

A HIDDEN FUNCTION OF US SECONDARY SANCTIONS: BLOCKING THE RIGHT TO DEVELOPMENT

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Abstract. This article strengthens existing arguments that US secondary sanctions violate international law. It proposes that they constitute a restrictive business practice that obstructs the right to development. Such sanctions penalise trade and competition that economists consider essential for development. By deterring foreign companies from doing business with states or major economic actors targeted by US primary sanctions, secondary sanctions effectively reserve the target's market for US companies once sanctions are lifted. Secondary sanctions, operating internationally, meet the definition of restrictive business practices that the UN Conference on trade and development has sought to curtail domestically. It may therefore offer a mechanism for challenging them on such grounds.

Keywords: secondary sanctions; anti-competitive measures; restrictive business practices; United States; UNCTAD.

СКРЫТАЯ ФУНКЦИЯ АМЕРИКАНСКИХ ВТОРИЧНЫХ САНКЦИЙ: ПРЕПЯТСТВОВАНИЕ РЕАЛИЗАЦИИ ПРАВА НА РАЗВИТИЕ

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Аннотация. Анализируется существующая аргументация о противоправности вторичных санкций США с точки зрения международного права. Выдвигается мнение о том, что они представляют собой ограничительную деловую практику, препятствующую реализации права на развитие. Подобные санкции наносят ущерб торговле и конкуренции, которые экономисты считают необходимыми условиями развития. Удерживая иностранные компании от ведения бизнеса с государствами или крупными экономическими субъектами, подпадающими под первичные санкции США, вторичные санкции фактически резервируют рынок санкционируемого государства для американских компаний на период, который начнется после отмены санкций. Вторичные санкции, действующие в международном масштабе, соответствуют определению ограничительной деловой практики, с которой Конференция ООН по торговле и развитию стремится бороться на национальном уровне. В связи с этим конференция может оспаривать подобные меры на указанных основаниях.

Ключевые слова: вторичные санкции; антиконкурентные меры; ограничительная деловая практика; Соединенные Штаты Америки; ЮНКТАД.

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Introduction

While the adverse impact of international sanctions, including unilateral measures, on the right to development¹ is well documented [1], this article addresses the specific harm to development caused by enforcing unilateral sanctions through secondary sanctions. This article argues that, because secondary sanctions aim to dissuade companies in non-sanctioning states – often developing nations – they prevent potentially significant economic contributions to development.

States apply sanctions to coerce the target into changing its conduct by withholding goods and services (and, in the case of individuals, certain state-granted rights). The sanctions prohibit entities within the sanctioning state from transacting with the target. Because this prohibition extends to business enterprises, it creates an inherent dilemma: while companies in the sanctioning state are barred, foreign companies outside its jurisdiction can fill the void. When these companies engage, they reduce pressure on the target, weakening the sanctions' coercive effect².

Sanctioning states have used two primary methods to address circumvention. One is to build coalitions that apply similar measures against the same target. This reduces the number of jurisdictions where companies may legally trade with the sanctioned party and can potentially enhance effectiveness³. Yet this approach

is imperfect: it widens opportunities for companies in non-sanctioning countries by removing additional competitors. The prospects of increased trade with the sanctioned party can induce states to resist geopolitical pressure to join such coalitions⁴. Others decline because their existing links with the target are substantial⁵, or if they maintain close political relations with the target⁶.

The other method to fight the circumvention of sanctions is applied by the most prolific sanctioning country, the United States, often to supplement its role in sanctioning coalitions; it involves using secondary sanctions against foreign companies that do business with the targeted party. Under this mechanism, businesses anywhere in the world conducting transactions with US sanctions targets may themselves face American restrictions.

Secondary sanctions typically bar targeted firms from conducting business in the United States, excluding them from the world's largest economy. They also bar access to the US financial system, which remains essential for international commerce⁷. The threat of such consequences against economically significant foreign firms can prove sufficient to prompt their home governments to join US sanctions⁸, closing circumvention avenues.

The dubious legality of secondary sanctions

Under international law, the legality of secondary sanctions has been widely questioned, raising the prospect of formal challenges. Even before these measures became routine in US policy, one case prompted complaints to the WTO dispute settlement procedure, although it did not reach judgment because a domestic court ruling in the United States rendered it moot. In that dispute, brought in 1998, the European Commission and Japan

both claimed that the United States violated the WTO Agreement on government procurement after a US state, Massachusetts, banned its government from contracting with any entity that also conducted business with Myanmar, a country accused of human rights violations⁹. The ban faced simultaneous domestic challenge in a US case concerning state versus federal powers. It was lifted when the Supreme Court ruled it unlawful¹⁰ [2, p. 47].

¹Impact of unilateral coercive measures on economic, labour and social rights: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena F. Douhan. 16 July 2025 // United Nations : website. URL: <https://docs.un.org/en/A/HRC/60/36> (date of access: 24.11.2025). Para. 67.

²Kaca E. Dual-use items: EU seeks to limit circumvention of the sanctions on Russia // The Polish Institute of International relations : website. URL: <https://pism.pl/publications/dual-use-itemseu-seeks-to-limit-circumvention-of-the-sanctions-on-russia> (date of access: 12.05.2025).

³Forrer J. Aligning economic sanctions // Atlantic Council : website. URL: <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/aligning-economic-sanctions> (date of access: 12.05.2025) ; Sonali Chowdhry S., Hinz J., Kamin K., Wanner J. Brothers in arms: the value of coalitions in sanctions regimes // German Institute for Economic Research : website. URL: https://www.diw.de/documents/publikationen/73/diw_01.c.857116.de/dp2021.pdf (date of access: 12.05.2025). P. 3, 15–16.

⁴Coldal L. The role of third countries in the effectiveness of economic sanctions. Bergen : Univ. of Bergen, 2023. P. 13.

⁵Forlani M. Economic sanctions and their side effects: the EU food industry case study. London : Kings College London, 2022. P. 109–114.

⁶Kazakhstan does not join sanctions imposed on Russia, says Kazakh foreign minister // Asia-Plus. 26 Dec. 2022.

⁷Collins-Chase E. J. Sanctions primer: how the United States uses restrictive mechanisms to advance foreign policy or national security objectives // US Congress : website. URL: <https://www.congress.gov/crs-product/R47829> (date of access: 12.05.2025). P. 9–10.

⁸Forlani M. Economic sanctions and their side effects... P. 107–109.

⁹United States – measure affecting government procurement. 9 September 1998 // World Trade Organization : website. URL: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/88-3.pdf&Open=True> (date of access: 12.05.2025).

¹⁰United States – measure affecting government procurement: communication from the Chairman of the Panel. 12 February 1999 // Ibid. URL: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/88-5.pdf&Open=True> (date of access: 12.05.2025).

While the aborted WTO case involved a specialised aspect of international trade law related to government procurement, other challenges to secondary sanctions invoke broader principles of international law. One argument is that these measures breach the customary principle of non-intervention in the affairs of other states: by extending US jurisdiction to punish foreign companies for activities lawful where they occur, secondary sanctions interfere with other states' domestic legal systems, foreign relations and trade¹¹ [3].

Another ground is that secondary sanctions breach states' obligations to respect, protect and fulfil human rights. Like primary sanctions, they violate the rights

of targeted individuals – such as denying due process guaranteed by the International covenant on civil and political rights¹² – and harm those connected or dependent on the sanctioned party¹³.

It is also argued that secondary sanctions, similar to primary measures, are unlawful because the UN Charter assigns the legal power to authorise sanctions to the UN Security Council¹⁴; individual states lack such power except in limited circumstances unrelated to the reason for using secondary sanctions [4, p. 87]. The UN General Assembly has repeatedly condemned «unilateral coercive measures» – typically sanctions imposed without Security Council approval – as violations of international law¹⁵.

An additional argument: impeding development

This paper proposes a further basis for contesting the lawfulness of secondary sanctions: by punishing, or threatening to punish, foreign companies for engaging with entities targeted by US sanctions, they harm the human right to development in every country where such business is lawful. Secondary sanctions suppress two elements central to national development – trade and competition – by acting as anti-competitive measures.

While development encompasses many interrelated aspects, the economic dimension remains paramount. Exporting goods and services constitutes a critical component of development. The World Bank describes trade as «a powerful driver of development»¹⁶ and one of its economists has termed export growth «a vital feature of countries' development experience and performance» [5]. Other economists characterise it as «an essential component in reaching development objectives»¹⁷.

Trade thus forms an integral part of exercising the right to development¹⁸ and of fulfilling related entitlements – notably, the right to an adequate standard of living, and the associated rights to health, food and housing, and other specific rights. The significance of trade for development is reflected in various WTO and General agreement on tariffs and trade measures granting developing countries preferential access to foreign markets¹⁹.

Relevantly, unilateral sanctions predominantly originate from developed states with larger, more diversified

economies than those of developing nations, and their substantial trade links with targets enable meaningful coercive pressure [6, p. 88]. As more states join sanctions coalitions, fewer developed countries remain where companies might be exposed to US secondary sanctions. Moreover, due to the size and diversity of their economies, secondary sanctions imposed in these countries generally have a limited effect relative to their total economic activity.

This leaves nations outside these coalitions, particularly developing countries with fewer firms able to engage in international trade, at greater risk in two respects. First, their companies face higher likelihood of secondary sanctions. Second, such measures impose more substantial impacts on domestic economies and development.

In theory, primary sanctions against states or major economic actors could create opportunities for developing countries, as their businesses can fill the gaps left by sanctioning states. However, these benefits are outweighed by the more direct and acute human rights harms that primary sanctions inflict [7, p. 117–218]. Still, they do create favourable business conditions for companies in non-sanctioning states by offering them an accessible and sometimes sizable market while also insulating them from competitors in the sanctioning jurisdictions.

However, US secondary sanctions suppress these opportunities by deterring businesses in all other states

¹¹Secondary sanctions, civil and criminal penalties for circumvention of sanctions regimes and overcompliance with sanctions: report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alesandra F. Douhan. 15 July 2022 // United Nations : website. URL: <https://docs.un.org/en/A/HRC/51/33> (date of access: 12.05.2025). Para 13.

¹²Ibid. Para 14, referring to Art. 14–15 of the International covenant on civil and political rights.

¹³Ibid. The association or dependence may be direct or indirect.

¹⁴Articles 39, 41 of the UN Charter.

¹⁵Human rights and unilateral coercive measures: General Assembly resolution 79/167 of 19 December 2024 // United Nations : website. URL: <https://docs.un.org/en/A/RES/79/167> (date of access: 12.05.2025).

¹⁶Trade has been a powerful driver of economic development and poverty reduction // World Bank : website. URL: www.worldbank.org/en/topic/trade/brief/trade-has-been-a-powerful-driver-of-economic-development-and-poverty-reduction (date of access: 03.05.2025).

¹⁷Kose M. A., Mulabdik A., Vorisek D. Trade policy for developing economies // Vox.eu. URL: <https://cepr.org/voxeu/columns/trade-policy-developing-economies> (date of access: 04.05.2025).

¹⁸The right to development: General Assembly resolution 58/172 of 11 March 2004 // United Nations : website. URL: <https://docs.un.org/en/A/RES/58/172> (date of access: 12.05.2025). Para 14–15.

¹⁹Legal basis for preferential market access for goods from least developed countries // Ibid. URL: www.un.org/ldcportal/content/legal_basis_ldc_preferential_market_access (date of access: 02.05.2025).

from replacing US companies – or those from allied sanctioning countries – which must cease dealings with the target under primary sanctions. Essentially, secondary sanctions freeze the US share of the target's market and hold it open for US companies to resume business there when the sanctions end. This inherent feature remains unstated: once primary sanctions are lifted, the quickest way for the sanctioned party to restore disrupted economic activity is to revive previously established business ties²⁰, which can include «a shared history of complex prior interactions» [8, p. 264].

Secondary sanctions can therefore be understood as a restrictive business practice that suppresses competition both now, by preventing it from developing, and later, by discouraging future market entry. Though ostensibly preventing circumvention of primary sanctions²¹, they penalise foreign businesses – especially in developing countries – to discourage commercial relationships that prove difficult to displace once sanctions expire²².

Competition, like trade, is essential to development. Unlike trade, however, no global legal framework specifically addresses state conduct in international competition, though its role in national growth is well recognised. As early as 1960, the GATT's contracting parties recognised that «business practices which restrict competition in international trade may hamper the expansion of world trade and the economic development in individual countries»²³.

As with trade, competition proves vital for economic growth²⁴ [9, p. 15]. It possesses «paramount importance» in fostering conditions for economic expansion [10, p. 1], making it another critical factor in national development. Conversely, anti-competitive practices cause economic harm that undermines development [11, p. 5]; they obstruct the emergence and flourishing of business skills and capabilities [11, p. 14–15] and thereby restrain the capacity of states to exercise the right to development. Moreover, a UNCTAD report notes that «developing countries... tend to be more vulnerable to anti-competitive practices» for a number of reasons, such as having smaller and less diversified economies and having limited experience and resources to ensure that competition can thrive [11, p. 14].

Measures that suppress competition are typically addressed domestically through laws and regulations. Yet anti-competitive measures imposed internationally undermine development potential. As UNCTAD notes, with national economies increasingly integrated into the global system, «no country can escape the effects of anti-competitive practices originating outside their national borders» [11, p. 14]. Research has focused mainly on international cartels and similar arrangements [12], but the same reasoning applies to any conduct that suppresses cross-border competition. US secondary sanctions fall squarely within this category.

A novel path for challenging secondary sanctions

The right to development was elaborated in 1986 in the UN Declaration on the right to development²⁵. Although considered soft law and thus non-binding on states [13], efforts have been underway²⁶ since 2018 to create a legally binding treaty that would include «halting all measures that might have a negative impact on the right to development»²⁷. Another relevant non-binding instrument is the Set of multilaterally agreed equitable principles and rules for the control of restrictive business practices (here and further the

Set), which calls for «eliminating or effectively dealing with restrictive business practices... adversely affecting international trade, particularly that of developing countries, and the economic development of these countries»²⁸. When states agreed the Set in 1980, US secondary sanctions did not exist. Yet such sanctions fit squarely within the practices it aims to curtail.

While binding obligations on the right to development remain pending, the Set provides a possible avenue through which UNCTAD could examine secondary sanc-

²⁰Increase in Swedish exports to Iran. 4 February 2018 // Swedish Export Credit Agency : website. URL: www.ekn.se/en/about-ekn/news-and-events/newsroom/increase-in-swedish-exports-to-iran/ (date of access: 12.05.2025).

²¹Treasury disrupts Russia's sanctions evasion schemes: press release. 15 January 2025 // US Department of the Treasury : website. URL: <https://home.treasury.gov/news/press-releases/jy2785> (date of access: 12.05.2025).

²²Forrer J. Economic sanctions: sharpening a vital foreign policy tool // Atlantic Council : website. URL: <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/economic-sanctions-sharpening-a-vital-foreign-policy-tool> (date of access: 12.05.2025). P. 8.

²³General agreement on tariffs and trade. Restrictive business practices: decision of 18 November 1960 // World Trade Organization : website. URL: https://www.wto.org/Gatt_docs/English/SULPDF/90740130.pdf (date of access: 12.05.2025). P. 17 ; Restrictive business practices: arrangements for consultations. 2 June 1960 // World Trade Law : website. URL: <https://www.worldtradelaw.net/document.php?id=misc/rbp2.pdf&mode=download> (date of access: 12.05.2025). P. 2–3.

²⁴Macedo e Silva J. D. The macroeconomic impact of competition: a panel data approach. Porto : Universidade do Porto, 2021.

²⁵Declaration on the right to development: General Assembly resolution 41/128 of 4 December 1986 // United Nations : website. URL: <https://docs.un.org/en/A/Res/41/128> (date of access: 12.05.2025).

²⁶The right to development: Human Rights Council resolution 39/9 of 27 September 2018 // Ibid. URL: <https://docs.un.org/en/A/HRC/RES/39/9> (date of access: 12.05.2025).

²⁷The right to development: Human Rights Council resolution 57/19 of 10 October 2024 // Ibid. URL: <https://docs.un.org/en/A/HRC/RES/57/19> (date of access: 12.05.2025). P. 3.

²⁸The United Nations set of principles and rules on competition. 2000 // UNCTAD : website. URL: <https://unctad.org/system/files/official-document/tdrbpconf10r2.en.pdf> (date of access: 12.05.2025). Section F.

tions²⁹. It contains a procedure for resolving disputes between states concerning domestic measures to control anti-competitive practices. Although this process does not establish a tribunal to issue rulings, it seeks mutually acceptable solutions through consultation and depends on voluntary corrective actions. At present, it does not have jurisdiction over anti-competitive practices themselves.

Despite these limitations, the procedure can still be applied to secondary sanctions. The Set's periodic «Review Conferences» have adapted it in the past to reflect emerging needs³⁰. Several considerations support a further adjustment to address measures to restrict lawful commerce outside the jurisdiction imposing them: 1) the Set aims to prevent restrictive business practices from impeding development³¹; 2) UNCTAD recognises that cross-border anti-competitive practices, not only domestic measures, affect this aim; 3) the proliferation of US secondary sanctions has multiplied the presence of international anti-competitive measures, and 4) the absence of multilateral rules regulating such

conduct enables it to obstruct development with few checks.

Using the Set's consultation procedure would highlight the contrast between secondary sanctions and the Set's purpose, principles and rules. It could establish precedents for legal challenges connected to future binding obligations on the right to development.

Challenging US secondary sanctions in this context depends on revealing their function as anti-competitive business restrictions that inhibit the exercise of the right to development. Support for establishing their inconsistency with international law may come from an unexpected source: the United States. Before expanding its use of secondary sanctions, the US Government acknowledged that international anti-competitive conduct harms key components of development³².

That secondary sanctions constitute anti-competitive conduct follows directly from their nature and aims. Arguing that they breach international law by obstructing the right to development can therefore reinforce other claims regarding their illegality.

Conclusions

The threat and use of secondary sanctions in enforcing unilateral measures can deter firms in developing countries from expanding abroad, even when they play no role in the sanctions regime. They consequently suppress growth opportunities for international trade, inhibiting the right to development. The effects may

outlast the sanctions' duration, as they can operate as barriers that preserve markets for firms from the sanctioning state with established commercial links. A possible remedy lies in adapting the rules against restrictive international business practices developed by the UNCTAD.

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²⁹The United Nations set of principles and rules on competition. 2000 // UNCTAD : website. URL: <https://unctad.org/system/files/official-document/tdrbpconf10r2.en.pdf> (date of access: 12.05.2025). Para 4.

³⁰The United Nations Set of principles and rules on competition: implementation after 40 years. New York : United Nations, 2025. P. 15.

³¹The United Nations set of principles and rules on competition. 2000 // Ibid. URL: <https://unctad.org/system/files/official-document/tdrbpconf10r2.en.pdf> (date of access: 12.05.2025). Section A.

³²Intergovernmental group of experts on competition law and policy, roundtable on the impact of cartels on the poor: contribution by the United States of America (8–10 July 2013, Geneva) // Ibid. URL: https://unctad.org/system/files/non-official-document/IGE2013_RT2_USA_en.pdf (date of access: 12.05.2025).