

Ukraine – what should the shipping industry expect?

Roger Johnson, of the Standard Club, considers the initial sanctions imposed in relation to Ukraine, the impact of these on the shipping industry and what the shipping industry should be anticipating if a decision is taken to ratchet up the pressure on Russia.

Sanctions to date

As with other sanctions regimes, the US and the European Union (EU) have been among the most active jurisdictions to impose sanctions in response to developments in Ukraine. During little more than two weeks, three executive orders were issued in the US and three regulations (including an amending regulation) in the EU. The initial legislation was targeted at the former President of Ukraine, Viktor Fedorovych Yanukovich, his family and associates.

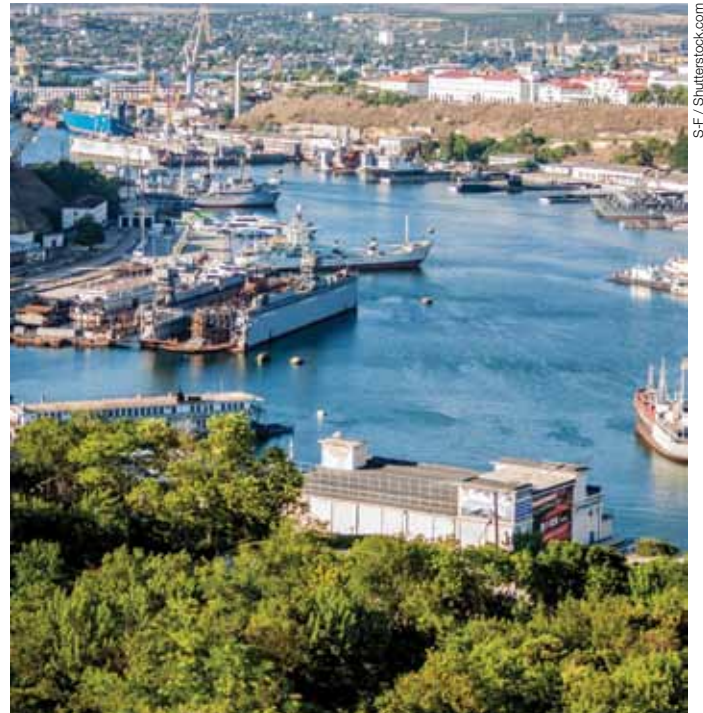
On 5 March, the Council of the European Union adopted a decision and regulation to freeze the assets of the former President and 17 other individuals said to be responsible for the misappropriation of Ukrainian state funds and/or for human rights violations in Ukraine. These initial sanctions came into force on 6 March and freeze all funds and economic resources belonging to, owned, held or controlled by these listed individuals. They also prohibit both making available any such funds or economic resources to or for the benefit of such persons and any activities the object or effect of which is to circumvent these freezing measures.

On 6 March, and as part of a co-ordinated approach, President Obama likewise issued an executive order imposing sanctions on individuals and entities who have undermined Ukraine's territorial integrity. Specifically, this applies to any individual or entity responsible for undermining Ukrainian democratic processes or institutions; or for threatening the peace, security, stability, sovereignty or territorial integrity of Ukraine. As with the EU sanctions, these sanctions again are aimed at freezing the assets of such persons, blocking all property and interests in property located in the US or which are under the possession or control of US individuals or entities.

The subsequent sanctions were in response to the deployment of Russian military forces in the Crimea region of Ukraine and the decision by the Supreme Council of the Autonomous Republic of Crimea to hold a referendum on the future status of Crimea. In the preamble to the EU Council regulation of 17 March, that decision was strongly declared to be "contrary to the Ukrainian Constitution and therefore illegal".

These 17 March EU sanctions extend the assets freezes, and accompanying travel bans, also to Russian individuals. In a press release issued following the EU Foreign Affairs Council meeting on 17 March, the EU emphasised:

"The European Union remains ready to support facilitating dialogue between Ukraine and Russia. We urge Russia to take steps to de-escalate the crisis, immediately withdraw its forces back to their pre-crisis numbers and garrisons in line with its international commitments, begin direct discussions with the government of Ukraine



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and avail itself of all relevant international mechanisms to find a peaceful and negotiated solution, in full respect of its bilateral and multilateral commitments to respect Ukraine's sovereignty and territorial integrity ... "Any further steps by the Russian Federation to destabilise the situation in Ukraine would lead to additional and far-reaching consequences for relations in a broad range of economic areas between the EU and its member states, on the one hand, and the Russian Federation, on the other hand. The EU calls on Russia to return to developing a strategic partnership with the EU instead of isolating itself further diplomatically and economically."

By an amending regulation dated 20 March, the EU list of sanctioned entities was increased by a further 12 individuals.

The US executive order of 17 March extended those targeted to officials of the government of the Russian Federation, those operating (for example) in the Russian arms sector and those materially assisting such persons. Included among the seven people listed are high-ranking Russian officials such as Deputy Prime Minister Dmitry Rogozin. In a fact sheet released on publication of the executive order, the White House warned:

"The US also will seek to hold accountable individuals who use their resources or influence to support or act on behalf of senior Russian government officials. We recognise that the Russian leadership derives significant support from, and

takes action through, individuals who do not themselves serve in any official capacity. Our current focus is to identify these individuals and target their personal assets, but not companies that they may manage on behalf of the Russian state.”

On 20 March, the third executive order was issued further extending the sanctions to those determined to operate in sectors of the Russian economy such as financial services, energy, metals and mining, engineering and defence. Among designated individuals are key Russian businessmen such as Gennady Timchenko, a co-founder of the major crude oil trader Gunvor Group. In addition, Bank Rossiya (described in the accompanying US Treasury press release as “the personal bank for senior officials” of Russia) was sanctioned alongside Yuri Kovalchuk, described as the bank’s largest single shareholder. The US Under Secretary for Terrorism and Financial Intelligence, David Cohen, was also quoted as saying:

“With its currency near an all-time low, its stock market down 20% this year and a marked rise in interest rates, Russia has already started to bear the economic costs of its unlawful effort to undermine Ukraine’s security, stability, and sovereignty ... As President Obama has made clear, we will continue to impose costs in direct response to Russia’s provocative acts, even as we have made clear there is a path to de-escalate the situation in Ukraine that respects Ukraine’s sovereignty and territorial integrity and takes account of Russia’s legitimate interests.”

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The current impact on the shipping industry

At this time, the sanctions in relation to Ukraine are not specifically directed at the maritime industry. However, the US executive orders are widely worded; and the transport of military or other equipment/goods (or personnel) could breach these.

Ship owners and charterers also obviously need to exercise due diligence to ensure that they do not trade, or otherwise do business, with any sanctioned individuals or entities, or with any entities which are owned or controlled by them.

Although US, EU and other sanctions may not directly apply to a ship owner, the dominant role played by the US dollar in global trade means that US sanctions cannot be ignored. In the same way, as many P&I clubs and other insurers/reinsurers are based in the EU neither may EU sanctions. For example, P&I cover for a ship generally will cease automatically if it is employed in any trade or voyage which will expose the club to the risk of any adverse action or if such insurance is or becomes unlawful.

What further sanctions should be anticipated?

Russia is a permanent member of the United Nations Security Council; and has therefore been able to veto any resolution in relation to Ukraine (in the same way as Russia and China have vetoed any sanctions in relation to Syria). However, the

UN Secretary-General Ban Ki-Moon has met with key parties, including with President Putin in Moscow, to try to de-escalate tensions and to find a diplomatic solution to the crisis.

It is hoped that such concerted efforts will be successful without the need further to extend sanctions. Certainly, while the 20 March US executive order indicates a willingness to target key Russian industries, all parties have acted with restraint to date. In particular, President Putin himself has not been designated; and with the exception of the US sanctions against Bank Rossiya only a limited number of individuals (rather than businesses) have been targeted. Likewise, sanctions issued by Russia in response to western measures have been similarly limited in scope.

However, co-ordinated sanctions imposed by the US, EU and other powers (as has occurred to date with these limited sanctions relating to Ukraine) previously have proved to be effective political instruments in achieving foreign policy goals. This has been through adversely impacting the economies of targeted regimes, as well as those with power and influence to change the regimes’ policies.

As shipping is the dominant means of transporting cargos, the shipping industry has often been targeted to implement such economic sanctions. This is perhaps best illustrated by the bans on transporting petroleum products, and other key cargos, found in the sanctions in respect of Iran and Syria. In both cases, these prohibitions have also been extended to related finance and insurance to widen the effectiveness of the sanctions. However, such developments in sanctions legislation have come at the price of an increasing compliance burden on commercial parties, uncertainty resulting from often unclear and overlapping legislation, as well as loss of business to others who are not subject to the same indirect sanctions.

Conclusion

At the time of writing this article, ie following the initial flurry of US and EU sanctions discussed above, the restrictive measures imposed in relation to Ukraine have only a limited impact on the shipping industry. It is also hoped that a diplomatic solution will be found to the crisis that will avoid more widespread sanctions. However, the US in particular has made it clear that it is willing to extend sanctions to target key Russian industries; and recent examples such as Iranian and Syrian sanctions show that the shipping industry may be used to implement these.

Ship owners and charterers therefore need to exercise caution to ensure not only that they do not unwittingly breach existing sanctions, but also are not caught out by any potential future sanctions which may be imposed without warning. [MRI](#)



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