

# Sanctions and export controls

Navigating your trade law compliance

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December 2021  
European Silk Road Summit



# Agenda

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# 1. Sanctions



# 1.1 Sanctions

## Sanctions

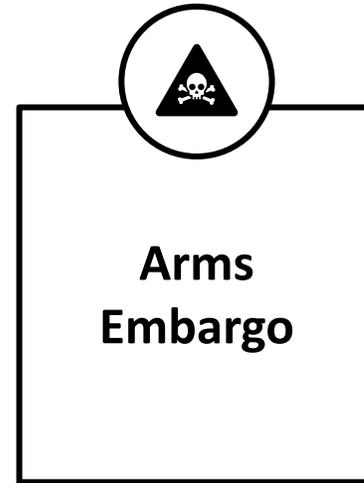
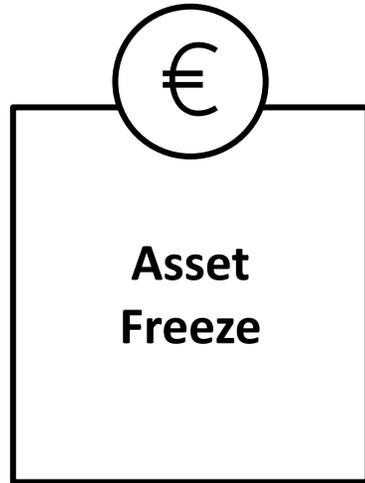
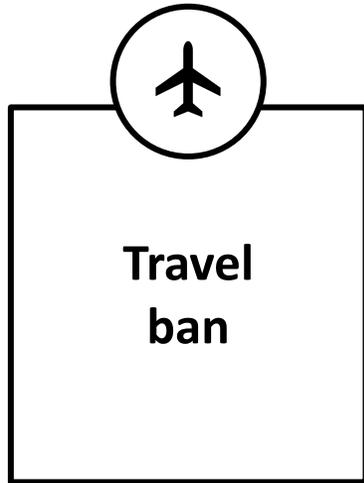
- (Political) instruments;
- Coercive restrictive measures, not by military means;
- Applied by the international community and/or at EU level;
- Aimed at modifying or 'punishing' the behaviour of countries, organisations, companies or individuals; and
- With the aim of enforcing or restoring international 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

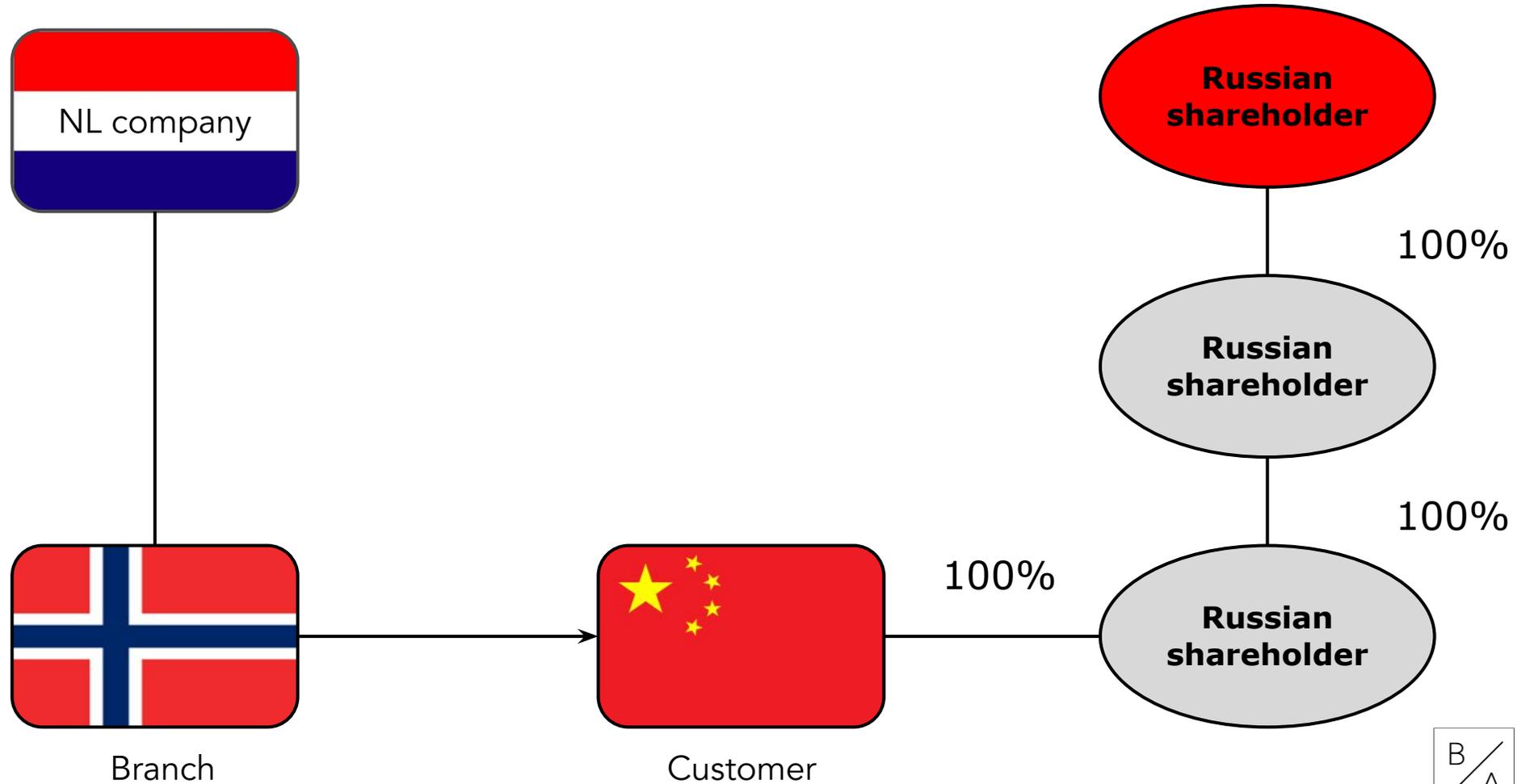
Two elements:

- 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.

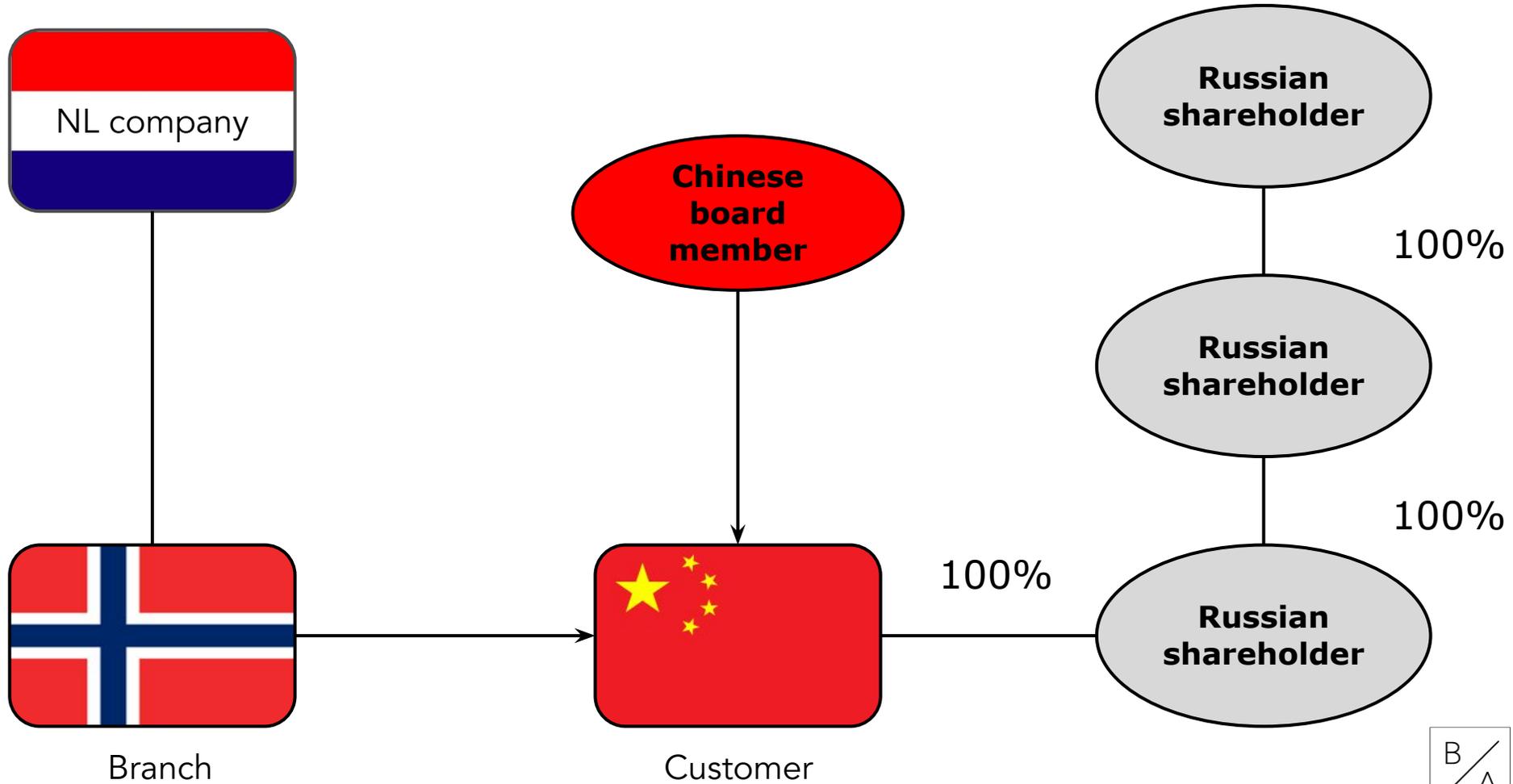
Ownership/control:

- 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.

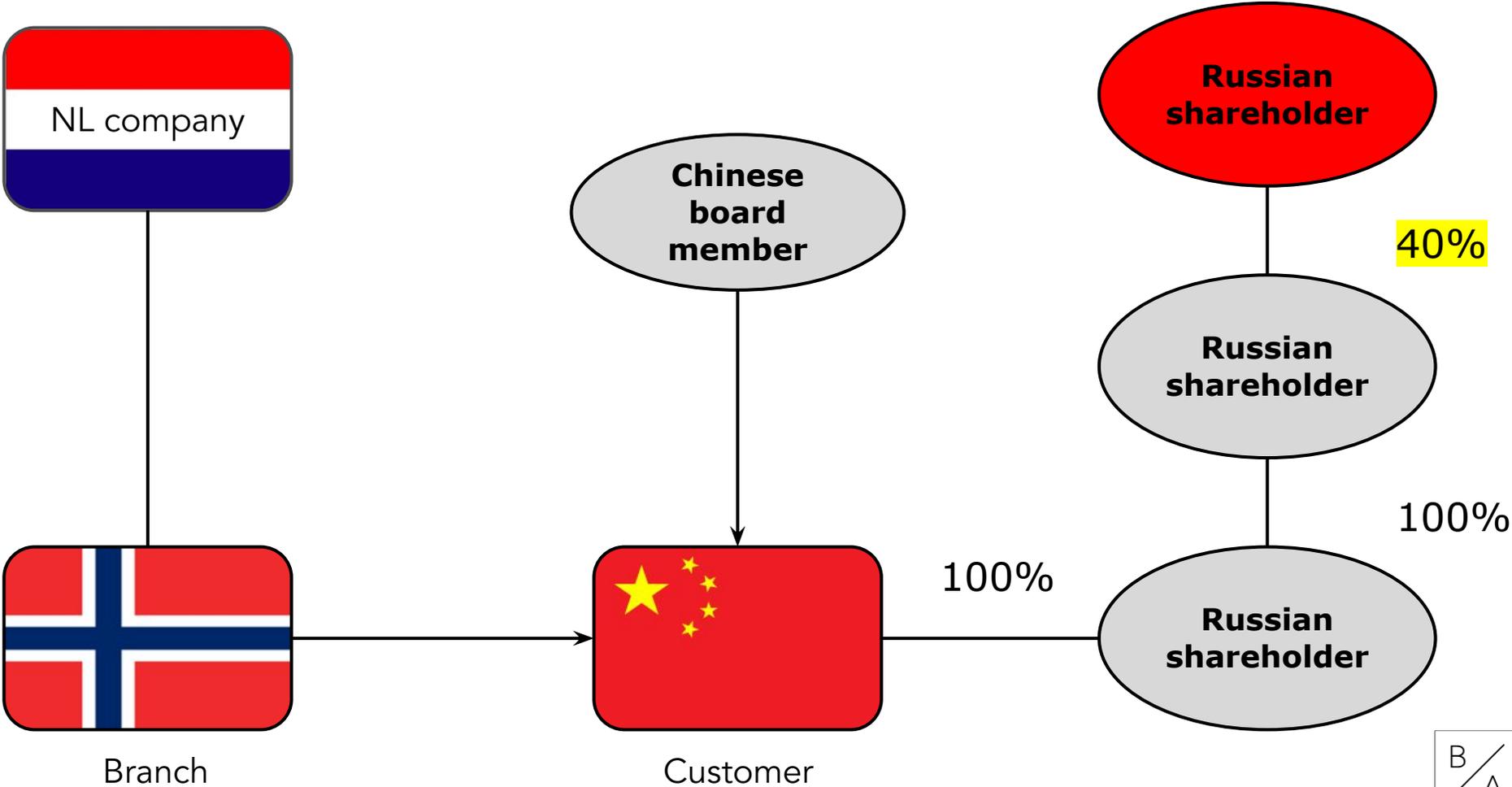
# 1.3 Case



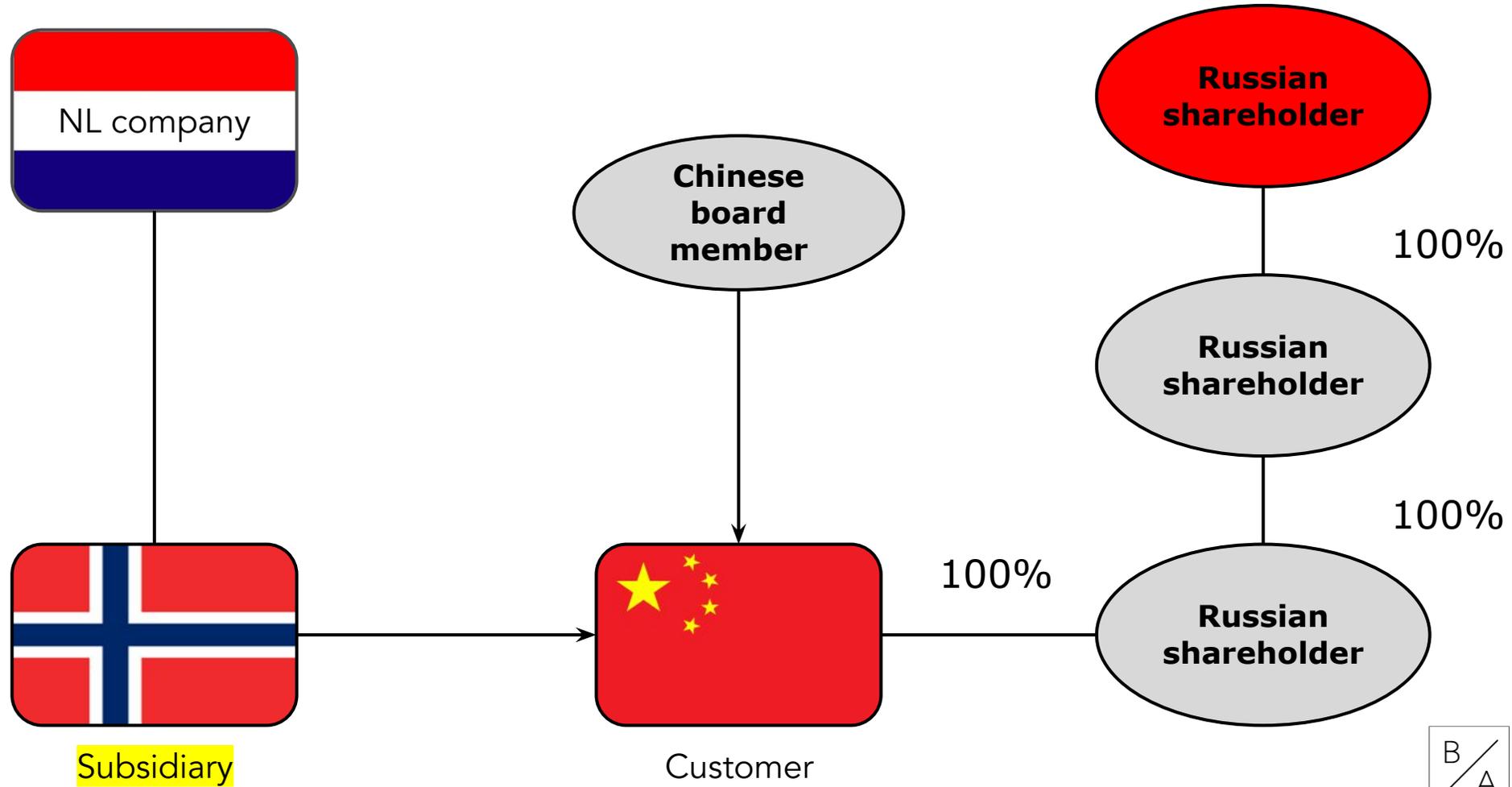
# 1.3 Case



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

# 1.5 US Sanctions

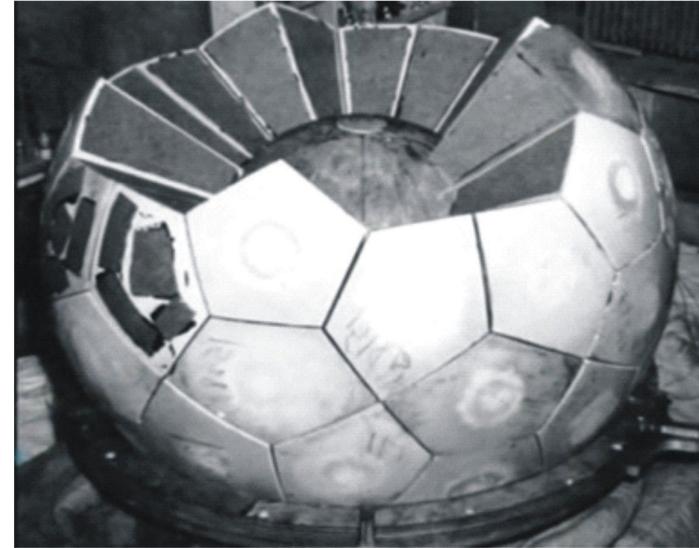
US sanctions are applicable to:

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

# 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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