

Committee Secretariat

Foreign Affairs, Defence and Trade Committee

Department of the Senate

23rd August 2024

Australia's Sanctions Regime

Dear Secretariat,

This is the second Senate Inquiry I've made a submission to this year, and I'd like to thank you and the Committee for the opportunity.

Can I make a general opening statement that relates to h) and i) of the terms of reference;

1. Self-interest will weaken most sanctions and possibly render them ineffective. That self-interest will either be national, political, ideological or commercial. The sanctions being applied by the world against Russia due to the Ukraine War are the current case in point. It suggests to Australia that sanctions measures by our allies and the non-aligned could never be relied upon if we faced a hostile adversary. This should instruct Australia to develop an absolute self-reliance in advance of any future shock or event.

2. After the Covid-19 pandemic, with obvious impacts on the supply chains to Australia, I would have thought we would have acted with urgency on the issue of Australian self-reliance, and the security and understanding of our supply chains. There is nothing more essential than our liquid fuel as we import 90% of our needs. Our understanding of the liquid fuel supply chain needs to detail the crude oil feedstock into refineries, whether those refineries are within Australia or overseas. A written response from a Government Minister this year stated that "it is not feasible to know individual shipments". A Finnish think-tank, CREA, proves that it is possible to track such shipments through business intelligence such as Kpler, and satellite services. For a budget under \$2 million a year the Joint Committee on Trade, Foreign Affairs and Defence could assemble a team of analysts using commercial business intelligence services, to inform them of the liquid fuel movements, trends, stockpiling and changing national allegiances. Our Parliamentarians would know this information in real-time. Shipments and money changing hands for goods is tangible intelligence for decision making.

3. Our purchasing of fuel refined from Russian oil in overseas refineries suggests we fail to understand our supply chains, or, we act in our self-interest of wanting full and unrestricted liquid energy supply.

This activity offends the intention of our sanctions. To not fund the Putin war machine. The taxation take from this activity to the Kremlin exceeds \$3 Billion AUD.

This activity is counter to the intent of our specific sanction to ban the direct importation into Australia of Russian oil or products refined from Russian oil in the Russian Federation. We have created a loophole that is legal, but, is not measured or defined, and is not being acted upon by our Parliament. We have failed to introduce a review mechanism of this loophole at the time of granting it. If we have reviewed it, we are comfortable with its' implications for Ukraine. If that is the case, it is a national disgrace.

4. This loophole activity was referred to most members and senators of the Australian Parliament, the Cabinet, the Prime Minister and Foreign Minister in August and September of 2023. A failure to act on this implies a significant time lag. Again, this activity was highlighted by a number of submissions to the Senate Inquiry into Australian Support for Ukraine as of May 2024, and was significant enough to warrant the public testimony of a submitter. However, in the face of worsening battlefield conditions for the Armed Forces of Ukraine in late 2023 through to mid-2024 this issue did not force an urgent review, even after a Children's Cancer Hospital and a Maternity Hospital were deliberately targeted by cruise missiles in Kyiv. Australian fuel consumers can assume their consumption funded these strikes.

5. More than likely, Australia will face a similar indifference in the future when faced by a hostile adversary and relying upon international sanctions assistance. Our current actions towards this loophole reflects real politics and we should be developing a resilience against such as part of our future-planning. What are we doing about this?

6. We should also examine why this issue is not triggering a mechanism of response within our Government, our Parliament, our political parties or our Ministries. It is certainly not a failure to understand the consequences of funding the Kremlin. A spokesperson for DFAT recently responded in a SBS Russia article that it was "looking in to the matter".

DFAT responded to my correspondence in October 2023 after referral to the Foreign Minister. A 9 month time lag is exposed by these two responses. The conscious decision to allow this loophole must have occurred at a meeting somewhere soon after Australian Autonomous Sanctions were introduced. Where in the mechanism of that decision was there a nominated date to review the quantum and effects of that loophole, and a means to track, quantify, record, analyse, table and report on that loophole. Does such a staffing entity currently exist within Government to enable this, what is its' budget, who does it report to, and if not, why not? Is that what the DFAT spokesman meant when they said to SBS, " We are looking into the matter" ? If we don't have such mechanisms, what hope do we have with other instruments of sanctions surveillance and enforcement, such as databases of War Criminals and sanctioned individuals, and collaboration with other countries on such information.

7. On February 1st 2024, the United States Department of Treasury's Office of Foreign Assets Control published a Price Cap Coalition Compliance and Enforcement Alert. This alert contained recommendations to the G7, EU and Australia to look for voyage irregularities, Automatic Identification System (AIS) manipulation and spoofing and illegal ship-to-ship transfers. This implies the need for the Australian Government to be aware of individual ship voyages. However, the Ministerial response from Government 30th January 2024 to my correspondence 28th August 2023, suggests Australia does not have a mechanism within the non-Defence Departments to track shipping, unlike the Americans.

"The sanctions do not prohibit the import of refined petroleum products from countries that may use Russian oil in their refineries, *as it is not feasible to identify details on the origin of all refinery feedstock and such information is not available in import datasets.*"

That quote is correct in that the Australian Petroleum Statistics publish monthly data on the refinery origin of Australia's imports. These statistics do not include the origin of the crude oil feedstocks that supply these refineries, as such information was not required in 2010 when this dataset was commenced. It is however, required to comply with the US Treasury OFAC Oil Price Cap Compliance and Enforcement Alert 1st February 2024.

8. Most importantly, the Ministerial response sent to me 30th January 2024 stated "Further, our sanctions are targeted and are not intended to adversely impact third countries." I would suggest there is a third country

adversely impacted by this loophole in our sanctions, and that country is Ukraine. The degree of adverse impact from the \$3 Billion AUD in taxes we have supplied Putin has caused a far greater economic and human cost to Ukraine than we can quantify.

9. Supply is possible. Individual ship tracking would allow our Parliamentarians to know that supply of refined fuel to Australia is still possible without using Russian oil feedstock. I supplied a list of those refineries not using Russian oil in my submission to the Inquiry on Australian support for Ukraine. It took the analysts of CREA some time to compile that list, but they understand it provides a solution to one of our national concerns. Introducing a 'preferred' refinery list on the basis of their non-use of Russian feedstock, could enable the Australian Government to remedy this loophole that they are presently reluctant to legislate against. A small rebate system for increased wholesale prices or transport costs that is funded from the fuel excise tax such shipments create, could keep the prices down at the bowser. It would require a small element of market intervention, but, essentially, that is the nature of sanctions anyway.

It is unlikely we will see a political appetite to do much based on what has transpired since 2022, however, the real-world model of how to degrade a country is being played out in Ukraine, and that same play-book could be used very easily by a hostile adversary on Australia. Particularly when we don't have a comprehensive missile defence.

Kind thanks again to yourself and the Committee for this opportunity.,

Yours sincerely,

Dr Graham Marning