Bank Instruments, Embargoes, and Blacklists

Or how banks will have to monitor (and police) international trade

summary

- Origin
- Bank instruments
- Embargo clauses/Blacklists
- Case studies

The origin

- National authorities and supranational organizations (e. g. UN, EU) are imposing restrictive measures against countries, organizations, groups, companies and private individuals who continuously infringe against internationally accepted behavior and norms or have been identified as suspects for acting as terrorist or supporting terrorist organizations. Such measures are more commonly know as embargos or sanctions

- Banks have to ensure that all payments, including documentary payments are in compliance with local and as well as applicable international rules

- Bank will also need to monitor that a transaction is not in breach of anti money laundering laws or might be fraudulent

- On top of this Banks will also have a internal policies on parties, countries and products they will not deal with

- As you can imagine this quite a wide area which needs to be monitored and would require quite a sophisticated set of tools to have 100 % hit ratio

- In practice most banks do have adequate tools available to filter quite a big part our however large part of the process still involves manual intervention, as well as interpretation (!)

Bank instruments
What instruments, what checks

- Clean payments; all parties participating and all parties mentioned (including correspondent banks)
- Documentary collections; all parties mentioned on all documents, logic of transaction *
- * nowadays a documentary collection gets as much scrutiny as and letter of credit

Bank instruments

- Letters of credit; all parties mentioned <u>on all</u> documents, logic of transaction, the sailing route of the underlying vessel, goods

- Bankguarantees; type of guarantee, project, goods, parties mentioned (including banks, countries), agents and third parties

What checks will be done (not comprehensive)

- OFAC (if applicable)
- UN
- EU
- Dual use goods
- Money laundering
- All parties mentioned on the instrument used (bank, beneficiaries, applicants, drawers, drawees, shippers etc)
- Whether (in documentary payments) a transaction makes sense

Embargo clause

First of all what is a embargo clause in a letter of credit;

- a statement that a bank upon processing the letter of credit and any presentation hereunder will comply with (applicable) embargo rules

There a various ways of describing this and based upon the language used the effects of the clause could range from a sensible warning to a **“black box**” in which the exporter has **no** security at all when working with a Letter of Credit

The official standpoint from the ICC is that banks <u>should</u> not include these clauses in their l/c’s, but it is not prohibited and quite a number of banks/countries will incorporate them nowadays

Please note that even when the lc does not contain a so-called embargo clause the banks participating will always comply with applicable law so the absence of such a clause does not guarantee payment could not be blocked due to a breach of an (applicable) embargo, however if and when included the beneficiary needs to study the clause well as depending on the structure the clause could have a big detrimental impact on your security

Case study 1

- letter of credit issued by Chinese Bank in USD

- advised by a European bank **outside** Germany (!)

- lc contains a so called embargo clause i.e

The issuing bank will comply with OFAC, EU, UN and local rules and regulations

Case study lc 2 Embargo clause

- letter of credit issued by Chinese Bank
- advised by a bank **inside** Germany (!)

- lc contains a so called embargo clause

The issuing bank will comply with OFAC, EU, UN and local rules and regulations

Case study 3 Embargo clause

letter of credit issued by Chinese Bank in Euro’s

- advised by a bank outside Germany (!)

- lc contains a so called embargo clause

The issuing bank will comply with OFAC, EU, UN, as well as local rules and regulations

Case study 4 Embargo clause

letter of credit issued by Chinese Bank in Euro’s

- advised by a bank outside Germany

- lc contains a so called embargo clause

The issuing bank will comply with OFAC, EU, UN, its internal policies and guidelines as well as local rules and regulations

Case study 5 sanctioned party

- Export lc issued by sanctioned party or including sanctioned party
- At sight
- At 30 days
- At 90

- Import lc issued by sanctioned party
- At sight
- At 90 days

Case study – tick all the boxes

- Export lc issued in USD by a sanctioned Russian bank and a sanctioned russian applicant
- Tenor 370 days after shipment
- Exporter is a manufacturer of pharmaceuticals
- This particular lc deals with the export of software to categorize pharmaceuticals
- Lc contains a embargo clause
- Software is shipped on a marine vessel Abouzar

Conclusion

- Banks are called upon more and more to monitor and police trade finance
- Understand that this might cause delays if you are working with sanctioned parties/countries or if trade transactions are unclear
- This requires exporters and importers to do their homework
- Work with your banks to avoid unnecessary delays but accept they might still occur