

APPLICATION OF ECONOMIC RESTRICTIONS (SANCTIONS) IN INTERNATIONAL LAW: PRACTICAL AND THEORETICAL ASPECTS

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ABSTRACT

This article discusses the effectiveness of economic sanctions and the factors influencing it, taking into account the theoretical postulates of the new institutional economics. The position is confirmed that economic sanctions remain an active, but economically and politically ineffective tool for pursuing the foreign policy of states due to high costs. It is stated that when imposing sanctions, it is necessary to take into account the humanitarian consequences, as well as an analysis of the long-term economic effect not only for the participating countries, but also possible external externalities for a third party.

Keywords: *economic sanctions, secondary sanctions, targeted sanctions, financial sanctions, comprehensive sanctions, smart sanctions, subjects and objects of sanctions, the effectiveness of sanctions, costs, consequences of sanctions, humanitarian damage.*

АННОТАЦИЯ

В данной статье рассматривается эффективность экономических санкций и факторы, влияющие на нее, с учетом теоретических постулатов новой институциональной экономики. Подтверждается положение о том, что экономические санкции остаются активным, но экономически и политически малоэффективным инструментом проведения внешнеполитического курса государств из-за высоких издержек. Констатируется, что при введении санкций необходимо учитывать гуманитарные последствия, а также анализ долгосрочного экономического эффекта не только для стран-участниц, но и возможные внешние экстерналии для третьей стороны.

Ключевые слова: *экономические санкции, вторичные санкции, адресные санкции, финансовые санкции, всеобъемлющие санкции, умные санкции, субъекты и объекты санкций, эффективность санкций, издержки, последствия санкций, гуманитарный ущерб.*

INTRODUCTION

In the most general form, the main goal of economic sanctions is political relations, but the instrument of influence is measures that directly restrict

international economic relations in order to destabilize the country's economy as a whole or its individual sectors. This makes it possible to conduct economic analysis based on the methodology of economic theory (economics), developed in the approaches of the new institutional economics in the theories of public choice and political markets. From the standpoint of the economic-theoretical approach, sanctions, by analogy with the monopoly of firms, in fact represent the monopoly of the state, which allows economic and humanitarian costs not only of the “host”, but also of its own country in the name of optimizing foreign policy. Consequently, like any monopoly, they lead to a decrease in economic efficiency, not to mention the social and humanitarian consequences.

As many authors point out, the history of the imposition of sanctions is very ancient and dates back to 432 BC. e., when they were introduced by the Athenian Maritime Union in relation to the city of Megara to stop the practice of migration of runaway Athenian slaves and plowing of border territories⁴. The intensification of the use of economic sanctions as an alternative to costly military pressure in politics dates back to the 1990s after a brief lull in the 1980s. Interest in economic sanctions as an instrument of pressure is currently growing, since other key instruments of foreign economic influence have their own objective limitations. These include trade, financial and macroeconomic policies, aid provision, and economic sanctions themselves.

Trade policy tends to be liberalized within the framework of the World Trade Organization (WTO), regional integration unions, and its impact, of course, cannot be discounted as a positive instrument for the development of international relations, which, in particular, is demonstrated by the example of Russia in the EurAsEC in the context of economic sanctions against it. Financial and macroeconomic policies, economic assistance as instruments of pressure have significant limitations due to the volume of the international financial market and budget deficits in most developed countries of the world. For the effective impact of these tools in the context of globalization, it is necessary to coordinate the activities of a number of states and non-state institutions with their complex of interests and contradictions, which is demonstrated by the current situation in the European Union.

DISCUSSION AND RESULTS

Thus, the imposition of sanctions has become the leading tool of foreign policy in crisis situations in order to defend national political interests. If in the last decade of the last century, comprehensive sanctions (embargos) caused the greatest

controversy, now targeted or “smart” sanctions are at the center of scientific and social thought. The reason for this is probably related to the difficulty of introducing comprehensive sanctions under the auspices of the UN (the right of veto). The focus of researchers is not only the economic sanctions adopted by the UN Security Council in December 2006 against Iran, for which the period of cancellation has now begun, but to a greater extent the issue of unilateral US sanctions or collective EU sanctions against Russia.

A feature of the last 20 years is the change in the subjects of economic sanctions. The United States, the leader in imposing unilateral economic sanctions in the period up to the 1990s, has been joined by other active participants. Currently, there are 26 sanctions programs in the United States, of which only six are comprehensive, and all the rest are targeted. Most analysts believe that multilateral sanctions under the auspices of the UN or the Council of Europe are more effective in the process of globalization of world economic relations. Despite the fact that since the beginning of the 1990s the UN has more than tripled the use of economic sanctions, there are currently about ten of them, the vast majority of which relate to targeted sanctions, including against individuals and organizations included in the UN Security Council sanctions list.

According to the most common definitions, economic sanctions mean a deliberate suspension (threat of suspension) of existing foreign economic relations initiated by the government or international intergovernmental organizations that would have taken place in the absence of sanctions. The main goal of sanctions is to change the policy of the targeted country, including the behavior of its individual leaders. Specific goals can be regime change followed by a change in policy, cessation of hostilities, destruction of the country’s military potential, etc. To justify sanctions, positive goals are always declared, such as the fight against terrorism, drugs or the prevention of a “humanitarian catastrophe”, the fight against totalitarian regimes. In particular, the UN Security Council considers sanctions as coercive measures aimed at maintaining or restoring international peace and security and as an alternative to military action if diplomatic efforts fail.

Non-economic sanctions include such instruments as prohibition and restriction of cooperation in public organizations (OECD, NATO), cancellation of government visits and parliamentary exchanges, a ban on the issuance of visas and, accordingly, on entry into the country, including transit through the country, refusal of military cooperation, from participation in international economic and political summits on

the territory of the target country or disruption of such, refusal to participate in cultural and sports events, a ban on broadcasting TV channels, etc.

According to the number of participants of the party imposing sanctions, they are divided into unilateral and multilateral. The second option is usually carried out under the auspices of international organizations. In this regard, the so-called extraterritorial (secondary) sanctions are of interest, which suggest that not only individuals and legal entities of a given country, but also those from third countries can be punished for violating unilateral sanctions, in particular the United States, which, of course, causes backlash from the international community and is considered a violation of international law.

In the context of the globalization of the banking sector in the United States, active financial measures have been developed against a number of banks in European countries and Japan, which for some reason did not comply with unilateral US sanctions against third countries. In the period 2009-2015, the amount of losses from such secondary sanctions against individual European banks ranged from USD 100 million to USD 700 million. In particular, the French bank BNP Paribas suffered an unprecedented loss of \$8.9 billion when it was banned in 2014 for a period of one year from conducting various types of banking transactions in dollars. The US leverages its global currency position when many industry markets trade only in US dollars.

The set of tools for economic sanctions is as wide as the types of foreign economic relations. Traditionally, they are divided into foreign trade and financial sanctions¹⁴. In the sphere of restricting foreign trade (not only goods, but also services, such as transport, telecommunications), the purpose of sanctions may be to increase prices for import-substituting products in the recipient country, with corresponding consequences for consumers. Moreover, the instruments of restriction are very diverse. Thus, within the framework of the sanctions that were in force against Iran, the United States obtained from the European Union the suspension of state guarantees to European companies when exporting goods and services to Iran.

Financial sanctions include various measures aimed at suspending financial flows, lending, financial assistance, investments, which should lead to a shortage of financial assets, an increase in the interest rate on loans and subsequently to a financial deficit. The instruments of such are diverse: bans on business with banks, on funding in American or European banks, seizure of property and pledges of banks, closing of correspondent accounts, a ban on the purchase of already issued

shares, bonds and deposit receipts, on the use of electronic payment systems and data transmission systems.

Financial sanctions can reduce trade flows without the application of trade sanctions, as they reduce the possibility of trade credits and suspend payments. American analysts believe that trade sanctions have a greater impact on the standard of living of the population, while financial ones, on the contrary, have a greater effect on the elite and the power structures associated with it. In our opinion, given the macroeconomic consequences, such measures also hit ordinary citizens, especially in the current conditions of electronic payments. In practice, taking into account the mutual influence of all spheres of the economy, these types of sanctions are applied in combination.

A classic example of a set of targeted sanctions tools are actions against Al-Qaeda and the Taliban (1999), which include three types: an asset freeze, a ban on movement, and an arms embargo on listed individuals and entities. Detailing the mechanism used to implement the sanctions shows a wide range of tools used. The freezing of funds and financial assets included the freezing of funds received from property; preventing not only entry into the territory, but also transit; a ban not only on the direct but also on the indirect supply of weapons, not only on the weapons themselves, but also on related materiel, including paramilitary equipment; embargo on military advisory services and training.

The United States also uses a variety of similar tools when introducing unilateral targeted sanctions. Even universities are becoming objects: they are deprived of research grants, the exchange of students is suspended, and a ban is introduced on the admission of students on scholarships from objectionable governments. This is a typical example of secondary sanctions. Thus, in 2008, the United States imposed sanctions (lifted in February 2010) against the Baltic State Technical University, the Moscow Aviation Institute and the D.I. Mendeleev on the basis of the US non-proliferation law for Iran, North Korea and Syria. Later, after Iran tested a ballistic missile, secondary sanctions were imposed on a number of Russian defense enterprises and companies (Europalas-2000, Graphite Research Institute, INOR Research and Production Center, MOSO, NPO Polyus, Rosoboronexport, Tula Instrument Design Bureau). Russia's only intermediary in the arms trade, Rosoboronexport, is constantly under pressure to impose or lift secondary sanctions from the United States, which can also be regarded as unfair competition.

In recent years, the active use of targeted sanctions has led to a debate about the violation of individual rights in their use. This contributed to the creation of new institutions under the UN Security Council: the Contact Point for de-sanctioning requests and the Office of the Ombudsman.

Traditionally, the concept of economic sanctions includes official sanctions (from comprehensive to targeted) using appropriate tools. However, conventional non-tariff measures of foreign trade policy can also contribute to political pressure. For example, phytosanitary barriers were activated in time (import to Russia from Georgia of mineral water and wine). Currently, experts see a similar motive for anti-sanctions in the proposal of the Rosselkhoznadzor to the national organizations for quarantine and plant protection of the EU countries to completely suspend the phytosanitary certification of Dutch flowers for delivery to Russia. Undoubtedly, such a measure has an objective reason, since up to 60% of infections were detected in flowers that came from the Netherlands. Along with this, the Rosselkhoznadzor is considering a ban on the import of flower products from Germany, the Czech Republic, Slovakia, Italy, Poland, Lithuania and Latvia, and Colombia is invited to switch to direct deliveries to Russia, bypassing the European Union. The use of covert and non-tariff protectionist policies can be seen as an example of covert economic sanctions.

This subgroup also includes a number of instruments of non-economic sanctions, which, although they are intended only to demonstrate dissatisfaction with certain policies and cause reputational damage (a ban on participation in international sports competitions, on holding cultural events, exclusion from public organizations, etc.).

According to the theory of political markets, business entities direct part of their assets to entrepreneurial activity according to the investment motive (profit), and part - in accordance with the political motive (political rent) to activity in the political market. Political leverage can be a very effective method of generating rents by acquiring revenue rights from the state. For example, through the acquisition of exclusive rights to foreign trade activities and the execution of government orders, as well as through the acquisition of benefits through hidden measures of non-tariff regulation and quotas. For example, even with the introduction of comprehensive sanctions by the UN Security Council, there are a number of exceptions for products that reduce risks of a humanitarian nature (humanitarian aid in food, clothing, medicines, information materials). Market participants who have acquired quotas for

these deliveries may inflate purchase prices. Along with this, sanctions covering oil-producing countries contribute to higher energy prices.

The postulates of economic theory say that the presence of tariff and non-tariff protectionist restrictions lead to net economic losses of society, or losses of "dead weight". This applies to both the economy of the sanctioning country and the recipient country, even if the receiving country does not retaliate. For example, not only Russia suffers losses due to the current regime of sanctions aimed at it, but also the European Union and the United States, which is already an indisputable fact - the only problem is the question of whose losses are greater, especially in the long term. Thus, according to experts from the Austrian Institute for Economic Research (Österreichische Institut für Wirtschaftsforschung, WIFO), Europe is expected to lose 100 billion euros and more than two million jobs from a decrease in exports to Russia. Undoubtedly, the EU countries, where the dependence on exports to the Russian economy is quite large, suffer to a greater extent, and the sanctions losses of the "dead weight" are distributed unevenly. WIFO analysts believe that the continuation of sanctions will cause the German economy to fall by more than 1%, Italy will lose more than 200 thousand jobs and 0.9%, France - almost 150 thousand jobs and 0.5%, and Estonia, as economically the most dependent on Russia, will lose about 16%, and this is in the context of a very moderate growth in the GDP of the European Union.

Along with this, according to the classical theory of markets, there is an effect of redistribution of part of the consumer's surplus from consumers to producers due to an increase in domestic prices under the influence of protectionist barriers. Consumer surplus, as is known, is formed during free trade due to lower world prices, then the consumer receives a kind of gain. Such a result of the redistribution of consumer surplus in favor of the producer due to rising prices in the domestic market is possible just in the countries against which sanctions have been imposed. According to the concept of political rent, the resources of the redistribution effect in favor of producers will be spent on unproductive use, since the political rent seeker will use them to lobby for political decisions, which will be his costs. In our case, this is lobbying for the abolition or, on the contrary, the introduction of economic sanctions. Equilibrium in the search for political rent is reached when the marginal cost is equal to the marginal revenue corresponding to the expected benefits from the establishment of the corresponding political decision. As a result, resources from the redistribution effect in favor of producers will be redirected to the costs of lobbying, which leads to the effect of dispersion of political rent.

In the same way, one can calculate the dispersion of political rent from the imposition of sanctions, which will be used to lobby or buy the votes of supporters of the policy pursued, both for the country imposing sanctions and for the target country. For example, according to The Wall Street Journal in 2014, the Russian gas company “NOVATEK” spent about \$280,000 to counter the decision of the US Senate to tighten sanctions.

Methodologically, it is also expedient to calculate the "amplification effect" and the cumulative impact of various interrelated sanctions instruments. In the theory of international economics, the Jones magnification effect is known, which means disproportionate changes in endogenous economic variables under the influence of changes in exogenous variables. The effect of the amplification effect leads to a higher increase in the income of the owners of factors of production that are intensively used in export industries with an increase in world prices and, on the contrary, increases the losses of owners of factors that are intensively used in import-substituting industries when prices fall in the context of international trade liberalization. In our case, the introduction of sanctions and counter-sanctions restricts international trade and, accordingly, causes a change in prices, with a different effect on industry incomes. The cumulative effect of the imposition of sanctions can also be calculated as a macroeconomic multiplier effect according to Keynesian theory.

CONCLUSION

So, we have reviewed and classified the main types of economic and non-economic sanctions, efficiency factors, the consequences of their introduction, which allows us to draw the following conclusions:

- firstly, non-governmental and intergovernmental organizations have become active subjects of economic sanctions; therefore, it is desirable to actively involve them in solving sanctions problems;

- secondly, it is now more widely believed in the international community that targeted sanctions aimed at leaders, the political elite and those sections of society that are responsible for a particular policy led to less negative humanitarian effects, in contrast to comprehensive sanctions, therefore they are more commonly used. However, targeted sanctions, in our opinion, can have a significant negative macroeconomic effect, since they can be targeted at financial institutions and leading sectors of the economy;

- thirdly, financial sanctions are recognized as more effective than trade sanctions, since they have a minimal short-term impact on foreign trade and the economy of the target country in the short term. But a strong effect in the long run, resulting in a minimal negative short-term humanitarian effect, can hold back economic development in the long run;

- fourthly, the application of the theory of political markets allows us to take into account in more detail the positive and negative effects of the redistribution of political rent when sanctions are introduced;

- fifthly, it is necessary to take into account not only direct losses from the introduction of economic sanctions, but also the transaction costs of making political decisions;

- sixth, when calculating the consequences of sanctions, one should take into account the amplification effect from the entire set of sanctions tools, as well as the elasticity of supply and demand, including import substitution;

- seventhly, non-tariff measures of protectionist policy (for example, phytosanitary barriers) in the form of covert sanctions can be used as instruments of sanctions;

- Eighth, targeted sanctions are not a panacea in foreign policy, and their application also leads to significant economic and humanitarian costs for society.

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