Dealing with sanctions in Switzerland

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Swiss-based commodity traders and banks are well-advised to monitor potential impacts of sanctions prohibitions. To avoid costly surprises, many choose to apply Swiss, EU and US sanctions, even when there is no apparent link.

Swiss sanction regime

The 2003 Swiss Embargo Act gives the Federal government the authority to implement UN and OECD sanctions. The Act also allows Switzerland to join sanctions adopted by the EU and USA. The Act sets out the guiding principles and provides for far-reaching search and seize powers, simplifies international mutual assistance and sets the parameters in case of breach (max 5 years imprisonment and fine up to CHF 1 mio.). The actual sanctions are ordered by the Federal government.

In terms of scope, Swiss sanctions follow the standard technique of "primary sanctions" and impose import or export restrictions of goods, technology, capital or services. Sanctions also target individuals or companies (e.g. asset freeze). Swiss sanctions ordinances also impose travel bans.

Implementation of UN sanctions is a legal obligation and a mechanic process. Switzerland's neutrality is not an obstacle to implement EU sanctions, yet Switzerland only joined EU sanctions in 1998 (against the Republic of Yugoslavia). Ever since, Switzerland has participated to EU sanctions on an ad hoc basis, either fully or partially.

Swiss traders and bankers should treat sanctions as a top priority. Banks must screen against the sanction lists, freeze assets and report to the State Secretariat for Economic Affairs (SECO). Traders should carry out counterparty and country checks. The SECO enforces the sanctions regimes and has far-reaching search and seize powers. It will target the actual perpetrator, as well as the management for failure to properly implement the sanctions.

Equally, the Federal Prosecution Office will investigate breaches for prohibited money transfers which may constitute money laundering. Under risk of penalty, Swiss banks must block and notify suspicious transfers to the Swiss money laundering reporting agency. Again, top management may be targeted. Finally, FINMA, the banking regulator, may review the banking licence if sanctions are not properly handled.

Two recent parliamentary reports concluded that Switzerland's sanction policy is robust and needs no overhaul.

Extraterritorial Enforcement of US Sanctions Laws

Recent years have witnessed an emerging trend of extraterritorial enforcement of U.S. sanctions laws against non-US companies and financial institutions. These enforcement measures have taken the form of nine and ten-figure civil and criminal settlements with non-US businesses and banks for sourcing products and services from the United States for the benefit of sanctioned countries or persons, as well as "secondary sanctions" imposed against non-US companies, who provide material support to sanctioned persons.

Rather than focusing only on country-based sanctions programmes, sanctions authorities increasingly seek to disrupt the systems and networks that are used to fund and support sanctioned governments. Under this approach, US sanctions regulations are used as a tool to isolate members of these illicit networks and cut them off from access to the international financial system at large. The most effective means that the US has for doing this is to essentially deputise US financial institutions, and their branches around the world. US banks are therefore held accountable to identify, block and report sanctioned transactions or risk substantial penalties. Because non-US banks rely heavily on correspondent account relationships with US banks, they are incentivised to comply with US sanctions rather than take the risk of losing access to the US financial system.

As US sanctions restrictions broaden, strengthen, and become more heavily enforced, third-country traders (those who are neither US nor sanctioned) are increasingly at risk of being implicated in an extraterritorial enforcement matter. This phenomenon has given rise to "anti-blocking" or "counter sanctions" laws in the EU and elsewhere which, for example, restrict companies from complying with US "secondary sanctions" on Iran to the extent that those activities are in compliance with EU sanctions relief afforded by the Iran Joint Comprehensive Plan of Action. The EU is in process of establishing a separate payment mechanism, "Instex," which would facilitate permissible financial exchanges between the EU and Iran, in order to avoid the reach of US sanctions.

Despite these efforts to assert sovereignty, the threat of enormous criminal penalties and the possibility of losing access to US dollars and the US financial system cause most international financial institutions to choose to comply with U.S. sanctions policies resulting in a lack of transparent and reliable financing and payment channels.

Outlook

In the current political environment, Swiss market players must remain vigilant and should proactively monitor trends in sanctions enforcement. ■

Sanctions Compliance in International Commodity Trade

Navigating through Swiss, EU and US sanctions is difficult, especially when there is no readily apparent link to these jurisdictions. Getting it wrong can be costly.

Join us for a one day intensive and interactive seminar given by a group of proven experts.

Date: 9 May 2019 Time: 9.30 – 17.30 Where: FER, Geneva To register: stsa.swiss