On 10 June 2021, China passed the Anti-Foreign Sanctions Law (the “Law”) to counter US and EU sanctions against China. The Law provides a legal basis for Chinese government to countermeasure the extraterritorial effect of the US and EU laws. The Law takes effect on the date of its enactment.

Summary

The Law, as promulgated by the National People's Congress (NPC), establishes a coordination mechanism and authorizes the State Council and Ministries to establish countermeasures lists, apply counter-sanctions measures, and issue specific measures and regulations.

The Anti-Foreign Sanctions Law not only serves as an addition to countering the extraterritorial jurisdiction of the laws of US and EU on China, but also extends the extraterritorial jurisdiction of Chinese laws. Although there is still some room for the specific implementation of the Law, it does not affect its legislative intent. It provides for a general principle and legal basis for subsequent specific rules and regulations and preserves the opportunities to expand or narrow the interpretation for specific situations at a later date.

Background of the Anti-Foreign Sanctions Law

Since 2018, US-China relations have taken a sharp turn for the worse, with the United States placing Chinese government, officials, and companies on various restricted lists through export control-related laws and sanctions-related executive orders, including the Office of Foreign Assets Control (OFAC) Office of the Treasury Department’s Specially Designated Nationals List (SDN) and the recently enacted “CMIC” List, the Department of Commerce’s Bureau of Industrial Security (BIS)’s Entity List, and the Military End User List (MEU), etc.

As a way to respond, Ministry of Commerce of China (MOFCOM) first introduced the Regulation on Unreliable Entity List in September 2020, followed by Measures to Block the Improper Extraterritorial Application of Foreign Laws and Measures (the “Blocking Measures”) in January 2021. Moreover, China has sanctioned more than 80 foreign organizations and individuals since December 2019, mainly due to issues regarding Hong Kong, Uyghur and Taiwan, yet without specifying the scope of the sanctions and the consequences (the list is attached at the end of this Article). The Law will provide the legal basis for administrative regulations and measures that will be enacted before and after this time.

The Law Has a Higher Legal Status Than Blocking
Measures

The Law is passed by the National People’s Congress (NPC), and thus is a higher law in its legal status than the Blocking Measures passed by MOFCOM.

Just as the International Emergency Economic Powers Act (IEEPA) authorizes the US President to issue executive orders to sanction foreign countries’ governments, officials, and entities, the Anti-Foreign Sanctions Law authorizes the State Council and its Ministries to take counter-sanctions measures by establishing counter-sanctions lists, imposing restrictions on entry, freezing property, and restricting transactions with listed individuals and entities.

Not Only Countermeasures But Also Proactive Sanctions

The Law primarily emphasizes countermeasures, but also includes proactive sanctions.

Countermeasures Against Unilateral Foreign Sanctions

As the title speaks, the Law focuses on taking countermeasures when foreign countries take “discriminatory restrictive measures” against Chinese government, citizens or organizations \(^1\). The Law does not define ”discriminatory restrictive measures”, however, it is clear from the context that the purpose of the Law is to counter “foreign interference in China’s internal affairs”\(^2\). As the head of the Legal Affairs Committee of the Standing Committee of the National People's Congress explains, the Law emphasizes the word “anti” and it opposes the “foreign sanctions imposed on China by certain western countries and organizations under the guise of defending democracy and human rights.”\(^3\)

Thus, the Law will apply primarily to unilateral sanctions imposed by foreign governments on China's domestic politics and policies, such as the recent unilateral sanctions imposed by the US and EU on Uyghur issues.

Other Proactive Sanctions Included in the Catch-all Clause

In addition to countermeasures, Article 13 and 15 of the Law provide a catch-all clause that if a foreign country, organization or individual commits an act that endangers national security, China may implement direct sanctions in accordance with this Law and issue relevant implementation laws and regulations.

Applicable Countermeasures

Regarding the specific applicable measures, Article 3 establishes specific counter-sanctions lists, and Article 6 clearly provides for 3 countermeasures and a catch-all clause:

1. Denial of visa issuance, denial of entry, deregistration of visa or deportation;
2. Seizure, distraining or freezing of movable property, immovable property and other types of property within the territory of China;
3. Prohibiting or restricting the organizations or individuals within the territory of China from conducting relevant transactions, cooperation or other activities with the related foreign countries, organizations or individuals;
4. Other necessary measures.

In fact, the Ministry of Foreign Affairs used both entry bans and trade bans in its sanctions against the US and EU respectively in January and March of this year. However, these sanctions do not specify the manner and scope of
their implementation. For example, when the Ministry of Foreign Affairs announced sanctions against 10 EU persons and 4 institutions on March 22, 2021, it provided for entry ban against the sanctioned persons and their families, and a trade ban between the sanctioned institutions as well as their affiliates and China. The meaning and scope of “family members,” “affiliates,” and “transactions” were not explained, nor is it clarified whether the ban applies to foreign-invested enterprises and foreigners in China.

Here, while the Law classifies and clarifies the sanctions that can be taken, it still does not provide further clarifications on the specific manner and scope of implementation of countermeasures.

The State Council and Its Ministries Are Responsible for the Implementation

Although the Law does not yet designate a single Ministry responsible for implementation, the Law expressly authorizes "the Ministry of Foreign Affairs or other Ministries of the State Council" to establish, change, or cancel the lists and countermeasures. Moreover, it establishes a coordination mechanism for counter-sanctions to integrate and coordinate the efforts of State Council and its Ministries.

Therefore, this mechanism may coordinate the development of separate countermeasure lists or specific countermeasures for each Ministry based on the need. For example, Ministry of Foreign Affairs or Ministry of Public Security may handle entry bans, Ministry of Finance or Ministry of Justice may enforce the asset freezing, and MOFCOM may implement the trade bans.

Consequences of Violation

The Law requires that "organizations and individuals in China" should implement specific countermeasures and should not implement foreign discriminative restrictions. Failure to comply with countermeasures may result in administrative penalties, while the implementation of foreign restrictive measures will entitle the aggrieved party of the restrictive measures to bring a civil action in local courts.

The Law does not clearly define "organizations and individuals in China", possibly leaving the door open for specific countermeasures and regulations in the future and deciding whether to provide exceptions for foreign-invested enterprises in China and foreigners in China as needed.

Conclusion

The introduction of the Anti-Foreign Sanctions Law is only the beginning of China's establishment of its own legal system of extraterritorial jurisdiction. The application and implementation of the Law may serve as a practical test of its effectiveness and give rise to various specific implementation rules and measures. For both Chinese local companies and multinational entities, it is important to focus not only on the extraterritorial jurisdiction of laws in US and EU, but also on compliance issues under Chinese laws.

Appendix: Foreign organizations and individuals who were sanctioned by China

December 2019 on Hong Kong Issues

1. National Endowment for Democracy (NED)
2. American Association for Democracy in International Affairs (NDI)
3. American Institute for International Republican Studies (IRI)
4. Human Rights Watch (HRW)
5. Freedom House

**July 2020 on Uyghur Issues**

6. Marco Rubio (R-FL)
7. Ted Cruz (R-Texas)
8. Chris Smith (R-NJ)
9. Former Ambassador-at-Large for International Religious Freedom Brownback (R-CA)
10. Congressional-Executive Commission on China (CECC)

**July 2020 on Taiwan Issues**

11. Lockheed Martin

**August 2020 on Hong Kong Issues**

12. Missouri Senator Josh Hawley (R)
13. Arkansas Senator Tom Cotton (R) of
14. Pennsylvania Senator Pat Toomey (R)
15. Human Rights Watch Executive Chairman Kenneth Roth (D-CA)
16. Carl Gershman, President, National Endowment for Democracy
17. Derek Mitchell, President, American Association for Democracy in International Affairs
18. Daniel Twining, President of the American Institute for International Republican Studies
19. Michael J. Abramowitz, President, Freedom House

**October 2020 on Taiwan Issues**

20. Boeing Defense, Space & Security (Boeing)
21. Raytheon

**November 2020 on Hong Kong Issues**

22. John Knaus, Senior Director for Asian Affairs, National Endowment for Democracy (NED)
23. Manpreet Anand, Head of Asia Program, Democracy in International Affairs (NDI), Kelvin Sit, Program Director,
   Crystal Rosari, Head of Hong Kong Chapter

**January 2021 on Uyghur Issues**

24. 28 officials in the US during Trump's term

**March 2021 on Uyghur Issues**

25. 5 EU MEPs—Reinhard Butikofer, Michael Gahler, Raphaël Glucksmann, Ilhan Kyuchyuk, Miriam Lexmann
26. Dutch Member of Parliament Scherzma (Sjoerd Wiemer Sjoerdsma)
27. Samuel Cogolati, Member of the Belgian Parliament
28. Dovile Sakaliene, Member of the Lithuanian Parliament
29. German scholar Adrian Zenz
30. Björn Jerdén, a Swedish scholar
31. Political and Security Committee (PSC) of the Council of the European Union
32. European Parliament Sub-Committee on Human Rights
33. Mercator Center for Chinese Studies (MERICS), Germany
34. Alliance of Democracies AoD (Denmark)

**March 2021 on Uyghur Issues (US & Canada)**
35. March 2021 US Commission on International Religious Freedom (USCIRF) Gayle Manchin, Chair, Tony Perkins, Vice Chair
36. US House Foreign Affairs Committee Subcommittee on International Human Rights (Tom Lantos Human Rights Commission)
37. Canadian Federal Representative Michael David Chong (D-CA)

**March 2021 on Uyghur Issues**

38. Tom Tugendhat, Chairman of the UK Parliamentary Select Committee on Foreign Affairs
39. Iain Duncan Smith, former leader of the Conservative Party
40. Neil O’Brien, Conservative MP and co-founder of the China Research Group
41. David Alton, Member of the House of Lords (UK)
42. Conservative MP Tim Loughton
43. Nusrat Ghani, Conservative MP and member of the UK Parliament’s Business, Energy and Industrial Strategy Committee
44. Helena Kennedy, Labour Member of the House of Lords
45. Geoffrey Nice, Barrister and Chairman of the Uyghur Court in the UK
46. Joanne Nicola Smith Finley, Professor of Chinese at Newcastle University
47. China Research Group
49. Uyghur Tribunal (Independent Uyghur Tribunal)
50. Essex Court Chambers” (Essex Park Barristers and Solicitors)

**May 2021 on Religious Issues**

51. USCIRF Commissioner Johnnie Moore

1. Anti-Foreign Sanctions Law, art. 3.
3. The Head of the Legal Affairs Committee of the Standing Committee of the National People’s Congress Answers Reporters’ Questions on the Anti-Foreign Sanctions Law, available here.
10. https://world.huanqiu.com/article/40uXo98J3Fq
15. https://cn.reuters.com/article/china-mofa-us-religion-sanction-0526-idCNKCS2D70VY

**Your Key Contacts**