

Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Article 1 — These Rules are formulated in accordance with the National Security Law of the People's Republic of China and other relevant laws for the purposes of counteracting the impact on the People's Republic of China caused by unjustified extraterritorial application of foreign legislation and other measures, safeguarding national sovereignty, security, and development interests, and protecting the lawful rights and interests of citizens, legal persons, and other organizations of the People's Republic of China.

Article 2 — These Rules apply to circumstances where the extraterritorial application of foreign legislation and other measures unjustifiably prohibits or restricts citizens, legal persons, or other organizations of the People's Republic of China (hereinafter referred to as "Chinese parties") from engaging in normal economic, trade, and related activities with a third country (or region), its citizens, legal persons, or other organizations.

For the purposes of these Rules, "unjustifiably prohibits or restricts" means the prohibition or restriction by foreign legislation and other measures of extraterritorial application is determined, upon consideration of various factors, to be in violation of international law and the basic principles of international relations.

Article 3 — The Ministry of Commerce of the People's Republic of China shall take charge of the counteracting work and shall be responsible for accepting, adjudicating upon, and making decisions on relevant matters. The Ministry of Commerce shall establish a working mechanism involving the participation of relevant departments (hereinafter referred to as the "working mechanism") to take charge of the counteracting work.

Article 4 — The working mechanism shall assess and determine whether the extraterritorial application of foreign legislation and other measures constitutes an unjustified prohibition or restriction as set forth in Article 2 of these Rules. The working mechanism shall take into account the following factors in making its assessment:

- (1) Whether the foreign legislation and other measures are in violation of international law and the basic principles of international relations;
- (2) The potential impact of the foreign legislation and other measures on China's national sovereignty, national security, and development interests;
- (3) The potential impact of the foreign legislation and other measures on the lawful rights and interests of Chinese parties or third countries (regions), their citizens, legal persons, or other organizations;
- (4) Other factors that should be taken into consideration.

Article 5 — Where a Chinese party is prohibited or restricted by foreign legislation and other measures from engaging in normal economic, trade, and related activities with a third country (or region), its citizens, legal persons, or other organizations, the Chinese party shall truthfully report the relevant circumstances to the

Ministry of Commerce within 30 days. Where a Chinese party is required to comply with the foreign legislation and other measures, the Ministry of Commerce may assess the situation. Where a Chinese party fails to truthfully report the relevant circumstances as required, the Ministry of Commerce may impose penalties.

Article 6 — The working mechanism shall, upon assessment and confirmation that the foreign legislation and other measures constitute unjustified extraterritorial application, issue a prohibition order that prohibits the recognition, enforcement, and compliance with the relevant foreign legislation and other measures.

Where the working mechanism determines that recognition, enforcement, or compliance with the foreign legislation and other measures may cause serious damage to China's national sovereignty, national security, or development interests, it may issue a prohibition order that prohibits the recognition, enforcement, and compliance with the relevant foreign legislation and other measures.

The prohibition order may be suspended or revoked by decision of the working mechanism based on actual circumstances.

Article 7 — The working mechanism may, in light of actual circumstances, decide to exempt a Chinese party from compliance with the prohibition order with respect to the recognition, enforcement, or compliance with foreign legislation and other measures within a specified scope.

Article 8 — Where a Chinese party suffers material losses as a result of non-compliance with foreign legislation and other measures, the relevant government departments may provide necessary support as the circumstances require.

Article 9 — Where a Chinese party complies with the prohibition order, and a party to a judgment or ruling made under the foreign legislation invokes the judgment or ruling as the basis, thereby causing losses to the Chinese party, the Chinese party may institute legal proceedings in the people's court in accordance with the law, requesting that the party compensate for the losses. However, this shall not apply where the Chinese party obtains an exemption in accordance with Article 7 of these Rules.

Where a Chinese party suffers losses as a result of compliance with foreign legislation and other measures by a relevant party within the territory of China, the Chinese party may institute legal proceedings in the people's court in accordance with the law, requesting that the relevant party compensate for the losses. However, this shall not apply where the relevant party obtains an exemption in accordance with Article 7 of these Rules.

The people's court may, in accordance with the law, render a judgment requiring compensation as provided in the preceding two paragraphs. Where a party refuses to comply with an effective judgment or ruling of the people's court, the Chinese party may apply to the people's court for compulsory enforcement in accordance with the law.

Article 10 — Where a government department has other provisions on counteracting unjustified extraterritorial application of foreign legislation and other measures, such provisions shall prevail.

Article 11 — The Ministry of Commerce shall, in accordance with the provisions of these Rules, formulate implementation guidelines.

Article 12 — These Rules shall be interpreted by the Ministry of Commerce.

Article 13 — The provisions of these Rules shall not affect the obligations assumed by the People's Republic of China under international treaties or agreements to which it is a party.

Article 14 — These Rules shall apply, mutatis mutandis, to the branches and representative offices of foreign companies within the territory of the People's Republic of China.

Article 15 — These Rules shall also apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region. Matters relating to their application shall be separately prescribed.

Article 16 — These Rules shall take effect on the date of promulgation.

Implementation Guidelines (Ministry of Commerce Order No. 1 of 2021)

The Implementation Guidelines on the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures were issued by the Ministry of Commerce on January 9, 2021. Key provisions include:

Reporting Obligations: A Chinese party who is prohibited or restricted by foreign legislation and other measures from engaging in normal economic and trade activities shall submit a written report to the Ministry of Commerce within 30 days. The report shall include the basic information of the Chinese party, the foreign legislation or measures concerned, the nature and scope of the prohibition or restriction, and the impact on the Chinese party.

Application for Exemption: A Chinese party may apply for an exemption from the prohibition order where special circumstances exist. The application shall specify the reasons for the exemption, the scope of the exemption sought, and any supporting materials. The working mechanism shall make a decision within 30 working days of receipt of a complete application.

Support Measures: Where a Chinese party suffers material losses as a result of non-compliance with foreign legislation and other measures, relevant government departments may provide necessary support, including but not limited to guidance, coordination with foreign parties, and other appropriate measures.

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