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# China's Extraterritoriality: A New Stage of Lawfare

EXPLAINER - DECEMBER 2024




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EXPLAINER - December 2024

# China's Extraterritoriality: A New Stage of Lawfare



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**The new European Commission has made economic security a priority, through innovation and protecting the EU from market distortion, technology theft and coercion. The EU has adopted new trade defense instruments to reduce its supply chain vulnerabilities and is rethinking its industrial policy. Yet, its strategy has one blindspot: the EU has no clear policy to deal with extraterritoriality, least of all Chinese extraterritoriality. This is shortsighted and could damage the EU's long-term economic and political interests.**

## **A GROWING USE OF EXTRATERRITORIALITY**

**Extraterritoriality – that is, the application of national laws abroad – is not a new phenomenon, but it is gaining traction.** In a world characterized by strategic competition, mass subsidies, de-risking and weak multilateral organizations, countries are looking for new ways to safeguard their political and economic interests. Many are turning to law to achieve this. This includes China.

**A Trump presidency is likely to further tighten export control measures for US – and European – companies trading with China.** In a context of growing economic rivalry, a Trump presidency may be tempted to use extraterritorial measures, especially export controls, to limit tech exports. It may also put pressure on European countries to follow suit in return for continued US support to Ukraine and Europe. In such a scenario, China is likely to respond with similar tit-for-tat measures. This would be particularly problematic for European companies operating in both markets. It would involve high compliance costs and/or risks fines and market access denial in case of non-compliance with one of the two legal regimes.

**China's perspective on extraterritoriality has evolved.** For the longest time, the concept was associated with the “century of humiliation” – the period between 1842 and the Pacific War during which Western powers imposed their own consular laws and jurisdiction on China. Today, it is seen as an opportunity to safeguard and assert China's interest. Xi Jinping sees law as a strategic tool and extraterritorial norms have proliferated under his leadership.

**Chinese extraterritoriality has three aims:** first, to defend against foreign interference and sanctions; second, to legitimize China's foreign policy actions and strengthen Chinese global influence; and third, to deploy China's public security agenda on a global scale.

**China's extraterritoriality is primarily designed to respond to, and manage, systemic rivalry with the United States.** China's defensive toolkit is designed to reduce the impact of US economic sanctions and to respond to US export control restrictions, which have heavily targeted China's access to dual-use technologies. Some of China's defensive tools, such as the Blocking Rules, resemble those put in place by the EU to shield companies from being forced to comply with foreign sanctions.

**China also applies its laws abroad to increase its global presence and influence through a realist approach focused on the balance of power with the United States.** It has attempted to use Chinese law to deal with ongoing disputes, such as in the South China Sea, and resorts to legal language to legitimize its actions.

**China enforces public security policies extraterritorially, primarily to silence criticism of China.** It has developed a comprehensive array of laws and enforcement practices to target Chinese dissidents and opponents. There is also evidence of China establishing unregistered police stations abroad and attempting forceful repatriation of PRC nationals. Intimidation, persuasion to return to China and rendition of

PRC nationals in foreign countries all pose a significant challenge to European democracies and to their decision-making.

**China is exploring a more offensive approach to extraterritoriality, in the form of economic sanctions, to assert its power – though it has yet to use it.** Extraterritoriality is increasingly seen as a way to assert power and to constrain the others, for example by putting pressure on foreign individuals and companies to comply with Chinese laws or to ignore foreign laws, even when they are based abroad. Although China has not used law to put pressure on foreign companies already active in, or trading with, China, it could do so in the future.

**China's modus operandi favors attacking where there is no defense in place.** A more offensive use of extraterritoriality by China will depend on three factors. First, the decision and willingness of the top leadership to employ such tactics during moments of international tension; second, a stronger international role for the renminbi and lower overall exposure to the dollar; and third, the countermeasures third-countries could take to respond to Chinese extraterritorial norms. Without credible deterrence, the EU could easily be subjected to Chinese economic sanctions, and the untested anti-coercion instrument is likely to be insufficient to create deterrence.

## EUROPE'S RESPONSE

**The EU needs to understand that Chinese extraterritoriality has changed.** Chinese extraterritoriality is no longer solely about managing US-China strategic competition. It is also a tool to promote China's norms and jurisprudence abroad, a way to retaliate against foreign interference, and an instrument to assert political and economic interests.

**The EU needs to understand how Chinese extraterritoriality impacts EU interests now and in the future – and plan accordingly.** The EU's current approach is largely predicated on the need to respond to US extraterritoriality. However, China's decisions to enforce its national security laws abroad, including in European countries, should give the EU cause for concern and spur it on to rethink its approach.

**The EU should continue to work with like-minded partners on combatting forceful repatriation and transnational repression.** While national security falls squarely under the sovereign authority of member states, national governments should be open to discussing transnational repression inside the EU and to share best practice. The EU should also continue to work with like-minded partners and international organizations on this issue.

**The EU must be open to developing a new form of offensive extraterritoriality.** The EU has historically resisted an offensive use of extraterritoriality and has preferred to castigate the US for (ab)using extraterritoriality. The possible escalation of US-China technology competition in the coming years imposes a change of approach. Advocates of a more offensive strategy on extraterritoriality point out that change is already happening, given the EU's new emphasis on using trade defense instruments, such as the Anti-Coercion instrument. But an offensive extraterritorial regime needs to be able to impose costs, and to ensure compliance with European export control interests, for example *vis-à-vis* Russia.

**The EU should show that it is ready to deny access to the EU's single market.** The EU's economic security instruments are mainly about reciprocity, not about promoting the EU's strategic interests. This is particularly true in relation to China. Yet, the EU single market is a strategic priority for China and crucial for its economic health. Losing access to it would be deeply damaging to China's interests and constitute a powerful deterrent for the EU. The EU single market is the best leverage the



EU has. It must come up with a credible plan that demonstrates intent and capability.

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“Accelerate the construction of our country’s legal system for extraterritorial application” Xi Jinping asked the Party during the second meeting of the Central Committee for Comprehensive Law-Based Governance in 2019.<sup>1</sup> This was quite the pivot for a country for which the term extraterritoriality (域外法权) conjured memories of the “century of humiliation” – the period between 1842 and the Pacific War during which Western powers imposed extraterritorial consular jurisdiction on China, undermining its sovereignty and reducing China to what Mao Zedong called a “semi-colony.”

Extraterritoriality is still seen today as a way for hostile foreign powers to exploit China’s national vulnerabilities, especially the United States in the context of US-China trade and technology confrontation. From Huawei and ZTE to SMIC and China’s arms industry, the number of Chinese companies placed on various US sanctions lists is long and keeps growing. US export control restrictions have limited China’s access to dual-use technologies from the US, but also elsewhere. In 2018, the State Council<sup>2</sup> issued a White Paper clarifying its stance on what it referred to as the US-China “trade friction.”<sup>3</sup> It included a section on “long-arm jurisdiction” (长臂管辖权) and sanctions against other countries based on US domestic laws, specifically denouncing US export control practices and the designation of Chinese companies on the Entity List of the Department of Commerce.

At the same time, China has been developing its own form of extraterritorial jurisdiction since Xi’s remarks. It has rapidly expanded its arsenal of geoeconomic tools to provide the Party’s leadership with enhanced options for defense and retaliation, but also for coercion purposes.

<sup>1</sup> CCTV, “中央全面依法治国委员会新年首会 [The Central Committee for Comprehensively Governing the Country according to Law holds its first meeting this year]”, Xinhua, 26 Feb 2019, <http://politics.people.com.cn/n1/2019/0226/c1001-30903794.html>, 19 Nov 2024.

<sup>2</sup> See the appendix – glossary, p. 65.

<sup>3</sup> The State Council of the People’s Republic of China, “The Facts and China’s Position on China-US Trade Friction,” Xinhua, 26 Sept 2018, [https://english.www.gov.cn/archive/white\\_paper/2018/09/26/content\\_281476319220196.htm](https://english.www.gov.cn/archive/white_paper/2018/09/26/content_281476319220196.htm), 19 Nov 2024. Full Text: [The Facts and China’s Position on China-US Trade Friction](https://english.www.gov.cn/archive/white_paper/2018/09/26/content_281476319220196.htm) ([www.gov.cn](https://english.www.gov.cn)).

Some of the new legislation is designed to act as countermeasures to foreign extraterritoriality. China has created its own list of unreliable entities and adopted a counter-foreign sanctions law, for example. Other new laws, like the 2020 Export Control Act or the Personal Data Protection Act, are designed to directly assert extraterritorial jurisdiction on foreign companies. In addition, there has been renewed thinking on the role of sanctions to achieve foreign policy aims. Exactly like in the area of military modernization, what China justifies as necessary for its national defense also has the potential to be used offensively as a coercive geoeconomic tool. While China still lacks a coherent framework to enforce all extraterritorial norms abroad, it is perfecting its toolbox.

China's extraterritoriality is walking on two legs. While US-China competition is the primary driving force behind the adoption of geoeconomic extraterritorial tools, other forms of extraterritoriality have been developed to support China's public security agenda, which has intensified under Xi Jinping's leadership. Initially, these practices aimed at curtailing freedom of speech and silencing criticism of China abroad. However, they are evolving into a comprehensive array of laws and enforcement practices that project China's domestic security regime globally, first and foremost targeting the People's Republic of China (PRC) nationals, but in certain cases also foreign nationals living in Hong Kong, the PRC, and outside China's sovereign territory.

This paper examines the ongoing and rapid evolution of China's extraterritorial laws and enforcement measures. It covers the narrow understanding of extraterritoriality, which "refers to the prescriptive jurisdiction of a State over extraterritorial acts", though this jurisdiction is executed territorially, within the sovereign borders of the State.<sup>4</sup> It also looks at the extraterritorial enforcement of a law, i.e. enforcement outside the sovereign borders of the state – such as the consular jurisdiction of imperialist powers inside China during the period of the

<sup>4</sup> Zhengxin Huo and Man Yip, "Extraterritoriality of Chinese Law: Myths, Realities and the Future", *The Chinese Journal of Comparative Law*, (2021) Vol. 9, No. 3, pp. 328-358.

unequal treaties<sup>5</sup>, which ensured that they could only be tried in the courts of their home countries. This paper explores how both aspects of extraterritoriality are being built to pursue the foreign policy goals of the Chinese leadership – and argues that **national security considerations prevail over all other possible policy considerations to explain China's interest in extraterritorial jurisdiction.**

**The paper also argues that Europe is unprepared for what should be anticipated as China's coming full embrace of extraterritorial tools to defend its interests and assert its power – a trend that is likely to accelerate as US-China geo-economic competition intensifies under a second Trump administration.** So far, European attention has been largely focused on the challenges posed by US extraterritorial jurisdiction, with a well-documented history of US actions against European companies, leaving many scars in the continent's business circles.<sup>6</sup> In contrast, the geo-economic challenge from China remains theoretical in the mind of many Europeans. Yet, the challenges for Europe are many. While China has limited the enforcement of its extraterritorial norms abroad, it is arming itself with new tools. China intends to create new vulnerabilities that could be exploited in the future, in times of international crisis, or simply during phases of tension in bilateral relations, to coerce states into accepting its preferred policy outcomes. In addition, intimidation, persuasion to return to China, and sometimes even rendition of PRC nationals in foreign countries pose a significant challenge to European democracies, which have yet to develop an efficient response to safeguard their sovereignty from such covert action. The problem will only aggravate unless decisive action is taken.

<sup>5</sup> *The unequal treaties refer to a series of treaties mostly negotiated during the 19th and early 20th century with the western powers in the context of their commercial expansion in China (mainly the UK and France). These treaties imposed by the western imperialist powers led China to lose sovereignty over many portions of its territories while treaties also granted extraterritorial powers to the foreign countries.*

<sup>6</sup> *Georgina Wright, Louise Chetcuti, Cecilia Vidotto Labastie, "Extraterritoriality: a Blind Spot in the EU's Economic Security Strategy", Institut Montaigne, Issue Paper, January 2024, <https://www.institutmontaigne.org/en/publications/extraterritoriality-blind-spot-eus-economic-security-strategy>, 19 Nov 2024.*

# 1 Law, power and the pursuit of China's national interests

What falls inside the scope of “China’s extraterritoriality”? China’s foreign and security policy approaches extraterritoriality from three different angles: lawfare, economic coercion and clandestine action.

The People’s Republic of China places great emphasis on lawfare or “legal warfare” (法律战) as a tactic to achieve strategic objectives. In China’s strategic language, lawfare refers to the instrumentalization of international law and treaties, as well as national laws, to justify Chinese actions and discredit the legitimacy of rivals. The term comes from the military domain. It was first incorporated in China’s military doctrine in the early 1960s and has since been reemphasized in the 21st Century. In 2005, the “three warfares” (psychological, public opinion and legal) were included in the training and education doctrine of the People’s Liberation Army, the Chinese Armed Forces.<sup>7</sup>

**Lawfare is used to assert China’s territorial claims.** For example, in the South China Sea, China has gradually applied its national laws and enforced its administrative control through Coast Guards and other maritime agencies. This has occurred even in light of a ruling by the Arbitration Tribunal that highlighted the invalidity of certain aspects of China’s territorial claims. According to the tribunal, there is no legal basis for China’s assertion of historic rights to resources encompassed in the maritime area falling within the ‘nine-dash line’. China has been using the ‘nine-dash line’ on maps to delineate its claims, but without ever clarifying what constitutes a territorial sea and an Exclusive Economic Zone.<sup>8</sup>

<sup>7</sup> Jill I. Goldenziel, “Law as a Battlefield: the US, China and the Global Escalation of Warfare”, *Cornell Law Review*, 23 September 2021, [Law as a Battlefield: The U.S., China, and the Global Escalation of Lawfare – Cornell Law Review](#), 19 Nov 2024.



**Xi Jinping also sees lawfare as a means to achieve foreign policy goals, in particular to manage global competition and to defend China from the reach of foreign extraterritorial norms.** In a speech given during a 2022 collective study session of the Party's Politburo,<sup>9</sup> focusing on the "construction of the socialist rule of law system with Chinese characteristics"; a goal outlined at the 20th Party Congress, Xi underscored the importance of "using rule of law means to conduct international struggle" (运用法治手段开展国际斗争).<sup>10</sup> These words are coded: the term "rule of law" closely aligns with the notion of lawfare, while the term "struggle" constitutes Xi's favored Marxist terminology for describing competition in international politics. In his speech, Xi first advocates for building legislation to defend China against "sanctions, [foreign] interference, and long-arm jurisdiction." Second, he calls for "prioritizing urgent needs by strengthening law in foreign-related fields" (按照急用先行原则, 加强涉外领域立法), indicating that China should be prepared to use extraterritorial norms as a means to assert China's interests abroad.

The emphasis on law as a "means" underscores Xi Jinping's willingness to use the legal system to serve China's political and strategic considerations. According to Liu Jingdong, research director at the China Academy of Social Sciences, Xi believes that the law should serve the Party's international goals.<sup>11</sup> Liu notes that the domain of "law in foreign-related fields" includes relatively traditional and uncontroversial areas such as improving the legal environment for foreign companies operating in China and enhancing China's ability to handle international

<sup>8</sup> Robert D. Williams, "Tribunal Issues Landmark Ruling in South China Sea Arbitration", *Lawfare*, 12 July 2016, [Tribunal Issues Landmark Ruling in South China Sea Arbitration | Lawfare \(lawfare-media.org\)](https://www.lawfaremedia.org/article/tribunal-issues-landmark-ruling-in-south-china-sea-arbitration), 19 Nov 2024.

<sup>9</sup> See glossary, p. 65.

<sup>10</sup> Xi Jinping, 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设, *Qiushi*, Avril 2022, 坚持走中国特色社会主义法治道路 更好推进中国特色社会主义法治体系建设 – 求是网 ([qstheory.cn](http://qstheory.cn)), 19 Nov 2024.

<sup>11</sup> Liu Jingdong, 加强涉外领域立法的理论思考与建议, *International Law Studies* (国际法研究), no. 2, 2023, [http://iolaw.cssn.cn/zxzp/202304/t20230412\\_5619392.shtml](http://iolaw.cssn.cn/zxzp/202304/t20230412_5619392.shtml), 19 Nov 2024.

dispute settlements. It also, however, includes a strategic objective, that of “enhancing China’s international law discourse in global governance.” In other words, law is conceived as a way to increase China’s global influence by projecting responsibility and legitimacy.

**Law should also be used to advance the goals set forth by Xi in his report to the 20th Party Congress to “improve anti-sanctions, anti-interference and anti-long-arm jurisdiction mechanisms” – in other words, to counter foreign extraterritorial norms.** He argues for the need to “further operationalize and enhance the effectiveness and functions of the Anti-Foreign Sanctions Act and other laws” and to “enrich the domestic legal toolbox for anti-sanctions, anti-interference and anti-long-arm jurisdiction”. To do this, Liu argues that the legal basis of the 2015 National Security Law should be extended further. First, in the field of national security, Liu calls “to increase the strength of criminal penalties for acts that jeopardize China’s national security both within and outside the country”. Then, he argues that the 2015 National Security Law should be complemented by further legislation in “in key areas such as economic security, financial security, scientific and technological security, and ideological security, respectively, in accordance with the basic principles set forth in the Law”.

In other words, **lawfare extends well beyond the issue of extraterritoriality.** Xi Jinping’s foreign policy is marked by the strategic construction of legal frameworks designed **to elevate China’s position within the international system.** The implementation of laws with extraterritorial components should be viewed as part of this broader agenda. Once in place, these provisions afford the Chinese leadership a wide array of policy options.

**Extraterritoriality is also seen by the Chinese leadership as a means to strengthen China’s coercive economic policies.** The People’s Republic of China under Xi Jinping makes frequent use of economic coercion as a foreign policy tool, seeking to force states to change course on

issues considered priority national interests in Beijing.<sup>12</sup> Under Xi's leadership, the list of countries subjected to economic coercion has grown significantly, though not all for the same reason. Norway was punished for raising human rights concerns, the Philippines and Vietnam were coerced over disputes in the South China Sea, South Korea over defense cooperation with the United States, Lithuania in relation to its decision to welcome a Taiwanese representative office using the name "Taiwan", and Australia after it retraced the origins of COVID-19 to China. These measures are not framed as retaliatory sanctions – China has never designated a Norwegian salmon exporter or a Lithuanian copper producer on an entity list, for example. Rather than opt for a clear and transparent legal framework, China has practiced plausible deniability – providing no formal explanation when export permits are revoked or when sanitary and phytosanitary restrictions suddenly halt imports of agri-foods.

**Finally, extraterritoriality should also be analyzed in the context of the People's Republic of China's long tradition of clandestine action overseas,** including elite capture, influence operations and other types of "United Front Work", to use the Communist Party's terminology for actions that target non-Communist Party members to build support for the Party. Clandestine action differs from extraterritorial application of Chinese law, but they reinforce each other. In Europe, the problem has surfaced in recent years in two forms, the presence of unregistered Chinese police stations and attempts to forcefully repatriate Chinese nationals outside the frameworks of legitimate law-enforcement cooperation.

<sup>12</sup> Vida Macikenaite, "China's economic statecraft: the use of economic power in an interdependent world", *Journal of Contemporary East Asia Studies*, 9(2), 2020, pp. 108–126, <https://doi.org/10.1080/24761028.2020.1848381>. "Examining China's Coercive Economic Tactics", *Congressional Testimony* by Victor Cha, 10 May, 2023, *Examining China's Coercive Economic Tactics* (csis.org). Yeo, Yukyung, "The limits of pressure: China's bounded economic coercion in response to South Korea's THAAD", *Australian Journal of International Affairs*, 77(3), 2023, pp. 276–298, <https://doi.org/10.1080/10357718.2023.2216642>, 19 Nov 2024.

According to reports from the NGO Safeguard Defenders, 102 clandestine police stations have been established in 53 countries since 2016.<sup>13</sup> These stations are operated by four local police jurisdictions under the Ministry of Public Security:<sup>14</sup> Nantong, Wenzhou, Qingtian, and Fuzhou. They function as administrative centers but are also used to coerce Chinese nationals abroad. Between April 2021 and July 2022, NEGO Safeguard Defenders estimates that 230,000 individuals were forced or persuaded to return to China. Chinese authorities use various measures, such as revoking the right to education for the children of suspects, intimidating or imprisoning family members in China, and harassing individuals via WeChat. In July 2022, the Wenchang local government announced sanctions for those failing to report to authorities, including loss of health insurance, barring children from public schools, blocking family members from public sector jobs, auctioning or demolishing illicitly purchased property, and denying bank loans.<sup>15</sup>

In March 2024, a forced repatriation attempt at Charles de Gaulle airport was thwarted by the French airport border police. The operation was led by the head of the Ministry of State Security post at the Chinese embassy in Paris, who benefitted from diplomatic immunity. The covert policemen were attempting to repatriate Ling Huazhan, a political dissident linked to Falun Gong, a spiritual movement rooted in Buddhist, Taoist and Qigong traditions heavily involved in anti-communist activities, which the Party has been suppressing since the late 1990s. A document from the Chinese embassy, signed by the second secretary of consular affairs for overseas, detailed this forced return attempt. A French media investigation also revealed that a Chinese restaurant

<sup>13</sup> “230,000 Chinese “persuaded to return” from abroad, China to establish extraterritoriality”, *Safeguard Defenders*, 2 May 2024, <https://safeguarddefenders.com/en/blog/230000-policing-ex-pands>. “Patrol and Persuade: A follow-up investigation to 110 Overseas”, <https://safeguarddefenders.com/sites/default/files/pdf/Patrol%20and%20Persuade%20v2.pdf>, 19 Nov 2024.

<sup>14</sup> See glossary, p. 67.

<sup>15</sup> Harth, Laura, Yenting Chen, “Chasing Fox Hunt: Tracing the PRC’s Forced Return Operations around the Globe”. *Safeguard Defenders*, April 2024, <https://safeguarddefenders.com/sites/default/files/pdf/Chasing%20Fox%20Hunt.pdf>, 19 Nov 2024.

in the 9th arrondissement in Paris was conducting covert police missions.<sup>16</sup> Following Xi's visit to Paris, a "commando" operation was foiled on May 8, aiming to repatriate a Uyghur Kazakh woman to China. One of the six men detained had a passport connected to the embassy. In response, France requested the expulsion of the MSS post head and his deputy via a "mutual agreement" procedure rather than declaring them "persona non grata".<sup>17</sup> The French press noted that Chinese intelligence services operating in those areas had not gone to great lengths to attempt to conceal their actions, and remained in France even after the failure of their operations.<sup>18</sup>

The establishment of unregistered police stations and forceful repatriation attempts illustrate China's willingness to enforce its domestic security regime far beyond its borders. The recent incidents in Europe, particularly in France, underscore China's increasingly bold approach. As these activities become more visible, they pose significant questions about the boundaries of national legal enforcement overseas, and how the EU should respond to transnational repression and its relations to third countries that are targeted by Chinese transnational repression.

<sup>16</sup> Antoine Izambard, « Comment la police chinoise infiltre la France », *Challenges*, 2024, [https://www.challenges.fr/monde/asia-pacifique/comment-la-police-chinoise-infiltre-la-france\\_891606](https://www.challenges.fr/monde/asia-pacifique/comment-la-police-chinoise-infiltre-la-france_891606), 19 Nov 2024.

<sup>17</sup> Jacques Follorou, « Deux espions Chinois priés de quitter la France, après la tentative de rapatriement forcé d'un ressortissant », *Le Monde*, 3 July 2024, [https://www.lemonde.fr/societe/article/2024/07/02/deux-espions-chinois-pries-de-quitter-la-france-apres-la-tentative-de-rapatriement-force-d-un-ressortissant\\_6246161\\_3224.html](https://www.lemonde.fr/societe/article/2024/07/02/deux-espions-chinois-pries-de-quitter-la-france-apres-la-tentative-de-rapatriement-force-d-un-ressortissant_6246161_3224.html), 19 Nov 2024.

<sup>18</sup> Jacques Follorou et Simon Leplâtre, « Des fonctionnaires chinois à la manœuvre en France contre des dissidents », *Le Monde*, 20 May 2024, [https://www.lemonde.fr/societe/article/2024/05/18/des-fonctionnaires-chinois-a-la-man-uvre-en-france-contre-des-dissidents\\_6234020\\_3224.html](https://www.lemonde.fr/societe/article/2024/05/18/des-fonctionnaires-chinois-a-la-man-uvre-en-france-contre-des-dissidents_6234020_3224.html), 19 Nov 2024.

**Table 1: The expansion of Chinese extraterritorial laws**

Date	Law	Aim
<b>July 1979</b>	Criminal Code.	Tackle crime.
<b>August 1982</b>	Marine Environment Protection Act (MEPA).	Protect the environment.
<b>July 1994</b>	Foreign Trade Law (中华人民共和国对外贸易法).	Respond to unfair or discriminatory trade practices targeting China. Also the legal basis for other extraterritorial laws (2020 Unreliable Entity List).
<b>October 1997</b>	Regulations on the Administration of Arms Exports (军品出口管理条例).	Control exports.
<b>August 2008</b>	Anti-Monopoly Law (中华人民共和国反垄断法).	Protect Chinese trade and economy from market distortion.
<b>July 2015</b>	National Security Law (中华人民共和国国家安全法).	Part of the national security agenda. Promote Chinese jurisprudence. Also the legal basis for other extraterritorial laws (Entity Lists, Blocking Rules, etc.).
<b>June 2017</b>	Cybersecurity Law (网络安全法).	Part of the national security agenda. Grants Chinese public security and intelligence services access to data stored in China.
<b>June 2020</b>	Hong Kong National Security Law (中华人民共和国香港特别行政区维护国家安全法).	Part of the national security agenda. Legal basis to punish activities that pose a threat to national security.
<b>September 2020</b>	Unreliable Entity List (不可靠实体清单规定).	Sanctions list designed to protect China's interests.
<b>December 2020</b>	Export Control Law (出口管制法).	Control exports and re-exports of arms and sensitive technology.

Date	Law	Aim
January 2021	Regulation on Counteracting the Unjustified Extraterritorial Application of Foreign Laws and Measures, or “blocking rules” (反制外国无理域外适用法律和措施规定).	Block application of foreign extraterritorial measures on Chinese firms or firms operating in China.
June 2021	Anti-Foreign Sanctions Act (反外国制裁法).	Block application of foreign extraterritorial measures. Provide support to Chinese individuals and companies targeted by foreign extraterritorial norms.
August 2021	Personal Data Protection Act.	Controls transfers of personal data outside of China.
September 2021	Data Security Law (数据安全法).	Part of the national security agenda. Covers data regulation and surveillance. Law adopted in response to 2018 US Cloud Act.
July 2023	Law on Foreign Relations (中华人民共和国对外关系法).	Block and respond to foreign extraterritorial norms and provide a legal basis for use of some Chinese laws abroad.

## 2 A more limited use of extraterritoriality before Xi Jinping

It’s been almost 150 years since Chinese reformist intellectual Wang Tao published the essay “Abolish Extraterritoriality” (除额外权利) one of the first Chinese language texts to propose a definition of “extraterritorial rights” (额外法权)<sup>19</sup> – where he makes the distinction between extraterritoriality and consular jurisdiction. This distinction, first put forward

<sup>19</sup> Wang Tao 王韬, 弢园文集外编 [Collection of essays from the Tao garden] (Shanghai: Shi ji chu ban she, 2002), 74, 433, quoted in Carrai, Maria Adele. *Sovereignty in China: A Genealogy of a Concept since 1840*. Cambridge: Cambridge University Press, 2019. Print. Cambridge Studies in International and Comparative Law.

in Japan and common in East Asia by the beginning of the twentieth century, was pushed by Chinese intellectuals seeking to end unequal treaties and restore Chinese sovereignty.

In the words of historian Huang Xingtao, from Renmin University's Institute of Qing History, extraterritoriality during the unequal treaties had a bad connotation. Huang highlights how foreign powers exploited the confusion between "consular jurisdiction" and "extraterritoriality" for political purposes by portraying the expansion of reciprocal diplomatic immunity – extending privileges to all foreign nationals – as a natural and legitimate response to what they perceived as China's outdated legal system. So much so, that many Chinese intellectuals at the time were fighting to abolish foreign privileges in China that had been granted through foreign extraterritorial norms.<sup>20</sup> For Huang, extraterritoriality is a "privilege for the strong, and a narrative for the weak" (强者的特权与弱者的话语).<sup>21</sup> According to scholar Gao Hancheng, it was only in 1906 that an article in "Beiyang Official Gazette" distinguished "extraterritoriality" enjoyed by diplomats from "consular jurisdiction" enjoyed by ordinary foreigners. The article also criticized the conflation of these terms.<sup>22</sup>

From the foundation of the People's Republic of China until Xi Jinping's "new era", only four pieces of legislation contained extraterritorial clauses: the 1979 Criminal Code, the 1982 Marine Environment Protection Act (MEPA), the 1994 Foreign Trade Law (discussed in the next section), and the 2008 Anti-Monopoly Law.<sup>23</sup>

<sup>20</sup> Huang Xingtao, 黄兴涛 | 强者的特权与弱者的话语: "治外法权"概念在近代中国的传播与运用, *Sohu*, 29 December 2019, 黄兴涛 | 强者的特权与弱者的话语: "治外法权"概念在近代中国的传播与运用\_西方 ([sohu.com](http://sohu.com)), 19 Nov 2024.

<sup>21</sup> *Op. cit.*

<sup>22</sup> Gao Hancheng, 高汉成, 治外法权"概念词源属性辨正, *Chinese Academy of Social Sciences*, 31 July 2019, [https://www.cssn.cn/skgz/bwyc/202208/t20220803\\_5453872.shtml](https://www.cssn.cn/skgz/bwyc/202208/t20220803_5453872.shtml), 19 Nov 2024.

<sup>23</sup> Yongping Xiao and Lei Zhu, "The 'Effect Doctrine' and the Extraterritorial Application of Chinese National Laws It's Easier Said Than Done", *Cambridge Handbook of China and International Law*, 2023, pp. 181-199.



Article 7 of China's 1979 Criminal Code covers "personal jurisdiction" which is applicable outside the territory of China. It is consistent with the principle of "active nationality" in public international law according to which a country can prosecute a national, even if they live abroad, and for crimes committed overseas. It is also consistent with the principle of "passive nationality" according to which a country can prosecute for crimes committed overseas which are designed to harm or target its nationals. Passive nationality provides a foundation for article 8 of the Code, which states that its provisions "may be applicable to foreigners, who outside PRC territory, commit crimes against the PRC state or against its citizens".<sup>24</sup> China's enforcement of the 1979 Criminal Code has varied over time – there has been no systematic pursuit of foreign criminals for crimes committed against Chinese nationals overseas, even though China's foreign policy agenda since the Hu Jintao years (2002-2012) has placed greater emphasis on protecting Chinese citizens overseas.

Some famous examples include the extradition of Burmese drug lord Naw Kham. China led a joint effort with law enforcement officers from four countries to apprehend Naw Kham and his gang members after the killing of 13 Chinese sailors on the Mekong river.<sup>25</sup> Naw Kham was ultimately captured in Laos in late April 2012 and extradited to China on May 10, 2012. The Intermediate People's Court of Kunming conducted open proceedings in September 2012, and Naw Kham was ultimately executed in 2013 on the count of murder, drug trafficking, kidnapping and hijacking. By contrast, the death of 58 Chinese immigrants in the United Kingdom in 2000 did not lead to China to invoke the passive nationality principle, partly because it did not want to attract international criticism by seeking extradition. Instead, the case was prosecuted in the United Kingdom and the Netherlands.<sup>26</sup>

<sup>24</sup> Zhengxin Huo and Man Yip, "Extraterritoriality of Chinese Law: Myths, Realities and the Future", *The Chinese Journal of Comparative Law*, (2021) Vol. 9 No. 3 pp. 328-358.

<sup>25</sup> Jonas Parello-Plesner, Mathieu Duchâtel, *China's Strong Arm: Protecting Citizens and Assets Abroad*, IISS, Adelphi, 2015, pp. 91-106. Adelphi series: Vol 54, No 451 (tandfonline.com), 19 Nov 2024.

The 1982 Marine Environment Protection Act is the only Chinese environment legislation that incorporates the effects doctrine, according to which a country can exercise jurisdiction abroad when foreign acts have direct, substantial and likely economic effects in the country. While the effects doctrine was first used to justify the extraterritorial application of competition law, it has also been used in the context of environmental protection. Article 2 states that the law “shall also apply to pollution to the sea areas under the jurisdiction of the People’s Republic of China originating from areas beyond the sea areas under the jurisdiction of the People’s Republic of China”.<sup>27</sup> As Xiao Yongping and Lei Zhu note, there is nothing extraordinary about incorporating the effects doctrine into marine environment legislation – the United States, Iceland or the European Union follow a similar approach.<sup>28</sup>

In the field of economic statecraft, the 2008 Anti-Monopoly Law aligned with the growing international consensus at the time around the effects doctrine in competition law, i.e. that national competition rules could apply abroad to prevent market distortion at home. China’s Anti-Monopoly Law regulates monopolies, abuse of dominant position and mergers (article 3).<sup>29</sup> Examples include:

- In 2013, the Shenzhen Intermediate People’s Court ruled in favor of Huawei in the *Huawei v. InterDigital* case. Huawei filed action against InterDigital alleging that it had formed a dominant market position by successfully incorporating its 3G patents in international wireless communication standards, leading to excessive royalties targeting

<sup>26</sup> Danielle Ireland-Piper, “Long arm of the law: China’s extraterritorial reach”, Lowy Institute, 31 July 2024, [Long arm of the law: China’s extraterritorial reach | Lowy Institute](#), 19 Nov 2024.

<sup>27</sup> The State Council of the People’s Republic of China, “Foreign Trade Law of The People’s Republic of China”, updated on 23 August 2014, [Marine Environment Protection Law of the People’s Republic of China \(www.gov.cn\)](#), 19 Nov 2024.

<sup>28</sup> Xiao, Lei, *op.cit.*

<sup>29</sup> The State Council of the PRC, *Anti-monopoly Law of the People’s Republic of China, adopted at the 29th Meeting of the Standing Committee of the Tenth National People’s Congress, 30 August 2007, Anti-monopoly Law of the People’s Republic of China (www.gov.cn)*, 19 Nov 2024.

Huawei and monopolistic conducts of tie-in sales.<sup>30</sup> According to Xiao Yongping and Lei Zhu, this is the first case of extraterritorial assertion of Chinese law under the effects doctrine.<sup>31</sup> The court eventually ruled it was competent as it determined that the “relevant market” for ruling the case was the patent licensing markets – therefore the Chinese domestic market in its relevant scope.

- In June 2014, the Ministry of Commerce of the People’s Republic of China (MOFCOM)<sup>32</sup> announced its decision to “prohibit concentration of undertakings by prohibiting Maersk, MSC and CMA CGM from establishing a network center.”<sup>33</sup> MOFCOM concluded that the merger was different from a “loose shipping alliance” and “may have effects of excluding or restricting competition on the container liner shipping service market for the Asia-Europe route”. It added that “the participating undertakings had failed to prove that the benefits of the merger significantly outweighed the adverse effects, or that the merger served public interests”.
- In November 2016, the State Administration for Industry and Commerce imposed a fine on Tetra Pak worth seven percent of Tetra Pak’s annual revenue in China after concluding that Tetra Pak had abused its dominant position in the liquid food aseptic packaging equipment market in order to weaken competition in the Chinese market, by taking advantage of its presence in three distinct jurisdictions (Switzerland, Hong Kong SAR and the PRC).<sup>34</sup>

<sup>30</sup> You Yunting, “The Anti-Monopoly Judgment’s Digest of Huawei vs. InterDigital of China Courts”, *Bridge IP Law Commentary*, 30 April 2014, *The Anti-Monopoly Judgment’s Digest of Huawei vs. InterDigital of China Courts - Bridge IP Law Commentary (chinaiplawyer.com)*, 19 Nov 2024.

<sup>31</sup> Xiao, Lei, *op. cit.*

<sup>32</sup> See glossary, p. 66.

<sup>33</sup> MOFCOM announcement No 46 of 2014 on decisions of anti-monopoly review to prohibit concentration of undertakings by prohibiting Maersk, MSC and CMA CGM from establishing a network center, 20 June 2014, *MOFCOM Announcement No. 46 of 2014 on Decisions of Anti-monopoly Review to Prohibit Concentration of Undertakings by Prohibiting Maersk, MSC and CMA CGM from Establishing a Network Center (www.gov.cn)*, 19 Nov 2024.

<sup>34</sup> Xiao Fu and Guofu Tan, “Abuse of Market Dominance Under China’s Anti-Monopoly Law: The Case of Tetra Pak”, SSRN, 18 Jan 2018, <https://ssrn.com/abstract=3111205> or <http://dx.doi.org/10.2139/ssrn.3111205>, 19 Nov 2024.

### 3 Extraterritoriality under Xi Jinping: trade defense, retaliation and coercion

After Xi Jinping called on “accelerating the construction of a legal system for extraterritorial application of Chinese law”, the matter became a priority on the legislative agenda of the Standing Committee of the National People’s Congress<sup>35</sup>. Between 2020 and 2021, China adopted four texts, all of which provided new options for trade defense and retaliation, but also for coercion. They created a legal foundation to justify countermeasures against perceived unfair trade practices, but can also be used more offensively. They are based on article 7 of the revised Foreign Trade Law, which provides that “in the event that any country or region applies prohibitive, restrictive or other like measures on a discriminatory basis against the People’s Republic of China in respect of trade, the PRC may, as the case may be, take countermeasures against the country or region in question”.<sup>36</sup> Extraterritorial measures include: the 2017 Cybersecurity Law of the PRC; the 2020 Regulation on Unreliable Entity List (不可靠实体清单规定); China’s 2020 Export Control Law (出口管制法); the 2020 Hong Kong National Security Law; the 2021 Regulation on Counteracting the Unjustified Extraterritorial Application of Foreign Laws and Measures (反制外国无理域外适用法律和措施规定); the 2021 Anti-Foreign Sanctions Act (反外国制裁法); the 2021 Data Security Law; the 2023 Law on Foreign Relations.

<sup>35</sup> See glossary, p. 65.

<sup>36</sup> The State Council of the PRC, “Foreign Trade Law of The People’s Republic of China”, updated on August 23, 2014, *Foreign Trade Law of The People’s Republic of China* ([www.gov.cn](http://www.gov.cn)), 19 Nov 2024.

### 3.1. THE 2020 REGULATION ON UNRELIABLE ENTITY LIST (不可靠实体清单规定)

In September 2020, China's Ministry of Commerce (MOFCOM) published a list of "unreliable entities" (UEL), based on articles 16 and 26 of the Foreign Trade Law and the National Security Law.<sup>37</sup> The 14 Provisions clarify when punitive measures can be imposed on designated foreign entities (companies, organizations or individuals) suspected of "endangering China's national sovereignty, security or development, causing serious damage to the legitimate rights and interests of Chinese enterprises, organizations and individuals". It is a retaliatory measure against foreign entities that suspend transactions with Chinese companies, organizations and individuals on the basis that such action is "in violation of market-based principles" (article 2). Those listed under the Provisions lose the right to import or export, invest, work and travel to China. They also face hefty fines and can have their residence permits revoked (article 10). There are also risks of prison time. The UEL is completely distinct from China's export control list, and is complemented politically in 2021 by the Anti-Foreign Sanction Law.

The UEL is both designed to respond to, and emulate, the various lists that the US executive branch has relied on for its foreign policy. These include the Specially Designated Nationals and Blocked Persons List (SDN List) administered by the US Treasury's Office of Foreign Assets Control (OFAC) and the Entity List, managed by the US Department of Commerce's Bureau of Industry and Security (BIS).

Unlike US extraterritorial legislation however, the UEL is not managed by a designated government authority; instead, a working mechanism composed of "relevant central governmental authorities" is responsible for

<sup>37</sup> MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List", Ministry of Commerce of the People's Republic of China, September 19, 2020, <https://web.archive.org/web/20241008001740/http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>, 19 Nov 2024.

implementing the Provisions. The working mechanism is located within the Ministry of Commerce of the State Council and includes representatives of the Ministry of Foreign Affairs,<sup>38</sup> the Ministry of National Defense,<sup>39</sup> the Ministry of Public Security<sup>40</sup>, the Ministry of Human Resources and Social Security,<sup>41</sup> and the General Administration of Customs.<sup>42</sup>

There is so far no indication that the Chinese leadership intends to use the UEL in the way that the US government uses its various export controls and sanctions lists. Since the creation of the UEL Provisions in 2020, no entity had been listed until February 16, 2023, when MOFCOM announced that it was placing Lockheed Martin and Raytheon (US aerospace and defense companies) on the UEL for supplying arms to Taiwan. The two companies were already sanctioned under the Anti-Foreign Sanctions Law.<sup>43</sup>

China's enforcement capacity is also weaker than the United States'. For example, the US can threaten US and non-US companies that do not respect US measures with exclusion from the US market and financial system – effectively barring them from trading with, and in, the US market and from trading in dollars. The threat acts as a powerful deterrent. Exclusion from the Chinese market is a threat, but exclusion from the Chinese financial system does not wield nearly the same power. What's more, the Chinese government is hardly going to threaten the exclusion of foreign companies from its market at a time when it faces an economic downturn and is increasing efforts to attract foreign investment. For now at least, foreign-invested companies are unlikely to be adversely affected by the UEL Regulations.

<sup>38</sup> See glossary, p. 66.

<sup>39</sup> See glossary, p. 66.

<sup>40</sup> See glossary, p. 67.

<sup>41</sup> See glossary, p. 67.

<sup>42</sup> See glossary, p. 68.

<sup>43</sup> Chinese Ministry of Commerce Places Two Companies on Its Unreliable Entity List for the First Time," Davis Polk, February 2023, <https://www.davispolk.com/insights/client-update/chinese-ministry-commerce-places-two-companies-its-unreliable-entity-list>, 19 Nov 2024.

However, the creation of the UEL is part of a growing arsenal of measures enabling China to target multinational companies that comply with US extraterritorial measures and those of other countries. It creates new challenges for foreign firms operating in China, for those that have supply chains that include China or for those that see China as an export market. A company that complies with requests from the US government in ways that adversely impact Chinese interests, risk retaliation. In such a scenario, companies will need to undertake a careful risk assessment that considers the potential implications of following US rules in relation to the company's exposure to China.<sup>44</sup>

### 3.2. CHINA'S 2020 EXPORT CONTROL LAW (出口管制法)

In October 2020, the PRC National People's Congress Standing Committee passed the Export Control Law (ECL)<sup>45</sup>, three years after MOF-COM presented a first draft of the legislation. It became effective in December 2020. The law contains a retaliatory regime and extraterritorial jurisdiction, but it is first and foremost a way for China to control transfers and re-exports of arms and sensitive technology. Whether China uses it for retaliation and coercion in the future is still unclear – what is certain is that the Chinese leadership intends to use export control strategically for foreign policy purposes. However, it is still cautious about including re-exports of Chinese goods through third countries in the scope of the PRC's legislation.

<sup>44</sup> Chen Zhu, Paul MacKenzie, Cheryl Zhu, "China's 'Unreliable Entity List' Creates New Counter-vailing Risks for Companies Navigating US Sanctions and Long-Arm Enforcement", Morrison Foerster, June 2021, <https://www.mofo.com/resources/insights/201007-china-mofcom-unreliable-entity-list>, 19 Nov 2024.

<sup>45</sup> The National People's Congress of the People's Republic of China, "Export Control Law of the People's Republic of China", 17 October 2020, *Export Control Law of the People's Republic of China*, 19 Nov 2024.

**China already had administrative regulations governing export licensing of military and dual-use goods, but the export control law is part of a normal legislative ramping-up.** During the era of Chairman Mao Zedong (1949–76), controls on transfers of conventional arms took the form of executive decrees.<sup>46</sup> In 1997, the Chinese Government adopted the Regulations on the Administration of Arms Exports (军品出口管理条例), which governed exports of conventional arms and the management of firearms and other weaponry. In the early 2010s, many in China were pushing to replace it with an administrative system based on the Foreign Trade Law and the Criminal Law as this was easier to operate than a law governing arms exports that allowed only State Owned Enterprises to export weapons in the Chinese system.<sup>47</sup>

The law is designed to govern and regulate exports of “controlled items” such as arms and sensitive technology and is comparable to export controls in many other countries. China’s export control legislation aims at “safeguarding national security and interest, performing nonproliferation and other international obligations, and strengthening and regulating export control” (article 1). It covers “controlled items” defined as “export of dual-use items, military products, nuclear and other goods, technologies, services related to safeguarding national security and interest or performing nonproliferation and other international obligations” (article 2). It organizes the licensing procedure through the State Council and the Central Military Commission,<sup>48</sup> and authorizes or prohibits licensing for exports and transfers of products, technology, and services, depending on product features, end-users, destinations, or end-uses. It also outlines a regime of penalties for violation and non-compliance, putting pressure on exporters to establish export control compliance systems. Penalties in case of non compliance may consist

<sup>46</sup> Evan Medeiros, Bates Gill, *Chinese Arms Exports: Policy, Players and Process* (US Army War College, Strategic Studies Institute: Carlisle, PA, Aug. 2000), p. 26.

<sup>47</sup> Mark Bromley, Mathieu Duchâtel, Paul Holtom, *China’s Exports of Small Arms and Light Weapons*, SIPRI Policy Paper no. 38, Stockholm, October 2013.

<sup>48</sup> See glossary, p. 67.



of warnings, suspension, confiscation or fines. The amount of fines depends on the offense and “on the amount of illegal income” but can go up to RMB 5 million (about USD 755,857) or 10 times the gains made from the illegal activities (articles 33-44).

It is unclear whether China intends to use the ECL as a way to retaliate or respond to foreign sanctions or measures that undermine Chinese interests. Article 48 of the law states that “where any country or region endangers the national security or interest of the People's Republic of China by abusing export control measures, the People's Republic of China may take countermeasures against such a country or region according to the actual circumstances”. The text does not specify whether such countermeasures should take the form of export denials – the language is intentionally vague and suggests that China’s response is not necessarily limited to export controls. In that sense, it mirrors the exact dispositions of the anti-sanctions legislation and, in many ways, is therefore redundant.

Like other countries, China is constantly revising its export control list and there is no question that it sees export restrictions as part of its foreign policy toolbox. In the field of export controls, control lists and enforcement matter as much as the legal foundations for licensing and export denials: export control is what the states make of it. In this respect, article 9 authorizes “temporary controls” for a period of two years, after which “a decision shall be made whether to terminate the temporary control, extend the period of the temporary control, or include the items subject to the temporary control in the export control list”. This suggests that China would have more flexibility to respond to perceived unfair trade practices.

In July 2023, China announced that export licenses would be needed for gallium, germanium and derivatives, two rare minerals widely used in the production of semiconductors and other high-technology goods – with MOFCOM pointing to the risk of export to military end-users.<sup>49</sup> Later that month, China’s Ministry of Commerce, the General Administration of Customs, and other Chinese agencies announced new export control

restrictions on drone-related items. In December 2023, China placed rare earth processing technology on its control list.<sup>50</sup> These developments suggest that China is considering export denials in technology segments where China holds an asymmetric advantage over foreign competitors – possibly as a means to guarantee market hegemony and reduce competition.<sup>51</sup> Only an actual crisis can reveal the extent to which China could weaponize dependencies in critical raw materials in times of crisis, but a major threshold has been crossed with China using export denials as possible countermeasures to vaguely defined acts “against Chinese interests”. While China has so far refrained from imposing costs through export controls, the decisions of the end of 2023 send the unmissable signal that it is ready to do so. As a recent study by the German think tank Mercator Institute for China Studies (MERICS) underlines, Beijing conceives export controls as a tool lying at the intersection of national security and industrial policy, with the aim of keeping value chains in China and nurturing technological superiority where possible.<sup>52</sup>

Article 44 states that “where any organization or individual outside the territory of the People's Republic of China violates the provisions of this Law on the administration of export control, which endangers the

<sup>49</sup> “商务部 海关总署公告2023年第23号 关于对镓、锗相关物项实施出口管制的公告 [Announcement No. 23 of 2023 of the Ministry of Commerce and the General Administration of Customs on the Implementation of Export Control on Gallium and Germanium Related Items]”, Ministry of Commerce of the People's Republic of China, July 3, 2023, <https://m.mofcom.gov.cn/article/zwgk/gkzcfb/202307/20230703419666.shtml>, 19 Nov 2024.

<sup>50</sup> Liu Siyi, Dominic Patton, “China bans export of rare earths processing tech over national security”, Reuters, 22 December 2023, [China bans export of rare earths processing tech over national security | Reuters](https://www.reuters.com/world/china/china-bans-export-rare-earths-processing-tech-over-national-security-2023-12-22/), 20 Nov 2024.

<sup>51</sup> Tobias Gehrke and Julian Ringhof, “The power of control: how the EU can shape the new era of strategic export restrictions”, <https://ecfr.eu/publication/the-power-of-control-how-the-eu-can-shape-the-new-era-of-strategic-export-restrictions/>, 20 Nov 2024. Jing Zhang, Tamer A. Soliman, Jennifer L. Parry, “China Proposed Changes to the “Catalogue of Technologies”, Policy Brief, p.7. May 2023, <https://www.mayerbrown.com/en/insights/publications/2023/02/china-proposed-changes-to-the-catalogue-of-technologies-prohibited-and-restricted-from-export>, 20 Nov 2024.

<sup>52</sup> Rebecca Arcesati, François Chimits, Antonia Hmaid, “Keeping value chains at home, how China controls foreign access to technology and what it means for Europe”, MERICS, 8 August 2024, <https://merics.org/en/report/keeping-value-chains-home#msdyntrid=OX9T3M-n7bvVh-SuYVeUV9SyG1-7HTaytlzWVy9Bh2dA>, 20 Nov 2024.

national security and interest of the People's Republic of China, or obstructs the fulfillment of nonproliferation and other international obligations, the organization or individual shall be held legally liable and be punished in accordance with the law". This is an approach similar to the US export control regulations, which could lead to criminal liabilities for foreign companies that fail to comply with the regulations – but it remains to be seen whether China uses these export controls for purposes other than prosecuting illegal arms transfers. The reference to the “national security and interest” of the PRC is certainly broad enough to create a vast scope for action, including for foreign policy goals.

Meanwhile, article 45 may pave the way for extraterritorial enforcement. In a first version of the law, third-country recipients of a controlled item seeking to re-export that item to another country could be subject to a licensing requirement – in other words, they may need the authorization from the PRC. The final version of the text has watered down language on the “re-export of any controlled items”. Article 45 focuses on transshipment and transit activities, as well as the transfer of goods to a place overseas from customs-supervised zones in China – not from third countries. This suggests that MOFCOM has yet to decide whether “re-exports” would require specific licensing and therefore have extraterritorial reach.

In summary, the Export Control Law brings China one step closer to adopting the export control philosophy of the United States by using export denials of sensitive technology to achieve foreign policy goals. The EU has done the same in the context of Russia's invasion of Ukraine. While the ECL was initially designed to govern arms and sensitive technology exports, China is also thinking about how to use export controls as a form of retaliation, especially given US export control restrictions targeting China's military-industrial complex.<sup>53</sup> There are important

<sup>53</sup> US Department of Defense. *Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. (“Mac”) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283)*. October 5, 2022, <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.pdf>, 20 Nov 2024.

industrial policy considerations in China's approach to technology transfers – the law unlocks the potential use of export denials during international tensions, for purposes of retaliation and coercion.

### **3.3. THE 2021 REGULATION ON COUNTERACTING THE UNJUSTIFIED EXTRATERRITORIAL APPLICATION OF FOREIGN LAWS AND MEASURES** (反制外国无理域外适用法律和措施规定)

In January 2021, China's Ministry of Commerce introduced the "Rules on Counteracting Unjustified Extraterritorial Applications of Foreign Legislation and Other Measures," commonly referred to as the "Blocking Rules".<sup>54</sup> These Rules supplement the Export Control Law (ECL) and Unreliable Entities List (UEL) Provisions. They are also China's first regime designed to block the application of foreign laws that undermine China's strategic interests. The Blocking Rules share the same legal foundation as the Entity List (UEL), namely the 2015 National Security Law and other relevant laws, which embrace a broad definition of national security.<sup>55</sup> This grants Chinese authorities significant discretion in defining what constitutes a potential threat to China's national security.

Like the European Union's Blocking Statute, the Rules are designed as a defensive instrument rather than an offensive legal tool. The stated purpose of the Blocking Rules is purposely broad:

- counter the impact on China of "unjustified extraterritorial application of foreign legislation and other measures",

<sup>54</sup> "MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures", Ministry of Commerce, January 9, 2021, [https://english.mofcom.gov.cn/Policies/GeneralPolicies/art/2021/art\\_98677d0ed28b41b9adef-f27b00c9d001.html](https://english.mofcom.gov.cn/Policies/GeneralPolicies/art/2021/art_98677d0ed28b41b9adef-f27b00c9d001.html), 19 Nov 2024.

<sup>55</sup> Christopher Corr, Lin Li, Samuel Scoles, Chunfu Yan, "China Establishes New Mechanism to Counteract "Unjustified" Extraterritorial Application of Foreign Measures", White & Case LLP, February 2021, <https://www.whitecase.com/insight-alert/china-establishes-new-mechanism-counteract-unjustified-extraterritorial-application>, 20 Nov 2024.

- safeguard Chinese national sovereignty, security and development interests,
- protect the legitimate rights and interests of citizens, legal persons and other organizations of China.

What companies the Rules apply to is not always clear. For instance, the term “third state” suggests that the Rules apply to transactions between a Chinese entity and any third-country entity. Rules do not specify which of the foreign rules or sanctions it is guarding against – meaning they could cover almost any foreign legislation or measure, apart from the treaties or international agreements which China is a party to.

Under the Rules, Chinese entities are supposed to raise awareness of issues preventing “normal” transactions within 30 days of their occurrence. The Rules establish a working interagency mechanism similar to the working mechanism of the UEL and ECL: it involves several departments and is chaired by the Ministry of Commerce (MOFCOM). When conflicts arise, they are managed by MOFCOM, the National Development and Reform Commission (NDRC)<sup>56</sup> and other relevant State Council departments. This interagency mechanism is common in China, particularly for addressing trade and economic policies. If the mechanism finds that a foreign extraterritorial norm undermines Chinese interests, MOFCOM can issue a prohibition order to prevent the Chinese – or foreign company based in China – to comply with it. The mechanism can also “suspend or withdraw a prohibition order,” and entities can apply to MOFCOM for an exemption. However, the procedure and means of appeal remain unclear at this stage.

Contrary to the EU’s anti-coercion instrument that includes countermeasures but no compensation mechanism for the targets of coercion, the Chinese regulation does not only include countermeasures but also support to companies that are adversely affected.<sup>57</sup> Article 11 of the

<sup>56</sup> See glossary, p. 68.

regulation creates a compensation system, specifying that the government will provide the necessary support to offset significant losses resulting from non-compliance with foreign extraterritorial laws and measures.

### 3.4. THE 2021 ANTI-FOREIGN SANCTIONS ACT (反外国制裁法)

The Anti-Foreign Sanctions Act (AFSL) was passed by the National People's Congress' Standing Committee (NPCSC) on June 10, 2021 and was effective immediately. The Act is designed to block foreign extraterritorial provisions in China and allows the CCP to take measures against any foreign action "that endangers China's national sovereignty, security and development interests".<sup>58</sup> According to the MERICS, the AFSL is a "blocking statute, retaliatory regime and proactive sanctions legislation rolled into one".<sup>59</sup> According to article 3(2) of the AFSL: "If any foreign country violates international law and the basic principles of international relations, contains or suppresses China based on various pretexts or its own laws, takes discriminatory restrictive measures against Chinese citizens or organizations, or interferes with China's internal affairs, China is entitled to take corresponding countermeasures".

As a blocking statute and a retaliatory regime, the Act complements the UEL and the 2021 Blocking Rules. It is an "overall legal framework for countering foreign sanctions".<sup>60</sup> Article 12 (punitive measures) enables retaliatory sanctions. Any foreign individual or company accused of

<sup>57</sup> Mathieu Duchâtel, "Effective Deterrence? The Coming European Anti-Coercion Instrument", *Institut Montaigne*, 2 December 2022, <https://www.institutmontaigne.org/en/expressions/effective-deterrence-coming-european-anti-coercion-instrument>, 20 Nov 2024.

<sup>58</sup> *Beijing's Strategy for Asserting Its "Party Rule by Law" Abroad. Special Report*, United States Institute of Peace, September 2022.

<sup>59</sup> Katja Drinhausen, Helena Legarda, "China's Anti-Foreign Sanctions Law, a warning to the world", *Merics Commentary*, June 2021, <https://merics.org/de/kommentar/chinas-anti-foreign-sanctions-Law-warning-world>, 20 Nov 2024.

undermining Chinese interests on the basis of foreign extraterritorial norms can be added to the Anti-Sanctions list (“Counter-Control List”). This includes those who, on behalf of foreign governments, are involved in the drafting and carrying out of the sanctions; but also individuals and companies that comply with those sanctions, anywhere in the world.

Those listed face visa bans, banned entry into (or deportation from) China, the freezing of their assets in China and are barred from doing business with Chinese entities. The menu is “taken straight from the US playbook” and bears strong resemblance with the sanctions lists in the US.<sup>61</sup> Importantly, as the Act is designed to support Chinese individuals and companies that are the targets of foreign sanctions – it provides them with support and help to initiate lawsuits in Chinese courts for relief.

The AFSL has clearly been designed to deter Chinese – and foreign companies based in, or trading with, China – from complying with foreign rules. The confusion around compliance rules are meant to further strengthen deterrence: the AFSL does not provide companies with mechanism to request an exemption application of the law<sup>62</sup>, nor does it specify which foreign extraterritorial laws they should not comply with. Unlike the EU Blocking Statute, the AFSL does not identify which foreign sanctions are blocked, creating broad discretion for Chinese authorities to decide where to focus enforcement.<sup>63</sup> In addition, the AFSL has a higher legal status than administrative rules enacted by MOFCOM as it falls under the responsibility of the NPCSC, which has legislative power in China.

<sup>60</sup> “China introduces anti-sanctions law”, Clifford Chance, July 2021, [China-Introduces-Anti-Foreign-Sanctions-Law-July2021.pdf \(cliffordchance.com\)](#), 20 Nov 2024.

<sup>61</sup> Chen Zhu et al, “China’s New Anti-Foreign Sanctions Law: Understanding Its Scope and Potential Liabilities”, Morrison Foerster, June 2021, <https://www.mofo.com/resources/insights/210630-chinas-new-anti-foreign-sanctions-law>, 20 Nov 2024.

<sup>62</sup> Amigo Xie, Steven Hill. *Key Takeaways and Q&As to Understand China’s Effort to Establish Its Own Legal Regime of Extraterritorial Jurisdiction*. K&L Gates. July 2021.

<sup>63</sup> *China’s New Anti-Foreign Sanctions Law: Understanding Its Scope and Potential Liabilities*, Morrison Foerster, June 2021.

But the Act also contains proactive sanction measures, beyond defense and retaliation. Article 15 (proactive measures) provides a legal basis for any direct countermeasure or sanction against any foreign country, organization, or individual that “implements, assists in, or supports any act endangering” China’s interests”. The category is intentionally broad so as to be able to impose foreign sanctions or discriminatory restrictive measures on all foreign entities or individuals deemed to undermine China’s interest – even if they are not the primary actors.<sup>64</sup> In addition, in what resembles collective punishment and intimidation, the CCP can, under the AFSL, sanction those affiliated to the individuals and entities involved in carrying out sanctions against Chinese targets, including (a) immediate family members; (b) senior managers or control persons; (c) entities in which they serve as senior managers; and (d) entities in which they have control or participated in their establishment or operation.

Put simply “a foreign company terminating a transaction with a Chinese company, or a foreign financial institution shutting down a Chinese company’s bank account opened outside China, due to unilateral foreign sanctions, may in accordance with local compliance regulations all be deemed to have assisted in the implementation of discriminatory restrictive measures”.<sup>65</sup>

The Act is extraterritorial in the narrow sense of the term in that it can trigger countermeasures in response to foreign extraterritorial norms anywhere in the world. However, the jurisdiction is executed territorially. It does not contain secondary sanctions<sup>66</sup> and does not plan to target assets in third countries, though this could change.

<sup>64</sup> Amigo Xie, Steven Hill. *Key Takeaways and Q&As to Understand China's Effort to Establish Its Own Legal Regime of Extraterritorial Jurisdiction*. K&L Gates. July 2021.

<sup>65</sup> “China’s Milestone in Counteraction against Unilateral Foreign Sanctions: Anti-Foreign Sanctions Law”, Gide Loyrette Nouel, July 2021, [https://www.gide.com/sites/default/files/gide\\_china\\_client\\_alert\\_afsl\\_20210712\\_final.pdf](https://www.gide.com/sites/default/files/gide_china_client_alert_afsl_20210712_final.pdf), 20 Nov 2024.



The Act does not yet clarify which ministries can sanction foreign entities. A “mixed comity” is tasked with reporting to the State Council, the executive branch of the PRC, any irregular or illegal application of laws, but the decision-making process itself is not detailed in the text of the Act. Only future practice will answer the question.

China has employed the Anti-Foreign Sanctions Act twice, against US officials in the Trump administration and against US individuals and organizations, in retaliation to US sanctions imposed following the crackdown in Hong Kong<sup>67</sup> (July 2020) and in response to alleged human rights violations in Tibet (December 2022). Although the Law has never been used against European companies, its adoption was fast-tracked in response to the March 2021 imposition of joint sanctions by the US, the EU and the UK for human rights violations in Xinjiang. The PRC responded by imposing counter-sanctions even before the Act was adopted, further highlighting China’s willingness and ability to counter-sanction.<sup>68</sup>

The modus operandi may evolve over time and the practice may adjust course. Yet, the act also contains a clear political signal that China’s arsenal will continue to grow. In particular, article 13 states that “in addition to the AFSL, relevant laws, administrative regulations, and departmental rules, may provide for the adoption of other necessary countermeasures against acts that endanger China”.

<sup>66</sup> *There are two types of sanctions: primary sanctions which apply to the individuals and/or entities from the country issuing the sanctions and forbidding them from trading with listed foreign entities; and secondary sanctions targeting individuals and entities that trade with entities subjected to primary sanctions or whose activities are deemed to contravene the issuing country’s interest.*

<sup>67</sup> *The Chinese authority adopted several repressive measures regarding democratic rights and an electoral reform in 2019 and 2020 which led to massive protests and demonstrations that were severely repressed.*

<sup>68</sup> *Francesca Ghiretti, “How China Imposes Sanctions, A Guide to the Evolution of Beijing’s New Policy Tool”, MERICS, 6 June 2023, <https://merics.org/en/report/how-china-imposes-sanctions>, 20 Nov 2024.*

## 4 The global expansion of China's security state

In July 2015, the Standing Committee of the National People's Congress passed the National Security Law. This was a watershed moment and confirmed Xi Jinping's distinctive rule-by-law approach to national security matters. The law reads like a statement and defines national security as "the relative absence of international or domestic threats to the state's power to govern, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major national interests, and the ability to ensure a continued state of security". Following the National Security Law, the years leading up to the 19th Party Congress of the Chinese Communist Party in 2017 marked the beginning of Xi Jinping's proclaimed "new era", which saw the adoption of several pieces of national security-related legislation. All make use of the protective principle in international law (also called the security principle) which states that national laws can apply abroad to protect the issuing country – here the PRC – from foreign acts that could undermine its national sovereignty and security. All seek to complement what China is unable to achieve through international law-enforcement cooperation, like extradition treaties for example. All pose direct challenges to European interests, and will inevitably result in new frictions in EU-China relations in the future. These laws, detailed below, include: the 2017 Cybersecurity Law (网络安全法); the 2021 Data Security Law (数据安全法); the 2020 Hong Kong National Security Law (中华人民共和国香港特别行政区维护国家安全法); the 2023 Law on Foreign Relations (中华人民共和国对外关系法).

#### 4.1. THE 2017 CYBERSECURITY LAW (网络安全法)

China's 2017 Cybersecurity Law (CSL) establishes an overall security framework to manage the PRC's cyberspace sovereignty.<sup>69</sup> The CSL was passed by the National People's Congress<sup>70</sup> in November 2016 and came into force in June 2017. It supplemented existing laws, rules and regulations relating to information security, such as Administrative Measures for Prevention and Treatment of Computer Viruses and Administrative Measures for Hierarchical Protection of Information Security.

The Cybersecurity Law has been described as a "milestone" in Chinese legislative history as it is the first text with extraterritorial jurisdiction that has been given "teeth" with provisions to allow enforcement, through sanction measures.<sup>71</sup> According to article 75, "where any overseas institution, organization or individual attacks, intrudes into, disturbs, destroys or otherwise damages the critical information infrastructure of the People's Republic of China, causing any serious consequence, the violator shall be subject to legal liability in accordance with law; and the public security department of the State Council and relevant departments may decide to freeze the property of or take any other necessary sanction measure against the institution, organization or individual".

The CSL is primarily about data localization inside China and gives Chinese public security and intelligence services access to data stored in China for the purpose of investigating incidents through on-site inspections. Data localization is the main tool of the legislation which is designed to "safeguard cyberspace sovereignty, national security and

<sup>69</sup> Rogier Creemers, Graham Webster, Paul Triolo "Translation: Cybersecurity Law of the People's Republic of China (Effective June 1, 2017)", *DigiChina*, June 2018, <https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>, 20 Nov 2024.

<sup>70</sup> See glossary, p. 65.

<sup>71</sup> Zhengxin Huo and Man Yip, *op. cit.*

public interests; protect the lawful rights and interests of Chinese persons and promote the healthy development of the informatization of the economy and society.”<sup>72</sup> The CSL applies to network operators and businesses (almost all businesses in China that use email or other data networks). According to the law “national operators must provide technical support and assistance to the public security and state security organs [...] during a crime investigation.” The law also requires network operators in critical sectors to store data within mainland China that is gathered or produced by the network operator in the country and it contains a security assessment for any “outward data transfer” – requiring business information and data on Chinese citizens gathered within China to be kept on domestic servers in China. The law adds that this data cannot be transferred abroad without permission. Finally the CSL includes a ban on the export of any economic, technological, or scientific data that would pose a threat to “national security or the public interest”.

#### 4.2. THE 2021 DATA SECURITY LAW (数据安全法)

The Data Security Law (DSL) was adopted by the Standing Committee of the PRC National People’s Congress in June 2021. It came into force in September 2021<sup>73</sup> and aims to regulate the collection, storage, processing and publication of any kind of data, in order to protect “the lawful rights and interests of individuals and organizations” and to safeguard “the sovereignty, security, and development interests of the state” (article 1).

<sup>72</sup> François Godement, Viviana Zhu, “Cross-Border Data Flows: The Choices for Europe”, p. 52. Institut Montaigne, April 2023, [https://www.institutmontaigne.org/ressources/pdfs/publications/Institut%20Montaigne\\_actionnote\\_cross-border\\_data\\_flows\\_the\\_choices\\_for\\_europe\\_0.pdf](https://www.institutmontaigne.org/ressources/pdfs/publications/Institut%20Montaigne_actionnote_cross-border_data_flows_the_choices_for_europe_0.pdf), 20 Nov 2024.

<sup>73</sup> National People’s Congress of the PRC, “Data Security Law of the People’s Republic of China”, adopted at the 29th Meeting of the Standing Committee of the Thirteenth National People’s Congress, 10 June 2021. [Data Security Law of the People’s Republic of China \(npc.gov.cn\)](https://www.npc.gov.cn), 20 Nov 2024.

Together with the CSL, the law can be seen as a countermeasure to the 2018 US CLOUD Act according to which US law enforcement agencies have the right to access data stored on US servers, no matter which country the data is stored in.<sup>74</sup> Article 36 makes clear that “without the approval of the competent authorities of the People’s Republic of China, organizations or individuals in the People’s Republic of China shall not provide data stored within the territory of the People’s Republic of China to any overseas judicial or law enforcement body”. This poses a dilemma for companies caught between the two laws: do they comply with the US CLOUD Act or do they comply with the 2021 Data Security Law? The problem occurred in the summer 2024 when Chinese company Nuctech invoked articles 31 and 36 of the Data Security Law, article 41 of the Personal Information Protection Law and article 28 of the Law on Safeguarding State Secrets to refuse the European Commission access to information requested in the context of an EU foreign subsidies investigation.<sup>75</sup> Nuctech, which produces body and luggage scanners for airports and ports in over 170 countries, had already been blacklisted by the US Department of Commerce in 2020 after it claimed that “NucTech’s lower performing equipment impairs US efforts to counter illicit international trafficking in nuclear and other radioactive materials”.<sup>76</sup> In June 2024, Nuctech appealed to the General Court of the EU against the European Commission’s decision to inspect its offices in the Netherlands and in Poland as part of an ongoing investigation into a suspected breach of the EU’s Foreign Subsidies Regulation, which

<sup>74</sup> Ryan D. Junck, Bradley A. Klein, Akira Kumaki, Ken D. Kumayama, Steve Kwok, Stuart D. Levi, James S. Talbot, and Siyu Zhang, “China’s New Data Security and Personal Information Protection Laws: What They Mean for Multinational Companies,” Skadden Publication, November 3, 2021, <https://www.skadden.com/insights/publications/2021/11/chinas-new-data-security-and-personal-information-protection-laws>, 20 Nov 2024.

<sup>75</sup> Finbarr Bermingham, “EU subsidy raids on Chinese company Nuctech were legal, court rules”, *South China Morning Post*, 14 August 2024, <https://www.scmp.com/news/china/article/3274381/eu-subsidy-raids-chinese-company-nuctech-were-legal-court-rules>, 20 Nov 2024.

<sup>76</sup> *Federal Register*, “Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities From the Entity List”, 22 December 2020, <https://www.federalregister.gov/documents/2020/12/22/2020-28031/addition-of-entities-to-the-entity-list-revision-of-entry-on-the-entity-list-and-removal-of-entities>, 20 Nov 2024.

aims to guard the single market from potential distortions caused by foreign subsidies.

The Data Security Law completes the Cybersecurity Law by establishing a system of hierarchical data classification ranked by importance and by sensitivity. “Core state data” or “national core data” are “data concerning national security, lifelines of the national economy, important aspects of people’s lives, major public interests” and are subject to “stricter management rules” (article 21). “Important data” and “general data” with “important data” are subject to stricter management and protection requirements. The wording in each category is loosely defined and all can be shown to have national security considerations. Local regulatory authorities are expected to issue additional guidelines as to what constitutes important data under their jurisdiction, although no timeline for issuing the guidelines has yet been set.

The DSL has extraterritorial effect in that it applies to data processing activities in and outside of China. Article 2 states that the law applies “to any overseas data processing that jeopardizes the national security, public interests or the lawful rights and interests of individuals/organizations of China”.<sup>77</sup>

Multiple governmental agencies oversee data security matters. China’s Central National Security Commission<sup>78</sup> implements national data security strategies and establishes a coordination mechanism. Public security and national security authorities enforce data security, while government departments regulate it in their relevant sectors (i.e. telecommunications, transportation, finance, natural resources, public health, and education) and locations. The Cyberspace Administration of China (CAC)<sup>79</sup> oversees internet data security.<sup>80</sup> This streamlined

<sup>77</sup> François Godement, Viviana Zhu. *Cross-Border Data Flows: The Choices for Europe*, p. 53.

<sup>78</sup> See glossary, p. 68.

<sup>79</sup> See glossary, p. 67.

approach reflects a comprehensive effort to manage and safeguard data across diverse sectors within the Chinese regulatory framework.

It remains unclear how this broad regulatory discretion will be enforced. Under the DSL, companies processing “important data” are subject to periodic security reviews. Interestingly, the text allows China to respond with reciprocal measures to “discriminatory restrictions” in areas like investment, trade or any data-related field – another case of creating retaliation options.<sup>81</sup> The case of Nuctech shows that in the absence of enforcement, the necessity for Chinese companies to comply with the DSL and other pieces of data legislation has concrete consequences for EU-China relations.

Indeed, penalties can be significant for Chinese companies that fail to comply with the DSL. Breaking any aspect of the law may lead to fines of up to RMB 5 million (around USD 690,000) per company and RMB 500,000 (around USD 69,000) for the person responsible.<sup>82</sup> This is light sentencing in comparison with the risks faced by firms found mishandling “core state data”, which can be fined up to RMB 10 million (around USD 1,400,000), but also have their operating licenses revoked or forced to cease operations. Companies that leak sensitive data abroad can be hit with similar fines and punishments, and those providing electronic information to overseas law enforcement bodies without permission can face penalties of up to five million yuan (around USD 702,000) and be forced to suspend business operations.

<sup>80</sup> Daniel L. Cohen, Tatman R. Savio, Jingli Jiang, Natasha G. Kohne, and Jenny Arlington, “Impact of the New China Data Security Law for International Investors and Businesses,” Akin Gump Publication, July 26, 2021, <https://www.akingump.com/en/insights/alerts/impact-of-the-new-china-data-security-law-for-businesses-and-international-investors-1>, 20 Nov 2024.

<sup>81</sup> François Godement, Viviana Zhu. *Cross-Border Data Flows: The Choices for Europe*, p. 53.

<sup>82</sup> Amy Yin, “China passes new Data Security Law”, Reed Smith LLP. June 2021, <https://www.reeds-mith.com/en/perspectives/2021/06/china-passes-new-data-security-law>, 20 Nov 2024.

While fines and legal penalties for violating the DSL are significant, the law will be tricky to enforce. The Nuctech case shows that competing compliance requirements are inevitably going to result in Chinese companies seeking cover from the Chinese government – and that, forced to choose, they will follow PRC laws. According to Nuctech itself, “what’s most striking is the Court’s insistence on Nuctech breaking Chinese laws for the purpose of illegally sharing data stored in China [with authorities abroad]. Nuctech has repeatedly informed the European Commission and the Court that we are prohibited from providing such data as it violates the PRC law. Such stance raises questions on the legal and political impartiality of the case”. This is the first case of a Chinese company seeking to use the extraterritorial dispositions of Chinese legislation to ignore European law.

For foreign firms operating in China, the DSL is mostly a bureaucratic compliance headache. As Carolyn Bigg, Partner and Global Co-Chair of the Data Protection, Privacy and Security group at DLA Piper states, the DSL is yet “another important piece in the overall data protection regulatory jigsaw in China” making it “complex” and “increasingly onerous” for international businesses to navigate through.<sup>83</sup> It is especially challenging for companies that have a global business presence and which are subject to data security requirements in multiple countries. The DSL shows that they need to be careful when generating and collecting data from China. So far, there is no recorded case of a foreign firm being prosecuted and fined for failure to comply with the DSL, but the Nuctech case shows that it is only a matter of time before this legislation creates new irritants in EU-China relations.

<sup>83</sup> “China’s new data law gives President Xi Jinping power to shut down tech firms”, *The Straits Times*, June 2021, <https://www.straitstimes.com/asia/east-asia/chinas-new-data-law-gives-xi-the-power-to-shut-down-tech-firms>, 20 Nov 2024.



### 4.3. THE 2020 HONG KONG NATIONAL SECURITY LAW (中华人民共和国香港特别行政区维护国家安全法)

The imposition of a strict national security regime in Hong Kong, once a thriving outward-looking open society, will stay in history as a signature of the Xi years. China's National People's Congress Standing Committee (NPCSC) for the Hong Kong Special Administrative Region (HKSAR) adopted the National Security Law in 2020, and the law was promulgated by Hong Kong's Chief Executive Carrie Lam shortly thereafter.<sup>84</sup> The law was adopted despite the massive and violent antigovernment protests against the imposition of an authoritarian regime over the city.

In his work report to the 20th Communist Party Congress, Xi Jinping stated that the law would ensure that Hong Kong was "governed by patriots" and that order was restored.<sup>85</sup> Today, Chinese analysts argue that the law had defeated civil unrest and countered foreign liberal influences. In the words of Chinese intellectual Feng Yujun, the law is an urgent and necessary response to "anti-China and Hong Kong rebel forces continuously challenging the authority of the Constitution and the Basic Law with the aim of seizing the power of governance of the Hong Kong Special Administrative Region (HKSAR)". That rebel forces were "carrying out a "color revolution" and recklessly challenging the bottom-line of the principle of "one country, two systems". Feng argues that the law transformed the situation in Hong Kong "from one of chaos to one of governance" and concludes that the outcome of "one law [has] safeguarded Hong Kong".<sup>86</sup> This explains why the law is also being described as a "harbinger of China's emerging power through legal discourse".<sup>87</sup>

<sup>84</sup> "In Full: Official Translation of the Hong Kong National Security Law", Hong Kong Free Press, 1 July 2020, <https://hongkongfp.com/2020/07/01/in-full-english-translation-of-the-hong-kong-national-security-law/>, 20 Nov 2024.

<sup>85</sup> Transcript: President Xi Jinping's report to China's 2022 party congress", NikkeiAsia, Oct 2022, <https://asia.nikkei.com/Politics/China-s-party-congress/Transcript-President-Xi-Jinping-s-report-to-China-s-2022-party-congress>, 20 Nov 2024.

The law provides a legal basis to punish activities seen as a threat to national security and grants Beijing powers to crack down on political crimes, including crimes of secession, subversion, terrorism and collusion with foreign forces. These broad and vaguely defined terms essentially give Chinese authorities power to target anyone who criticizes the PRC's policies vis-à-vis Hong Kong and to prosecute cases in mainland China. Penalties are harsh – non-compliance can lead to life imprisonment.

The extraterritorial provisions of the legislation have become a source of diplomatic tensions between China, the United States and Europe. Article 38 of the text states that the law “shall apply to offenses [under this Law] committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region”. Soon after it came into force, China arrested six activists living in Western countries on suspicion of inciting secession or colluding with foreign forces, including a US citizen, Samuel Chu – thereby demonstrating its resolve to enforce the extraterritorial dispositions of the law.<sup>86</sup> Chu, the head of the Washington-based Hong Kong Democracy Council, called himself “the first non-Chinese citizen to be targeted”, but certainly “not the last”.<sup>89</sup>

In 2023, the Hong Kong police force twice placed international bounties on wanted activists for crimes of secession and collusion with foreign forces – offering rewards of up to HK\$ 1 million (about USD 128,000) for

<sup>86</sup> *Feng Yujun*, 冯玉军: 习近平法治思想与实践创新—兼论党的二十大报告关于法治建设的重大创新论述, *Modern Legal Studies* (现代法学), no. 3, 2023, ...; 冯玉军: 习近平法治思想与实践创新—兼论党的二十大报告关于法治建设的重大创新论述—中国法学网..., 20 Nov 2024.

<sup>87</sup> *Moritz Rudolf*, “The Hong Kong national security law: a harbinger of China's emerging international legal discourse power”, *SWP Comment* no. 56, 2020, <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-71465-8>, 20 Nov 2024.

<sup>88</sup> “Hong Kong seeking arrest of fleeing activists”, *BBC*, 31 July 2020, <https://www.bbc.com/news/world-asia-china-53616583>, 20 Nov 2024.

<sup>89</sup> “Exile is no protection from Hong Kong security law, says US dissident Samuel Chu – wanted for ‘secession’”, *AFP*, 1 August 2020, <https://hongkongfp.com/2020/08/01/exile-is-no-protection-from-hong-kong-security-law-says-us-dissident-samuel-chu-wanted-for-secession/>, 20 Nov 2024.

information leading to their arrest.<sup>90</sup> The British Foreign, Development and Commonwealth Office stated that the UK would “not tolerate any attempt by any foreign power to intimidate, harass or harm individuals or communities in the UK”<sup>91</sup>. The decision also led to condemnation by the US Department of State, which commented that “the extraterritorial application of the Beijing-imposed National Security Law is a dangerous precedent that threatens the human rights and fundamental freedoms of people all over the world”<sup>92</sup>.

China has vigorously defended the extraterritorial application of Hong Kong’s National Security Law. According to the Department of Justice of the government of Hong Kong Special Administrative Region, “extraterritorial application vested with the NSL is in line with the well-recognized international law principle of “protective jurisdiction”.<sup>93</sup> Legal experts say this argument is “justified because a State has the right to defend and protect its vital interests. The protection of such interests cannot be left to other States that do not consider such interests to require the protection of criminal law. For these reasons, international law does not impose limits on a State to prescribe rules to assert such jurisdiction”<sup>94</sup>.

The law creates new risks for foreign nationals exposed to Hong Kong. According to Amnesty International, “anyone on Earth, regardless of

<sup>90</sup> Kelly Ng, “Hong Kong offers HK\$1m bounties on five overseas activists”, BBC, 15 December 2023, <https://www.bbc.com/news/world-asia-china-67724230>, 20 Nov 2024.

<sup>91</sup> John Curtis, Nigel Walker, “UK Government Policy on China”, House of Commons Library, 13 May 2024, <https://commonslibrary.parliament.uk/research-briefings/cdp-2024-0096/>, accessed 24 Oct. 2024, 24 Oct 2024.

<sup>92</sup> US Department of State, Press Statement, “Hong Kong’s Extra-Territorial Application of the National Security Law”, 3 July 2023, *Hong Kong’s Extra-Territorial Application of the National Security Law – United States Department of State*, 20 Nov 2024.

<sup>93</sup> National Security Law aligns with international practice”, *The Government of the Hong Kong Special Administrative Region – Press Releases*, 17 July 2021, <https://www.info.gov.hk/gia/general/202107/17/P2021071700506.htm>, 20 Nov 2024.

<sup>94</sup> Lam Hing-chau, Qin Jing, *The Protective Jurisdiction Under the Hong Kong National Security Law: Legitimacy and Impact*, *Chinese Journal of International Law*, Volume 21, Issue 1, March 2022, Pages 115–136, <https://doi.org/10.1093/chinesejil/jmac011>.

nationality/location, can technically violate law and face arrest if in a Chinese jurisdiction (even while in transit).” While an overwhelming majority of foreign nationals in Hong Kong are not involved in Hong Kong politics, they still face the risk of being arrested on trump charges, especially during times of international tensions when Beijing may decide to use these arrests as a way of putting pressure on their government, as it did against Canada in recent years. Despite all the emphasis in China on the “rule of law”, it is a feature of communist constitutional orders to place the judicial branch under the authority of the Party. China has so far failed to convince its international partners that legality and fair treatment will always prevail over executive power.

Article 43, which authorizes law enforcement to request “publisher(s), platform service provider(s), hosting service provider(s) and/or network service provider(s)” to remove content that endangers national security also has international jurisdiction. After the passing of the legislation, companies like Google, X, Meta, Zoom and Telegram stopped processing user data requests from the Hong Kong government and required that all data should be processed through the US-Hong Kong Mutual Legal Assistance Treaty instead.<sup>95</sup> However, compliance with content restriction and removal requests has dramatically increased under the new legal regime: China is increasingly successful in creating a pervasive sense of paranoia in Hong Kong society that promotes and enables self-censorship.

The erosion of Hong Kong’s autonomy and of the individual rights of Hong Kong’s citizens has occurred in the absence of major international pushback. In the future, EU countries may have to deal with crises involving their nationals convicted of crimes under the National Security Law.

<sup>95</sup> Tin Pak, “International Censorship and Digital Surveillance Under Hong Kong’s National Security Law”, *The Henry M. Jackson School of International Studies, University of Washington*, 28 March 2024, <https://jsis.washington.edu/news/internet-censorship-and-digital-surveillance-under-hong-kongs-national-security-law/>, 20 Nov 2024.

#### 4.4. THE 2023 LAW ON FOREIGN RELATIONS (中华人民共和国对外关系法)

China's Foreign Relations Law was passed by the National People's Congress in June 2023, and became effective the following month. Its stated purpose is to "safeguard China's national sovereignty, national security and development interests and uphold international fairness and justice." While it often reads like a foreign policy manifesto, it is also intended to codify foreign policy decision-making and impose a legal scope for the actions of China's foreign policy actors. The law also seeks to further develop legal language to counter the impact of the "long-arm jurisdiction"<sup>96</sup> of the United States.

Article 33 states that the PRC has the "right to take, as called for, measures to counter or take restrictive measures against acts that endanger its sovereignty, national security and development interests in violation of international law or fundamental norms governing international relations".<sup>97</sup> The emphasis on legitimacy and creating a legal framework for countermeasures mirrors the dispositions in the Anti-Foreign Sanctions Law or the Export Control Law. China's State Councilor<sup>98</sup> Wang Yi implicitly referred to article 33 when he suggested that the Foreign Relations Law would act "as a preventive, warning, and deterrent mechanism while also providing a legal foundation for China to assert its legitimate rights on the global stage". He also underlined the intended role of the law in helping China against "unilateralism, protectionism, hegemonism, bullying and foreign interference, sanctions, and sabotage".<sup>99</sup> He strongly

<sup>96</sup> Bonnie S. Glaser and Dr. Moritz Rudolf, "China Global Podcast: Interpreting China's New Foreign Relations Law", German Marshall Fund, 18 July 2023, <https://www.gmfus.org/news/interpreting-chinas-new-foreign-relations-law>, 20 Nov 2024.

<sup>97</sup> Ministry of Justice of the PRC, "The Law on Foreign Relations of the People's Republic of China", Xinhua, 11 July 2023, [http://en.moj.gov.cn/2023-07/11/c\\_901729.htm](http://en.moj.gov.cn/2023-07/11/c_901729.htm), 21 Nov 2024.

<sup>98</sup> See glossary, p. 68.

<sup>99</sup> Zhu Zheng, "Navigating the seas of diplomacy: China's Foreign Relations Law", CGTN Opinion, 30 June 2023, *Navigating the seas of diplomacy: China's Foreign Relations Law – CGTN*, 21 Nov 2024.

emphasized the instrumental dimension of the law in support of China's foreign policy goals by arguing that it was part of China's drive to continuously expand its legal "toolbox" for "foreign struggles".<sup>100</sup>

Chinese scholar Liu Jingdong, in a piece published before the adoption of the law, argued that such a text was needed to "clearly stipulate" "the basic legal principles of anti-sanctions, anti-interference and anti-long-arm jurisdiction" in order "to provide basic guiding principles for the legislation of various sectors in the foreign-related field."<sup>101</sup> The law is a clear message to international audiences, with article 8 stipulating that "any organization or individual who commits acts that are detrimental to China's national interests in violation of this Law and other applicable laws in the course of engaging in international exchanges shall be held accountable by law."

Zhang Qiyue, from the Shanghai Institutes of International Studies, argues that the Foreign Relations Law "provides a legal basis for protective jurisdiction and the extraterritorial application of Chinese laws under specific conditions by way of domestic legislation, with the intention of effectively protecting the security and legitimate interests of Chinese citizens and organizations".<sup>102</sup> He specifically refers to article 37 of the Law related to the safety of Chinese nationals overseas, which he argues is the responsibility of the State. This article of the Foreign Relations Law provides additional legal justification for article 71 of the 2015 Anti-Terrorism Law, which set the stage for China's future overseas military operations: "The Chinese People's Liberation Army and Chinese People's armed police forces may assign people to leave the country on

<sup>100</sup> Orange Wang, "'Sanctions deterrent': China frames new Foreign Relations Law as essential to national sovereignty", *South China Morning Post*, 29 June 2023, '[Sanctions deterrent': China frames new Foreign Relations Law as essential to national sovereignty | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/diplomacy/article/3211111/sanctions-deterrent-china-frames-new-foreign-relations-law-essential-national-sovereignty), 21 Nov 2024.

<sup>101</sup> Liu Jingdong, 加强涉外领域立法的理论思考与建议, *International Law Studies (国际法研究)*, no. 2, 2023, [http://iolaw.ccssn.cn/zxzp/202304/t20230412\\_5619392.shtml](http://iolaw.ccssn.cn/zxzp/202304/t20230412_5619392.shtml), 21 Nov 2024.

<sup>102</sup> Zhang Qiyue, 张琪悦: 对外关系法制定的重要意义及促进其有效实施的路径, *Shanghai Institutes of International Studies*, July 2023, <https://www.sis.org.cn/sp/15023.jhtml>, 21 Nov 2024.

counterterrorism missions as approved by the Central Military Commission".<sup>103</sup> The language was vague and intentionally so.

In sum, China's Law on Foreign Relations provides legal language to frame Chinese foreign policy and seems primarily targeted at Chinese foreign policy actors, creating legal obligations and responsibilities to strengthen broad existing goals, such as protecting nationals overseas or responding to hostile action with countermeasures. Building legal bases to justify Chinese foreign policy acts, in a quest to strengthen their legitimacy and ultimately their impact, appears to be the second main consideration behind this legal codification of aspects of Chinese foreign policy. Not everyone agrees. According to Valdis Dombrovskis, the EU's Commissioner for Trade, the Law on Foreign Relations, together with China's legislation on counter-espionage, is a matter of "great concern", and part of an increasingly "politicized" business environment in which European companies "struggle to understand their compliance obligations".<sup>104</sup>

<sup>103</sup> Mathieu Duchâtel, "Terror Overseas, Understanding China's Evolving Counter-Terror Strategy", European Council on Foreign Relations, Policy Paper no. 193, October 2016.

<sup>104</sup> Laura He, "Europe's trade chief promises more 'assertive' approach to China as deficit soars", CNN, 25 September 2023, [Europe's trade chief promises more 'assertive' approach to China as deficit soars | CNN Business](#), 21 Nov 2024.

## 5 Lawfare and the future of the PRC's extraterritoriality: intentions and capabilities

### 5.1. INTENTIONS: EXTRATERRITORIALITY IS WHAT THE PARTY MAKES OF IT

China's current thinking on extraterritoriality starts with a tactical concern: how to reduce the country's vulnerability to US actions. Establishing "countermeasures" and legal foundations to justify their usage, is the most salient element of China's approach to extraterritoriality under Xi Jinping. This notion permeates key legal texts and the Foreign Policy Law and Foreign Trade Law provide the essential legal framework to legitimize future acts of retaliation.

Surprisingly, there is more expert literature dedicated to understanding the implications of US extraterritorial measures on China than there is to understanding how Chinese extraterritoriality would be applied. This heavy focus on the United States is manifest in the calculated choice by the Chinese Foreign Ministry to use the notion of "long-arm jurisdiction" improperly. The term is used constantly and evokes manipulative foreign interference in domestic affairs of sovereign states. In a 2023 White Paper, the Chinese Foreign Ministry described US "long-arm jurisdiction" as "a hegemonic tool to maintain US hegemony, suppress foreign competitors, interfere in the internal affairs of other countries, and even subvert the governments of other countries".<sup>105</sup> In US law, the term "long-arm jurisdiction" has a more narrow meaning. It refers to the exercise of personal jurisdiction over non-resident defendants, in

<sup>105</sup> Foreign Ministry of the PRC, "The US Willful Practice of Long-arm Jurisdiction and its Perils", February 2023, [http://fr.china-embassy.gov.cn/fra/zfzj/202302/t20230203\\_11019538.htm](http://fr.china-embassy.gov.cn/fra/zfzj/202302/t20230203_11019538.htm), 21 Nov 2024.



particular whether a defendant has enough of a connection – minimum contacts – to a country to justify a court in that country to require him/her to appear and defend themselves in a lawsuit there. In other words, a court can ask a non-resident to appear before court only if that person meets the minimum contacts requirement with that country. In the past, the minimum contacts requirement has helped to limit the extra-territorial reach of US laws.<sup>106</sup>

If Beijing sees extraterritoriality first and foremost as a foreign policy tool, it should be understood in the broader context of Chinese strategic considerations. Seen from that angle, building an extraterritorial toolkit is just one of several responses to US actions, each of which complements and reinforces the others. For example, scholar Huo Zhengxin argues that China should make full use of international law and multilateral institutions to put pressure on the US, while simultaneously strengthening the international role of the Renminbi to reduce China's exposure to sanctions; he also recommends that the Chinese government clarifies the conditions under which countermeasures will be taken, if only to help Chinese companies with their strategic planning.<sup>107</sup> As part of this broader strategic response, he advocates a full embrace of extraterritorial jurisdiction, to expand China's influence, notably through the Anti-Monopoly Law and the Cybersecurity Law; the establishment of a Chinese jurisprudence, to clarify the application scope of ambiguous texts. Only then will China be able to influence international norms and behaviors – the change at the systemic level, in his view, should be China's ultimate aim. Huo Zhengxin sees this as a long-term process. The primary objective for the PRC appears to be the creation of a comprehensive legal toolbox that offers a range of strategic options to the political leadership. Interestingly, Huo Zhengxin's

<sup>106</sup> Bill Dodge, "How to Criticize US Extraterritorial Jurisdiction (Part I)", *Conflicts of Law*, 22 November 2023, <https://conflictoflaws.net/2023/how-to-criticize-u-s-extraterritorial-jurisdiction-part-i/>, 21 Nov 2024.

<sup>107</sup> Huo Zhengxin, 霍政欣, 国内法的域外效力: 美国机制、学理解构与中国路径, 7 March 2024, <https://fzfyjy.cupl.edu.cn/info/1036/16236.htm>, 21 Nov 2024.

analysis moves seamlessly from tactical countermeasures specifically designed to manage US-China competition to China's power and influence in the international system, which, in his view, is the only way to guarantee that China can withstand US pressure and manage power competition with the US.

A formal doctrine of use or even elements thereof are still absent from Chinese writings. It may only emerge once China regularly employs these tools. Only when there is enough jurisprudence to make a factual judgment of the practice of Chinese extraterritoriality will analysts be able to distinguish countermeasures from coercion. While China's legal texts focus on countermeasures, China's foreign policy practice makes ample use of lawfare and economic coercion. An offense/defense ambiguity is unavoidable when analyzing or predicting Chinese actions given the nature of China's political system, where the Party, as stated in its charter ("the Party leads everything"), holds authority over all institutions, including the judicial branch. It is a system of rule by law (法制) rather than rule of law (法治) which means that any legal countermeasure could potentially be used to impose costs on a political opponent but also to coerce an entity into changing its course of action – the increasing frequency of using lawfare against Taiwan is a case in point. Extraterritoriality, in other words, will be what the Party makes of it. Law will serve political and strategic considerations. When considering the toolkit of extraterritorial measures, it is important to remember to keep in mind that the end will justify the means, whether that's freezing assets located in China or denying export licenses.

## **5.2. CAPABILITIES: AN IMPRESSIVE TOOLKIT BUT LOW LEVELS OF ENFORCEMENT**

China's extraterritoriality toolkit includes visa bans, entry bans and deportation from China, freezing of assets located in China, prohibition for Chinese entities to do business with sanctioned individuals/

entities, export denials, jail terms and fines. Market access denial is not explicitly included in any text, even though the ban on doing business with a foreign person can obviously result in such an outcome. In the past decade, China has demonstrated its capability to use such tools even without laws with extraterritorial clauses – as demonstrated, for example, by the counter sanctions that were imposed on EU entities and individuals in March 2021 before the adoption of the Anti-Foreign Sanctions Act. It is possible then that China will continue to test its modus operandi of imposing costs non-officially, behind a façade of plausible deniability, without developing a fully-fledged extraterritorial toolbox. What is clear is that China will continue to resort to legal justification to increase the weight of its defensive and coercive foreign policy decisions.

China's extraterritoriality currently inflicts costs on foreign interests inside Chinese territory – or forbids access to this territory. China's willingness, and therefore, capability to impose costs is conditioned on China's exposure to its targets and the costs of sanctioning them. In some cases, the costs of full action will be too high – so the only option will be to go for purely symbolic moves, such as when China sanctioned Lockheed Martin or Raytheon over arms sales to Taiwan. Given the absence of arms industry cooperation between China and the United States, and the lack of capacity to target these companies abroad, sanctions appear mostly declaratory. Currently, companies with FDIs or market share in China are more exposed than companies operating in third countries – which could prove very problematic for the EU in the future. A sudden deterioration of China's relations with the EU or between China and single EU member states could present huge challenges for EU companies given the stock of 247,5 billion euros of EU FDIs in China (2022), EU goods exports to China worth 223,6 billion euros and services exports worth 57,3 billion euros in 2023.<sup>108</sup>

<sup>108</sup> DG Trade, European Commission, "EU trade relations with China. Facts, figures and latest developments", *EU trade relations with China (europa.eu)*, 21 Nov 2024.

Another unknown is the extent to which the use of the renminbi will grow in international transactions in the future – and how this might be used by China to put pressure on third countries to align with its extraterritorial norms. As of August 2024, the RMB was the fourth most active currency for global payments by value, with a share of 4.69%<sup>109</sup>. When you exclude payments within the Eurozone, the RMB ranked 5th with a share of 3.23%, after the British Pound and before the Canadian dollar.<sup>110</sup> Since Russia's illegal invasion of Ukraine for example, Russian companies have preferred to use the renminbi instead of the dollar for international transactions, Russian importations invoiced in yuan going up from 3% in 2021 to 20% in 2022<sup>111</sup>. As Philippe Aguiñer writes, China's ability to impose extraterritorial jurisdiction will largely hinge on the internationalization of the renminbi. In such a scenario, China would more readily be able to sanction foreign entities for non-compliance with its laws – in much the same way as the US does. In other words, the internationalization of the renminbi is essential if China wants to develop a more offensive use of extraterritoriality, in the form of secondary sanctions for example.<sup>112</sup>

Similarly, the Chinese authorities have long sought to reduce their vulnerability to third-country sanctions, especially after observing the impact that US sanctions (1996 Iran and Libya sanctions Act (ILSA) and Countering America's Adversaries Through Sanctions Act targeting Iran as well as Russia and North Korea (CAATSA) which prevent foreign companies to deal with the targeted countries) have had on Iran since 2014

<sup>109</sup> Swift, "RMB Tracker Monthly reporting and statistics on renminbi (RMB) progress towards becoming an international currency", September 2024, <https://www.swift.com/swift-resource/252333/download>, 21 Nov 2024.

<sup>110</sup> Swift, "RMB Tracker document centre", <https://www.swift.com/our-solutions/compliance-and-shared-services/business-intelligence/renminbi/rmb-tracker/rmb-tracker-document-centre>, 21 Nov 2024.

<sup>111</sup> Henry Foy, "Russia is increasingly using China's currency to evade sanctions", *Financial Times*, 27 September 2023, <https://www.ft.com/content/f1347042-cb5c-40d8-ac81-5bbc85542abd>, 21 Nov 2024.

<sup>112</sup> Philippe Aguiñer, « L'internationalisation du RMB : un bouclier contre les sanctions internationales ? », Institut Montaigne, 30 May 2023, <https://www.institutmontaigne.org/expressions/linter-nationalisation-du-rmb-un-bouclier-contre-les-sanctions-internationales-0>, 21 Nov 2024.

– another example of how the dominance of the US dollar in global finance can force companies, even third-country companies, to comply with US laws. China's involvement with sanctioned nations, like its purchase of Iranian oil, has underscored an urgency of developing alternatives to the dollar-dominated system. As mentioned above, the ongoing sanctions against Russia, and Russia's heavy reliance on China for trade, have accelerated China's efforts to promote the use of the RMB in international transactions, particularly through its CIPS (China International Payment System), as an alternative to SWIFT to mitigate risks associated with Western sanctions.

But even with the slow progress of the Renminbi's internationalization, in particular through swap accords, SWIFT will continue to dominate the global financial messaging infrastructure – including transactions in RMB. China controls the use of renminbi overseas and a large share of cross-border payments for renminbi-denominated securities are between Hong Kong and mainland China. What's more, CIPS is unlikely to replace SWIFT so long as a majority of the direct participants remain highly connected with the dollar financial system. However, this has not stopped China from encouraging more international partners to trade in RMB or from working hard to expand the use of CIPS.

Progress is slow, however. Wider adoption of the Renminbi and CIPS is mostly happening among countries that are looking to reduce their exposure to the US dollar, rather than because they are trying to substitute the two.

Finally, the reach and impact of China's extraterritoriality, in particular offensive extraterritoriality, will depend on the monitoring and enforcement capacity of the Ministry of Public Security and the Ministry of State Security. It will also depend on how third countries respond and whether they strengthen their own anti-interference measures to protect their sovereign law enforcement. The EU must come up with a credible plan before it is too late.

## 6 China's new stage of lawfare: the EU's response

Historically associated with the “century of humiliation”, extraterritoriality is rapidly becoming a tool for China’s national security and power projection. Its evolving approach to extraterritoriality presents significant challenges to the European Union – one that European policymakers have largely overlooked, if not entirely missed. This is partly because China has yet to fully deploy the instruments it has developed, like its extraterritorial norms, to safeguard and advance its strategic interests.

China’s extraterritorial measures were initially designed as a defensive strategy aimed at shielding itself from US economic sanctions and export controls. However, there are signs that Beijing increasingly views extraterritoriality as a means of asserting its power – and constraining that of others. China could one day employ economic sanctions or legal pressures to force foreign companies to comply with Chinese laws, even when they operate outside of its borders. This could place European firms in a precarious position, caught between the conflicting compliance obligations of the US and China, and on the receiving end of unilateral coercion during periods of political tension between Europe and China.

Economic security is a “central priority” for Ursula von der Leyen’s new European Commission. The EU has developed a robust set of trade tools, actively deploying new or enhanced instruments, and is now set to formulate an economic security doctrine. Yet, there is a major shortcoming in the EU’s approach: it has no comprehensive policy to address extraterritoriality, especially from China. With US-China technology rivalry intensifying and the risk of economic coercion rising, a swift change in the EU’s approach is vital. The EU must recognize that China’s use of extraterritoriality is no longer solely focused on managing its strategic

competition with the US; it is evolving into a broader set of tactics of lawfare to advance Chinese legal norms, retaliate against foreign policy decisions, and advance its strategic interests on a global scale.

To effectively counter Chinese extraterritoriality, the EU should take the following actions:

- 1. Leverage the power of the Single Market:** The EU must signal its willingness to deny market access to potential adversaries that are seeking to undermine its sovereignty and interests. The single market is the EU's most significant source of leverage and of strategic importance to China, particularly given the growing antagonism in its trade and technology relationship with the US. By demonstrating its readiness to restrict access to the European market in case of coercion or violations of European sovereignty, the EU can establish a credible deterrent against extraterritorial pressures. Moving forward, the EU needs to devise a comprehensive plan that links access to its single market to its strategic priorities, which goes beyond seeking economic reciprocity and a level playing field.
- 2. Develop an offensive extraterritorial strategy:** the EU should consider formulating its own strategy of offensive extraterritoriality. The Anti-Coercion instrument is a step in the right direction because of its very broad approach and the variety of measures it contains. However, whether it acts as a deterrent will only become clear once it has been applied. For any offensive extraterritorial strategy to succeed, it is crucial for the EU to convince potential adversaries that it can impose significant costs in the event of non-compliance with EU regulations – and won't hesitate to do so if its core interests are being undermined.
- 3. Enhance coordination on transnational repression and forceful repatriation:** The EU can play a crucial role in facilitating intelligence

sharing and a unified response to issues like transnational repression and forced repatriation. Although national security falls under the responsibility of individual member states, there should be a coordinated effort across the EU to exchange best practices and align responses. This collective approach would strengthen the EU's capacity to counter extraterritorial measures that threaten its sovereignty and democratic values.



## Glossary of Chinese governing and administrative bodies

### MAIN INSTITUTIONS OF CHINA'S GOVERNING SYSTEM

- **Politburo of the Chinese Communist Party (政治局):** one, if not the highest decision-making body in China's governance system. It currently includes 24 senior leaders, including Xi Jinping as its General Secretary, who set the course for China's political, economic, and social policies. It oversees the Party and government's work. The apex of the Party's executive power is further centralized within the Politburo Standing Committee and its seven members. The Politburo is part of the Central Committee of the Chinese Communist Party, which is the larger governing body of the Party.
- **Central Committee of the Chinese Communist Party (中央委员会):** the highest organ when the National People's Congress is not in session and is tasked with carrying out the parliament's resolutions, directing all party work, and representing the Party externally.
- **State Council (国务院):** the highest administrative body of the Chinese government, equivalent to a governmental cabinet in other countries. It includes the Premier and Vice Premiers. It is legally required to implement policies of the Chinese Communist Party.
- **National People's Congress (NPC) (全国人民代表大会):** the largest legislative body worldwide, it meets once a year in full session to enact important legislation, approve the central government's

budget, and ratify plans for national economic and social development. In China's current governance system, it has often been described as a rubber stamp body since it has never voted down an item on its agenda. The **National People's Congress Standing Committee** (NPCSC) is the permanent administrative organ of the NPC and its members are elected at the beginning of each term. The NPCSC enacts the vast majority of China's national laws and routinely conducts oversight of other governmental bodies.

### MINISTRIES UNDER THE STATE COUNCIL'S AUTHORITY

- **Ministry of Foreign Affairs (MOFA) (外交部):** ministry responsible for China's foreign relations. It is most visible through its minister, Wang Yi, and spokespersons, though Xi Jinping and Li Qiang also play a key role on the diplomatic front. Foreign policy on Taiwan falls under the jurisdiction of the Taiwan Affairs Office however.
- **Ministry of National Defense (国防部):** ministry responsible for managing the relations of Chinese armed forces with other entities (foreign militaries, the press, national-level ministries and agencies). The minister is not in charge of the direct chain of command for combat operations, such command lies within the Central Military Commission.
- **Ministry of Commerce (MOFCOM) (商务部):** ministry responsible for formulating strategies, guidelines and policies for trade and international economic cooperation, drafting laws and regulations for domestic and foreign trade, and overseeing inbound and outbound investment, foreign economic cooperation and foreign aid activities.

- **Ministry of Public Security (MPS) (公安部):** ministry responsible for public and political security, it oversees the vast majority of China's police force. It works under the leadership of both the State Council and the Chinese Communist Party, and is responsible for the Party's counterintelligence and political security activities. It has a strong role in China's surveillance apparatus along with the Ministry of State Security.
- **Ministry of Human Resources and Social Security (人力资源和社会保障部):** ministry responsible for national labor policies, standards, regulations and managing the national social security. It is also in charge of the Thousand Talents Plan.

### OTHER ADMINISTRATIVE BODIES

#### Under the authority of the Chinese Communist Party

- **Central Military Commission (CMC) (中央军事委员会):** the highest military decision-making body, it is responsible for the administration of China's armed and military forces. Independent from the Ministry of Defence, it directly refers to the Party and Xi Jinping is its chairman.
- **Cyberspace Administration of China (CAC) (国家互联网信息办公室):** part of the Central Committee, it has its roots in the former Office of External Propaganda. Its missions are to manage and enforce requirements for online content, but also to expand and codify into law policies and regulations on cybersecurity, data security, and privacy.

- **Central National Security Commission (CNSC) (国家安全委员会):** operating in a highly secretive manner and resembling a national security council, it is responsible for coordinating the country's national security policy since 2013 and is chaired by the Party's General Secretary.

### **Under the authority of the State Council**

- **General Administration of Customs (海关总署):** government agency responsible for customs controls and enforcement, besides taking care of the collection of certain taxes and duties.
- **State councilor (国务委员):** a high-ranking position within the State Council, ranking immediately below the vice premiers but above the ministers, in charge of assisting the Chinese Premier.
- **National Development and Reform Commission (NDRC) (国家发展和改革委员会):** the macroeconomic management agency, it develops and implements, among others, industrial policies and the Five-Year Plans.

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- Over 15 interviews with senior officials from EU institutions, member-state governments and third countries, including the US;
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*Institut Montaigne welcomes thoughts and ideas  
on how to address these issues collectively  
and put forward recommendations which serve  
the public interest.*



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**Extraterritoriality – the application of national laws abroad – is gaining traction.** In a world characterized by strategic competition and weakened international organizations, many countries are turning to law to secure their interests. This includes China.

**Extraterritoriality has expanded under Xi Jinping.** China no longer sees it as a relic of “the century of humiliation” during which foreign powers imposed consular jurisdiction on Chinese soil. Today, Chinese extraterritoriality has three aims: to defend against foreign interference and sanctions; to legitimize China’s foreign policy actions and strengthen its global influence; and as a way to deploy its public security agenda abroad.

**China is also exploring a more offensive approach to extraterritoriality in the form of economic sanctions – though it has yet to use them.** A more offensive use will depend on the willingness of the top leadership to employ such tactics during moments of international tension; a stronger international role for the renminbi and lower overall exposure to the dollar; and the countermeasures that third-countries could take to respond to Chinese extraterritorial norms.

**The EU must act.** Europeans need to understand the risks associated with Chinese extraterritoriality and plan accordingly. The EU should continue working with like-minded partners and be ready to deny access to the EU single market in case of abuse. Losing access to the single market would be deeply damaging to China’s interests and constitute a powerful deterrent for the EU.

Institut Montaigne’s latest issue paper provides a framework for understanding all dimensions of Chinese extraterritoriality and offers decision-makers and businesses a roadmap for an informed response. **Understanding the implications of Chinese extraterritoriality is crucial for governments and businesses, and should be integral to the EU’s approach to economic security.**



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