

Sanctions and export controls

Navigating your trade law compliance

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Agenda

1. Sanctions

- 1.1 Introduction
- 1.2 EU Sanctions
- 1.3 Enforcement in NL
- 1.4 US Nexus
- 1.5 Case

2. Export controls

- 2.1 Introduction
- 2.2 EU export controls
- 2.3 Enforcement in NL

3. Questions to ask as a company

4. Q&A

1. Sanctions



1.1 Sanctions

Sanctions

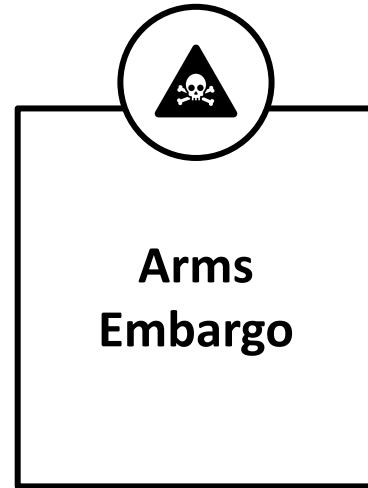
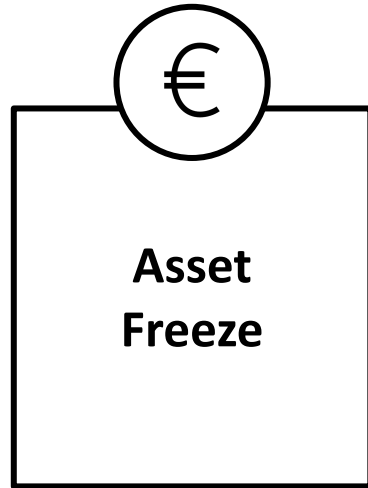
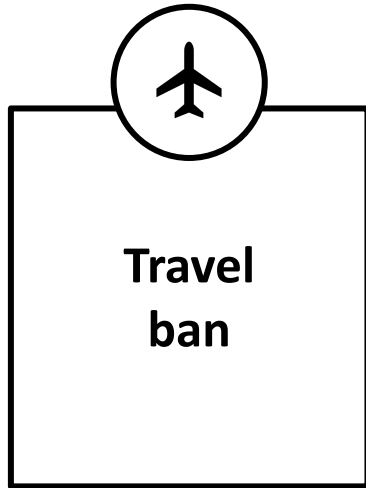
- (Political) instruments;
- Coercive restrictive measures, not by military means;
- Applied by the international community and/or at EU level;
- Aimed at modifying or 'punishing' the behaviour of countries, organisations, companies or individuals; and
- With the aim of enforcing or restoring international peace, security and human rights.
- Violation of sanctions can have serious consequences (penalties, imprisonment)

EU Sanctions

1. Implementation of international sanctions imposed by the UN;
2. Autonomous EU sanctions



1.2 EU Sanctions: categories/applicability



Sanctions are applicable to:

- all EU entities (including branches inside and outside the EU), also if they operate outside the EU;
- all persons having EU nationality, even if they are situated outside the EU;
- all persons with a non-EU nationality, when they are in the EU;
- non-EU entities, to the extent that they do business within the EU.

1.2 EU Sanctions: asset freeze

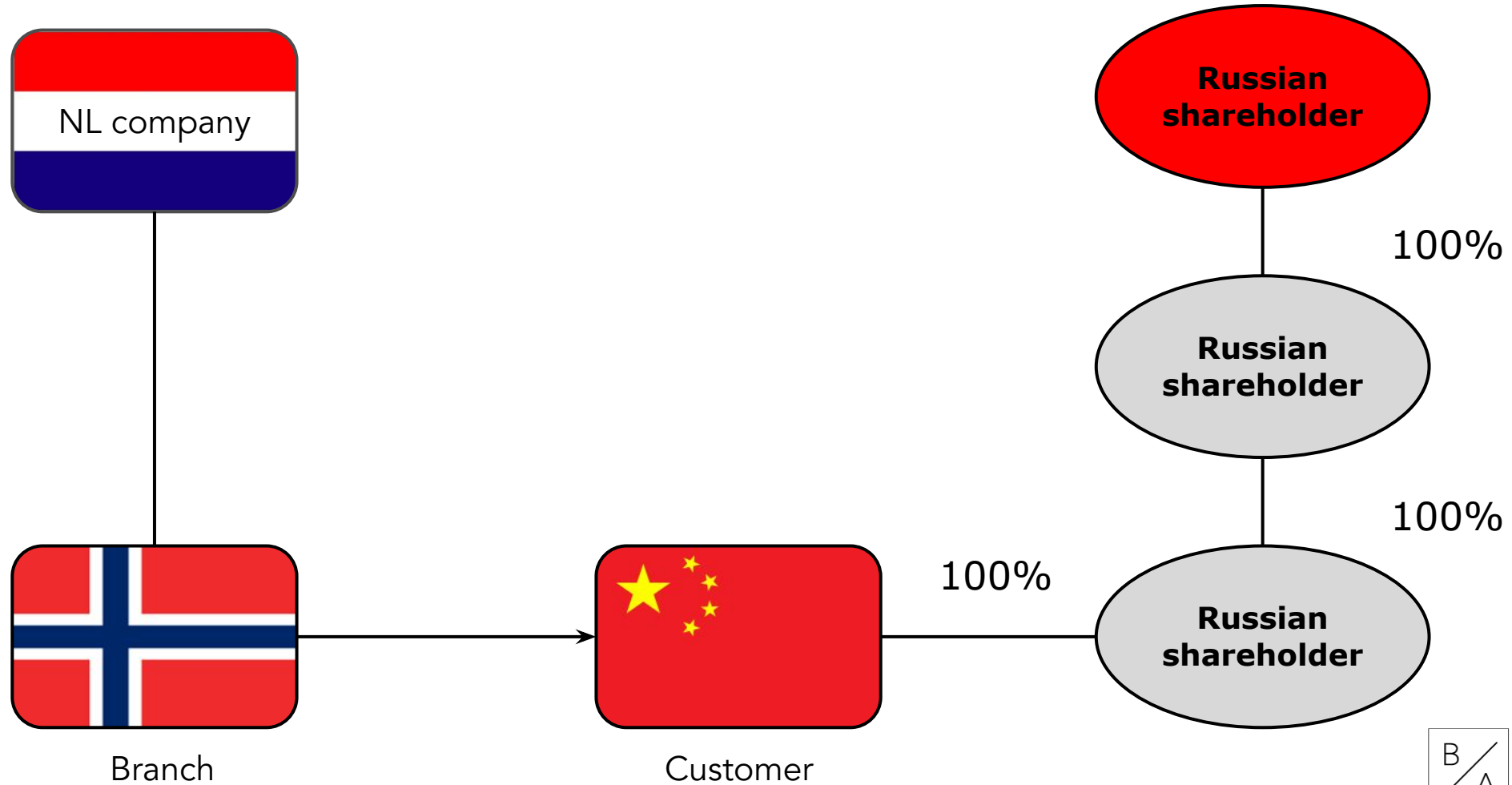
Two elements:

- All funds and economic resources belonging to, owned, held or controlled by such listed individuals/groups/entities shall be frozen.
- No funds or economic resources shall be made available, directly or indirectly to or for the benefit of such listed individuals/groups/entities.

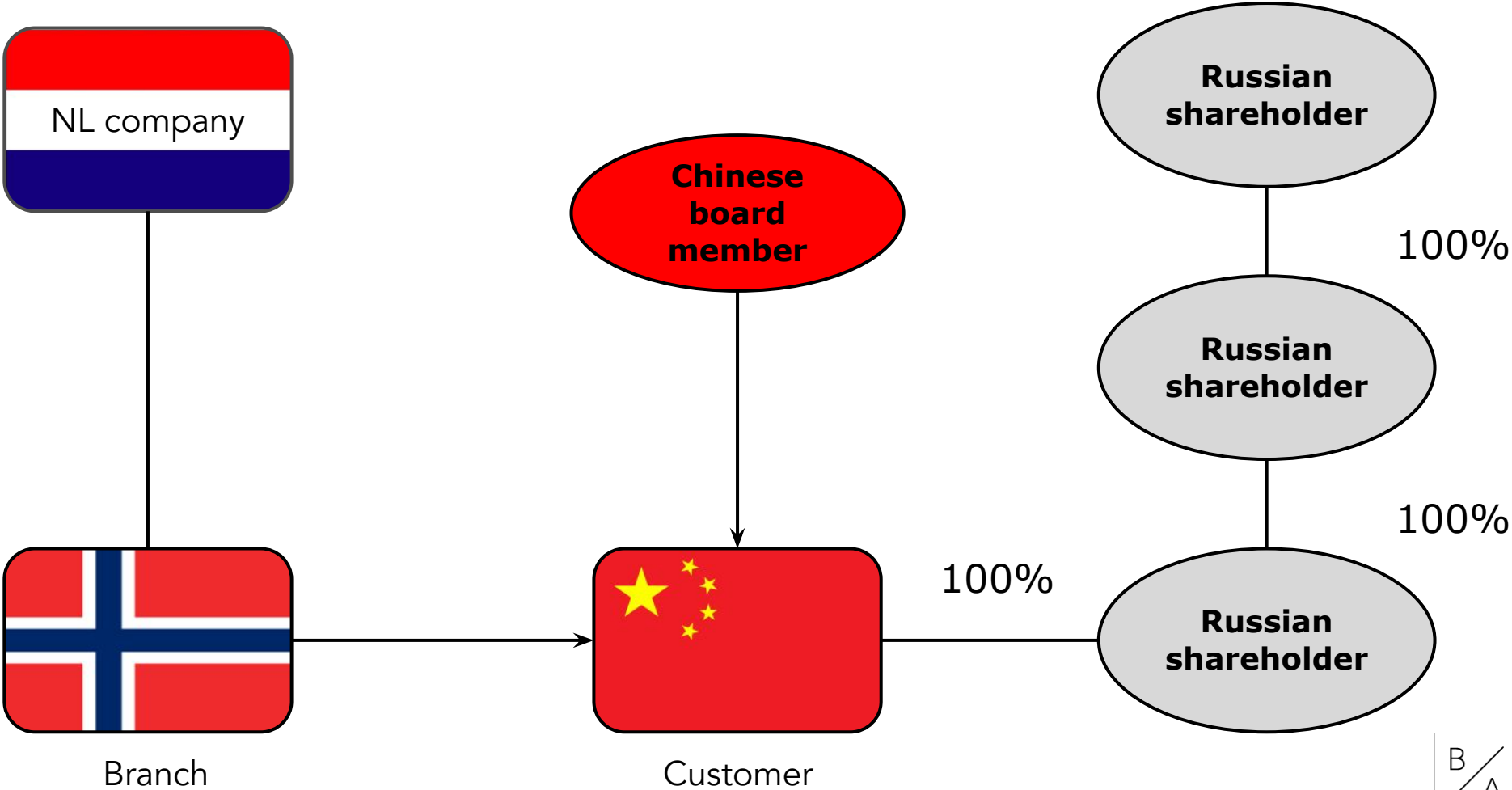
Ownership/control:

- Ownership: 50% or more of the ownership rights in a legal person, group or entity
- Control: depends on the factual circumstances. Control is assumed to be present when:
 - The legal person/group/entity has the right to appoint or remove members of the board or the supervisory body of an entity;
 - [...] has the right to exercise control over an entity by virtue of an agreement or the statutes; or
 - [...] has the right to use all or some of the entity's assets.

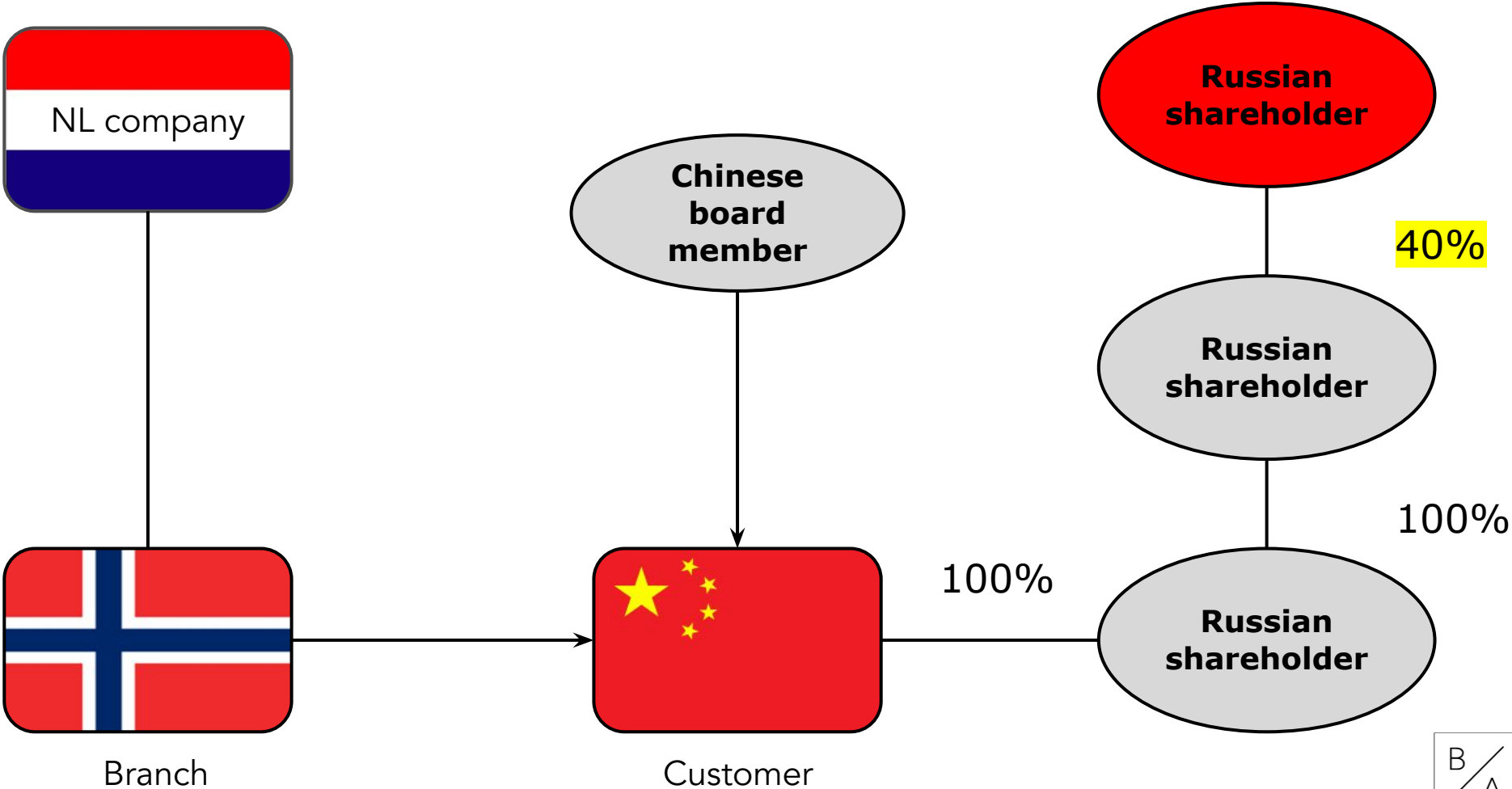
1.3 Case



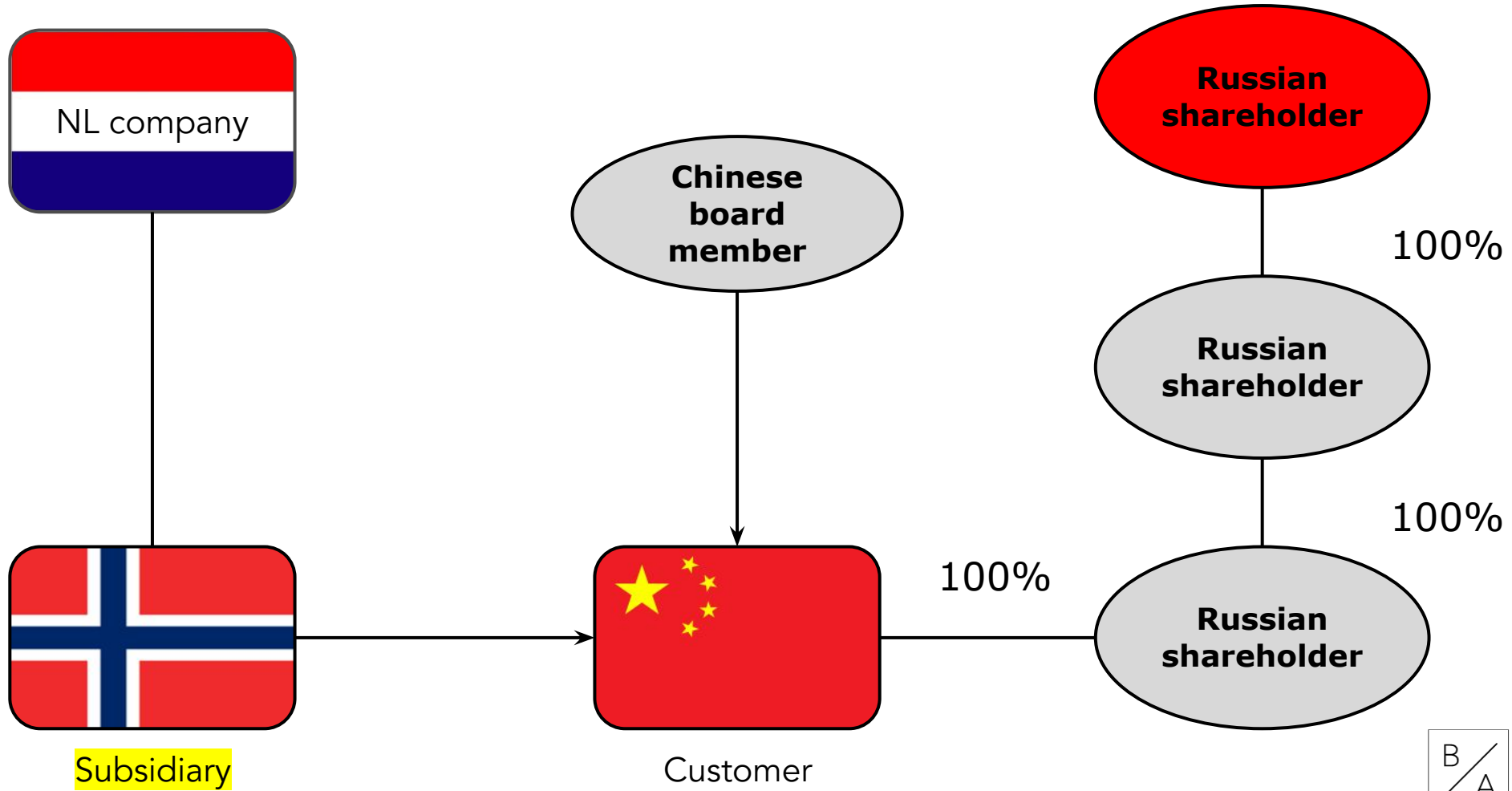
1.3 Case



1.3 Case



1.3 Case



1.4 EU Sanctions: recent developments

7 December 2020: EU Global Human Rights Sanctions Regime adopted

The regime targets:

- Individuals, entities and bodies (state and non-state actors);
- Those responsible for, involved in or associated with serious human rights violations and abuses worldwide.
- Example: Chinese individuals/entities such as Xinjiang Production and Construction Corps (XPCC).

Restrictive measures include:

- Travel ban (applied to individuals);
- Freezing of funds/economic resources and prohibition to make funds/economic resources available (applied to individuals and entities).

1.4 EU Sanctions: recent developments

22 May 2021: China retaliates with sanctions

- 10 individuals and 4 entities in the EU, including Members of the European Parliament
- China states the designated entities 'severely harm China's sovereignty and interests and maliciously spread lies and disinformation'

16 September 2021: European Parliament adopts a new EU-China strategy

Some key takeaways:

- "additional targeted measures under the EU Global Human Rights Sanctions Regime should be considered as necessary"
- "the ratification process of the Comprehensive Agreement on Investment (CAI) cannot begin until China lifts sanctions against MEPs and EU institutions"
- "urgent need for the EU to complete its range of autonomous measures including on the export of dual-use technology"

1.4 EU Sanctions: recent developments

18 November 2021: Motion adopted by Dutch Parliament regarding Uyghurs

- The motion requests the government to assess potential:
 - preventative measures to inform companies about what their products and services might be used for;
 - repressive measures (such as an export ban on certain products and services) to prevent human rights violations.

24 November 2021: SCMP: Renewal of European sanctions?

Exclusive | EU set to renew sanctions on Chinese officials for alleged Xinjiang abuses

- Adoption of the renewal is expected in early December after member states' ambassadors give the go-ahead 'without discussion'
- If adopted, the measures against four officials and one entity will roll over in March, one year after they came into force

1.4 Enforcement in NL

Legal framework in NL:

- Sanctiewet 1977
- Wet op de economische delicten (“Wed”)

Violation of sanctions:

- Criminal act if done deliberately, otherwise misdemeanor
- Max penalty for entities: EUR 870.000 or 10% of the yearly income
- For individuals: max EUR 87.000 and 6 years imprisonment

Authority	Responsibility/task
Ministry of Foreign Affairs	<ul style="list-style-type: none">• Responsible for the general implementation of international sanctions
Ministry of Finance	<ul style="list-style-type: none">• Responsible for the general implementation of financial sanctions• Licence applications for the release of frozen funds
AFM/DNB	<ul style="list-style-type: none">• Administrative enforcement regarding financial institutions
Public Prosecution Service/FIOD-ECD	<ul style="list-style-type: none">• Criminal enforcement

1.5 US Sanctions

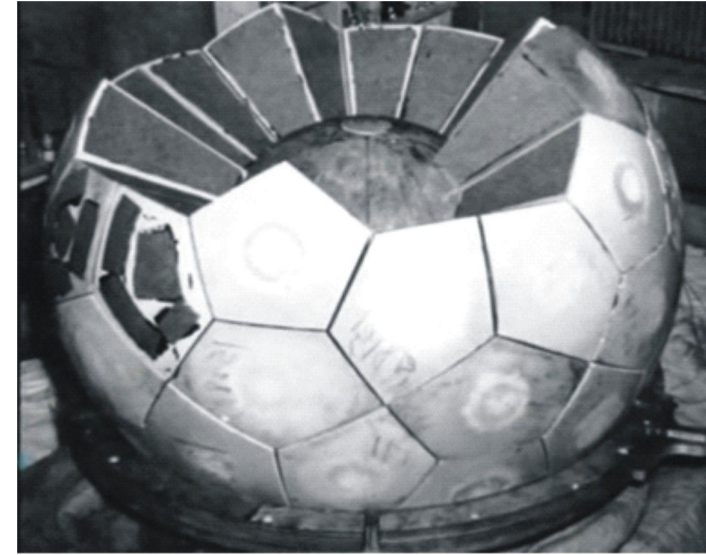
US sanctions are applicable to:

- “US persons”:
 - Individuals with US nationality/green card
 - Entities under US law;
 - Branches (and sometimes subs) of US entities;
 - Everyone in the US;
 - Non-US entities doing business in the US.
- USD transactions
- Re-export of US goods
- Export of goods with 10/25% controlled US-origin content
- Secondary sanctions: aimed at non-US persons
 - EU Blocking Statute
 - Risk of non-compliance with US sanctions



Example: Chinese Military Companies Sanctions (Executive Order 13959/14032)

2. Export controls



2.1 Export controls

Export controls has to do with the product itself vs. sanctions has to do with the final destination / end-use / end-user of the product.

European/national export controls are based on international agreements:

- Wassenaar Agreement: military and dual-use items*,
- Australia Group: chemical weapons
- Nuclear Suppliers Group: nuclear weapons
- Missile Technology Control Regime: missile technology

* Dual-use goods are products that can be used for both civilian and military purposes.

2.2 EU export controls

Original purpose: to prevent the proliferation of weapons of mass destruction and their means of delivery

No general prohibitions □ only license obligations

- EU Common Military List
 - Sets out a list of military items subject to export controls. A license is required for transfer (within the EU) and export (outside the EU) of these listed items.
- EU Dual-Use Regulation No. 2021/821
 - Governing the control of exports, brokering, technical assistance, transit and transfer of dual-use items.
 - Licence requirement for items listed on Annex I (and Annex IV) of the Dual-Use Regulation

2.2 EU Dual-Use Regulation

“Recast” of the Dual-use Regulation

- 9 September 2021: Modernized EU Dual-Use Regulation has entered into force
- Purpose: to respond to geopolitical and technological developments and strongly changing risks related to human rights violations
- Some key amendments:
 - Controls on cyber-surveillance technology
 - Broader protection of human rights
 - Definition of “Internal Compliance Program”
 - More detailed definition of dual-use items
 - Introduction of two new general EU export licenses
 - Tightened export controls on brokering and technical assistance

2.2 EU Dual-Use Regulation

“Catch-all” controls

- A license requirement may also exist for the export of non-listed items in case the items in question:
 - are or may be intended for use in connection with weapons of mass destruction;
 - are or may be intended for military end-use and the country of destination is subject to an arms embargo;
 - are or may be intended for use as parts of military goods that have been illegitimately exported without a license;
 - are cyber-surveillance items that are or may be intended for use in connection with internal repression, serious violations of human rights and international humanitarian law;
 - are dual-use items not listed in Annex I that are brought under *ad hoc* control by individual EU Member States for reasons of public security concerns, including the prevention of acts of terrorism and human rights abuses.

2.3 Enforcement in NL

Legal framework in NL:

- Sanctiewet 1977 & Wet op de economische delicten (“Wed”)

Violation of sanctions:

- Criminal act if done deliberately, otherwise misdemeanor
- Max penalty for entities: EUR 870.000 or 10% of the yearly income
- For individuals: max EUR 87.000 and 6 years imprisonment

Authority	Responsibility/tasks
Ministry of Foreign Affairs	<ul style="list-style-type: none">• Responsible for the general implementation of international sanctions and export controls
CDIU	<ul style="list-style-type: none">• Processes export license applications (individual licence, global licence, Union/national general licence)
Team POSS	<ul style="list-style-type: none">• Supports customs by organising custom controls risk analyses and inspection visits.
Public Prosecution Service	<ul style="list-style-type: none">• Criminal enforcement

3. Questions to ask

- What type of product are we talking about? = goods, software etc.
- Where will the product go to? = final destination
- Who will receive the product? = end-user
- How will/can the product be used? = end-use (military/dual-use)
- Owners/controllers of client/end-user? = beneficiary
- Banks/insurers/shipping companies? = beneficiary
- US persons, dollars, goods, content? = US nexus

4. Questions?



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