International Commerce

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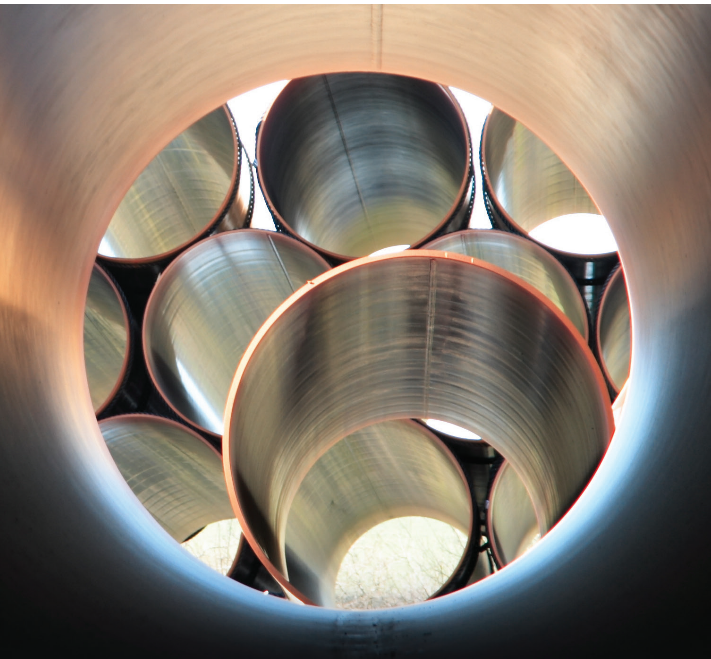
LIFE CYCLE OF A SANCTIONS PROGRAMME



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The continued increase of multilateral sanctions against Iran and speculation about action against Syria offer a useful contrast to the lifting of sanctions against Burma, such that now is an appropriate time to look at some of the trends and common features in EU sanctions programmes, with a particular focus on how those programmes have developed over time and what commercial organisations might expect if they are affected by them.

The political basis for international trade sanctions is that they are intended to address particular circumstances and operate to achieve particular foreign policy objectives. As a result, the sanctions should be dynamic, rather than static, pieces of legislation and they should be focused on specific, clearly identified policy objectives. They should be targeted to address the needs of the specific political situation, and more onerous sanctions should only be imposed if these are needed to ensure that the relevant public policy objectives are achieved. The restrictions and prohibitions should then be progressively reduced when events on the ground show that the sanctions programme is achieving its stated objectives.

Overview

This article will look in particular at the EU sanctions against Ivory Coast, Libya, Iran and Syria as a guide to the ways in which sanctions have historically been increased in response to political events. We will also look at the sanctions against Ivory Coast and Libya as a demonstration of how the sanctions have historically been reduced in response to political events.

The eyes of the world are of course currently on Iran, Syria and North Korea, and whilst more serious sanctions may well be imposed in the short term, the longer term objective is to persuade Iran to abandon its nuclear objectives, at which point the question will arise as to how such complex and overlapping sanctions can most effectively be wound down.

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EU Sanctions: Common Features

We will focus on "trade" sanctions i.e. those which prohibit or otherwise restrict some or all trade between the sanctioned regime and commercial organisations elsewhere.

At their heart, the EU trade sanctions programmes impose an asset freeze, by which the funds and economic resources of named individuals and entities are frozen and, in addition, the provision of funds or economic resources directly or indirectly to or for the benefit of the named individuals and entities is prohibited. As such, the EU sanctions are "targeted", in that the restrictions are directed at the individuals and entities which are said to be engaged in or supporting the activities which the sanctions are intended to curtail.

In most instances the asset freeze is accompanied by various restrictions on the import and export of particular goods to and from the sanctioned country. In some instances the prohibited goods are limited to military and quasi-military equipment, such as dual-use goods and/or equipment for internal repression. However, in other cases the prohibitions on imports and exports extend to purely "commercial" goods, in circumstances where it has been determined that the trade in those goods is either funding the activities of the targeted regime, or is in some other way critical to the achievement of that regime's objectives.

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EU Sanctions against Ivory Coast

In the case of Ivory Coast, a package of measures was adopted in January 2011 by the EU, following the refusal by the ex-President, Mr Laurent Gbagbo, to accept the result of a presidential election. The January 2011 restrictions were limited to an asset freeze which named 85 individuals and 11 entities. However, because the entities included the authorities which operated the Ivory Coast's two main ports (San Pedro and Abidjan), the sanctions had a significant effect on trade between the EU and the Ivory Coast, particularly exports of cocoa and coffee beans from the Ivory Coast, thereby reducing cash flows to the Ivory Coast and, it was believed, Mr Gbagbo and those supporting him.

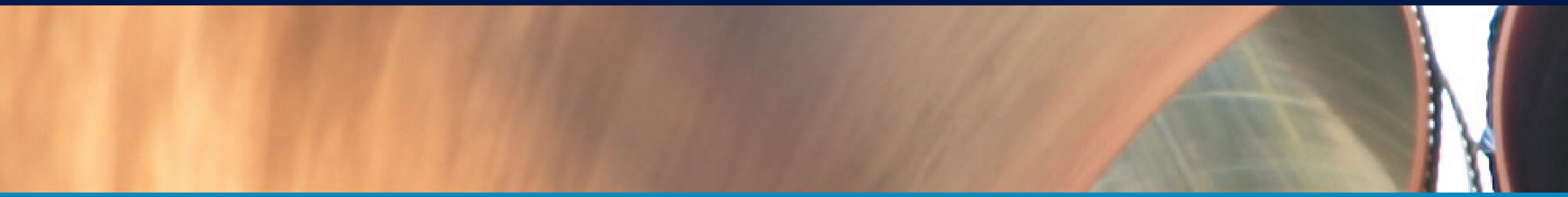
At the end of January 2011 a further 6 individuals and two entities were added to the asset freeze, to increase the pressure on Mr Gbagbo.

By April 2011, when the measures were beginning to have an effect, four entities (including the ports of Abidjan and San Pedro) were removed from the asset freeze and there were further removals in April, June and September 2011, with the result that there are currently only 15 individuals (and no entities) who are subject to the asset freeze. As such, the total "life" of the programme, save as it applied to these 15 individuals, was only nine months.

EU Sanctions against Libya

A similar model was followed in the case of the EU sanctions against Libya. Sanctions were first imposed in March 2011 (by Regulation 204/2011) and comprised both an asset freeze, and also restrictions on the supply of military and quasi-military equipment to Libya. The initial asset freeze applied to 26 individuals.

A week or so later, on 10 March, an additional individual and 5 entities were added to the asset freeze. Three weeks after that 11 more individuals and 9 entities were added to the list. A few days later restrictions on the ability of aircraft registered in Libya or owned or operated by Libyan nationals or entities to fly over the EU were



imposed. There were further additions to the asset freeze list in April, May, June and August 2011. At its height, the asset freeze applied to 39 individuals and 55 entities. These included six port authorities and numerous state oil companies, the intention being to deprive the Gaddafi regime of funding to fight the insurgency.

By September 2011, only six months after the first sanctions were imposed, the situation on the ground was changing, and various state-owned or connected enterprises were moving from the control of the old regime to the new regime. As a result, 28 entities were removed from the asset freeze list and there were further removals throughout September with the result that, at present, 38 individuals and 21 entities are subject to the asset freeze.

Commentary

In the case of both Ivory Coast and Libya, the initial asset freeze was targeted at those individuals most closely connected with the regime, and was expanded relatively rapidly to encompass a host of individuals and entities with links to that regime.

Because the policy objectives were clear, and the sanctions were targeted, the sanctions could be wound down relatively quickly. The secondary targets of the sanctions (i.e. those individuals and entities which were associated with, or were said to be supporting the individuals who were at the heart of the sanctions programmes, such as President Gaddafi and his Ministers) were the first ones to be removed from the list, as they either distanced themselves from the targeted regime, in the case of individuals, or moved from the control of the old regime to the new regime, in the case of entities. That allowed at least some trade with the sanctioned country to resume, whilst necessary restrictions remained in place against the key individuals and entities.

This timeline (with sanctions imposed, extended, then substantially reduced within a total period of less than one year) shows the importance of effective screening of counterparties, so that trade with prohibited parties is stopped as soon as they are added to the sanctions list, but opportunities are not missed when they are subsequently removed. It also shows the effectiveness of targeted sanctions which identify the correct targets (i.e. entities closely connected with the relevant regime), as opposed to blanket embargoes on trade.

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However, any review of the Libya and Ivory Coast programmes in isolation offers a somewhat simplistic view of the EU sanctions programmes, in that in each case the measures imposed were essentially limited to an asset freeze imposed by the EU, and as such, were imposed and then substantially relaxed in relatively short order.

The position in respect of the multiple over-lapping sanctions imposed by the EU, US and others against Iran and Syria shows, firstly, how much more complicated the sanctions programmes can be, and also, secondly, how much more difficult it will be to unravel those programmes when they are considered to have achieved their objectives.

EU Sanctions against Syria

EU sanctions against Syria were first imposed in May 2011. As with the measures against Ivory Coast and Libya, the sanctions initially comprised an asset freeze, in this case directed against 13 individuals, all closely connected to the Assad regime, supported by a prohibition on the supply of military and quasi-military equipment to Syria. The asset freeze was expanded in May, June and August, with the result that by 24 August 2011 (less than six months after sanctions were first imposed), a total of 50 individuals and 9 entities were subject to the EU asset freeze.

The landscape was changed in September 2011 as the EU imposed restrictive measures which went beyond a mere asset freeze. While the bulk of the additional measures

related to imports and exports of goods to and from Syria, there were also wider restrictions. In particular, as well as prohibitions relating to Syrian crude oil and petroleum products and restrictions on the supply of bank notes and coinage to Syria, finance to Syrian companies engaged in the exploration, production or refining of crude oil was blocked. Further restrictions on the European Investment Bank followed. In parallel with these wider restrictions on trade with Syria, individuals and entities continued to be added to the asset freeze, with 36 individuals, and 21 entities, including the Commercial Bank of Syria, added between September and December 2011.

By January 2012, the original EU Regulation had been amended so many times that a new regulation was required. That Regulation (36/2012) was published on 19 January 2012. As well as the asset freeze (which now extended to 86 individuals and 29 entities) the regulation was expanded, adding restrictions on a host of imports and exports to and from Syria (including technology for monitoring internet and telephone communications, key equipment and technology for Syria's oil and gas industry and equipment for Syrian power plants) as well as restrictions on banks and a ban on the provision of insurance to the State of Syria, its Government and public bodies.

Restrictions on the import and export of gold, precious metals and diamonds to and from Syria and on exports of luxury goods to Syria followed, and between January and October 2012 there were seven separate regulations, adding a further 99 individuals and 24 entities to the asset freeze list, which currently includes 179 individuals and 54 entities.

> In the case of Iran, EU sanctions imposed in 2007 were limited to an asset freeze against 10 entities and 12 individuals, plus an embargo on a limited number of items for Iran's nuclear programmes, in order to implement the measures in UN Resolution 1737(2006).

EU Sanctions against Iran

Likewise in the case of Iran, EU sanctions imposed in 2007 were limited to an asset freeze against 10 entities and 12 individuals, plus an embargo on a limited number of items for Iran's nuclear programmes, in order to implement the measures in UN Resolution 1737(2006). Throughout 2007, 2008, 2009 and 2010 more individuals and entities were added to the sanctions list, with the result that by October 2010 over 70 individuals and over 120 entities were subject to the asset freeze.

In October 2010, Regulation 961/2010 implemented UN Resolution 1929 (2010) and imposed a host of additional restrictions.

The additional measures imposed in October 2010 include prohibitions on financing and investing in certain Iranian businesses, including the oil and gas sector, rules applying to all transfers of funds to and from Iranian persons, entities and bodies (even where they do not appear on the asset freeze list), restrictions on EU banks and financial institutions and a ban on the provision of insurance to Iran, its Government, public bodies and corporations, and restrictions on transport.

Yet more restrictions were imposed in March 2012, including prohibitions relating to key equipment for Iran's oil and gas sector, Iranian crude oil, petroleum and petrochemical products, gold, precious metals and diamonds and Iranian currency, as well as a prohibition on the supply of specialised financial messaging services for clearing banking transactions.

The additional restrictions which were imposed in December 2012 went beyond these import/export bans, to include restrictions on transfers involving Iranian banks as well as prohibitions relating to key naval equipment and technology, specialist software, Iranian natural gas, graphite, raw and semi-finished metals, services to Iranian ships and the supply of oil and petrochemical tankers.

The list of asset freeze targets was expanded in parallel throughout 2011, 2012 and 2013 with the result that, at the current date, the asset freeze list includes over 100 individuals and almost 500 entities.

Commentary

While usually described as “smart” or “targeted” sanctions, the current package of measures against Iran is so wide-ranging as to amount to a virtual embargo on trade with Iran. Recent political rhetoric in the EU and the US has tended to focus on the “toughness”, “comprehensiveness” or “breadth” of the measures, rather than on their effectiveness, or the criteria to determine whether the restrictions are achieving their aims.

That makes it difficult to assess the overall effectiveness of sanctions as a tool of foreign policy. In addition, in circumstances where restrictions are not tied to particular objectives, it is difficult to see how it could be said that a particular objective has been achieved and that in turn makes it difficult to assess how and when particular restrictions will be relaxed or lifted if there is progress in persuading Iran to change its policies.

Conclusions

It will have been seen from the above discussion that sanctions programmes can change very rapidly in ways which can be difficult to predict. The changes can have huge implications on commercial organisations engaged in international commerce, but they are frequently introduced with little or no advance warning and commonly do not include grandfathering or wind-down provisions.

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Commercial organisations such as traders, transport operators, insurers and banks find themselves at the sharp end, with a high compliance burden, and with changes to sanctions programmes presenting them with threats or opportunities as restrictions and prohibitions are introduced or withdrawn.

As a result, commercial organisations engaged in international commerce not only need to exercise vigilance and check the status of the counterparties and goods they deal with, but also need to keep themselves updated as to changes in the relevant legislation to avoid risks and seize opportunities. Having an ear to the ground for future developments can be invaluable.

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