

China's first prohibition order targets the EU Foreign Subsidies Regulation

The European Commission's foreign subsidies investigation of Nuctech designated an unlawful extraterritorial jurisdiction measure

18 May 2026

Just one week after [the Ministry of Commerce issued its first blocking order](#), on 15 May 2026, the Ministry of Justice of the People's Republic of China (MOJ) invoked the Regulations of the People's Republic of China on Counteracting Unlawful Foreign States' Extraterritorial Jurisdiction ([Counter-Extraterritoriality Regulations](#)), identifying the European Commission's (Commission) investigation of Nuctech Co., Ltd. (Nuctech) under the EU Foreign Subsidies Regulation (FSR) against Chinese entities as an unlawful extraterritorial jurisdiction measure and prohibiting any organisation or individual from implementing or assisting in it ("Prohibition Order").¹ The Prohibition Order is the first enforcement action under the regulations, in force since 13 April 2026; the operative language names no class of addressees and no territorial limit. The order is best read not as an instrument directed at the Commission, whose institutional incentives, examined below, make retreat unlikely, but at the third parties whose cooperation the Commission's investigation requires.

Background

The Counter-Extraterritoriality Regulations

Promulgated on 13 April 2026, the regulations took immediate effect, consolidating into a single State Council-level instrument the identification, blocking and countersanctioning tools assembled since 2020. The 20 articles establish an interagency working mechanism, led by the State Council legal affairs office, with the MOJ as operational lead, for identifying foreign measures the mechanism deems unlawful extraterritorial jurisdiction.

Once a measure is identified, Article 13 authorises entity-specific prohibition orders against any party implementing or assisting in it.² Please refer to our recent publication for more details about the regulations: "[China's New Countermeasures Regulation: Identification, Blocking and the Malicious Entity List](#)".

The Nuctech investigation

The Nuctech investigation has served as the principal test case for the FSR's reach into data and personnel information outside of the EU. On 23 April 2024, the Commission conducted the FSR's first unannounced inspections at Nuctech's Warsaw and Rotterdam subsidiaries, demanding access to records on Beijing servers. In Case T-284/24 R *Nuctech Warsaw and Nuctech Netherlands v. Commission*, the president of the EU General Court refused, on 12 August 2024, to suspend the inspection decision in an interim ruling – technically *obiter dicta* on the Chinese-law question, since interim relief failed on other grounds – holding the qualified-effects doctrine to sustain extraterritorial reach and the Chinese-law claim unsubstantiated on the ground that Nuctech had not sought the authorisations from the competent Chinese authorities that would have demonstrated an actual conflict. The Commission escalated to an in-depth FSR investigation on 11 December 2025. Separately, the Ministry of Commerce of the People's Republic of China (MOFCOM) on 9 January 2025 found EU FSR practices to constitute unjustified trade and investment barriers. The Prohibition Order recasts that contest in legal terms, lifting it from a trade-barrier finding to a formal identification under a State Council-level instrument.³

1 [Regulations of the People's Republic of China on Counteracting Unlawful Foreign States' Extraterritorial Jurisdiction](#), State Council Decree No. 835 (promulgated and effective 13 April 2026); Ministry of Justice of the People's Republic of China, Announcement No. 5 of 2026, [Announcement on the Identification of the European Union's Foreign Subsidies Regulation Investigation Practices Against Nuctech as an Unlawful Extraterritorial Jurisdiction Measure](#) (15 May 2026).

2 Counter-Extraterritoriality Regulations, *supra* n. 1, arts 3, 4, 6, 8, 13 and 14; [Anti-Foreign Sanctions Law of the People's Republic of China](#) (10 June 2021), art 12; State Council of the People's Republic of China, [Notice on Countermeasures Against Foreign States' Unlawful Extraterritorial Jurisdiction](#) (13 April 2026).

3 [Regulation \(EU\) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market](#) [2022] OJ L 330/1; Case T-284/24 R *Nuctech Warsaw Company Limited and Nuctech Netherlands BV v. Commission*, [Order of the President of the General Court of 12 August 2024](#); European Commission, [Commission Opens In-Depth Foreign Subsidies Investigation Into Nuctech's Activities in the Threat Detection Systems Sector](#), Press Release IP/25/3019 (11 December 2025); Ministry of Commerce of the People's Republic of China, [Final Determination on the Trade and Investment Barrier Investigation Into Certain Practices of the European Union Under the Foreign Subsidies Regulation](#), MOFCOM Announcement No. 28 of 2024 (10 July 2024 launch; 9 January 2025 determination).

The identification and Prohibition Order

The identification

Issued jointly with MOFCOM and other State Council departments under Articles 3 and 6, the Prohibition Order determines that the Commission's FSR-based investigative actions against Chinese entities in the Nuctech matter constitute an unlawful extraterritorial jurisdiction measure.

The MOJ's reasoning, set out in the accompanying spokesperson's question-and-answer document, rests on two propositions: that the Commission's demands for broad and unrelated information within China violated international law and the basic norms of international relations, and that those demands harmed the lawful rights of Chinese citizens, legal persons and other organisations. The MOJ's characterisation of that conduct as "arbitrarily" demanding "extensive and non-essential information" tracks MOFCOM's January 2025 trade-barrier finding but supersedes it: the dispute now sits within a State Council-level instrument and is operative for the broader countermeasure framework the regulations establish.⁴

The Prohibition Order

The operative ordering language is that "no organization or individual shall implement or assist in implementing such unlawful extraterritorial jurisdiction measures." The Prohibition Order prohibits implementing or assisting in implementing the Commission's FSR-based investigative actions against Chinese entities in the Nuctech matter. In other words, it does not extend to the FSR investigations against Nuctech's EU subsidiaries. The regulations, by their name and fundamental principles, aim to restrict extraterritorial jurisdiction. Therefore, while China recognises the Commission's authority within the territory of the EU, when and if the investigation involves Chinese entities, it will be caught by the Prohibition Order, e.g. the Commission may request Nuctech EU subsidiaries to provide their own data, but not the data or information of Nuctech China or other Chinese companies, including third-party Chinese companies in the supply chain, business and industrial information in China, and Chinese financial information, government support, subsidy or policy. A broader concern of China relating to FSR is that those investigations tend to collect a wide range of China's supply chain and technology information that may present a national security concern.

Consequences of noncompliance

Under Article 13, the State Council legal department, following the working mechanism's procedures, may issue an entity-specific prohibition order against any organisation or individual that ignores the general prohibition. Noncompliance with such an order may attract administrative penalties, including monetary fines and restrictions on procurement in China; on imports and exports of goods, technologies and services; on cross-border data; and on exit, entry or residence. Foreign parties that promote or participate in the identified measure may, in parallel, be added to the Malicious Entity List established under Article 8, exposing them to entry bans, transaction prohibitions with Chinese parties, investment bans and asset freezes, and reaching entities controlled by, or operated with the participation of, a listed party. Chinese parties harmed by such conduct may, in addition, bring civil claims for damages and injunctive relief under Article 14, drawing on the private right of action already exercised under the Anti-Foreign Sanctions Law.⁵ The catalogue of penalties is broadly familiar from Chinese countersanctions practice; what is novel is the kind of third-party conduct the framework now reaches, and that novelty is sharpened by comparison with the MOFCOM action of two weeks earlier.

Comparative analysis

The MOFCOM refinery blocking order

The Prohibition Order is the second blocking action by Beijing in roughly two weeks: on 2 May 2026, [MOFCOM issued a blocking order](#) against US sanctions on five independent Chinese refineries and Hengli Petrochemical (Dalian) Co., Ltd., administered by the Office of Foreign Assets Control. The two sit within different statutory regimes, MOFCOM's under the 2021 Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures ("2021 Blocking Rules") and the MOJ identification under the State Council-level regulations. Together, they mark an operational pivot from the deterrence-by-availability posture of the preceding five years. While both orders aim to limit extraterritorial jurisdictions, MOFCOM's order targets US secondary sanctions on third-country counterparties; the MOJ identification targets the Commission's reach into data within China.⁶

4 MOJ Announcement, *supra* n. 1; Ministry of Justice of the People's Republic of China, [China Urges EU to Stop Abusing Foreign Subsidies Probe Tools](#) (Spokesperson's Question-and-Answer, 15 May 2026); MOFCOM Final Determination, *supra* n. 4.

5 Counter-Extraterritoriality Regulations, *supra* n. 1, arts 8, 13 and 14; Anti-Foreign Sanctions Law, *supra* n. 2, art 12.

6 Ministry of Commerce of the People's Republic of China, [Order Under the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures Concerning Sanctions Designations of Certain Chinese Refining Enterprises \(2 May 2026\)](#); [Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures](#), MOFCOM Order No. 1 of 2021 (9 January 2021); Executive Order 13902 of 14 January 2020, [Imposing Sanctions with Respect to Additional Sectors of Iran](#); US Department of the Treasury, Office of Foreign Assets Control, [Designation of Hengli Petrochemical \(Dalian\) Co., Ltd.](#) (24 April 2026).

The operator's conflict of laws

For an operator caught between the Commission's investigative powers under the FSR and the MOJ's prohibition, the conflict is no longer one of competing public policy interests but of competing primary legal obligations. In *Nuctech Warsaw*, the General Court treated Chinese domestic law as an insufficient defence – in an interim ruling whose Chinese-law holding is *obiter dicta*, and which rested on Nuctech's failure to seek authorisations from the Chinese authorities that would have demonstrated an actual conflict – and endorsed adverse inferences and facts-available methodologies where information is withheld; some 15 years of subsidy and antidumping jurisprudence have reinforced that line. The regulations now authorise Chinese authorities to penalise compliance with the foreign measure, and the Prohibition Order formalises the legal basis. The Article 11 exemption procedure, allowing affected parties to apply to the working mechanism for authorisation to comply in special circumstances, is the only on-the-record route to satisfying both regimes at once; its procedural details remain to be tested. The matter has, therefore, moved from a legal-risk question to an operational governance one, for which a documented decision-making framework is increasingly necessary, whatever the outcome of any individual case.⁷

Outlook

The position of the European Commission

The Commission is unlikely to terminate or pause the Nuctech investigation in direct response to the MOJ's identification. Its position has been consistently upheld by the EU General Court, including through the qualified-effects doctrine and the *Nuctech Warsaw* refusal to accept a foreign blocking statute as a basis for resisting compliance; the institutional incentives behind that line of authority remain intact. The Commission's public response characterised its information requests as "standard measures" consistent with the FSR; the matter is, therefore, likely to proceed to substantive determination unless Nuctech withdraws from the EU market.

Available to the Commission, in parallel, is the Anti-Coercion Instrument (Council Regulation (EU) 2023/2675), in force since 27 December 2023 but as yet unused; the legislative period in which the 13 April regulations were promulgated coincides with the trilogue on the revised Cybersecurity Act (CSA2), proposed on 20 January 2026, and the Industrial Accelerator Act (IAA), proposed on 4 March 2026.

The Prohibition Order accordingly sits within a wider EU-China policy confrontation rather than alongside it. Institutional retreat is, therefore, not the channel through which the order will take effect; the order's practical reach will be determined by the third parties – financial, professional and technical – on whose cooperation the Commission's investigation depends, and to whom the analysis now turns.⁸

Implications for operators

For the third parties identified above – Nuctech's EU subsidiaries, non-Chinese financial institutions holding records of Nuctech's financing arrangements, professional advisers engaged in document review and data transfer, and IT service providers facilitating cross-border data movement – the order materially elevates the legal risk profile of cooperation with the Commission. The regulations are operative, the prohibition is in force and Article 13 contemplates entity-specific orders against ongoing contraventions. It is at least arguable that the identification creates a documented basis on which an operator may, in EU proceedings, invoke a specifically identified foreign-sovereign prohibition, a comity argument *Nuctech Warsaw* did not foreclose, having addressed only a generic blocking statute. Further contested EU proceedings are now likely, with the existence, scope and effect of the Prohibition Order itself a litigated question. The order's practical reach beyond Nuctech will, however, be determined less by how those proceedings are resolved than by the judgement of the financial institutions, professional advisers and IT service providers whose cooperation the Commission's investigation now depends on – decisions those parties will be making, under their own legal exposure, with or without the resolution of any pending appeal.

How can we help?

Our International Trade & Foreign Investment Practice has advised on FSR investigations, Chinese countersanctions matters and cross-border conflict-of-laws questions throughout the development of these regimes. Our team, working across our London, Brussels, Beijing, Shanghai and Hong Kong offices, is well placed to advise on scoping conduct under the order; the Article 11 exemption procedure; documentary positioning for parallel EU and Chinese proceedings; sanctions, blocking-order and conflict-of-laws clauses; and Malicious Entity List exposure.

If you would like to discuss this development for your business, please contact any member of the team below or your usual contact at the firm.

⁷ The line of EU trade-defence authority on facts-available methodologies against Chinese state-owned banks and financial institutions extends from the 2010–2011 coated fine paper investigation onwards.

⁸ European Commission spokesperson, statement of 16 May 2026, reported in [China Orders Entities Not to Comply With EU Probe Into Nuctech](#), Reuters (16 May 2026); Case T-284/24 R, *supra* n. 4; [Regulation \(EU\) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries](#) [2023] OJ L 295/1; European Commission, [Proposal for a Regulation Revising the Cybersecurity Act](#), COM(2026) 11 (20 January 2026); European Commission, [Proposal for an Industrial Accelerator Act](#), COM(2026) 100 (4 March 2026).

Contacts



Ju (Lindsay) Zhu
Partner, Shanghai
T +86 21 6103 6303
lindsay.zhu@squirepb.com



José María Viñals
Partner, Madrid, Brussels, Geneva
T +34 91 426 4840
M +34 649 133 822
T +32 2 627 1111
josemaria.vinals@squirepb.com



Diego Sevilla Pascual
Director, Brussels
T +322 627 7612
diego.sevillapascual@squirepb.com



Tigran Piruzyan
Senior Associate, Madrid
T +34 618 017 354
tigran.piruzyan@squirepb.com