

How do economic sanctions in Russia impact on the Swiss commodities trading industry?

**Bachelor Project submitted for the obtention of the
Bachelor of Science HES in International Business Administration**

by

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Declaration

This Bachelor Project is submitted as part of the final examination requirements of the Haute école de gestion de Genève, for the Bachelor of Science HES-SO in International Business Management.

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Geneva , October 10th, 2016

Ruslan KHOJMAN

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Executive Summary

The purpose of this research is to identify and assess how the economic sanctions imposed by the United States (“US”) and the European Union (“EU”) against Russia impacted the commodity trading sector globally and particularly in Switzerland. To quantify the issue through public opinion, a survey was conducted with natural expected results saying that sanctions do have a negative effect on Russia but no effect in Switzerland. Through interviews with professionals in the industry, the issue was then qualitatively assessed and compared and contrasted to certain academic papers. The results expected were only partially satisfied. The main conclusion is that economic measures against Russia partly changed the way companies are doing business with the country, and they are, essentially, included in the global transformation of the commodity trading industry. Against a backdrop of falling commodities prices, the inability of leading countries to stimulate their economies, a slowdown in emerging markets and a much stronger compliance pressures are some factors that have affected the commodity trading business in Switzerland. The sector was split into three categories and each one of them reacted differently. The banks and financial institutions reacted defensively, closing Russian client’s accounts or reducing their financial exposure. Compliance and Legal departments became an increasing stakeholder in the decision making process and due diligence, relating to Russian origin commodities, which has grown exponentially over the past three years. It resulted in a substantial burden for the small and medium sized traders. It is the group that suffered the most from the sanctions program. The unforeseen aspect was the creation of new business opportunities especially for the major trading companies. Each firm faced the macro situation according to their micro reality; indebtedness, change in the strategy, management of the reputational risk. As for Russia: *“they produced, they produce and they will produce”* quoted one European trader. The key to future success for companies is how fast they will adapt to new conditions and at what cost.

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1 Introduction

The complexity of our world is increasing by many means. The population is growing and more demanding for goods and services. The improvement of technology has allowed humanity to operate faster and more efficiently. The drawback is the significant growth in new regulations that supports bureaucracy and slowness in proceedings.

2014 and 2015 were very interesting periods for the subject of this study. Firstly, the instability on financial and commodities markets that led to macro-economic challenges in many countries, especially those whose economies are based upon revenues from natural resources. Secondly, the partial lifting of Iranian sanctions, allowing this major oil and gas producer to increase its extraction and exports of crude oil and gas. Then followed the conflict in Ukraine that pushed many governments to take measures to counter the annexation of Crimea. The sanctions were in principle, two-fold: direct designation of an individual or a company and the broader based Sectoral Sanctions which impacted individuals and many companies operating in Russia and abroad.. The country is commodity dependent and in need of foreign capital to develop its economy. Both, commodity and financial sectors were targeted by sanctions.

The Lake Geneva area, where 35% of global crude oil is traded and specifically where 75% of Russian crude oil and oil products were traded, had already sensed and recognized changes in commodities trading business and tried to adapt to new market conditions.

In the first place a survey was conducted to gauge public opinion on the subject and eventually to determine a general strategy for further analysis. The following part is composed of four sections. The first part provides an overview of the international status-quo and what led to the current situation. The second part analyzes sanctions from each of the major sanction issuers perspective. The third section focuses on the main issue of the research: the sanction's impact. The subject will approach banking and trading sectors, where the latter is divided in majors trading companies and small independent traders.

2 Background

Since the collapse of the Soviet Union in 1991 and the declarations of newly independent states such as the Baltic republics, the Russian Federation's relationships with its neighbors were tense. Various conflicts emerged and the Russian government

always disliked when a former Soviet Union Republic chose to leave the zone of strong Russian influence. It is exactly what happened to Ukraine.

Ukraine was always considered in Russia as an inseparable nation. The culture, the language, a common history were factors that witnessed this close relationship. The latter was built on common interest, and both countries were part of the Commonwealth of Independent States Free Trade Area (CISFTA). The idea is the same that drove the creation of the European Economic Community (EEC).

In 2011 according to the European Parliament News (European Parliament's Press Service 2016), the Association Agreement was initiated between the European Union and Ukraine. The goal was to improve relations between neighbors and mostly to tighten trade relationships. This Association was very badly perceived by the Russian Federation because it would have entered into a conflict of interest from the Ukrainian side. As a matter of fact, Russia and the European Union impose important custom duties toward each other and Russia also acts in the interest's frame of CISFTA. By accepting the Association Agreement, Ukraine would have free trade possibility with the European Union as well as with CISFTA's members, which contradicts the idea free trade areas. In other words having free trade agreements with competing between them partners is unfair competition because it allows companies to circumvent custom duties put in place by each party.

The Russian government put pressure in 2013 on Ukrainian authorities, especially on former pro-Russian President Viktor Yanukovich and the agreement failed at the end of that year. The European Parliament's Press Service also quotes many facts that go for a potential free trade area between the European Union and Ukraine. 31% of overall trade was made with EU against 19.9% with Russian Federation, and Ukrainian exporters would have saved €487 million per year.

Following presidential refusal to sign the agreement many deadly protests took place at the Independence Square called Maidan and led to a revolution. Many national and extra-national powers were involved resulting in the separatism of the eastern part of the country and the Crimean crisis.

The Crimean Peninsula is a very strategic place in the Black Sea and many Russian naval ports are based within its territory. The Russian government undertook a peaceful invasion (without firing a single shot) and organized in March 2014 a referendum to justify the annexation of this territory into the Russian Federation. This intervention was the turning point in the relations between Western countries led by the

United States, the European Union, and Russia. The International coalition, led by the USA, condemned the action and launched a succession of diplomatic and economic sanctions.

3 Type of sanctions

In international law, there is no precise definition of what a sanction is. Many specialists give various descriptions of these measures and it is commonly understood and accepted today that it has to follow the principle of non-intervention. (United Nations 1974) Armed interference is considered as a last resort to avoid human losses, heavy structural damages and high costs for the intervention. However, this statement is criticised because no definition was given of that principle and examples such as Cuba's embargo put in place by U.S government in 1960 and Iran's sanction program in 1984 are so invasive that in 1990s the UN Security Council ("UNSC") has reconsidered the type of sanctions.

The international lawyer Jean Combacau defines sanctions as "*measures taken by a state acting alone or jointly with others in reply to the behavior of another state, which, it maintains, is contrary to the international law*" (Combacau, 1992, p. 313). This definition was completed by Panos Koutrakos, professor of European Union Law at City University in London, by giving the aim of the action; "*the exercise of pressure by one state or coalition of states to produce a change in the political behaviour of another state or group of states*" (Koutrakos, 2001, p. 49). The political aspect is essential in the sense that even sanctions on individuals contain a political side that the government under pressure has to consider. However, the goal of such measures is concrete: to change behavior and to prevent the undesirable behavior of a state or to serve as an example to avoid.

The international community adopts different types of sanctions according to the situation it has to deal with. These can be divided into four main categories: diplomatic, military, economic and sports sanctions.

Sports sanctions are less invasive and more symbolic. The government or a group of states shows that they strongly disagree with the behavior of the punished state. The recent ban of a part of Russian Olympic team is an example as well as the boycott of Olympic games by a group of countries, led by the United States, protesting the Soviet invasion of Afghanistan.

Diplomatic sanctions are also taken very seriously and consist of cutting dialogue with the targeted state by canceling official visits, closing embassies, withdrawing diplomatic team but also making citizens' movements of targeted state harder by the requirement to obtain visas. In 2015, Venezuela implemented visas for US citizens. Maduro's government was accusing the US government of political destabilization.

Since military intervention is taken as a last resort, military sanctions mostly comprise arms embargo's. For example, selling weapons to China is prohibited by the European Union and the United States since the violent repression of the Tiananmen Square protests. (European Commission 2016).

UN economic sanctions can be defined as *“coercive foreign policy action[s] [that] intentionally suspend customary economic relations such as trade and/or financial exchanges to prompt the targeted state to change it's policy or behavior.”*

In 1990 Iraq invaded Kuwait and almost immediately was placed under economic sanctions. However, there is a before and an after in the implementation of this measure. Before, economic sanctions were known as comprehensive, meaning a global ban was imposed on the state at fault. However, this raised questions about ethics. The UNSC conducted several independent types of research with a conclusion that the sanctions were ineffective. In fact, they did not change the behavior of the elite, the government or targeted groups but exacerbated the social, economic and health issues of the population.

Therefore, the UNSC with a group of additional countries, with significant importance and were not members of the UNSC at that time decided to evolve sanction regimes. The goal was to improve the effectiveness of implemented measures and decrease the harm done to the population or the country's economy as a whole. Sanctions went from comprehensive to targeted or commonly said “smart.”

Economics smart sanctions can be split into three main subdivisions;

- on individuals, groups or corporate entities
- on specific commodities or a specific sector of an economy
- in a particular region of a country

3.1 Sanctions on individuals, groups or corporate entities

Sanctions on individuals alone are not new and were demonstrated to be unsuccessful. Usually, a travel ban was implemented, but targeted people were either rich and powerful enough to avoid this measure or to have control over these individuals was too complicated. To name or add new persons on a ban list was also very tricky and suffered from the bureaucratic low speed. (Biersteker, Portela 2015)

Financial pressure is another way to limit the power strength of people. In 1994, UNSC targeted Raoul Cedres' regime in Haiti and adopted the resolution to freeze funds and financial resources of officials, police included. (Biersteker, Portela 2015) The measure was a failure because families and close people were arbitrarily put on different lists. The action was not coordinated, and governments were only urged and not requested to apply such a measure. Through time these issues were corrected and special commissions were appointed to draw lists and keep them constantly updated. Compliance, in this case, has a strong role. First, it is forbidden to use or to transfer the frozen resources by any entity until the restriction is lifted. Second, the funds are made totally unavailable to the person under sanction.

In the other hand, corporations, especially those who are closely related to the government or the elite of a country, could seriously affect the economy and be affected in their day to day business. The combination causes serious issues from a legal standpoint and operational view.

Practical example: John is under sanction and sees his movements and funds frozen. John has shares in 3 companies based in Europe: he owns 100% the first one entity, he participates up to 51% in the second organization and has only 25% of parts of the third company. John helped his son to create the last business and provided him the capital, but legally his son has to the majority of shares (50%). The rest is held by a third party. John is a well-known fellow in crude oil business and derivatives.

Theoretically, the problem would occur when John decides to sell his first company. Banks would not support the transaction, and potential buyers could not act as such since they will finance the deal and therefore make funds available to John. The first company is a one-person show meaning that it is a small company employing four people and which is strongly related to John's personality, his network, his deals. Sales will become harder because there is a need in finance and bank accounts are frozen. Moreover, the company would see their contractual obligation hard to fulfill. Providing funds on behalf of the company or delivering goods would be impossible since the

direct beneficiary of these deals is John. Under specific circumstances, a license could be obtained, but this is the competence of the authorities in the country where the business is based or to where the goods are delivered. The process is very slow, and there is no guarantee of the success.

The second company would have the same issues at least in Europe since John is the majority owner of the business. Making resources available to the other shareholder would be considered as if it was for John, hence forbidden. (Schürle, Bureiko, Popp 2015)

The third company adds, even more, complexity to the case because John is not the main shareholder. His son has the business and operates it. However, the fact, that there is a very strong relation between John and his son, in fact, a direct relative, jeopardize potential investors or future commercial relationships. Almost all first class bank will not take the risk to do business with a company where one of the main owners is a listed person or where it is a family business.

3.2 Sanctions on specific commodities or a specific sector of an economy

Sectoral economic sanctions are considered by both parties (sanctioned and sanctioning) very seriously. Dr. Schürle, the partner at Debevoise & Plimpton law firm, quotes two main goals:

“(i) sanctions intended to prevent the targeted country from receiving goods and services which assist its perceived misconduct, and (ii) sanctions intended to pressure a targeted country indirectly through cutting off access by key industries to funds, services, and investment.” (Schürle, Bureiko, Popp 2015)

As an example for the first goal, Iran was banned on imports of goods aimed to develop its nuclear program and lately Russia was sanctioned on its energy state-owned companies by cutting access to financing. Sectoral bans are very vast and could easily be a subject of a specific book. For the purpose of this research, three examples are analyzed and would serve as a demonstration of the infinite spectrum of possibilities in hand of governments and the UNSC.

3.3 Sanctions on a particular region of a country

The case of the Federal Republic of Yugoslavia serves as an example how sanctions are implemented in a region instead of an entire country. During the civil war,

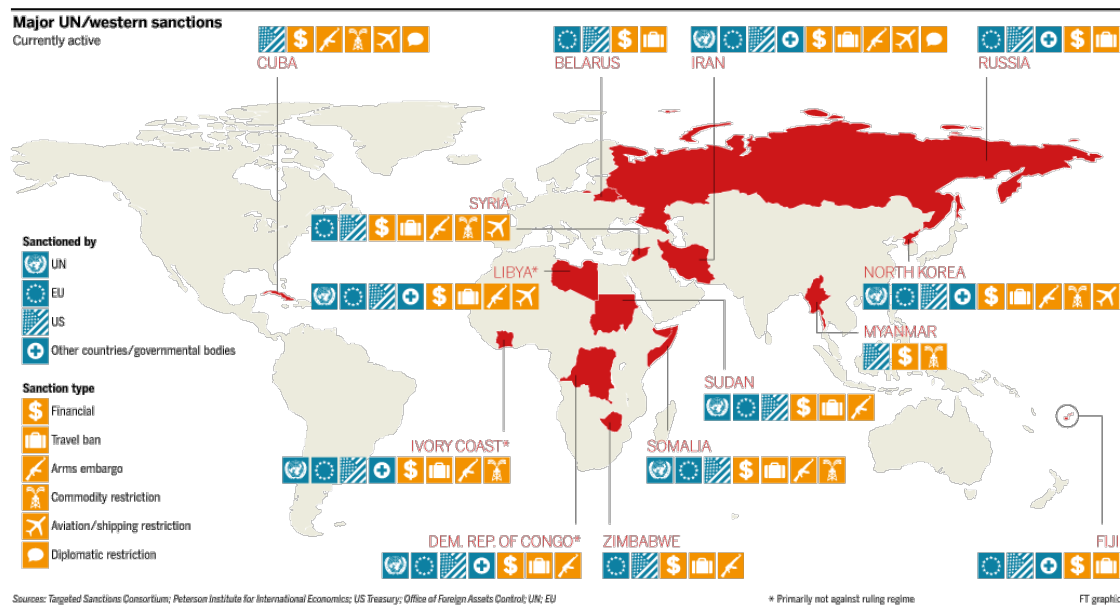
especially in Bosnia and Herzegovina, Bosnian Serbs were accused of ethnic cleansing in the region where they were in control. This forced UNSC to undertake a trade ban on imports, exports, and transshipments through those areas under sanction. Navigation on the Danube was completely taken under control, and any commercial maritime traffic in the territorial waters of Serbia and Montenegro was prohibited.

Recent events in Ukraine forced the international coalition to sanction the region of Donbass and the Crimean Peninsula. Although these regions are still considered by the majority of the countries as an integral part of Ukraine, the area of Donbass is under a trade ban for coal and wheat. Moreover, people or organizations related to the separatist leaders are also banned and impossible to do business with. Unfortunately, it is hard to monitor in such war zones what belongs to the provisional government and what is owned by ordinary people. The Crimean Peninsula is a gray zone where a small part of the international community has recognized the annexation of the region by the Russian Federation and a majority is still against that territorial and political move. Therefore the Crimean Peninsula is isolated from Western capital and technology.

4 Major Regulators

Sanctions are measures usually taken by a developed country or an organism that wants to prevent the further harm or future escalation in a specific region or country, by specific individuals or groups. Although these measures are imposed on a target, the country or a group of countries that adopt them suffer from that decision. Why? Because sanctions force the companies and sectors from these countries to stop their commercial relationship with the region under ban. (e.g deep water drilling technology can't be sold to Russia) In other words, economic sanctions are aimed to change a behavior of another party by imposing on its economy more restrictions (e.g.: freeze of assets, a ban on the trade of commodities or finished products).

Chart 1 - Main actual sanction regimes



Source:(Dyer 2014)

To have an economic impact the country or body that implements them has to be significant on the international stage. The common moderator is the UNSC with its five permanent members (United States of America, United Kingdom, France, Republic of China and the Russian Federation) plus additional members that have a one year of membership. The Security Council decides if the situation is critical and warrants the imposition of sanctions. The process is explained in following paragraphs. The United States are the most active nation with sanctions programs. They operate multilateral and unilateral sanctions, and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") is responsible for the implementation of adopted measures. The European Union manages its sanctions with the help of the European Commission. To note that London is of particular importance as a financial market and has its unilateral sanction regimes, implemented by Her Majesty's Treasury. In the scope of this research, the State Secretariat for Economic Affairs ("SECO") plays a key role in the decision of sanctions and has a significant impact on companies operating on the Swiss territory. Every institution will be analyzed through their organization and decision-making process and particularly on their Russian sanctions.

4.1 U.N. Security Council

A sanction regime is one of the key points in United Nations organization. The body responsible for that is the UNSC, which nominates subsidiary entities to assure the performance of its decisions. The fifteen members of the council are part of different committees. Their working scope begin from counter-terrorism goes through political missions and peacekeeping operations, also includes international courts and various advisory bodies. Many of these committees are responsible for sanctions, their implementation, compliance and in the case of enforcement, propose a panel of measures to avoid further escalating actions.

Professor Biersteker analyzed that *“It takes the UNSC an average of 14 months from the time it first takes note of a conflict to the imposition of targeted sanctions: only six months in the case of proliferation, but an average of 17 months in cases of conflict.”*(Tourinho, Hudáková, Eckert, Biersteker 2013) This is comprehensively long and gives the targeted country or group enough time to organize a system which will or would bypass the sanctions. The universal character of UNSC sanctions is that every member country has to adopt them and consequently has to undertake measures on a national level in the order of a proper implementation. If the compliance is not sufficient, there is a warning from the Council, and if the compliance is still insufficient, there are penalties of a different type. Usually, they appear as trade sanctions as well at the various level of severity.

Table 1 - Main actual sanction regimes

Objectives	Present		Main Objective	
	Frequency	Percent	Frequency	Percent
Armed conflict	42	34.71%	37	59.68%
<i>Cease hostilities</i>	31			
<i>Peace enforcement</i>	31			
<i>Support peace building</i>	10			
<i>Negotiation of peace agreement</i>	9			
Human rights	21	17.36%	0	0.00%
Democracy support	17	14.05%	6	9.68%
Counter-terrorism	16	13.22%	9	14.52%
Good governance	8	6.61%	1	1.61%
Support judicial process	6	4.96%	1	1.61%
Non-proliferation	6	4.96%	6	9.68%
Support humanitarian efforts	3	2.48%	0	0.00%
Protect population under R2P	2	1.65%	2	3.23%
	121	100.00%	62	100.00%

Source:(Tourinho, Hudáková, Eckert, Biersteker 2013, Ruslan Khojman)

Since the creation of the sanction regimes, the effectiveness was always the counter argument of the opposition side. First, as the above table shows, the UNSC tries to intervene mostly in armed conflicts, but the main objective remains unclear since almost 50% of the present sanctions have several objectives and gives large leverage for the administrators of the regime, respectively the UNSC.

“As a result, the UN sanctions hurt both the target and neighboring countries, but they hurt targets more intensely.”(Golliard 2013)

4.1.1 UNSC and sanctions against Russia

In the case of sanctions against Russia following the annexation of Crimea, the situation is clear and blocked at this level. The UNSC cannot decide to introduce sanctions on the Russian Federation because Russia is a permanent member of the Council and has the right of the veto. To better understand why the situation is blocked at this stage, a short explanation of the decision making process is following.

The decision-making process is regulated in the Charter of the United Nations, in the article 27:

“1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.”

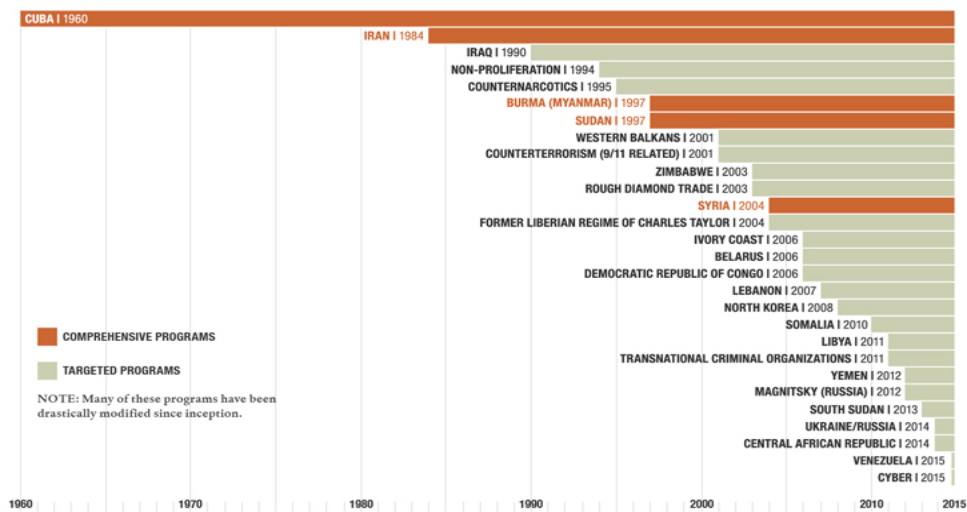
Source: (UN 2009)

There are two types of decisions, on procedural matters and all others. Since sanctions are not considered procedural as per the note of Article 27, the acceptance of that proposal should obtain all votes of the permanent members and have at most the abstention of one or two permanent members. Otherwise, the vote is impossible, which is the case in the Ukrainian conflict against the Russian Federation.

However, to put pressure on the offender, many countries or groups of countries have enough economic power to express their disagreement and force the offender to reconsider its position.

4.2 U.S - OFAC

Chart 2 - U.S Sanctions Programs (2015)

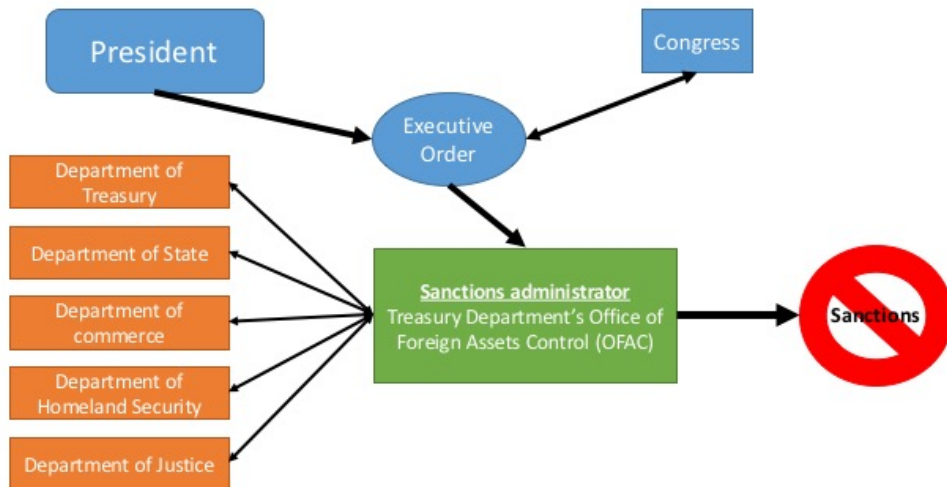


Source: (Maters, Ro 2015)

The United States of America is the most active player in term of sanctions. Through decades, U.S. Government imposed embargos and trade restriction, mostly to their national bodies, commercial entities or physical persons. The process of the U.S. sanction policy is relatively simple.

The president can declare an emergency or a national threat and issue an executive order to counter the situation. On the other hand, the Congress has the possibility to modify, to extend or to vote new sanctions. The order is then passed to OFAC, which in cooperation with different national departments implement the order and transform it into a sanction. They are introduced for one year and then extended if the Congress or the president finds it necessary.

Chart 3 - The US sanction making process



Source: (Шароян 2015, Ruslan Khojman)

4.2.1 US sanctions against Russia

In March 2014, the President of United States issued 3 Executive Orders against the Russian Federation. The American government accused their Russian colleagues of direct and indirect intervention which undermined Ukrainian national sovereignty, territorial integrity, peace, stability, and security. (Office Of Foreign Assets Control 2014a) This was also valid for the Ukrainian neighbor region. The first Order, issued on the 10th of March, was blocking assets and transactions or individuals that are helping the offender in his purpose. A list was established essentially with persons acting on Ukrainian territory. The second Order, issued on the 19th of March just after the controversial Crimean Referendum, stipulated the same measures against the Government of the Russian Federation. Since this formulation was too vague, OFAC communicated a clear definition:

“the term the “Government of the Russian Federation” means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, including the Central Bank of the Government of the Russian Federation, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.”

Source: (Office Of Foreign Assets Control 2014c)

In the third Order, the President urged the Secretary of Treasury in collaboration with Secretary of State to set up and launch economic sanctions against the Russian government and its national economic allies in the private sector.

This sanctions regime is resumed in three points:

First, blocking sanctions forbids any US persons to conclude any transaction by “*transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on OFAC’s SDN List*” (Office Of Foreign Assets Control 2014a)

The second type of sanctions regards the Crimean region and its total embargo (including any goods and all type of services).

Finally, sectoral sanctions prohibit US persons or persons in the United States from entering into transactions with specifically designated Russian entities in a specific sector (Energy and Development). These measures are explained, and entities are listed in the Directives 1 to 4 (For a full text of the Directives refer to Appendix 3)

- Directive 1: A ban on financing, issue new debt or a new equity longer than 90 days maturity for nominated persons or entities under this directive. In September 2014, it was updated and the time frame decreased to 30 days.
- Directive 2: Prohibition to transact, finance or to deal in new debt of longer than 90 days maturity with entities under this list.
- Directive 3: The interdiction is the same as under Directive 2 but only for 30 days maturity for entities under that directive.
- Directive 4: A ban on providing material and service support that include exploration and production in difficult areas such as Arctic offshore fields for entities under that list.

Table 2 - Consolidated list of sanctioned companies

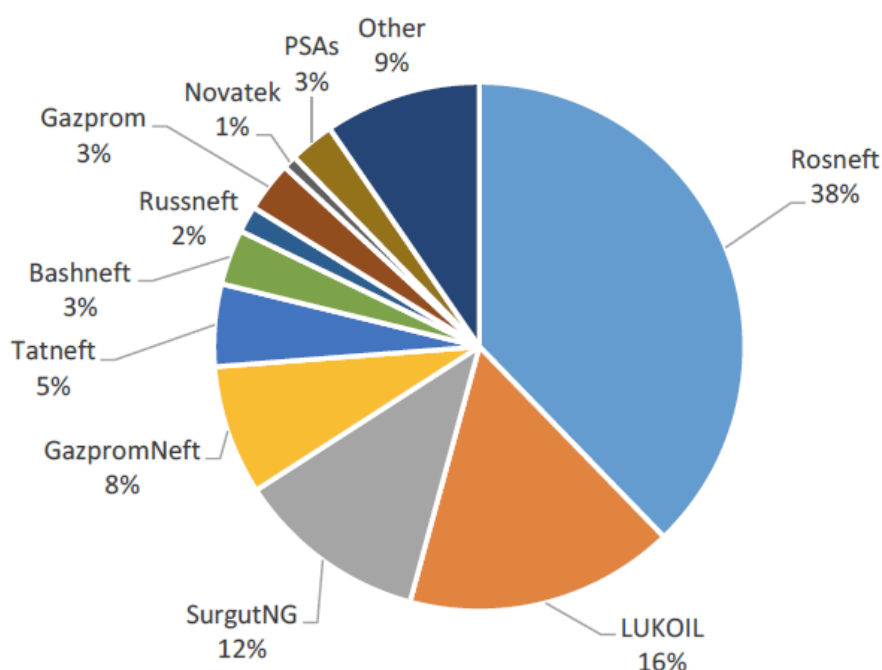
Directive 1	Directive 2	Directive 3	Directive 4
BANK OF MOSCOW	FINANSOVO-INVESTITSIONNAYA KOMPANIYA NOVAFININVEST OAO	ROSTEC	GAZPROM NEFT
BANK RAZVITIYA	NOVATEK		GAZPROM OAO
BANK VNESHNEY TORGОВLI (RSFSR)	GAZPROM NEFT		LUKOIL
BANK VTB OAO	ROSNEFT		ROSNEFT
GAZPROMBANK OAO	SAMOTLORNEFTEGAZ JSC		SIBIRSKAYA NEFTYANAYA KOMPANIYA OAO
ROSSELKHOZBANK	SIBIRSKAYA NEFTYANAYA KOMPANIYA OAO		SURGUTNEFTEGAS
SBERBANK OF RUSSIA	TRANSNEFT		
VNESHECONOMBANK			

Source: (Office Of Foreign Assets Control 2015, Ruslan Khojman 2016)

The analysis showed that OFAC concentrated its effort on few but strategic companies in Russia. Most enterprises fallen under sanctions are strongly related to these few companies. Two categories are specified. The first group of businesses is subsidiary companies of large corporations. They provide financial and technological support, management skills and diversification in strategy. The second group of companies is related to its management. C-level managers and members of the board of directors of large corporations own these smaller firms or have a majority in the capital. The interest varies from one firm to another. The strategy could be either wealth and risk diversification or a simple scheme based on personal interest and private wealth.

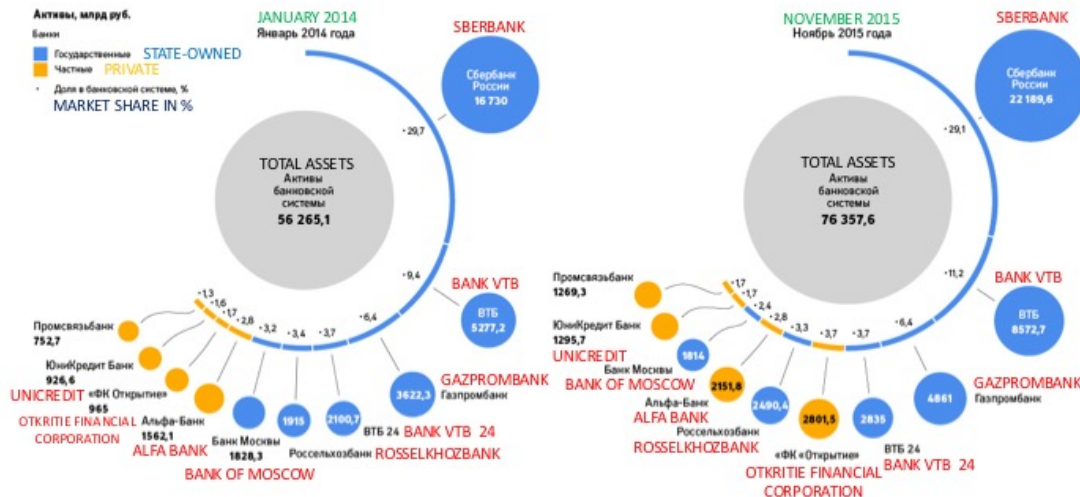
According to the Ministry of Energy of the Russian Federation, five companies account for more than 75% of Russian oil production. By comparison with the consolidated sanctioned companies in the table above, one can deduct that OFAC sanctioned 78% of Russian oil production.

Chart 4 - Russia's oil production volume by companies in 2014



Source: (Ministry of Energy of the Russian Federation 2016)

Chart 5 - Russia's banking sector, comparison of 2014 & 2015
(assets in Mia Rubles)



Source: (Шароян 2015, Ruslan Khojman)

To understand the financial impact of the sanctions imposed by U.S. Government, the Chart above illustrates the Russian banking sector and reveals two characteristics. First, only state-owned institutions were targeted which proves that OFAC aimed to undermine the financing of the Russian Government and therefore the national companies that strongly rely on these banks. Second, the market share of the state-owned banks represented 56.1%, and the first four places are occupied by that type of institution. Another important fact is the progression of the private banks, mostly the Otkritie Financial Corporation. According to the Russian central bank and the financial magazine RBK, the company became the main financier of Rosneft by buying obligations of the producer in rubles, used them as collateral to get US dollars (REPO) in the Central Bank and make the amount available to the company for its operations. The same mechanism was applied to finance Lukoil. In November 2015 the total debt of the financial institution to the Central Bank consisted of 16.2 billion US dollars (Шароян 2015) which represented 70% of the banking sector currency debt under REPO scheme.

During the past few years, US Government intensified the targeted sanction regimes and can put considerable pressure on the sentenced party. However, many studies under different approaches showed the inefficiency in these actions compared to the goals that have to be achieved. The reality is that economic sector is taking these measures very carefully because of the leverage power of the United States in every

segment of the economy. Therefore, OFAC became an essential player in compliance, especially in financial and commodity sector. Its influence reaches far beyond the US borders as the enforcement chapter will demonstrate.

4.3 Europe – EU/European Commissions

Regarding the union of 28 countries that have their legislation, political forces, and issues as well as the different state of their economies, the process of imposing restrictive measures is more complex and bureaucratic than in the USA.

The foundation of sanction regimes and its legal basis is clarified in three documents:

- Basic Principles on the Use of Restrictive Measures (that gives the framework and ideological goals that the European Council would use for its foreign policy)
- Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the framework of the EU Common Foreign and Security Policy (which gives more details on the type of the restriction and on how to implement them)
- EU Best Practices for the Effective Implementation of Restrictive Measures (which clarify modalities on the building of a sanction list or what financial or trading measures could be adopted)

The article 21 of the European Union Treaty states:

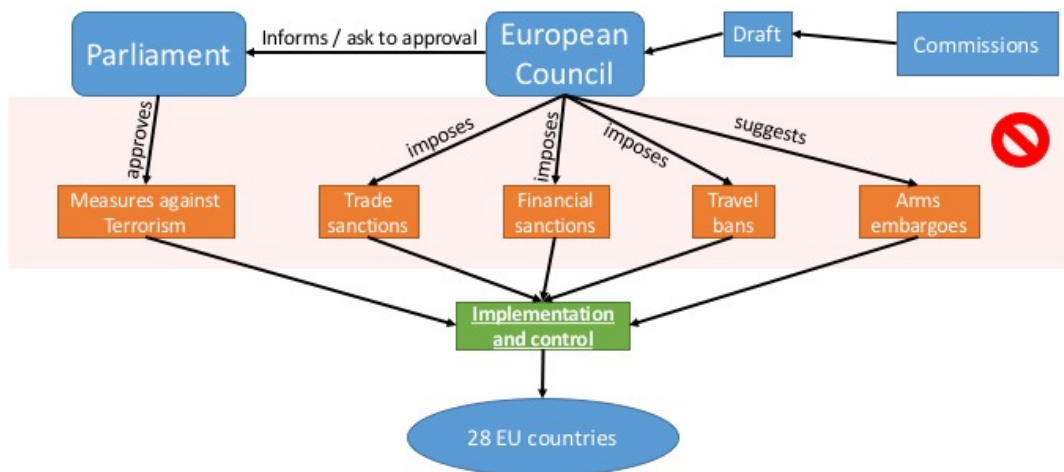
“The Union's action on the international scene shall be guided by the principles which have inspired its creation, development, and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”

Source: (European Council 2008)

For the research, the quote informs on two main facts. First, the European Union acts as a single and unified body in relation to such issues as human rights and democracy. Second, the European Union perform under international law and the principles of the United Nations Charter. Since the UNSC is acting on this Charter basis, the European Union would closely follow the decisions taken by this body, which in practice is very often verified. Consequently, many sanction regimes of the EU should match the

resolution taken by UNSC. However, this is not always the case as it will be shown below.

Chart 6 - The EU sanction making process



Source: (Шароян 2015, Ruslan Khojman)

The chart presented above confirms that the European Council, since the Treaty of Lisbon, has a central role in the decision-making process. Commissions propose only a resolution in agreement with different stakeholders such as Governments, NGO's, legal bodies and the private sector. The Council imposes the restrictions and passes the responsibilities to each member of the European Union, who will have the duty to implement the sanctions on the national level and put in place a monitoring system.

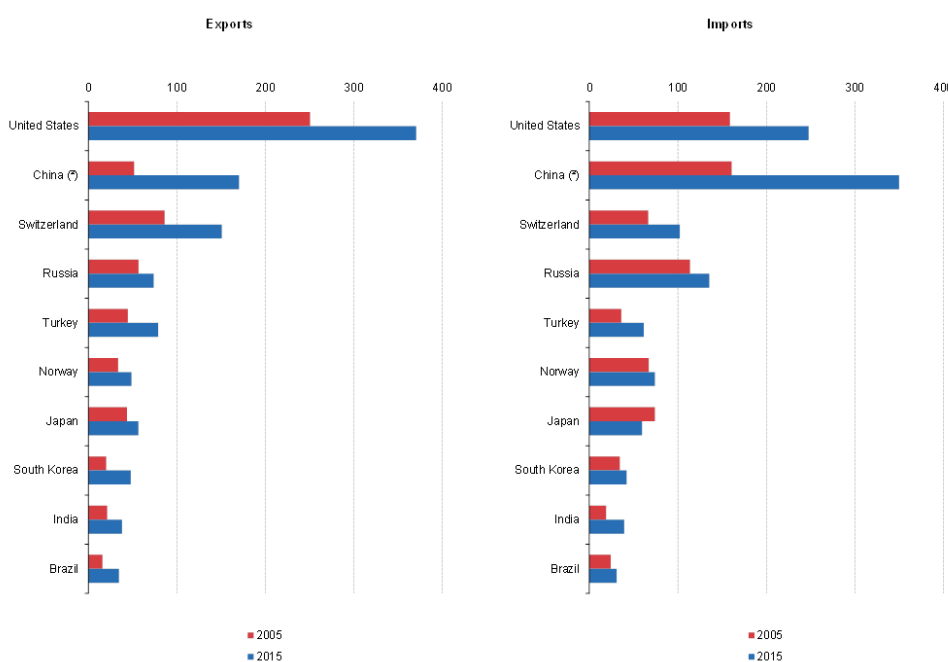
This system has the advantage of pluralism in contrast with the United States, even though the recent shift of power to the Council was taken negatively by country members. The dilemma, in this case, was where to give priority, in the fairness of the system or the speed of the procedure. After different researchers and the example of the UNSC, the preference went to a rapid reaction of a single body, which is the Council. However, in overall the process has many inefficiencies. The first is the sovereignty of each member and their freedom of how to put in place the enacted directives. There is no homogeneity despite the best practices established by Brussels. Furthermore, each member state has its interests from the economic, legal and social standpoint. The history showed that Iran's sanctions were implemented six months later than expected because Greece, Italy, and Spain were heavily dependent on Iranian crude oil and its derivatives. The time was given to substitute the supplier and internally to operate structural changes. However, based on research conducted by Professor Hufbauer, the success of a sanction is strongly correlated with the rapidity of

the reaction and the duration of the sanction (Hufbauer 2007). Lastly, from the purely legal point of view, many targets went into the European Court of Justice to claim a cancellation of the decision and if so claim damages. The issue is that some sanctions go against rights recognized by the European Union itself and decrease even more the credibility and the power of the sanction's sender (Giumelli 2013).

4.3.1 EU sanctions against Russia

The European Union has a close relationship with the Russian Federation regarding territorial proximity but also trade. The chart bellows underlines this exchange but mostly shows the progression. Both exports and imports increased, to the point where Russia became the third partner behind China and USA.

Chart 7 - EU-28 trade by main trading partners 2005 & 2015 (billion EUR)



Source: (Eurostat 2015)

This situation had its importance for the decision-making process when the EU decided to introduce measures against Russia relating to the Ukrainian conflict.

The European Council chose targeted sanctions to show the disagreement with the Russian government external politics. Besides the embargo on arms and related technology (example with amphibious assault ship Mistral, where the contract was broken despite the quasi-delivery of the vessel), the European Union also froze the assets of 149 individuals and 37 entities. Most of the entities are related to the West-

Ukrainian region and Crimean Peninsula. However, few of them are key corporations in the Russian financial and energy sectors

The limitations are resumed as such:

“EU nationals and companies may no longer buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 30 days, issued by:

- *five major state-owned Russian banks;*
- *three major Russian energy companies;*
- *subsidiaries outside the EU of the entities above, and those acting on their behalf or at their direction.*

Assistance about the issuing of such financial instruments is also prohibited.

EU nationals and companies may also not provide loans with a maturity exceeding 30 days to the entities described above.

The following services necessary for the abovementioned projects may not be supplied: drilling, well testing, logging and completion services and supply of specialized floating vessels.”(European Union Newsroom 2014)

The following companies are subject to restrictions mentioned above.

Table 3 - Companies under restrictions

Banks	Trading Companies
Gazprombank	Gazprom Neft
Rosselkhozbank	Transneft
Russian National Commercial Bank	Rosneft
Sberbank	
Vnesheconombank	
VTB Bank	

Source (Ćwiek-Karpowicz, Dudzińska, Al. 2015)

at first, in July 2014, the measures were applied to a narrow list of entities and the loan's maturity was established to 90 days. The European Commission then decided to reinforce their position regarding the Russian's government. In September 2014 new restrictions were adopted: the maturity of debt was lowered to 30 days and new

companies were added to the list. These limitations were renewed several times and were still in place at the moment of this research.

In September 2015 the European Commission released a notice (European Commission 2015) that gave further precisions on the scope of sanctions, prohibitions, and possible exemptions. Financial services sanctions were aimed to restrain the Russian government's ability to finance their activities related to the Ukrainian conflict but not to harm trade flows between the European Union and Russian Federation.

The Commission Guidance note (European Commission 2015) specified that only exports and imports under sanctions are prohibited. Any commodity, if it is financed by European person and the maturity falls under 30 days, is not under this ban. Any contracts or agreements concluded before 12th of September 2014 regarding the financing remains valid.

On the other hand, any extension of the existing medium and long term loans or credits is forbidden. Furthermore, EU banks cannot confirm or advise institutions mentioned in Table 1, which makes financing of Russian commodities problematic.

4.3.2 U.K sanctions against Russia

The United Kingdom adopted the similar position than the European Union regarding the Russian Federation sanctions. Being a member of the Union, the UK government has an obligation to comply with the Council resolutions if the latter are ratified. The implementation of the sanctions is a matter of the national governments, and the UK authorities issued the guidelines (Office of Financial Sanctions Implementation 2016) by the situation. If the UK decides to support a more severe position in front of the Russian Federation, it would be a pure national choice.

5 Swiss Regulator – SECO

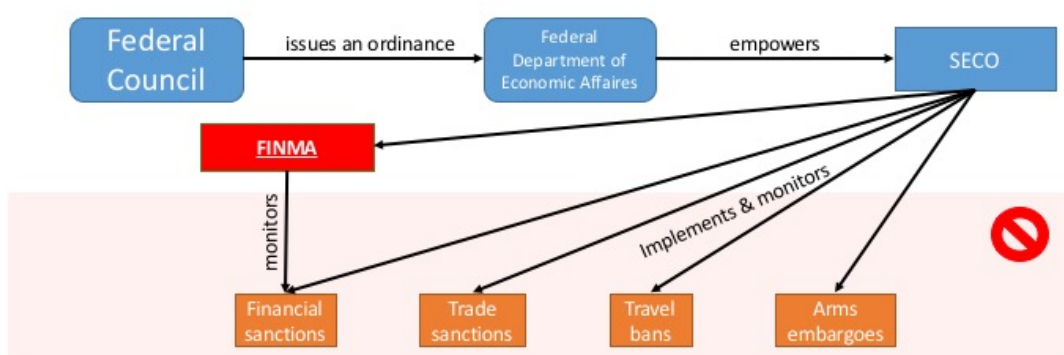
Switzerland has a particular position since the country follows the politics of neutrality. However, the Swiss government often adopted many restrictive measures taken by UNSC and the authorities officially state that to:

“participate in widely and internationally approved sanctions, serves the interests of the foreign policy of Switzerland, based on the respect of international law and humanitarian values. The Federal Council also considers other elements, before deciding on sanctions, such as the solidarity with the international community and the need to oppose violations of the law.”

Source: (Secrétariat d'Etat à l'économie SECO 2016)

UNSC resolutions or coercive measures are edited by the Federal Council and passed to the State Secretariat for Economic Affairs (SECO) in order to implement them, respectively to construct and to release the legal text, to notify accordingly the official bodies of the changes and to empower them with the supervision and punitive authority (e.g. Swiss Financial Market Supervisory Authority, FINMA)

Chart 8 - The Swiss sanction making process



Source: (FINMA 2015, Ruslan Khojman)

5.1 Swiss sanctions against Russia

In the ordinance of the 2nd of April 2014, the Federal Council sanctioned 16 individuals related to Crimean Peninsula, showing accordingly to the Russian government its disapproval of the Ukrainian annexed territory. If the US and the EU authorities imposed rapidly economic and targeted sanctions, the Swiss government took longer to assess the situation and join the international community in coercive measures.

In August 2014, two types of sanctions were ordered by the Federal Council to (or “intending to”) avoiding circumvention platform:

- Commercial restrictions, under which any transaction with the Crimean Peninsula was prohibited, a ban on any sale or purchase of military goods and services with Russian Federation was established and where any technological aid for the extraction of crude oil in Arctic regions, for the shale drilling or the explorations deeper than 150m under water required an authorization.
- Financial restrictions; the issuance of financial instruments where the maturity is over 30 days has to request authorization from SECO if the following conditions are satisfied:

- The issuer is one of the companies in the sanction list located in Russia.
- The issuer is a company, located outside of Switzerland and that more of 50% of the shares are held by a firm under sanction.
- The issuer is a company acting on behalf of or under instructions of a sanctioned firm.

The authorization is granted if the fundraising does not exceed the average nominal value of the financial instruments allocated during the past three years.

Are outside of the ban's scope transactions that are concluded between Switzerland, EU and other states that the measure does not a concern.

Sanctioned entities and companies owned by more than 50% by sanctioned firms that have their Headquarters in Switzerland or EU are guaranteed to receive an authorization for their operational liquidity according to the legislation in place.

The negotiation of financial instruments issued by sanctioned companies has to be declared and authorized by the competent authorities.

On the 6th of March 2016, the sanction regime was reassessed and extended without a maturity date.

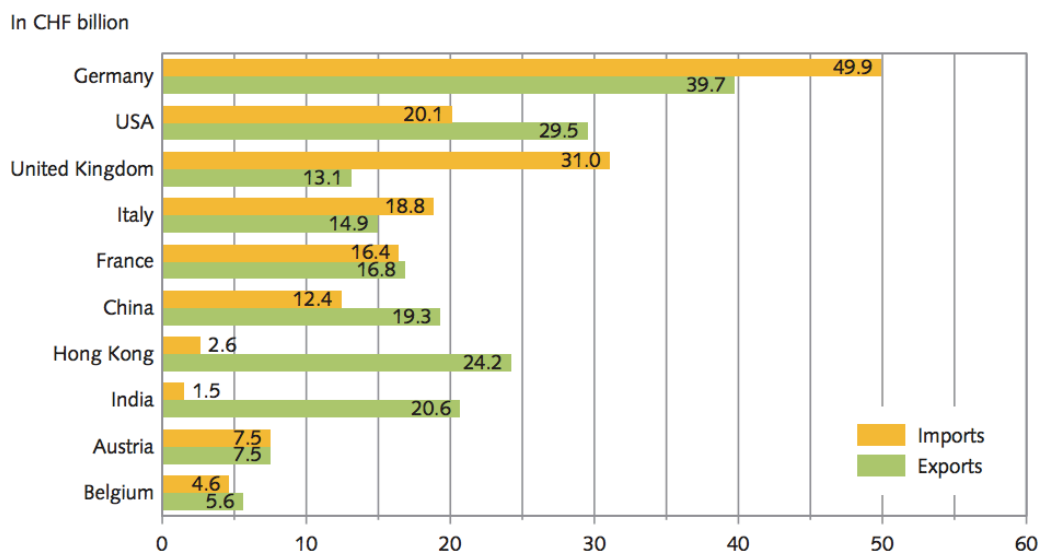
Swiss sanction lists are comprised of 146 individuals, 37 organizations (political, military group, support entities), 5 Russian state-owned banks, 3 Russian state-owned commodities producers, 11 Russian state-owned companies involved in military business and research). All these persons are also under the EU sanctions, which confirms that the Swiss authorities acted very carefully with this political issue.

5.2 Role of Switzerland in the commodity trading

The importance of the relationship with the European Union is of the first order for Switzerland. According to the Federal Statistical Office (Swiss Customs Administration 2015), at the moment of the events, respectively 2014, 45% of Swiss exports were directed to the European Union and 66% of imports came from the European Union. As the chart below shows that the tendency did not change and that 7 of 10 key trade partners are European countries. Furthermore, the USA takes the second position in the statistics, which gives them a significant importance regarding negotiation power.

Being the major player in sanction regimes, the USA has enough leverage to put pressure and to urge the Swiss government to join the sanction regime.

Chart 9 - Principal business partners in 2015



Source: (Swiss Customs Administration 2015)

On the other hand, Switzerland is a major player in commodities trade and commodity trade finance. According to STSA, the Lemanic region is the number one regarding the volume of grain and oil seeds, number one in Europe for sugar trade and tied at the first place with London in cotton trade (STSA 2015). However, the most important for the present research, Switzerland, especially Geneva, is the number one worldwide in the finance of commodity trading and where the Swiss Association believes that 75% of the Russian crude oil is traded. In fact, presented in the chart 5, Rosneft and Litasco (Lukoil) that are producing combined 54% of Russian crude oil have their trading arms in Geneva. Putting on the list Rosneft and GazpromNeft, the Swiss government sanctioned respectively 38% and 8% of Russian crude oil production.

Commodity trading companies are not only present in Switzerland because of the tax reduction programs and highly qualified human resources, but also for the proximity of the financing. The market size was estimated in 2013 by the Swiss Banking Association of around CHF 1'500 billion according to the report of the Bank for International Settlement (Committee on the Global Financial System 2014). Major banks such as BNP Paribas, ING, Credit Suisse or Societe General with a long track record in trade finance are very active in commodity financing. The same report also states that financing of the commodity trading in 2013 was made roughly 70 to 80% by

these majors. With new regulations in perspective and recent sanctions violations, the compliance department takes an essential part now. The following chapter is analyzing how companies were affected by several violations in the business regarding the sanctions.

6 Enforcement and Violations

As mentioned previously, the US Government is the most active in coercive measures, and this was confirmed by the recent increase in the number of sanctions but also by the fines that companies had to pay if a regime is violated.

Chart 10 - Major U.S. Sanctions violations cases (2009-2015)

BANK NAME	HEADQUARTERS	YEAR	FINE
BNP PARIBAS	France	2014	\$8.9 Billion
STANDARD CHARTERED	UK	2012	\$667 Million
ING	Netherlands	2012	\$619 Million
CREDIT SUISSE	Switzerland	2009	\$536 Million
ABN AMRO	Netherlands/UK	2010	\$500 Million
HSBC	UK	2012	\$375 Million*
LLOYD'S	UK	2009	\$350 Million
COMMERZBANK	Germany	2015	\$342 Million*
BANK OF TOKYO - MITSUBISHI	Japan	2014	\$315 Million
BARCLAYS	UK	2010	\$298 Million
BANK OF TOKYO - MITSUBISHI	Japan	2013	\$250 Million
CLEARSTREAM	Luxembourg	2014	\$152 Million
ROYAL BANK OF SCOTLAND	UK	2013	\$100 Million

Note: Major settlement threshold >/\$100 million. Fines may include penalties for anti-money laundering laws violations.
*Fines are part of larger settlements involving related financial crimes.

Source: (Maters, Ro 2015)

The fact that a national company could be severely fined by an another national authority when the violation did not happen on the territory of the second one is relatively new. This tendency strongly increases the complication of the business environment and especially compliance. Companies have to put in place processes and human resources to be in order with every authority under which they operate, should it be direct or indirect. This dramatically increased costs in the banking sector and trading companies. In an interview for Euromoney, Mr. Geis, a senior product manager for trade products at Commerzbank attested that *"Some banks are closing down relationships."* and *"If you have to do KYC properly, you may have to invest between \$15,000 and \$50,000 [to achieve adequate due diligence on a single client]."*

For smaller banks, this can affect relationships. If you have a limited number of transactions, it can reduce the appeal of working in a country."(Long 2014)

To better understand the risks that banks and companies are facing in Switzerland, two cases, respectively BNP Paribas case and Credit Suisse case are presented.

6.1 Credit Suisse case

Background

“From 1995 to 2006, Credit Suisse processed USD payments for institutions in OFAC-sanctioned countries which held USD clearing accounts with it. In 2003, there was a significant rise in the number of Iranian USD clearing accounts at Credit Suisse, after Lloyds TSB Bank exited from this business.

As there was a risk that USD payments relating to an OFAC-sanctioned country might be caught by the OFAC-filters of the U.S. correspondent banks, various methods were developed over time to enable the payments to be processed via the USA. One particular method was to complete or change the SWIFT messages used for processing payments with this purpose in mind.

One of the solutions used by Credit Suisse employees to circumvent the rules was to replace the name of the (OFAC-sanctioned) Iranian ordering institution in field 52 of SWIFT 202 messages (“MT 202”) with other details – in particular with the comment “Order of a Customer” – before forwarding the payment instructions to U.S. banks. In other cases, the bank sent U.S. banks SWIFT MT 202’s containing incorrect information that the (OFAC-sanctioned) ordering institution had itself inserted. For example, one ordering institution gave “CS” as the ordering customer of the payment; Credit Suisse condoned this incorrect information and sent the message to the U.S. correspondent bank involved in the payment chain.

In December 2005, Credit Suisse decided to exit the business with U.S. sanctioned countries such as Iran and Cuba, etc. This decision was then gradually implemented in 2006 and 2007.

Accusation made by the U.S. authorities

In the opinion of the OFAC and the U.S. Department of Justice (“DoJ”), the latter being tasked with prosecuting breaches of U.S. federal criminal law, Credit Suisse breached the provisions of the International Emergency Economic Powers Act and the Trading with the Enemy Act by forwarding USD payments not permitted under U.S. regulations to U.S. correspondent banks. The U.S. authorities view such actions as a prohibited export of services by U.S. correspondent banks to OFAC sanctioned countries, which is prohibited also for non-U.S. banks.

Credit Suisse was further accused of having followed criminal practices since the mid-1990s which served to help entities subject to U.S. sanctions regulations circumvent the applicable restrictions. It allegedly pumped hundreds of millions of USD in illegal payments through the U.S. system. Under one accusation, the bank was alleged to have used “stripping” to falsify 521 SWIFT messages and to have informed sanctioned entities how to avoid the OFAC-filters used by U.S. banks, thereby causing its U.S. correspondent banks to process such payments in ignorance of their origin. The U.S. authorities view such practices as a criminal offence against U.S. banks and the U.S. government. The bank was also blamed for preventing the U.S. banks from correctly recording or correctly reporting such transactions, or from being able to correctly report such transactions.

The New York County District Attorney's Office ("DANY") views the actions of Credit Suisse as "falsifying business records" under New York State's penal law. Under this law, a person commits an offence when, with intent to defraud, he makes or causes a false entry in the business records of an enterprise, or prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Settlement between Credit Suisse and the US authorities

In the NY Fed's opinion, Credit Suisse failed to establish the requisite compliance infrastructure to comply with U.S. law and prevent breaches of U.S. law. Furthermore, through these actions it exposed itself to increased reputational risk and jeopardised its ability to ensure the "safety and soundness" of its business.

The settlement executed on 16 December 2009 has brought the ongoing investigations to a conclusion. All U.S. authorities that have lodged claims in respect of this matter are covered by these documents.

As is usual in such cases, the actual settlement documents are based on a detailed Statement of Facts. It summarizes the facts from the perspective of the criminal prosecution authorities conducting the investigations and must be acknowledged by the bank. The Deferred Prosecution Agreement ("DPA") concluded between the bank and the DoJ and between the bank and the DANY is based – in accordance with the DPA's basic mechanism – on the fact that the Statement of Facts provides sufficient grounds for criminal charges, but that for the time being at least, these will not be pressed. After a probationary period, in this case of 24 months, the entire proceedings will be dismissed, providing the institution has complied with the DPA's terms. In practice, it is extremely rare for charges to be pressed at a later date. Under the terms of the settlement, the bank undertakes to pay a fine totaling USD 536 million. The bank also undertakes to cooperate with the U.S. authorities within the limits of the applicable laws for the duration of the DPA's. In terms of supervisory law, the bank undertook vis-à-vis the Board of Governors of the Federal Reserve System („Board“) and the NY Fed that it will implement and/or continue implementing a global compliance program and provide reports on it. A settlement agreement was also concluded between the OFAC and the bank."

Source: (FINMA 2009)

6.2 BNP Paribas case

“The US authorities conducted an investigation against the BNP Paribas (Group) regarding the violation of US sanctions against Cuba, Iran and Sudan. FINMA also examined whether the Swiss company, the BNP Paribas (Suisse) SA (= BNP Suisse), had breached Swiss supervisory law in this regard. During the probe, FINMA examined how BNP Suisse identified, limited and monitored the risks emanating from its cross-border trading business from 2002 to 2011. Business developments with business partners in countries sanctioned by the US, the bank's business and monitoring policy since 2002 and compliance with internal rules and regulations were also examined.

Serious violation of US sanctions by the Swiss company

The probe conducted by FINMA revealed that, particularly in the case of Sudan, the bank had ignored and violated US sanctions up to 2011, particularly during the period from 2002 and 2007. Its specific findings are as follows:

- Dollar transfers: Sudanese and Iranian clients instructed BNP Suisse to avoid any references to Sudan and actual clients when handling transfers in order to avoid payment transactions getting blocked by international payment transaction filters. BNP Paribas (Suisse) followed those instructions, thus enabling the settlement of payments.
- Transfers via third-party banks: BNP Suisse made transactions for Sudanese clients using accounts managed by a third bank. BNP switched to a third-party US clearer and inserted third party banks between it and the client. It was therefore not evident to the US bank that Sudanese clients were involved in the transactions. For its part, the BNP Suisse believed that US sanction law did not apply to foreign banks, particularly where transactions were settled via a US third-party bank. BNP Suisse did, nonetheless, have grave doubts about the legal implications of this practice. No fewer than 20 legal opinions were sought concerning this matter.
- Foreign exchange transactions: BNP Paribas (Suisse) SA made a considerable number of exchange transactions outside the US for clients affected by the embargo. The transactions were concealed by BNP Suisse and BNP Paris. By acting in this manner, the background and involvement of Sudanese clients were not evident to third parties.
- Letters of credit: BNP Suisse provided a large amount of credit to finance Sudanese oil trading. Here it was also the case that the bank managed to conceal from third parties payments that had a Sudanese link.
- Incomplete implementation of group-internal directives: BNP Suisse implemented its group internal directives on preventing business with Sudanese clients only in part. This meant that the Sudanese links were not recorded in the system and the transactions were not stopped.

Violation of organisation and governance rules

FINMA has issued a decree and has thus concluded its enforcement proceedings against BNP Paribas (Suisse) SA. It has established that the bank seriously violated its duty to identify, limit and monitor the risks involved in making transactions with business partners in countries subject to US sanctions. The bank exposed itself to unduly high legal and reputational risks and violated requirements for adequate organisation under Swiss supervisory law. On the other hand, FINMA found no indications of Swiss sanctions having been breached.

The proceedings also found that BNP Suisse had in the meantime adapted its procedures for making transactions with business partners in countries subject to sanctions in order to avoid any further breaches in compliance. FINMA will engage an independent third party to review the consistent implementation of those measures.

The supervisory authority will also order additional capital adequacy requirements for operational risks and impose a two-year ban on conducting business with companies and persons subject to EU and/or US sanctions. It will also continue its probe into determining the extent to which the board of directors, management and other BNP Suisse employees were involved in the misconduct.

FINMA reiterates the legal risks relating to foreign sanctions

FINMA based its assessment of the handling of foreign sanctions on Swiss supervisory law, which sets out that a bank must at all times assure proper business conduct and have an adequate organisation, including risk management. Financial institutions must analyse, reduce and adequately control the legal and reputational risks emanating from foreign law. This also applies to the handling of respective sanctions.

This particular case again illustrates the possible consequences financial institutions face that are not in full control of their operational risks, especially with regard to compliance.

US proceedings against BNP Paribas (Group) concluded

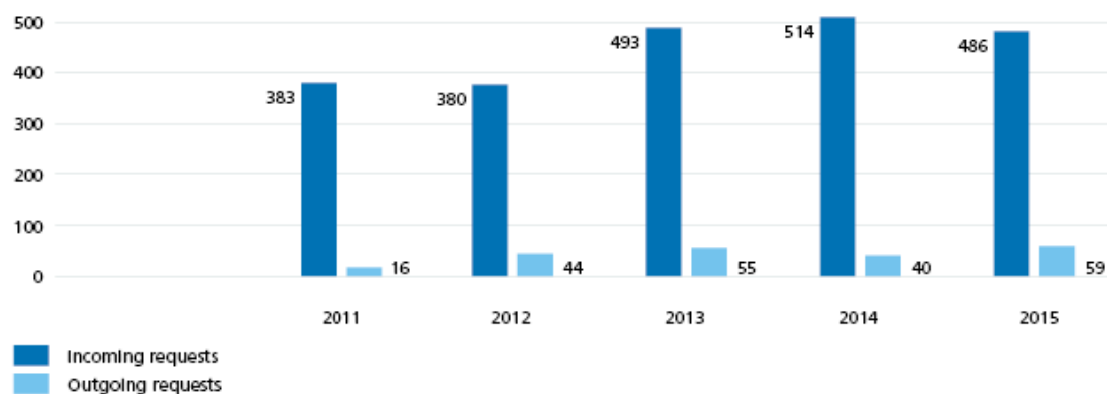
BNP Paribas (Group) announced today its agreement with the U.S. Department of Justice (DoJ) and the New York Department of Financial Services (DFS) concerning the circumvention of US sanctions imposed against Cuba, Iran and Sudan. The agreement with the DoJ involves the Group's guilty plea and payment of a fine totalling 8.97 billion dollars to the US authorities. The DFS also issued sanctions against the Group including the temporary exclusion from dollar clearing for certain business units."

Source: (Lux 2014)

In both cases, the Swiss Federal Banking Commission and consequently FINMA collaborated very closely with OFAC and introduced a procedure against both banks. The authority states clearly that it does not have to enforce the foreign law against entities that it supervises. Nevertheless, by their doings, both entities missed the duty of capture, limit and control their risks and thereby neglected the duties of safe and soundness business conduct. Both banks were blamed and requested to put in place procedures to prevent in the future such risks.

Having a strong reputational risk to maintain, the Swiss authorities have fully collaborated with other foreign similar departments and saw in 2013 the number of international requests increase.

Chart 11 - International cooperation: incoming and outgoing requests (2011–2015)



Source: (FINMA 2015)

These requests concern not only individuals and their assets, but also groups and companies that are directly and indirectly involved with a sanction regime. The correlation in the increase of such requests and the Russian sanctions is not evident. However, a source from BNP Paribas confirmed that during this period a significant rise in disclosure request was observed, especially in regards to sanctions. The peak of applications is observed in 2014, the year when the sanctions were introduced.

7 Trade Finance in the Swiss Banking sector

Have the cases presented above influenced the banking industry? The answer is very likely affirmative. Was the influence positive for the Swiss banking industry or negative? The probability of a pessimistic outcome is high. According to BNP sources, the bank cut off many lines to companies dealing with sanctioned countries. Even though the activity of a company had nothing to do with a specific sanction (e.g. financing wheat when crude oil is under a ban), the financing was interrupted. The situation became dramatic when companies or individual traders after twenty years of legal and trustful relationship have seen their loans stopped, but more hurtful, their accounts were closed. Clients were asked to close their relation with the bank and without and

alternative. Many small players complained about the treatment, qualified of inhuman, after so many years of common work and interest. In this context, traders related to Russia suffered the most. The same source from BNP gave some practical examples of how hard and costly it became to have a Russian customer.

To open an account and then a credit line, the bank needs to proceed a due diligence. This was valid before sanctions, but since every Russian client costs the bank several dozens of thousands Swiss francs, reaching many times hundreds of thousands Swiss francs, it became economically harder to accept their application. Before the sanctions, the bank needed a couple of weeks to open an account now, this time, jumped to a one-month minimum and sometimes reached three months. Compliance team regarding Russian clients quadrupled and legal team increased by three over the past four years. Once the account is open, every transaction is very closely scrutinized, phone calls are supervised, and every inflow or outflow above ten thousand US \$ has to be explained and documented. The relations of the client are as much important as the origin of funds. People linked directly or indirectly to the Russian government become instantly politically exposed individuals and the investigation doubles. Public information is also monitored. When a client's reputation was tarnished in press, it happened that the bank asked the customer to close the accounts even if the news were found to be false. The bank does not want to take the reputational risk anymore. The source at BNP testified that approximately 90% of Russian clients were asked to close their accounts and 60 to 70% of companies dealing with Russia were put under high pressure to cease their business with Russian partners. Unfortunately, the reasons were not always very clear, and many firms criticized the management of this critical situation.

Was this reaction too extreme? The response is delicate and could take many directions. Obviously, the bank has chosen to adopt a very strict line. That is understandable in terms of time and reputational risk. American Government agents were permanently present at some point in the bank and monitored carefully transactions and agreements that appeared to them suspicious. BNP source relayed a tense and mistrustful atmosphere that was not favorable for a sound governance. The focus was put mostly on the minimization of risk. The compliance department exploded regarding human resources and became an unavoidable stakeholder in the decision-making process during deal's agreements.

On the other hand, reputational harm was already done for BNP and questions were risen to challenge the way this crisis was managed. The bank was and still is a major

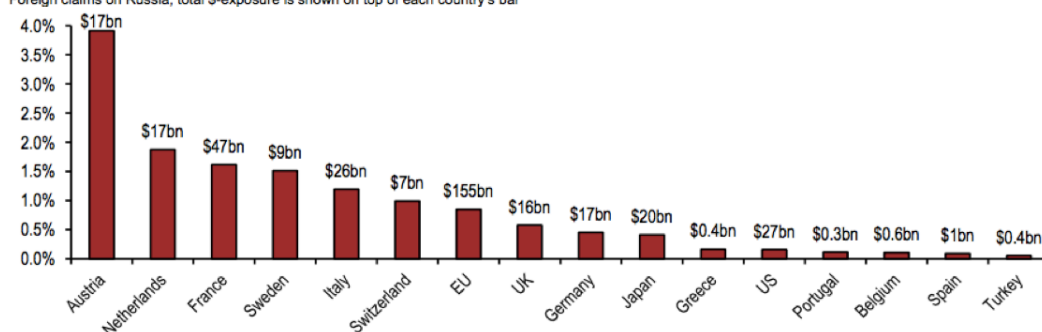
actor in commodity trade finance. Major trading companies were asked to reduce their exposure to the Russian market, which not every company agreed to do. Would these major trading companies have turned their backs to the bank if this emergency situation was dealt otherwise, respectively more softly? It is hard to believe so since other banks did not react in such drastic matter, even though significant measures were undertaken in every institution. Unfortunately, the consequences for the bank were the free departure of many respectable clients. It is important to state that this outflow was not major but meaningful enough for the bank and its market position. One of legitimate concern according to the BNP sources was trust. If the bank is capable of cutting a relationship of many decades so easily, this could happen to any respectable company. Therefore, some small and medium firms, to secure their financing, reduced or even stopped the usage of their credit lines with BNP. This behavior demonstrates that either way reputation was negatively affected and the bank undertook massive reorganization in trade finance arm.

Despite the risk exposure, many banks jumped on the opportunity to attract Russian clients who left or were ejected from BNP. This is the case of ING Bank and Societe Generale. This is partly reflected in the graph below where France accounted an exposure of 47 billion US \$ in 2014, mostly by its three major trade financing banks, respectively Societe General, Credit Agricole, and BNP Paribas. In 2014 BNP did not release its exposure, but Societe General presented approximately 30 billion US \$ exposure. To note that no detailed specification was found on the nature of the loans. Societe General is known to be very present in Russia as the retailer bank. Therefore, it is hard to conclude that a significant part of the risk was carried by trade finance. Interesting to notice that the capital market reacted negatively to the situation and the shares went down by 15% in December 2015.

Chart 12 - Bank's exposure to Russia (% of GDP)

Exhibit 11: Banks' exposure to Russia (% of GDP)

Foreign claims on Russia, total \$-exposure is shown on top of each country's bar



Austria in the graph is mostly represented by Raiffeisen Bank International and also demonstrate a vulnerability although it is unclear if this exposure is mainly due to the trade financing or to the global credit risk. The depreciation of Russian currency played a major role in bank's losses in 2014 and mirrored the significant market risk that the institution was facing.

The graph shows an exposure risk of 7 billion for Switzerland, accounting for only 1% of the Swiss GDP. The figure seems to be underestimated if we compare to huge deals that Rosneft, for example, concluded to secure its access to the capital. The explanation could reside in the dilution of the trade finance. European Union exposes 155 billion US \$ exposure and regroup banks that have a historical trade finance pedigree. In Switzerland, banks are mostly known for their asset management competence. UBS is considered the first private wealth management bank in the world and Credit Suisse is one of the biggest. Their core business is not commodities trading, neither trade finance. Although banks always seek to increase their margins and their profit. Not so long ago, commodities were a lucrative business for banks, the consumption and prices were so high, driven by the development of BRICS, that letting the opportunity go was out of the question. A former trader of petrochemicals gave an insight of the euphoria that reigned at that time;

"Banks were so excited to conclude new deals that they did not count on their expenses. Parties with hundreds of people in a Palace or a private castle with pretty girls were relatively common at that time. The following day's hundreds of deals were concluded. As an example to open an account took only a few days and to open an LC took only minutes. Each LC could earn the bank between sixty and hundred thousand US \$ and there were more than hundred per day. The calculation was simple, and we did not have to hesitate much to accept the deal. It was the golden period. Today people are nostalgic."

After the first collapse in 2008, prices went up until 2012 and crash again to a dramatic level. The margins became smaller, and banks had to decrease their exposure. The risk taken by some institutions was not reasonable and deviate strategically from their core know-how. This was the case of Credit Suisse, but also UBS and many private wealth management banks in Switzerland. This decrease could explain why Swiss banks had and have a relatively small Russian exposure.

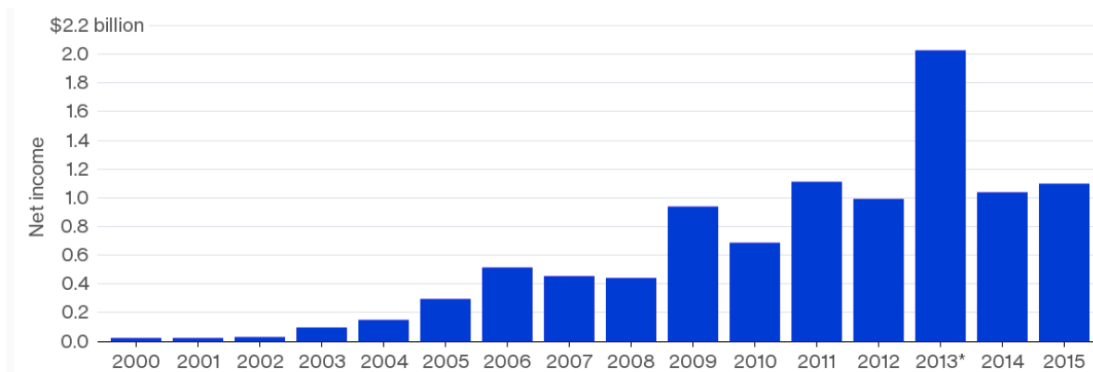
It is very plausible that the sanctions had an effect on Swiss trade finance sector, no distinction made between Swiss financial institutions and foreign firms established in Switzerland. Even though some banks, such as ING or Deutsche Bank increased their client portfolio, the effect on the sector is assumed to be negative because the country risk increased, credit risk as well. The reputational risk seems to have become a key factor in the decision-making process, and banks want to minimize it. However, it would be too simplistic to name sanctions the main reason why many banks turned their backs to Russian clients in trade finance. Macro-economical aspects such a decline in consumption leading to a decrease in demand, the increase in the supply, the global political and social instability also strongly influence the choices of banks to enter a geographic market and take the risk.

8 The Swiss commodity trading sector

First, it would be reasonable to split the sector into two distinct categories. The first one represents major companies such as Vitol, Trafigura, Mercuria, Glencore, Gunvor. It is important to note that all these companies are leaders in a particular type of commodity which is energy. The second group is less visible but often forgotten. These are firms that go from a medium structure to a one-person show, meaning an individual company. The difference is more that significant, it is an entirely different way to do business, strategically, financially and commercially speaking. This will be explained in further paragraphs.

Traditionally big traders can be distinguished from producers that are usually mining companies, national companies and extracting companies such as Shell or BP. In accountant language, we name them to light. What does that mean? On my assumptions, traders are naturally opportunistic and very reactive. This signifies that a trading company will be extremely sensitive to market variations. These variations could have many causes; supply and demand disruption, political instability, financial crisis, etc. Traders make use of these changes and try to minimize the risk to a minimum. In fact, the global economic volatility is taken as a chance to increase profitability.

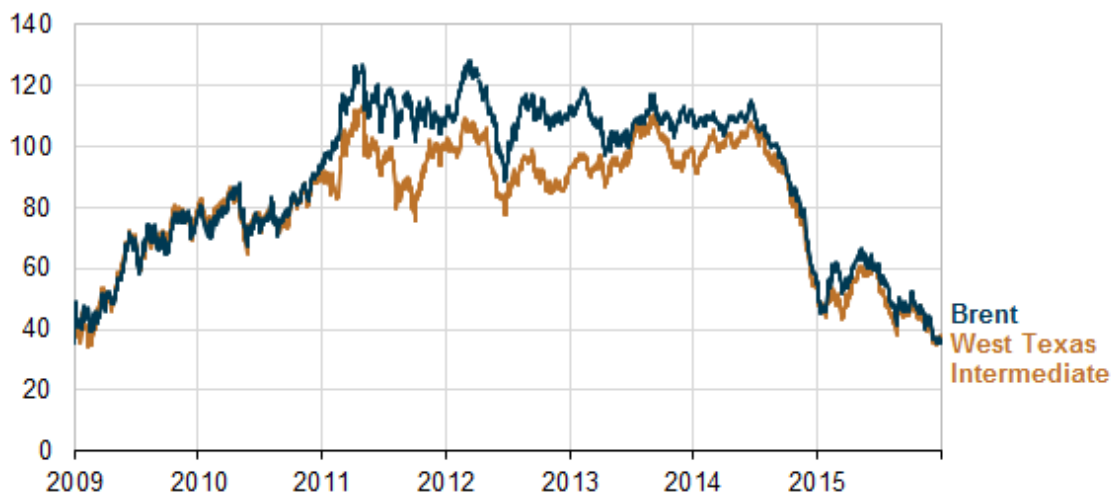
Chart 13 - Trafigura's trading profit history



Source: (Hoffman 2015)

The graph above presents the profit of a real trading company. Independently the exceptional gain that Trafigura did in 2013 due to an asset sale, the income is showing a remarkable stability since 2011 and even increased slightly in 2014 and 2015 in comparison with the previous year.

Chart 14 - Daily crude oil spot prices, 2010-2015 (\$/barrel)



Source: (EIA 2016)

It is relevant to emphasize the Trafiguras's profit shown above by the exhibition of two major crude oil indexes. In 2014 the Organization of the Petroleum Exporting Countries (OPEC) decided to keep extracting crude oil in response to the pressure that the United States were putting on the market with the production of shale crude oil. Prices dropped almost to the post-2008 financial crisis level, but the profit of the Swiss trading firm increased. This is counterintuitive but very possible by hedging mechanism by which the price risk is mitigated to 90-95%.

In comparison, mining companies and assets large firm have a small room for maneuver. Why? Because the enterprises are stuck with their assets acquired at a very high price and put in accounting books as such. When the market decreases, the asset loses its book value, and the profit has negatively impacted the impairment. This is the case for the refineries or mines that were acquired during bullish market. The perfect example of the company that suffered very much from the market contraction is Glencore.

The corporation's management some years ago decided to take another strategy and to draw away from a simple trading company that it was for a long time. Investors considered Glencore as a light Corporation and had invested consequently. The strategy adopted was the vertical integration. Various assets were acquired, one of them at very high price, respectively the company Xtrata for 41 billion US \$. Xtrata was historically was a mining company and very asset heavy. As a consequence, Glencore also became asset heavy, and its company's profile shifted from a trading firm to an extracting company such as BHP Billiton Ltd or Rio Tinto Group. This strategy is not necessarily bad in my opinion because it gives the company a couple of market advantages. First, the firm would secure its supply and decrease the risk to see its supplier go bankrupt, meaning disrupt the production. Then the extraction is in the house, that also means that Glencore can reduce the costs and optimize the production as it sees suitable. Moreover, finally, synergies can be created and give a substantial market advantage. Unfortunately for Glencore, commodities prices went down and promised profits evaporated. Why the example of Glencore has an importance for the present research is explained in the following sections.

8.1 Vitol & Glencore finance Rosneft for 10 billion US \$

The size and the ingenuity of that deal were reported all over the commodity trading business. To better understand its amplitude, a rapid summary is following.

In March 2013, Rosneft signed a five-year supply contract of 67 million metric tons (representing 491'110'000 barrels) of crude oil with Vitol (20.1 million metric tons = 147'333'000 barrels) and Glencore (46.9 million metric tons = 343'777'000 barrels). Both companies financed the deal by a prepayment. The goal for Rosneft was to secure its development, namely to complete the financing of TNK-BP acquisition. (US \$ 55 billion on which US \$ 45 were already raised). Rosneft proceeded much by the bond issuance than pre-exports financial deals, so this made the agreement unusual. (TFR 2014) Moreover, the deal was not only remarkable for its size but also by its structure.

Rosneft was able to keep this debt off the balance sheet and record it as a commercial liability instead of financial debt.

Table 4 - Key fact of the syndicated loan

Borrower	Special purpose vehicles (ROS-GIP and ROS-VIT)
Region	Russia
Nominated by	Citi / Deutsche Bank / ING / HSBC
Purpose	Funding to SPVs for prepayments by Glencore and Vitol for delivery of oil and oil products by Rosneft
Signed	8 March 2013
Classification	Prepayment
Amount	US\$8.232bn
Tenor	Five years
Main participants Bookrunners	Bank of America Merrill Lynch / BNP Paribas / Citi / Deutsche Bank AG London Branch / HSBC / JP Morgan; and Société Générale CIB
Mandated lead arrangers	Glencore / Vitol / Bank of America Merrill Lynch / BNP Paribas / Citi / Crédit Suisse / Deutsche Bank AG Amsterdam Branch / HSBC / J.P. Morgan / Morgan Stanley / Santander / Société Générale CIB
Lead arrangers	ABN AMRO / Barclays / Lloyds / Rabobank International / UBS
Senior arrangers	ING
Facility agent, security agent and documentation agent	Deutsche Bank AG Amsterdam branch
Legal adviser	Linklaters LLP

Source: (TFR 2014)

This transaction reflects a new strategy of the Russian company to finance its development and trading companies taking advantage of the secure supply. In June 2013 a similar five years pre-payment contract was signed by Rosneft with Trafigura for US \$ 1.5 billion and up to 10.11 million metric tons (approximately 74'106'300 barrels) (Bell 2013) and will be explained deeply in the next chapter.

The problem occurred with the issuance of sanctions by US government and EU Council. Since the US \$ 10 billion agreement was concluded before the sanctions, the deal was not impacted. However, new arrangements operated under the same scheme found many difficulties and mostly a refusal. Trading companies interested in the pre-export financing were disappointed to find that the US and the EU banks were refusing to make funds available to sanctioned companies, even though legally they were allowed to do so. The understandable bank declined the risk to be sentenced and

financed, despite an unclear legislation. In Summer 2014 Vitol could not conclude the contract for US \$ 2 billion prepayment loan against oil supplies because no market player agreed to take the risk. (Farchy, Hume 2014).

8.2 Trafigura, the largest exporter of Russian crude oil

In the previous chapters, the importance for a trading company to be asset light and reactive was emphasized to give a practical example of how market conditions can change quickly for a trading company. The relevance of Trafigura's case for the present research paper is of the first order. The implementation of sanctions against Russia gave the opportunity for the company to take the first place of private Russian crude oil exporter over Vitol and Glencore. This is how it happened.

Mentioned in the prior chapter, Rosneft expanded its development by the acquisition of TNK-BP. The goal stated by the company was to "create synergies, to optimize the crude and product supply logistics and including joint upstream development opportunities" (Bell Pottinger and al. 2012) The state-owned company proceeded by the bond issuance, meaning debt. The obligation was issued in US dollars, and with the collapse of the ruble, the costs of this debt exploded. Thirty billion US dollars were worth one trillion rubles and increased in 5 months to 1.4 trillion. With decreasing prices of the crude oil, the capacity of the company to reimburse the debt became critical. Rosneft had to repay 17.1 billion US \$ in cash until the end of the first quarter of 2015. From March 2013 and March 2015, the average Urals crude oil price was respectively 95.51 US \$ / barrel meaning that Rosneft had to produce and sell 179'038'844 barrels to compensate this debt. Knowing that the production of the company was in average 5.04 million barrels per day during that period, Rosneft must have extracted for 36 days straight to reimburse only this debt. No operational costs were taken into account.

In December 2014, the firm was backed by the central bank. The institution announced a sale of bonds where it included Rosneft's bonds on the Lombard List (List of securities that can be used as collateral). (Hirst 2015) The news was taken very negatively and exacerbated the fall of the Russian currency. This situation could have been resolved if the Russian producer wasn't placed on the sanction list by the United States and the European Union. The access to the capital became very restricted, and the management had to find a solution to avoid the default on bond's repayment. It seems that US and EU banks due to political and reputational risk did not want to be involved. Rosneft through the government aid concluded agreements with Chinese banks for a very attractive price but also addressed a proposition to major traders. It is

where Trafigura could take the opportunity and use its 5 billion US \$ prepayment contract, concluded in 2013, to double the procurement and secure the supply. In fact, the scheme is simple. Trafigura proceeds with a prepayment of 30 days or less and receives crude oil at an attractive price, meaning with a comfortable discount because of the market conditions and because of the need of Rosneft to sell its production. Then, stores it onshore or offshore and wait until the price is more favorable to sell it with a comfortable margin. To be able to do that, the Swiss company has an apparent advantage over the concurrence; that is cash. Few firms are capable of paying in advance more than 500 million US \$ in a month and still being totally operational. This demonstrates one of the main property of a simple trading company; liquidity. The comparison with Glencore speaks for itself.

Question to ask is how the firm was capable of providing so much cash in such a short time? *“The Group enters into repayment agreements where purchases of commodities are prepaid. When the prepayment agreement can be settled in cash or another financial asset, it is classified at amortized cost in line with IFRS 9. When settlement of the prepayment agreement solely occurs by having the commodities physically delivered, these agreements are not classified as financial instruments as they do not meet the definition of a financial asset.”* (Trafigura Group PTE LTD 2015) From the sanction perspective, this statement is necessary because the financial instruments are the one that was targeted by USA and EU. Since this type of financing is not considered financial instruments, it does not fall under sanctions. In 2015 Trafigura's annual report, prepayments in the current assets amounted 2,110.8 million US \$ comparing to the previous year where prepayments accounted for 2,025.1million US \$. The position was stable from one year to another. The significant difference appeared in 2013 where the same position amounted 881.5 million US \$, meaning that this type of financing almost tripled. The standard comprehension of this type of financing leads to inventories. However, surprisingly it remained stable, worth between 7.4 and 7.8 billion US \$. I assume that prepaid cargos did not stay long in the company's possession and quickly moved to China.

Trafigura in its risk management report gave a partial explanation on how the company managed to stay so much liquid.

“The Group manages its treasury and liquidity risks maintaining a strong liquidity position through the following:

- *Targeting immediately available cash on hand of minimum USD500 million under standard conditions (higher in the case of extreme volatility);*
- *Maintaining bilateral lines which allow the Group to mark-to-market financings to the value of the underlying physical assets. Mark-to-market financing is performed weekly (or intra-weekly in the case of extreme volatility) and provides an additional source of liquidity which is not available to competitors which are financed purely from revolving credit facilities;*
- *Committed unsecured credit facilities;*
- *Maintaining headroom under bilateral trade finance lines and committed revolving credit facilities; and*
- *Limited distribution of profit (significant retained earnings) and subordination of repurchased equity. The Group provided a financial guarantee for an amount of USD 300 million” (Trafigura Group PTE LTD 2015)*

In 2015 the crude oil market became extremely volatile, and my assumption is that the company put aside enough immediately available funds to be able to finance the prepayment and avoid the involvement of bank in a less flexible syndicated loans.

The example of Trafigura shows how trading companies use market conditions to their advantage and in this specific case increase their market share. The sanctions played a positive role for the company and gave the opportunity to geographically diversify its supply as much as to secure it. The adaptation was surprisingly fast despite the amounts involved, up to 500 million US \$ prepayment per month and representing at that time more than 5.2 million barrels.

8.3 Mr Timchenko put on Specially Designated Nationals list

Until this chapter, it was the question of sanction against entities mostly and economic restrictions. Nevertheless, some companies were hit directly or indirectly by the sanctions against individuals. This was the case with Gunvor, one of the major crude oil trader. The company was founded by two persons Gennady Timchenko and Torbjorn Tornqvist. After the Crimean Peninsula annexation, Mr. Timchenko was very fast designated by US Government to have very close relationship with the President Vladimir Putin. In fact, they were practicing judo together in St Petersburg. At some point, it was said that Vladimir Putin was one of the shareholders of the company. The rumor was quickly officially denied by the company. Mr. Timchenko detained 43.5% of

shares and Mr. Tornqvist the same percentage. The rest was split between minor shareholders, in majority senior managers. On 19th of March 2014, Mr. Timchenko agreed to sell its shares to Mr. Tronqvist and cut in that way his relation to the company. The next day the list of Specially Designated Nationals was issued by OFAC.

By doing this move, Mr Timchenko avoid to Gunvor a delicate situation of being under sanctions of the Executive Order 12661 where “*any individual or entity that is owned or controlled by, that has acted for or on behalf of, or that has provided material or other support to, a senior Russian government official.*”(OFAC 2014) In other words, it could have become impossible or illegal, from US prospective, to deal with the company and the situation concerned every stakeholder.

Why was Mr. Timchenko sanctioned? The graph bellow shows very direct relations to the President Putin. These people are not only business men or politically close persons to the president but his friend's circle. Every individual is related to Mr Putin since his university years, or since his first political moves in St Petersburg. He put trust in them and they gave it back.

Chart 15 - Putin's close circle – Sanctioned individuals



Source: (BBC News 2014; OFAC 2014; European Commission 2016)

Mr. Timchenko received personal gifts, was practicing sports with Mr. Putin and received different state contracts through his company Volga. What is reproached to Mr Timchenko is the indirect funds that he made available to Mr Putin and his government. There is no direct link to Ukraine or to Crimean Peninsula annexation but the financial resources at Mr Putin's disposal were considered harming the peace regulation process.

Despite the sanctions and the assets freeze, Mr Timchenko received 1 billion US \$ for his capital participation only in June 2016. No information was divulged on the deal, but many questions rise regarding the success of it and information collection. First question that comes in mind is how Mr. Timchenko was warned many days before the appearance of his name on the sanction list. And how is it possible to agree on such transaction the day before the release of this list. The company assured that the preparation of the exit was orchestrated for a long time and that the list accelerated the process. Both founders had strategically different opinions on the future of the company and divergence started way before the Ukrainian crises and sanction risk. The Swedish owner desired to expand the business all over the world, when Mr. Timchenko wanted to focus on Russia and deepen the relationship within the country. It is hard to assert that Gunvor has reacted specifically after and because of the sanctions against Russia, but the turn in the strategy is impressive.

Gunvor is involved or owns different objects in Russia that could testify of a former close partnership. The company owned Ust Luga Terminal, one of the largest rail-to-ocean terminal, bought 56 million USD \$. The upgrading and the development of the present infrastructures needed large investments, that partially Gunvor and BNP financed under loans of 283 and 199 million US \$. Part of this investment was also acquired by Mr Timchenko himself. To illustrate the importance of the terminal it is simple to mention some facts about the infrastructure. Ust Luga Terminal is provided for loading on the vessels for crude oil and crude oil products such as oils, diesel or benzin by rail but also by Baltic Pipeline System-II (BPS-II). Gunvor owned 50% (93 million USD \$) of the Nevskaya Pipeline Company, which owns 4 kilometres pipeline that connected BPS-II to Transneft crude oil tank farm. The capacity is about 170 to 211 million barrels per year. (Gunvor 2015) (Representing 520'000 barrels per day, but hardly comparable with Russian crude oil export because of the presence of crude oil products.). Gunvor also divested the 30% share in Kolmar coal-mining project amounting at the beginning 120 million USD \$. These assets testify the importance that Russia had in the company's portfolio. Bloomberg quoted that the Swiss trader accounted at some point 30% of the seaborne crude oil Russian exports.

None of these assets is owned by Gunvor anymore, meaning that the shift is significant. However, it is difficult to certify that all these divestments were because of the sanctions. I would assume that the company had a real strategy of geographical diversification. Traders tends to secure their supply and Russian political instability could have just accelerated the movement to other sources. On the other hand this

example enlighten the importance of the individuals involved in the company and their impact of the business.

8.4 Medium and small traders

At the time of the redaction of this study, I was working in a small trading company, specialized in the Base Oil and Petrochemical products. Many traders testified that to do business became more and more difficult and many had to cease their activities for different reason.

The first one is the access to trade finance. As mentioned in the previous chapters about banking sector, after the implementation of sanctions banks became more suspicious and more attentive to their Russian clients. A considerable part was asked to close their account and to leave the bank. Others have seen their credit lines cut by half in the best case and the worst case was when the line was divided by ten or more. The capital asked to have or to open a credit line reached 10 million US \$ for the majority of banks. Trading in general became more difficult for Russian clients. Most of the accepted transaction were back-to-back because banks didn't want to take additional risk. Moreover, if front-to-back credits were asked, the bank would enter into the deal only for a company that had already a high turnover and high volumes.

Also the business has changed in terms of compliance. Basel III put banks under high pressure even though the implementation has been postponed to year 2019. Banks such as BNP Paribas, after substantial turbulence want to show the prove their credentials. It is almost logical that in 2015 the best bank for trade finance in Europe was BNP Paribas. The goal is to take as less risk as possible, preferably with high margin. Unfortunately, from my experience, small and medium structures tend to take larger risks because of higher returns. A practical example come to mind to illustrate the negative impact coming from stricter norms imposed on banks.

A small company specialized in Russian crude oil products was buying from Perm refinery in Russia and selling the product to north Africa. After Arab Spring, the firm meet bank's reluctance to confirm Letter of Credit issued by local banks. Some took the risk after confirming a confirming bank and the deal could take place. The issue came from when the sanctions were imposed. The company could not find a bank that was willing to open a LC with Russia as the Origin of the product. This happened after 6 years of relationship and a secure and stable track record of the transaction. The company was related to three banks. Each of them asked for higher guarantee and

more information about the customers. Only partial information was provided and the opening request was denied. The trader could not find a bank to finance his imports even though the customers were the same for more than 5 years. After five months of struggle, the trader left to Singapore and closed his office in Geneva. What strikes me first is the fact that customers had nothing to do with the Russian sanctions. Why three banks did not ask the trader, at the first place, to give them more information about the customer? Second, the banks were willing to confirm the LC if the trader increased its capital, meaning that it was not an issue of KYC. This story happened in the middle of the year 2015, why wait so long after the implementation of sanctions. The trader is Russian and I assume that played the main role for the decision. The goal was to get rid of Russian clients in order to avoid any spotlights of American or Swiss national authorities.

After a discussion with an independent trader of crude oil, I sensed a frustration and a loss of trust in the Swiss banking sector. The person felt betrayed after a fructuous and long relationship with his banks. He admitted that what motivated him to come and establish his individual company in Switzerland was the proximity of the finance. Now that the reality evolved and he feels the doors less and less open to him, he's honestly considering leaving the market to China. Ultimately the shift to Asia of Russian national companies is also felt on a micro scale, where small traders see more opportunities and less barriers there than in Geneva and Switzerland.

9 Conclusion

After the survey and my personal knowledge of the subject, the expectations were relatively negative on the findings of the present research. I was surprised to find that the outcome took a more subtle approach. Economic sanctions have usually a negative impact on every actor. The sanctioned party endure substantial changes in their economic reality and the opposite side feels the financial and commercial variation depending on its dependence and relationship. Russia is a major commodity exporter, especially energy. In Switzerland the presence of the discrete but very active commodity trading business was expected to react negatively to the sanctions imposed on Russia. The banking sector respond adversely to the situation, but not the way I thought. The banks were still doing business with Russian companies, only the manner changed. Compliance became more severe and institutions came to be more selective. Risk management overtook the pursue of the highest margin to my opinion and

reputational risk increased to the point where institutions were rejecting honest and reliable people.

Small traders from my perspective suffered the most. Not because of the lack of opportunities or restrictions but because of the absence of funds to finance their goods. Banks, by refusing to grant them loans, were just squeezing the market and letting them leave the country giving the opportunity to concurrent financial places to become more attractive.

Finally, my unexpected findings came from major traders. According to my understanding, sanction regimes are only another very present variable that companies are dealing with. That is why it would be simplistic to draw a general tendency. There are losers and there are winners. The reality that each big firm is facing could be very different from one to another. Depending on their strategies, their main sector of activity or their dependence on a specific region. In Switzerland, the commodity trading industry, concerning major companies, did not cease to do business with Russia after the sanctions were imposed. Some left this market and some took the opportunity to take the empty market share left by those who withdrew.

To conclude, in my opinion, the world became less certain and business more volatile. Sanction regimes not only grew into a common political tool but also an economic weapon, used more and more often. Sanction's avoidance is unthinkable for companies and compliance as much as transparency will gain in importance. This will inevitably bring new costs and structural rigidity that could play an important role in the future for Lemanic region and Geneva as commodity trading hub. The question, if these new standards will become a burden or, in the opposite, a competitive advantage for Switzerland, would be relevant for a further research.

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Appendix 1 : Survey Results

Note: The survey was conducted on a student population. The age range is between 18 and 38, where the median is at 26. The sample is not representative of the Swiss population by age, neither by the revenue but reflects partially the professions practiced in the third, respectively service group. The results surprisingly show that people surveyed did not feel a negative impact on their day-to-day life neither on the Swiss economy as a whole.

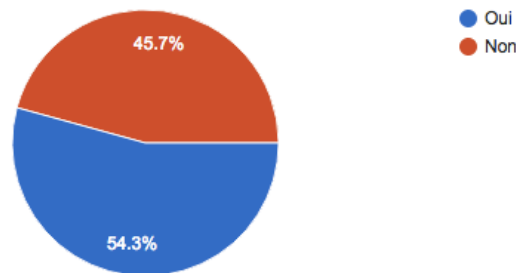
QUESTIONS

RESPONSES

559

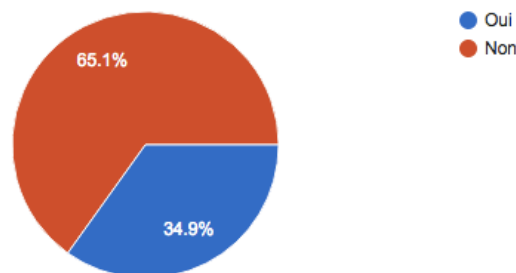
Pensez-vous que les sanctions imposées à la Russie par l'Union européenne (y compris la Suisse) et les Etats Unis ont eu un impact significatif sur l'économie russe?

(551 responses)

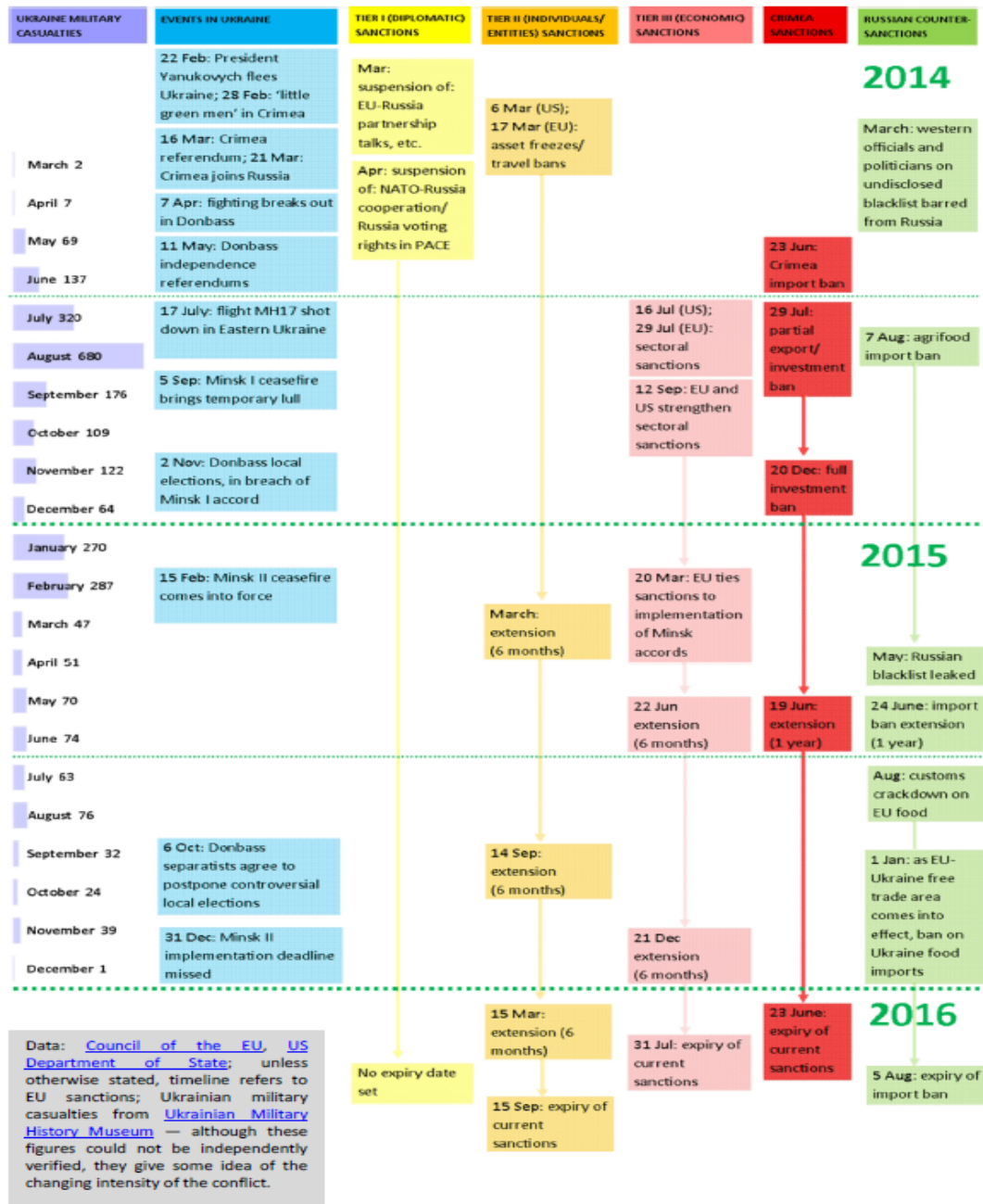


Pensez-vous que les sanctions imposées à la Russie par l'Union européenne (y compris la Suisse) et les Etats Unis ont eu un impact négatif sur l'économie suisse?

(553 responses)



Appendix 2 : Russian Sanctions Timeline (2014-2016)



Source (Members' Research Service 2016)

Appendix 3 : Full sanction text of OFAC

Directive 1

“(1) all transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity or new equity of persons determined to be subject to this Directive, their property, or their interests in property; and (2) all activities related to debt or equity issued before the date of this Directive 1 (as amended) that would have been prohibited by the prior version of this Directive 1. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive.”(Office Of Foreign Assets Control 2014a)

Directive 2

“(1) all transactions in, provision of financing for, and other dealings in new debt of longer than 90 days maturity of persons determined to be subject to this Directive, their property, or their interests in property; and (2) all activities related to debt issued before the date of this Directive 2 (as amended) that would have been prohibited by the prior version of this Directive 2. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.”(Office Of Foreign Assets Control 2014b)

Directive 3

“all transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity of persons determined to be subject to this Directive, their property, or their interests in property. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.”(Office Of Foreign Assets Control 2014c)

Directive 4

“the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to this Directive, its property, or its interests in property.”(Office Of Foreign Assets Control 2014d)

Appendix 4 Full Council regulation regarding the Russian sanctions

Article 1

1. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 by:
 - (a) major credit institutions or finance development institutions established in Russia with over 50 % public ownership or control as of 1 August 2014, as listed in Annex I;
 - (b) any legal person, entity or body established outside the Union owned for more than 50 % by an entity listed in Annex I; or
 - (c) any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (b) of this paragraph or listed in Annex I,shall be prohibited.
2. The direct or indirect purchase or sale of, the direct or indirect provision of investment services for, or assistance in the issuance of, or any other dealing with bonds, equity, or similar financial instruments with a maturity exceeding 30 days, issued after 12 September 2014 by:
 - (a) entities established in Russia predominantly engaged and with major activities in the conception, production, sales or export of military equipment or services, as listed in Annex II, except entities active in the space and nuclear energy sectors;
 - (b) entities established in Russia which are publicly controlled or with over 50 % public ownership which have estimated total assets of over 1 trillion Russian Roubles and whose estimated revenues originate for at least 50 % from the sale or transportation of crude oil or petroleum products as of 12 September 2014, as listed in Annex III;
 - (c) any legal person, entity or body established outside the Union owned for more than 50 % by an entity referred to in points (a) and (b); or
 - (d) any legal person, entity or body acting on behalf, or at the direction, of an entity within the category referred to in point (c) or listed in Annex II or III,shall be prohibited.
3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited direct or indirect imports or exports of goods and non-financial services between the Union and Russia or any other third State, or for loans that have a specific and documented objective to provide emergency funding to meet the solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by an entity referred to in Annex I.
The prohibition in paragraph 3 shall not apply to drawdown or disbursements made under a contract concluded before 12 September 2014 if:

- (a) all the terms and conditions of such drawdown or disbursements: were agreed before 12 September 2014; and have not been modified on or after that date; and
 - (b) before 12 September 2014, a contractual maturity date had been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.
- 4. The terms and conditions of drawdowns and disbursements referred to in this paragraph include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount
- 5. The prohibitions in paragraphs 1 and 3 shall not apply to:
 - (a) the sale, supply, transfer or export and to the import, purchase or transport of hydrazine (CAS 302-01-2) in concentrations of 70 per cent or more;
 - (b) the import, purchase or transport of unsymmetrical dimethyl hydrazine (CAS 57-14-7);
 - (c) the sale, supply, transfer or export and to the import, purchase or transport of monomethyl hydrazine (CAS 60-34-4);
 for use of launchers operated by European launch service providers, or for the use of launches of European space programs, or for the fueling of satellites by European satellites manufacturers.
 The amount of any export of hydrazine shall be calculated in accordance with the launch or launches or the satellites for which it is made and shall not exceed a total quantity of 800 kg for each individual launch or satellite. The amount of any export of monomethyl hydrazine shall be calculated in accordance with the launch or launches or the satellites for which it is made.
- 6. The prohibitions in paragraph 2 shall not apply to the provision of technical assistance, brokering services or other services, and to the provision of financing or financial assistance, related to the operations referred to in points (a), (b) and (c) of paragraph 5.
- 7. The operations referred to in points (a), (b) and (c) of paragraph 5 and in paragraph 6 shall be subject to prior authorization by the competent authorities of the Member States. Member States shall duly inform the Council in all cases where they grant an authorization. The information shall include the details of the amounts transferred and of the end-use.

Article 2

- 1. The direct or indirect sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, to Russia by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.
- 2. It shall be prohibited:
 - (a) to provide technical assistance, brokering services or other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary

- equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body in, or for use in Russia;
- (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance or guarantee, as well as insurance and reinsurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services or other services directly or indirectly to any person, entity or body in, or for use in Russia.
- 3. The import, purchase or transport of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, from Russia by nationals of Member States or using their flag vessels or aircraft, shall be prohibited.
 - 4. The prohibition in paragraphs 1, 2 and 3 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts, and to the provision of spare parts and services necessary for the maintenance and safety of existing capabilities within the Union.

Article 3

- 1. The direct or indirect sale, supply, transfer or export of dual use goods and technology as included in Annex I to Regulation (EC) No 428/2009 to any person, entity or body in Russia as listed in Annex IV to this Decision by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.
- 2. It shall be prohibited:
 - (a) to provide technical assistance, brokering services or other services related to goods and technology set out in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV;
 - (b) to provide financing or financial assistance related to goods and technology referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of these goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any person, entity or body in Russia, as listed in Annex IV.
- 3. The prohibitions in paragraph 1 and 2 shall be without prejudice to the execution of contracts concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts, and to the provision of assistance necessary for the maintenance and safety of existing capabilities within the EU.
- 4. The prohibitions in paragraphs 1 and 2 shall not apply to exports, sale, supplies or transfers of dual-use goods and technology for the aeronautics and for the space industry, or the related provision of technical or financial assistance, for non-military use and for a non-military end user, as well as for maintenance and safety of existing civil nuclear capabilities within the EU, for non-military use and for a non-military end user.

Article 4

1. The direct or indirect provision of associated services necessary for the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States shall be prohibited:
 - (a) oil exploration and production in waters deeper than 150 metres;
 - (b) oil exploration and production in the offshore area north of the Arctic Circle;
 - (c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.

2. The provision of:
 - (a) technical assistance or other services related to the equipment referred to in paragraph 1;
 - (b) financing or financial assistance for any sale, supply, transfer or export of the equipment referred to in paragraph 1 or for the provision of related technical assistance or training; shall also be subject to prior authorization by the competent authority of the exporting Member State.
3. The competent authorities of the Member States shall not grant any authorization for any sale, supply, transfer or export of the equipment or the provision of the services, as referred to in paragraphs 1 and 2, if they determine that the sale, supply, transfer or export concerned or the provision of the service concerned is destined for one of the categories of exploration and production referred to in paragraph 1.
4. Paragraph 3 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts.
5. An authorization may be granted where the sale, supply, transfer or export of the items or the provision of the services, as referred to in paragraphs 1 and 2, is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment. In duly justified cases of emergency, the sale, supply, transfer or export or the provision of services, as referred to in paragraphs 1 and 2, may proceed without prior authorization, provided that the exporter notifies the competent authority within five working days after the sale, supply, transfer or export or the provision of services has taken place, providing detail about the relevant justification for the sale, supply, transfer or export or the provision of services without prior authorization.

Article 5

In order to maximize the impact of the measures referred to in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for herein.

Article 6

Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Decision.

Article 7

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:
 - (a) entities referred to in point (b) or (c) of Article 1(1) and in point (c) or (d) of Article 1(2), or listed in Annex I, II, III or IV.’.
 - (b) any other Russian person, entity or body; or
 - (c) any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) or (b) of this paragraph.
2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.
3. This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Decision.

Article 8

It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in Articles 1 to 4a, including by acting as a substitute for the entities referred to in Article 1.

Article 9

1. This Decision shall apply until 31 January 2017.
2. This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.
3. The restrictive measures laid down in this Decision shall be reviewed no later than 31 October 2014, in particular taking into account their effect and the measures adopted by third States.

Article 10

This Decision shall enter into force on the date following that of its publication in the Official Journal of the European Union.

Source (European Commission 2016)