, and development interests such as national sovereignty and security.

3. Suggestions for Improving China's Regime in the Area of Counter-sanctions

3.1. Building Comprehensive and Complete Anti-sanctions Laws, Regulations and Normative Documents

China's anti-sanctions legal system should comprise two aspects: first, blocking the application of foreign sanctions and counteracting long-arm jurisdiction and counter-interference; and second, strong anti-sanctions, striking at sanctioning countries and relevant subjects in accordance with the needs of national security protection. On the basis of economic development and institutional construction, China should improve the formation of a very strong legal system of blocking and countermeasures, including the Anti-Foreign Sanctions Law, the Measures for Blocking and other supplementary regulations, through the establishment of a complex decision-making system, closely linked law enforcement departments, and a tightly coordinated process, and at the same time, in addition to high-profile legislative confirmations and guidance, it is necessary for the state organs in the foreign affairs, import and export, trade and other specific At the same time, in addition to the confirmation and guidance of high-level legislation, it is also necessary for state organs to coordinate the measures and means of counter-sanctions in the specific fields of diplomacy, import and export, trade and other areas, in order to minimize the adverse impact on the main bodies in China, and to achieve a scientific, reasonable, flexible and effective system design that profoundly embodies our country's firm confidence in protecting our national security, as well as our pursuit of firmly defending China's own political and economic interests.

3.2. Strengthening the Intervention of Governmental Entities and Coordination at the International Level

By actively utilizing legal tools to effectively respond to possible threats of sanctions and other national security risks, by adhering to the fundamental direction of blocking and actively countering sanctions, and by building and improving the anti-sanctions legal system in terms of legislation, law enforcement and judicial means, China will be able to better safeguard its economic development and national security interests. In view of the existing dilemmas and obstacles of China's counter-sanctions in the current economic field, firstly, it should be made clear that China has always adhered to the basic principles of abiding by international law and utilizing the means of international law to safeguard its own legitimate interests. Secondly, we should analyze the extraterritorial counter-sanctions practices, and design the path of China's counter-sanctions legal system through the subjects, objects, means and actual effects of China's counter-sanctions legal practices in the economic field, so as to clearly define the main body of the obligations and the distribution of the responsibilities, and to support the economic and trade countermeasures, and to complement the systematic legal system and rules, so as to comprehensively improve the economic counter-sanctions capability of China.

3.3. Enhancement of the Response Capacity of the Main Bodies of Our Country in the Field of Counter-sanctions

Through the Anti-Foreign Sanctions Act, the specific enforcement procedures and implementation mechanism of China's economic field of counter-sanctions are structured in a concrete manner, which can further provide enterprises and individuals affected by sanctions with more precise rules and legal support. Actively respond to new changes in the national security situation and protection of national interests, the establishment of these systems for the entities in China and sanctions provide a reasonable means of countermeasures and legal basis at the same time, help to safeguard national sovereignty, security, development and core interests of the country to provide the theoretical basis and practical support, and jointly build a community of human destiny of "peaceful development and win-win cooperation". and jointly build a "peaceful development and win-win cooperation" community of human destiny.

3.4. Strengthening the International Cooperation of Our Regime in the Field of Counter-sanctions

China's anti-sanctions system cannot be separated from the coordination of the international macro-rule system. While formulating legal norms and lists of entities and individuals for preventing and resolving overseas anti-sanctions, and adjusting and adapting normative documents in domestic jurisdictions, countries should strengthen inter-regional or international governmental cooperation and the collaboration of international organizations in order to effectively strengthen cooperation against illegal sanctions within the framework of international law, and to resist unilateral sanctions and acts of long-arm jurisdiction adopted by developed countries in order to protect their own first-mover advantages. At the same time, we should strengthen interregional or international cooperation among governments and international organizations, and effectively strengthen cooperation against illegal sanctions within the framework of international law, so as to resist the unilateral sanctions and long-arm jurisdiction adopted by developed countries in order to protect their first-mover advantages. In this regard, China needs to take into account its own process and actual situation in the process of overseas international cooperation and international treaty making, participate more actively in the whole process of international anti-sanctions system, actively build a new order of international supervision and management, further enhance the international unilateral and multilateral cooperation, continuously expand the channels of international cooperation, and strengthen the synergy and cooperation of the legal system and

implementation of blocking and anti-sanctions among countries. Cooperation. Taking into account the current situation and experience in the regulation of cross-border flow of personal information in China, through the establishment of bilateral agreements, the improvement of regionalized norms, and the construction of global norms, we have formed a mode of cooperation in the field of anti-sanctions, normative objects, and a mechanism for the protection of rights and remedies in our favor, so as to build up a good new order and environment for globalized competition and cooperation as well as for the transmission and flow of technological products.

4. Conclusion

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As a founding member of the United Nations and the first country to sign the Charter of the United Nations, China has always defended the international system with the United Nations at its core, firmly upheld the international order based on international law, adhered to an independent foreign policy of peace, implemented the five basic principles of peaceful coexistence and promoted the building of a community of shared destiny for humankind. Under the guidance of the Anti-Foreign Sanctions Act, the establishment of a counter-sanctions legal system that is adapted to Chinese characteristics and based on China's national conditions requires, first and foremost, integrated planning for the active construction of a counter-sanctions legal system, in accordance with the country's interests in development and its foreign policy, and in the light of the characteristics and laws of the construction of legal systems. China's counter-sanctions field is also constantly improving the reality of conflict with the principle of absolute immunity of state sovereignty, but with the introduction and improvement of the Law of the People's Republic of China on Immunity of Foreign States, the conflicts and contradictions between the relevant institutional level and the actual reality of the field are also in the process of continuous improvement, to truly solidify and safeguard China's legal toolbox of blocking and counter-sanctions to play an effective role.

China's anti-sanctions field has initially formed a defensive anti-sanctions system with the Anti-Foreign Sanctions Law as the main body and two perspectives of blocking and counter-sanctions. From general legislation to specialized counter-sanctions bills, from principled provisions to specific implementation rules, and from legislation, law enforcement to judiciary, China has actively constructed a multi-faceted legal system of counter-sanctions that adapts to the real situation, with the core scenario of blocking extraterritorial application and proactive counter-sanctions, and the path of realizing refined counter-sanctions and governance of key areas. The legal system of counter-sanctions should be rationalized and efficiently implemented, so as to form a multifaceted counter-sanctions pattern adapted to the actual situation, and to effectively protect China's national security on the legal front. The systematized counter-sanctions legal system should pay attention to the interface and interaction between the blocking and counter-sanctions system and other legal systems, the conditions of admissibility, international judicial assistance and other procedural mechanisms, and the study of case adjudication.

It should improve the construction of a foreign-related legal system and realize the coordination and cooperation of sectoral laws, including the basic principles, burden of proof, application of laws, liability for damages, and the validity of exemption clauses. Counter-sanctions measures should be more targeted and effective, with clear subjects and strict procedures, and a legal system of extraterritorial regulation with Chinese characteristics should be established.

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