



On June 10, 2021, PRC legislature passed the Anti-Foreign Sanction Law (the “Law”) with immediate effect.

I. Objective of the Law: China now has right to take countermeasures

The Law clarifies that “China has the right to counteract the countries which uses various pretexts or according to its own laws to contain and suppress China, adopts discriminatory restrictive measures against PRC citizens/entities or interferes in China’s internal affairs.”¹

*** Comments:** According to the press conference held on June 10, 2021, some foreign restrictive measures imposed on PRC citizens/entities on the following China issues would be deemed as discriminatory, such as matters relating to Hong Kong SAR, Taiwan, Xinjiang province, Covid-19.²

II. Responsible PRC Departments to take countermeasures

State Council and other relevant departments have authority to decide a list of individuals and entities who directly or indirectly involve the restrictive measures against PRC citizen or entity (“**Countermeasure List**”).³ China will set up a coordination mechanism to overall manage the anti-foreign sanction works, and all the responsible departments shall fully cooperate with each other to perform their respective responsibilities and insist in information sharing.⁴

*** Comments:**
(1) It is expected that the “other relevant departments” shall at least contain the Ministry of Commerce and the Ministry of Foreign Affairs.
(2) From the text of laws, the responsible departments are granted wide discretion (no concrete criteria) to determine whether to add certain individuals/entities to the Countermeasure List.

III. Countermeasure List: covered individuals/entities

Two categories of individuals/entities would be added in the Countermeasure List:

First Category	The individuals and entities directly or indirectly involved in the formulation, decision, and implementation of the discriminatory restrictive measures⁵
Second Category	The following individuals/entities in relation to the First Category: <ul style="list-style-type: none"> • Their spouse and immediate family members; • The senior executives or actual controller of them; • The entities in which they serve as senior executives; • The entities which they actually control, set up, or operate.⁶

*** Comments:** The “individual” may refer to officials, politicians, entrepreneurs, scholars, etc.; while the “entity” may refer to all kinds of business organization, non-profit organization, non-government organization, etc. It is inevitable that business community will be impacted since senior officers of a company or the company itself may be subject to the countermeasures. The Law also has created additional compliance obligations on multinationals with PRC subsidiary or doing business in/with China.

IV. Countermeasure decisions and remedy

1. Countermeasure decisions

PRC Responsible departments may adopt one or more of the following sanctions on the listed individuals and entities:

- denial of visa issuance, banning entry into China, invalidating visas, and deportation;
- sealing up, seizing and freezing movable, immovable and other types of property in China;
- prohibiting or restricting from conducting related transactions, cooperation or other activities with domestic entities or individuals;
- other necessary measures (catch-all).⁷

*** Comments:** The transaction & cooperation ban and catch-all clause may literally block all the business activities in China. The upcoming practices are waited to determine how far the sanction can reach.

2. Remedy for countermeasure decisions

Countermeasure decisions cannot be subject to any judicial appeal or administrative review as the decision made is final decision⁸, and the countermeasure decisions can only be suspended, altered, or canceled by the Ministry of Foreign Affairs, State Council, and other responsible departments.⁹

*** Comments:**
(1) It indicates that the responsible departments are also granted discretion to remove, modify, or change the sanction or list.
(2) The wording of “final decision” produces a debate on whether one can file administrative reconsideration (government process) or administrative litigation (court process). The answer will show up only when any remedy is successfully taken in the future.

V. Compliance Obligations for Other Parties

1. Implementation of countermeasures adopted by China

Entities and individuals within the territory of China shall implement the countermeasures adopted by China, otherwise, sanctions would be granted.

Party	Liability
Entities and individuals within the territory of China¹⁰	State Council and other responsible departments may restrict or prohibit the violating party from conducting any <i>relevant activity</i>.

*** Comments:**
(1) The scope of “relevant activity” may cover the financial activity, consulting activity, legal services, etc. Therefore, the liability can be considered as suspension/freeze on all the business activities carried by the violating party.
(2) It is worthy to note that “entities and individuals within the territory of China” include foreign invested enterprises.

2. Prohibition to implement foreign measures against PRC individuals/entities

Any organization and individual shall not implement or assist in the implementation of the discriminatory restrictive measures taken by any foreign country against any Chinese citizens/organizations. The Chinese citizens/organizations may file a lawsuit to the people’s court to request the cessation of infringement and compensation for any loss.

Party	Liability
Any entities and individuals¹¹	PRC individual or entity may <i>file a lawsuit</i> against the violating party and seek for compensation.

*** Comments:**
(3) Legal community is discussing the practicability of “filing a lawsuit,” such as, whether the party challenging the action has “standing,” whether the court will accept the case (jurisdiction concern), whether the judgment can be enforced overseas, etc.

VI. Other Laws and Regulations:

The Law clearly states that other laws, administrative regulations, and normative documents may be rolled out to counteract foreign unfair sanctions.¹²

*** Comments:**
By now, three documents have been released:
(1) PRC Export Control Law (nature: law);¹³
(2) PRC Blocking Rules (nature: normative document);¹⁴
(3) PRC Unreliable Entity List (nature: normative document).¹⁵

<http://www.npc.gov.cn/npc/c30834/202106/d4a714d5813c4ad2ac54a5f0f78a5270.shtml>

<http://www.npc.gov.cn/npc/kgfb/202106/90e92a915d5241468daa089a29cf08d3.shtml>

¹ Article 3 of the Law
² http://www.gov.cn/xinwen/2021-06/11/content_5616932.htm
³ Article 4 of the Law
⁴ Article 10 of the Law
⁵ Article 4 of the Law
⁶ Article 5 of the Law
⁷ Article 6 of the Law
⁸ Article 7 of the Law
⁹ Article 8, 9 of the Law
¹⁰ Article 11 of the Law
¹¹ Article 12 of the Law
¹² Article 13 of the Law
¹³ <https://asiallians.com/zh-hans/legal-news-prc-adopted-export-control-law/>
¹⁴ <https://asiallians.com/en/legal-news-china-released-blocking-rules-counteract-us-long-arm-jurisdiction/>
 Normative document ranking inferior to law promulgated by legislature in the hierarchy of legal authority of Chinese laws and regulations.
¹⁵ <http://asiallians.com/china-legal-update-blacklist-unreliable-foreign-entities-released-protect-chinese-companys-interest-us-china-trade-war/>

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