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## Article

### Beware of sharks in the water – Navigating trade in a world of sanctions

By **Jayant Raghu Ram**

#### *Introduction*

On 24 February 2022, Russian tanks and troops rolled into Ukraine, thus triggering the beginning of the ongoing conflict in Ukraine region and putting an end to the months of speculation regarding the possibility of war. Western nations like the EU, UK, and the US, who have been supporting Ukraine in the war have adopted several political, military and economic measures to weaken Russia with the objective of turning the tide.

Among the numerous measures adopted by the West, the war has brought into focus the use of sanctions as an instrument to penalize Russia and its allies such as Belarus. While sanctions as an instrument are well known among political and economic institutions in the West, comparatively little attention has been paid to Western sanctions by businesses in India. Characterized as instruments for achieving Western policy objectives, the implications for Indian businesses remain less understood. This article attempts to shed light on the nature and extent of Western sanctions, and why Indian businesses should provide more attention to their implications on Indian business interests.

#### *Origin and nature of sanctions*

The imposition of global sanctions against Iraq in the 1990's to penalize it for invading Kuwait probably popularized today's contemporary notion of sanctions. However, the use of sanctions as a punitive instrument goes

back all the way to the times of the ancient Greeks when they used to retaliate against warring neighbors. In modern times, the United States has been one of the prominent users of the sanctions, having used it for decades to act against unfavorable regimes or their policies.

The sanctions adopted by countries such as the United States are different from the ones adopted by the Security Council of the United Nations (UN) in that the former are unilateral in nature while the latter are multilateral in nature. Further, while unilateral sanctions are instruments of domestic law, UN sanctions are instruments of international law and binding upon all UN members.

An important aspect of sanctions is that the targets are not limited to countries but even particular individuals and organizations, government or private, can become the target of sanctions.

Another distinguishing feature is that unilateral sanctions are autonomous in nature, i.e., they are based on national policy objectives. On the other hand, non-aligned countries like India enforce sanctions to implement UN Security Council resolutions; they do not have a formalistic or autonomous regime of sanctions based on their own policy objectives. Though India has taken its own tough measures in challenging moments, for example, by imposing tariffs of 200% on imports from Pakistan, whether

these measures can constitute ‘sanctions’ is debatable.

Another classification of sanctions is based on their applicability. While a country may sanction a particular country, organization or individual, the obligation to comply with such sanctions is usually on subjects connected to the country imposing the sanctions, such as individual citizens of the sanctioning country, companies incorporated in the sanctioning country, etc. Such sanctions are called ‘primary sanctions’.

In case of sanctioning countries like the United States, their ambition to penalize the sanctioned entities can be far-reaching. With the objective to increase the focus of their actions, these sanctioning countries may even impose sanctions on third-country entities unrelated to the primary sanctioned entity. Such sanctions are called ‘secondary sanctions’. A prominent example is the United States’ Countering America’s Adversaries Through Sanctions Act (CAATSA), that penalizes third countries for engaging in military transactions with, *inter-alia*, Russia.

### **Overview of legal framework for unilateral sanctions**

Most unilateral sanction regimes that exist today are adopted by Western countries. The United States has an advanced and complex systems of sanctions that towers in comparison to non-autonomous sanctions regimes. In case of countries like the United States, there may be multiple legislations that authorize the US Government to impose sanctions on transactions including export and import of goods, services and investments in sanctioned entities.

The unilateral sanctions framework administered by such countries are rigorous and

vast in scope, applicability, and coverage. In fact, where sanctioned items are exported to third countries, the sanction laws also impact such transactions if there is ‘knowledge’ that such sanctioned items are destined to the sanctioned country.

The penalties imposed for violating sanctions include fines and imprisonment; and can be severe depending on the violation. Interestingly, these sanction laws allow businesses to disclose inadvertent violations of sanctions, which can mitigate the quantum of probable penalties.

More importantly, such sanctions are not prohibitions, but instead are restrictions, which means that transactions, such as exports, where sanctions are otherwise attracted, can be made under valid license obtained from the competent authority.

### **Extra-territorial reach of unilateral sanctions**

One of the biggest concerns that has arisen in connection to unilateral sanctions is their extra-territorial applicability to citizens and subjects outside their legal jurisdiction and unaffiliated to subjects in the sanctioning country (such as, being a subsidiary of a company incorporated in the sanctioning country). In fact, under the American sanction regime, the prohibition on engaging in sanctions-related conduct extends to ‘any person’, a term which has been defined to include citizens not just of the United States but also citizens of a foreign country.

Though the legal recognition of such extra-territorial applicability of domestic laws under the framework of international law is highly debatable, their operation in practice presents a different picture. The following cases illustrate this point.

In October 2022, a United States district court indicted (formally charging) three Latvian citizens and a Latvian incorporated company for allegedly attempting to export a dual-use export-controlled item, manufactured in the US, to Russia in violation of US export restrictions. Latvian authorities assisted the United States in making the arrests and preventing the export of the goods to Russia.<sup>1</sup>

In September 2022, the US government sanctioned a Mumbai-based company for facilitating the trade of petrochemical products between Iranian producers and Chinese purchasers. It was reported that such action was the first against an Indian company in Iran-related sanctions.<sup>2</sup>

Further, even from a jurisprudential point of view, US courts in decisions such as *United States v. Zarrab* (2016 WL 6820737) and *United States v. Tajideen* (319 F. Supp. 3d 445 (D.D.C. 2018)) have affirmed the extra-territorial applicability of US sanctions laws to non-US persons.

### **Conclusion and implications for Indian businesses**

The advent of globalization has brought with it both benefits and risks for Indian businesses, which are today more inter-connected than ever. However, while globalization has opened opportunities for Indian businesses to access markets beyond the West, the current global

political climate has increased the legal risks and costs of doing business with such markets.

While the risks are obvious but not precisely defined for Indian companies who are either branches or subsidiaries of companies headquartered or based in the West, the risks may be unknown for unaffiliated Indian companies who are intermediates in transactions that may connect sanctioning countries and sanctioned entities. These risks are heightened in light of the extra-territorial applicability of such sanction laws.

Though one may legally debate the appropriateness of countries to extend the applicability of unilateral sanctions beyond their territorial jurisdictions, practical considerations warrant that Indian businesses should at least be aware of the legal implications of any violations of sanctions laws. Though this may necessitate a higher level of legal due diligence and caution on part of Indian businesses, the costs of making informed decisions far outweigh the costs of potential liability under unilateral sanction laws.

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<sup>1</sup> Press Release, *European Nationals and Entities Indicted on Charges of Violating U.S. Laws for Their Attempt to Export a Dual-Use High-Precision Jig Grinder to Russia*, Department of Justice, U.S. Attorney's Office: District of Connecticut, 19 October 2022, <https://www.justice.gov/usao-ct/pr/european-nationals-and-entities-indicted-charges-violating-us-laws-their-attempt-export>

<sup>2</sup> Press Release, *Treasury Targets Financial and Shipping Facilitators of Iranian Petrochemicals and Petroleum Sales*, 29 September 2022, U.S. Department of the Treasury, <https://home.treasury.gov/news/press-releases/iy0980>

## Trade Remedy News

### Trade Remedy actions by India

Product	Country	Notification No.	Date of notification	Remarks
Alloy steel chisel/ tool and hydraulic rock breaker in fully assembled condition	China PR and Korea RP	F. No. 6/8/2022 -DGTR	30 September 2022	Anti-dumping duty investigation initiated
ATS-8	China PR	F. No. CBIC-190354/265/2022- TRU	20 October 2022	Central Government decides not to impose anti-dumping duty as recommended
Ceramic Rollers	China PR	F. No. 7/18/2022 - DGTR	30 September 2022	Anti-dumping duty Sunset Review initiated
Copper Tubes and Pipes	Vietnam	F. No. 07/16/2022 - DGTR	30 September 2022	Countervailing duty New Shipper Review initiated
Electrogalvanized Steel	Korea RP, Japan and Singapore	29/2022-Cus. (ADD)	19 October 2022	Anti-dumping duty imposed
Ferro Molybdenum	Korea RP	F. No. 22/03/2022- DGTR	30 September 2022	Bilateral Safeguard Investigation initiated
Fishing Net	China PR	F. No. 7/22/2022 - DGTR	30 September 2022	Anti-dumping duty Sunset Review initiated
Glycine	China PR	F. No. 6/14/2021 - DGTR	29 September 2022	Anti-dumping duty recommended to be imposed for five (5) years
Grinding Media Balls	China PR	F. No. 7/13/2022 - DGTR	30 September 2022	Anti-dumping duty Sunset Review initiated
Gypsum Board / Tiles with lamination at least on one side	China PR and Oman	F. No.6/11/2022- DGTR	30 September 2022	Anti-dumping duty investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
High Tenacity Polyester Yarn	China PR	F. No. 7/21/2022 - DGTR	30 September 2022	Anti-dumping duty Sunset Review initiated
Industrial Laser Machine	China PR	F. No. 6/7/2022- DGTR	29 September 2022	Anti-dumping duty investigation initiated
Jute Products	Bangladesh and Nepal	F. No. 7/09/2021 - DGTR	30 September 2022	Definitive Anti-dumping Duty recommended to be imposed for five (5) years
Metronidazole	China PR	F. No. 6/3/2022 -DGTR	30 September 2022	Anti-dumping duty investigation initiated
Mono Ethylene Glycol	Kuwait, Saudi Arabia and USA	F. No. 6/8/2021- DGTR	27 October 2022	Anti-dumping investigation terminated after finding of absence of material injury
Natural Mica-based Pearl industrial pigments excluding cosmetic grade	China PR	F. No. 7/17/2022 - DGTR	30 September 2022	Anti-dumping duty Mid-Term Review initiated
Saccharin in all its forms	China PR	4/2022-Cus. (CVD)	21 October 2022	Countervailing duty extended to goods from Thailand
Semi-Finished Ophthalmic Lenses	China PR	F. No. 6/6/2021- DGTR	29 September 2022	Definitive Anti-dumping Duty recommended to be imposed for five (5) years
Sulphur Black	China PR	F. No. 06/09/2022 - DGTR	30 September 2022	Anti-dumping duty investigation initiated
Synthetic Grade Zeolite 4A	China PR	F. No. 7/14/2022- DGTR	29 September 2022	Anti-dumping Sunset Review initiated
Synthetic Grade Zeolite 4A	Iran and Thailand	F. No. 6/05/2022- DGTR	30 September 2022	Anti-dumping duty investigation initiated
Toughened glass (specified) for home appliances	China PR	F. No. 6/10/2022 - DGTR	30 September 2022	Anti-dumping duty investigation initiated

Product	Country	Notification No.	Date of notification	Remarks
Viscose Rayon Filament Yarn	China PR	F. No. 6/06/2022 - DGTR	30 September 2022	Anti-dumping duty investigation initiated
Wheel Loaders	China PR	F. No. 6/4/2022 -DGTR	30 September 2022	Anti-dumping duty investigation initiated

### Trade remedy actions against India

Product	Investigating Country	Document No.	Date of Document	Remarks
Finished Carbon Steel Flanges	USA	2022-22752	20 October 2022	Scheduling of Expedited Five (5) Year Reviews on Anti-Dumping and Countervailing Duty
Lined Paper Products	USA	2022-21771	6 October 2022	Preliminary finding of sales at less than normal value by one entity.
Paper File Folders	USA	2022-22676	19 October 2022	Anti-dumping duty and Countervailing Duty investigations initiated
Pneumatic Off-the-Road (OTR)	USA	2022-22953	21 October 2022	Scheduling of Full Five (5) Year Reviews on Anti-dumping duty and Countervailing Duty
Quartz Surface Products	USA	2022-22623	18 October 2022	Affirmative finding of receipt of countervailing subsidies by one entity
Silicomanganese	USA	2022-22873	21 October 2022	Anti-dumping duty - Changed Circumstances Review (CCR) initiated
Stainless Steel Wire Rod	USA	2022-22997	24 October 2022	Scheduling of Expedited Five (5) Year Reviews on Anti-Dumping Duty
Steel Nails	USA	2022-22148	12 October 2022	US ITC determines absence of material injury to US industry



## WTO News

### Count on WTO in coordinated action to fight food security crisis, says DDG Paugam

The WTO delivered important outcomes at its 12th Ministerial Conference in June and is actively engaged in many international initiatives to tackle food insecurity, Deputy Director-General Jean-Marie Paugam said at a meeting of the Committee on World Food Security on 10 October in Rome. He highlighted the importance of keeping markets open, re-energizing WTO agriculture negotiations to achieve an equitable international food system and expediting the implementation of the Agreement on Fisheries Subsidies. “We are committed to fight the global food security crisis,” he concluded.

### Members brainstorm on initiating “second wave” of WTO fisheries subsidies talks

WTO members met at an informal retreat in the French town of Evian-les-Bains on 10 October in order to share ideas and think creatively on how to approach the “second wave” of negotiations to further discipline harmful fisheries subsidies. They also underlined the urgent need to appoint a new chair to lead the negotiations.

### WTO members discuss implementation of Information Technology Agreement, new IT developments

Participants in the WTO’s Information Technology Agreement (ITA) met on 11 October to discuss implementation issues relating to the ITA. They also underlined the importance of engaging with the private sector to learn about technological advances and to keep WTO rules up to date.



## India Customs & Trade Policy Update

### Integrated/single certificate incorporating food safety related requirements is also acceptable in case of certain food imports

Imported food consignments of milk and milk products, pork and pork products and fish and fish products need to be accompanied by a health certificate issued by competent authority of

the exporting country, with effect from 1 November 2022. The Central Board of Indirect Taxes and Customs had *vide* its Instruction No. 18/2022, dated 12 August 2022 shared an Order dated 3 August 2022 by the Food Safety and Standards Authority of India which also prescribed the format for the health certificates for this purpose. Now, the CBIC has, based on



clarification from FSSAI, further clarified that integrated/single certificate incorporating food safety related requirements is also acceptable by FSSAI at the time of import clearance, provided it shall incorporate all the information as per the format notified earlier.

### **Wheat flour (atta) exports allowed under Advance Authorisation and by EOU/SEZ, subject to conditions**

The Ministry of Commerce and Industry has allowed export of wheat flour (atta) against Advance Authorisations and by Export Oriented Units (EOUs) and units in Special Economic Zones (SEZs). In respect of EOU and SEZs, there is a condition of pre-import of wheat by actual user. The importer would not be permitted to transfer imported goods for any purpose including job work. Further, procurement of domestic wheat for the purpose of export of wheat flour will not be allowed. Also, entire production must be exported except the wastage as permitted by the Norms Committee. Notification No. 39/2015-20 dated 14 October 2022 has amended Notification No. 30/2015-20 for this purpose.

### **Rice – Export quota for broken rice notified**

The Ministry of Commerce has notified export quota for the year 2022-23 for export of broken rice which is otherwise prohibited for exports. As per Notification No. 38/2015-20, dated 12 October 2022, quota of 3,97,267 MT would be available in case Letters of Credit have been opened and the message between the foreign bank and the Indian bank, both are before 8 September 2022. It may be noted that Notification No. 31/2015-20, dated 8 September 2022 prohibited export of broken rice with effect from 9 September 2022. Further, Trade Notice

No. 19/2022-23, dated 14 October 2022 in this regard notifies the procedure to apply for registration certificate/permission under the above-mentioned quota.

### **Sugar exports restrictions extended till 31 March 2023**

The Ministry of Commerce and Industry has extended the export restrictions in respect of sugar (raw sugar, refined sugar and white sugar) till 31 March 2023. The restriction was earlier applicable only till 31 October 2022. It may be noted that the restriction is not applicable to sugar being exported to EU and USA under CXL and TRQ quota as per prescribed procedure. Notification No. 40/2015-20 dated 28 October 2022 has been issued for the purpose.

### **Platinum, Palladium, Rhodium, etc. – Import duty increased**

The Ministry of Finance has withdrawn the lower rate of basic customs duty available on imports of Platinum, Palladium, Rhodium, Iridium, Osmium and Ruthenium. The imports of said goods, covered under Heading 7110 of the Customs Tariff Act, 1975 will now be covered under the Tariff rate of 12.5% instead of 10%. Further, Agriculture Infrastructure and Development Cess @ 1.5% has been imposed on imports of goods of this Heading, other than those specified. It may be noted that exclusion has been provided to Platinum and Palladium for use in the manufacture of (i) all goods, including Noble Metal Compounds and Noble Metal Solutions, falling under heading 2843, (ii) all goods falling under sub-heading 3815 12, and (iii) catalytic converters falling under tariff item 8421 32 00, subject to conditions. Notifications Nos. 52 and 53/2022-Cus., both dated 3 October have been issued for the purpose.



## Ratio Decidendi

### **Alloy steel forging rings requiring further operation to be used as rings for bearing are classifiable under Heading 7326**

The CESTAT Ahmedabad has held that alloy steel forging (machined) that is required to undergo further operation to be ready to use as rings for bearings, etc., is classifiable under Heading 7326 of the Customs Tariff Act, 1975 as ‘other articles of iron or steel’. The Tribunal observed that the articles of iron and steel which are subjected to various processes and incomplete shape would be covered under Chapter 73. The Court noted that alloy steel forged machined rings were to be further subjected to heat treatment, grinding, and super finishing (like honing and lapping) processes at the buyer’s end to convert into bearing race. [*Ravi Technoforge Pvt. Ltd. v. Commissioner – 2022 VIL 770 CESTAT AMH CU*]

### **Handheld enterprise mobile computers are classifiable under Customs Tariff Item 8471 3090**

The Customs Authority for Advance Rulings has held that handheld enterprise mobile computers are classifiable under Tariff Item 8471 3090 of the Customs Tariff Act, 1975 and not as smartphones (even if it had SIM). The devices combined personal computer and scanning functions in a single device that can be outfitted with off-the-shelf or custom software applications that perform everyday tasks, such as monitoring deliveries, tracking assets, and managing inventory. Relying upon Note 3 to Section XVI of the Tariff, according to which composite machine performing various functions is to be classified according to the principal function performed by such a device, the Authority noted that for the products under consideration, automatic data processing appeared to be the main function, while other functionalities of said machines were not different from auxiliary functions that could be seen on any computer, such as desktop or laptop computers. [*In RE: Ret-Tech Private Limited – 2022 VIL 70 AAR CU*]

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