



Trade Sanctions

March 2022

Outline

Sanctions overview

New Sanctions

Permits and licenses

Non-Compliance

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SANCTIONS OVERVIEW

WHAT SANCTIONS DOES AUSTRALIA IMPOSE

Australia imposes 4 main types of sanctions:

- Restrictions on trade in goods and services
- Restrictions on engaging in commercial activities
- Targeted financial sanctions (including asset freezes) on designated persons and entities
- Travel bans on certain persons.

WHO IS COVERED BY AUSTRALIA'S SANCTIONS

Each country has different rules on what entities and activities are covered by their Sanctions

Australian law applies to:

- Australian citizens wherever the activity is undertaken
- Australia registered companies wherever the activity is undertaken
- Activities in Australia by any person of entity

Australia does not seek to impose its laws on residents and companies from other countries where there is no connection with Australia

Direct and indirect activity

Restrictions on supplies apply to both direct and indirect supplies

You need to find out the ultimate end user of the goods

Example, s4 of the Autonomous Sanctions Regulations:

You make a sanctioned supply if:

- (a) the person supplies, sells or transfers goods to another person; and*
- (b) the goods are export sanctioned goods in relation to a country or part of a country; and*
- (c) as a **direct or indirect result** of the supply, sale or transfer the goods are transferred:*
 - (i) to that country or part of a country; or*
 - (ii) **for use in that country** or part of a country; or*
 - (iii) for the **benefit of that country** or part of a country.*

Scope of import restrictions

A sanctioned import occurs if:

- a) The person either:
 - i. Imports or **purchases** the goods from another person; or
 - ii. **Transports** the goods; and
- b) The goods are either
 - i. Exported from the sanctioned country
 - ii. The **goods originate** in the sanctioned country

Sanctions services

A sanctioned service is the provision to a person of:

- a) Technical advice, assistance or training; or
- b) Financial assistance; or
- c) A financial service; or
- d) Another service

If it assists with, or is provided in relation to, a sanctioned supply.

Would arranging customs clearance or freight in relation to a sanctions supply be a sanctioned service

Dealings with designated persons

- The Minister has wide power to designate individuals or categories of individuals as designated persons
- It is a an offence to directly or indirectly make an asset available to, or for the benefit of, a designated person

THE MAIN PLAYERS

DFAT – Primary body that administers and enforces the sanctions regime

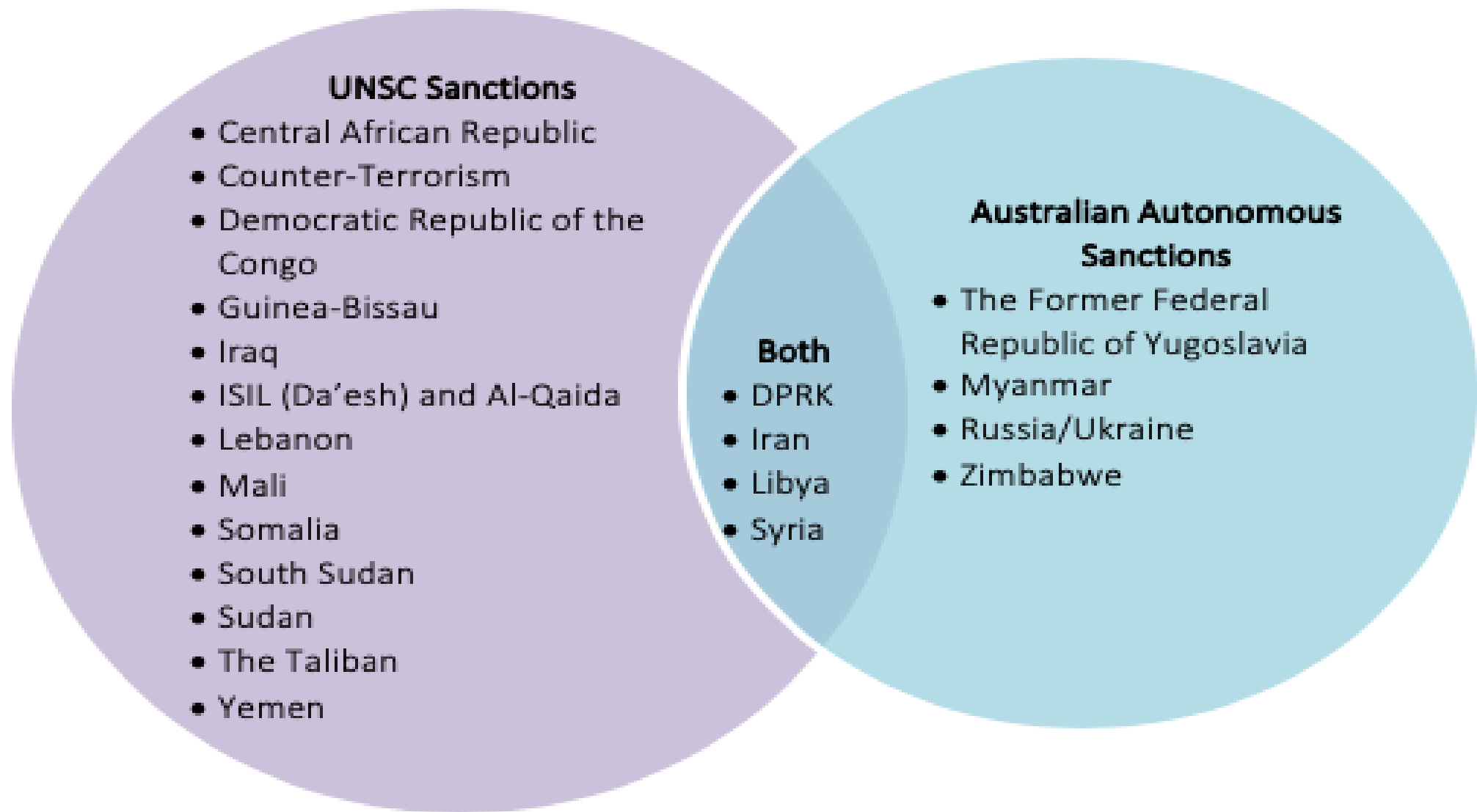
Australia Sanctions Office (ASO) – sits within DFAT and is the sanctions regulator, manages permits and provides guidance on the law

ABF – Will holds goods for review by ASO

AUSTRAC – Will monitor and report financial transactions

Defence Export Controls – Issues permits for the export of defence related goods

Commonwealth Director of Public Prosecutions – Prosecutes breaches



Source DFAT

Russian Sanctions



WHERE DOES RUSSIA FIT IN

Not a major trading partner

46th largest trading partner

0.2% share of AU exports

0.1% share of AU imports

Keys products

- Live animals
- Hides and skins
- Mechanical equipment
- Petroleum
- Fertilisers
- Wood products
- Educations
- Tourism

EXISTING RUSSIAN SANCTIONS

Export/Supply

Since 2014/15 there has been a prohibition on the direct or indirect supply, sale or transfer to Russia of any of the following goods:

- arms or related material (weapons, ammunition, military equipment, vehicles, spare parts, accessories – goods on the DSGL)
- items suited for used in certain categories of oil exploration or oil production projects in Russia

Import - Prohibition on the import, purchase or transport or arms or related material if they originate in or have been exported from Russia

EXISTING UKRAINE SANCTIONS

Since 2014 and 2015 there have been restrictions relating to goods that originate in or were exported from Crimea or Sevastopol

It has been prohibited to directly or indirectly supply certain items relating to the creation, acquisition or development of infrastructure for:

- The transport, telecommunications or energy sectors
- The exploitation of oil, gas or minerals reserves in Crimea/Sevastopol

It is prohibited to import, purchase or transport any goods if they originate in, or are exported from, Crimea or Sevastopol

Restrictions also apply to certain commercial dealings, services and financial dealings

NEW RUSSIAN SANCTIONS – GOODS

Import

The import of oil, refined petroleum products, natural gas, coal and other energy products from Russia

All goods in Chapter 27

Begins on 25 April (45 days' notice was given)

Export

Export prohibition on aluminium ores (including bauxite), alumina and related products to Russia

Commenced on March 20

OTHER RUSSIAN SANCTIONS

Restriction on dealing with financial instruments issued by, or providing loans or credits to:

- Certain specified Russian banks,
- Russian companies involved in supplying military equipment; or
- Publicly controlled or owned Russian companies involved in the sale of transport or crude oil or petroleum products;
- Subsidiaries of the above entities

Most Russian trade is not prohibited

OTHER RESTRICTIONS ON RUSSIA

- Providing services relating to restricted goods
- Would this extend to logistics services connected with the supply of sanctioned goods
- Restrictions on dealing with certain individuals – generally those connected with the Russian Government or someone that the Minister is satisfied is a person responsible for, or is complicit in, the threat to the sovereignty of Ukraine
 - Who owns the assets you are dealing with
 - Who will be receiving the assets
 - Extends to making the assets directly or indirectly available

DONETSK AND LUHANSK

Restrictions that apply to Crimea and Sevastopol extended to the Donetsk and Luhansk regions of the Ukraine

Export

The direct or indirect supply certain items relating to the creation, acquisition or development of infrastructure for:

- The transport, telecommunications or energy sectors
- The exploitation of oil, gas or minerals reserves in Donetsk and Luhansk

Import

All imports of goods originating in, or exported from, these regions are prohibited - however

This prohibition does not include goods originating in the nominated regions which have been made available to the Ukrainian authorities for examination and for which compliance with the conditions conferring entitlement to preferential origin has been verified by Ukrainian officials.

PERMITS AND LICENSES

General

Granted by the Minister of Foreign Affairs

Apply via the Australian Sanctions Portal – PAX

Required information

- Detailed description of the goods
- Detailed description of the end use of the goods
- Detailed information on the end user and any other relevant parties – including an end user certificate
- The intended transport route

Australia's national interests

Always depends on the circumstances

What are the objectives of the sanctions regime

Is the activity advantageous to Australia as a whole (economic, security)

Impact on Australia's international reputation

Must provide all relevant information

Seek the assistance of Austrade

Expect it to take months

Issues with permits

Will be limited to specified suppliers and customers

Will be limited to specified goods

May be limited in quantity and duration

May be limited to a particular route

May only be able to be used once

If it relates to exports, you may still need a DEC permit

It can be revoked if circumstances change



CONSEQUENCES FOR BREACH

Hapag-Lloyd

HOUSTON EXPRESS
HAMBURG
IMO 9294391

TERMINAL BURCHARDKAI

Offences

Offence to engage in conduct and that conduct contravenes a sanctions law

Sanctions law – supply, import, services

- Penalties for individuals:

- a) Imprisonment up to 10 years

- b) A fine up to the greater of 3 times the value of the transaction or \$550,000

- Penalties for corporations

- a) A fine up to 3 times the value of the transaction

- b) A fine up to \$2,200,000

Issues for corporations

Strict liability offence – No need to prove intent

No offence if the body corporate proves that it took reasonable precautions, and exercised due diligence, to avoid contravening that subsection

Reasonable precautions and exercising due diligence

What is reasonable will always depend on the circumstance.

What level of sanctions corporate governance and oversight framework is in place

Is there a sanctions risk assessment framework

How are transactions screened

Are there established internal controls – well documented policies, how do you identify, review, record and escalate prohibited activity

Is there quality assurance in place to test that the system is working

What training is in place

How will you identify a trusted insider that is breaching the requirements

How do you prove you acted reasonably to a Commonwealth investigator

Providing false or misleading information

It is an offence to give false information or a Document to the Commonwealth in connection with a sanctions law.

It is an offence to give information to a person knowing that person will give it to the Commonwealth in connection with a sanctions law and the information is false

Only relates to false or misleading “material particulars”

Customs declarations – goods descriptions – invoices – supplier/customer details – tariff classification – value of the goods – existence of a permit

It is also an offence not to provide requested information

Other penalties

Likely to be a breach of the Customs Act:

- False or misleading information
- Prohibited import or export
- Strict liability offences
- Infringement notices

Director's duties

- There is a continuing duty to make adequate inquiries into issues that have the potential to harm the company and not to solely rely on the advice of others

Case study

- Successful civil proceedings by ASIC against a director of the AWB relating to the AWB's trade with Iraq
- The director did not ensure that:
 - *the AWB did not breach the UN Security Council Resolutions by making payments to the Iraqi government*
 - *the AWB had UN approval for payments to the Iraqi Government*
 - *the AWB Board was properly informed of the above matters*



MEASURES BY OTHER
COUNTRIES

Measures by other countries

- While many countries have implemented measures against Russia, there is no uniformity in those measures
- Compliance with Australian measures may not mean compliance with the measures of other countries
- There will be differences in the extent to which supplies/imports are banned
- There is variance in the financial sanctions imposed
- Some countries have removed MFN for Russian goods

Examples of variance

- UK has stopped major Russian banks accessing sterling or clearing payments via the UK and suspended 28 Russian companies from trading on the London Stock Exchange
- US has stopped the major Russian banks for making any transactions in USD and banned Russian planes from US airspace
- EU has banned EU and member state transactions with the Russian Central Bank, imposed a limit of 100,000 Euros on the bank accounts of Russian individuals
- Canada has removed the MFN status for Russian



Extra-territorial operation

US sanctions extend to:

- Non-US companies that have a branch or subsidiary in the US
- Non-US companies that do business in the US
- Parties not in the US that process payments in US dollars through US banks
- Transactions that involve US products, software and technology

EU sanctions generally have the same application as Australia's sanctions. However, technically they can apply to branches of EU companies in third countries (such as Australia)

Case studies

Société Générale S.A - 2018

- SocGen processed billions of dollars in illicit funds to or through the US or US financial institutions involving a number of sanctioned countries
- Following US Government enforcement, SocGen agreed to pay penalties totalling USD 1.34 billion relating to 2,500 sanction violations
- Demonstrates that the US are willing to enforce their laws against non-US companies



STEPS TO TAKE

Traders

- Review the origin of imports
- Review the destination of exports
- Supplier/Customer due diligence
 - How well do you know who you are dealing with
 - Do you understand the company structure
 - What is the end use of the goods
 - Do you know the end user of the goods
 - Should you seek an end use certificate

Due diligence needs to be ongoing as the regulations change

Traders

- Review the consolidated list for names of contracting parties, trading partners, end users, suppliers, financial institutions – note – this list only covers travel bans and asset freezes
- Be very cautious with newly established companies in affected areas
- Subscribe to DFAT to obtain the most recent update
- If in doubt, obtain an indicative assessment via the sanctions portal – 3 months
- For exports, do you also need a DEC permit
- Be aware of the regulations of other countries
- Think about and plan for future sanctions

Contractual provisions

With your customers consider seeking specific warranties that:

- They have undertaken due diligence regarding sanctions related issues
- They are not a sanctioned party
- The goods are not sanctioned goods

Include a contractual right to disclose confidential information to the Government to comply with a sanctions law

Force majeure clause – not in breach if your action is to comply with a sanctions law

Jurisdiction – Some EU countries have laws (no claims provisions) that prevents a party from bringing a contractual claim arising from another party's efforts to comply with sanctions laws

How does your insurance policy deal with sanctioned transactions

Can you lawfully exit existing contracts that now seem risky

Logistics professionals

Most trade with Russia and the Ukraine is still permitted – but there are greater risks

Expect a greater level of ABF intervention = delays = container detention and storage charges

Expect interruptions to shipping routes

Expect delays

The laws may change while the goods are on the water

What due diligence do you have in place to ensure you are not providing a sanctioned service – identity of client, accuracy of information in the import / export declaration

What are the sanctions provision in the BOL

How will you prove to DFAT and the ABF that you acted responsibly

Warning signs

Change in supplier /
consignee name

Change in country
of export / import
to a non-sanctioned
country

Unusual shipping
route

Unwillingness to
share information
about individuals of
the goods

Goods shipped as
low value
transactions

A request to change
commercial
documents

Documentation that
looks
unprofessional

Goods do not
match the business
of the entity

The customer is
prepared to pay
more for a “low
doc” export/import

The customer is
pushing for an
unusual tariff
classification

Unable to verify the
identity of the
customer / generic
email address

Case study – Russian Imports

- Legitimate business importing aircraft parts
- Restrictions on Russian military equipment
- Russian produced goods exported from Lithuania
- Origin not declared as Russian
- Goods exported via air freight as a low value export
- Very generic description of goods – “parts”
- Suppliers were traders of the goods and would not disclose the manufacturer
- Subsequent AU export of goods approved by DEC, but original import was not approved by DFAT
- Successful customs prosecution

Exports to Iran

- Prosecution in 2019 of an individual associated with the export of 90 tonnes of nickel alloys to an Iranian owned Dubai based company
- Nickel was used for peaceful purposes
- Offender knew the end user was an Iranian company and she was not to disclose that to the Australia nickel suppliers (she made false statements to the Australian suppliers)
- Goods were falsely described as stainless steel
- Offence was making a sanctioned supply and providing false information in relation to a sanctioned supply
- She pleaded guilty
- Sentence – imprisonment of 2 years served by way of an intensive correction in the community (home detention) and 18 hours of community services per month for 2 years



Questions

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