

China's Legal Strategy to Cope with U.S. Export Controls under the WTO Framework

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Abstract: The United States has established a number of export control regulations within the framework of the World Trade Organization (WTO), which have somewhat impacted China's exports. An major issue faced by China is how to employ legal tactics to counteract US export prohibitions. This study will examine China's current legislative framework and assess US export control laws within the context of the WTO. Targeted countermeasures will be recommended to satisfy China's legal obligations for dealing with US export controls under the WTO framework through the lens of issues and improvements. This study examines the issues with the current legal tactics and looks for potential solutions by analyzing pertinent domestic and international literature, laws, and regulations in combination with real-world case studies for comparison and summarizing. The study comes to the conclusion that China's legal defenses against US export controls inside the WTO framework have certain flaws. For instance, in order to properly respond to US export regulations, China needs to significantly develop its legal system. In addition, China should strengthen cooperation with other member countries to jointly face the challenges of US export controls. In response to these problems, this article puts forward some policy suggestions, including improving relevant laws and regulations, strengthening cooperation with other member countries, actively participating in the work of international organizations to protect China's export interests. At the same time, this article also recognizes that these strategies are only preliminary explorations, and further research and practical exploration are still needed in the future. In the field of international trade, China should continuously adapt to changes, strengthen the construction of its own legal system, and promote the development of China.

Keywords: WTO framework, U.S. export controls, legal strategy in China

1. Introduction

The trade conflict between the US and China has been becoming worse recently, and the US has been acting more frequently to impose technology export limits on China. More than half of the 24 legal lawsuits the US has brought at the WTO in the last eight years have China as their target. Technology export restrictions imposed by the United States on China are mainly directed at items like weaponry, high-tech materials, communications equipment, electronics, and space products that could increase China's technological and military prowess. Even certain civilian, non-US

technological items are subject to limitations. In light of this, China must contend with the United States' long-arm jurisdiction and technology export prohibitions, which place limitations on its ability to advance technologically [1]. Because of this, China urgently needs to introduce a comprehensive and fundamental Export Control Act to cope with this situation. In the financial and economic context, the United States Foreign Corrupt Practices Act is another example of the extraterritorial application of a domestic law.

China is currently strengthening its position in global trade, but the United States' unilateral trade penalties are also exerting pressure on the country [2]. Developing nations like China are in a passive position as a result of the fact that developed Western nations control most of the rules governing international dispute resolution. An analysis of the U.S. technology export control legislation can therefore help to further define the status and significance of technology export control in the context of responding to the growing U.S. technology export control. In addition, it takes into account China's advantages and constraints while drawing from the helpful experience of the US legislation to offer workable recommendations for China to deal with technology export control and enhance China's technology export control system.

Theoretically, it is of great importance to advance the work of China's technology export control legislation by a thorough analysis of the U.S. technology export control legislation in light of China's circumstances. In order to provide helpful references for China's response to technology export control and the development of its technology export control system, this article will explore the U.S. technology export control legislation.

2. Analysis of the WTO Framework and U.S. Export Control Policies

The World Trade Organization (WTO) is the only global international organization that deals with the rules of trade between countries. At its core are the WTO Agreements. Negotiated and signed by most of the world's trading countries and ratified in their parliaments. The aim is to ensure that trade proceeds as successfully and freely as possible [3].

Export controls are measures taken by a country to restrict the export (including re-export, domestic transfers) of specific goods, software, technology or services, as well as exports to specific countries or regions. Under U.S. law, export controls are implemented by the Bureau of Industry Security ("BIS"), a division of the U.S. Department of Commerce, with the primary legal basis being the U.S. Export Administration Regulation ("EAR"). The reasons for the United States to implement export controls include national security, foreign policy, prevention of the proliferation of weapons of mass destruction ("WMD"), counter-terrorism and regional stability.

2.1. Basic Principles of the WTO Framework

WTO legal system as a whole, with the WTO Agreement as the General Charter. The WTO Agreement is divided into a preamble, sixteen articles, and four annexes. The specific rules comprise four annexes. The entire WTO legal system is characterized by lengthy and complex legal instruments. However, the following five foundational principles are consistently applied throughout all of the instruments:

Non-discrimination trade principle. It contains two important basic principles. That is, the principle of most-favored-nation treatment and the principle of national treatment. Members generally cannot discriminate between trading partners; preferences granted to one member should be equally granted to other members, i.e., most-favored-nation treatment. Imported and locally produced goods should be treated equally, i.e. the principle of national treatment.

Opening trade. Progressive reduction of trade barriers and elimination of trade distortions through negotiations. It is one of the main measures to promote the free flow of international trade.

Predictability and transparency. Adoption of this Principle fulfills the commitments of each WTO member. Not only does it not raise barriers to trade without justification. It also helps to provide a clear and transparent business environment.

Fair competition. WTO does not allow unfair competition by unfair trade practices by States Parties. Special prohibition of exports in the form of dumping and subsidies. Both dumping and subsidization are clearly defined, and specific and detailed implementation measures have been formulated.

Support for less developed countries. The WTO encourages development and therefore allows developing countries greater flexibility in fulfilling the content of the agreement.

These principles provide stable legal rules and mechanisms for global trade. A more open and fairer environment has been created for trade activities among countries. China should give full play to the basic principles of the WTO framework when dealing with U.S. export controls. adhere to the five basic principles, safeguard China's legitimate rights and interests, and promote China's economic stability and development.

2.2. Overview of United States Export Control Policy

The United States plays a pivotal role in international trade. However, in order to protect national interests and domestic industries, the United States has implemented a strict export control policy. The U.S. Department of Commerce's Bureau of Industry and Security (BIS) imposes export controls on particularly sensitive products, technologies, and software. Scope of application and control lists according to BIS when different countries apply for licenses from the U.S. Implemented targeted export control policies with China-Specific Controls.

2.3. The Impact of U.S. Export Control Policies on Chinese Economy

Within the framework of the WTO, the United States has adopted a series of export control policies that have had a noticeable impact on Chinese economy. For example, the United States Department of Commerce has cited violations of United States national security or diplomatic interests. It has included a number of leading Chinese companies and organizations in the high-tech sector in the United States Entity List and the Unverified List.

Table 1: Statistics on Chinese entities (including enterprises, organizations and individuals) included in the restricted list [4].

List type	Number of Chinese entities involved (2022→2023)
Entity List	528→613
Unverified List	112→126
Military End-User	71→71
Denied Persons List	10→12
Specially Destinated Nationals	356→440
Non-SDN Chinese Military Complex Companies List	68→65
Sectoral Sanctions List	1→1

Chinese entities on the Entity List are unable to purchase items on the U.S. Commerce Control List from the United States or third countries. It restricts China's foreign trade, and the technological cooperation and introduction of Chinese entities is hindered, impeding their production and operation. It also strikes at the development of China's high-tech industry, increasing the cost of inputs for technological and equipment innovations and leading to the postponement of China's technological progress. Chinese entities have been adversely affected in terms of raw material procurement, customer retention, market expansion and economic development strategies.

Today, the export control policy of the United States has a multifaceted impact on China's economy. China should adopt a proactive response strategy to better meet the challenges and obstacles posed by the United States export control policy.

3. China's Existing Legal Strategies for Responding to U.S. Export Controls

To protect our export interests and national interests, China has implemented a number of comprehensive and layered countermeasures against US export controls under the WTO framework. China has established a strong legal framework for its own steady development in the face of U.S. export control by clarifying legal requirements, bolstering review and supervision, encouraging technological innovation, and strengthening international collaboration. By putting these strategies into practice, China will effectively protect its export interests and encourage steady economic growth. In some real-world situations, China's legal techniques for addressing US export prohibitions inside the WTO framework are also on display.

3.1. China's Countermeasures under the WTO Framework

First off, China actively participates in the international trading system, sues the United States through the WTO's dispute resolution process, and uses the law to protect its own rights and interests.

Second, China expands its partnerships with other nations, forges economic ties that are mutually advantageous and win-win, and responds to U.S. export restrictions through multilateral and bilateral trade agreements. For instance, to enhance a coordinated response to U.S. export limits, China has signed free trade agreements with the European Union, Russia, and other nations and regions.

China has also improved the policy assistance and direction it provides to exporters. To assist businesses in overcoming the obstacles caused by export controls, the government has implemented a number of policy measures on export controls and offered fiscal, tax, and financial support. As a result, the impact of U.S. export restrictions on China's exports is lessened. At the same time, it stimulates businesses to increase technical innovation, boost product competitiveness, and minimize their reliance on critical U.S. technologies.

In addition, China has accelerated the growth of domestic industries and improved its potential for independent innovation. It has improved the technological level and added value of the upper reaches of the industrial chain by bolstering investment in scientific research and innovation. It has also decreased its reliance on imported essential technology and components, making it more resistant to U.S. export regulations. In order to prevent intellectual property theft and leakage, China has also stepped up its intellectual property enforcement and protection measures. By doing this, the possibility of being subject to U.S. export restrictions has decreased.

3.2. Provisions of China's Existing Laws on Export Control

In response to U.S. export restrictions, China has taken a number of responses as an economic power, based on the WTO legal system. The export control requirements in China's current legislation are very explicit.

First of all, China has implemented explicit export control provisions through pertinent laws and regulations. As an illustration, the Export Control Act and other pertinent legislation that establish extensive controls and restrictions on the classification of export commodities, licensing schemes, technical standards, and other matters have been introduced [5]. The adoption of these legislation has given China nation a strong legal foundation on which to respond to U.S. export restrictions.

Second, China has improved the scrutiny and control it applies to export goods. China has established specific export control agencies and appropriate departments to assess and monitor exports of goods that could be affected by U.S. export restrictions. These organizations must adhere to WTO regulations, guarantee China's compliance with export control laws, and protect the legitimate rights and interests of Chinese businesses.

Third, China has strengthened its technology R&D and internal innovation, which has increased its export competitiveness. China has come to the realization that relying solely on international trade is insufficient to protect national interests in the face of U.S. export restrictions. In order to lessen its reliance on U.S. export restrictions, China has consistently raised its investment in technology R&D and independent innovation, enhanced the technological content, and added value of its products.

China also prioritizes international cooperation in its response to US export restrictions. To collectively address the export control issue, cooperation with other nations and areas is crucial. China favors the development of an equitable, open, and transparent global trade system and actively participates in the pertinent WTO negotiations. In order to create a synergy and safeguard the interests of the State and enterprises while jointly responding to US export regulations, China has also strengthened bilateral cooperation with other nations.

3.3. Practical Cases of China's Response to U.S. Export Controls

Practical examples provide a crucial illustrative and instructive role.

Restrictions on the export of high-tech goods are the subject of the first case. China has successfully carried out independent research and development, produced a number of high-tech products, established a number of patents, and set a number of technological standards, increasing its competitiveness in the global market. This has been accomplished by strengthening independent innovation and technological research and development.

The use of trade remedy measures is the subject of the second lawsuit. China has succeeded in stopping some actions involving trade barriers and unfair competition by starting WTO trade remedy proceedings and enacting anti-dumping measures against the U.S.

The third scenario is how international collaboration has evolved throughout time. China has been able to lessen its reliance on the American market and explore additional options on the international market by establishing free trade agreements with other nations and enhancing cooperation in the multilateral trading system.

The last case is about strengthening the domestic legal system. By amending and improving the relevant laws and regulations, China has strengthened its supervision and management in the field of export control and improved its ability to respond at the legal level.

4. Existing Problems in China's Response to U.S. Export Controls

China is committed to upgrading its economic development and tries to make coping strategies from various aspects in the face of U.S. export controls [6]. China promulgated the Export Control Law, establishing the basic institutional framework and rules for export control, and setting up a comprehensive legal system for export control with clear hierarchical levels, interconnected vertical hierarchies and horizontally linked laws and regulations, and a framework for implementation that includes relevant administrative regulations and departmental rules of the competent authorities, with the legal system and its implementation still needing to be continuously improved.

4.1. Problems with China's Export Control Policy

In the face of U.S. export control, China has formulated a legal strategy for China's export control at a later stage. Chapter I, General Provisions, and Chapter II, Control Policies, of China's Export Control Law, and the provisions of the control lists and control measures are the most widely used in current practice, and there are many specific and urgent demands from the perspective of export operators and relevant subjects, such as China's adoption of an application-by-application model for examination and approval, and the hope that the examination and approval cycle of some cases involving a number of organizations will be more efficient, and that the codes of items on the control lists are not in line with the international common codes, which makes it difficult to make inquiries. There are still some problems in concrete judicial practice.

4.1.1. Problems with China's Export Control Tools

China's export control tools are export control licenses and export control license lists [7]. On August 9, 2023 Biden signed an executive order. Restrictions on U.S. investment in China in high-tech areas, including semiconductors, quantum information technology, and other technological elements. At present, China have made a serious socialization to the United States. It shows the need for China to continue to improve its legal system for export control. China's export control tools are relatively homogeneous and need to be further optimized and designed, and their rational and flexible use should be strengthened.

4.1.2. Issues of Regulatory Approaches to China's Export Controls

Due to the late introduction of China's export control law as well as the late development of export control work, the regulatory work is only divided into three parts: before, during and after the event. The weakest of these is the ex post facto monitoring component. Article 15 of the Export Control Act stipulates that there shall be no unauthorized alteration of the end-use of the items under application or their transfer to a third party. However, whether the relevant parties actually comply with the requirement at the time of application is prone to formalization based on the provisions alone, resulting in a reduction in the deterrent effect of the regulation. Therefore, the regulator needs to implement ex post facto supervision so as to ensure that the system fully utilizes its functions. In the light of the current situation in China, there is still a need for a gradual exploration of substantive work.

4.2. Suspension of the WTO Dispute Settlement Mechanism

On December 10, 2019, the WTO Appellate Body was officially shut down. Due to the existence of individual member states abusing the right of veto and obstructing the normal operation of the WTO dispute settlement mechanism. As a result, the current Appellate Body Chancellor is still in the vacant stage. In order to avoid this problem, at the present time, WTO member countries should

actively promote the revision of the relevant DSU regulations [8]. The early realization of the replacement of the Chancellor of Justice will revitalize the dispute settlement mechanism of the WTO [9].

4.3. Summary

At the end of the epidemic of the current century, economic globalization has encountered a countercurrent and the world has entered a new period of change. In the face of the United States maintaining its hegemonic position in the international community with the help of export controls and frequently imposing export control sanctions on China. It has made China face unprecedented challenges in global cooperation and procurement. In this regard, there is an urgent need for China to further improve its response system and enhance the rational construction of the legal system for export control. As a member of the WTO, it assists the WTO dispute settlement mechanism in playing its important role. Thus promoting world economic development.

5. China's Strategy to Cope with U.S. Export Controls under the WTO Framework

By opposing the export controls put in place by the United States, bolstering the development of the domestic legal system, and promoting international cooperation with the WTO dispute settlement mechanism, China can better protect the interests of China's enterprises and effectively address the challenge posed by U.S. export control within the context of the WTO. In order to defend its lawful rights and interests in international commerce, China will have strong backing from the creation and implementation of these measures. At the same time, it will raise China's status and influence in global commerce and aid to advance the legal growth of its involvement in it.

5.1. Formulation and Implementation of Targeted Countermeasure Strategies

In order to create clear, precise goals for the countermeasures strategy, China should carefully evaluate the policy aims and methods of US export controls.

First, to undermine the United States' export control policies. To reciprocate, China can put similar export control measures in place. For instance, place limitations or controls on the export of a few important American goods. This would not only lessen the negative effects of US export restrictions on China nation but also send a clear message to the US.

The second is to encourage the revision or repeal of American export control regulations through bilateral and global collaboration. In accordance with the WTO's rules, China can work together to exert pressure on the US to change or eliminate its irrational export control policies by working with other WTO members. By beginning a bilateral conversation system with the United States, China may also try a sensible approach to settling export control disagreements at the same time.

Thirdly, China should develop the capacity for lawful opposition and reinforce the framework of the domestic legal system. Enhance pertinent laws and rules to more precisely define and limit export control measures. In order to increase the effectiveness and caliber of legitimate resistance, China need also improve the coordination and collaboration of the relevant departments.

5.2. Improvement of the Domestic Legal Framework and Enhancement of Legal Resilience

To strengthen its legal defenses, China should implement a number of reforms to the domestic legal system.

First, make sure the pertinent laws and regulations have been reviewed and updated to reflect the WTO framework's principles. In order to prevent conflicts with the WTO's principles and

regulations, China must take this into full account while drafting and enforcing laws. Protect the interests of domestic industries while ensuring compliance and fairness.

Second, enhance cordial cooperation with the WTO dispute resolution process and defend China legal rights and interests by filing disputes. China can also actively take part in the dispute settlement mechanism's reform, encouraging it to function more equitably and effectively and giving member states greater dispute resolution options [10].

China should also promote the development of its domestic legal services system and raise the standard and competence of its legal professionals. This entails enhancing legal education and training and developing more individuals with legal knowledge of international trade. A comprehensive legal aid framework should be implemented at the same time to offer businesses affected by export control activities legal support and assistance.

5.3. Strengthen Co-operation with Other Member Countries

China's participation in the WTO enables it to work with other members more closely to address the issues caused by American export restrictions.

First, China need to speak out louder and with more force regarding US export regulation. Since acting alone has inherent limitations, member nations should establish a cooperative mechanism to collectively protect the WTO's authority and the free-trade ideal. China can create a stronger synergy through international cooperation and dialogue to collectively address the issues caused by US export prohibitions.

Second, enhancing cooperation with other member nations can allow for the exchange of knowledge and expertise. to discuss their individual experiences and learn about the methods used and results achieved by other nations in reacting to U.S. export restrictions to increase Chinese capacity to react, as well as to prevent errors and double-upwork and to increase effectiveness.

Third, strengthening ties with other member nations can help advance system reform. Although there are already a number of regulations governing trade behavior within the WTO framework, these regulations must be regularly adjusted and modified in light of the quick changes in the world economy and trade. Together, China can develop reform ideas that will support enhancing and modernizing the WTO system. By doing this, a more equitable, open, and mutually advantageous trading environment can be created inside the WTO framework, improving the circumstances for the economic growth of all nations.

Finally, in order to overcome various technological and skill problems, boosting cooperation with other member countries can also develop technical cooperation and talent training. To increase the caliber and competitiveness of the human resources in the export control sector, China can also train and recruit additional talent in the pertinent sectors.

6. Conclusion

This thesis examines China's legal approach to U.S. export restriction within the context of the WTO. This paper have reached the following conclusions after investigating the pertinent theoretical and practical difficulties.

First of all, China has actively pursued legal action against American export restrictions. China has protected its lawful rights and interests in response to the export restriction measures implemented by the United States by using the WTO dispute settlement procedure as well as independent countermeasures. This paper discover that China's legal strategy to preserve its own interests while simultaneously promoting the growth of international trade and the advancement of the rule of law, through a vast number of case studies and empirical study.

Second, China's response to the U.S. export control procedure strengthened both internal and external collaboration in addition to focusing on legal means. China actively seeks the assistance of other members in the WTO dispute resolution with the United States, forming the strength of multilateral cooperation. China has also built strategic partnerships with other nations in order to work together to overcome the problems caused by American export restrictions. This collaboration gives us more negotiating leverage on a legal level, as well as knowledge and expertise to respond to export controls together.

China has once more placed a strong emphasis on the union of law and policy when addressing American export restrictions. By enacting relevant laws and regulations, China has provided a concrete basis and guidance for responding to U.S. export controls. At the same time, China has also strengthened the adjustment and optimization of domestic policies to promote industrial upgrading and independent innovation. This integration of laws and policies provides a solid foundation for China's response to U.S. export control, and further enhances China's response capacity and competitiveness.

Finally, This paper present numerous research outlooks in response to the issues and difficulties with China's response to American export restriction. To effectively adapt to the dynamic changes in U.S. export control, China's legal and policy systems must first be strengthened. Second, in order to jointly explore coping mechanisms and enhance China's risk-resistant capacity, industrial collaboration and international cooperation must be strengthened. In order to adjust to the growth of the globalized economy and trade environment, it is also essential to thoroughly investigate the reform and enhancement of the international trade law system.

In conclusion, China's legal campaign against US export restrictions within the WTO framework has been successful. However, in the face of the continuous increase of international trade uncertainty, China still need to continue to explore and innovate, so as to provide a more solid and sustainable legal guarantee for the development of China's international trade.

Authors Contribution

All the authors contributed equally and their names were listed in alphabetical order.

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