

## Spotlight on Sanctions

Primary weapons in economic warfare, sanctions have recently faded from the news, apart perhaps from brief mention after a test-fired missile. Usually reactive and seldom part of an elected manifesto, they are among the main tools in geopolitical tussles worldwide. Never allowing the unwary to claim that they were unaware, their strict measures can have a major impact on international trade. Many have recently been lifted but far more remain, and this article considers some of their complexities.

The polar opposite of official approval, this type of sanction forbids or inhibits commerce in order to exert pressure on regimes said to be dangerous (North Korea), abusing their subjects (Sudan) or both (Syria), or otherwise thought to need urging in a more wholesome direction. Carrying severe penalties for breach, sanctions are created by national governments, or by supranational bodies like the EU and UN. Greatly varied, they target countries, entities, individuals, trades, activities or a combination.

There are currently more than 30 countries affected by EU sanctions alone. The above will be familiar, but the list also includes Haiti, Egypt and Lebanon. The widespread EU and also US sanctions on Libya have been partially withdrawn, and those on Myanmar very largely so. All nuclear-related restrictions on Iran have been lifted, though that is subject to strict conditions and major exceptions - wider sanctions, like those concerning terrorism and human rights, remain.

Sanctions can be inconsistent in scope and contradictory in effect. Thus the US sanctions Venezuela but the EU does not, and vice-versa with Tunisia. US law countering the Arab League boycott of Israel would apply for example to pre-fixture confirmation that a vessel has not called there, but there is no equivalent under EU or UK law. Cuba remains under heavy US sanction, much of which is in conflict with EU anti-blocking legislation.

Sometimes a specific location, institution or type of entity is targeted. One might visit the Crimea, but not using ports sanctioned by the EU, or under contract with one of the many agents, authorities and other bodies subject to proscription. The EU embargo on importing Crimean goods might even mean difficulty for a vessel validly provisioning there but later landing unused materials at an EU port.

Very many people are sanctioned as individuals, such as those said to be aiding terrorism, part of the Assad government or involved in Kim Jong-un's nuclear weapons programme. Others might be designated as members of a repressive regime, or belonging to an outlawed body or being an owner or controller of such. If people are caught by any current sanction structure, dealing with them is unlawful. It does not matter that sanctions that applied for some other reason have been lifted.

In some cases activities are legal in principle but there are restrictions on how they are done. This is a feature of some of the established and increasingly forgotten measures imposed in response to developments in Crimea and eastern Ukraine. It may be lawful to deal with company *x*, provided only that one does not give more than 90 or perhaps 30 days' credit. Aimed at Russia's finance mechanisms, these sectoral sanctions mean that care is needed when selling, or chartering out, to certain bodies. Any such contract or fixture must tailor what might often be standard terms, to ensure a positive obligation to pay all sums (e.g. the purchase price, demurrage or deviation amounts and any freight balance) within the relevant period, or risk impermissible credit.

Rules on ultimate beneficial ownership can add further uncertainty, and might define relevant ownership and control in different ways. Certainly these provisions are not the same in the EU and the US, and in the latter say also that a body that in aggregate is more than 50% owned or controlled by sanctioned parties is itself a sanctioned party.

In summary:

1. Sanctions operate at national, corporate and individual levels, and offer many difficulties. What is lawful somewhere may be unlawful elsewhere. A person or body freed from some sanctions may still be subject to others;
2. Sanctions can apply to unexpected people and places, and in counterintuitive ways. Much may also depend on where an act is done, or on the nationality of those involved;
3. All may be lawful apart from a certain payment period, so that needs to be known, and terms and credit control procedures modified accordingly;
4. Counterparty identity checks must be robust enough to penetrate disguise, and detailed ownership provisions understood and applied;
5. Sanctions can be very significant in the international sale and carriage of goods, and parties should seek advice in any case of ambiguity or doubt.

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