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Economic sanctions in contemporary international relations: new forms of implementation

Summary: The article discusses the application of economic sanctions in the context of current international economic relations which are evolving along with the development of new relations between states, their integration groups, and international economic and financial organisations. The current phase of globalization is unable to meet earlier expectations, as there are more and more disputes arising from conflicts of national interests, and in some cases, as a response to the above, sanctions are being applied.

Most of the research in this area focuses on the legal basis for economic sanctions, while their economic features resulting from the peculiarities of the development of international economic relations are not given sufficient attention. This article addresses the problem of defining sanctions clearly, taking into account their specificity, legal status, the legality of application, and the effectiveness of regulations. Justification and unification of the economic definition of the category of “sanctions” may be a premise for preventing their abuse by individual states pursuing their own interests and may serve the purposes of proper legal interpretations within international organisations, primarily the UN. The authors suggest that the principles of the application of international sanctions should be made more precise in UN and EU regulatory documents. They draw attention to the new characteristics of international economic sanctions, in particular, to attributing protectionist features to these sanctions and using aggressive protectionism by states as a tool to promote national interests in order to achieve a competitive advantage.

Keywords: international economic relations, national interests, foreign trade, restrictive measures, coercive measures, economic sanctions

Sankcje gospodarcze we współczesnych relacjach międzynarodowych: nowe formy wdrażania

Streszczenie: Artykuł omawia stosowanie sankcji gospodarczych w kontekście aktualnych międzynarodowych stosunków gospodarczych, które ewoluują wraz z kształtowaniem się nowych relacji między państwami, ich ugrupowaniami integracyjnymi oraz międzynarodowymi organizacjami gospodarczymi i finansowymi. Współczesna faza globalizacji nie potrafi sprostać wcześniejszym oczekiwaniom, coraz częściej bowiem dochodzi do konfliktów wynikających ze sprzeczności interesów narodowych, na co w niektórych przypadkach reaguje się stosowaniem sankcji.

Większość badań prowadzonych w tym zakresie skupia się na prawnych podstawach sankcji gospodarczych, podczas gdy ich ekonomicznym cechom, wynikającym z osobliwości rozwoju międzynarodowych stosunków gospodarczych, nie poświęca się dostatecznej uwagi. Artykuł podejmuje problem klarownego zdefiniowania sankcji z uwzględnieniem ich specyfiki, statusu prawnego, legalności stosowania oraz skuteczności regulacji. Uzasadnienie i ujednoczenie definicji ekonomicznej kategorii „sankcji” może stać się przesłanką zapobiegania ich nadużywaniu przez poszczególne państwa kierujące się własnymi interesami oraz służyć właściwym interpretacjom prawnym w ramach organizacji międzynarodowych, przede wszystkim ONZ. Autorzy proponują konkretyzację zasad stosowania sankcji międzynarodowych w dokumentach regulacyjnych ONZ i UE. Zwrócono przy tym uwagę na nową charakterystykę międzynarodowych sankcji gospodarczych, w szczególności nadawanie im cech protekcyjnych i wykorzystanie przez państwa agresywnego protekcyjizmu jako narzędzia w promowaniu interesów narodowych w celu osiągnięcia przewagi konkurencyjnej.

Słowa kluczowe: międzynarodowe stosunki gospodarcze, interesy narodowe, handel zagraniczny, środki ograniczające, środki przymusu, sankcje gospodarcze

JEL: F13, F51, K33, K20

The analysis of scientific publications concerning economic sanctions in the system of international relations gives grounds to assert that certain aspects are theoretically insufficiently represented, but could justify appropriate practical actions in the foreign economic activity. Some parts of the theory ignore the interdisciplinary nature of economic sanctions, allow for different interpretations of their essence to be used by subjects at different levels of international relations, and do not sufficiently justify and define acceptable and unacceptable areas of application in accordance with WTO norms and rules for foreign trade relations of countries. For example, in the Ukrainian professional literature, too little attention is paid to sanctions in the foreign economic sphere.

The processes of globalization of the system of World Economic Relations and internationalization of economic relations, contrary to expectations, did not protect countries from intense competition in the foreign economic sphere, in terms of access to raw materials and energy resources, and competition for markets for products and services. As a result, conflicts periodically arise at the level of national interests between states – the subjects of international economic relations. The resolution of such conflicts should be ensured both by the participants of the process themselves (on a bilateral or multilateral basis) and by the relevant international organizations with the necessary powers. These are, first of all, the UN structures (Security Council, Economic and Social Council, International Court of Justice), the World Trade Organization, the European Commission, and other international and regional organizations.

It should be noted that under the current conditions of generally accepted agreements, mutual consideration of interests is more desirable than ever in the sphere of world trade and economic relations, which at the current stage are subject to unprecedented politicization. At the same time, the values of free trade become hostages of trade wars and other forms of unfair competition. In particular, in recent decades,

sanctions applied to certain countries have begun to play an increasingly significant role in the system of international economic relations. The motives for applying sanctions, including economic ones, can depend on many factors and pursue various goals, primarily political ones. In most cases, exactly political goals are achieved by applying economic sanctions. At the same time, both the category of “sanctions” and the mechanism of sanctions in the sphere of international activity basically combine regulatory, political, and economic components, creating the interdisciplinary nature of sanctions in theoretical terms.

Since precisely international economic sanctions and their features are the subjects of attention in this case, at the present stage it is necessary to consider only this important segment. A clear, logical, and transparent mechanism for a practical application requires that the very concept of “sanctions” be justified and unified. The modern terminology in the sphere of international legal relations interprets the Latin word “sanctions” as “a measure of influence (economic, political, military) exerted on a state that does not comply with international agreements”. Thus, sanctions are measures of forced external influence on relevant subjects of international relations to achieve the desired goals. The essence of the problem here is that the modern practice of international economic relations uses a whole set of measures of such coercive influence. Some of them are used post-factum (after international legal norms are violated), others – before possible violations are committed, that is, they are preventive. Economic measures of coercive influence include various types of trade restrictions in the form of direct and indirect actions – protective and anti-dumping measures to protect the domestic market, embargoes, economic boycotts, countermeasures, and the sanctions themselves (Zygankova, 2003, p. 217, 239; Schneider, 1999, p. 35, 38, 39, 41; Malskyj, Jagolnyk, 2005, p. 144, 194). In connection with this practice, researchers draw attention to certain problems in the professional literature when interpreting the concepts of “sanctions” and “countermeasures” (Ryszka, 2008, p. 28-29; Borodajenko, 2018). The prevailing position is that sanctions can be applied by individual states, groups of states, or international organizations, primarily the UN. At the same time, in any case, international sanctions are coercive measures imposed by the UN or individual states or groups of states (with the knowledge of the UN) in relation to other states that violate international law. In principle, the purpose of international sanctions (restrictive measures) is to change the policies and actions of the relevant states, legal entities, or individuals.

The completeness of the definition of “international economic sanctions” is important not only for theoretical reasons. It forms the basis for a clear classification of economic sanctions, justification of their principles, methods, forms and limits of application. It should be taken into account that terminological uncertainty can serve some states as the basis for abuse in resolving international disputes to their advantage (Tshubarev, 2009, p. 206-207). The practice shows that the free interpretation of international sanctions by subjects, the lack of clarity in these positions leads to their extra-territoriality and serves as the basis for the emergence of new international disputes in foreign trade relations.

At the same time, the postulate that the legitimacy of economic sanctions is or should be ensured by both main principles of international law and regulatory documents of the major international organizations, primarily the UN, as well as the WTO, regardless of the grounds for their application, cannot be disputed. However, the first theoretical problem in the practical sphere of international relations, oddly enough,

appears at this level. The fact is that the concept of “sanctions” does not exist at all in the UN Charter, which, in particular, refers to the use of *preventive or enforcement action* (Article 2, Article 5) by the organization itself or the Security Council against relevant states. Simultaneously, the Security Council is authorized to decide *what measures not involving the use of armed force are to be employed to give effect to its decisions*, and it may call upon the Members of the United Nations to apply such measures. It is also explained therein that *these (measures) may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraph, radio, and other means of communication, and the severance of diplomatic relations* (Article 41). Furthermore, Article 42 of the UN Charter ascertains that if the measures mentioned above are insufficient, the Security Council may take such measures of enforcement as *demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations* (UN Charter). However, already in the UN Millennium Declaration adopted by General Assembly Resolution 55/2 of September 8, 2000 (paragraph 9), it is noted that the UN resolves: *to minimize the adverse effects of United Nations economic sanctions on innocent populations, to subject such sanctions regimes to regular reviews and to eliminate the adverse effects of sanctions on third parties* (UN Millennium Declaration, 2000). As can be seen, there is a regulatory and definitional inconsistency in UN normative documents: the UN Charter does not provide for sanctions, and the Declaration refers to their adoption, revision, or minimization.

Consideration of international economic sanctions may be sufficient if the regulatory and normative requirements of the WTO are taken into account. However, questions also arise here, since the Marrakech Agreement (1994) on the establishment of the World Trade Organization does not even mention the very concept of “sanctions”. This position can be interpreted as meaning that the main international organization regulating trade relations in the world economic system does not provide for sanctions to influence certain participants in the international market. This inconsistency shows that the application of sanctions is contrary to WTO norms and rules.

Both in theory and in regulatory documents of international organizations, primarily the UN and the European Union, the issue of the principles of international sanctions and the limits of reasons for their application remains open. The conducted research and analysis give us grounds to formulate the basic principles of the system of international economic sanctions. In our opinion, such principles are:

- 1) compliance with the norms of international law;
- 2) clear validity of the grounds for applying sanctions;
- 3) transparency;
- 4) one-time application;
- 5) absence of double standards in determining the objects of sanctions;
- 6) inadmissibility of using sanctions for protectionist purposes and to eliminate competitors.

We understand the one-time nature of sanctions as the action based on the formula: one basis for sanctions – one sanction or one group of them applied once at a time (per one reason). We consider the inadmissibility of using sanctions for protectionist purposes and as a method of uncompetitive contestation to be a reliable basis for preventing from the sanctions being imposed by their initiator against the object of sanctions for protectionist purposes as an instrument of unfair competition.

The above shows that the issue of clarifying the regulatory framework of the UN and other international organizations regarding the unified interpretation of the definition of international economic sanctions and determining the permissible limits of their application based on relevant principles remains valid.

It should be noted that in recent years, the issue of sanctions in international relations, primarily economic ones, has become increasingly vital. At the same time, the economic interests of states may give way to other national interests.

However, we should not forget that the level of effectiveness of sanctions is directly dependent on the clarity of their definition, the accuracy of classification, the validity and specification of criteria for implementation, the reasoned gradation of the possibilities of influence, and the anticipation and preliminary assessment of the level of risks for all subjects of the process from the moment of their application.

As mentioned above, the UN Charter does not refer to sanctions; if necessary, it provides for the application of temporary or long-term measures of influence or coercion against the relevant parties, which can be taken by the Security Council. Similarly, in the European Union, its regulatory decisions provide for the application of appropriate measures of influence on the participants of international economic relations with the participation of the EU Member States and third countries (EU-Sanktionen). However, in the EU normative and regulatory documents restrictive measures are classified as sanctions. Herein, it should be noted that it is necessary to clearly define the goals of applying restrictive measures in legislative acts based on decisions of the UN Security Council (Council of the EU, 2004). At the same time, such mechanisms of influence are used by individual states, and not in relation to the implementation or non-fulfilment of bilateral treaties or commercial agreements by their partners, but based on the possible or potential impact on their own national interests. Such measures in the system of international relations are considered sanctions, the introduction of which has a political or economic basis. For example, in Ukraine, the law *on sanctions states that in order to protect national interests special economic and other restrictive measures (hereinafter referred to as sanctions) can be applied* (Zakon Ukrainy, 2014).

In Poland, the Ministry of Foreign Affairs considers that *international sanctions, which are called restrictive measures, are one of the tools for influencing entities whose activities violate international law. (...) Sanctions can be directed against a number of third countries, individuals or groups thereof* (Sankcje międzynarodowe, 2020).

In the modern practice of international relations, sanctions are often perceived as an appropriate strategy for achieving the goals set, and in some cases, there is a false opinion that the application of sanctions alone is sufficient to solve complex problems. However, from the point of view of practical implementation, it is advisable to consider sanctions as a special tool which, in combination with others, can form the basis for a full-fledged strategy. In this regard, the specialised Swiss publication – CSS, in its editorial article *Economic sanctions: a miracle weapon or a bomb that did not explode*, notes that: *(...) sanctions will remain an important component of the foreign and security policy tools of the commonwealth of states* (CSS, 2010, p. 1). The attention is focused on the fact that economic sanctions pursue political goals using economic means. For this purpose, normal trade and financial relations are interrupted, and economic sanctions can be defined as discriminatory restrictions on imports or exports, technologies, capital, or services against one country or a group of countries in order to persuade the subject of sanctions to behave in a certain way for political reasons (CSS, 2010, p. 1).

In the modern practice of international relations, the EU applies the following types of sanctions:

- diplomatic sanctions (expulsion of diplomats, suspension of diplomatic relations, suspension of official visits);
- trade sanctions (general sanctions related to business activities);
- financial sanctions (freezing of assets or economic resources, ban on financial transactions, restrictions on export loans or investments);
- military sanctions (arms embargo);
- transport restrictions (restrictions on land, air, or sea communication);
- communication sanctions (restriction of access to mail, radio, and television);
- sports and cultural sanctions;
- restriction of entry to the territory of the country;
- suspension of cooperation with a third country.

Economic and financial sanctions of the EU include bans on:

- exports and imports (trade sanctions against specific goods, such as technological equipment, oil, diamonds);
- the provision of specific services (brokerage, financial, technical assistance);
- flights, investments, payments and capital movements or cancellation of tariff preferences.

Restrictive economic and financial measures, including targeted financial sanctions, should be applied by all legal entities and individuals engaged in business activities in the EU, including citizens of non-EU countries. The EU often imposes targeted financial sanctions against specific individuals, groups, or organizations responsible for policies or other actions.

The increasing frequency and number of sanctions applied give grounds for concluding that their nature and purpose gradually change. The conclusions on this issue by EU experts are not groundless: *recently, there have even been too many international sanctions. It is impossible not to notice that today sanctions are coming to the fore in international politics and replacing traditional diplomacy. Herewith sanctions are endowed with protectionist, deglobalization and regulatory features, serve geopolitics and primarily affect the economy. Nevertheless, we must not forget that sanctions are essentially a means of economic war* (Sušová-Salminen, 2017).

According to the analysis of trade and economic relations of the main players in the world market (the United States, China, countries of the EU, East and Southeast Asia, India), in part of their intended purpose, sanctions are increasingly acting as protective measures and tools to promote the national interests of specific states, that is, they acquire purely protectionist features in achieving competitive advantages. In these processes, the United States of America is at the forefront. In the *National Security Strategy of the USA*, economic sanctions are among the most influential instruments of economic diplomacy, in particular, it is explicitly noted that: *economic tools – including sanctions, anti-money-laundering, and anti-corruption measures, and enforcement actions – can be important parts of broader strategies to deter, coerce, and constrain adversaries. (...) Multilateral economic pressure is often more effective because it limits the ability of targeted states to circumvent measures and conveys united resolve* (National Security Strategy of the USA, 2017).

It should be noted that one of the challenges of our time for the world economy is the interest in using these instruments of economic influence, which are formed de-

pending on the dynamics of the positions of the leading states in the world markets.

Among the indicators whose dynamics can affect the use of non-standard instruments of pressure on competitors, are, in particular, the following:

- the share of the country's GDP in its total world volumes;
- the country's GDP growth rate;
- the export dependence of the country's GDP;
- the exports and foreign trade balance;
- the state of foreign trade relations between the main players in the world market.

Table 1 The share of the country's GDP in total world volumes (in %)

Year	USA	China
1980	23.5	2.6
2000	31.0	3.4
2005	28.2	4.5
2015	24.0	14.9
2018	23.8	16.1
2019	24.4	16.4

Calculations by the authors based on data UNCTAD, 2006, 2017, 2019.

Table 2 The share of China, Germany and the USA in global export (in %)

	USA	Germany	China
2000	12.1	8.5	3.9
2018	8.6	8.0	12.5

Calculations by the authors based on World Bank data (wits.worldbank.org), 2019.

Given the size and share in the global GDP, the first positions belong to the United States and China – see table 1. The share of Germany, France, Canada, and the United Kingdom in the global GDP volumes is decreasing. A similar situation is in the dynamics of exports – see table 2.

The given data indicate that the position of China is strengthening with a simultaneous weakening of the position of the United States (Kolodko 2020a, 2020b). Accordingly, relations between the countries in the field of foreign trade are becoming more strained, and there is a need to find options for using non-standard tools to restore the status quo. The situation is aggravated by the state of bilateral trade relations between the United States and China.

For the period from 2009 to 2018 inclusive, China's share in the negative current account balance of the United States ranged from 69.7% to 92.8% over the years. The negative balance of commodity trade of the USA with China (according to the World Bank) was 77% from imports in 2015 (USD 387.9 billion), in 2016 – 76% (USD 365.9 billion), in 2017 – 75.3% (USD 396.1 billion), and in 2018 – 78.7% (USD 443.1 billion). Of the 229 trading partner countries, the US had a negative trade balance with 112 countries in 2017 and with 104 countries in 2018 (wits.worldbank.org, 2019).

It is clear that in order to equalize the situation and achieve at least a minimum balance in export-import operations, states try to take measures to influence competitors using standard and non-standard measures. Neither side wants to give up its position. Restrictive measures are introduced in the form of increased import duty rates, restrictive quotas are established for trade positions of imports, and relevant regulatory documents are adopted to regulate foreign trade relations. As an example of ensuring national economic interests, the checklist for US ambassadors, adopted by the State De-

partment together with the Department of Commerce, can be referred to, which required the full use of the status and force of pressure on partners in host countries to create new opportunities for American firms. In particular, one of the tasks is to establish the possibility for the American business environment to apply the sanction policy that the US government provides (Ambassador's Checklist for Promoting U.S. Business, 2020).

Based on the conducted research and analysis of regulatory and statistical data, as well as professional publications, there are grounds for concluding that at the present stage of development of the world economic system and international economic relations, economic sanctions take new forms of expression and a new target direction at the level of interstate relations. Their characteristic feature is that economic sanctions in the sphere of international relations begin to emerge in the form of a reaction to those states or subjects where the legal framework of the state that initiated the introduction of sanctions does not apply, that is, they become extraterritorial. Along with the unilateral application of sanctions by individual countries for protectionist purposes in violation of WTO rules and regulations, there is an aspiration among other participants in international markets for similar actions. This becomes the basis for intensifying the use of economic sanctions as an instrument of aggressive protectionism.

Conclusion

The analysis of the problems of economic sanctions in international economic relations has shown that there is a number of aspects that are insufficiently represented theoretically, which make it possible to justify appropriate practical actions in this area. Modern challenges in the activities of subjects of the world economic system introduce new approaches to the application of economic sanctions, affecting the characteristics of the latter.

For a clear, logical, and transparent formation of the mechanism of practical application, it is important to justify and unify the definition of "sanctions", since uncertainty in terminology can serve individual states as the basis for abuse in resolving international disputes to their advantage. The free interpretation of sanctions by relevant states and lack of clarity or vagueness in these positions lead to their extraterritoriality and serves as the basis for the emergence of new international disputes in foreign trade relations.

The issue of clarifying the regulatory framework of international organizations, in particular the United Nations, regarding the unified interpretation of the category of *international economic sanctions* and determining the permissible limits of their application on the basis of relevant principles currently remains valid.

The question of principles of international sanctions and limiting the grounds for their application remains open both in theory and in regulatory documents of international organizations, primarily the UN and the European Union. With reference to the principles of the system of international economic sanctions, they must meet the following:

- compliance with the norms of international law;
- the validity of the grounds for applying sanctions;
- transparency;
- one-time and one-chain application;
- the absence of double standards in determining the objects of sanctions;

- the inadmissibility of using sanctions for protectionist purposes and in order to eliminate competitors.

A characteristic feature of modern international economic relations is that sanctions come to the fore in international politics and displace traditional diplomacy. At the same time, sanctions are endowed with protectionist, deglobalization and regulatory features, serve geopolitics, and primarily affect the economy. Sanctions are increasingly acting as protective measures and tools of promoting national interests of specific states, that is, they are acquiring purely protectionist features in achieving competitive advantages.

It is a feature of economic sanctions in the sphere of international relations that they begin to display themselves in the form of a reaction to those states or subjects where the legal framework of the state that initiated the adoption of sanctions does not apply, that is, they become extraterritorial. Along with the unilateral application of sanctions by individual countries for protectionist purposes in violation of WTO rules and regulations, aspiration among other participants in international markets for similar actions arise. This becomes the basis for intensifying the use of economic sanctions as an instrument of aggressive protectionism.

It is advisable to increase the role of economic diplomacy in the use of sanctions in international economic relations. At the same time, taking into account its tasks in this area, the adoption of necessary measures by the relevant states should be considered to prevent the formation of circumstances in which there will be a threat of falling under the considered restrictive measures and measures of coercive influence, included in the category of *sanctions*.

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