

## Targeted Trade Sanctions: 1. The Example of Rough Diamonds Controls

- § 208 *Legal Framework*
- Adopt legal and administrative provisions as appropriate to implement the certification scheme developed through the Kimberley Process.\*
  - Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council resolutions on trading in rough diamonds with states targeted by sanctions.
- § 209 *Administering Agency*
- Designate importing and exporting authorities; appoint an official coordinator to deal with the implementation of the certification scheme, who could serve as a point of contact if sanctions are imposed.
  - Collect and maintain official production, import and export data.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 210 *Information Dissemination*
- Share statistical data with other countries as appropriate.
  - Communicate with parties involved in the diamond industry; notify them directly, including through outreach activities, and provide specific and timely guidance for the implementation of sanctions.
- § 211 *Monitoring Compliance*
- Establish a system of domestic controls for the production and trade of rough diamonds and which allows for effective international monitoring.
  - Cooperate to ensure the effectiveness of the certification scheme towards the implementation of sanctions.
  - Ensure that all cash purchases of rough diamonds are routed through official banking channels, supported by verifiable documen-

\* The Kimberley Process proposes a certification scheme for rough diamonds aimed in part at facilitating the control of trade in rough diamonds. The current agreement is to be found at <<http://www.kimberleyprocess.com>>. While the aim of the Kimberley Process is primarily conflict prevention rather than conflict resolution, the certification scheme may facilitate more effective sanctions, should the Security Council act to target the trade in rough diamonds.

tation such as that developed as part of the Kimberley Process Certification Scheme.

§ 212 *Enforcement*

- Maintain dissuasive and proportional penalties for transgressions.
- Inform others of the names of individuals or companies convicted of activities relevant to the certification scheme or the effectiveness of sanctions.

§ 213 *Relevant Regional and International Agreements*

- Kimberley Process Certification Scheme, November 2002 ([www.kimberleyprocess.com](http://www.kimberleyprocess.com))

§ 214 *Relevant IGOs and NGOs*

- Partnership Africa Canada ([partnershipafricacanada.org](http://partnershipafricacanada.org))
- Global Witness ([www.globalwitness.org](http://www.globalwitness.org))
- Diamond High Council ([www.diamonds.be](http://www.diamonds.be))
- Amnesty International ([web.amnesty.org/diamonds/index.html](http://web.amnesty.org/diamonds/index.html))

### Targeted Trade Sanctions: 2. The Example of Timber\*

- § 215 *Legal Framework*
- Amend or enact appropriate legal and administrative provisions, or use the Interlaken Model Law, to establish authority to implement Security Council embargoes on trading in conflict timber with states targeted by sanctions.
- § 216 *Administering Agency*
- Identify and empower an administering agency, such as the MFA, Customs or Agriculture Ministry, to detect timber imports from illegal sources and seize prohibited goods.
  - Ensure effective communication at all levels – between the UN and Member States, between UN missions and capitals, and within the capitals (among those responsible for implementation).
- § 217 *Information Dissemination*
- Increase public awareness of forest crimes and opportunities to purchase forest products from legal sources.
  - Educate judicial and law enforcement officials about forest law enforcement.
  - Develop protocols for sharing import/export data.
- § 218 *Monitoring Compliance*
- Cooperate towards universal standards for monitoring and reporting on forest crimes, such as through the registration of origin and destination by timber producers.
- § 219 *Enforcement*
- Strengthen penalties and sanctions against illegal activities.
- § 220 *Sector-Specific Measures*
- Support existing multilateral efforts aimed at suppressing illegal logging through: labeling and certification of timber products; timber tracking through chain of custody audit and negotiation systems and; monitoring and verification of imports.
- § 221 *Relevant Regional and International Agreements*
- Ministerial Declaration of the Forest Law Enforcement and Governance East Asia Ministerial Conference, September 2001 (available at: [www.foejapan.org/en/news/minist\\_decl.html](http://www.foejapan.org/en/news/minist_decl.html)).

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\* This table represents a first attempt to consolidate information relevant to the implementation of sanctions targeted on timber.

- § 222 *Relevant IGOs and NGOs*
- United Nations Forum on Forests ([www.un.org/esa/sustdev/forests.htm](http://www.un.org/esa/sustdev/forests.htm))
  - G8 Action Program on Forests ([www.g8.gc.ca/docs/forestfinal-e.asp](http://www.g8.gc.ca/docs/forestfinal-e.asp))
  - Global Witness ([www.globalwitness.org](http://www.globalwitness.org))

## 9. Implementation at the National Level: Towards a Comprehensive Model Law\*

### Introduction

- § 223 Article 25 of the United Nations Charter obliges Member States of the UN to implement decisions taken by the Security Council. Fundamental to the implementation of targeted sanctions is Member States' ability to give effect to Security Council Resolutions in domestic law. The national legal framework therefore is crucial to the establishment of the administrative practices to implement UN sanctions. In many states, however, specific legislative action is required to translate Security Council decisions into national law. The essential question is: Does the State have the authority necessary to implement targeted sanctions?
- § 224 States respond to this question in various ways.\*\* Amongst these, the "Model Law approach" has been endorsed by sanctions experts as the most straightforward and uncontroversial means whereby a state can implement targeted sanctions efficiently at the national level.

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\*\* See the Interlaken Report.

### Targeted Trade Sanctions

- § 384 Specific trade sanctions aim at reducing revenues and at controlling flows of strategic commodities going to particular actors. These import or export bans most often concern exports of particular commodities. The export of such goods from particular countries is to be reduced, generally through import bans by recipient countries, although in other cases, states may be banned from exporting strategic items to targets. The sanctions history include cases of bans on exports of tobacco, rough diamonds, etc. from particular countries. Recently, timber exports have been discussed. There are also cases of restrictions on oil deliveries or spare parts to particular countries. Targeted trade sanctions may affect the exports or imports from or to an entire country with respect to the specified commodity, but not its general trading. They should avoid some of the classic problems of comprehensive sanctions, as they are not intended to harm the entire economy. However, some economic sectors in a country may be adversely affected, and thus, sanctions may also have negative effects for individuals other than those who are the ultimate target of the sanctions regime.
- § 385 Targeted trade sanctions have not been studied in depth. One exception is the field of rough diamond exports from particular countries, where some experience has been gained. The so-called Kimberley Process may eventually address some of these problems.
- § 386 When focusing on sanctions evasion there are particular problems in targeted trade sanctions that need to be addressed throughout the sanctions regime. In the following, some issues of concern are discussed and guidelines are suggested for addressing them, for each phase of sanctions implementation.
- § 387 Customs services are central in implementation and they may benefit from international cooperation, as indicated in Part III. Lessons can be drawn from the efforts to combat drug trade and trafficking. The World Customs Organization and Eurocustoms should be consulted when targeted trade sanctions are used for lessons from past experience.

*Typical Problems in Implementing Targeted Trade Sanctions*

§ 388 The use of targeted trade sanctions as a separate measure is novel. Recent experiences have highlighted generic issues that require careful consideration:

- Goods that are subject to targeted trade sanctions such as oil, diamonds or timber are frequently difficult or impossible to distinguish from similar goods that are not subject to such sanctions.
- The control of these commodities can be evaded by mixing banned goods with those that are allowed to be freely traded.
- Certification systems for targeted goods are not internationally standardized or may not be used in practice (e.g. end-use certificates for arms purchases or rough diamonds). The use of false documents creates opportunities for sanctions evasion.
- Commodities, such as oil, that might be included in targeted sanctions regimes generate their own problems. Oil companies and governments may not monitor fuel stocks and movements in areas adjacent to conflict zones.
- Targeted actors may shift from trading in one sanctioned commodity to other non-sanctioned resources (e.g. from rough to polished diamonds, from diamonds to timber).
- Targeted actors subject to import bans will frequently stockpile the goods in question prior to implementation of sanctions.
- Targeted trade sanctions may produce unintended consequences, such as black markets and expanded opportunities for corruption. The beneficiaries of black markets and corruption may be the target itself.

With these and similar considerations in mind, the following recommendations can be made for the effective implementation of targeted trade sanctions:

### Recommendations for Improving Targeted Trade Sanctions: The Planning Phase

- § 389 *Pre-assessment and Contingency Planning*
- Identify the goods and services that are available to the target regime and that support its ability to engage in the behavior that concerns the Security Council.
- § 390 *Distinct and Accurate Definition of Measures*
- Consider whether to include services such as maritime registry, engineering, and others that facilitate evasion of the targeted trade sanctions.
  - Consider the technical means that are available to identify national sources of goods and commodities in target states, potential allies and trade partners that might help it evade sanctions.
  - Identify states, non-state actors and their networks that are controlling the production, trading and financing of the specific goods or services being considered for targeted sanctions.
  - Identify who the most important trading partners of the targets are and assess their willingness and capacity to implement suggested sanctions.
  - Conduct an early humanitarian assessment of the impact of targeted trade measures on target economy and on (potentially affected) non-target economic sectors or key states.
  - Compile record of normal trade patterns, including volumes of trade, with respect to the goods and services for the target. Try to obtain information from Member States regarding possible stockpiling by the target, as well as increases in production and sales in advance of an export ban.
- § 391 *Listing*
- Although the sanctions are focused on all trade involving specific goods and services, listing may be considered if some traders, producers, financiers or others known to be involved in previous sanctions violations can be identified.

### Recommendations for Improving Targeted Trade Sanctions: The Operations Phase

- § 392 *Commitment*
- Identify States, regional networks, individuals and entities whose cooperation in implementation is vital and urge them to commit to swift and effective implementation.
  - Identify key trading partners of the target regime to determine how States or organizations might direct capacity building assistance to improve implementation.
- § 393 *Complementary Measures*
- Consider using travel bans against those responsible for violating sanctions or who facilitate illicit trade in banned goods or services to reinforce targeted trade sanctions.
  - Consider targeted aviation sanctions to prevent smuggling.
  - Strengthen efforts to introduce a standardized and credible system or certificates of origin for particular commodities (e.g. for rough diamonds as discussed in the Kimberley Process).
- § 394 *Coordination and Technical Management*
- Engage relevant industry leaders and private sector associations in the sanctions regime and encourage them to share information with UN.
  - Arrange special meetings with major trading partners of the target to explain the sanctions and to identify needs in their implementation.
  - Consider new mechanisms or targeted sanctions to respond to evasion strategies and changes in trade and financial flows after implementation.
  - If UN or regional peacekeepers are present in a region where targeted trade sanctions are imposed, and they have information on sanctions evasion, they should be instructed to report this to the UN system.
  - If UN or regional peacekeepers are present in the region, consider attaching Sanctions Monitors to the peace operation.
  - Work with the World Customs Organization (WCO) and international law enforcement groups to determine appropriate, internationally uniform penalties for violations of targeted trade sanctions.

### Recommendations for Improving Targeted Trade Sanctions: The Follow-Up Phase

- § 395 *Technical Assistance*
- Consider designating appropriate technical experts to the relevant Sanctions Committee(s) to assist in coordinating the implementation of the sanctions across the UN system.
  - Offer training programs for officials in key fields of sanctions implementation.
- § 396 *Flexible and Dynamic Response*
- Monitor trade patterns with respect to targeted goods, particularly in the target region, with the intent of strengthening sanctions if necessary.
  - Monitor trade flows for indications of evasion through mixing of sanctioned and non-sanctioned goods.
  - Monitor changes in trade financing that may indicate evasion of the targeted sanctions.
  - Monitor whether targeted actor shifts to other economic activities and consider whether additional measures to respond to such shifts are necessary.
- § 397 *Positive Measures*
- Assist key countries with implementation measures.
  - Evaluate possible humanitarian impact in the affected sector and consider ways to provide additional humanitarian assistance.
  - Consider increased assistance in fields of education, health, etc. to demonstrate that sanctions and their effects are only intended to impact the target, not the general population.
- § 398 *Communication*
- Proactively engage in public diplomacy to encourage implementation and enforcement of sanctions.
  - Anticipate and counteract target's propaganda campaigns against sanctions by holding press conferences, issuing press releases and making other public statements as appropriate.
  - Engage relevant industry leaders and private sector associations in targeted sanctions and encourage them to share information with UN.
- § 399 *Delisting*
- In cases of sanctions on particular non-state actors, individuals or companies, Member States should be encouraged to carefully scrutinize and regularly review any lists of known evaders or facilitators for the target for possible mistakes in listing, and to respond swiftly and judiciously to requests for removal.