

Research on Legal Regulation of Multinational Corporations' Internationalization Based on the Huawei Incident

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Abstract: In the current international situation, the environment faced by multinational corporations in the process of internationalization is more complex. After going abroad, Chinese multinational corporations will inevitably face the legal control of the host country. This paper sorts out the overview of the Huawei incident in which the United States sanctioned Huawei, summarizes the reasons for the sanctions, and based on this, summarizes the potential illegality in its legal regulation. Finally, based on the experience summarized from the Huawei incident, this paper provides suggestions for the internationalization of Chinese multinational corporations from both national and corporate perspectives.

Keywords: Huawei incident; Export Control Act; Huawei company

1. Overview of Internationalization Development

1.1. Current Status of Global Internationalization Development

Currently, global economic cooperation and competition are deepening, and the emergence of new technologies has completely transformed traditional economic models, accelerating the transformation towards a digital economy. At this crucial juncture, multinational corporations (MNCs) serve as key links in international production, circulation, distribution, and consumption, significantly promoting China's participation in international investment cooperation, integration into the global trade system, and optimization of global supply chains. Numerous MNCs are actively engaged in global layout strategies to seize international market shares. In the fierce international competition, high-tech industries, with their high added value, high industry thresholds, and significant social benefits, are more prone to encountering various trade barriers^[1]. As a representative MNC in China's communications equipment industry, it has a relatively mature internationalization path and strategy, providing valuable lessons for other Chinese MNCs.

Influenced by China's economic development and the globalization of the world economy, and with the support of national strategies and continuous improvements within enterprises, Chinese MNCs occupy an important position in driving economic growth. However, at the same time, most enterprises have not fully understood the characteristics of China's MNCs, which started late and have not yet matured in terms of internal and external mechanisms. This has made it difficult for many MNCs to sustain their development in the international market^[2].

1.2. Overview and Current Status of Huawei's Internationalization Development

1.2.1. Early Stage

Focus on Import and Export Trade In the 1980s, when Huawei was just established, the company engaged in imitative innovation based on the introduction of foreign advanced technologies. It was not until the 1990s, when foreign telecommunications enterprises began to compete for the Chinese market with low prices, that Huawei's domestic living space was squeezed. In the early stage, Huawei actively participated in international expositions and , promoted the enterprise, and exported products in search of development, but had not yet implemented a specific internationalization strategy. By participating in various international expositions, it opened up product sales channels through import and export trade with foreign markets and accumulated international clients.

1.2.2. Initial Expansion

Entry into Multiple International Markets. In 1996, Huawei entered the Hong Kong market to begin accumulating experience in international operations. In the same year, it also ventured into Russia, where it not only secured MTS mobile network and Ural Telecom switches in Moscow but also capitalized on the changing international relations with the strategic partnership between China and Russia to accelerate cooperation with Russia and successfully joined the Russian government's new procurement plan. During this period, Huawei's internationalization journey gradually expanded from neighboring countries to European, Latin American, and African markets. It established research and development centers in both developing and developed countries, actively cooperated with local enterprises, adopted various business forms, and achieved great success in multiple international markets, paving the way for its global layout.

1.2.3. Mature Stage

Since 2003, Huawei's business has expanded worldwide, with its overseas market sales revenue accounting for more than 40% of its total sales revenue. Since its establishment in 1988, led by its president Ren Zhengfei, Huawei has continued to focus on technological innovation through a unique management system. From a startup with only six employees, it has gradually grown into an international company with annual sales revenue exceeding \$31.7 billion. Its internationalization growth trajectory is nothing short of legendary. Based on this trend, Huawei is expected to further consolidate its leading position in the industry, its multinational operation strategy may usher in a new upsurge, and it has great potential to become a leading telecommunications equipment manufacturer globally.

2. Overview and Focus of the Huawei Incident

2.1. Overview of the Huawei Incident

Since Huawei officially entered the US market in 2001, it has encountered intellectual property lawsuits from Cisco Systems of the United States. Subsequently, Huawei faced numerous obstacles when acquiring US companies or assets. Prior to the outbreak of the Huawei incident in 2018, the United States had already begun to lay out plans and exert pressure on Huawei. As early as 2009, the United States began to conduct covert surveillance on Huawei, which can be regarded as the initial action taken by the US against Huawei. Subsequently, the US government continuously intensified its pressure on Huawei.

In August 2018, the US government filed charges against Huawei, its affiliated companies, and Huawei's then-CFO Meng Wanzhou in the Eastern District of New York Federal Court^[3]. Since 2018, the US government has intensified its crackdown on Huawei. Considering information security, technological supremacy, political factors, and other concerns, the US government has adopted a series of reported means to comprehensively suppress Huawei. In January 2019, the US Department of Justice publicly announced charges against Huawei and Meng Wanzhou, accusing them of violating the International Emergency Economic Powers Act (IEEPA) and 13 other charges including bank fraud and telecommunications fraud. On May 15, 2019, the US Bureau of Industry and Security (BIS) announced that due to Huawei's alleged involvement in business transactions that pose a serious threat to and infringe upon US national security, foreign policy, and national interests, Huawei and its 69 affiliated companies were added to the Entity List. Since then, Huawei has become a target of US trade sanctions and export controls.

The Huawei incident that erupted in 2018 was not sudden but the result of long-term pressure exerted by the US on Huawei. In the face of these challenges, Huawei has demonstrated strong resilience and innovation capabilities, actively seeking legal channels for appeal and defense. On March 7, Huawei announced that it had filed a lawsuit in a US federal court challenging the constitutionality of Section 889 of the 2019 National Defense Authorization Act, requesting the court to rule that this sales restriction clause against Huawei is unconstitutional and to issue a permanent injunction against its enforcement. At the same time, Huawei has strengthened cooperation and exchanges with the international community, striving to create a more fair and reasonable international environment for itself.

2.2. *Reasons for US Sanctions on Huawei in the Huawei Incident*

Among the 13 charges that have been made public, charges 8 to 12 primarily accuse Huawei Technologies Co, Ltd. (Huawei) and Huawei Device USA Inc. of violating and conspiring to violate the International Emergency Economic Powers Act (IEEPA). IEEPA authorizes the President to declare a national emergency and issue executive orders in response to specific situations where national security is seriously threatened. The US charges against Huawei are based on its alleged use or conspiracy to use US goods, technology, and services for direct or indirect exports to Iran, which violates IEEPA.

Furthermore, the U.S. Department of Justice has also accused Huawei and its affiliated companies of bank fraud, telecommunications fraud, and obstruction of justice, among other criminal acts. Specific allegations include Huawei's support for illegal activities through wire transfers, suspected of money laundering crimes. At the same time, Huawei and other companies are also accused of deliberately conspiring to undermine U.S. judicial integrity and obstruct court investigation processes.

3. Analysis of the Illegality of U.S. Sanctions

3.1. *The Effects Doctrine Violate the Principle of Jurisdiction*

Through case law and subsequent legislation, the United States has broadened the interpretation of the objective territorial principle and innovatively proposed the "effects doctrine." This principle is articulated in "The Fourth Restatement of the Foreign Relations Law of the United States" as: "A state may exercise jurisdiction over an act done outside its territory if the act has a substantial effect within the territory." Unlike the "objective territorial principle," which focuses on the location of the ultimate harm caused by the tortious act, the "effects doctrine" emphasizes assessing the potential impact of extraterritorial acts within the territory. However, in U.S. practice, the definition of this "effect" is highly ambiguous and discretionary, and even indirect harm may serve as a basis for punishment based on the effects doctrine, providing potential room for abuse of U.S. export control laws.

Currently, this principle is primarily applied in U.S. secondary economic sanctions. By expanding the connection between controlled entities and the U.S. jurisdiction or broadly defining the impact of extraterritorial acts on the country, the United States achieves extraterritorial application of its domestic laws. This approach not only breaches the traditional limitations of the objective territorial principle but also abuses the "effects doctrine," thereby granting undue extraterritorial effect to its export control laws. Such extraterritorial effect neither conforms to the current recognized trend of the territorial principle nor violates the consensus among countries to prioritize respect for the territorial principle.

3.2. *The Ethnic group of Products and Technologies Violate the Principle of Personality*

The active ethnic group standard is typically applied to natural persons, legal persons, or other organizations. However, some countries extend its scope to products and technologies, using domestically exported products and technologies to expand the extraterritorial effect of export control laws and thereby impose secondary sanctions on third countries and their entities. This practice is mainly implemented by establishing the concepts of "product ethnic group" and "technology ethnic group," and through extending regulatory actions and expanding the scope of items. However, the international community does not universally recognize this practice, as generally, once products and technologies are normally exported abroad, their ownership transfers accordingly, and the original country loses jurisdiction over them. The United States' export control laws leverage its technological advantages to bring more and more extraterritorial products and technologies under its jurisdiction. Taking the Huawei incident as an example, the United States suppressed Huawei's research and development and supply chain by revising export control regulations. This practice has not received practical support from the international community and international trends. In addition, while international law allows jurisdiction based on the principle of ethnic group, it also emphasizes the extent of the exercise of jurisdiction and prohibits arbitrary jurisdiction that infringes upon the territory and sovereignty of other countries. When the United States exercises extraterritorial jurisdiction based on "ethnic group," it seriously violates the territorial jurisdiction of third countries and the substantive interests of other countries, which also violates the proper application of the principle of ethnic group.

3.3. Violation of conservation

International law recognizes that a country has jurisdiction based on the principle of protection, which to some extent aligns with the objectives of the United States' export control laws and provides the possibility for the expansion of their extraterritorial effect^[4]. To establish the extraterritorial effect of export control laws based on the principle of protection, two conditions must be met: first, the conduct must pose a significant threat, involving national security or major national interests, but the international community has not yet reached a consensus on whether "economic security and market interests" fall within the scope of protection; second, there must be a unified understanding among relevant countries regarding the illegality of the conduct. However, countries often have a strong subjective element when defining what conduct threatens their national security and other national interests, and they are arbitrary when applying domestic laws, and the United States is no exception. In the Huawei incident, the United States failed to reasonably demonstrate from the perspective of the principle of protection how Huawei's potential re-export violations could affect US security, instead invoking the International Emergency Economic Powers Act established based on the principle of protection to make accusations. This reflects the United States' abuse of the principle of protection and the illegality of its malicious expansion of the extraterritorial effect of its export control laws.

In summary, the United States often uses the expansion and extension of the principle of jurisdiction to safeguard its own interests, which violates the principle of jurisdiction. The extraterritorial application of domestic law should follow the default order of territorial principle priority. International organizations and other countries should respect and recognize the bona fide territorial interests of each sovereign state, which is a manifestation of a country's territorial supremacy. In the practice of extraterritorial application of domestic law, the evolution of the United States' extraterritorial application standards reflects its value judgments and choices among factors such as domestic enterprise protection, national foreign policy, and foreign sovereign interests. This is actually an abuse of the traditional basis of jurisdiction^[5].

4. Insights from the Huawei Incident

4.1. At the National Level

4.1.1. Improve China's judicial relief mechanism

When faced with dilemmas, enterprises often tend to seek settlement during the law enforcement stage, but may consequently face huge fines or other severe sanctions. This situation is partly attributed to the imperfect relief mechanism in our country. Currently, there is an urgent need to strengthen pre-emptive relief measures and post-relief safeguards in China. The key to pre-emptive relief lies in providing solid support from domestic law. On the one hand, when Chinese enterprises or entities encounter requests for evidence in foreign sanctions cases, they can raise defenses based on mandatory provisions of domestic law. On the other hand, for judgments made by foreign courts that conflict with China's national sovereignty or fundamental legal principles, China has clearly stipulated through legislation that they will not be recognized and enforced. Entities can submit applications for refusing to recognize and enforce relevant judgments based on the public policy principle in Article 282 of the Civil Procedure Law, which states that "China will not recognize and enforce judgments that violate the fundamental principles of Chinese law or national sovereignty, security, and social public interests."^[6]In terms of post-relief, China needs to further improve its domestic judicial litigation mechanism. Specifically, the scope of application of relevant clauses should be expanded, and procedures should be standardized to ensure that American individuals, entities, and even the US government can be targeted for claims and required to compensate for fines that exceed a reasonable range. Meanwhile, this process should strictly comply with international law rules, achieve centralized jurisdiction by courts, and ensure the effectiveness and legitimacy of relief channels.

4.1.2. Improve China's export control law

The United States is currently actively promoting multilateral export controls, attempting to convert the extraterritorial effect of its export controls into an international consensus. To effectively respond to this situation, China can consider using bilateral export control cooperation as the cornerstone to promote the formulation of regional multilateral export control rules and establish a coordination and interaction mechanism for export controls among developing countries^[7]. Additionally, strengthening trade and investment cooperation within multilateral frameworks such as the G20 is also crucial.

Taking China's accession to the WTO as an example, after successful entry through arduous negotiations, the scale of US exports to China increased significantly. This demonstrates that actively participating in the formulation of international rules is crucial for safeguarding national interests. Therefore, China should more deeply engage in international institutional building to ensure effective convergence between domestic law and international rules and make defensive preparations from multiple dimensions. Meanwhile, within international coordination and cooperation mechanisms, China can explore utilizing bilateral or multilateral judicial. At the same time, China can use bilateral or multi-party judicial assistance in the international coordination and cooperation mechanism to realize the extraterritorial application of export control law and further enhance the international influence of China's export control law^[8].

4.2. The enterprise level

4.2.1. Strengthen their legal capabilities for rights protection

By conducting in-depth research on the framework and sanctions provisions of the U.S. export control law, they can actively defend their rights through rule research and actively participate in litigation through legal channels in the event of trade sanctions. In fact, although the Huawei incident intensified in 2018, the U.S. intention to suppress and sanction Huawei had already emerged beforehand. Huawei's response and counterattack to these accusations and sanctions also demonstrate its thorough preparation and deep consideration, making it a typical case worthy of reference for Chinese enterprises involved in foreign economic and trade cases. During the period of accepting U.S. accusations, Huawei actively utilized legal means to file lawsuits against the U.S. Congress and government departments. However, this case ultimately revealed the true intention of the U.S. to abuse its power for targeted sanctions and suppression. During the litigation process, the district court failed to remain neutral and instead fully adopted the U.S. government's claims. Especially in terms of case citation, the district court's selective approach violated the logic and jurisprudence of case citation. The U.S. government's rebuttal stance and basis against Huawei's claims, as well as the district court's partial attitude towards the U.S. Congress, have triggered deep reflections among more sanctioned enterprises. This highlights that in the U.S. so-called system of separation of powers, although the court is endowed with the role of a "fair adjudicator," it is difficult to conceal its "state-centric" judicial shielding behavior. Therefore, as long as the U.S. persists with its trade strategy of geopolitical competition, for enterprises from competitive countries including China, challenging the extraterritorial effect of its domestic laws or the legitimacy of administrative procedures through constitutional or administrative litigation to safeguard their rights will face great difficulties.

4.2.2. Compliance construction

Firstly, before the China-U.S. trade war, a common issue for most Chinese enterprises entering the international market was that they did not fully understand the laws of the target country, nor did they conduct risk assessments of its business environment and propose compliance construction opinions, resulting in many defects in the compliance management system. In the process of internationalization, enterprises should accurately grasp the amendments to the U.S. export control laws by reasonably setting up internal compliance risk control institutions.

Secondly, the U.S. export control policy towards China involves numerous departments, with professional content and frequent changes to the control list. Coupled with differences in geography, culture, language, and legal systems, Chinese enterprises still face significant challenges in understanding and grasping policy dynamics. On the one hand, enterprise compliance personnel need to closely monitor whether related products fall within the scope of U.S. control. As well as whether the end-use of imported items has been changed during the transaction process. The United States typically publishes information on its restrictions against China through the Federal Register and BIS announcements, which elaborate on the specific content, reasons, and policy orientations of the restrictions. Therefore, compliance personnel need to have a deep understanding of this information and analyze why entities are included on the restriction list, in order to develop risk avoidance strategies for the company, reduce economic losses, and provide possibilities for future responses. In addition, when engaging in trade with the United States, Chinese enterprises can actively explore projects that can save time costs in the application process, by deeply studying the relevant institutional rules of the U.S. export control law to find legal pathways for business operations. Meanwhile, enterprises should establish a comprehensive compliance evidence management system to provide strong evidentiary support when safeguarding their rights through legal channels if necessary.

5. Conclusions

Taking the Huawei incident as an example, the article delves into how the US violates the principle of jurisdiction by expanding it to safeguard its own interests, emphasizing that the extraterritorial application of domestic law should follow the territorial principle and respect the territorial interests of each sovereign state.

To address such situations, the article proposes countermeasures at the national level, including improving judicial relief mechanisms and actively participating in international rule-making. Improving judicial relief mechanisms involves strengthening pre-emptive relief measures and post-relief guarantees. Nations should also actively engage in international rule-making to ensure the effective connection between domestic law and international rules. At the enterprise level, the Huawei incident suggests that foreign-related enterprises need to strengthen their legal rights protection capabilities by deeply studying the US export control framework and sanctions regulations. Additionally, enterprises must enhance compliance efforts, including thoroughly understanding target country laws, conducting risk assessments, and establishing compliance and risk control departments to accurately grasp amendments to the US export control law.

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