

World Bank Group Sanctions System Review – External Consultation

Response of Kevin E. Davis

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I am pleased to submit the following recommendations for consideration in the course of the Legal Vice-Presidency's review of the World Bank Group's (the "Bank") Sanctions System. They were prompted mainly by the Consultation Plan's invitation to comment on the overall goals of the Sanctions System and how the Bank should go about measuring success in achieving those goals. As such, they may be relevant to both Phase I and Phase II of the review.

1. Acknowledge that the objectives of the Sanctions System are those of the Governance and Anti-Corruption Strategy

The Sanctions System is part of the Bank's overall Governance and Anti-Corruption Strategy. The stated objectives of that strategy include not only reductions in levels of corruption but also, ultimately, enhanced opportunities for citizens, improved service delivery and overall poverty reduction.¹ I encourage the Bank to acknowledge these kinds of social and economic outcomes as the ultimate objectives of the Sanctions System.

2. Evaluate the Sanctions System in terms of social and economic outcomes

Acknowledgement of the social and economic objectives of the Sanctions System should influence the way in which the Sanctions Systems is evaluated. The Bank has a stated commitment to rigorous monitoring and evaluation of the outcomes of its interventions. Previous evaluations of the Sanctions System have focused on whether it comports with due process, principles of global administrative law or the rule of law.² I am not aware of any evaluations that have focused on whether the Sanctions System generates positive social and economic outcomes. Such an evaluation is clearly required. As part of that evaluation the Bank should consider

¹ Strengthening Governance: Tackling Corruption, The World Bank Group's Updated Strategy and Implementation Plan (March 6, 2012)

² See Anne-Marie Leroy and Frank Fariello, *The World Bank Group Sanctions Process and its Recent Reforms* (Washington, DC: World Bank, 2012), as well as Andrés Rigo Sureda, *Process Integrity and Institutional Independence in International Organizations: The Inspection Panel and the Sanctions Committee of the World Bank* in Laurence Boisson de Chazournes, Cesare Romano and Ruth Mackenzie (eds.), *International Organizations and International Dispute Settlement: Trends and Prospects* (Ardsley, NY: Transnational, 2002), 165; Report Concerning the Debarment Processes of the World Bank (August 14, 2002); Independent Panel Review of the World Bank Group Department of Institutional Integrity (Washington, DC: World Bank, September 13, 2007); Pascale Héléne Dubois and Aileen Elizabeth Nowlan, *Global Administrative Law and the Legitimacy of Sanctions Regimes in International Law*, 36 *Yale Journal of International Law* 15 (2010); Stephen S. Zimmermann and Frank A. Fariello, Jr., *Coordinating the Fight against Fraud and Corruption: Agreement on Cross-Debarment among Multilateral Development Banks*, 3 *World Bank Legal Review* 189 (2012); Laurence Boisson de Chazournes and Edouard Fromageau, *Balancing the Scales: The World Bank Sanctions Process and Access to Remedies*, 23 *European Journal of International Law* 963 (2012).

reforms aimed at both improving the social and economic outcomes associated with the Sanctions System and enhancing the Bank’s ability to monitor and evaluate those outcomes. The following recommendations may assist in those efforts.

3. Collect and report data on the extent of the Bank’s influence over sanctioned parties

The most direct way in which the Sanctions System can be expected to influence social and economic outcomes is through the deterrent effect that debarment will have on firm behavior. The magnitude of that effect will vary across firms. In some sectors the Bank is only one of many sources of capital and for firms in those sectors the cost of being barred from participating in Bank-sponsored projects may not be significant. To estimate the extent of the deterrent effect of debarment I recommend that the Bank collect and report data on the amount of business the Bank has done with debarred firms prior to their debarment as well as any other reasonable proxies for the amount of business each firm stands to lose by being debarred. Ideally, the Bank would also collect data on the costs of being cross-debarred or being sanctioned by organizations to which the Bank refers matters, but I appreciate that this might be difficult to accomplish.

4. Collect and report data on the incremental impact of the Bank’s activities

The Bank’s Sanctions System overlaps with systems administered by other organizations, including other development banks, aid agencies and national law enforcement agencies. Data on the extent of that overlap is required in order to estimate the incremental impact of the Bank’s Sanctions System. I recommend that the Bank collect and report data on the extent to which: i) the World Bank’s investigations or sanctions replicate the actions of other agencies and, ii) those other agencies’ actions were made possible or facilitated by the World Bank’s Sanctions System.

5. Require social and economic outcomes to be considered in determining sanctions

The World Bank Sanctions Procedures list both a range of possible sanctions and a set of factors that ought to influence the sanction decision.³ The list of factors does not include the social or economic consequences associated with the possible sanctions. Sanctions with equivalent impact on a sanctioned party may vary in terms of their impact on the societies in which that party operates. For instance, debarment may prevent an exceptionally well-qualified firm from participating in a particular Bank project at the expense of the intended beneficiaries. At the same time, an alternative to debarment that would impose similar costs on the firm may be available. In such a scenario, imposing debarment as opposed to a sanction with less adverse social or economic effects seems incompatible with the overarching objectives of the Sanctions System. In order to address this concern, I recommend that the World Bank Sanctions Procedures list social and economic consequences of imposing the sanction among the factors that the Evaluations Officer or Sanctions Board, as the case may be, should consider in determining an appropriate sanction.

³ World Bank Sanctions Procedures, sections 9.01 and 9.02.