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Research on Jurisdictional Conflicts and Coordination in Anti-Monopoly Investigations under Globalization of the Industrial Chain - From the Perspective of Improving the Extraterritorial Application System of China's Anti-Monopoly Law

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Abstract. In the context of globalization and the profound integration of industrial chains, cross-border monopolistic behaviors have rendered the conflicts over anti-monopoly jurisdiction among countries increasingly prominent. This study, from the vantage point of enhancing the extraterritorial application system of China's Anti-Monopoly Law, conducts a systematic analysis of the underlying causes of such jurisdictional conflicts among countries, international coordination approaches, as well as the challenges China encounters in the practice of anti-monopoly jurisdiction.The research reveals that the core of jurisdictional conflicts lies in the interplay between national sovereignty and interests. Relying on the single entity principle and the effects principle, countries have been consistently expanding their extraterritorial jurisdiction, thereby giving rise to jurisdictional conflicts and the predicament of asymmetric regulation. China faces three major deficiencies: unclear extraterritorial application criteria, the absence of coordination mechanisms, and being at a disadvantage in the rules arena due to other countries' extraterritorial application based on the effects principle.Consequently, this paper innovatively puts forward a “dual-track coordination mechanism”. Internally, it aims to clarify relevant rules, while externally, it advocates the practice of international comity and the exercise of reasonable jurisdiction.

Keywords: Conflict of anti-monopoly jurisdiction, Extraterritorial application, Principle of international comity, Dual-track coordination mechanism

1. Introduction

With economic globalization, the relationship between countries has become increasingly close, and as a result, more and more multinational enterprises have emerged. A multinational enterprise is defined as a company that owns and controls subsidiaries or branches in other countries or regions outside its home country and engages in international production and business activities under a common management strategy and organizational structure. Due to their strong financial strength

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and large scale, multinational enterprises often exhibit a relatively high number of monopolistic behaviors. Moreover, the forms of their monopolistic practices are diverse, such as monopoly agreements, abuse of dominant market position, and concentration of business operators.

Due to the particularity of multinational companies, their monopolistic behaviors are more likely to give rise to extraterritorial jurisdiction issues. The main reason lies in the extraterritorial application systems in the anti-monopoly laws of various countries. The extraterritorial application of anti-monopoly laws refers to the legal principle that a country's anti-monopoly law not only applies to restrictive competition behaviors occurring within its territory but also can regulate and govern behaviors that occur outside its territory but have a substantial, direct, and foreseeable effect of excluding or restricting competition in its domestic market. Major countries and regions around the world generally have legal provisions for the extraterritorial application of anti-monopoly laws, such as the United States and the European Union. Due to the extraterritorial application of anti-monopoly laws by various countries, there are often cross-jurisdictional and conflicts in anti-monopoly investigations, leading to related jurisdiction coordination issues. The case of American Banana Co. v. United Fruit exemplifies the method used in the early days of the United States to coordinate jurisdictional conflicts - that is, directly waiving jurisdiction. The plaintiff, American Banana Company, accused the defendant, United Fruit, of monopolizing the banana trade in Central America through illegal means. The plaintiff claimed that these actions violated the Sherman Antitrust Act of the United States and demanded compensation.However, Oliver Wendell Holmes held that statutes should generally not be construed as having extraterritorial effect—meaning that for acts occurring entirely outside the United States, U.S. courts lack jurisdiction. This established America's earliest extraterritoriality principle, the territorial principle, which denied any extraterritorial effect to U.S. laws [1].

At present, China's "Anti-Monopoly Law" does not have detailed and specific provisions regarding the application of its jurisdiction beyond its borders. This makes it difficult for anti-monopoly supervisory authorities to determine whether they have jurisdiction and how to coordinate anti-monopoly jurisdiction with the home countries of multinational companies. There is currently no legal basis or much case experience for addressing such issues. In the current context of global industrial chains, the above problems in the anti-monopoly law can have negative impacts. For instance, it may fail to effectively regulate the damage caused by overseas monopolistic behaviors to the domestic market. Foreign enterprises can directly impact the Chinese market by implementing monopolistic behaviors abroad, but our law enforcement agencies are unable to intervene due to the lack of clear basis. Or it may lead to the "asymmetric regulation" dilemma. Europe and the United States frequently impose penalties on Chinese enterprises' overseas behaviors based on the "effectiveness principle", but China lacks equivalent rules and is unable to counteract the actions of foreign enterprises that harm Chinese interests, resulting in Chinese enterprises being in a rule disadvantage in international competition.Based on scholarly perspectives, to address this issue, it is necessary not only to conduct scientific assessment and rigorous justification of monopolistic conduct occurring abroad, but also to establish preemptive agreements with relevant nations regarding jurisdiction and enforcement matters. Such agreements should delineate the scope of bilateral cooperation and define specific obligations [2].

This article focuses on the issue of jurisdictional conflicts arising from cross-border monopolistic behaviors in the process of global industrial chain integration. Taking the improvement of the extraterritorial application system of China's Anti-Monopoly Law as the starting point, it comprehensively employs comparative analysis, case studies, and normative analysis methods to systematically analyze the root causes of jurisdictional conflicts and the international coordination

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paths. The research aims to solve the current problems in China, such as ambiguous extraterritorial jurisdiction rules, the lack of coordination mechanisms, and the "asymmetric regulation" dilemma. It proposes a system optimization plan centered on the "dual-track coordination mechanism", integrating international courtesy and reasonable jurisdiction principles, to provide theoretical support and practical guidance for the construction of a global anti-monopoly governance system.

2. Conflicts and coordination of anti-monopoly jurisdiction among major countries and regions

2.1. Causes of anti-monopoly jurisdiction conflicts among major countries and regions

The main conflicts in anti-monopoly jurisdiction among major countries mainly arise from the extraterritorial application systems stipulated in their respective anti-monopoly laws. Currently, the mainstream principles for the extraterritorial application of anti-monopoly laws in major countries are the effect principle and the single entity principle.

The principle of effect refers to the situation where the laws of a country (or legal jurisdiction) can apply to actions or activities that occur outside its territory, as long as such actions or activities have a substantive, direct, and reasonably foreseeable effect or impact within its territory. This principle was established by the United States in the case of United States v. Aluminum Co. of America et al. in 1945 [3]. In this case, the American Aluminum Company (Alcoa) basically monopolized the production and sales of primary aluminum in the United States in the first half of the 20th century. The U.S. government sued Alcoa under Article 2 of the Sherman Antitrust Act, accusing it of illegally monopolizing the market through exclusive business practices, with the relevant behavior in this case mainly being the signing of cartel agreements with foreign enterprises. Before this case, the Sherman Antitrust Act mainly targeted monopolistic behaviors within the United States. However, in this case, due to Alcoa's control of overseas aluminum resources and signing of cartel agreements, it constructed a transnational monopoly network, and its overseas actions had a causal relationship with the monopoly results in the United States. The U.S. court extended the anti-monopoly investigation to overseas actions for the first time. According to this case, the U.S. court held that as long as the overseas actions of U.S. enterprises have a direct, substantive, and foreseeable anti-competitive effect on the United States, the U.S. court has jurisdiction. This logic gradually evolved into the "effect principle" (Effects Doctrine), becoming the core basis for the extraterritorial application of U.S. antitrust law.

The principle of a single entity refers to a legally independent parent company and its subsidiary or affiliated company, if there is a close economic control and synergy relationship, they can be regarded as a single economic entity. At this time, the subsidiary loses its independent decision-making ability and its actions can be attributed to the parent company, thus breaking the limitation of the independent liability of the legal person. In the case of Copperweld Corp. v. Independence Tube Corp. [4], Copperweld Company and its wholly-owned subsidiary Regal Tube Company were accused of conspiring to monopolize the steel pipe market in the United States. The plaintiff, Independence Tube Company, claimed that the actions of the parent company and the subsidiary constituted illegal conspiracy. However, the Supreme Court held that the parent company and the wholly-owned subsidiary belong to a single entity, and their actions do not constitute "conspiracy" under Section 1 of the Sherman Act. Thus, the Single Entity Doctrine was proposed.

The extraterritorial application of anti-monopoly laws has led to overlapping and intersecting jurisdictional issues as well as jurisdictional disputes.Research shows that in cases involving the extraterritorial jurisdiction of anti-monopoly laws, both parties involved almost always raise

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objections to the jurisdiction of the court. However, due to the significant differences in the litigation systems of different countries, and the different understandings of concepts such as "extraterritoriality", "extraterritorial jurisdiction", "extraterritorial application", and "extraterritorial reach" by different courts, there are differences in understanding and leading to variations in court judgments [5]. Therefore, disputes over antitrust jurisdiction will be protracted and difficult to resolve properly.

2.2. The coordination paths and issues of current anti-monopoly jurisdiction disputes

2.2.1. The principle of international comity

In the 17th century, Dutch scholar Huber proposed the well-known "Huber's Three Principles". According to this principle, the home country has no obligation to apply foreign laws. The only reason for applying foreign laws is the courtesy of the home country [6]. The "Hu Bo's Three Principles" were the embryonic form of what is now known in the legal field as the "Principle of International Good Faith".

The content of the principle of international comity is as follows: The laws of a country are only valid within its sovereign territory and apply to all its citizens; they do not have inherent validity outside the country; all persons within the country's territory, whether permanently residing or temporarily staying, are subject to the laws of that country; if the laws of a country have come into effect, their validity can extend to outside the country, but they must not infringe upon the sovereignty of other countries and the rights and interests of their citizens.

The principle of international comity can be further divided into legal conflicts in procedural law and legal conflicts in substantive law. In this article, the jurisdictional conflicts among different countries regarding monopolistic behavior are mainly studied, which belong to legal conflicts in the procedural sense. However, the discussions on the extraterritorial effect of domestic laws and other aspects of substantive law will not be elaborated in detail here.

2.2.2. Principle of reasonable jurisdiction

After the Alcoa case, there have been an increasing number of extraterritorial jurisdiction cases in the United States regarding the monopolistic behavior of multinational enterprises. Of course, this action will inevitably lead to conflicts with the laws of other countries, because the host country where the monopolistic behavior occurs will also claim jurisdiction over the case [7]. Subsequently, in the case of Timberlane Lumber Co. v. Bank of America in 1983, a universally applicable coordination approach was introduced, namely the "Jurisdiction Rule of Reason". The Jurisdiction Rule of Reason achieves a balance between extraterritorial jurisdiction and the sovereignty interests of other countries through a multi-factor analysis.In this case, the court held that Timberlane failed to adequately prove that the defendant's actions had caused direct, substantial and foreseeable anti-competitive harm to the US timber market, and that exercising extraterritorial jurisdiction would potentially interfere with the sovereignty of Honduras and damage the judicial relationship between the two countries. Therefore, the US federal district court rejected the lawsuit request of the plaintiff Timberlane [8]. However, in certain aspects, the US interests were too weak, and the coordinating motivation of foreign countries to restrict competition was too strong, thus failing to provide sufficient grounds for the US's extraterritorial jurisdiction [7].

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2.2.3. Issues regarding the application of the two principles

Applying either of the above two principles alone cannot effectively resolve jurisdictional conflicts. For cases where only the principle of international comity is applied, since international comity is mainly a voluntary, moral, and non-coercive coordinating principle, if other countries refuse to follow the principle of international comity, then the two countries cannot achieve a good coordination effect regarding jurisdictional issues. The resulting consequence might be that countries start to pursue unilateralism, leading to legal "wars" and even causing diplomatic frictions.

For the sole application of the principle of reasonable jurisdiction, this principle grants a country excessive discretion in determining the scope of jurisdiction. The country may expand the scope of jurisdiction based on factors such as "interests" or "dominance", and place its own jurisdiction above that of other countries. Alternatively, due to the fact that the jurisdiction of the case does not bring positive effects to the country, it may use the principle of reasonable jurisdiction as a means to evade jurisdiction.

In conclusion, only when the home country and the host country of a multinational enterprise respect the national sovereignty of each country and follow the principle of "courtesy" while also adhering to the principle of reasonable jurisdiction, can they better handle or coordinate the issue of jurisdiction conflicts.

3. Extraterritorial application of China's anti-monopoly law and jurisdiction coordination

3.1. Current regulations on extraterritorial application of China's anti-monopoly law (jurisdiction coordination)

As China was building its anti-monopoly legal system and specific procedures, it referred to European competition law. However, the provisions on extraterritorial application, which originated from the "effects doctrine" in the United States, may cause problems in practical application. For instance, there is the issue of choosing between public enforcement and private enforcement. China's anti-monopoly system is positioned similarly to that of Europe, so the methods used by US courts to handle anti-monopoly cases do not align with China's situation, which is a result of the division of labor between public and private enforcement systems [9].

The second article of the current Chinese Anti-Monopoly Law stipulates: "Monopoly behaviors occurring within the territory of the People's Republic of China shall be governed by this law; monopoly behaviors occurring outside the territory of the People's Republic of China that have an exclusionary or restrictive impact on domestic market competition shall also be governed by this law." This is the first legal provision in the Chinese Anti-Monopoly Law that stipulates extraterritorial jurisdiction.However, this did not result from summarizing individual cases in judicial practice as in the United States, but rather emerged from institutional transplantation—where China absorbed and adapted foreign legal texts and relevant jurisprudential interpretations—under the pressures of economic globalization [6].

In cases of jurisdictional conflicts and coordination regarding anti-monopoly issues, China adheres to the "principle of limited jurisdiction". The core of this principle is to only regulate monopolistic behaviors that are actually carried out or have a substantive impact within China's territory. At the same time, the penalties are strictly limited to the business activities of the enterprises in China, in order to avoid conflicts with the jurisdictional authorities of other countries.

Meanwhile, China has also signed bilateral treaties or regional agreements with relevant countries through diplomatic means to prevent the possibility of jurisdictional conflicts. For example, in the

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Regional Comprehensive Economic Partnership Agreement (RCEP), it is stipulated that competition law enforcement should "take into account the major interests of the members", and Vietnam requires Chinese enterprises to fulfill notification obligations before conducting anti-monopoly investigations in China.

It can be seen that in the issue of jurisdictional conflicts outside China's territory in the field of anti-monopoly, China has not focused on substantive conflict resolution methods. Instead, it has adopted the "principle of jurisdictional limitation" or diplomatic means to prevent jurisdictional conflicts. However, when preventive measures fail to prevent the occurrence of jurisdictional conflicts, China does not have feasible coordination methods to resolve them.

3.2. Suggestions for improvement

The Antitrust Bureau and the Federal Trade Commission of the United States are specifically responsible for anti-monopoly reviews and penalty enforcement. Although they are not part of the judicial system, they possess judicial and administrative powers in the field of anti-monopoly, enabling them to efficiently address related issues. However, in China, due to the prevalent practice of multiple parties collaborating, there may be problems of improper division of jurisdiction over monopolistic behaviors and unclear regional divisions. To address this issue, the authority of the State Council's Anti-Monopoly Committee should be expanded to make it a specialized agency, and the powers should be centralized to solve anti-monopoly problems [10].

China should establish clear jurisdictional standards and define clear boundaries for extraterritorial application. The current expression of extraterritorial application in the Anti-Monopoly Law is ambiguous, often leading to inconsistent enforcement standards. Therefore, our country should add direct, substantive and predictable jurisdictional requirements.

However, in international practice, having definite jurisdictional standards cannot completely solve the conflict issues. Therefore, a dual-track jurisdiction coordination mechanism should be established, combined with the principle of international courtesy to implement an active courtesy mechanism, and always maintain a humble attitude. Establish a compulsory negotiation procedure, set up a negotiation obligation for the State Council's Anti-Monopoly Committee, and when there is a conflict with the jurisdiction of other countries, one should actively initiate bilateral negotiations. During the negotiation period, the investigation should be suspended to avoid meaningless jurisdictional competition. At the same time, implement "negative courtesy" (Negative Comity). If another country has already exercised jurisdiction over the same monopolistic behavior, our country can suspend law enforcement unless there are obvious deficiencies.

Strictly limit the application of the reasonable jurisdiction principle stipulated in the Anti-Monopoly Law, and do not give it priority in applying as the fallback clause for anti-monopoly jurisdiction. This is to prevent the use of hegemony for jurisdiction or the occurrence of situations where jurisdiction should be exercised but is not.

4. Conclusion

This paper mainly focuses on the issue of jurisdictional conflicts arising from cross-border monopoly behaviors in the context of global industrial chain integration. From the perspective of improving the extraterritorial application system of China's anti-monopoly law, it systematically analyzes the root causes of jurisdictional conflicts in anti-monopoly cases among different countries, outlines the main paths of international coordination, deeply explores the current predicaments faced by China and their causes, and finally proposes targeted directions for system improvement.

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This article holds that the conflict of jurisdiction is essentially a contest between national sovereignty and interests. Under the unified legal norms of international law, each country, out of its own interests, expands the extraterritorial effect, which becomes the root cause of the conflict. To address the dilemma caused by overly general standards for extraterritorial application, resulting in inconsistent law enforcement, poor predictability, or excessive reliance on "jurisdictional limitation" and diplomatic preventive measures. To solve this dilemma, establishing a "dual-track coordination mechanism" is an urgent task: internally, formulate detailed rules or issue guidelines, clearly introduce direct and predictable jurisdictional standards, strictly limit the "reasonable jurisdiction principle" as the fallback clause, prevent abuse; externally, systematically integrate into the international coordination framework, practice the principle of international courtesy, and establish a mandatory negotiation procedure at the legal level, granting the State Anti-Monopoly Committee the legal obligation to initiate bilateral or multilateral negotiations when conflicts arise, and suspend the investigation during the negotiation period. The ideal way to resolve conflicts in the future should be "courtesy priority + reasonable jurisdiction", that is, taking courtesy as the leading factor to seek consensus, and in cases ·involving major interests, supplement with a strictly limited analysis of reasonable jurisdiction.

It can effectively regulate the damage caused by overseas monopolistic behaviors to the domestic market, ensuring a fair competition order. Moreover, it can also solve the problem of asymmetric regulation, providing a rule-based backing for Chinese enterprises in global competition and enhancing China's voice in international rule-making. Thus, it can be seen that improving the extraterritorial application system and jurisdiction coordination mechanism of China's anti-monopoly law contributes to promoting regional and multilateral coordination and building an equal and mutually beneficial global anti-monopoly governance system, demonstrating profound significance of China's wisdom.

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