

Sanctions Clause

Worldwide, the most frequently applied sanction and embargo measures are:

- embargoes on exporting or supplying military weapons and associated technical assistance, training and financing
- bans on exporting equipment to states or organisations where that equipment might be used for internal repression
- asset freezes on individuals in government, government bodies and associated companies, or terrorist groups and individuals associated with those groups
- travel bans on named individuals
- bans on imports of raw materials or goods from the sanctions target; and
- other inevitable catch-all measures that may be applied according to individual circumstances.

To complicate matters further, the USA, UK and EU do not administer sanctions from a central point within their bureaucracies.

Businesses have always sought to protect themselves from falling foul of sanctions by including appropriate clauses in their commercial dealings. For reinsurers and insurers, who deal with clients with all manner of goods and services offered worldwide, there is a considerable risk of becoming inadvertently embroiled in sanctions breaches where the export itself was in breach, or in the event of an insurance claim, where claims funds are to be transferred to either a sanctioned country, an organisation or an individual.

Reinsurers have now introduced a clause called the "Sanctions Clause" into the world insurance markets. **This clause, reproduced below, merely restates the current legal situation. It does not introduce anything new.** Reinsurers and insurers have never been able to pay insurance claims (i.e. transfer funds) to sanctioned countries, organisations, or certain individuals:

SANCTION LIMITATION AND EXCLUSION CLAUSE (LMA 3100)

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

Where does this leave the NZ exporter and importer?

The principal issue today for exporters and importers, in a confused world, is navigating the myriad and sometimes conflicting sets of sanctions in place. Exporters and importers in the USA and the EU regularly have to hire consultants. However, the situation is probably much less confused for NZ exporters who export food products. Food is only rarely subject to trade restrictions. In addition, NZ subscribes only to UN sanctions, and we have only very limited sanctions of our own. Those that exist are mainly to do with the current regime in Fiji.

Nevertheless - and this is the reason for the arrival of the Sanctions Clause in NZ insurance policies - many of the providers of capital to local NZ insurers are located within the EU and the USA, and are bound by their own domestic laws.

NZ exporters have only to comply with UN sanctions and NZ law, and the laws of the territories through which their cargo passes. The first step is to consult with the Sanctions Officer in the [Legal Division of the Ministry of Foreign Affairs and Trade](#).

By using trade terms such as Free Carrier (FCA Incoterms® 2010), the exporter can deliver the goods locally to a carrier nominated by the overseas buyer, either at the exporter's premises or another named place (the carrier's premises, or a container yard within the country of export, for instance). The insurance risk transfers at that point, so there is little danger of a cargo insurance claim running into sanction issues. Trade with countries that are subject to sanctions has always borne a high trade credit risk. For these high risk trades, it has always been wise practice to receive payment and pass over the cargo to the buyer as soon as possible, at a time prior to or at the time of the physical export of cargo from NZ.

If you have further queries as to how the Sanctions Clause applies to your insurance, contact: [John McKelvie](#), Vero Marine's Underwriting & Risk Manager.

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