

Economic sanctions and WTO law

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Introductory comments

- Economic sanctions contradict some of the key principles underlying the multilateral trading system, such as:
 - cooperation as the preferred means to resolve common problems;
 - the principle of non-discrimination;
 - trade liberalization as a means to raise standards of living; and
 - the need for security and predictability.

- At the same time, since its creation, the multilateral trading system has recognized that, in some circumstances, economic sanctions may be justified. Thus, the security exception has been part of the GATT since before the WTO was established.

- The security exception also seeks to promote coherence among international obligations.

Background

- Economic sanctions have not been reviewed by the WTO dispute settlement system and there is a lot of uncertainty as to if (and how) such kind of disputes should (and could) be handled by the system.
 - Sanctions are political tools while the WTO dispute settlement system is a rule-based system that mostly handles technical economic issues. WTO Members are less willing to have WTO adjudicatory bodies “second-guess” their decision-making for some measures than for others.

- This is not the first time that economic sanctions have been discussed in the GATT/WTO. Some other examples include:
 - Helms Burton law (DS38)
 - Massachusetts government procurement measures relating to Myanmar (DS88/95);
 - Falklands/Malvinas crisis;
 - Nicaragua;

What are the relevant questions when looking at economic sanctions from a WTO perspective?

1. Is the particular conduct (sanction) subject to WTO rules?
2. Assuming the conduct is subject to WTO rules, is it consistent or inconsistent with the relevant WTO obligations?
3. Even if the conduct violates a WTO rule, can it be justified under the security (or other) exception?

Assessing the *WTO*-consistency of economic sanctions: some examples of recent sanctions

United States sanctions (non-exhaustive list)

- **Directive 1 (*Sanctions on financial institutions*):** U.S. persons or any person within the U.S. are prohibited from entering into transactions, providing financing for, or any other dealings in new debt of longer than 30 days maturity or new equity of certain financial institutions.
- **Directive 2 (*Sanctions on energy companies*):** U.S. persons or any person within the U.S. are prohibited from transacting in, providing financing for, or other dealing in new debt of greater than 90 days maturity issued by certain energy companies entities
- **Directive 3 (*Sanctions on defense companies*):** U.S. persons or any person within the U.S. are prohibited from entering into transactions, providing financing for, or any other dealings in new debt of longer than 30 days maturity issued by certain defense companies.
- **Directive 4 (*Export restrictions imposed on certain energy companies*):** OFAC imposed sanctions that prohibit U.S. persons or persons within the U.S. from undertaking the direct or indirect exportation or reexportation of goods, services (not including financial services), or technology in support of exploration or production for Russian deepwater (greater than 500 feet), Arctic offshore, or shale projects that have the potential to produce oil in Russia to five Russian energy companies involved in these types of projects.

Services mode of supply

Mode	Description
1	Neither supplier nor consumer crosses border
2	Consumer of country A consumes service in country B.
3	Service supplier of country A establishes itself in country B
4	Service supplier who is national of country A provides service in country B.

Russian sanctions (non-exhaustive list)

- On 7 August, Russia announced it would suspend imports of meat, fish, fruit, vegetables, fruit, and milk products from the United States, the EU, Norway, Canada, and Australia for one year.
- Visa restrictions against a group of Japanese citizens, in response to similar restrictions that Japan imposed against Russia.

Security exceptions (Article XXI GATT/Article XIVbis GATS)

Security Exceptions

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

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