



# Study on the Application of Maritime Injunction as the Function of the Anti-suit Injunction Regime

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**Abstract.** By analyzing the purpose, characteristics and connotation of the maritime injunction regime and the anti-suit injunction regime, this article is committed to establish a solid theoretical support of response to anti-suit injunctions and to provide an effective legal remedy to deal with parallel proceedings and anti-suit injunction hindrance in the field of maritime justice, at the basis of judicial practice against extraterritorial anti-suit injunctions with maritime injunctions. It's recommended to summarize the existing experience, analyze the dilemmas and obstacles in practice, and strive to take maritime injunction as the carrier in the field of maritime litigation, absorb and give full play to the institutional advantages and functions of the anti-suit injunction regime, pioneer the innovation of building an anti-suit injunction regime with Chinese characteristics in maritime litigation, so as to comprehensively safeguard the legitimate rights and interests of relevant parties in China, and enrich the positive countermeasures for resolving international and inter-regional jurisdictional conflicts in the maritime field.

**Keywords:** Maritime Injunction · Anti-suit Injunction · Jurisdiction Conflict · Parallel Proceedings

## 1 Introduction

With the increasing importance of China in the maritime field, the complexity and challenge of the legal risks that our domestic relevant parties may face in the international maritime trade activities are increasing day by day. In recent years, in the field of maritime litigation, Our parties have been subject to extraterritorial anti-suit injunctions with increasing frequency, and are therefore in a relatively vulnerable position, posing a risk to the maintenance and enforcement of their legal rights and interests.

Anti-suit Injunction, which is read literally as an order prohibiting litigation, specifically refers to a restrictive order against an opposing party over whom the court or the arbitration tribunal of that country may exercise jurisdiction, which is issued by a court of a country, according to the application of a party, in order to prevent the opposing party from instituting or continuing foreign proceedings that have already been instituted and have the same parties and subject matters in dispute with litigation or arbitration

proceedings pending or anticipated in that country. The anti-suit injunction regime originated in the United Kingdom, was initially in the form of a Writ of Prohibition to resolve conflicts of jurisdiction between domestic courts in the United Kingdom, which to a certain extent, effectively defused the overlap of jurisdiction between the Royal Court and the Ecclesiastical Courts, and between the Court of Equity and the General Court.

## **2 Successful Practice of Resolving a Foreign Anti-suit Injunction with the Maritime Injunction in the Maritime Field**

Until *Huatai P&C Insurance Co., Ltd. Shenzhen Branch v. Clipper Chartering SA* in 2017, the Wuhan Maritime Court issued a maritime injunction to directly respond to the sanction from the extraterritorial anti-suit injunction against the Chinese party. In this case, the insurer *Huatai P&C Insurance Co., Ltd. Shenzhen Branch* filed a lawsuit against *Clipper Chartering SA* in the Wuhan Maritime Court over a dispute relating to Bill of Lading VC00818 for the carriage of goods by sea. In response, the respondent *Clipper* did not raise an objection to the jurisdiction of the the Wuhan Maritime Court within the statutory defense period under the PRC Civil Procedure Law, but instead applied to the Hong Kong court for an anti-suit injunction on the basis that the dispute was subject to the valid arbitration clause. According to the respondent *Clipper's* application, the High Court of Hong Kong issued an anti-suit injunction ordering the to withdraw its action and restraining it from commencing or continuing any proceedings in the mainland against *Clipper* in respect of any dispute arising out of the bill of lading or the contract of carriage. However, the respondent *Clipper* did not challenge the jurisdiction of the Wuhan Maritime Court over the dispute arising from the contract of carriage of goods by sea. Therefore, the Wuhan Maritime Court held that the respondent had implicitly submitted to its jurisdiction, and that the application for the Hong Kong anti-suit injunction violated the principle of estoppel. As a result, a maritime injunction was issued by the Wuhan Maritime Court in accordance with the PRC SMPL and other relevant provisions of Chinese law, ordering the defendant *Clipper* to withdraw the Hong Kong anti-suit injunction.

In this case, the Wuhan Maritime Court took the initiative to respond positively to the extraterritorial anti-suit injunction, which is the first time that Chinese courts have used maritime injunctions to counteract the sanctions of extraterritorial anti-suit injunctions, creating a precedent for maritime injunctions against anti-suit injunctions in the maritime field, effectively safeguarding the judicial remedy rights and interests of parties involved in extraterritorial maritime disputes, and providing a new direction for its handling of the anti-suit injunction issue.

In Chinese maritime litigation, passive defensive responses to extraterritorial anti-suit injunctions are not sufficient in today's context to fully respond to the increasingly complex jurisdictional disputes and parallel proceedings in maritime disputes. Given that at present Chinese maritime trial capacity upgrade and relevant regime advantages, and summarizing the excellent experience of maritime judicial practice, in the field of maritime litigation, it's with more promising realistic possibilities and response effectiveness for Chinese courts to use maritime injunctions to play the function and value of anti-suit injunctions, in order to proactively deal with conflict of jurisdiction and parallel litigation issues.

### **3 Practical Dilemmas of the Maritime Injunction Acting as the Anti-suit Injunction Regime**

#### **3.1 Inadequacies in the Jurisdiction of the Maritime Injunction Regime Make It Inseparable from Substantive Proceedings**

Based on Article 52 in the PRC SMPL, A party who applies for a maritime injunction before instituting an action shall file the application with the maritime court at the place where the maritime dispute arises.

However, because of the transnational nature of maritime trade, when actual maritime disputes arise, the “place of dispute” is usually abroad and not within Chinese actual jurisdiction. In such a situation, due to the restrictions on the place of disputes, maritime injunctions cannot be applied for in the pre-litigation stage, but only after the substantive proceedings in our maritime court, our parties will consider applying for a maritime injunction to restrain the other party in foreign litigation or arbitration. As a result, when using maritime injunctions in response to extraterritorial anti-suit injunctions, the parties have to rely on substantive litigation in China, whereas anti-suit injunctions in common law countries do not require substantive litigation and are more straightforward in restricting the conduct of foreign litigation.

#### **3.2 There are Some Difficulties of Review and Determination in the Process of Making a Maritime Injunction**

The conditions for the application of a maritime injunction are the core of the maritime injunction system. Article 56 of the PRC SMPL provides that the conditions for the application of a maritime injunction can be summarized as the three main elements of suitability of the claimant’s subject matter, a breach of legal provisions or contractual provisions by the respondent, and a matter of urgency, all of which must be satisfied at the same time.

First of all, the claimant’s subject matter is fit and proper, which requires that it has a “specific maritime claim” and that the “specific maritime claim” should have an enforceable content. However, both in law and in practice, the boundaries of the “specific maritime claim” referred to in the maritime injunction regime are blurred, and whether the specific basis for applying for a maritime injunction in response to an anti-suit injunction is a specific maritime claim has to be analyzed and assessed on a case-by-case basis.

Secondly, it is also uncertain whether the opposing party’s application to the foreign court for an anti-suit injunction by the respondent is consistent with the above breach of legal provisions or contractual provisions. One of the preconditions for applying for a maritime injunction in response to an anti-suit injunction is that the respondent’s application for an anti-suit injunction in a court of another country is a branch of legal provisions or contractual provisions. However, it is quite difficult for our maritime courts to verify and identify the above mentioned condition.

Finally, “a matter of urgency” referred to in the conditions is generally considered in academic circles to be a matter of fact, including the urgency of the time and the seriousness of the consequences. In view of the diversity and complexity of maritime

disputes, the objective criteria for “a matter of urgency” are not yet defined in the relevant laws. So in practice, therefore, different cases need to be treated differently.

### **3.3 The Enforcement Means and Deterrent Effect of Maritime Injunctions Are Usually Weak**

With reference to Article 59 of the PRC SMPL, the penalties of the maritime injunction regime and the anti-suit injunction regime are very similar in terms of penalty concepts and provisions, which seek to strengthen respective legal effects and deterrent effects through severe penalties.

However, as the current maritime injunction system in the PRC SMPL was amended and implemented more than 20 years ago, the range of fines and duration of detention may not be sufficient to deter and punish violators today, and further amendments are needed to keep pace with developments of the times and society.

Firstly, unlike common law countries, the relevant laws in China do not provide for contempt of court for breaches of anti-suit injunctions. Secondly, the amount of fines imposed by a maritime injunction is usually far from being sufficient to deter and restrain the requested person compared to the amount of the subject matter of a maritime dispute. Again, although the PRC SMPL civilly provides for the duration of detention for breach of a maritime injunction, substantive detention measures are difficult to enforce where the respondent to the maritime injunction is a foreigner or absent from the country.

As a result, the above mentioned factors have led to difficulties in the enforcement of sanctions for refusal to comply with maritime injunctions and to weak judicial disciplinary capacity, thus severely limiting the substantive effectiveness of maritime injunctions in responding to and countering extraterritorial anti-suit injunctions in the field of maritime litigation.

## **4 Countermeasures for the Maritime Injunction Acting as the Anti-suit Injunction Regime**

### **4.1 Clarify the Details of the Maritime Injunction Regime and Regulate the Scope of Its Application**

First of all, according to Article 56(1) of the PRC SMPL, the maritime claims involved are “concrete”, not abstract, and the lack of an express enumeration of the concrete scope may lead to a certain degree of abuse of maritime injunctions. Therefore, there is a need for a more concrete enumeration and practical verification of the scope of maritime claims covered by maritime injunctions. On the one hand, claimants to maritime injunctions should be qualified and the courts should strictly define the legal relationship between the parties. On the other hand, the PRC SMPL only provides for “specific maritime claims”, which is too general. It is recommended to typify maritime injunction cases by enumerating the types of maritime claims and to add exclusionary provisions. In this way, it can better regulate the scope of maritime injunctions and clarify the legislative support for maritime injunctions in order to deal effectively with extraterritorial injunctions, thus creating the basic conditions for playing the function and value of anti-suit injunctions.

Secondly, in accordance with the provisions of Article 56(2) of the PRC SMPL, there is a need to amend the legislation or issue a judicial interpretation in order to clarify whether the conduct of the respondent in parallel proceedings in another country or region would involve or satisfy the provision, a breach of legal provisions or contractual provisions by the person against whom a claim is made needs to be redressed. At the same time, for the consideration of playing the function and value of anti-suit injunctions through the maritime injunction regime, it is necessary to refer to the relevant conditions for issuance of anti-suit injunctions and to add relevant applicable circumstances.

It is proposed that, subject to the provisions of Article 56 of the PRC SMPL, the respondent must be prevented from instituting or continuing foreign proceedings that have already been instituted and have the same parties and subject matters in dispute with litigation or arbitration proceedings pending or anticipated in that country, for the following circumstances: (i) a breach of any jurisdictional agreement between the parties as to the exclusive jurisdiction of our maritime courts, or of any arbitration agreement between the parties to be arbitrated by our arbitration institutions; (ii) the circumstances in which the relevant laws provide for the exclusive jurisdiction of the maritime courts; (iii) the circumstances in which the case in dispute affects an important public policy in China; (iv) other circumstances where it is necessary to protect the jurisdiction of the courts or arbitration institutions.

#### **4.2 Strengthen the Penalties of the Maritime Injunction Regime in Line with the Development of the Times and Society**

The current maritime injunction regime in the PRC SMPL was revised and implemented more than 20 years ago. Given Chinese current economic level and the development of international trade and economy, there is a need to increase the amount of penalties for violation of maritime injunctions and to improve the means of punishment, in order to seek to enhance the judicial deterrent effect on violation of maritime injunctions.

With regard to the amount of fines for individuals and entities, the range of fines should be reasonably increased in accordance with the development of maritime trade. It is recommended that, in addition to the simple application of a fixed amount of fines, a certain percentage of fines based on the value of the subject matter of the maritime dispute between the two parties should be established in order to increase the severity of penalties.

First of all, for the amount of fines of individuals and units, according to the development of maritime commerce and trade, the range of fine amount should be reasonably increased. It is suggested that we should not only simply apply the fixed amount of fine, but also make a certain proportion of the amount of fine based on the amount of the dispute between the two sides to strengthen the punishment.

Furthermore, the maritime courts should reflect on the problems and shortcomings revealed by the difficult enforcement of maritime injunctions in the past. In the case of parties who have breached maritime injunctions by seeking proceedings in a court of another country or region, the courts should take full account of whether they have property in China available for enforcement and whether the parties are actually in China.

In this regard, it is recommended that reference be made to the consequences in common law countries for a breach of an anti-suit injunction, in order to impose a wide

range of restrictions on the assets and economic contacts in China, as well as future entry and exit, of parties who violate maritime injunctions issued by the maritime courts.

#### **4.3 Take Full Account of Potential Barriers to Regime Transplantation and Implement in a Phased Manner**

The impact of the exclusion of legal systems on the transplantation of the anti-suit injunction regime is an issue that cannot be ignored in the future legislative and practical process where maritime injunctions respond to anti-suit injunctions and fulfil the function and value of anti-suit injunctions. The independence of the anti-suit injunction regime itself may satisfy the compatibility of its implementation in maritime law. In addition, in institutional transplantation and adaptation, the transplanted regime adapts to the transplanted institutional environment so that it can survive and function in the specific transplanted environment.

The anti-suit injunction regime functions as an institutional rule mechanism for domestic inter-district parallel proceedings, and only as a more flexible temporary response for international parallel proceedings. There is a central assertion that things develop in an upward spiral in the Magisterial System.

Therefore, with reference to the historical development of the anti-suit injunction regime, it's proposed to solve the problems of inter-regional parallel proceedings in the field of maritime dispute between the four places on both sides of the Taiwan Strait, from within and outside, in the development of the maritime injunction. In the next stage, we should summarize the shortcomings and deficiencies in practice, constantly adjust, modify and improve the relevant legal norms and procedural methods, and then gradually implement them on a global scale, so as to fully achieve the goal of the legal regime transplantation and consolidate the construction of Chinese maritime legal regime.

## **5 Conclusion**

In conclusion, the international nature and complexity of maritime disputes is increasing, and parties in China are increasingly subject to extraterritorial anti-suit injunctions. In summing up the practical experience of responding to anti-suit injunctions by means of maritime injunctions, it is also important to analyse in depth the shortcomings and deficiencies revealed in the process of their application and to improve them. Meanwhile, it's necessary to clarify the conditions for the application of maritime injunctions, strengthen the penalties for maritime injunctions and reasonably plan the future practice path for maritime injunctions to play the role of anti-suit injunctions in accordance with the development of the times, so that the maritime injunction would absorb and fulfil the function and value of the anti-suit injunction, in order to fully safeguard the legitimate rights and interests of relevant parties and the independence of Chinese judicial sovereignty. Chinese maritime jurisdiction should also take this opportunity to improve the maritime judicial regime, establish a preferred venue for maritime dispute settlement, enhance the international discourse and credibility of Chinese maritime jurisdiction, safeguard Chinese maritime rights and interests, and optimize the maritime business environment.

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