

International Trade Law & Sanctions

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Key Issues

Scope

- 1. Objectives of trade sanctions**
- 2. Forms of sanctions**
- 3. Effectiveness of sanctions to meet the objectives**
- 4. Laws dealing with sanctions**
- 5. Legal issues**
- 6. Conclusions**

Objectives of trade sanctions

- **To protect or further national security**
 - Not necessarily to protect military interests
 - Often to protect economic and commercial interests
- **To make another country align its policies and actions to what the sanctioning country considers “right” or appropriate**

Forms of sanctions

- **Targeted Restrictive Measures**

Individuals and entities

- **Economic Sanctions**

- **Visa Measures**

Laws dealing with sanctions

- UN Charter
- WTO Agreements
- Other multilateral rules

UN Charter

- **Article 39**
 - may determine the **existence** of any threat to the peace, breach of the peace, or act of aggression
 - shall make recommendations to maintain or restore international peace and security.
- **Article 40**
 - Imposition of provisional measures
- **Article 41**
 - may decide what measures not involving the use of armed force are to be employed
 - May include **complete or partial interruption of economic relations** and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.
- **Article 42**
 - action may include demonstrations, **blockade**, and other operations by air, sea, or land forces of Members of the United Nations.

WTO Agreements

- GATT - Article XXI
- GATS - Article XIV *Bis*
- TRIPS – Article 73
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on Agriculture
- Agreement on Government Procurement

GATT – Article XXI

Nothing in this Agreement shall be construed

(a)

(b) To prevent any Member from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable material or the material from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relation; or

to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter **for the maintenance of international peace and security.**

GATT – Article XXI

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(i) relating to fissionable material or the material from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relation; or

to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter **for the maintenance of international peace and security.**

Article XIV Bis of GATS

Nothing in this Agreement shall be construed

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) **taken in time of war or other emergency in international relations**; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter **for the maintenance of international peace and security**.

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Article 73 of TRIPS

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member from taking any action which it considers necessary for the **protection of its essential security interests**;
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) **taken in time of war or other emergency in international relations**; or
- (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter **for the maintenance of international peace and security.**

Article 73 of TRIPS

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member from taking any action which it considers necessary for the **protection of its essential security interests**;
 - (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) **taken in time of war or other emergency in international relations**; or
- (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter **for the maintenance of international peace and security.**

Article 2.2 of TBT

..... technical regulations shall not be **more trade-restrictive than necessary** to **fulfil a legitimate objective**, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: **national security requirements**; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment

Preamble to Agreement on Agriculture

Noting that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries;

Article III:1 of GPA

Nothing in this Agreement shall be construed to prevent any Party **from taking any action or not disclosing any information** that it considers necessary **for the protection of its essential security interests** relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

Other multilateral rules

- International Maritime Organisation
- OECD - FATF

Interpretation issues

1. Who judges 'whether it is necessary for the protection of essential security interests?
2. Taken in time of war – by countries involved in war or anyone else?
3. **other emergency in international relations**

seems to cover sanctions in the light of Russia &

Ukraine conflict

Effectiveness of Sanctions

- All studies and researches unanimously
state:

Not sure of whether they meet the
intended objectives


- **But** the industry and trade **suffer**

Advisory to clients

- Continue to impress upon their Governments to provide an environment least disruptive of trade and



Hope for the best outcome
at the earliest

A blue wavy banner with white text. The banner has a wavy top and bottom edge, creating a fluid, wave-like shape. The text is centered and reads: "Thank you all and open for", "comments", and "from the learned audience !!".

Thank you all and open for

comments

from the learned audience !!