

### One hundred years ago...

In October 1917, the U.S. enacted the Trading With the Enemy Act (“TWEA”) authorizing the President, during time of war, to seize property within the jurisdiction of the U.S. in which any foreign country or national thereof has an interest. Pursuant to this law, President Wilson created the Office of the Alien Property Custodian to administer the assets seized under TWEA. The creation of a government agency employing hundreds of people to oversee this new sanctions law and implement specific programs to seize the assets and regulate the dealings in property subject to the act ushered in the modern era of sanctions compliance. Today’s U.S. Office of Foreign Assets Control is the direct descendant of the Office of the Alien Property Custodian and administers sanctions authorities with a direct lineage to TWEA.

While the creation of a government agency dedicated to the administration of economic sanctions has recently celebrated its 100th anniversary, the use of sanctions as a tool of foreign policy is actually ancient. Sun Tzu’s philosophy of warfare in the 5th C. BC reflects many of the concepts underpinning the idea of sanctions - how to use non-military forces like economic power and incentives to defeat an enemy’s will to fight. A century later, in 432 BC, Pericles is credited with the first use of economic sanctions in issuing the “Megarian decree” imposing a set of economic sanctions levied by the Athenian Empire upon Megara shortly before the outbreak of the Peloponnesian War. They apparently didn’t work to prevent the conflict. That’s a frequent criticism of sanctions - they’re often seen as ineffective. But the sustained use of sanctions spanning more than two millennia suggests otherwise.

### I’m often asked with considerable scepticism: do sanctions actually work?

It’s a fascinating question, for which there are many perspectives, best debated over a bottle of wine. The answer of course depends on what you’re trying to accomplish. What is clear, however, is the way governments have thought about this question and the ways in which sanctions have been employed and implemented have changed dramatically over time.

The history of sanctions through to the enactment of TWEA and the creation of the [Office of the Alien Property Custodian](#) reveals sanctions a tool of warfare. TWEA was passed to confiscate property from anyone whose actions might be considered a possible threat to the U.S. effort in World War I. The U.S. Office of Alien Property Custodian was set up to confiscate the property and businesses of German immigrants as well as property and businesses in the U.S. owned by German interests, such as the [Bayer](#) chemical company. According to one historian, the U.S. used TWEA to confiscate half a billion dollars of private property during WWI. Similar to the Megarian decree, there’s little indication the employment of sanctions had much practical impact on the conduct or outcome of the war. Indeed, the U.K. had enacted a similar law at the beginning of the war in 1914, which also did little to hasten the war’s end.

But, they did prove popular and in the lead-up to WWII, the use of economic sanctions to embargo trade to isolate economic resources from hostile countries was well advanced. In one example, during the late 1930’s, the U.S. employed sanctions authorities to deprive Japan of necessary fuel. These actions apparently had a significant impact on Japan’s ambitions. The impact of the embargo forced Japan to use hostile action to physically seize needed resources, and the U.S. naval presence in the Pacific was seen by Japan as a threat to their access to these resources. Some commentary suggests this use of sanctions against Japan may have provoked the attack on the U.S. fleet in Pearl Harbor, speeding the U.S. entry into the war, rather than serving as a deterrent.

Through this history and until the Cold War sanctions were inherently military in nature and intended as part of the conduct of armed hostilities. While the concept of a “moral embargo” was first articulated during WWII, in which the U.S. adopted trade restrictions against Japan as an expression of moral outrage against the Japanese bombing of civilians in mainland China in the late 1930s, the authorities under TWEA were specifically for wartime and intentionally hostile and provocative. During the Cold War, however, sanctions became distinct from armed hostilities. With the US Export Control Act and subsequent related trade embargos against the Soviet Bloc starting in the late 1940s the central focus of sanctions was to restrict trade as a formal means to censure the actions of other governments and express official condemnation as a substitute to war rather than a part of it.

One of the clearest examples of the use of sanctions primarily as an expression of official policy and punishment rather than a form of warfare is the continuing U.S. embargo against Cuba. Although the sanctions were initially enacted as part of the short-lived armed hostilities between the U.S. and Cuba, in the 53 years since the enactment, they have, arguably, served solely as a resilient expression of U.S. policy, divorced from any actual fighting and seemingly without any effective impact in coercing a change in Cuba’s commitment to communism.

## Modern sanctions turn 100 Reflections by Stevenson Munro, Global Head, FCC, Sanctions Compliance

By the mid-1970s this concept of sanctions as a tool for a broad set of policy objectives beyond mere military objectives was codified in the U.S. International Emergencies Economic Powers Act (“IEEPA”), which created the legal authorizations to use economic sanctions outside of war and is now the primary legal authority for most U.S. modern sanctions regimes. IEEPA’s main focus is using the power of the U.S. economy as a coercive force for any U.S. foreign policy deemed by the President as a national emergency. Those policy objectives cut across a range of issues from human rights, narcotics and transnational crime, WMD proliferation, to targeting rogue governments acting outside the norms of international law, and terrorism. Depending on the program and the policy objectives and practicalities of implementation, these programs contain a wide mix of coercive measures and those meant solely as a statement of moral outrage. Indeed, a survey of the currently intact U.S. sanctions suggests the primary purpose of approximately a half-dozen sanctions program is to target a broad range of transnational criminal activity, such as narcotics trafficking, cyber crimes, and terrorism, as opposed to its use as a form of coercive foreign policy.

The use of sanctions as an official “moral” expression has also been adopted by the U.N. Security Council on the international scale. As one example, the U.N. Security Council first imposed economic sanctions in 1966 on Rhodesia following the unilateral declaration of independence by the white minority regime. The sanctions, initially imposed by Britain and subsequently the UN, were meant to cripple the country economically and thus force the minority government to step down. The U.N. imposed a ban on selling petroleum products and military hardware to Rhodesian regime; and on the purchase of Rhodesian tobacco, metals and agricultural goods. The sanctions forced Rhodesia to ration petrol and reduced tobacco exports to a trickle, which made commercial farmers turn to maize as a crop they could market at home. Ironically, as maize meal became plentiful and cheap, and Rhodesia was able to trade via South Africa, Angola and Mozambique, the economy and population benefited.

The Cuban and the Rhodesian examples evidence another common experience: sanctions inevitably create unintended and unforeseen consequences that complicate, frustrate, and sometimes undermine their very purpose. See, for example, the U.N.’s Oil for Food Programme, which was created to address the unintended consequences of civilian suffering caused by the United Nations’ imposition of [comprehensive sanctions on Iraq](#) following Iraq’s invasion of [Kuwait](#) in August 1990. However, this attempt to redirect the sanctions toward the Iraqi regime, while well intentioned, was itself undermined by widespread corruption and abuse threatening the legitimacy of the U.N.’s entire program.

The lessons from these unintended collateral consequences motivates today’s inclination toward crafting “smarter” and targeted sanctions programs meant to isolate and focus the impact toward the entities, persons, or industrial sectors where the impact is predicted to be greatest while limiting unintended collateral consequences. The theory makes sense, but the practical implementation of nuanced rules creates a compliance reality that is far more complex and difficult to implement, which can limit the intended impact.

Similarly, recent experience in sanctions implementation has resulted in a trend toward a global adoption of minimum standards and voluntarily importing prohibitions into companies and into jurisdictions where they are not legally applicable. While much of this was the result of some spectacular compliance failures that introduced violations from one jurisdiction to another resulting in serious enforcement consequences, it’s also an acknowledgment of the seriousness of the underlying issues and risks that motivate the creation of the sanctions, divorced from any political objective. Many organizations across the globe use sanctions lists promulgated by various authorities and international bodies as part of their internal risk management and as a guide for their own internal culture and business decisions. This globalization, whether by formal multinational action or through voluntary adoption by global companies, necessarily strengthens the impact a particular sanctions program can have to effect the desired change or outcome. Despite more than 20 years of U.S. sanctions on Iran, negotiating the nuclear deal between the P5+1 countries and Iran came about within 5 years of E.U. and U.S. coordinated, multi-national sanctions and numerous companies and banks implementing voluntary global sanctions programs that significantly enhanced Iran’s economic isolation.

### So, do they work?

It depends on your perspective and objective and what you define as success. In many cases, success is limited to the statement made by the sanctions - the need to take some action short of actual warfare, especially where some action is necessary but armed conflict is untenable. Where there is a coercive element to the sanctions, success often requires the adoption of a long-view, the ability to adjust the approach to address the unforeseen consequences, and continuously increasing the pressure through multinational action. And, once sanctions are imposed, they become quite sticky. Even if they prove successful and they are subsequently lifted, for many reasons, it’s often difficult for trade and engagement to return. But, however you answer this question, it is certain that sanctions are here to stay and will likely only increase in use.

### Further reading

- Kern, Alexander (2009) ‘Economic Sanctions Law and Public Policy’ (Palgrave Macmillan)
- House of Lords, Select Committee on Economic Affairs, 2<sup>nd</sup> Report of Session 2006-7, ‘[The Impact of Economic Sanctions](#)’ (9 May 2007), Volume 1
- Thomas, Biersteker et al. (2013) ‘[The Effectiveness of United Nations Targeted Sanctions](#)’, The Targeted Sanctions Consortium
- United Nations Security Council Briefing on 3 August 2017 on ‘[Enhancing the Effectiveness of UN Sanctions](#)’ by Assistant Secretary-General Tayé-Brook Zerihoun
- Gross, Daniel A. (28 July 2014) ‘[The U.S. Confiscated Half a Billion Dollars in Private Property During WWII: America’s home front was the site of internment, deportation, and vast property seizure](#)’. Smithsonian. Retrieved 6 August 2014