

agri**business**



Sanctions & Embargoes

Do you know how they work and how they may impact your business?



As an Agribusiness customer it's important to understand your obligations in relation to domestic and international sanctions and embargoes and how they may potentially impact your business.

This information will assist you in understanding:

- **how sanctions and embargoes work; and**
- **your obligations in relation to domestic and international sanctions and embargoes.**

Why is this important to me?

Any infringements on trade in sanctioned or embargoed goods and services or dealings with 'Specially Designated Nationals' (SDN)¹ are serious offences and can result in severe penalties, including seizure of goods, significant fines and even imprisonment.

In addition to these penalties, your transactions and your business could be placed at risk. An infringement of a sanction or embargo could result in confiscation of your payment or freezing of funds which could impact your cash flow. It may also affect your business reputation and impose increased due diligence by regulators, financial institutions and counterparties on your future transactions and/or activities and your ability to operate as a business.

Remember, it's important that you understand how sanctions and embargoes may affect your business before entering into arrangements with offshore providers and/or their agents.

If you're uncertain we recommend you seek independent legal advice.

What is a sanction?

Sanctions are frequently used by governments to implement foreign policy and fight financial crime and terrorist organisations. Sanctions act as a non-violent foreign policy tool designed to influence a country, specific person, legal entity and/or organisation. This is intended to deter activities which may include providing sanctuary for international criminals (such as terrorists); the proliferation of nuclear weapons development and abuses of fundamental human rights.

1. Refer page 6 for definition of Specially Designated Nationals (SDN)

Sanctions affect financial institutions such as NAB and their customers by placing restrictions and controls on the movement of goods, services and money.

These restrictions can include:

- Prohibiting the transfer of funds to and/or from a sanctioned country and/or Specifically Designated Nationals (SDN)¹;
- Freezing the assets of a government, entity, individual and/or resident of a sanctioned country;
- Prohibiting particular types of activities;
- Imposing travel bans; and/or
- Other financial and diplomatic restrictions.

NAB and its customers are legally bound to adhere to sanctions imposed by relevant jurisdictions.

What is an embargo?

An embargo is a unilateral or collective restriction on the import or export of goods, material, capital or services into or from a specific country or group of countries. Embargos are similar to sanctions and are legal barriers to trade.

NAB and its customers are legally bound to adhere to sanctions and embargoes imposed by relevant jurisdictions.

What sort of transaction could place my business at risk of a sanctions and embargo violation?

If you or your business is involved in any of the following transactions you are at risk:

- You make a payment directly to someone who is subject to sanctions or embargoes (SDN)¹.
- You make a payment into an account located in a non-sanctioned country, however, the account holder or the beneficiary is located in a sanctioned country.
- The movement of funds and/or goods in your transaction involves a party who is subject to sanctions or embargoes (for example airlines, banks, shipping vessels and ports).
- You negotiate a contract in USD as a benchmark with the expectation that the funds will be paid in EUR. (If the beneficiary had been paid in USD the transaction would have been captured under US sanctions regulations and not paid.)

Are there different types of sanctions?

Yes, Australia has in place two types of sanctions regimes:

Multi-lateral – adopted by more than one country against another one. These are usually issued by supranational bodies such as the United Nations Security Council (UNSC).

1. Refer page 6 for definition of Specially Designated Nationals (SDN)

Autonomous – adopted by one country against another one. These are usually issued by domestic government bodies such as the USA Office of Foreign Asset and Control (OFAC), Australian Department of Foreign Affairs and Trade (DFAT), USA Office of Foreign Asset and Control (OFAC); and the UK's Her Majesty's Treasury (HMT).

Sanctions can also be targeted rather than being imposed against an entire country. Common examples of targeted sanctions include:

Specially Designated Nationals (SDN)

Sanctioned individuals and entities are commonly known as 'Specially Designated Nationals' (SDNs). This term is used for any individual, group or entity that has been 'listed' by a sanctions issuing authority. SDNs may be individuals or entities such as financial institutions, companies, shipping vessels, ports or airlines and can be located anywhere in the world.

Sanctions authorities designate SDNs for a number of reasons – they may be linked to Human Rights Abuses, Nuclear Proliferation, Supporters of Sanctioned Regimes, Terrorism, Narcotics Trafficking, or even Transnational Criminal Organisations. Entities beneficially owned by or significantly linked to an SDN should also (in most cases) be considered SDNs².

Good, Services and Commodities

Targeted sanctions cover the supply, sale, transfer, maintenance, provision of training etc. of sanctioned goods, services and commodities. This includes funds transfers related to the trade of these goods, services and commodities. Sanctioned items range from the trade of weapons, certain types of rough diamonds, all the way through to the provision of higher education in specific sciences.

Arms Embargoes

Prohibition of the trade of certain weaponry and dual use goods. Dual use goods are products and technologies normally used for civilian purposes but which may have military applications. These items commonly require an export trade licence.

The Sanction and Embargo regimes may be subject to frequent and sometimes sudden change. They can also be imposed at any time and by any country, international organisation or supranational body, and in general the effect is immediate.

Banks, together with all financial institutions, have a duty to ensure they comply with applicable sanction and embargo regimes. If NAB fails to execute its responsibilities under applicable sanction regimes, it could be subject to significant regulatory enforcement action, fines, serious reputation damage and criminal charges in Australia or elsewhere.

NAB may be required to request certain information about the nature of your business transaction and/or activity to clearly ascertain compliance with current sanctions and embargoes regimes.

NAB may not be able to complete your financial transaction if all requested information has not been provided.

Who implements sanctions and embargoes?

Australia

Implementation of UN sanctions and embargoes in Australia is done through the Department of Foreign Affairs and Trade (DFAT). Autonomous Sanctions Act (ASA) was table by parliament in October 2010, and is designed to enable further regulation, and faster implementation, and enforcement of Australia's autonomous sanctions.

European Union

The European Union (EU) implements sanctions and embargoes (commonly referred to as 'restrictive measures' by the EU), under the Common Foreign and Security Policy (CFSP) framework. EU sanctions and embargoes apply to all EU member states.

United Kingdom

Her Majesty's Treasury (HMT) is responsible for the implementation and administration of international financial sanctions and embargoes in effect in the UK.

United Nations

The United Nations Security Council (UNSC) is responsible for implementing United Nations sanctions and embargoes. All member countries under the Charter of the United Nations are obliged to abide by UN Sanctions.

United States

United States Treasury Office of Foreign Assets Control (OFAC) is responsible for administering and enforcing Autonomous US sanctions and embargoes. Recent changes to US sanction and embargo laws (eg. comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA)) have strengthened the regime substantially. Obligations now have far-reaching extra-territorial application and capture non-US based financial institutions and businesses as well as all US citizens and green card holders.

How are sanctions and embargoes enforced in Australia?

Restrictions are implemented through regulations made under the Charter of the United Nations Act 1945 and can apply to:

- any person in Australia;
- any Australian anywhere in the world;
- companies incorporated overseas that are owned or controlled by Australians or persons in Australia; and/or
- any person using an Australian flag vessel or aircraft to transport goods or transact services subject to UN sanctions.

What if I'm paying in US Dollars (USD)?

It is important to also be aware that OFAC strictly enforces US sanctions and embargoes regulations for each business transaction which:

- is in US Dollars (USD);
- involves any US citizen or registered business entity, anywhere in the world;
- involves any goods of US origin (including components);and/or
- involves any business which has US connections (this may be a branch, ownership or a subsidiary).

Some sanction and embargo obligations issued by OFAC may have certain explicit restrictions directed at US citizens, so you must exercise care when considering your business involvement.

If your business activity involves any of the above, US sanctions and embargoes could also apply.

If you think you may be affected you should seek independent legal advice.

What is an example of a sanctions or embargo violation?

Australian Wheat Board (AWB)

Iraq was one of Australia's most lucrative wheat markets, taking one-tenth of our exports by 1999. Under the UN oil-for-food program, it was prohibited to directly pay money to Saddam Hussein's regime. Instead, money from Iraq's oil sales was kept in a UN administered account and was used to pay for wheat and other food supplies. However, payments for AWB wheat were found to have been inflated and surplus funds ultimately paid to the Iraqi government providing them with access to US dollars.

AWB was found to be responsible for selling Australia's wheat at inflated prices and involved in sanctions violations by paying illegal kickbacks to Saddam Hussein's regime.

The scandal resulted in international condemnation and litigation. It is believed that Australia lost almost all of its lucrative wheat market in Iraq to the US following the scandal. AWB agreed to pay \$39.5 million to more than one thousand aggrieved institutional and retail investors. The crisis brought about a significant loss of support for the AWB's monopoly power over the sale of Australian wheat. The AWB share price continued to suffer and the company was sold in December 2010 and delisted from the Australian Securities Exchange (ASX).

What else should I look for?

There are a number of 'red flags' which may indicate further investigation is required before entering into a proposed transaction.

Lack of information – if counterparty fails to provide you with information about the shareholders or owners of a company.

Diversion countries – certain countries are known to be used as transshipment destinations prior to cargo being delivered to a sanctioned country. Ask yourself if the goods are of the usual type to go to that country. If not investigate further, especially when goods are being delivered in close proximity to a country that is subject to wide international sanctions.

Contractual documents – are Bills of Lading or transactional documents unmarked or to the order of the counterparty? It is important to check contractual documents to ensure that they don't list a sanctioned or embargoed person and/or entity.

Remember that you may be dealing with someone who has a vested interest in the transaction. Take care not to accept advice from any individual or their agent who is not qualified to provide it – their advice may be incorrect.

Can I get a licence or permit to carry out an activity?

Licences and permits are often available and/or required but these can be complex, so legal advice is recommended. DFAT may only provide clearance for Australian jurisdiction and currency, so be aware that this may not cover all sanctions.

(DFAT will not provide legal advice as this must be independent, so it is recommended you seek guidance from a sanctions specialist.)

Key points to remember:

- Sanctions refer to economic coercive measures taken by one or more countries towards another country, specific person or legal entity organisation.
- An embargo is a unilateral or collective restriction on the import or export of goods, material, capital or services into or from a specific country or group of countries.
- The sanctions and embargoes environment is complex, volatile and dynamic with international legislation subject to change without notice.
- Sanctions and embargoes do not only affect banks. Everyone must ensure they meet these requirements. Governments regularly take action against exporters, importers and trading companies.
- Exporters must also be aware of export regulations which may fall under a sanctioned or embargoed regime and are separately set out.
- Remember, it's not just the Australian government's sanctions and embargoes regime you need to understand – any other regimes may also apply (e.g. if you invoice, receive or negotiate a payment in USD then US sanctions could also apply).
- Obtain independent legal advice on all sanctions regimes that may impact your intended business.
- Ensure you have the necessary authorisations and/or licence/s which may be required to facilitate the intended transaction.

- Keep up to date with international developments by reading media reports and accessing relevant websites.
- Where appropriate, develop your own internal expertise in the application of international sanctions (this may be prudent for industries where the threat of sanctions is higher e.g. petroleum, energy etc.).
- Speak to your NAB Agribusiness Banker to understand how we can assist you in managing the complexities of overseas trade. Advise your Banker immediately if there are any changes in your business activity.



Please talk to your local agribusiness banker about how these Sanctions and Embargoes may effect your agribusiness.

For more information call **13 10 12**, visit **nab.com.au** or visit us in store.



Hearing impaired customers with telephone typewriter can contact us on **1300 363 647**.

Important: The information contained in this brochure is general in nature and has been prepared by National Australia Bank Limited (NAB) to assist its Agribusiness customers in understanding sanctions and embargos. It is not intended to act as advice nor does it purport to contain all matters relevant to your circumstances or any specific transaction. As the environment relating to sanctions and embargos is dynamic and evolving this information is subject to change without notice. NAB is not under any duty to update or correct it. All information should be checked for accuracy, currency and completeness. Current information can be obtained from the Department of Foreign Affairs and Trade website www.dfat.gov.au and Department of Defence website www.defence.gov.au/deco/embargos.htm. If sanctions or embargo issues arise in your business NAB recommends that you obtain independent legal advice. ©2013 National Australia Bank Limited ABN 12 004 044 937 AFSL and Australian Credit Licence 230686 A103453-0713