



[Home \(/\)](#) > [Policies \(/article/policyrelease/\)](/article/policyrelease/) > [General Policies](#)

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MOFCOM Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures

Order of the Ministry of Commerce of the People's Republic of China

2021 No. 1

The Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, approved by the State Council, are hereby promulgated and shall be effective as of the date of the promulgation.

Minister of Commerce

Wang Wentao

January 9, 2021

Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures

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

Article 2 These Rules apply to situations where the extra-territorial application of foreign legislation and other measures, in violation of international law and the basic principles of international relations, unjustifiably prohibits or restricts the citizens, legal persons or other organizations of China from engaging in normal economic, trade and related activities with a third State (or region) or its citizens, legal persons or other organizations.

Article 3 The Chinese Government pursues an independent foreign policy, adheres to the basic principles of international relations, including mutual respect for sovereignty, non-interference in each other's internal affairs, and equality and mutual benefit, abides by the international treaties

and agreements to which China is a party, and fulfills its international obligations.

Article 4 The State shall establish a working mechanism composed of relevant central departments (hereinafter referred to as “the working mechanism”), to take charge of counteracting unjustified extra-territorial application of foreign legislation and other measures. The working mechanism is led by the competent department of commerce of the State Council, and the specific matters thereof are handled by the competent department of commerce and the department of development and reform in conjunction with other relevant departments of the State Council.

Article 5 Where a citizen, legal person or other organization of China is prohibited or restricted by foreign legislation and other measures from engaging in normal economic, trade and related activities with a third State (or region) or its citizens, legal persons or other organizations, he/it shall truthfully report such matters to the competent department of commerce of the State Council within 30 days. The matters reported shall be kept confidential by the competent department of commerce of the State Council and its staff members if so requested.

Article 6 When assessing and determining whether there exists unjustified extra-territorial application of foreign legislation and other measures, the working mechanism shall take the following factors into overall account:

(1) whether international law or the basic principles of international relations are violated;

(2) potential impact on China’s national sovereignty, security and development interests;

(3) potential impact on the legitimate rights and interests of the citizens, legal persons or other organizations of China;

(4) other factors that shall be taken into account.

Article 7 Where the working mechanism, upon assessment, confirms that there exists unjustified extra-territorial application of foreign legislation and other measures, it may decide that the competent department of commerce of the State Council shall issue a prohibition order to the effect that, the relevant foreign legislation and other measures are not accepted, executed, or observed (hereinafter referred to as “prohibition order”).

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

Article 8 A citizen, legal person or other organization of China may apply to the competent department of commerce of the State Council for exemption from compliance with a prohibition order.

To apply for exemption from compliance with the prohibition order, a written application shall be submitted to the competent department of commerce of the State Council, in which the reasons for the application for exemption and the scope of exemption shall be included. Decisions on whether to approve the application or not shall be made within 30 days from the date of acceptance of the application; decisions shall be made in a timely manner in case of emergency.

Article 9 Where a person complies with the foreign legislation and other measures within the scope of a prohibition order, and thus infringes upon the legitimate rights and interests of a citizen, legal person or other organization of China, the latter may, in accordance with law, institute legal proceedings in a people’s court, and claim for compensation by the person; except where the former person is granted exemption in accordance with Article 8 of these Rules.

Where a judgment or ruling made in accordance with the foreign legislation within the scope of the prohibition order causes losses to a citizen, legal person or other organization of China, the latter may, in accordance with law, institute legal proceedings in a people's court, and claim for compensation by the person who benefits from the said judgment or ruling.

Where the person referred to in Paragraph 1 and Paragraph 2 of this Article refuses to execute an effective judgment or ruling made by the people's court, the citizen, legal person or other organization of China may apply to the people's court for enforcement in accordance with law.

Article 10 Members of the working mechanism shall, in accordance with their respective functions and duties, provide guidance and service for the citizens, legal persons or other organizations of China in response to unjustified extra-territorial application of foreign legislation and other measures.

Article 11 Where, in adherence to the prohibition order, a citizen, legal person or other organization of China suffers significant losses resulting from non-compliance with the relevant foreign legislation and other measures, relevant government departments may provide necessary support based on specific circumstances.

Article 12 In response to unjustified extra-territorial application of foreign legislation and other measures, the Chinese Government may take necessary counter-measures based on actual circumstances and needs.

Article 13 Where a citizen, legal person or other organization of China fails to truthfully report as required or fails to comply with the prohibition order, the competent department of commerce of the State Council may give a warning, order he/it to rectify within a specified period of time, and may concurrently impose a fine according to the severity of the circumstances.

Article 14 Where a staff member of the competent department of commerce of the State Council fails to keep confidentiality for the citizen, legal person or other organization of China who makes the report according to relevant provisions, the staff member shall be punished in accordance with law. Where a crime is constituted, criminal liability shall be investigated for in accordance with law.

Article 15 These Rules shall not apply to such extra-territorial application of foreign legislation and other measures as provided for in treaties or international agreements to which China is a party.

Article 16 These Rules shall be effective as of the date of promulgation.

(All information published on this website is authentic in Chinese. English is provided for reference only.)

Approved by: MINISTRY OF COMMERCE, PRC