

Application of China's Anti-Foreign Sanctions Law and Its Impact on Foreign Enterprises

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Abstract: With the continuous deepening of inter-State cooperation, the number of conflicts and contradictions between States has increased dramatically for the consideration of their national interests. Under such circumstances, how to resolve conflicts and eliminate the impact of conflicts on the home country has become an urgent problem to be solved. The Law of the People's Republic of China on Countering Foreign Sanctions is intended to be a defense against restrictive measures taken by other countries against China. This paper firstly studies the legislative background of the this law and combs through the specific provisions of the law. It then provides suggestions on how foreign companies can avoid violating the Anti-Foreign Sanctions Law. Frankly speaking, China's Anti-Foreign Sanctions Law demonstrates China's attitude and ability to use international law to protect the rightful interests and rights of the state, its own organizations and its citizens, and also provides a reference for the majority of developing countries to protect their rightful interests and rights. Other countries could work with China for mutual benefit, create a community of human destiny when conflicts arise, they can be resolved through peaceful consultations.

Keywords: Law of the People's Republic of China on Countering Foreign Sanctions, security, foreign enterprise, recommended measures

1. Introduction

In recent years, with the continuous enhancement of economic globalization, the trade friction among countries around the world has intensified, especially the trade friction between China and the United States has had an obvious and intense trend of evolution within a space of time. In an effort to safeguard their own national interests, countries around the world generally take such measures as imposing high tariffs on other countries' commodities and enterprises, or attaching anti-dumping duties and other ways to combat foreign trade [1]. For example, the United States, in order to safeguard its own national security interests, set up export control regulations and established the entity list system. Since May 2019, the U.S. has placed Huawei on the Entity List, which prohibits global suppliers from using U.S. technology from supplying chips and technology to Huawei. As the competition in the cell phone market hinges on the chip quality, the cut-off of 5G chips has caused a huge impact on the cell phone business of China's Huawei enterprise [2].

In the face of the world situation, China previously had no better legal way to safeguard its national interests. On Jun.10, 2021, The Law of the People's Republic of China on Countering Foreign

Sanctions was voted on and approved by the 29th meeting of the Standing Committee of the 13th National People's Congress, aiming to respond to foreign sanctions and safeguard China's national interests. The introduction of the Anti-Foreign Sanctions Law has been met with many different reactions from the international community. Some supporters are in favor of the enactment of this law because it can better safeguard the interests of their own countries and restrain the behavior of other countries from a legal perspective, while some opponents believe that the Law will exacerbate trade friction, and some worried voices indicate that the Law will put foreign enterprises in a dilemma when they engage in trade transactions between China and foreign countries. This article will study the Anti-Foreign Sanctions Law in terms of legislative background, motivation for regulation, application of the Law and its targets, and at the same time provide some adoptable suggestions for foreign enterprises engaged in trade and investment with China.

2. Legislative Background and Regulatory Motivation of the Anti-Foreign Sanctions Law

In recent years, in view of the increasing breadth and depth of sanctions imposed on China by some foreign countries, the forms and contents of sanctions have also tended to diversify. For this reason, on June 10th, 2021, China formally promulgated The Law of the People's Republic of China on Countering Foreign Sanctions to counter the sanctions imposed on China by foreign countries. The adoption and implementation of the Anti-Foreign Sanctions Law can accurately crack down on such behaviors in order to protect the Chinese state's legitimate rights and interests, economic entities and person.

On the one hand, China is faced with a complex and tense international situation and increasingly severe foreign sanctions. For example, other countries have sanctioned ZTE, placed Huawei on the "Entity List" to restrict its development, and the U.S. has issued the "Xinjiang Cotton Ban" and BCI has taken advantage of its monopoly to suppress the cotton farming industry in Xinjiang, and so on. So that Chinese enterprises have encountered great resistance and challenges in expanding overseas markets. Huge resistance and challenges to China's national interests have also caused some damage. Therefore, the Anti-Foreign Sanctions Law was born as a reaction to the needs of the times, and it is a necessary and realistic response of China to safeguard national sovereignty, security, dignity and core interests, as well as the urgent needs of the international situation.

On the other hand, from relevant domestic law and international practices, China has gained a large number of empirical cases of anti-sanctions legislation, which has laid a solid foundation for this Law. It has also demonstrated that the Anti-Foreign Sanctions Law has been enacted with strong enforceability and a wide scope of application. Prior to this, the country had enacted the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures, which not only regulates the behavior of enterprises that may enter the list of unreliable entities, but also describes the legal assistance and support that can be provided by the relevant governmental departments to the relevant enterprises and individuals[3]. In addition, According to the People's Republic of China's Export Control Law, "China may take reciprocal measures against such country or region if any country or region abuses export control measures to harm the national security and interests of the People's Republic of China." [4]. It can be seen that the introduction of this Law is also the result of the continuous optimization of the legal system in line with practice.

3. Content of the Anti-Foreign Sanctions Law

3.1. Applicable circumstances and targets

What is countered in the Anti-Foreign Sanctions Law is the sanctioning actions taken by foreign countries against China. Countermeasures are actions taken by foreign state organs, and do not include the actions of foreign civil organizations and individuals. Counter-sanctions are unilateral

sanctions imposed by foreign nations against Chinese individuals and groups. Foreign sanctions against third countries, their organizations and individuals are not covered by this Law[5]. In addition to dealing with "foreign sanctions", this Law also applies to counter-sanctions against acts that jeopardize China's interests in security, growth, and sovereignty.

The targets of the Anti-Foreign Sanctions Law fall into two main categories. First, individuals and organizations that are directly or indirectly involved in formulating, deciding, or implementing discriminatory restrictive measures, which will be included in the countermeasures list for precision strikes. Second, the State Council may also take preventative actions against specific relations of individuals and organizations included in the countermeasures list. These also include the individual's spouse and relatives within the individual's immediate family, senior managers or the organization's actual controllers, senior management organizations, and organizations in which the individual and the organization truly control or participate in the establishment and operation of the organization.[6].

3.2. Counteraction List and Countermeasures

The Countermeasures List is an important mechanism of China's Anti-Sanctions law. The Countermeasures List and the countermeasures form a matching closed loop, allowing this law to have a complete set of processes from the provisions to the actual application. The Anti-Foreign Sanctions Law's Article 4 states that the State Council's pertinent departments can direct or indirect involvement in the formulation and decision-making process on the implementation of the provisions of Article 3 of this Law by placing organizations and individuals on the counteraction list. The counter-listing system is based on the means of holding accountable those who have imposed or assisted in the imposition of sanctions [7].

Depending on the circumstances, the relevant the Council of State departments may apply sanctions in line with their assigned duties and obligations. For individuals included in the countermeasures list, measures will be taken such as not issuing visas, not allowing entry, canceling visas, or expelling them from the country. For property, both moveable and non-moveable, on Chinese region, measures are taken to seize, detain and freeze them. With regard to the targets of China's countermeasures, measures are taken to prohibit or restrict organizations and individuals in China from engaging in exchanges and collaboration with them, or restrictive conditions may be imposed on any transactions or cooperation carried out by them [8].

4. The Anti-Sanctions Law's Effect on Foreign Enterprises and Solutions

The promulgation of the Anti-Foreign Sanctions Law is conducive to creating a predictable legal environment, high stability and an expected business environment in China, which is precisely to protect Chinese enterprises from entering the international market on an equal footing, competing with foreigners on a fair basis and trade freely with the role of escort. As China's opening up to the outside world continues to deepen, China is also more supportive of encouraging economic and trade cooperation with foreign enterprises, friendly and mutual assistance. This is because China's enactment of this law is intended to target unlawful infringement of China's national interests by counteracting enterprises that participate in the implementation of, or support the enforcement of discriminatory policies by some countries, which often does not comply with international legal rules and work with foreign countries to strike Chinese entities for no apparent reason. Foreign companies that engage in normal trade transactions with Chinese companies and individuals will not be affected.

However, foreign companies will also face the challenge of two major dilemmas. Above all, the first challenge that foreign companies face is that when choosing who to cooperate with, they need to identify and investigate whether they have been put on the countermeasures list by the Chinese government. It is easy to detect subjects that are already on the countermeasures list. But China's

counter-sanctions have a wide coverage for any individuals, their spouses, relatives or organizations and their executives that are associated with the subjects included in the countermeasures list are likely to be involved. As a foreign-funded enterprise, its global layout of the supply chain, distributors are countless, forming an intricate customer, equity links. This requires foreign enterprises to conduct exhaustive investigation and identification of the background, executives, family relationships, and business equity of the partner.

Secondly, after the introduction of anti-sanctions laws, foreign enterprises are sometimes caught in a dilemma. Foreign countries, for the sake of their own national interests, will take sanctions against the trade development of other countries, and may require foreign enterprises to implement or assist foreign countries to take restrictive actions against other countries. And once the foreign enterprises have implemented or assisted, they may become the target of China's countermeasures. Currently, many foreign-invested enterprises in China are mostly subsidiaries of foreign enterprises. This means that once their parent company implements sanctions against China for the benefit of a foreign country, as it usually does as an actual participant in the foreign parent company or is controlled and managed by the parent company, they are at risk of being placed on China's countermeasures list, whether or not it does the same, or assist in it [9]. On the other hand, if it complies with the provisions of China's Anti-Foreign Sanctions Law and does not implement the relevant provisions of the foreign sanctions against China. Its foreign company or the parent company will have to bear great pressure, face "rejection" from the domestic market, or lose the domestic market. Even bear huge fines, which will cause great damage to both its development and profitability. Foreign enterprises may be caught in a dilemma based on internal and external regulations and requirements.

5. Recommendations and Prospects for Foreign Investment under the Anti-Foreign Sanctions Law

To best cope with the Anti-Foreign Sanctions Law, it is recommended that subsidiaries of foreign-funded enterprises in China can prioritize compliance with China's Anti-Foreign Sanctions Law when they face compliance dilemmas, and fulfill their mandatory obligations under the Anti-Foreign Sanctions Law in accordance with the law [6]. In the event of a situation where a foreign country enforces its implementation or assists in the adoption of restrictive measures against China, foreign companies may actively communicate with their parent companies. This is because in such cases, according to Article 11 of China's, The Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, if subsidiaries of foreign-funded enterprises in China fail to comply with the relevant foreign laws and measures then suffers huge losses as a result, the relevant departments of the Chinese government can provide necessary assistance based on different actual situations [9].

At the same time, foreign enterprises must make careful considerations and review to evaluate their choice of partners. They can investigate their partners in accordance with the Chinese countermeasures list prior to the transaction and avoid transactions with direct or indirect targets of sanctions [10]. Foreign companies can also establish contractual mechanisms to ensure that transactions with their partners can be carried out in a long and smooth manner. Foreign companies can comprehensively assess the Anti-Foreign Sanctions Act and rigorously scrutinize transaction contracts to comply with the law. For example, they can amend the template of the transaction contract that conflicts with the Anti-Foreign Sanctions Act. Foreign companies can write in the contract that both parties to the transaction are required to commit to comply with China's anti-foreign sanctions law. And at the same time establish a contract termination mechanism, which stipulates that if one of the parties to the cooperation is included in the anti-foreign sanctions list during the contract period, the foreign company has the right to terminate the contract to protect itself [9].

6. Conclusion

Overall, the Anti-Foreign Sanctions Law is basically a defensive law. This law was introduced to safeguard China's national interests and national security in the form of law, and it is mainly defensive to counteract foreign countries. Comparatively speaking, it will not impose an excessive burden on legitimate foreign investment. At the same time, China has been practicing the concept of the community of human destiny, with an open attitude to welcome foreign investors to "come in". China will also further create a smooth business environment under the rule of law to promote foreign investment in China. Restrictive measures between countries can increase international tensions and trade risks, and hinder international exchanges or innovative progress. Countries should adhere to the concepts of upholding independence and autonomy, achieving a peaceful world and promoting common development among countries around the world, establish friendly and cooperative relations with other countries, to promote the construction of a world with common prosperity and harmony.

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