

# Sanctions in close-up – application and practice in India



Sanctions in India are known as ‘Prohibitions’ and they typically conform with UN Security Council resolutions. Ameeta Verma Duggal and Aditi Warriar provide a deep dive into the Indian sanctions regime and insight into the country’s approach to controlling exports.

For several years now, India has had provisions regulating trade, financial transactions, and the entry of sanctioned individuals into Indian territory. These are focused on the country’s commitment to a policy of not assisting, encouraging or inducing any country to manufacture weapons of mass destruction (‘WMD’) and to prevent non-State actors and terrorists from acquiring WMD and their means of delivery. Such regulations are targeted towards maintenance of national security, public order and fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security, and take the form of sanctions or export control measures.

The word ‘sanction’ finds no mention in the laws of India and is instead referred to as ‘Prohibitions’. India imposes Prohibitions, classifiable as country-specific, product-specific and organisation, group or individual-specific. The Prohibitions imposed by India conform to the obligations cast on the Member States of the United Nations, pursuant to various United Nations Security Council resolutions (‘UNSCR’). The most frequently applied Prohibitions in India are with respect to trade in arms, nuclear

material and nuclear-related materials, prohibited financial assistance, and entry of sanctioned individuals through India.

India is a member of the Missile Technology Control Regime, Wassenaar Arrangement and the Australia Group, besides being an adherent country to the Nuclear

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Suppliers Group. Accordingly, India’s export control laws are compliant with these multilateral export control regimes.

India mandates exports of all strategic goods, services and technology being subject to specific authorisations depending on end use and end-user. Such items are listed in the Special Chemicals, Organism, Materials, Equipment and Technologies (‘SCOMET’) List, which includes nuclear materials and nuclear-related materials, equipment and technology; munitions and chemical and biological weapons.

## Regulatory framework for imposition of Prohibitions

The most effective way of implementing Prohibitions has been to curb trade with the target country. In India, exports and imports of goods, services or technology are generally ‘free’ except when prohibited or regulated by the central government.

The Prohibitions are implemented through the Directorate General Foreign Trade in the Ministry of Commerce & Industry (‘DGFT’), being the nodal authority regulating India’s foreign trade policy (‘FTP’), formulated pursuant to the Foreign Trade (Regulation and Development) Act, 1992 (‘FTDR’). The FTDR – which regulates these Prohibitions and the exports, transfers, re-transfers, transit, transshipment of and brokering in SCOMET items – in turn, incorporates by reference the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act 2005 (‘WMD Act’). The WMD Act was enacted pursuant to UNSCR 1540 (2004), which had necessitated the provision of integrated legal measures to exercise controls over the export of materials, equipment and technologies capable of use in WMD and their means of delivery and to prohibit unlawful activities in relation thereto.



While the overall regulation of Prohibitions and export controls vests with DGFT, exports of nuclear materials and nuclear-related materials, equipment and technology are authorised by the Department of Atomic Energy, and exports under the Munitions List are authorised by the Department of Defence Production, Ministry of Defence.

The UNSCRs that govern non-proliferation also provide for combating the financing of proliferation of WMD. These include

- general resolutions, such as UNSCR 1373 (2001) and 1540 (2004);
- country-specific resolutions, such as UNSCR 1718 (2006) and 2231 (2015) against DPRK and Iran, respectively; and
- organisation-, group- or individual-specific resolutions, such as UNSCR 2199 (2015) with respect to organisations and individuals such as the Islamic State in Iraq and the Levant ('ISIL'), Al Nusrah Front ('ANF') and others associated with Al Qaida.

Violation of financial sanctions warrants action under the Prevention of Money-laundering Act, 2002 ('PMLA') and the Unlawful Activities (Prevention) Act, 1967 ('UAPA'). The implementation of these sanctions involves inter-departmental actions, particularly between the Ministry of External Affairs, Department of Economic Affairs, Ministry of Home Affairs, Financial Intelligence Unit India ('FIU-Ind'), Reserve Bank of India ('RBI'), Securities and Exchange Board of India ('SEBI') and the Insurance Regulatory Development Authority ('IRDA') (collectively, 'Regulators').

The Ministry of Home Affairs undertakes regular threat assessments regarding terrorism and its financing and the Ministry of External Affairs keeps the Regulators updated on requirements under UNSCRs.

### Prohibitions under the FTP

In compliance with sanctions imposed under UNSCRs, the extant Prohibitions extend to the following:

1. Direct or indirect import and export to/from Iran;
2. Direct or indirect import and export from/to the Democratic People's Republic of Korea ('DPRK');

3. Import and export of arms and related material from/to Iraq;
4. Import of charcoal from Somalia;
5. Trade with ISIL (also known as 'Daesh'), Al Nusrah Front and other individuals, groups, undertakings and entities associated with Al Qaida.

### Direct or indirect import and export from/to DPRK of items, materials, equipment, goods and technology are prohibited.

#### Prohibition on trade with Iran

Direct or indirect import/export from/to Iran of any item, material, equipment, goods and technology mentioned in the following documents is permitted subject to the provisions contained in annex-B to UNSCR 2231 (2015):

- (i) Items listed in INFCIRC/254/Rev.9/Part 1 and INFCIRC/254/Rev.7/Part 2 (International Atomic Energy Agency, 'IAEA' documents) as updated by the IAEA from time to time;
- (ii) Items listed in S/2006/263 (UNSC document) as updated by the UNSC from time to time.

These documents list the items, materials, equipment, goods and technology which could contribute to Iran's enrichment-, reprocessing-, or heavy water-related activities, or to development of nuclear weapon delivery systems.

#### Prohibitions on trade with the DPRK

Direct or indirect import and export from/to DPRK of items, materials,

equipment, goods and technology are prohibited. Specifically, exports to DPRK are subject to the UNSCRs on DPRK, namely: 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2094 (2013), 2270 (2016), 2231 (2016), 2356 (2017), 2371 (2017) and 2375 (2017) and 2397 (2017). This list is subject to periodic revision.

#### Prohibition on export

(A) Direct or indirect supply, sale, transfer or export of:

- (i) Any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms, or related materiel including spare parts;
- (ii) All arms and related materiel, including small arms and light weapons and their related materiel;
- (iii) All items, materials, equipment, goods and technology as set out in the UNSC and IAEA documents, namely:
  - a) S/2006/853;
  - b) S/2006/853/Corr.1;
  - c) Part B of S/2009/364;
  - d) Annex III of UNSCR 2094 (2013);
  - e) S/2016/1069;
  - f) Annex A to INFCIRC/254/Rev.12/Part 1 (IAEA document);
  - g) Annex to INFCIRC/254/Rev.9/Part 2 (IAEA document);
  - h) S/2014/253;
  - i) S/2016/308;
  - j) Annex III of UNSCR 2321 (2016); and
  - k) other items, materials, equipment, goods and technology, as determined by the central government, which could contribute to DPRK's nuclear-related, ballistic missile-related or other WMD-related programmes;
- (iv) Luxury goods, including, but not limited to, the items specified in annex IV of UNSCR 2094 (2013), annex IV of UNSCR 2270 (2016) and annex IV of UNSCR 2321 (2016);
- (v) Items as determined by the central government (except food or medicine) that could directly contribute to the development of



operational capabilities of the DPRK's armed forces subject to exemptions and procedures set out in paragraph 8 (a) and (b) of UNSCR 2270 (2016).

#### *Prohibition on import*

(B) The direct or indirect procurement or import from the DPRK, of items, whether or not originating in the DPRK, covered in sub-paragraphs (A)(i), (A)(ii), (A)(iii) and (A)(v) above.

#### *Sectoral prohibitions (export)*

(C) Direct or indirect supply, sale, transfer or export of:

- (i) New helicopters and new or used vessels, except as approved in advance by the UNSC Committee set up pursuant to paragraph 12 of UNSCR 1718 (2006) ('the Committee') on a case-by-case basis;
- (ii) Aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel subject to exemptions and procedures set out in paragraph 31 of UNSCR 2270 (2016) and paragraph 20 of UNSCR 2321 (2016);
- (iii) Condensates and natural gas liquids;
- (iv) Refined petroleum products subject to exemptions and procedures set out in paragraph 5 of UNSCR 2397 (2017);
- (v) Crude oil subject to exemptions and procedures set out in paragraph 4 of UNSCR 2397 (2017);
- (vi) All industrial machinery, transportation vehicles, and iron, steel and other metals subject to exemptions and procedures set out in paragraph 7 of UNSCR 2397 (2017);

#### *Sectoral prohibitions (import)*

(D) Direct or indirect import of:

- (i) Coal, iron and iron ore subject to exemptions and procedures set out in paragraph 8 of UNSCR 2371 (2017);
- (ii) Gold, titanium ore, vanadium ore, and rare earth minerals;
- (iii) Copper, nickel, silver and zinc;
- (iv) Statues, unless the Committee approves on a case-by-case basis in advance;
- (v) Seafood (including fish, crustaceans, molluscs, and other aquatic invertebrates in all forms) subject to exemptions and

procedures set out in paragraph 9 of UNSCR 2371 (2017) and paragraph 6 of UNSCR 2397 (2017);

- (vi) Lead and lead ore subject to exemptions and procedures set out in paragraph 10 of UNSCR 2371 (2017);
- (vii) Textiles (including but not limited to fabrics and partially or fully completed apparel products) subject to exemptions and procedures set out in paragraph 16 of UNSCR 2375 (2017);
- (viii) Food and agricultural products, machinery, earth and stone including magnesite and magnesia, wood and vessels subject to exemptions and procedures set out in paragraph 6 of UNSCR 2397 (2017).

#### **Prohibition of trade with Iraq**

Import/export of arms and related material from/to Iraq. However, export of arms and related material to the government of Iraq is permitted subject to a specific 'No Objection Certificate' from the Department of Defence Production.

#### **Prohibitions on trade with Somalia**

In accordance with UNSCR 2036 (2012), the FTP prohibits direct or indirect import of charcoal from

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Somalia, irrespective of whether or not such charcoal has originated in Somalia. Accordingly, importers of charcoal in India are required to submit an express declaration to customs that the consignment has not originated in Somalia.

#### **Prohibitions in other laws**

India maintains a list of terrorist groups, individuals and entities under the UAPA ('the Designated List'), which includes organisations listed in the Schedule to the UN Prevention and Suppression of Terrorism (Implementation of Security Council

#### **Prohibitions on trade with terrorist groups**

In compliance with the UNSCR 2199 (2015), trade in oil and refined oil products, modular refineries and related materials, besides items of cultural (including antiquities), scientific and religious importance are specifically prohibited with the Islamic State in Iraq and the Levant ('ISIL'), Al Nusrah Front ('ANF') and other individuals, groups, undertakings and entities associated, directly or indirectly, with Al Qaida.

Resolutions) Order 2007 made under the United Nations (Security Council) Act 1947. The Designated List is updated regularly by the Ministry of External Affairs subject to the other UN sanctions and communicated to the Regulators. Further, requests received from other countries pursuant to UNSCR 1373 (2001) are considered by the Ministry of External Affairs and the Designated List is accordingly updated.

The UAPA empowers the government to

- freeze, seize or attach funds and other financial assets or economic resources held by or on behalf of or at the direction of the individuals or entities that are covered under the Designated List or any other person engaged in or suspected to be engaged in terrorism;
- prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities in the Designated List or any other person engaged in or suspected to be engaged in terrorism; and
- prevent the entry into or through India of individuals in the Designated List or any other person engaged in or suspected to be engaged in terrorism.

With respect to funds, financial assets or economic resources or related services held in the form of bank accounts, stocks or insurance policies and so on, the Regulators forward the Designated List to the banks, stock exchanges/depositories, intermediaries regulated by SEBI and insurance companies. All financial transactions are counter-checked against the Designated List and suspicious transactions are required to be reported to FIU-Ind. The Ministry of

Home Affairs also forwards the Designated List of individuals to the immigration authorities and security agencies with a request to prevent the entry into or transit through India. Compliance against the Designated List is reported to the Ministry of Home Affairs by various agencies involved, which forwards the same to the Ministry of External Affairs for onward reporting to the United Nations.

India is also a member of the Financial Action Task Force ('FATF'), the independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing, and the financing of proliferation of WMD. The FATF recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard. The RBI takes into consideration the advisory issued by FATF to protect the international financial system from ongoing money laundering and terrorist financing risks emanating particularly from DPRK, Iran, Afghanistan, Iraq, Syria and Yemen, while noting that such advisories do not preclude the regulated entities from legitimate trade and business transactions with these countries. The RBI has aligned its instructions to the objectives of FATF and prohibited an Indian party from making direct investment in an overseas entity (set up or acquired abroad directly as a joint venture/wholly owned subsidiary or indirectly as a stepdown subsidiary) located in countries that are identified as non-cooperative by FATF or as otherwise notified by the RBI.

### Enforcement of Prohibitions

The Prohibitions are enforced through multiple authorities, including DGFT, Customs, Department of Revenue Intelligence, Enforcement Directorate and so on depending on the nature of offence. Some of the broad penalties that may get attracted to cases involving violations of Prohibitions are shown in the table, right.

### USA sanctions and India

India has always been reluctant to implement unilateral sanctions imposed by other countries. Most recently, India has had to deal with the sanctions imposed by the United States under the Countering America's Adversaries Through Sanctions Act,

| S No | Act                     | Penalty   |
|------|-------------------------|---|
| 1.   | FTDR                    | <ul style="list-style-type: none"> <li>i. Suspension or cancellation of the Importer Exporter Code.</li> <li>ii. Inclusion in the Denied Entity List.</li> <li>iii. Penalty of not less than ten thousand rupees and not more than five times the value, whichever is more.</li> <li>iv. Confiscation.</li> </ul>   |
| 2.   | WMD Act                 | <ul style="list-style-type: none"> <li>i. In case of unlawful manufacture, acquisition, possession, development or transport of a weapon of mass destruction or their delivery system, imprisonment for minimum 5 years extendable to life, with fine.</li> <li>ii. In the event of export of any material, equipment or technology knowing that it is intended to be used in the design of weapons of mass destruction: <ul style="list-style-type: none"> <li>(a) first offence, minimum imprisonment of 6 months extendable upto 5 years with fine.</li> <li>(b) subsequent offences, minimum imprisonment of 1 year extendable upto 7 years with fine.</li> </ul> </li> </ul>   |
| 3.   | Atomic Energy Act, 1962 | Imprisonment for a term, which may extend to five years, or with fine, or both.   |
| 4.   | Customs Act, 1962       | <ul style="list-style-type: none"> <li>i. Confiscation.</li> <li>ii. Penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under the Customs Act, whichever is higher.</li> <li>iii. Imprisonment for a term which may extend to seven years and with fine.</li> <li>iv. In the case of preparation for export of prohibited goods, imprisonment for a term which may extend to three years, or with fine, or with both.</li> </ul>   |
| 5.   | PMLA                    | <ul style="list-style-type: none"> <li>i. Rigorous imprisonment for a term not less than three years but which may extend to seven years and fine.</li> <li>ii. Seize, attach, freeze or confiscate property involved in the money-laundering.</li> <li>iii. Arrest any person believed reasonably to be guilty.</li> </ul>   |
| 6.   | UAPA                    | <ul style="list-style-type: none"> <li>i. Punishment for unlawful activities – imprisonment for a term which may extend to seven years, and fine.</li> <li>ii. Penalty for being member of an unlawful association – imprisonment for a term which may extend to two years, and fine.</li> <li>iii. Penalty for being member of an unlawful association and committing any act resulting in loss of human life – punishable with death or imprisonment for life, and fine.</li> <li>iv. Penalty for dealing with funds of an unlawful association – issuance of a prohibitory order and if the person continues to act in prohibition of the order, imprisonment for a term which may extend to three years, or with fine or with both and an additional fee.</li> <li>v. Punishment for conspiracy – imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and fine.</li> <li>vi. Punishment for being member of a terrorist organisation - imprisonment for a term which may extend to imprisonment for life, and fine.</li> <li>vii. Punishment for holding proceeds of terrorism – imprisonment for a term which may extend to imprisonment for life, and fine.</li> <li>viii. Punishment for contravention of the Explosives Act, or the Explosive Substances Act, or the Inflammable Substances Act, or the Arms Act, with intent to aid any terrorist or terrorist organisation – imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and fine.</li> </ul> |
| 7.   | Arms Act                | <ul style="list-style-type: none"> <li>i. Punishment for bringing into, or taking out of India, any arm or ammunition prohibited by the Central Government for import or export – imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.</li> <li>ii. Punishment for bringing into or taking out of India any arm or ammunition without licence for import and export of arms – imprisonment for a term which shall not be less than one year but which may extend to three years and fine.</li> </ul>  |

2017 ('CAATSA') on Iran and Russia.

As *WorldECR* readers will know, following the US withdrawal from the Joint Comprehensive Plan of Action in May 2018, the US imposed sanctions against Iran effective November 2018. However, eight countries, including India, were specifically exempted by grant of a 'waiver' for a period of six months (unless expressly extended), allowing them to continue buying Iranian oil. India and Iran, have shared historical ties and Iran is India's major oil supplier. India has also made substantial investment of \$500 million to develop Iran's Chabahar Port as a transit hub for Afghanistan, Central Asia and the International North-South Transport Corridor. Besides, India is also developing two gas fields in and around Iran. It is, therefore, not easy for India to disengage itself from Iran. To overcome the transactional difficulties posed by the US sanctions, India has signed a bilateral agreement with the National Iranian Oil Company to settle oil trades in Indian currency (which is not freely traded on international markets) through an

Indian government-owned bank. India has also exempted these rupee payments from taxes. The rupee payments will be used by Iran to pay for imports from India, invest in Indian businesses, pay for Iranian missions and students in India, and so on.

India also countered the CAATSA sanctions against Russia and signed a defence deal for the purchase of the Russian-built S-400 Triumf or the SA-21 Growler, a long-range surface-to-air missile system. India gives primacy to its individual diplomatic relations, including with Iran, Russia and the United States, which surpasses the unilateral sanctions imposed by any individual country. India is a strategic partner for the US, having recently been conferred Strategic Trade Authorisation-1 status, which saw the US ease controls on high-tech exports to India. It is believed that US will not endanger its relations with India over the Russia defence deal.

#### **Conclusion**

With ever-growing concern over proliferation of weapons of mass

destruction threatening international peace and security, coupled with India's membership of the multilateral export control regimes, India is becoming aggressive in its enforcement of Prohibitions and export controls. It has an established and robust legislative framework to counter proliferation of WMD and terrorism. Now the authorities are focused on enforcing the same through inter-departmental cooperation in investigations and joint enforcements. The lead is being taken by the intelligence agencies and customs. Shipments and movement of individuals from or to sanctioned countries are under intense scrutiny. India's commitment to a safe and secure world is steadfast.

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