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Economic Sanctions, Blocking Instruments and Case Study of the Consequences

Jiaxin Li[1,a,*]

[1]*ZUEL-SUR School of Economics and Law, Zhongnan University of Economics and Law*
a. li.jiaxin0128@outlook.com
**corresponding author*

Abstract: With the irreversible trend of global trade, the stipulation on the sanctions of trading is directly or indirectly interfering with the national economy, contingency, and further, the making of blocking statutes and policies against extraterritorial trade sanctions. In this review, this essay first demonstrates the general categories of sanctions, outlines the corresponding blocking instruments and ordinances issued by the European Union, China, the U.K., France and other regions and countries to discuss the attempts different countries have undertaken for the prevention of the judicial application to states' jurisdiction. This essay also addresses the evolving landscape of global trade sanctions and the countermeasures countries have taken to protect their interests. To provide a comprehensive analysis, it also adopts the empirical analysis through the case study of the consequences under these regimes. It concludes with suggestions for future possible actions considering the current practice and status, enabling the independency of states on the new cross-border weapon to achieve international checks and balances.

Keywords: economic sanctions, foreign trade regulation, extraterritorial jurisdiction

1. Introduction

The intergradation of European countries formed the European Community (EC), aiming at building free movements of goods, personnel, services, and capital for the single market [1]. Reaching reciprocal and mutually advantageous arrangements are the foundation for the establishment of the World Trade Organization system. There are some regulations that put endeavors on the other way around to impose sanctions on the trade and economy, that is, to apply destructive economic sanctions on some states, corporates (state-owned companies and private companies), and individuals.

There are cross-border dispute decisions by some dispute resolution systems, such as the Court of Justice of the European Union (CJEU) and the Dispute Settlement Body (DSB) under WTO. Sanction decisions are subject to the application of laws and regulations. The discussion here explores the obligations under WTO systems, and the reasoning of Article XXI (b)(iii) of the General Agreement on Tariffs and Trade 1994. The blocking statutes are published by different international subjects, such as the EU, China and Russia.

The consequence for violation or non-performance of the sanction may lead to reputational losses from non-compliance. Also, the state as international rule makers may be challenged [2] for the breaking of international order and legitimate functions at the international level [3].

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This article is structured in four parts. Followed by this introduction, part 2 provides the widely applied discussion on sanctions with a focus on economic sanctions. Part 3 discusses the blocking instruments. Part 4 is the case analysis. The reflection is concluded in Part 5.

2. Types and Foundation of Sanction

2.1. Definition

Sanctions are the series of procedures and actions taken by powerful countries against smaller entities [4]. The history of international sanctions can be traced back to ancient Greek times [5]. Some regimes appear to rely on tough sanctions, financial incentives, and others on what appear to be little more than exhortation. As Alain Pellet depicted, 'sanction' should be reserved only for sanctions authorized by the United Nation's Security Council (UNSC) under Chapter VII of the UN Charter [6]. An effective sanction shall focus on the individual benefits that derive from the properly designed mechanism [7]. Devika Hovell defines such sanctions as 'autonomous' [8].

With respect to the understandings above, sanction is divided into two categories based on the entity that impose the sanction [9]. They are unilateral sanction and multilateral sanctions. Also, considering the approaches, there are other types of sanctions, such as financial sanctions and trade sanctions.

2.2. Distinction of Different Sanctions

The distinction between financial and trade sanctions is based on the different approaches applied to economic sanctions. Trade sanctions refer to measures taken by the initiator of sanctions to restrict its exports to the target entity by reducing or cancelling the importation of goods from that entity. Such restrictions on the involved countries would lead to economic losses, therefore, forcing the target entity to comply with the desired rules or regulations.

Most of the cases of economic sanctions include trade sanctions.

The U.S. embargo policy against Japan during World War II pertained to the control of Japan's ability to obtain strategic materials such as oil. Financial sanctions are used by the country initiating the sanctions to curb the target's financial power by freezing the target's overseas funds, canceling aid, cancelling loans, and prohibiting the flow of funds, causing a shortage of funds for the target, which leads to economic hardship and eventually succumbing to the initiator's aspired goal.

2.3. Unilateral Sanction vs. Multilateral Sanction

Unilateral sanctions refer to the situation where only one main state initiates the economic sanction(s), or that country plays the primary role. Multilateral sanctions, on the other hand, are imposed by more than one country, and these countries play a small role in the implementation of the sanctions.

The U.S. has imposed economic sanctions on North Korea. For example, in the case of the U.S. economic sanctions against North Korea. Though Japan and South Korea participated in the imposition of economic sanctions, sanctions, their function on the matter is supplementary and therefore, the U.S. economic sanction against North Korea is still classified as unilateral sanctions.

United Nations General Assembly resolutions have repeatedly stated that the United States' coercion of other countries to participate in economic sanctions against Cuba through extraterritorial sanctions constitutes a threat to national sovereignty, and have urged all Member States to neither recognize nor reject the United States' actions. Multilateral economic sanctions are increasingly used to promote international peace and security [10].

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2.4. Basis of Economic Sanctions

Traced back to the end of World War I, the League of Nations was formed. Article 16 of it provided in its covenants for economic sanctions against countries that broke the covenants to start the war. Woodrow Wilson's opinion of security in the League of Nations pertaining to economic sanctions is deemed essential for restraining different states from using armed aggression for dispute settlement. Wilson and the Covenants provided the foundation of the United Nations (UN) and for the institutional authority of the General Assembly and Security Council to adopt international economic sanctions.

The UN Security Council and Its Power to Impose Economic Sanctions. Article 2(7) of the UN Charter regulates UN organizations not to 'intervene in matters which are essentially within the domestic jurisdiction of any state'. Chapter 5 of the Charter concedes the SC a central role in maintaining international peace and security. Chapter 7 of the UN Charter authorises it to take whatever measures necessary, short of the use of force in response to a breach of peace and security or a threat to peace and security.

In the cross-century era, the UN General Assembly approved the Elimination of Coercive Economic Measures as a Means of Political and Economic Compulsion Assembly, marking the avoidance and restriction of economic sanctions.

3. Extraterritorial Jurisdiction and Legislations on Blocking the Sanction

3.1. Extraterritorial Jurisdiction

It can be understood that the jurisdiction of extraterritorial application of U.S. law is a matter of legislative jurisdiction, while the litigation jurisdiction of U.S. courts over foreign-related cases is a matter of judicial jurisdiction; and the sanctioning of violations of U.S. law by U.S. administrative agencies is a matter of enforcement jurisdiction [11]. According to the prevailing theory of international jurisprudence, jurisdiction is divided into prescriptive jurisdiction, jurisdictional jurisdiction and enforcement jurisdiction. Jurisdiction outside of territorial jurisdiction is collectively referred to as "extraterritorial jurisdiction. Menno T Kamminga defines 'extraterritoriality' and 'extraterritorial jurisdiction' as the capability of a State to take approaches and actions beyond its territory for the protection of its persons, property or events.

In the Bozkurt Case (the "Lotus Case") decided in 1927, the Permanent Court of International Justice (PCIJ) stated: "In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory, except by virtue of a permissive rule derived from international custom or from a convention." [12].

A number of countries have attempted to address disputes with the United States over economic sanctions through the WTO dispute settlement process, and following the enactment of the Holmes-Burton Act in 1996, the EU reacted quickly by filing a dispute settlement request with the WTO in October of that year. The EU alleges that the U.S. extraterritorial sanctions exclude EU member states' rights to free trade with Cuba under the WTO's General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS).

3.2. Blocking Statutes

The contemporary blocking statutes emerged in the mid-20th century and initially focused on the procedures against investigative discovery by courts in other countries (mainly against the United States) within their own territory. The most common and earliest purpose is the prohibition of improper discovery by involved entities in the courts of other countries in practice [13].

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The second half of the 20th century experienced the trendy legislative efforts on the making of blocking statutes in response to particular U.S. investigations or litigation that the international community perceived the extraterritorial jurisdiction is overreaching [14].

3.3. Legislations on Blocking the Sanction

Table 1: Blocking statutes of different countries*.

State	Instrument	Release Time	Updates	Effective
Canada	Foreign Extraterritorial Measures Act (FEMA)	1985	Updated in 1997	Effective
France	Décret n° 2022-207 du 18 février 2022 relatif à la communication de documents et renseignements d'ordre économique, commercial, industriel, financier ou technique à des personnes physiques ou morales étrangères	1980	2022	Effective
Germany	Außenwirtschaftsverordnung (AWV)	2013	Amended by 25 April 2022	Effective
United Kingdom	Protection of Trading Interests Act (PTI) 1980	1980	Changes point in 05/11/1993	Effective
European Union	Council Regulation (EC) No 2271/96	1996	Current version 07/08/2018	Effective
	Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018	2018	/	Effective
Australia	Foreign Proceedings (Excess of Jurisdiction) Act 1984	1984	/	Effective
Hong Kong, China	Protection of Trading Interests Ordinance	1995	2000	Effective
Japan	Special Measure Act for Protecting Companies from the Obligation of Returning Profits due to 1916 United States Act, No. 162 of 2004	2004	/	Effective
Russia	Decree No. 252 on Russian countersanctions	2018	/	Effective
P.R. China	Anti-foreign Sanctions Law (ASL)	2021	/	Effective
	Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures (Blocking Rules)	2021	/	Effective

(*Note: Last visited on Apr.30, 2023)

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These regulations are established purposely against the long-arm jurisdiction and/or the secondary jurisdiction against U.S. The table below listed out the legal instruments U.S. released to attach the extraterritorial jurisdiction.

Table 2: U.S. Legislation on extraterritorial jurisdiction.

U.S. Legislation	Release Time
Trading with the Enemy Act (TWEA)	1917
Iran-Libya Sanctions Act**,** ILSA, aka the Iran Sanctions Act (ISA)	1995 Modified in 109th Congress in 2006
Omnibus Foreign Trade and Competitiveness Act	1988
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (the Helms-Burton Act)	1996
Iran and Libya Sanctions Act (ILSA)	1996
Foreign Corrupt Practices Act (FCPA)	1977
Export Administration Regulations (EAR)	Modified in 2023
International Emergency Economic Powers Act (IEEPA)	1977
Restatement of the Law, Third, Foreign Relations Law of the United States	1987
Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)	2010
Venezuela Defense of Human Rights and Civil Society Act of 2014	2014
Foreign Investment Risk Review Modernization Act of 2017 (FIRRMA)	2017
Export Control Reform Act of 2018	2018

4. Case Analysis on the Extraterritorial Sanction

4.1. Case 1 - Société Nationale Industrielle Aérospatiale vs. United States District Court for the Southern District of Iowa

In the past decades, U.S. courts have ordered foreign parties to break their own countries' laws with increasing frequency. These orders represent an unprecedented development in international law. Almost all of the U.S. court-ordered violations of foreign law contravene foreign 'blocking statutes.'

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Prior to this case, Motorola sued Uzans [15] and eventually won a $3 billion judgment against the Uzans in the Southern District of New York.

Article 5 of the EU Blocking Statute depicts:

"No person referred to in Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom."

This provision, which prohibits the relevant subject from complying with foreign laws blocked by the EU Blocking Statute, is one of the most impactful and controversial provisions of the EU blocking law on EU private economic subjects because it would place EU private economic subjects in the position of (a) either complying with U.S. sanctions rules but violating EU blocking laws, or (b) complying with EU blocking laws but violating U.S. sanctions rules. The "Dilemma" (Dilemma). The existence of an extraterritoriality bar has placed many French multinational companies in a dilemma (the "aérospatiale dilemma") [16].

In France, a deeply entrenched principle of law directly derived from Roman law shields parties from an obligation to assist their opponent in litigation [17].

4.2. Case 2 – BAWAG – P.S.K. Bank

BAWAG-P.S.K, Austria's 5th largest bank. As per the requisition by New York-based Cerberus Capital Management during its acquisition of the bank, BAWAG closed the accounts of approximately 100 Cubans insomuch as to meet the requirements of U.S. sanctions against Cuba. Austria considers BAWAG violated the EU blocking statute and has indicated that it will interfere with the legal investigation and take judicial proceedings. As the case unfolded, the United States Government intervened and announced that BAWAG had been granted an injunction. The U.S. government intervened and announced that it had granted BAWAG an exemption from the U.S. sanctions against Cuba. BAWAG then reinstated the Cubans' accounts and the case was solved through political approaches. The accounts are exempted from being closed [18][19].

The possible solution for the multinational entities and involved personnel is to observe compliance within the legitimate boundary. It is pertinent that the U.S. courts usually accept the blocking statutes with actual practice and therefore, the legislators shall adopt the handy blocking methods into the effective and under execution instrument against the extraterritorial jurisdiction.

5. Conclusions

The aim of writing this article is to give a comprehensive literature review and summary on the legislation and practices to the blocking statutes. However, due to the great conflicts of the regulatory interests of sovereign states, in most cases, the regulatory convergence can only be solved by means of private law, that is, the choice of jurisdiction by international civil and commercial subjects, and assuming the risks associated with the choice of jurisdiction. In comparison, the case analysis above is limited in legal reasoning. Only researched the blocking instruments of some states and whether the application of blocking statutes is subject to further exploration.

The legitimacy of economic sanctions cannot cover the irrationality of economic sanctions, as many of them do not fully comply with the principles of international law. The overstretching application of the laws and regulations of some states is an alert for stakeholders. There is the urgent for countries to establish the valid blocking statutes which actually prevails so that the argumentative opinion from foreign courts can be resolved. The building of legal instruments is only the first step of the legislation technique. The application and human rights under the legal frames are a great field for discovery, assuring a stable acceptability of international trade, and investment in the business.

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References

[1] *Barnard, C. (2022). The substantive law of the EU: the four freedoms. Oxford university press.*
[2] *Raustiala, K. (2005). Form and Substance in International Agreements. The American Journal of International Law, 581-614.*
[3] *Helfer, L. R. (2005). Why States create international tribunals: a response to professors Posner and Yoo. California Law Review, 899-956.*
[4] *Davis, L. &. (2003). History lessons sanctions: neither war nor peace. Journal of economic perspectives, 17(2), 187-197.*
[5] *Alexander, K. (2009). Economic sanctions. Law and Public Policy. Hampshire [England]: Palgrave Macmillan, a division of Macmillan Publishers Limited.*
[6] *Pellet, A. &. (2012). Sanctions. In Max Planck Encyclopedia of Public International Law. Oxford University Press.*
[7] *Colgan, B. A. (2019). Beyond graduation: economic sanctions and structural reform. Duke LJ, 69, , 1529.*
[8] *Hovell, D. (2019). Unfinished business of international law: the questionable legality of autonomous sanctions. American Journal of International Law, 113, 140-145.*
[9] *Bapat, N. A. (2009). Multilateral versus unilateral sanctions reconsidered: A test using new data. International Studies Quarterly, 53(4), 1075-1094.*
[10] *Kilpatrick, R. L. (2020). Global Challenges and the Law of the Sea (Vol. 467). In M. C. Ribeiro. Springer.*
[11] *Du, T. (2015). Economic Sanction in International Law. China: Law Press.*
[12] *THE CASE OF THE S.S. "LOTUS", SERIES A.-No. 70 (PERMANENT COURT OF INTERNATIONAL JUSTICE September 7, 1927).*
[13] *Davila, E. M. (2008). International E-Discovery: Navigating the Maze. Pitt. J. Tech. L. & Pol'y, 8, 1., 1.*
[14] *YE, Y. (2020). On the EU Blocking Statute. Pacific Journal, Vol. 28,No. 3, 50-60.*
[15] *Motorola Credit Corp. v. Uzan, 388 F.3d 39 (2d Cir. 2004) (United States District Court for the Southern District of New York October 22, 2004).*
[16] *Hoda, M. M. (2018). The aerospatiale dilemma: why u.s. courts ignore blocking statutes and what foreign states can do about it. California Law Review, 106(1), 231-.*
[17] *Hilaire, J. (2015). Adages et maximes du droit français. Dalloz. Interforum.*
[18] *IMMENKAMP, B. (2018). Updating the Blocking Regulation: The EU's answer to US extraterritorial sanctions. Belgium: European Parliamentary Research Service.*
[19] *Bernhardt, R. B. (1992). Restatement of the Law Third: The Foreign Relations Law of the United States. St. Paul: American Law Institute Publishers.*