

SOUNDINGS

International Sanctions

International sanctions have existed as a diplomatic tool for centuries. In the 21st Century international sanctions are the favoured weapons of governments seeking to accomplish global foreign policy objectives.

What is remarkable about international sanctions in the 21st Century is their scope, effect, and extraterritorial effect. There are currently 56 countries, including major economic powers such as China, Russia and India, which are subject to some form of UN, EU or US sanctions.

Types of sanctions

Generally speaking there are two types of sanctions. Firstly, there are those that target specific individuals and organisations. These sanctions cover any activity that will confer an economic benefit to a designated party. This includes using the funds or economic resources of a designated party and making funds available to a designated party, either directly or indirectly. Examples of commonly sanctioned activities are the provision of insurance, legal services and banking. In some cases specific individuals are the subject of a travel ban.

Secondly, there are sanctions that target specific economic sectors and trades, known colloquially as 'embargoes'. These are designed to target particular areas of economic activity and put pressure on the affected state's economy. Many embargoes are targeted at the import and export of certain strategic goods, services or raw materials. Common examples include bans on the import or export of petroleum products, arms, munitions or nuclear material.

Comparison of major sanctions regimes

Iran

The Iranian sanctions regime is primarily targeted at trades related to oil, petroleum products and trades which could potentially enhance Iran's nuclear capability. There are also strict restrictions on financial transactions which directly or indirectly confer an economic benefit to designated parties on the Iran sanctions list.

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The effects of sanctions are far reaching and concerns often arise as to the uncertainty and lack of clarity of the sanctions regulations themselves.

It is worth noting that sanctions in relation to oil and petroleum products include the stemming of bunkers of Iranian origin. This includes bunkers stemmed in Iran, bunkers stemmed outside of Iran of Iranian origin and non-Iranian bunkers that have been co-mingled with those of Iranian origin.

Aside from targeting individuals, companies and organisations associated with the government, the sanctions regime is designed to have two effects: firstly, to limit Iran's capability to develop a domestic nuclear industry and, secondly, to restrict Iran's access to the global economy. Broadly speaking the objective is to put pressure on the government to enact political reform. There has been some recent relaxation of sanctions against Iran but many provisions remain in place.

Syria

The Syrian sanctions are similar to those imposed against Iran, and consist of both embargoes and financial sanctions targeted at specific persons, institutions, organisations and companies controlled by, or associated with, the Assad government.

As with the Iranian sanctions, there are sanctions in place to prevent the government from benefiting from Syria's oil industry. To achieve this there are embargoes in place against the import or export of oil or petroleum products, capital and machinery that could be of benefit to Syria's oil industry.

In contrast to the Iranian sanctions, the Syrian sanctions are also more deliberately focused against the import of military machinery, and equipment which can be used for the domestic production of such machinery.

There are also embargoes targeted at imports relating to the energy industry as well as coinage and currency. Whilst there are similar prohibitions in place with respect to Iran, the emphasis of the Syrian sanctions is upon restricting and degrading the Assad government's ability to continue to fight the on-going conflict in Syria.

Russia/Ukraine

Originally financial and travel restrictions were targeted at particular individuals associated with either (i) the regime of former President Yanukovich of the Ukraine, or (ii) individuals within the Russian government (and some of their associates) who are suspected of involvement in the recent Crimean crisis. Recent

months have seen an escalation of the sanctions regime as the crisis in Eastern Ukraine has continued. In May 2014, the US added a further 17 entities as designated parties. These included banks, construction companies, transportation companies and holding companies, a development which extended the sanctions regime to target the wider Russian economy. As of July 2014 major energy companies, including Rosneft and Novatek, have been added to the list of designated parties targeted by US sanctions.

There are also embargoes in place against goods originating from the Crimea, enacted by the EU and Ukraine. Of particular interest to Members will be the Ukrainian restrictions upon calling at Crimean ports. In July 2014 the Ukrainian government announced the closure of all Crimean ports to international shipping. Additionally, ships calling at Crimean ports may be restricted or even prohibited from entering Ukrainian ports.

The latest move by the US government represents a significant escalation of the nature and scope of the EU sanctions regime implemented in March 2014 and signals an attempt to disrupt key sectors of the Russian economy. Given the escalation of the Ukraine crisis, following the Flight MH17 incident, there may be a further strengthening, and widening, of the sanctions regime designed to isolate Russia's economy as a whole.

The position remains fluid and the impact of sanctions introduced at the end of July, 2014 will need to be assessed.

The impact of sanctions on a Member's operations

The effects of sanctions are far reaching and concerns often arise as to the uncertainty and lack of clarity of the sanctions regulations themselves. The vague drafting of sanctions legislation is partly deliberate as the authors have sought to create confusion in order to deter companies and individuals from engaging in any activities involving sanctioned parties.

Clearly, when sanctions affect a trade in commodities, e.g. oil, bulk commodities or containerised goods, the opportunities to trade ships to affected countries are also restricted. In the current market, where the availability of ships is high in comparison to demand, the fact that some trades and markets are essentially 'off-limits' can be noticeable in some sectors.

On the other hand, the premium freight rates sometimes offered by a charterer to ship a cargo to sanctioned countries can be an attractive prospect. However, aside from the additional cost of ensuring compliance with sanctions, there are other risks and costs which may arise when trading to sanctioned countries.

Recently the Club has dealt with several cases where ships have been delayed for significant periods of time when the sale of the cargo on-board has been suspended, or delayed, due to sanctions. In such cases a Member can be exposed to significant operational costs, without the certainty of receiving any prompt payment from its counterparty. This is especially true of voyage charters where an owner may not be entitled to collect demurrage until after a cargo has been discharged. Members are recommended to undertake pre-fixture enquiries before entering into charters requiring a ship to make a voyage to a sanctioned state.

Designated parties may target a Member or its assets. If so a Member may be unable to pay a claim or put up security without breaching sanctions. The resultant delays and losses could be significant, especially, if a ship cannot be released from arrest without the sanctions first being lifted.

The effect of sanctions on cover

In cases where a Member is involved in a claim, or has potentially contracted with a designated party, the cover and assistance that an insurer can provide to the assured may be limited.

In terms of the cover provided by the Club, the provision of legal services may be permitted. However it is dependent upon individual governments as to whether payment of legal fees will be authorised. For example, under EU sanctions legislation, a Member State may allow funds and economic resources to be made available, which are "intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services". However, if this requires a payment to or for the benefit of a designated party, permission may not be given.

Compliance with sanctions

Members are advised to continue to closely monitor developments in international sanctions. The imposition of sanctions may not be well publicised. If a Member has any

concerns about trading to a particular country to with a particular individual or entity they should consult their usual contact at the Managers.

Due diligence is essential where any sanctions regime is concerned. We recommend that Members should run checks on all parties involved when trading to a sanctioned country. In order to ensure that proper due diligence is carried out Members are advised to seek legal advice. Ideally such checks should be carried out before the business is fixed.

Although the cost of these enquiries will be an operational expense for the Member's account, the Club is always available to assist Members by recommending suitable lawyers and preparing the necessary instructions. There are several law firms providing professional services in this area. When instructed, lawyers will typically require the full details of the following parties:

- All charterers and sub-charterers in the chain
- Port and terminal operators
- Cargo shippers and receivers
- Stevedoring companies
- Ship's agents
- Banks involved in the handling of monies due under the charters
- Banks involved in the sale and purchase of the cargo.

It is crucial that Members notify the Club as far in advance as possible in order to give the lawyers adequate time to perform the checks before the fixture is finalised. These checks may be difficult and complicated, especially when the shareholdings and management structures of a company are not easily available. If there are any suspicions that a designated party may be involved in a transaction, those suspicions need to be fully investigated. If not then a Member may find itself to be in breach of sanctions.

Conclusions

Whilst governments remain of the view that sanctions are an effective tool for implementing foreign policy, they will continue to have a measurable effect on Members' operations, as well as the industry as a whole, for the foreseeable future.



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