

New Developments in Targeted Sanctions and China's Response

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Abstract: Targeted sanctions, as an important means of unilateral sanctions, cause great damage to the property of enterprises and citizens of the sanctioned countries. Targeted sanctions not only increase the insecurity between two countries, but also greatly hinder the development of cross-border trade. The successive introduction of China's Measures of Obstruction and Anti-Foreign Sanctions Law has to a certain extent alleviated the negative impact of targeted sanctions on the investment of foreign-related enterprises and citizens in China. However, the problems of anti-targeted sanctions such as the comprehensiveness of the legislation, the coordination of its application, and the procedural safeguards against targeted sanctions still exist. This paper starts from the legal path of China's response to targeted sanctions and combines the experience of foreign counter-sanctions. It analyzes the deficiencies in China's legal path to deal with U.S. targeted sanctions and puts forward countermeasures.

Keywords: Targeted Sanctions, Blocking Legislation, Anti-Foreign Sanctions Act.

1. New Trends in “Targeted Sanctions” in the context of the Russian-Ukrainian conflict

With the Crimean crisis in 2014, targeted sanctions have a wider coverage and a greater number of sanctions. 2022 The Office of Foreign Assets Control (hereinafter referred to as OFAC) under the U.S. Department of the Treasury took 100 sanctioning actions, involving a total of 82 countries and regions, and sanctioning 2,204 individuals and entities. More than 70% of them are related to Russia-related sanctions, and restrictions have been introduced on a number of fields and companies in Russia's financial, energy, and defense and military industries. And the number of sanctions is still climbing, the U.S. Treasury Department announced the latest sanctions show that the U.S. side will be on Russia and support Russia's 22 individuals and 83 entities to implement sanctions.

Today, targeted sanctions are taking on a more aggressive posture. The United States in this sanction practice used the SWIFT payment system as a sanction measure. The United States and other Western countries issued a joint statement on the 26th, will be part of the Russian banks excluded from the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment system, and the implementation of restrictive measures on the Central Bank of Russia, in order to prevent its allocation of international reserves to weaken the impact of sanctions.

The targeted sanctions are more targeted than before. Although the scope of the targeted sanctions is larger and the situation more intense, the United States and Western countries have paid more attention to the targeting and precision of the targeted sanctions, reserving a certain amount of space for exemptions from the relevant sanctions. In this targeted sanctions, there are more than a dozen exemption licenses involving humanitarian and medical assistance, but also exempted part of the business related to education, agriculture, etc., reflecting the U.S. intention to avoid implicating innocent people and harming the interests of themselves and their European allies. The United States and

Western countries in the joint statement announced the use of SWIFT sanctions at the same time emphasized that only “some” Russian banks to implement targeted sanctions, highlighting the United States for the “precision sanctions” control.

The West is unprecedentedly united. The EU's approach to targeted sanctions is the opposite of the indecisive attitude it displayed in 2014, demonstrating strong diplomatic resolve and making sacrifices in the process of implementing targeted sanctions. In less than a year the EU has reached hundreds of embargo clauses through ten rounds of sanctions.

The subject of sanctions is more diversified than before. In addition to the state, the current practice of targeted sanctions against Russia involves a number of multinational companies with international influence, which have been sanctioned by restricting some of their functions or withdrawing from the market. There are also citizen groups and certain important international organizations participating in the sanctions. This is rare in the history of U.S. foreign targeted sanctions. The above non-state actors participate in the sanctions through the act of “standing in line”, mainly in the hope of avoiding the sanctions as much as possible in the context of the implementation of targeted sanctions by the United States side, so as to achieve the purpose of reducing losses.

2. Analysis of the Impact of “Targeted Sanctions” on China

Impact of targeted sanctions on our entities. Entities subject to targeted sanctions may be subject to restrictions prohibiting the export of goods, technologies and services to the United States and restrictions prohibiting transactions in the United States, among other things. This will have a certain negative impact on the operations and development of these entities.⁴⁶ Huawei affiliates were included in the U.S. Bureau of Industry and Security's list of entities in 2019, and an additional 38 Huawei subsidiaries were included within that list in 2020. According to U.S. federal law, after Huawei and its subsidiaries are added to the Entity List, all U.S. companies must obtain prior authorization from the Bureau of Industry and Security when exporting, importing, or re-

exporting to Huawei, but the authorization is based on a presumption of denial policy as a standard of review, which means that the authorization will be denied in most cases, and the sanctions are not limited to the U.S. mainland. The scope of application is not limited to U.S.-based subjects, but is determined by the flow of Huawei products. As long as the product is of U.S. origin and the composition of the product meets regulatory requirements, it is subject to prior approval by the Bureau of Industry and Security (BIS), even if the product is owned by a foreign person. According to Huawei's 2022 annual earnings release, Huawei's global sales in 2022 declined by 68.7% year-over-year. 31 Chinese companies were placed on the unverified list in October 2022, and companies placed on the unverified list will be subject to certain export controls, and will have to obtain approval from the U.S. Department of Commerce and provide additional evidence of compliance if they import the items in question.

Impact of Targeted Sanctions on Our Citizens. Citizens who are subject to targeted sanctions may experience adverse effects such as bans or revocations of existing visas, restrictions on entry into the country, and freezing of assets. In October 2019, the State Counterterrorism Office (SCTO) clarified that the U.S. Department of Commerce (DOC) has placed the Public Security Department of the Xinjiang Uyghur Autonomous Region (XUAR) and its nearly 20 affiliates on its "Entity List" (EL). In March 2020 Republican Rep. Curtis and others call for the denial of visas, freezing of assets, and other sanctions against Chinese officials who "willfully concealed or misrepresented the international public health emergency" related to the XKP outbreak. In December 2022, the United States imposed sanctions on two Chinese officials for human rights issues in Tibet.

3. Analysis of the Existing Path and Effectiveness of China's Response to "Targeted Sanctions"

(1) Blocking legislation

China's narrow system of blocking laws that are truly used to respond to targeted sanctions is comprised of the Anti-Foreign Sanctions Law and the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws and Measures (hereinafter referred to as the "Blocking Measures").

In 2020, the Ministry of Commerce (MOFCOM) issued the Blocking Measures, which are primarily responsible for blocking the improper extraterritorial application of foreign laws and measures. It provides a legal basis for Chinese entities and citizens to respond to U.S. targeted sanctions. The Law is a typical blocking law legislation, which completely includes the basic system of a typical contemporary blocking law (Articles 7 and 9). The two working mechanisms of the Blocking Law are public enforcement represented by the issuance of injunctions and private law remedies represented by the introduction of recovery mechanisms. The private law remedies are carried out through civil litigation procedures, in which there are two modes of remedies, one is civil compensation for the violation of the law claimed by the party concerned, and the other is to allow Chinese entities or enterprises suffering from the extraterritorial misapplication of foreign laws and measures to sue the relevant parties in the domestic courts for compensation for their losses. Public enforcement revolves around the process of "timely reporting - assessment and confirmation - issuance of an injunction by

the competent authority - application for exemption". Chinese citizens, legal persons or other organizations encountering improper extraterritorial application of foreign laws and measures should report such cases within 30 days. The working mechanism of the Blocking Measures will review the foreign laws and measures, and if there are indeed cases of improper extraterritorial application, the Ministry of Commerce will issue relevant injunctions requiring the relevant parties to apply for exemptions. The MOFCOM will issue relevant injunctions requiring the relevant entities and citizens not to comply with the foreign laws and measures. The Measures provide that Chinese entities and citizens may apply for exemptions from the injunctions in order to prevent them from being caught in the awkward position of violating both Chinese and foreign laws.

The Measures are departmental regulations with a low legislative level, which will affect the effectiveness of the response to targeted sanctions. Article 9 of the Blocking Measures provides for two situations in which a party may request compensation for damages. The formulation of paragraphs 1 and 2 of the article already meets the formal requirements of the basis of claim in terms of the structure of the provision. However, the civil legal relationship regulated by the Blocking Measures is significantly different from the general civil legal relationship, and it is necessary to formulate a specialized basis of claim. However, the current legislative level of the Blocking Law is not able to accomplish this task. The EU Blocking Regulation, on the other hand, is formulated by the Council of the European Union, the most important decision-making body and legislature of the EU. Its legal status is higher than that of EU Directives and EU Decisions, which leaves enough space for designating its supporting laws and regulations. The content of the Blocking Scheme also needs to be improved. The Blocking Measures do not specify the competence of its working mechanism, the specific procedures and materials for applying for exemptions, or the level of the people's court accepting the case.

Both the Anti-Foreign Sanctions Law and the Provisions on the List of Unreliable Entities have both blocking and countermeasure functions. The blocking norms of the Anti-Foreign Sanctions Act are centralized in Article 12 of the Act. It makes clear that targeted sanctions imposed by the U.S. on Chinese entities and citizens are unlawful under Chinese law, and grants Chinese entities and citizens the right to file civil lawsuits when they are subjected to sanctions. Article 2(2) of the Unreliable Entity List Provisions is typical of retaliatory sanction legislation and helps to block the application of discriminatory measures by unreliable entities against Chinese entities and citizens.

(2) Reciprocal Countermeasures

1. List of Unreliable Entities

In May 2019, the Ministry of Commerce stated that China would establish a list of unreliable entities. China began exploring the establishment of a mechanism for using "reciprocal countermeasures" to respond to targeted sanctions. In September of the same year, the Ministry of Commerce issued the Provisions on the List of Unreliable Entities, which set out clear provisions on the working mechanism of the Unreliable Entity List System (Articles 4-8), the penalties for being included in the list (Article 10), and the criteria for inclusion and removal (Articles 12 and 13). The introduction of this provision represents the beginning of China's consolidation of norms for responding to targeted sanctions. 2023 China's Ministry of Commerce (MOFCOM)

published on its website on February 16, 2023, a decision to include companies such as Lockheed Martin, which are involved in arms sales to Taiwan, in the List of Unreliable Entities, based on the relevant provisions of Articles 2, 8, and 10 of the Provisions on the List of Unreliable Entities.

The List of Unreliable Entities is similarly plagued by a low legislative hierarchy in the course of practice. China's Administrative Compulsory Law stipulates that administrative coercive measures such as the seizure of premises, facilities or property are reserved for the law, and only the law can set up these administrative coercive measures. However, the List of Unreliable Entities is only a departmental regulation, and the aforementioned administrative coercive measures cannot be used in response to targeted sanctions.

2. Anti-Foreign Sanctions Act

After the occurrence of targeted sanctions, the target country has the sovereign right to counteract them in international law, and the implementation of countermeasures is based on the domestic laws of each country. In 2021, China promulgated the Law of the People's Republic of China on Anti-Foreign Sanctions, which provides a strong legal basis for Chinese entities and citizens to respond to targeted sanctions, and for the implementation of the Provisions on the List of Unreliable Entities and the Measures for Blocking. The Law clearly provides for countermeasures to be taken by extraterritorial individuals or entities that may impose discriminatory measures against Chinese entities or citizens. The reciprocal countermeasures of the Anti-Foreign Sanctions Law are concentrated in Articles 4-6. Article 5 specifies the expanded scope of the countermeasures list, which provides for a total of four categories of sanctions, including the extension of sanctions to the spouses and immediate family members of individuals on the countermeasures list. Article 6 specifies three categories of countermeasures, including denial of visas, denial of entry into the country, cancellation of visas or expulsion from the country. In Article 6(4), there is a provision that allows for the adoption of "other necessary measures." In December 2021, the U.S. sanctioned four Chinese nationals on the basis of "human rights in Xinjiang," and China reciprocated by imposing restrictions on entry and freezing the residence of four U.S. citizens in China, in accordance with the Anti-Foreign Sanctions Act (AFSA). In December 2021, the U.S. sanctioned four Chinese citizens for "human rights in Xinjiang".

There are problems with the procedural safeguards in the Anti-Foreign Sanctions Act for responding to targeted sanctions. Provisions on countermeasure procedures are sketchy, and the Law contains more authorizing than operational provisions. As can be seen from Article 7 of the Law, decisions made by the relevant departments of the State Council in accordance with the Law are final. Moreover, there are no clear provisions on the reasons for sanctions and the notification of sanction decisions. This means that the parties are not able to make a meaningful expression of the decision on sanctions. Referring to Article 71 of China's Administrative Procedure Law, Article 7 of the Anti-Foreign Sanctions Law excludes the parties from administrative litigation and administrative reconsideration of the sanction decision. In practice, there is a risk that the relevant authorities may intentionally invoke the Anti-Foreign Sanctions Law in order to avoid administrative litigation or administrative reconsideration. As national-level legislation,

procedural safeguards should be strengthened, procedural disputes should be minimized, and the review of the legality of countermeasures procedures should be improved.

The Anti-Foreign Sanctions Law is harmonized with other laws and is poorly supported. From the above, enterprises or citizens in China enjoy the right to file civil lawsuits for recovery when they are subjected to targeted sanctions. Article 272 of the current Civil Procedure Law stipulates the jurisdiction of the court. If there is a case where an organization or individual outside China imposes or assists in the imposition of targeted sanctions on an entity or individual in China, which satisfies Article 12 of the Anti-Foreign Sanctions Law, but does not satisfy Article 272 of the Civil Procedure Law, the courts in China are unable to accept such a case. In addition, when applying the Administrative Compulsory Law to carry out anti-targeted sanctions, there may also be cases where administrative coercive measures cannot be used because the subject of the sanction is not a foreign entity or citizen in China. In the case of foreign export control, there is no doubt about the application of our Export Control Law, but in the case of export control based on response to targeted sanctions, the order of application of the two laws or the choice of provisions may be in dispute.

4. China's Response to U.S. "Targeted Sanctions": The Way to Improvement

(1) Improving the content of legislation and upgrading the level of legislation

Improving the content of the legislation. How should "discriminatory restrictive measures" and "assistance in the implementation of counter-sanctions" be defined in the Anti-Foreign Sanctions Act? To avoid ambiguity, the provisions should be refined as soon as possible. The provisions of the current Unreliable Entity List issued by the Ministry of Commerce are vague, and the lack of transparency may increase the uncertainty of the application of the measures. Its substantive and procedural provisions should be improved. As for the substantive provisions, the criteria for inclusion in the List of Unreliable Entities, specific countermeasures, and remedial measures for entities included in the List should be improved. With regard to the procedural provisions, it should be made clear that the activation of the relief mechanism is an important safeguard for the protection of the legitimate interests of entities or citizens in China, and that the conditions for activation of the list, the method of investigation, the notification of the results and other procedural work should be improved.

As mentioned above, the implementation of the List of Unreliable Entities requires the cooperation of several administrative departments, but due to its low legislative level, it is difficult to ask other departments for cooperation. The Blocking Measures provide for a basic litigation system, but it is doubtful whether the Measures can be used as a basis for adjudication of lawsuits filed with the People's Courts by entities or citizens who have been subjected to targeted sanctions in China on the basis of the Measures. Under China's existing legal system, only by upgrading the legislative level and transforming the two administrative regulations into laws enacted by the National People's Congress, followed by the State Council's issuance of implementation procedures and measures on issues related to national sovereignty, trade and commerce, and diplomacy,

can the Measures better utilize their effectiveness to help entities and citizens of China to deal with targeted sanctions.

(2) Strengthening procedural safeguards in response to targeted sanctions

1. Establishment of a timely reporting system

The reporting obligation is mandatory in the Blocking Measures, but the manner of reporting needs to be further clarified. China can refer to the EU's notification system for sanctioned subjects - EU - member states to establish a tripartite reporting system for the transmission of sanctions information among the government, enterprises and citizens of China on the basis of the EU's notification system. The system should increase the subject of the report channel, the subject of sanctions reported by the sanctions information directly to the government level, the government to receive the sanctions information for integration, organization of research and judgment, and effective national resources and sanctions on the sanctions of the country to play the game, to make the best protection of the legitimate interests of domestic entities and citizens of the response measures. The cooperation of the three main parties in building a timely reporting system will help to safeguard the long-term interests of enterprises and citizens in China.

2. Enhancing legislative review of targeted sanctions in the process

the Anti-Foreign Sanctions Act decision to respond to targeted sanctions is "certain finality", which is not the first time in national security, but such a form of the subject of sanctions directly deprived of the right of redress and the right to appeal. The measures provided for in the anti-foreign sanctions law can be devastating to the enterprise or even the industry, so the relevant legal provisions should be formulated in a prudent manner, considering whether they are in line with the spirit of international law, whether they are justified, and whether they are contrary to the content of domestic law. From the perspective of enhancing the legitimacy of the response to the targeted sanctions regime, it is very necessary to give the sanctioned subject appropriate relief channels and procedural safeguards under the domestic law mechanism. The procedures for the implementation of specific systems, including the exemption system and the reporting system in the working mechanism of the Blocking Measures, should be improved as soon as possible.

(3) Continuously optimizing the legal system for dealing with targeted sanctions

At present, China's legal system for countering targeted sanctions has basically been completed. However, there is still room for further improvement in practice, so that it can better safeguard national interests and become a sharp blade to help block U.S. targeted sanctions. China's Anti-Foreign Sanctions Law is closely linked to other laws and requires the cooperation of many laws to maximize its effect. Moreover, the measures in this law to deal with targeted sanctions involve trade and commerce, insurance, securities and other fields, and also need to cooperate with criminal law, civil law and other legal departments. Therefore, it is necessary to solve the problem of coordination between the Anti-Foreign Sanctions Law and other laws. For example, to clarify the relationship between the Anti-Foreign Sanctions Law and other laws and regulations, and to solve the problem of the sequential application of the Anti-Foreign Sanctions Law and

the Export Control Law mentioned in this paper. The emergence of a coordinating body can resolve conflicts between sectoral laws in terms of substantive provisions, while in terms of procedures, it can effectively resolve the inefficiency caused by the fragmentation of institutions and the conflict of relevant policies.

5. Conclusion

In conclusion, if our country wants to deal with the targeted sanctions of the United States fundamentally, the key is to protect the legitimate interests of our entities and citizens and to improve the comprehensive national strength. Countermeasures against improper sanctions against foreign countries, from the national level is a "conflict of laws" or even "legal war". In terms of specific legal countermeasures, based on China's national conditions, we should formulate and improve the relevant laws, and make the legislation complementary, revise and formulate other relevant laws and regulations in a timely manner, so as to build a complete foreign-related legal system. In addition, it is also necessary for the government and enterprises to work together to improve the level of corporate compliance in order to make Chinese enterprises invincible in international competition.

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