

Sanctions screening of parties, vessels and goods

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Sanctions are the second compliance dimension of every trade finance transaction. A bank that opens a documentary credit must screen the applicant, the beneficiary, the banks involved, the vessel, its owner and manager, the ports of loading and discharge and the goods themselves against the applicable sanctions lists. In Switzerland these are the measures adopted under the Embargo Act, in particular the ordinance on measures in connection with the situation in Ukraine. Banks also screen against the lists of the European Union, the United Kingdom and the United States, because their correspondent banks and dollar clearing require it.¹ Since 2020 vessel screening has become a discipline of its own. In May 2020 the United States Departments of State and the Treasury and the Coast Guard issued a joint advisory on illicit shipping and sanctions evasion practices. It described deceptive practices such as disabling or manipulating the automatic identification system, physically altering vessel identification, falsifying cargo and vessel documents, ship-to-ship transfers, voyage irregularities, false flags and flag hopping, and complex ownership or management structures.² Banks now use commercial databases that record a vessel's ownership history, flag changes, port calls and gaps in its automatic identification system (AIS) signal.

For a Lugano steel or coal trader, the sanctions regime against Russia since 2022 has made screening a daily task. The import ban on Russian iron and steel products, the price cap on Russian oil and the rules on products processed in third countries require the trader to prove the origin of the goods. Mill certificates and certificates of origin have become sanctions documents. The bank will require them as conditions of the credit, and a discrepancy in these documents is now a compliance issue as well as a documentary one. Chapter G.II treats the substance of these rules, the Swiss adoption of the European Union's sanctions packages and the enforcement practice of the State Secretariat for Economic Affairs (SECO).³ Dual-use goods raise similar issues under the Goods Control Act. The Wolfsberg

principles concede that banks cannot be expected to determine the dual-use character of goods without government help.⁴

1 Reporting and the limits of the bank's view

Where a bank's screening or transaction monitoring produces a suspicion, the bank must clarify the background (Art. 6 AMLA) and, if the suspicion is founded, file a report with MROS (Art. 9 AMLA). It must also freeze the assets connected with the report as soon as MROS informs it that it is transmitting the report to a prosecution authority (Art. 10 para. 1 AMLA). In trade finance the suspicion often arises during the life of a transaction, when the bank holds documents or has issued an undertaking to a third party. The bank may then face conflicting duties: an irrevocable undertaking to pay against complying documents on the one hand, and the prohibition on executing a transaction that may serve money laundering or breach sanctions on the other. UCP 600 does not resolve this conflict. Sanctions clauses in credits, which allow the bank to refuse payment where payment would breach sanctions, have become common, although the ICC has warned that broad clauses undermine the certainty of the credit.⁵ Under Swiss law a payment prohibited by sanctions law is legally impossible, and the courts would not order a bank to pay contrary to a binding sanctions ordinance.

The Federal Council's report of 2020 noted that suspicious activity reports in the commodity sector rarely came from the financing banks.⁶ This is a structural limitation of the bank's position. A bank sees one transaction or one client and cannot see the entire chain of the goods or the use of the money after payment. The response of the industry has been to improve the information available to banks. It has introduced vessel tracking, verification of bills of lading with carriers, data from inspection companies and, increasingly, digital trade documents whose integrity can be checked. The next section examines the legal framework for such documents.

2 Notes

1. Federal Act of 22 March 2002 on the Implementation of International Sanctions (Embargo Act, EmbA), SR 946.231; Ordinance of 4 March 2022 on Measures in connection with the Situation in Ukraine, SR 946.231.176.72; titles and dates as listed at [droit-bilingue.ch](https://www.droit-bilingue.ch/en-de/9/94/index.html), <https://www.droit-bilingue.ch/en-de/9/94/index.html> and <https://www.droit-bilingue.ch/de-fr/9/94/index.html>. See Chapter G.II. ↩

2. U.S. Department of the Treasury, Office of Foreign Assets Control, "Publication of Guidance to Address Illicit Shipping and Sanctions Evasion Practices", recent actions of 14 May 2020, <https://ofac.treasury.gov/recent-actions/20200514>; the advisory itself, Guidance to Address Illicit Shipping and Sanctions Evasion Practices (14 May 2020), <https://ofac.treasury.gov/media/37751/download?inline> (section on deceptive shipping practices). ↩
3. See Chapter G.II. ↩
4. Wolfsberg Group, ICC and BAFT, Trade Finance Principles (2019) (above). Federal Act of 13 December 1996 on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods (Goods Control Act, GCA), SR 946.202, title and date as listed at droit-bilingue.ch, <https://www.droit-bilingue.ch/en-de/9/94/index.html>. ↩
5. ICC Banking Commission, Guidance Paper on the use of sanctions clauses in trade finance-related instruments subject to ICC rules (2014, revised 2020). ↩
6. Federal Council, report of 26 February 2020 (above), 14. ↩

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