Liza Mark and Tianyun Ji in Journal of American Chamber of Commerce in Shanghai: 'China Releases Blocking Rules Against Foreign Laws'

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On January 9, 2021, the Ministry of Commerce of the People's Republic of China ("MOFCOM") issued the Measures for Blocking Improper Extraterritorial Application of Foreign Laws and Measures (the "Measures"), effective immediately. The Measures resemble blocking statutes available in other foreign jurisdictions such as the European Union – which were enacted mainly to counteract extraterritorial U.S. sanctions.

The Measures are promulgated per the People's Republic of China (PRC)'s National Security Law (2015), suggesting its core motivation is the protection of China's national security, not pure economic considerations. Together with the adoption of the PRC Export Control Law (2020) and MOFCOM's Provisions on the Unreliable Entities List (2020) ("UEL") issued in late 2020, China is setting up a framework for dealing with long-arm extraterritorial sanctions and export controls imposed by other countries – the U.S. in particular – on Chinese parties.

Measures' Applicability

a. Scope. The Measures were formulated according to China's National Security Law to counteract extraterritorial application of foreign laws and measures (collectively, the "Foreign Law") being applied to Chinese parties. The Measures contain three elements as provided under Article 2: (i) that the extraterritorial application of the Foreign Law violates international laws and fundamental principles of international relation, (ii) which improperly prohibits or limits PRC citizens, legal entities or other organizations' (collectively, "Chinese Person") ordinary commerce and relevant activities (iii) with a third country or region's (i.e. not said foreign country's) citizens, legal entities or other organizations.

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