

Brief Introduction to the Anti-Foreign Sanctions Law

On June 10, 2021, the Anti-Foreign Sanctions Law of the People's Republic of China (the "Anti-Foreign Sanctions Law") was adopted by the 29th Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China, and signed and issued with immediate effect by presidential order of President Xi Jinping.

I. Legislative Purpose

According to the provisions of the Anti-foreign Sanctions Law and the press conference held by the Legislative Affairs Commission of the Standing Committee of the National People's Congress, the Anti-Foreign Sanctions Law is a law with the nature of proper self-defense by China. For example, Article 1 emphasizes that "it is enacted for the purpose of safeguarding the sovereignty, security and development interests of the State and protecting the legitimate rights and interests of citizens and organizations of China", and is for the purpose of countering and opposing the so-called "unilateral sanctions" imposed by foreign countries against China, safeguarding the rights and dignity of China, and protecting China's institutions and individuals from being suppressed and bullied by external forces.

II. Application of Countermeasures

(i) Circumstances

The Anti-Foreign Sanctions Law stipulates two circumstances under which countermeasures may be taken:

One is against "discriminatory restrictive measures". According to Article 3, where any foreign country, in violation of international laws and basic norms governing international relations, uses various excuses or pursuant to its own laws to contain and suppress China, adopts discriminatory and restrictive measures against Chinese citizens and organizations or interferes in China's internal affairs, China has the right to take corresponding countermeasures.

The other is activities endangering national sovereignty, security and development interests. According to Article 15, where it is necessary to take necessary countermeasures against any foreign state, organization or individual who commits, assists or supports the acts endangering the sovereignty, security and development interests of China, relevant measures shall be implemented with reference to this Law.

(ii) Object of Application

According to Articles 4 and 5 of the Anti-Foreign Sanctions Law, countermeasures are applicable to the following parties:

1. Parties involved in the development of discriminatory restrictive measures and put on the "Countermeasures List" issued by the "relevant departments" of the State Council. According to Articles 4, the relevant departments of the State Council may decide to include in the Countermeasures List the individuals and organizations that have directly or indirectly participated in the formulation, decision on or implementation of the above discriminatory restrictive measures; and
2. Relevant parties of the parties on the Countermeasures List. According to Articles 5, the relevant departments of the State Council may also decide to take countermeasures against the following individuals and organizations relevant to the parties on the Countermeasures List:
 - 1) Spouse and lineal relatives of the individuals on the Countermeasures List;
 - 2) Senior officers or ultimate controlling person of the organizations on the Countermeasures List;
 - 3) Organizations which such individuals on the Countermeasures List serving as senior officers; and
 - 4) Organizations which are actually controlled, established or operated by individuals or organizations on the Countermeasures List.

(iii) Decision Making Authority: the "relevant departments" of the State Council

In accordance with the abovementioned provisions, the "relevant departments" of the State Council has the power to decide on the parties to be included on the Countermeasures List. However, the Anti-Foreign Sanctions Law does not specify what the "relevant departments" of the State Council refer to. In addition, according to Article 9, "the determination, suspension, modification or cancellation of the Countermeasures List and the countermeasures shall be promulgated by orders of the Ministry of Foreign Affairs or other relevant departments of the State Council" with the Ministry of Foreign Affairs as the leading authority.

Thus, it is our understanding that there should be more than one department of the State Council having the decision-making authority on the Countermeasures List and whether to take countermeasures. They may include the Ministry of Commerce, the Ministry of Foreign Affairs and other authorities, which is also reflected in Article 6, according to which the relevant departments of the State Council may, based on their respective duties and functions, decide to take one or more of the countermeasures against the individuals and organizations on the Countermeasures List.

The law provides that the determination, suspension, modification and cancellation of the Countermeasures List and the countermeasures shall be promulgated by the order of the Ministry of Foreign Affairs or other relevant departments of the State Council. The Ministry of Foreign Affairs is particularly mentioned therein and it is foreseeable that the Ministry

of Foreign Affairs may be primarily responsible for promulgation of such list and measures in the future.

III. Countermeasures

(i) Types of countermeasures

According to Article 6, the relevant departments of the State Council may, based on their respective duties and functions, decide to take one or more of the following measures against the individuals and organizations on the Countermeasures List according to the actual situation:

- a. Denial of visa issuance, denial of entry, cancellation of visa or deportation;
- b. Seizure, distraintment or freezing of movable property, real estate property and other types of properties within the territory of China;
- c. Prohibiting or restricting the organizations or individuals within the territory of China from conducting transactions, cooperation or other activities with such individuals and organizations; and
- d. Other necessary measures.

(ii) Final decision

According to article 7, the decisions made by the relevant departments of the State Council on the Countermeasures List and countermeasures shall be final. Thus, there should be no review remedy, such as administrative reconsideration or appeal, for such individuals or organizations once the decision is made.

However, where the circumstances on which the countermeasures are based have changed, according to Article 8, the relevant departments of the State Council may suspend, modify or cancel the relevant countermeasures.

IV. Coordination Mechanism

According to Article 10, the State will establish a coordination mechanism for anti-foreign sanctions work to be in charge of the overall planning and coordination, and the relevant departments of the State Council shall strengthen coordination, cooperation and information sharing, and determine and implement the countermeasures measures according to their respective duties and functions.

It shows once again that the relevant departments of the State Council in charge of the anti-foreign sanctions work are not only one department but also a multi-departmental working mechanism, and it also indicates that the State Council and the relevant departments will further formulate relevant rules and regulations in the future to facilitate implementation of the Anti-Foreign Sanctions Law.

V. Obligations of Relevant Organizations and Individuals

The Anti-Foreign Sanctions Law also stipulates the obligations of relevant organizations

and individuals and the consequences of breach.

Firstly, “organizations and individuals within the territory of China” is obligated to implement the countermeasures adopted by the relevant authorities. According to Article 11, the organizations and individuals within the territory of China shall implement the countermeasures taken by the relevant departments of the State Council, otherwise, they may be subject to certain punishments/measures imposed by the relevant department, such as being restricted or prohibited from engaging in the relevant activities.

According to Article 14, where “any organization or individual” fails to implement or cooperate in implementing the countermeasures, they will be held accountable in accordance with the law. One way of interpretation is that this is for the implementation of China's countermeasures, and the term “any organization or individual” shall only refers to organizations and individuals “within the territory of China” .

Furthermore, according to Article 12, “no organization or individual” may implement or assist in implementing the discriminatory restrictive measures taken by any foreign state against Chinese citizens or organizations. Different from Article 11, such obligations are not clearly limited to “organizations and individuals within the territory of China” only, but more broadly stipulated as obligations of “any organization and individual” , and Article 12 further stipulates that where an organization or individual infringes upon the legitimate rights and interests of any citizen or organization of China, the Chinese citizen or organization may bring a lawsuit to the people's court in accordance with the law, seeking cessation of the infringement and compensation for the losses. In this regard, one interpretation suggests that it still refers only to organizations and individuals within the territory of China, but a broader interpretation suggests that it may also include organizations and individuals outside the territory of China, since that the consequences of their actions to implement or cooperate with foreign sanctions may directly affect China, and the Anti-Foreign Sanctions Law shall also apply, in which case the PRC citizens and organizations may have the right to sue in accordance with the law. With regards to the different interpretations, it is to be further clarified and tested by regulations and practice.

VI. Relationship with certain Existing Laws and Rules

Before the Anti-Foreign Sanctions Law, there have been certain provisions on countermeasures in China. For example:

- i. Article 48 of the Export Control Law of the People's Republic of China promulgated in October 2020 provides that “where any country or region harms the national security and interests of the People's Republic of China by abusing the export control measures, the People's Republic of China may take reciprocal measures against such country or region in light of the actual situations” ;
- ii. In September 2020, the Ministry of Commerce issued the Provisions on the “List of Unreliable Entities” , and established a system for the list of unreliable foreign entities,

according to which, relevant countermeasures may be taken against the following acts committed by foreign entities in the course of international economic and trade activities and related activities: (a) endangering the sovereignty, security and development interests of China; and (b) interrupting normal transactions with Chinese enterprises, other organizations or individuals in violation of normal market transaction principles, or taking discriminatory measures against Chinese enterprises, other organizations or individuals, which seriously harms the legitimate rights and interests of Chinese enterprises, other organizations or individuals; and

- iii. In January 2021, the Ministry of Commerce issued the Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures, which applies to “Secondary Sanction” , i.e. the extraterritorial application of foreign laws and measures in violation of international laws and basic norms governing international relations, which improperly prohibits or restricts Chinese citizen, legal person or other organization from conducting normal economic and trade activities and relevant activities with any third country (region) or its citizen, legal person or other organization. Such improper extraterritorial application of foreign laws and measures on China will be blocked.

In this regard, the Anti-Foreign Sanctions Law specifically provides for linkage and compatibility. According to Article 13, “for any act endangering the sovereignty, security and development interests of China, the relevant laws, administrative regulations and departmental rules may prescribe other necessary countermeasures in addition to the provisions of this Law” . Article 13 also leaves room for the formulation of other rule, regulations and countermeasures.

VII. Conclusion

The Anti-Foreign Sanctions Law lays the legal ground for China to adopt sanctions against sanctions by foreign countries, and provides a clear and broad legal basis for systematically establishing Countermeasures List and enforcing countermeasures in the future.

However, there are also some ambiguities in the Anti-Foreign Sanction Law. For example, it is unclear which departments are the “relevant departments” of the State Council determining the Countermeasures List and countermeasures, whether the “organizations and individuals” who are not allowed to implement or assist in implementing any foreign discriminatory restrictive measures include foreign organizations and individuals, the consequences of illegal acts by relevant organizations and individuals are to be clarified, and all of which are yet to be given further regulatory guidance.