Evolution of Targeted Financial Sanctions - A Perspective

by Tom Dawlings

Significant resources are deployed in the financial services industry in checking terrorist lists and managing filters on payments systems to comply with anti-terrorist financing laws and regulations. It is easy to criticise this international effort as bureaucratic and time-consuming but it is worthwhile considering how much this process has evolved.

International sanctions lists did not start with the 9/11 attacks in New York and Washington in 2001. At that time financial sanctions had been in place continually since August 1990 when they were imposed on Iraq by the United Nations Security Council following the Iraqi invasion of Kuwait. Further mandatory resolutions of the United Nations imposed financial sanctions on Serbia and Montenegro in 1992, Libya in 1993, Haiti in 1994 and Bosnia and Herzegovina in 1994.

These financial sanctions were not against designated targeted names but against all financial assets held by these countries (for Libya, the sale proceeds of oil were exempted from the sanctions). As a result, the sanctions were both a blunt tool and difficult to administer; it was necessary, for example, to determine whether a company might ultimately be controlled by a sanctioned country and to what extent in order to establish whether that company should be the subject of financial sanctions.

This prompted calls for 'smarter' financial sanctions to be targeted only at particular individuals and entities and not everyone or all entities owned and controlled by a particular country or regime. Targeted financial sanctions against Angola (UNITA) were imposed in 1998 and against the Taliban government in Afghanistan in 1999 (Security Council Resolution 1267 remains the basis for the continuing financial sanctions regime against Al Qaida and the Taliban). Additional anti-terrorism measures of the United Nations resulted from the adoption of Security Council Resolution 1373 in September 2001.

In May 2003, with the adoption of Resolution 1483, the residual Iraq sanctions were targeted at the assets held by former government officials including Saddam Hussein, his family and senior members of his regime. All United Nations financial sanctions regimes were then focused at named targets.

The regimes imposed subsequently (against the Democratic Republic of Congo in 2003, Liberia in 2004, Ivory Coast in 2004, Lebanon and Syria in 2005, Sudan in 2006, North Korea in 2006 and Iran in 2006) were also all targeted at particular named individuals and entities.

This was also the case with financial sanctions regimes imposed by the European Union (against the Federal Republic of Yugoslavia and Serbia in 1998, Burma/Myanmar in 2000, Zimbabwe in 2002, International Criminal Tribunal for Former Yugoslavia in 2004, Belarus in 2006 and Comoros in 2008). It was not, therefore, CFT that gave rise to listing names of financial sanctions targets but the desire to make financial sanctions smarter and more effective.

Do these lists work? Yes, but only because more identification information is now published and shared. In the aftermath of the 9/11 attacks, sanctions lists sometimes only identified the name of a suspected terrorist with no further identification information published.

As a result there was justifiable criticism of these lists. Better and fuller information on sanctions targets is now published. Ideally, sufficient information to identify a unique target should be provided to avoid all the work in eliminating 'false positives' (at a minimum this should be full name, date of birth and last known address/country of residence).

Publishing the names of suspected terrorists, however, certainly did assist following the London bombings in July 2005 and the plot to blow up planes that was foiled by the UK authorities in August 2006.

Effective listing should enable assets to be quickly identified and frozen, links to targets determined and those targets successfully excluded from the financial system; thus causing disruption and dismantling of terrorist operations.

World-Check and other commercial risk information services draw on sanctions information published by the United Nations, the European Commission and lists published by various countries, including the US Treasury Office of Foreign Assets Control (OFAC) list identifying the targets of US sanctions, with their myriad other sources to provide information being sought by banks and other financial institutions. This is all helpful information.

What are the continuing problems? These fall into two distinct areas. First operationally, lists need to focus on unique targets for the reasons already mentioned and also because of the potential damage done to people unfortunate enough to have the same or similar names to a listed financial sanctions target.

Lists need to be updated with useful identifier information when this becomes available and published names should be reviewed periodically to ensure there is a continuing need for listing. Making things operationally effective is a two way process. Those involved with financial sanctions at the United Nations, the European Commission, in government and law enforcement need to be aware and responsive to the problems with implementation being encountered by the financial services industry. And the financial services industry, in turn, needs to make sure that implementation difficulties are clearly identified and understood.

The second problem concerns jurisdictional discrepancies between the scope and enforcement of some sanctions regimes. For example, tensions have resulted from the United States imposing wider (unilateral) financial sanctions, notably against Iran, than those agreed by the United Nations.

The same is true regarding US sanctions against Cuba. As a consequence, there are transactions that may legitimately be undertaken in Europe that would normally be prohibited in the United States. This is further complicated because a legitimate transaction in Europe settled in Euros might be an illegal transaction in the United States if settled in US dollars cleared through New York.

The tension stems less from concern about US policy – the US' prohibiting all dealings with Iran is a matter for the US and the scope of the US sanctions is clearly identified by the US OFAC. Because the United Nations has more limited financial sanctions against Iran, there is trade that may legitimately be undertaken by individuals and entities not subject to the US' unilateral sanctions.

If a European bank advised its customer undertaking this legitimate business to settle the transaction in euros rather than US dollars (this to avoid any settlement difficulties), might the bank then be considered to be undermining the US sanctions against Iran? The concern for the bank is the very significant extra-territorial powers of the United States – and the more business that bank does in the US, the greater that concern.

A better understanding of this matter and how the US authorities might react is needed because there is otherwise a danger of legitimate business only being undertaken by those who are potentially wholly unsympathetic to the US objectives or wholly unconcerned about undermining US financial sanctions.

Knowledge of where the US has imposed wider financial sanctions than the United Nations is not the complete answer. There will be difficulties for a non-US bank to advise a customer to not undertake some particular business on the grounds that it is prohibited by US sanctions when that business is not prohibited in the jurisdiction where it is being carried out. That is a much more difficult message for a bank to give than simply advising that the business is now prohibited; potentially too there might be wider consequences.

This is an issue where there needs to be greater understanding between non-US banks and the various US authorities, particularly those (understandably) seeking the widest possible application and effectiveness of US sanctions.

Tom Dawlings is the former Head of the Bank of England's Financial Sanctions Unit, which first introduced a consolidated list of financial sanctions targets in November 2001 (this list continues to be maintained by the Assets Freezing Unit at HM Treasury). He advised policymakers on what was practically achievable with sanctions lists and assets freezing. He now works as an AML/CFT/Financial Sanctions consultant and with the Financial Integrity Network. He can be reached at Tom.Dawlings@btinternet.com.