# Table of Contents

Foreword xiii  
List of Figures xv  
List of Abbreviations xvii  
Acknowledgments xxiii  
Introduction 1  

**PART I**  
Sanctions and Contracts Considered 7  

**CHAPTER 1**  
International Trade Sanctions 9  
§1.01 Multilateral and Unilateral Measures 10  
§1.02 Trade-Related Measures 14  
§1.03 Coercive, Symbolic, and Punitive Measures 21  

**CHAPTER 2**  
International Sales Contracts 25  
§2.01 Contracts Falling within the Scope of a Trade Sanction 25  
§2.02 Contracts Governed by the CISG 28  

**PART II**  
Trade Sanctions as Statutes that May Be Taken into Account for the Resolution of a Contractual Dispute 33
### Table of Contents

#### CHAPTER 3
Characterization of Trade Sanctions in a Private Law Perspective 35

§3.01  Traditional Approach: Trade Sanction as a Datum 35
   [A] Overview 35
   [B] Rationale and Weaknesses 43

§3.02  Proposed Approach: Trade Sanction as a Legal Norm 50
   [A] Introduction to Overriding Mandatory Rules 50
       [1] Nature 50
       [2] Normative Content 56
   [B] Trade Sanctions as Overriding Mandatory Rules 59
   [C] Multilateral Trade Sanctions as Datum in Exceptional Circumstances 62

#### CHAPTER 4
Authority of Domestic Courts and Arbitral Tribunals to Give Effect to Trade Sanctions 65

§4.01  Contractual Disputes before Domestic Courts 69
   [A] Trade Sanctions Imposed by the State of the Forum 69
   [B] Trade Sanctions Imposed by the State of the Applicable Law 71
       [1] Irrelevance of the Overridingly Mandatory Characterization of a Trade Sanction 71
       [2] Relevance of the Fact that a Trade Sanction Serves Public Interests 74
   [C] Trade Sanctions Imposed by Another State 82

§4.02  Contractual Disputes before Arbitral Tribunals 85
   [A] General Considerations 85
   [B] Trade Sanctions Imposed by the State of the Applicable Law 106
       [1] General Findings 106
       [2] Implications of a Choice of Law by the Arbitrators 111
   [C] Trade Sanctions Imposed by Another State 112
       [1] General Findings 112
       [2] Purported Relevance of the Parties’ Legitimate Expectations 117
       [3] Sanctions Imposed by the State of the Seat of the Arbitration and Sanctions Imposed by States where Enforcement of the Award May Possibly Be Sought 120
       [4] Implications of a Choice of Law by the Parties 124
       [5] Implications of a Choice of Law by the Arbitral Tribunal 125
CHAPTER 5
Circumstances in Which a Trade Sanction May Be Given Effect 127
§5.01 Trade Sanction Taken into Account as an Overriding Mandatory Rule of the Forum State 127
§5.02 Trade Sanction Taken into Account as an Overriding Mandatory Rule External to the Applicable Law 131
[A] Conditions Overview 133
[1] Overriding Mandatory Rule as an Appropriate Means of Achieving a Legitimate Purpose 133
[a] “Application-Worthiness” Test 134
[b] System of Reference 137
[2] Existence of a Close Connection between the Contractual Dispute and the Enacting State 142
[3] Prevalence of the Benefits of a Decision to Give Effect to an Overriding Mandatory Rule over Those of a Decision to Disregard It 145
[B] Trade Sanctions in General 147
[1] Legitimacy, Necessity, and Proportionality of Trade Sanctions 147
[a] Multilateral Sanctions 147
[b] Unilateral Sanctions 152
[2] Connection between the Contractual Dispute and the Sanctioning State 161
[3] Consequences of a Decision to Give Effect to a Sanction versus Consequences of a Decision to Disregard It 162
[C] Extraterritorial Trade Sanctions 164
[1] Legitimacy and Efficiency 167
[3] Consequences of a Decision to Give Effect to a Sanction versus Consequences of a Decision to Disregard It 177
§5.03 Trade Sanction Taken into Account as an Element of the Applicable Law 179
[A] Exception of Public Policy 179
[1] Principles of International Public Policy of the Forum 180
[2] Principles of Transnational Public Policy 185
[B] Relationship between the Mechanism of the Exception of Public Policy and the Application of Overriding Mandatory Rules 187
[C] Trade Sanctions to Be Disregarded on Grounds of Conflict with Principles of Public Policy 188

CHAPTER 6
Relevance of the Lex Contractus 191
Table of Contents

PART III
Trade Sanction as a Ground for Exemption from Liability for Non-performance 197

CHAPTER 7
Trade Sanctions as Legal Impediments to Performance 199

§7.01 Impediment beyond the Defaulting Party’s Control 204
[A] Occurrence Making Performance Impossible or Unreasonably Difficult 204
[1] Trade Sanctions 205
[B] Occurrence beyond the Obligor’s Sphere of Risks and Responsibilities 213
[1] The Obligor’s Sphere of Risks and Responsibilities 213
[2] Impediment to the Obligation to Deliver or to Take Delivery of the Goods 215
[a] Trade Sanction Prohibiting Performance by the Buyer or the Seller 215
[b] Trade Sanction Prohibiting Performance by the Seller’s Supplier 217
[3] Impediment to the Obligation to Make a Payment 220

§7.02 Unforeseeability of the Impediment 222
[A] Relevance of the Foreseeability Test and Standard of Reasonableness 222
[B] Foreseeability of Future Trade Sanctions and Risk Assumption 226
[1] Trade Sanctions Prohibiting the Performance of an Obligation 226

§7.03 Unavoidability and Insurmountability of the Impediment and of Its Consequences 231
[A] Unavoidability and Insurmountability in General 231
[B] Unavoidability and Insurmountability of Trade Sanctions 234
[1] Trade Sanctions Prohibiting the Performance of an Obligation 234

§7.04 Causality 242
[A] Non-Performance, Delayed or Defective Performance 242
[B] Causal Chain between the Impediment and the Obligor’s Failure to Perform 244

§7.05 Duty to Give Notice 247
### Table of Contents

**Chapter 8**
Rights and Obligations of the Parties If the Obligor Is Exempted from Liability for Non-performance

- §8.01 Exemption from Liability for Damages 251
- §8.02 Suspension of the Obligation to Perform in Kind during the Term of the Sanction 258
- §8.03 Remedies Available to the Aggrieved Party 267
  - [A] Right to Declare the Contract Partially or Totally Avoided 268
    - [1] In General 268
    - [2] If the Sanction Affects Only Part of the Contract 279
  - [B] Right to Declare a Price Reduction 283
    - [1] If the Sanction Affects All or an Indivisible Portion of the Goods 283
  - [C] Right to Collect Interest 292
- §8.04 Fate of the Contract while the Sanction Is in Force and after it Is Lifted 295

**Chapter 9**
Rights of the Obligee If the Obligor Delivers a Substitute to Avoid the Prohibition

- §9.01 No Right to Declare the Contract Avoided 305
- §9.02 Right to Declare a Price Reduction 308

**Part IV**
Risk of Penalty for Breach of a Sanction as a Ground for Renegotiation or a Court-Ordered Adaptation of the Contract 311

**Chapter 10**
No Exemption Possible on Grounds of Increased Onerousness

- §10.01 Unaffordability in General as a Ground for Exemption 315
- §10.02 Insufficiency of the Risk of Penalty Alone for a Finding of Exemption 319

**Chapter 11**
Adaptation of the Contract on Grounds of Hardship

- §11.01 Hardship 321
  - [A] In General 321
    - [1] Fundamental Disruption of the Contractual Equilibrium 321
    - [2] Renegotiation, Court-Ordered Adaptation or Termination of the Contract 327
  - [B] Under the CISG 328
    - [1] Existence of a *Praeter Legem* Gap 328
    - [2] Renegotiation or Court-Ordered Adaptation of the Contract 334
| §11.02 | Threats of Penalty for Breach of a Sanction as Hardship | 345 |
|        | [A] Right to Seek Renegotiation or a Court-Ordered Adaptation of the Contract | 345 |
|        | [B] Threshold Test | 346 |

**CHAPTER 12**
Part III Revisited in the Light of Part IV: Remedies Available If the Cost of Avoiding a Trade Sanction Is Excessive | 349 |

Conclusions | 353 |

Bibliography | 367 |

Table of Arbitral Awards | 397 |

Table of Court Decisions | 403 |

Index | 413 |