

Cleary Foreign Investment and International Trade Watch

China Passes “Anti-Foreign Sanctions Law”

By Chase D. Kaniecki, Cunzhen Huang, Samuel H. Chang, Huanbing Xu & William S. Dawley on June 21, 2021

On June 10, 2021, the Standing Committee of the National People’s Congress of China adopted the “Anti-Foreign Sanctions Law,” which represents the Chinese government’s most recent and direct response to U.S. and EU sanctions that have been imposed on China during the last year. The law, which took immediate effect, authorizes the Chinese government to take certain actions when foreign countries are deemed to breach international laws or basic norms of international relations, seek to contain or suppress China’s interest under pretext or using their domestic laws, adopt restrictive measures against Chinese citizens or organizations on a discriminatory basis, or interfere with China’s domestic affairs. Given how broadly a number of the provisions are worded, it remains to be seen how the Chinese government will implement and enforce the law.

In particular, persons or entities identified as having been “directly or indirectly involved in the formulation, decision and/or implementation of . . . discriminatory restrictive measures” (*e.g.*, economic sanctions) targeting China or its citizens or organizations will be included in a list that will be maintained by the Chinese government. The actions the Chinese government may take against listed individuals or entities include the following and may not be appealed:

- The non-issuance of visas, denial of entry, or cancellation of visas or deportation;
- The seizure, distraint, or freezing of property located in China;
- The prohibition or restriction of dealings with Chinese individuals and entities; and
- Other necessary measures.^[1]

Under the law, the Chinese government also may take the same actions against the spouse and immediate family of a listed individual, the senior management or actual controller of a listed entity, any entity in which a listed individual serves in a senior management position, any entities actually controlled by a listed person or entity, or any entity in which a listed individual or entity “participate[s] in [its] establishment and/or operation.”

The law further provides that “any entity or individual may not implement or assist with foreign countries’ discriminatory restrictive measures against Chinese citizens or entities” and that Chinese citizens and entities that are harmed by such discriminatory restrictive measures may sue in Chinese court to prevent further infringement and receive compensation for damages.

Notably, the new law also includes additional provisions that appear to extend not only to foreign countries, policymakers and government officials responsible for the imposition of sanctions, but also to foreign “entities, or individuals who implement, assist with, or support any conduct that endanger China’s sovereignty, security, or development interests.” Moreover, “any entity or individual” that does not implement or assist with Chinese countermeasures “shall be held legally responsible.”

As of the date of this blog post, a list of persons and entities designated under the law has not yet been published. Although the Chinese government previously announced travel bans against certain U.S. politicians, **former Trump administration national security officials**, and **EU Parliament members**,^[2] the new law establishes a formal legal framework with a wider range of potential countersanctions.

More broadly, the new law is the latest and of the highest legislative authority^[3] in a series of recent legal measures that the Chinese government has implemented in response to U.S. and EU sanctions, including the introduction of an **Unreliable Entity List** in September 2020 and a **blocking statute** in January 2021.^[4] As with the existing authorities, this new law further complicates compliance and conflict-of-laws considerations for companies seeking to do business in China in accordance with both Chinese law and foreign sanctions, a topic we have **previously written** about on this blog.^[5]

[1] Other laws, regulations, or rules may provide for “other necessary countermeasures” against conduct that “endanger China’s sovereignty, security, or development interests.”

[2] Ministry of Foreign Affairs of the People’s Republic of China, “Foreign Ministry Spokesperson Announces Sanctions on Pompeo and Others” (Jan. 20, 2021),

https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1847554.shtml; Ministry of Foreign Affairs of the People's Republic of China, "Foreign Ministry Spokesperson Announces Sanctions on Relevant EU Entities and Personnel" (Mar. 22, 2021),

https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1863106.shtml.

[3] The new law has been promulgated by the Standing Committee of the National People's Congress, whereas the Unreliable Entity List and the Anti-Blocking Statute are regulations promulgated by ministries under the State Council.

[4] In September 2020, the Ministry of Commerce of the People's Republic of China (MOFCOM) published the Provisions on the Unreliable Entity List, setting forth the criteria and processes for identification of foreign individuals or entities deemed to engage in boycotts of Chinese individuals or entities or otherwise "endangering national sovereignty, security or development interests of China."

MOFCOM, Order No. 4 of 2020 on Provisions on the Unreliable Entity List (Sept. 19, 2020),

<http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>. In

January 2021, MOFCOM issued a new blocking statute prohibiting compliance with, and creating liability to injured Chinese parties for, "unjustified extraterritorial application of foreign legislation."

MOFCOM, Order No. 1 of 2021 on Rules of Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures (Jan. 9, 2021),

<http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml>.

[5] Cleary Trade Watch, Navigating Conflicts of Law: U.S. Sanctions and China's National Security Law (Aug. 19, 2020), <https://www.clearytradewatch.com/2020/08/navigating-conflicts-of-law-u-s-sanctions-and-chinas-national-security-law/>.

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