The Impact of the Extraterritorial Application of American Law on China and the Response to it

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Abstract. The extraterritorial application of American law has a long history of development, which has developed from the original firm territorialism to the " effect principle". Today, under the banner of the "America First" principle, the U.S. continues to expand the range of the extraterritorial application of its laws by expanding the "connection point", to achieve its political objectives, putting on a"legitimacy" cloak. After continuous development, it has been characterized by legal hegemony, extensive connection points, systematic operation, the politicization of applicable objects, and low predictability. The improper extraterritorial application of American law has caused many adverse effects on China, and China has actively responded to them through national legislation, regional cooperation, and enterprise compliance and legal remedy. However, these measures are still insufficient to eliminate all the adverse effects and to safeguard the legitimate rights and interests of our country. Therefore, China should also further improve it by formulating and revising relevant laws and regulations, improving working mechanisms, setting up compensation mechanisms and strengthening foreign-related rule of law talents, making full use of international and domestic laws to effectively curb the improper extraterritorial application of American law, and protect China's overseas interests.

Keywords: Extraterritorial application of American law；Long-arm jurisdiction；Negative impacts；Counter measures.

1. Introduction

In 2019, President Xi Jinping pointed out that we should accelerate the construction of the legal system for the extraterritorial application of our laws at the second meeting of the Central Committee for Comprehensive Rule of Law. This indicates that the Party and the state have begun to attach great importance to the construction of a system for the extraterritorial application of domestic laws.

The extraterritorial application of domestic law refers to the process in which domestic law applies to persons, objects, or actions located or occurring outside the scope of domestic jurisdiction[1].Extraterritorial application and extraterritorial jurisdiction are closely related in practice, and the two can be causal. The extraterritorial application of domestic law is basically the result of a country's domestic legislation, law enforcement and justice. When it violates a country's international obligations and international law, it belongs to improper extraterritorial application and constitutes international illegality. The extraterritorial application of American laws has a long history, and has formed a complete legal system and operational application system. In recent years, the U.S. has continuously provoked Sino-U.S. economic and trade frictions, held high the banner of unilateralism and "America First", and repeatedly imposed sanctions on China through legal weapons such as improper extraterritorial application of its laws. Especially after the Trump Administration came to power, the U.S. has normalized the use of unilateral economic sanctions, which has caused many adverse effects on countries around the world. In order to eliminate the adverse effects , we should analyze the existing shortcomings and difficulties on the basis of the legislative, regional cooperation and enterprise compliance measures that China has taken, improve the legal system for the extraterritorial application of Chinese laws, enhance the ability to respond to the improper extraterritorial application of foreign laws, and effectively safeguard the legitimate rights and interests of China.

2. General Issues Concerning the Extraterritorial Application of American Law

2.1 Historical Development of Extraterritorial Application of American Law

The extraterritorial application of American law has gone through three different stages : the period of strict territorialism, the period of transformation from strictness to the "effect principle", and the period of expansion since the 21st century.

From the beginning of the founding of the U.S. to the 19th century, in order to consolidate its federal stability, the U.S. firmly adhered to the territorialist position and insisted that the validity of law stopped at the geographical border and did not have extraterritorial effect. The Pennoyer v. Neff case of 1877, which took the principle of territorial jurisdiction as the basis for the court's jurisdiction over persons, is a classical interpretation of American legal territorialism. The Federal Supreme Court finally stated in its judgment : "When a case is directed against an individual only, service by public notice to a non-resident is invalid....... No state may directly exercise jurisdiction over an individual or property outside its jurisdiction.[2]"

With the change of the national conditions of the U.S., the negative results of the territorialist position and the multiple effects of the "lotus" judgment, the strict territorialist position began to shake. At the beginning of World War I, the U.S. issued the Trade with the enemy Law, and it is the first time American laws broke through the national boundaries, showing a trend of extraterritorial effect. The subsequent "Bowerman Case", , "Blackmer v.United States" and other judgments appeared contrary to the earlier "Banana Company v. Fruit United Company" judgments. The attitude of the U.S. courts reversed in "United States v. Aluminum Co. of America", in which the extraterritorial application of American law was first established.

After entering the 21st century, the "effect principle" has been recognized as the criterion for judging the extraterritorial application effect of American law and has become one of the basic principles of it. However, in order to further meet its own needs, the U.S. has promulgated more and more laws and regulations with extraterritorial effects, which have gradually expanded from the original commercial field to almost all fields such as criminal litigation, anti-corruption, export control and anti-monopoly. For example, the U.S. extended the extraterritorial application of laws through protective jurisdiction, and promulgated the Iran Nuclear Non-proliferation Law to impose sanctions on countries that assist Iran in developing nuclear weapons on the grounds that they infringe upon its national interests. As another example, the Iran Comprehensive Sanctions, Accountability and Divestment Law expands the definition of "equipment and servers"[3]. The U.S. has also made full use of general jurisdiction to expand the extraterritorial application of its laws, such as the enactment of the Global Magnitsky Human Rights Accountability Law to apply its domestic laws outside its own territory.

2.2 Characteristics of extraterritorial application of American law

2.2.1 Legal Hegemony

In the process of hegemony abroad, the U.S. has launched a "legal war", created topics and grasped the right to speak through various professional committees to promote the formulation of laws, build a "complete" legal system for extraterritorial application, and make its hegemonic acts "legitimate" in form. It often claims that it has obtained prior authorization or approval from its domestic legislature or administrative organ in advance ,so as to make laws a tool to assist it in leading global governance and be alienated as a "trap" to disintegrate the entities of other countries: The Patriot Bill, the National Emergency Law, the Overseas Anti-corruption Law, the Helms Burton Law, the Global Magnetsky Human Rights Accountability Law and other core laws have jointly built a complete system of extraterritorial application of laws in the fields of politics, military, economy and trade, and export control[4].

Its hegemony is mainly embodied in that as long as a foreign entity has a "minimum connection" with it., it can find a legal basis in the domestic laws to impose sanctions and strikes on the entities.

At present, the U.S. has an absolute dominant position in the world in terms of economy, finance and technology, and most countries rely on it.Under the influence of many factors, many entities around the world have become the objects of sanctions of it , and have to accept the enforcement. For example, as long as foreign entities have connections with the U.S., it can then invoke FCPA to prosecute enterprises that the government considers to have committed corrupt acts, and FCPA now has become a "weapon" to combat non-cooperative enterprises in the name of anti-corruption.

The U.S. has also created formal legality for the extraterritorial application through a large number of treaties on inernational judicial assistance. International judicial assistance and cooperation are now accepted and recognized by all countries and are widely used in cross-border evidence collection. However, the U.S. has continuously expanded the range of extraterritorial application through international judicial assistance and cooperation, making international judicial assistance an "umbrella". In March 2015, the U.S. accused seven senior Fifa officials of accepting bribes through the Bank of America to request Switzerland to arrest them and to submit extradition requests in accordance with extradition treaties; In December 2018, Canada arrested Meng Wanzhou at the request of the U.S.;In August of 2019, the U.S. requested Italy to arrest Russian officials[5].Practice has proved that the U.S., with the help of a large number of treaties on inernational judicial assistance, has put its illegal acts under the cloak of "legality", so that the concept of "hegemonism" can prevail in the international community.

To sum up, the complete legal system of the U.S. provides legal and policy support for safeguarding the global hegemony of the U.S., and the extraterritorial application of American laws has a strong legal hegemony.

2.2.2 Universality of Connection Points

Subject matter jurisdiction, nationality jurisdiction, territorial jurisdiction, protective jurisdiction and general jurisdiction jointly constitute the basis of extraterritorial application of domestic laws, and their main connection points become the reference for a country to claim the extraterritorial application of its domestic laws. For its own political purposes, the U.S. has continuously expanded its connection points, laying the foundation for the "extensive" improper extraterritorial application of American law.

As far as nationality jurisdiction is concerned, the U.S. tends to interpret the connection points of nationality jurisdiction from a wider perspective. For example, the U.S. extended the "nationality" connection point to “goods and technology” under the Export Administration Act of 1969 and a series of export control regulations, in order to prohibit any entity from exporting goods and technology originating from the U.S. to the sanctioned country.Territorial jurisdiction emphasizes the connection between the controlled object and its territory, which is similar to the “nationality” connection point . The U.S. is more broadly defining the impact of overseas acts on its own country, for example, it is considered that the use of US dollars has objectively affected it and conforms to the "effect principle", so it will be regarded as the connection point ; Another example is the use of American telecommunications systems or commercial instruments for communication and payment is considered as connection points in the FCPA. However, the use of the US dollar as well as the telecommunications and payment system in today's international business is extremely universal, which undoubtedly gives the U.S. wider jurisdiction. The U.S. has also often used "national security" as a connection point, such as by issuing the Iran Nuclear Nonproliferation Law to impose large-scale secondary sanctions； imposing sanctions on China's military industry, communications and other high-tech fields; restricting Huawei from participating in the construction of 5G networks, etc. Besides, the U.S. has taken "human rights violations" as the connection point through the formulation of the Global Magnitsky Human Rights Accountability Law, the Tibet Policy and Support Bill 2020, the Hong Kong Democratic Human Rights Bill, and the Uygur Human Rights Policy Law to exercise "general jurisdiction" over "human rights violations" in any region of the world.

Thus we can see that the extraterritorial application of American laws has shown obvious universality of connection points.

2.2.3 Operating Systematically

The U.S. has a strict operating system in the process of imposing sanctions. The Congress and the President, as the decision-making level, formulate relevant laws, and the President has the right to issue administrative orders imposing sanctions on specific objects; The Department of State , the Ministry of Commerce, the Ministry of Finance, the Ministry of Justice and the Ministry of Defense constitute the management to realize the management and operation : the Ministry of Finance, the Ministry of Justice and the Ministry of Commerce are responsible for investigation , the National Security Administration is responsible for providing intelligence support for the investigation , and some enterprises usually provide relevant intelligence clues under the pressure of the U.S.. The Office of Foreign Assets Control (OFAC) has a strong and effective sanction network under a strict decision-making, management and enforcement system, which provides a strong institutional support for the ultimate realization of the extraterritorial application of American law[6].

2.2.4 Politicization of Applicable Objects

At the stage, the extraterritorial application of American domestic laws and the imposition of sanctions on foreign entities are mostly related to politically sensitive countries and are obviously political. And the targets of sanctions are not only limited to countries in geopolitical conflicts, but also extended to their allies. According to the sanctioned entities and their sanctioned items published by the Department of Finance, the sanctioned items and entities in the mainland of China mainly involve the American sanctions against North Korea and Iran, and about 70% of the sanctioned entities are subject to sanctions due to their transactions with key objects. In its 2017 National Security Strategy Report, the U.S. defined China as a strategic competitor. In order to restrict the development of China's high-tech, the U.S. has targeted Huawei, ZTE and other enterprises as sanctions, showing obvious political tendencies.

2.2.5 Low Predictability

The extraterritorial application of American law has formed a relatively complete and huge system. However, the system is complex, resulting in insufficient consistency and low predictability. There have been differences in the interpretation of the law in the U.S.. In judicial practice, with regard to the extraterritorial application of the same legislation, judges tend to use different methods for legal interpretation, which usually leads to different judgments. In the case of Morrison v. National Bank of Australia, the Supreme Court adopted the method of text interpretation, but the Second Circuit Court and other lower courts adopted the method of purpose interpretation.

In addition, courts usually balance their interests in the process of extraterritorial application . The Restatement of the Foreign Relations Law (Fourth) of the U.S. reflects the balance between the interests. which lowers the predictability.

Thirdly, law enforcement agencies in the U.S. can "flexibly" choose the applicable law in the course of law enforcement. For example, FCPA provides a precise definition of extraterritorial acts under anti-bribery jurisdiction, but does not mention the range of extraterritorial application of accounting clauses. So in the process of enforcement, departments often graft accounting clauses and bribery clauses. According to statistics, more than half of the enforcement decisions made by authorities against non-U.S. companies are entirely based on accounting terms.

To sum up, The above three aspects jointly cause the low predictability of the extraterritorial application of the American law[7].

3. Adverse Effects of the Extraterritorial Application of American Law on China

3.1 Infringement upon China's National Sovereignty

The Principle of Sovereign Equality of States and Non-intervention into Other Coun-try's Internal Affairs derived therefrom are established as the basic principles of international law by authoritative international legal documents such as the Charter of the United Nations and the Declaration on Principles of International Law. It is interna- tionally mandatory and any State act shall follow it.

First of all, in Xinjiang Cotton Incident,the U.S. forces relevant enterprises to abandon free trade with Xinjiang cotton, which violates Non-intervention into Other Country's Internal Affairs. Non-intervention into Other Country's Internal Affairs was interpreted by the International Court of Justice in the Nicaraguan case of 1986, that is, no State or group of States may interfere in the internal or foreign affairs of other States in any way, and those matters that cannot be interfered with shall be affairs that the State may decide on its own in accordance with its sovereignty[8]. On the analysis of the Xinjiang Cotton Incident, the U.S. forced relevant enterprises to abandon their commercial contacts with Xinjiang cotton by withholding orders, and put its domestic laws above the free trade between Xinjiang and relevant enterprises.The essence is that the U.S. implements unilateral economic sanctions against Xinjiang cotton in accordance with its domestic laws, and realizes "Controlling China with Xinjiang" under the guise of "human rights". Its acts seriously damage the interests of China, violate Non-intervention into Other Coun-try's Internal Affairs, and do not have legality[9].

Secondly, the secondary sanction repeatedly used by the U.S. violates the Principle of Sovereign Equality of States and Non-intervention into Other Country's Internal Affairs. The Department of Justice sues and requests extradition of Meng Wanzhou for violating the transaction and export control ban against Iran under the International Economic Emergency Powers Act, which is secondary sanction;For the purpose of implementing sanctions against Iran, the Treasury Department has declared that the sanctions imposed on COSCO Shipping Chinese companies and individuals for "intentionally transferring oil from Iran in violation of Washington's sanctions ban on Iran" are also secondary sanctions.In 1996, the General Assembly adopted resolution 51/22 to explicitly deny the legality of secondary sanctions. In 1998, the General Assembly again adopted resolution 53/10 to emphasize that economic pressure on developing countries violates the principle of peaceful coexistence[10].Relying on its economic dominance, the U.S. forces the entities of third countries to stop economic and trade exchanges with the countries subject to sanctions through secondary sanctions, which obviously violates the Principle of Sovereign Equality of States and Non-intervention into Other Coun-try's Internal Affairs.

Thirdly, the U.S. infringes upon China's judicial sovereignty and violates the Principle of Sovereign Equality of States. The investigation of criminal cases belongs to the exercise of judicial sovereignty by States and is an essential part of the sovereignty of State. A foreign state must entrust the statutory organ of the requested state to investigate and collect evidence in criminal cases in accordance with the domestic law of the requested state.In the case of ordering Chinese banks to provide customer information, the U.S. bypassed the Agreement between the Government of the United States and the Government of the People's Republic of China on Judicial Assistance in Criminal Matters (Sino-U.S. Agreement) signed by the two countries in 2000 and directly forced the Chinese banks to provide relevant transaction information as evidence, which is inconsistent with the Sino-U.S. Agreement, seriously infringes upon China's sovereignty and violates the Principle of Sovereign Equality of States.

3.2 Curbing the Development of China's High-tech

The U.S. uses its leading position in the framework of most science and technology fields, as well as its domestic export control laws and regulations, such as the Export Administration

Regulations and the Economic Sanctions Regulations, to form a combined punch in conjunction with the Entity List（EL）and the "301 clause", so as to cut off the encirclement and suppress China's high-tech. Since 2018, the U.S. has often used the excuse of "national security" to swing sticks of sanctions to China’s high-tech enterprises such as Huawei, iFLYTEK and Dajiang, so as to curb the development of China's high-tech and realize the American scientific and technological hegemony. For example, the essence of the Huawei incident is the suppression of Huawei technology. The technology,chip and software restrictions imposed on Huawei seriously perplex its core business, and the "chip shortage" directly leaded to the overall sale of Honor business ; At the same time, the U.S., through the "Clean Network" Plan, restricts Huawei's participation in the construction of 5G networks on the grounds of “national security”, and attempts to establish a 5G infrastructure network without China.

The 301 Report points out that the unilateral sanctions imposed by the U.S. on China at the present are concentrated in potential fields such as electronics and the Internet. As of July 17, 2023, there have been 413 Chinese entities listed on SDN List, and more than 2000 Chinese entities listed in EL , which covers many high-tech fields such as military industry, communications, shipping and transportation.In addition, among the 31 Chinese entities added to the export control list by the Department of Commerce on June 12, 2023, 17 science and technology companies are mainly involved in high-tech fields such as aviation technology, ship equipment and materials[11]. However, enterprises listed in EL are very likely to be removed from the global advanced supply chain, thus triggering the deconstruction of the supply chain.

Behind the technical disputes is the game of national competitiveness. The U.S. intends to impose sanctions on Chinese high-tech enterprises by improper extraterritorial application of its domestic laws to curb China's strategic competitiveness in the field of advanced technology and affect the layout of "Made in China 2025".

3.3 Difficulty in safeguarding the legitimate rights and interests of Chinese enterprises, resulting in major economic damage

In recent years, in the process of the extraterritorial application of American laws, Chinese enterprises have been fear of the public opinion and lawsuits. In order to protect overseas interests, they have been forced to "accept" and often plead guilty , and their legitimate rights and interests often suffer major economic damage.

Under the high pressure, the legitimate rights and interests of Chinese enterprises are difficult to protect. After the Ameriacn law enforcement agencies investigating , the enterprises usually reach three different agreements with enterprises: non-prosecution agreement, deferred prosecution agreement and plea bargaining. The system gives enormous powers to law enforcement agencies and prosecutors. In practice, the enterprises usually choose to obey the Ameircan law enforcement agencies and plead guilty to get rid of the burden of litigation. According to statistics, most cases do not enter the proceedings(about 95% of federal cases choose to plead guilty and copromise)[12], so the respondent is difficult to obtain due process protection. For ZTE Incident, like most enterprises, ZTE is forced to plead guilty under pressure. As the case has not entered judicial proceedings, the due process protection that ZTE should enjoy is impossible.For another example, Meng Wanzhou finally signed a deferred prosecution agreement with the Department of Justice, which recognizes several facts, but it will still have a lot of "potential adverse effects" on Huawei, which is still in the "incubation period" of persecution, and the protection of legitimate rights and interests is still "unknown".

The improper extraterritorial application of American law has caused heavy economic losses to Chinese enterprises. During the ZTE Incident, ZTE was forced to reach an unequal reconciliation agreement and pay a huge fine, thus seriously damaging its "vitality". According to the annual report of ZTE, the operating profit margin and sales profit margin in 2017 are positive, and the product profitability is stable. However, since the economic sanctions imposed on ZTE in 2018, all its profit margin indicators have been negative, with losses exceeding 5.3 billion yuan[13]. In

addition, according to the annual report of Huawei, after the attack of the U.S., in 2022, the net profit of Huawei fell 68.7%, the cash flew from operating activities fell 70.2% , and the net cash fell 26.9% year on year [14].

3.4 Chinese enterprises being in a dilemma and having compliance problems

Frederick Pierucci, vice president of international sales of ALSTOM, pointed out in his book "American trap" that the U.S. uses its domestic law to disintegrate the competitive enterprises of other countries, and American laws have become the weapon for economic war and the "legal trap" [15].In recent years, in order to enhance the effectiveness of "long-arm jurisdiction", the U.S. has often used primary and secondary sanctions in combination, which results in low predictability. It is hard for Chinese enterprises to assess the potential impact and triggering possibility, and prepare relief measures in advance,thus having high compliance difficulties.

In addition, in the process of compliance, Chinese enterprises often fall into the "dilemma" of either abiding by American laws and accepting high penalties, or abiding by Chinese laws and losing overseas markets. In the case of ordering Chinese banks to provide customer information, the Confidentiality Law and the Archives Law of China clearly stipulate that it is not allowed to directly provide customer confidential archives to overseas regulatory authorities.However, faced with compulsory summons and huge fines, Chinese banks chose to abide by the American laws while violating Chinese laws . Similarly, in the case of the Huawei List and the Meng Wanzhou Incident, the Honkong and Shanghai Bank Corporaton was also forced to provide the Ministry of Justice with confidential information of Huawei.

3.5 Disrupting the International Order and Affecting the Construction of the "Belt and Road"

At the 75th anniversary summit of the United Nations，President Xi Jinping pointed out" Firmly commit to uphold the international system with the United Nations at its core, the international order based on international law, and the basic norms of international relations based on the purposes and principles of the United Nations Charter[16]." However, in order to achieve its own interests, the U.S. has been carrying out long-term improper extraterritorial application of its own laws, damaging the rights and interests of other countries and deviating from the "international order based on international law". As for the sanctions against Iran repeatedly involved in the aforementioned cases, the UN Security Council unanimously adopted the Iran Nuclear Agreement to lift the international sanctions against Iran. However, in the event that the International Atomic Energy Agency (IAEA) monitors and confirms Iran's compliance with the agreement, the U.S. still firmly believed that Iran had not fulfilled the agreement, unilaterally declared its withdrawal from IAEA , and issued a number of sanctions decrees in addition to UN Security Council resolutions. This move violates the Iran Nuclear Agreement, disregards the interests of the UN and other countries, and seriously disturbs the international order.

Secondly, in recent years, the U.S. has continuously violated the principles of "full connection" and "international courtesy" by arbitrarily creating "connection points" to expand the range of its jurisdiction. In the case of ordering Chinese banks to provide customer information, the U.S. brings Chinese banks into the "long-arm jurisdiction" only because that there are the branches of banks in the U.S. . In Huawei List and Meng Wanzhou Incident, the U.S. accused Huawei only of general crimes such as bank fraud, lying to the federal government , which is a wanton extension of protective jurisdiction. In addition, in practice, the U.S. also uses "involving American products" or "using US dollars" as the "connection points", so there is a huge risk of "long-arm jurisdiction" in transactions between China and relevant entities in the "Belt and Road".

4. The Status Quo and Practice of China's Response to the Improper Extraterritorial Application of Domestic Laws

4.1 Responding with National Legislative

In recent years, the U.S. has been carrying out improper extraterritorial application of American law, which has caused many adverse effects on China. As a response, China has issued the Provisions on the List of Unreliable Entities (hereinafter referred to as the List), the Measures for Blocking the Improper Extraterritorial Application of Foreign Laws (hereinafter referred to as the Blocking Measures) and the Anti-Foreign Sanctions Law of the People's Republic of China (hereinafter referred to as the Anti-DSanctions Law) before and after, and preliminarily constructed the blocking system in China.

4.1.1 Unreliable Entity List System（UELS）

In May 2019, the Ministry of Commerce of China announced that China would establish UELS, and in September, the Ministry of Commerce issued the List. The List as a whole stipulates the scope of objects to be considered for inclusion in the List, the factors to be considered, the measures and means, the removal system and the initiative procedural issues, which fully safeguard the procedural fairness and the legitimate rights and interests of relevant entities.

In order to further implement the List and improve the effectiveness of blocking the improper extraterritorial application, the Ministry of Commerce promulgated the Blocking Measures in January 2021.Supplemented by the List, the two together constitute an UELS, which further improves the blocking legal system in China.

The Blocking Measures stipulate the range of application subject matter, that is, secondary sanctions and primary sanctions with the effect of secondary sanctions. Article 7 stipulates that the competent department of the Ministry of Commerce shall issue prohibitions against recognition, enforcement and compliance with relevant foreign laws and measures after the working mechanism has assessed "improper". Article 8 stipulates that our entities shall comply with the prohibition unless they apply for exemption. And prescribing the procedures for applying for exemption. Article 9 stipulates that the legitimate rights and interests of Chinese entities have been damaged, and that they shall bring a lawsuit according to law and apply to the court for compulsory execution.

In February 2023, the Ministry of Commerce issued the first "blacklist" of unreliable entities, listing Lockheed Martin and Raytheon Missiles and Defense Company, which have sold military weapons to Taiwan for a long time,prohibiting them from conducting economic and trade exchanges with China, prohibiting their executives from entering the country and imposing severe fines. This is the first time that China used the list for justifiable defense since it was established, which demonstrates China's attitude and determination to safeguard national sovereignty and security.

4.1.2 From UELS to the Anti-DSanctions Law

The U.S. has shifted from "contact+competition containment" to "comprehensive containment" to China, and the EU and other countries have gradually joined the U.S. to impose sanctions on China. Faced with the improper extraterritorial application and sanctions,in order to better safeguard China's sovereignty and security and protect China's interests, China needs more proactive and rational laws and systems to effectively counter them. NPC Standing Committee issued the Anti-DSanctions Law in June 2021. The promulgation and implementation of the Law provides a clearer legal basis for the implementation of UELS，provides a stronger institutional guarantee for China's fight against hegemonism and unilateral sanctions, and marks the basic formation of the legal system for responding to the improper extraterritorial application of foreign laws. The range of counter-measures under the Anti-DSanctions Law extended to all types of sanctions (including primary sanctions). At the same time, it has included the setters and executors of foreign sanctions

in the list and given the same treatment to the immediate relatives of the objects of counter-measures, which has greatly enhanced the intensity of counter-measures.

Up to now, China has issued three anti-sanctions decisions. In response to the extension of "tentacles" to the human rights and illegal sanctions against two Chinese officials on the basis of the "Tibetan human rights" issue, China has included Yu Maochun and Tod Stann in the anti-sanctions list in accordance with the Anti-DSanctions Law, frozen their property in China, prohibited them from trading with Chinese entities and prohibited them and their immediate relaives from entering China.

4.2 Responding with Regional Cooperation

In recent years, the U.S. has not only imposed sanctions on China through improper extraterritorial application of domestic laws, but also attempts to exclude China from the "circle" by signing regional trade agreements with discriminatory and targeted clauses, so as to further realize "comprehensive containment". For example, in November 2018, the U.S., Canada and Mexico signed the U.S., Mexico and Canada Trade Agreement, which stipulates that if any contracting party concludes a free trade agreement with any country recognized as a non-market economy country, other contracting parties shall have the right to withdraw from the agreement. China has always been recognized by the U.S. as a "non-market economy country". This clause promotes the elimination of other contracting parties from concluding free trade agreements with China. If the U.S. makes use of similar treaties repeatedly, it will inevitably form an "economic blockade" against China and hinder China's opening up.

In order to further improve the quality of opening up, confront inappropriate extraterritorial adaptation of American laws and conflict with "economic containment", China has continuously expanded regional economic and trade cooperation and strengthened multi-party regional cooperation. In November 2020, China signed the Regional Comprehensive Economic Partnership Agreement (RCEP) with ASEAN, Japan and South Korea. Besides,in recent years, bilateral trade and investment cooperation has continued to grow rapidly. China has been the largest trading partner of ASEAN for 13 consecutive years, and China and ASEAN have been the most active investment partners for each other. Regional countries have expanded cooperation in digital economy, green development, e-commerce and other fields, and the links between industrial chains and supply chains are closer. China has also continuously strengthened economic and trade cooperation with Northeast Asian countries. In 2020, the total trade volume between China and the five Northeast Asian countries was $7177 billion, accounting for about 1/6 of China's foreign trade volume. The data and the level of cooperation is rising[17]. In December 2020, the China EU Comprehensive Investment Agreement negotiations were completed. Once the agreement comes into force, it will reverse the tide of anti-globalization to a large extent.

4.3 Responding with Enterprise Compliance and Active Resort to Law

With accession to the WTO for more than 20 years, the degree of reforming and opening has become higher and higher. Most Chinese enterprises engaged in foreign-related business have actively absorbed compliance legal talents, formed relatively complete compliance teams and formulated compliance management systems within themselves, which has largely evaded the risk of "long-arm jurisdiction". At the same time, faced with "long-arm jurisdiction",in order to escape from "legal traps", Chinese enterprises also actively resort to law . For example, wheh the U.S. listed several enterprises, including Xiaomi, in the sanctions list on the grounds of "related to the China's military", Xiaomi prosecuted the Ministry of Defense, and actively defended. Finally, the Court of the Columbit District ruled to remove Xiaomi from the "blacklist". For another example, in the case of Vitamin C, Hebei Weierkang Pharmaceutical Co., Ltd. and its parent company appealed to the law and actively responded to the lawsuit, which ultimately won in an all-round way and finally recovered huge losses for the enterprise[18].

4.4 Summary of the Deficiencies of China's Response to Improper Extraterritorial Application

Faced with the improper extraterritorial application of American law, China has taken measures at the legislative, regional and enterprise compliance levels, but there are still many shortcomings that need to be further improved.

4.4.1 The Low Legal Hierachy, Ambiguous Provisions , and Limited Efficiency

Both the List and the Blocking Measures are issued by the Ministry of Commerce, which are only departmental rules, and the legal hierachy is low, which is not conducive to the implementation of the Blocking Measures and the joint action across departments.

In addition, the provisions have a wide range of application and political attacks.Although they are flexible, the predictability are low, and their efficiency is limited to warning. Article 6 of the Anti-DSanctions Law stipulates that China may take counter-measures such as deportation, freezing the property within the territory of China, and prohibition of transactions with Chinese entities against objects listed in the “blacklist”. However, these measures can only serve when the entities have close contacts with China. For entities that do not plan to enter China and trade with Chinese entities, the function of the counter-measures cannot be achieved.

Moreover, the uncertainty of the consequences of the violation often leads to the abandonment of obsevation. Although the Blocking Measures have stipulated that relevant prohibitions shall not be recognized, enforced and observed, they have not clearly stipulated the penalties and intensity of the violation. At this time, Chinese enterprises usually choose to look for "certainty", and abide by laws with predictability (American laws),while violating Chinese laws, in that way the efficiency of the Blocking Measures is almost lost.

4.4.2 Difficulty in Coordinating with Other Departments, Laws and Regulations

The measures stipulated in Article 6 of the Anti-DSanctions Law include coordination with other laws and regulations: "issuing and cancelling visas", "entry" and "deportating" involve the Exit and Entry Administration Law; The "sealing up, distraining and freezing property within the territory of China" involves the Administrative Compulsory Law; The prohibition and resdtrcition from the transactions and cooperation cover almost all the laws and regulations in the commercial field. At present, China has not stipulated how to link up various laws and regulations, and how to implement the prohibition.If the laws and regulations are independently stipulated and act by their own departments, it may lead to a “mess”.

4.4.3 Difficulty in Compliance and Shortage of Foreign-related Legal Talents

Under the “long-arm jurisdiction” and the arbitrary expansion of the interpretation of the "minimum link" principle, any act harmful to the interests of the U.S. may be subject to its jurisdiction . Moreover, based on the "America First" doctrine, the supervision and assessment of economic entities by the U.S. Trade Representative is highly subjective and arbitrary. Therefore, even if an enterprise has established a professional compliance team and formulated a relatively complete compliance system, it is still extremely difficult to escape from the "legal trap". At the same time, there is a huge gap of foreign-related law talents now, which is insufficient to assist Chinese entities in establishing compliance systems, resorting to laws and meeting the needs of China's participation in the globalization.

5. Measures to Improve China's Response to Improper Extraterritorial Application of American Law

China has mitigated the adverse impact of the improper extraterritorial application of American law to a certain extent by legislation, regional cooperation, and active compliance. However,there are still many areas that need improvement. China,as a responsible major country,should firm the bottom line thinking ,maintaining the international order and not violating international law.

5.1 Raise the Legal Hierachy

The List and the Blocking Measures' legal hierachy is low, resulting in poor guidance and coordination in the need for multi-party cooperation in dealing with the extraterritorial application of American laws. Most other countries enact and implement it in the form of formal legislation. For example, in order to mitigate the adverse impact of long-arm jurisdiction, the EU has introduced the blocking laws in the form of the highest level hierachy, "Regulation", "Blocking Regulations". China should adopt formal legislation as soon as possible, promulgate the Blocking Law of the People's Republic of China (hereinafter referred to as the Blocking Law), facilitating the implementation and the joint action between departments.

5.2 Improve the Working Mechanism and Set up a Specialized Counter-measuring Institution

At this stage, China has not yet clearly stipulated the laws and regulations on the coordination and convergence between the Anti-DSanction Law and other departmental rules. China should revise or supplement relevant laws and regulations on how to implement in detail.

In addition, in order to avoid the situation of "mess", China should set up a specialized institution to coordinate and implement counter-measures in a unified manner. As early as the 1950's, the U.S. set up OFAC to carry out special foreign economic sanctions. China should, combining with the actual situation of itself, set up Anti-DSanctions Committee to implement anti-sanctions measures.

5.3 Clarify the Range and Implement Precise "Strikes"

The provisions of UELS and the Anti-DSanctions Law are relatively vague and unpredictable. According to the preceding discussion, an excessive range of "strikes" will also have many adverse effects on China. Therefore, it is necessary to further clarify the criteria for inclusion in the list, taking into account both effectiveness and ethics. First, Article 7 of the List clearly includes the considerations, which sets out the degree of harm and damage to entities (consequential elements), as well as non-commercial purposes. In order to weaken the unpredictability and reduce the adverse impact on Chinese entities, the subjective standard of "non-commercial purpose" should be deleted, and objective factors such as degree of harm and damage should be emphasized, and arbitrary expansion of the range of application is prohibited. Secondly, the EU Blocking Regulations specifies the range of blocking in the form of an annex, which is highly transparent and predictable, and China can reasonably draw lessons from the way in which the objects of counter-measures are updated timely by means of annexes or memorandums. In addition, the Anti-DSanctions Law and the List should establish a reasonable and effective removal mechanism to prevent inappropriate "strikes". The removal mechanism should include two channels, one is to meet the removal standard by correcting illegal acts; The other is that the relevant entities cooperate with the investigation and punishment of Anti-DSanctions Committee, and the committee adjusts the measures according to the scope of discretion.

5.4 Formulate and Amend Laws and Regulations to Enhance the Efficiency of Counter-measures

Promulgate the Foreign Sovereign Immunity Law of the People's Republic of China (hereinafter referred to as the Foreign Sovereign Immunity Law).Anti-DSanctions Law stipulates that China has the right to take counter-measures according to law against foreign entities that endanger China's sovereignty, security and development interests. Article 12 of the law stipulates that if the implementation of discriminatory measures by foreign entities infringes upon the interests of Chinese entities, Chinese entities shall have the right to start a suit to the loss according to law. However, China has always adhered to Absolute Immunity. When a foreign entity that infringes upon the legitimate rights and interests of a Chinese entity belongs to a foreign state or government, the courts will be hindered by sovereign immunity in accepting cases and executing judgments.

Therefore, China should promulgate the Foreign Sovereign Immunity Law as soon as possible, and transfer from Abusolute Immunity to Limited Immunity.

Amend the rules of extraterritorial application of the Civil Procedure Law. Article 272 of the Civil Procedure Law is considered as the long-arm jurisdiction clause of the Chinese version, but the range of application of this clause is limited ,causing the difficulty in exercising effective jurisdiction. For example,when a foreign entity is located outside China, takes discriminatory measures against Chinese entities, and does not meet the jurisdiction of Article 272, the courts cannot accept such cases, and the legitimate rights and interests of Chinese entities cannot be protected. Thus,Article 272 shall add "If an overseas organization or individual causes damage to a domestic entity, the court at the place where the damage results shall have the right to exercise jurisdiction".

The Detailed Rules for the Implementation of the Blocking Law shall be issued to further clarify the blocking working mechanism, the detailed rules for the procedures for making prohibitions, the procedures for applying for exemption, the procedural rights of the blocked entities， the legal consequences of violating the Blocking Law and so on, so as to consolidate the practicality and efficiency of UELS and the Blocking Law.

5.5 Establish a Compensation System Focusing on Safeguarding Private Interests

According to the above discussion, the blocking measures at this stage usually put domestic entities in a dilemma. For domestic entities adversely affected in order to safeguard national interests and abide by the Blocking Law of China, China should establish a ladder compensation system according to the actual amount of damage suffered by the entity to make reasonable compensation, so as to reduce the adverse impact on the entity,enhance the efficiency of the laws,and achieve an effective balance between national and private interests.

5.6 Strengthen the Construction of Foreign-related Legal Talents

Article 42 of the Foreign Relations Law of the People's Republic of China stipulates that the state strengthens the construction of a contingent of working personnel and takes measures to provide corresponding safeguards. In the process of responding to the improper extraterritorial application of American law at the national and enterprise levels, most legal workers in China are relatively new to the extraterritorial regulations and application of Chinese laws, and there is a huge gap of foreign-related legal talents who can "play a sole role". At present, China's traditional foreign-related personnel training can no longer meet the market demand. Colleges and universities, government judicial departments, foreign-related enterprises and law firms should cooperate and share information with each other: colleges and universities should reform teaching contents and strengthen the construction of nationalized courses; Then "going out", law firms, enterprises and judicial departments provide internship training for students; Finally, we will build an employment platform for talents, realize the feedback of foreign-related legal construction, and complete the closed loop of foreign-related legal personnel training.

6. Summary

In recent years, the U.S. have shown a "comprehensive containment" to China, and is extraterriorially applying their domestic laws in a more intesive and inappropriate way, using economic sanctions as a weapon to promote their own political and diplomatic strategies. Although the improper extraterritorial application of its domestic laws is disguised as domestic legality, it is obviously illegal under the existing rules of international law and has caused many adverse effects on China. In order to respond to the improper extraterritorial application and mitigate its adverse impact on China, China has responded extremely at the national, regional and enterprise levels respectively. However, the efficiency of these responses is limited.President Xi Jinping pointed out at the Central Working Conference on Comprehensive Rule of Law, "We should speed up the

strategic layout of foreign-related rule of law work, coordinate the promotion of domestic and international governance, and better safeguard national sovereignty, security and development interests."[19]Therefore, China should constantly improve the legal system, actively respond to it by all parties at all levels, and promote the domestic and the foreign-related rule of law as a whole, so as to form an all-round and systematic way out of difficulties and safeguard national sovereignty, dignity and core interests.

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