

Original Paper

Our Exploration of Countermeasures against the Abuse of Unilateral Sanctions by the United States

Zhao Jiahui¹

¹ Shenyang University of Technology, Shenyang City, Liaoning Province, China

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Abstract

Currently, the international landscape is undergoing changes, with unilateralism on the rise. Of which, economic sanctions are the most common form. Due to the lack of effective specialized international rules in the current international rule system, unilateral sanctions are increasingly frequently used by individual countries. The abuse of unilateral sanctions has impacted the normal operation of international mechanisms. Unilateral sanctions were originally used in a country's domestic law, but now some countries, such as the United States, expand their own laws' extraterritorial application through the continuous expansion of connection points, thereby giving their sanctions against foreign entities a cloak of legitimacy, which goes against the principles of international law and the basic norms of international relations (Bai, 2018). From a legal perspective, the implementation of illegal unilateral sanctions is achieved through the improper interpretation and application of international treaty exception clauses. From international custom, unilateral sanctions beyond countermeasures refer to those imposed by states other than the injured state, who deliberately legalize countermeasures related to sanctions, which greatly contributes to the abuse of unilateral sanctions. In this context, China should accelerate the construction of its anti-sanctions legal system to effectively counter the threats and damages caused by unilateral sanctions and firmly safeguard its sovereignty, security, and development interests.

Keywords

unilateral sanctions, countermeasures, security exception, anti-measures

In recent years, unilateral sanctions outside the scope permitted by the United Nations have gradually increased. The United States and the European Union are the main countries that have imposed unilateral sanctions. Unilateral sanctions like these, which have not been confirmed by the United Nations, are generally familiar to us. Since unilateral sanctions are not controlled and confirmed by

the United Nations, they are further used more frequently. Such coercive measures have a great impact on the existing rules of international law and on the sovereignty of States.

1. Introduction

The main reason why unilateral sanctions are abused as a tool to achieve political goals between countries is that their definition is too vague and legal regulations are insufficient. Unilateral sanctions are illegal in most cases, so it becomes urgent and important to analyze their illegality. Based on the analysis of the concept and illegality of unilateral sanctions, this paper will put forward reasonable suggestions for our country to deal with unilateral sanctions.

1.1 Unilateral and Secondary Sanctions

Unilateral sanctions are when a subject of international law “unilaterally” decides to impose economic, trade or other coercive measures on the target of sanctions in order to force the target of sanctions to change its policies or actions. Unilateral sanctions are designed to force other countries to act in line with their own national interests, so as to achieve their own national interests. This is contrary to the principle of non-interference in the internal affairs of other countries in international law.

In the case of unilateral sanctions, it is divided into primary sanctions and secondary sanctions, and the main content of primary sanctions is to prohibit or relatively restrict the transactions or other exchanges between one’s own country and the sanctioned country. In addition to the above content, secondary sanctions also prohibit and restrict transactions between third countries and their own countries related to the sanctioned countries. In the current international community environment, we have no objection to the view that secondary sanctions are contrary to international principles and norms.

Secondary sanctions are embodied in the fact that a country extends its domestic law without any measure or concern to achieve the purpose of interfering in the internal affairs of other countries, which definitely violates the principle of non-interference and the principle of state sovereignty in international law. Secondary sanctions and extraterritorial application of laws have largely created legal inequalities among countries, which run counter to the principles of respecting national sovereignty and non-interference in other countries’ internal affairs that we have always followed.

2. Second, the Reasons Why Unilateral Sanctions Are Abused

2.1 The Vague Definition of Unilateral Sanctions Has Led to Their Abuse

Most of the unilateral sanctions in today’s international community do not conform to the sanctions referred to in the international law. Unilateral sanctions are mainly economic sanctions. Some scholars of international law even define unilateral sanctions only from an economic perspective, and some even equate unilateral sanctions with economic sanctions. This is confused with economic sanctions.

However, as we all know, unilateral sanctions are divided into economic sanctions and non-economic sanctions, and economic sanctions often have political purposes. Some experts and scholars try to define unilateral sanctions from multilateral sanctions, but there are different views on the definition of

multilateral sanctions in the world. Although the UN Charter provides an international framework for the use of economic sanctions, most countries impose economic sanctions on a unilateral basis based on national legislation. A few countries have expanded the interpretation and application of unilateral economic sanctions based on their own core interests, leading to the excessive use of unilateral economic sanctions.

At present, the international community still lacks a universal and authoritative definition of unilateral sanctions, and the applicable rules of unilateral sanctions are also inadvertently clear, resulting in the abuse of unilateral sanctions.

2.2 The Complexity of the Characterization of Unilateral Sanctions Makes It Difficult to Apply the Law

Unilateral sanctions can only be considered when the legal nature of the sanctions is determined. In international law, unilateral sanctions are generally referred to as counter-reporting and countermeasures, but the specific type of sanctions should be analyzed according to the specific situation. In practice, however, determining the nature of the law is an extremely difficult matter. The reasons mainly include two aspects, one is that there is no recognized international court or other institution with compulsory jurisdiction that can exercise jurisdiction. On the other hand, in recent years, in addition to the resolutions of the UN Security Council, many countries or regions have implemented more and more unilateral sanctions. And they all have some common points, such as the gradual strengthening of extraterritorial, through some extraterritorial sanctions to impose their own laws on other countries and regions; The means of unilateral sanctions are gradually increasing, from the single economic sanctions to the parallel economic sanctions, cultural sanctions and political sanctions, and the proportion of political sanctions is increasing.

In fact, whatever the underlying reasons, the legal character of unilateral sanctions is determined primarily by the measures taken by the acting State and can therefore vary. In practice, unilateral measures can not only include economic measures such as financial sanctions, asset freezes, trade sanctions, arms embargoes, and commodity embargoes. It can also include non-economic measures such as diplomatic sanctions, travel bans, restrictions on freedom of navigation, aviation and transit, and the right to communication [Analysis of the illegality of unilateral sanctions and legal responses. Politics and Law. Zhang Yue (Law School, Sichuan University, Chengdu 610207, China)]. Among them, embargoes, diplomatic sanctions and travel bans may not be unlawful in themselves or in response to wrongful acts and can generally be characterized as counter-reporting under international law. How to distinguish low-intensity unilateral sanctions with retaliatory nature from purely high-intensity unilateral sanctions is a difficult problem in practice.

2.3 The Use of Counter-Sanctions beyond the Limit Opens Up the Possibility of Unilateral Sanctions

Sanctions are a means of punishment related to the responsibility of the State and are in fact a response to international wrongful acts. In the absence of a corresponding treaty and the absence of a Security Council resolution, the use of international custom to provide the so-called legal basis for unilateral sanctions would remove the wrongfulness of the corresponding act of countermeasures. In the past,

countries or regions that initiated unilateral sanctions first used countermeasures as an excuse to cover up their real acts of unilateral sanctions. However, the current anti-sanctions regulations are not perfect, which leads to the lack of certainty in the process of application. For example, in certain cases, measures such as counter-sanctions are applied without the consent or even knowledge of the targeted State, or even without the certainty that the illegal act has actually taken place.

The first condition for becoming a counter-sanctions measure in accordance with international law is not to violate procedural provisions. There are many procedural provisions, the first thing to pay attention to is to inform the other side of the obligation to counter sanctions and to propose that we should negotiate with the other side on the matter of sanctions. If the steps and procedures mentioned above are missing, it is also essentially a violation of the substance, because there is no difference in the result. That would lead to the illegality of what is itself characterized as unilateral sanctions remaining, and it would lead to the creation of State responsibility. In this case, if the sanctioned party implements relevant actions and measures to counter the situation it is facing, it is easy to escalate the situation.

Corresponding to the procedural requirement is the substantive requirement, that is, the root cause of unilateral sanctions, that is, whether the country facing the sanctions has committed a real act that is not in line with international law. Article 49 of the Draft states: “An injured State may, inter alia, only take countermeasures against the State responsible for the internationally wrongful act in order to induce that State to comply with its obligations” (Wang, 2022). The question of this first response is whether the State imposing countermeasures is actually in violation of international law. Take the United States and Russia for example. The United States and the European Union say that they imposed unilateral sanctions on Russia before it committed numerous violations of international law. The United States and the European Union have portrayed their unilateral sanctions as justified and a response to Russia’s previous wrongdoing.

3. The Adverse Effects of Unilateral Sanctions on Our Country

3.1 National Sovereignty Has Been Seriously Violated

The Charter of the United Nations provides for the principles of sovereign equality of States and non-interference in the internal affairs of states. These principles are applicable and must be observed by all countries and regions, and they have a mandatory effect. However, in recent years, unilateral sanctions imposed by western countries represented by the United States have seriously infringed our national sovereignty. In this case, the United States forced some enterprises to give up free trade with China’s Xinjiang cotton on the absurd grounds of forced labor in China’s Xinjiang region, in order to destroy China’s cotton industry base, destroy China’s cotton textile industry, and destroy the stable employment situation in Xinjiang. After a rigorous review of the Xinjiang project by the Shanghai Representative Office, it was reported to headquarters that it had not found a single case of forced labor in China. But the findings continue to be ignored. The United States forced some enterprises to give up

cooperation with Xinjiang cotton by withholding order, which is to apply its domestic law to China's free trade with Xinjiang and related enterprises. This behavior seriously violates the principle of non-interference in the internal affairs of other countries stipulated in the UN Charter, and also infringes on China's interests to a large extent, and is illegal.

The United States has also repeatedly interfered in our internal affairs and harmed our interests through secondary sanctions. In 2018, the United States indicted and extradited Meng. Under a series of tricks by the United States, Meng Wanzhou, the chief financial officer of Huawei, was detained by the Canadian side when she was transferring through Italy, and Meng Wanzhou was detained without violating Canadian laws, which is very unreasonable. The American case against Meng is fraud, but it is a false one. The United States and Canada have always used extradition treaties as a FIG leaf for their persecution of Chinese citizens, but it is internationally recognized that the law they rely on is only a means to protect their own interests and persecutory citizens of other countries, and has nothing to do with their stated fairness. Judging from the past events, the intention of the Meng Wanzhou incident is to suppress Chinese citizens, but also to suppress China's high-tech development. It can be seen from the Meng Wanzhou incident that Western countries represented by the United States use their international influence and their own economic advantages to force trade between third countries and the sanctioned countries. This is contrary to the internationally recognized principle of respect for the sovereignty of other states.

3.2 The Development of High-Tech Fields Is Limited

Western countries represented by the United States have for a long time occupied the leading level of scientific and technological development in the world, as well as their own import and export related laws and regulations such as the Export Administration Regulations. At the same time, with the specific measures such as the "entity list" and "Section 301" formulated by them, the development of China's high-tech technology field is restricted, and the targets of sanctions are Huawei and DJI, which are high-tech centered enterprises, in order to curb the development of China's high-tech enterprises, so as to achieve the purpose of maintaining their own national science and technology hegemony.

The "clean network" program is essentially the United States' suppression of the technological development of China's high-tech fields. Taking advantage of its leading edge in science and technology, especially the Internet, the United States has been doing all kinds of activities to monitor other countries' governments or individuals, but now it attacks China without evidence and claims to "clean the Internet". This insolence is no longer merely a matter of turning black and white upside down and distorting facts. The plan is a comprehensive form of discrimination and infringement against specific industries and sectors, targeting China. It goes beyond the punishment of a single enterprise or individual, and is a crackdown on a country's enterprise groups and the entire industry involved in Internet and telecommunications services. This is a direct violation of the company's right to normal business as well as its legitimate rights and interests under domestic and international law. The scope of the hegemonic acts of the United States and the seriousness of the illegal situation should

arouse the great attention of the entire international community, including China.

3.3 The Legitimate Rights and Interests of Enterprises Cannot Be Protected

In recent years, in the process of unilateral sanctions carried out by countries represented by the United States, quite a number of Chinese enterprises often choose the way of punishment to end quickly in order to avoid themselves falling into public opinion and to avoid the adverse effects brought by transnational lawsuits. In the actual process, enterprises often face a long-term investigation, which will lead to a decline in the reputation of the enterprise, but also let the enterprise in the panic for a long time, so enterprises in order to get out of this predicament as soon as possible, often choose to compromise. However, this approach often leads to heavy losses for the enterprise, and this loss is not what the enterprise should bear.

In March 2017, ZTE and the US government reached a settlement in the export control investigation case, ZTE paid about US \$890 million in criminal and civil penalties, and the US Department of Commerce's Bureau of Industry and Security suspended a US \$300 million fine against ZTE, which will be paid based on ZTE's compliance with the agreement over the next seven years. It was the largest fine ever imposed on a Chinese company. However, on April 16, 2018, the website of the US Department of Commerce announced that the United States and ZTE companies should not have trade exchanges for seven years. The reason given by the United States is that ZTE has violated the settlement agreement signed by the two sides. The US accused ZTE of illegally exporting to Iran and North Korea. However, because ZTE had previously been forced to settle with the United States under pressure from all parties, the case did not enter judicial proceedings, which means that ZTE has given up the opportunity to protect its rights and interests by judicial proceedings. At the same time, the amount of fines stipulated in the unequal settlement agreement between ZTE and the United States caused ZTE to suffer greatly in the year after the payment of the fine, and various profit indicators turned negative, before which ZTE's profitability had been stable.

3.4 The International Order Has Suffered a Major Setback

In order to safeguard its own national interests and consolidate its hegemonic position, the United States has extended its domestic laws to other countries many times, which has not only seriously damaged the interests of other countries, but also seriously damaged the international order that has been jointly maintained by all countries for a long time. To prevent Iran from developing nuclear weapons, the United States has banned all companies from importing Iranian oil. In September 2019, the US Treasury Department announced sanctions against six Chinese companies and five Chinese citizens for "knowingly transferring oil from Iran in violation of Washington's sanctions against Iran", including freezing the assets and earnings of these entities in the United States. U.S. companies and citizens are prohibited from making payments and any transfer of U.S. assets with those sanctioned entities. Such behavior of the United States completely ignores the position of the United Nations and the interests of other countries, and is a challenge to and serious disturbance to the international order.

4. The Specific Path of China's Response to the Unilateral Sanctions of the United States Is Applicable

At present, in the face of many serious unilateral sanctions by the United States, China has responded from the aspects of legislation, encouraging enterprises to respond reasonably and positively, and regional cooperation with other countries and regions, which has largely reduced the adverse impact of unilateral sanctions brought by the United States, and is also an encouragement for Chinese entities (Li, 2022). Maintaining the international order is the responsibility and obligation of China as a major country, and it is reasonable to further improve the response path to the unilateral sanctions of the United States on the premise of abiding by international law.

4.1 We Will Accelerate the Establishment of an Anti-Sanctions Legal System

The formulation and implementation of anti-sanctions measures in accordance with the law can not only help our enterprises facing unreasonable unilateral sanctions to solve the dilemma, but also have a positive impact on maintaining the image of our country as a responsible major country and enhancing our international influence. In view of unilateral sanctions, China currently has the Anti-Foreign Sanctions Law, which can be used in some specific circumstances. From the perspective of international law, the sanctions measures that can be used in our law are basically anti-sanctions measures, which means that only when a country becomes a sanctioned country can apply the law to respond, and can not take the initiative to apply to protect its own rights and interests.

At present, the document "Blocking Measures" that can be applied to anti-sanctions is issued by the Ministry of Commerce of The State Council of China, which is a category of departmental rules. Compared with laws or administrative regulations, its legal effect is low, which results in that departmental rules can not play a very good role in restraining the situation that requires multi-department cooperation in the process of anti-sanctions. In many other countries, anti-sanctions-related measures are in the form of formal laws.

On the other hand, the structure of anti-sanctions should be further improved, and special anti-sanctions agencies should be set up to avoid shirking responsibilities among various departments or overlapping responsibilities.

4.2 Further Clarify the Scope of Counter-Sanctions

At present, the scope of China's anti-sanctions is mainly stipulated by the Anti-sanction Law and the unreliable entity system, which lacks obvious predictability. At the same time, the scope of anti-sanctions is too large and unclear, and it is difficult to determine in the actual process, which has a lot of adverse effects on the real economy. Therefore, we should pay more attention to the implementability of measures in the path of improving anti-sanctions, and the criteria for the list should be further clarified.

The first thing to do is to clarify the objective criteria for entry into the list, and the List has clear provisions explaining the consideration of the list of unreliable entities, mainly including the commercial purpose, the foreseeable degree of harm to our entity enterprises and the actual degree of

damage ultimately caused. Considering the impact on China's entity enterprises, it should be as much as possible to reduce its unpredictability, so that China's enterprises can prevent in advance, reduce their own losses, and the "non-commercial purpose" in the list should be deleted as appropriate. The problem with this clause is that it is so subjective that it cannot be predicted and avoided like other factors. The objective factors such as the degree of harm and damage to Chinese enterprises should be emphasized. On the other hand, we can learn from the successful experience of other countries. In this regard, the EU implements the scope of blocking in the form of annexes to regulations, which has the advantage of high transparency and strong predictability. In this way, the scope and specific targets of counter-sanctions can be defined in the form of annexes or memoranda.

4.3 We Will Strengthen the Development of Legal Personnel Related to Foreign Affairs

At the present stage, the number of foreign-related legal talents in China can no longer meet the market demand. In the process of enterprises responding to unreasonable unilateral sanctions of the United States, there are few talents who are familiar with extra-territorial laws and regulations and skilled in dealing with relevant legal relations, and there is a huge gap of legal talents in this aspect. Facing this situation, Chinese universities, government, foreign-related enterprises and law firms should cooperate and share information with each other: universities should reform the teaching content and strengthen the construction of international curriculum; Law firms, enterprises and judicial departments provide internship training for college students; The State should build an employment platform for foreign-related talents and complete the closed-loop training of foreign-related legal talents.

5. Conclusion

Unilateral sanctions are legal and logical. However, due to the lack of an international system that can effectively constrain unilateral sanctions and make them play their proper role, individual countries or economically integrated regions will abuse their own laws to impose unilateral sanctions and bully other countries to maintain their own or regional economic hegemony. What is more, the frequent use of this has become a common means to curb the normal functioning of other living areas of the country. Such unilateral sanctions as a means to curb the development of other countries violates the principles and rules of international law, and also undermines the international environment maintained by the whole world. In order to deal with this situation and reduce the damage caused to our entity enterprises, our country should speed up the construction of anti-sanctions legal system on the basis of what has been built, further clarify the scope of anti-sanctions, strengthen the construction of foreign-related rule of law talents, and build a complete all-round rule of law system, so as to safeguard national sovereignty and our interests.

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