IATA
Cargo Claims and Loss Prevention Conference

29 – 31 October 2019, Amsterdam, Netherlands
IATA Cargo Claims and Loss Prevention Conference

29 – 31 October, Amsterdam, Netherlands
Welcome Back for Day 2

Christian Piaget
Senior Manager, Cargo Border Management & Claims
IATA
IATA Competition Law Compliance

Do not discuss:

- Pricing, including fares, service charges, commissions, etc.
- Bids on contracts or allocation of customers
- Geographic/Product market allocations and marketing plans, including
  - Expanding or withdrawing from markets
  - Group boycotts
  - Your commercial relations with agents, airlines or other third parties

Any discussion aimed at influencing the independent business decisions of your competitors

You will be asked to leave the meeting, and the meeting may be terminated, if the above-mentioned discussions occur.

Remember: All discussions count, even informal ones outside the meeting room!
Thank you to all our sponsors!
Session on Perishables

Eric Mauroux
Global Head Perishables
Air France-KLM & Martinair
A SUSTAINABLE APPROACH TO PERISHABLES

Eric MAUROUX
Global Head of Perishables
Amsterdam, 30th October, 2019
Perishables: a solid & fast growing sector for the airfreight industry

- **Increased consumption in developed countries.**
  Healthy food, super food, ready to eat

- **Emerging middle classes in developing countries.**
  Income growth coupled with population growth

- **Steady growth of the retail.**
  Turnover grow of 6.0% per annum

- **Steady growth for cut flowers:**
  Consumption in Europe & North America should grow by 20% in the next decade

**Faster growth** than the overall air freight industry. +2 pts of product share over the last 5 years

1st **Vertical** of the airfreight industry. 16% of the total airfreight tonnages
A highly fragmented supply chain with lots of inefficiencies

- Growers
- Ground Handlers
- Airlines
- Exporters
- Forwarders
- Importers
- Retailers
- Consumers
- Health & Customs authorities
- Brokers

Issues:
- Sanitary and phytosanitary challenges
- Disease and pest control
- Carriers product temperature ranges vs optimal commodity temperature range
- Lack of data and coordination throughout the whole chain
- Lack of standardization
- Poor fruit selection. Un-adapted transport conditions to airports
- Different setup and higher cost to make cool vs keep cool in case of excursions
- Phyto & Veto interceptions
- Lack or un adapted cool storage facilities
Reducing inefficiencies not only improves profitability but also has direct societal and environmental impacts.

**Societal:** Poverty reduction, Employment, Education, Health. Gender parity. Food safety and security.


**Environment:** Resource conservation and enhancement of environmental quality: Water resources, Green House Gas emissions, pest-control methods, pesticides, chemicals etc. Waste management and procurement policy.
Towards a more sustainable supply chain based on effective collaboration, innovation and data as key drivers to create value.

Building content thru social interactions with supply chain ecosystems.
Create value thanks to data

Data sharing

Data maturity?

Data value?

Data sharing

Data Crunching & machine learning

More predictive

Use cases
- Prevent quality defects
- Predict sales
- Detect stock shortage
- Predictive maintenance
- Stock management
- Product planification

Increased product shelf-life and reduced waste & loss.
Achieving standardization by moving towards a quality assured logistics chain based on collaboration

A quality assured logistics chain based on a degree/hour KPI including all actors from farm to fork. Powered by

- Quality assurance of the entire chain based on an effective collaboration
- With a clear value creation for all actors: guaranteed in less than X degree/hours which results in X days of additional vase/shelf life
- AND a major reduction in claims as a “side catch”!
Build contents thru social interactions with supply chain ecosystems
(trust, co-creation of solutions)

Implement standard and quality assurance with all stakeholders
(Degree/hours throughout the chain)

Create value thanks to data (develop use cases: from operational performance to sales & risk prediction) develop effective collaboration next to contractual relations
Session on Perishables
The CEIV Fresh Experience

Nicola Caristo
Pharma & Special Products Development Manager
Alha Airport MXP S.p.A.
FRESH MXP EXPERIENCE

Amsterdam
30 October 2019
Air Cargo Supply Chain: Critical Control Points
Air Cargo Supply Chain: communication flow

Shipper
Producer

Logistic Provider (3PL)
Freight Forwarder

Airline

Ramp
Handling Agent

Warehouse
Handling Agent

Airport

ALHA Group
Air Cargo Supply Chain: Speaks Shippers Language

Shipper/Producer

Shippers Requirements

Airport Ramp & Warehouse Handling Agent

Cargo Requirements

Pharma & Fresh Requirements
Air Cargo Pharma & Fresh Tool: IATA CEIV

QUALITY MANAGEMENT
PERSONNEL AND TRAINING
DOCUMENTATION
INFRASTRUCTURE AND EQUIPMENT

SUPPLIER MANAGEMENT
SELF-INSPECTION
COMPLAINTS AND QUARANTINE
OPERATION
Infrastructure and equipment

- Mapping for all Perishable Centre
- Monitoring and Alarm System upgrading and harmonization
- New HACCP pavement for Fresh Center Phyto
- New Cool Box thermo dollies for Ramp Operation
Operations - Fresh and Pharma

CoolBox

<<< Cool Track >>>

- Pharma ZONE
- Fresh Center HC
- Fresh Center NHC
- Fresh Center PHYTO
CoolBox
advanced hybrid cool dolly

Direct connection between Pharma Centre and aircraft

Seamless operations under Controlled temperature

Real-time temperature monitoring and alarms + KPIs management
Fresh and pharma documentary pre-check in

Logistic Provider (3PL) Freight Forwarder

Mxp

Pre-Check in Process

Dedicated - Priority Desk

L1 Message: AWB details + Security data + Customs data

L2 Message: L1 Message + Type of Loading

Type of Loading:
- Loose Cargo
- ULD Only
- Mixed Cargo

Type of Loading:
- General Cargo
- Special Cargo
- Cargo on Priority Flights
HOW TO USE THE RESERVATION SERVICE
EXPORT ACCEPTANCE

1. Select a button according to the NATURE OF THE GOODS and the TYPE OF CARGO.
   - GENERAL CARGO
   - SPECIAL CARGO
   - CARGO ON PRIORITY FLIGHTS

2. If you selected SPECIAL CARGO or PRIORITY FLIGHTS, complete your selection on screen number two.

3. Pick up your TICKET.

4. Check on the DISPLAY the match on the LETTER and NUMBER given to you and then go to the specified desk.

ALHA group
Pharma and Fresh Operations milestones

- Logistic Provider (3PL) Freight Forwarder
- Dedicated Priority Cargo Docks
- Dedicated Pharma & Fresh Storage
- Dedicated Build-up Stations

All Operation steps performed via tablet
- Real time information
- KPIs controls

Dedicated Pharma & Fresh Team
# Integrated Risk Register

## RISK REGISTER ALHA AIRPORT MXP (rev.3 del 01/01/2019)

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<td>3 med.io</td>
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<td>Facility Manager / Pharma Manager</td>
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<td>Facility Manager / Pharma Manager</td>
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<td>3 med.</td>
<td>basso</td>
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# Events Register: description and corrective actions

<table>
<thead>
<tr>
<th>Informazioni cronologiche</th>
<th>Indirizzo email</th>
<th>Tipologia merce:</th>
<th>Risk Ranking</th>
<th>Tipo di evento</th>
<th>Data inizio</th>
<th>Data fine</th>
<th>Descrizione evento</th>
<th>Conseguenze</th>
<th>Azione correttiva</th>
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<tr>
<td>3/14/2019 10:36:00</td>
<td>marco.gambaro@</td>
<td>Pharma</td>
<td></td>
<td></td>
<td>21/01/2019</td>
<td>23/01/2019</td>
<td>rilevata deviazione temperatura; lavori nessuna, deviazione temperatura non dip non necessario.</td>
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<td>28/02/2019</td>
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<td>07/03/2019</td>
<td>08/03/2019</td>
<td>verifica gestione PIL da spot check ef nessuna, lavorazione alfa corretta non necessario.</td>
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<td>3/14/2019 11:07:51</td>
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<td>export: Alli</td>
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<td>eccedute tempistiche di allineamento (innalzamento della temperatura durante il analisi della.</td>
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<td>errata introduzione dei 2 colli della pila rilevata deviazione di temperatura dopo l'evento rilevato.</td>
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Events Register: follow-up and preventive actions

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<th>Analisi delle cause</th>
<th>Azione preventiva</th>
<th>Costo associato all’evento (in €)</th>
<th>prefiss o AWB</th>
<th>suffisso AWB</th>
<th>HAWB</th>
<th>Colli</th>
<th>Kgs</th>
<th>azione preventiva</th>
<th>responsabile intervento</th>
<th>data intervento</th>
<th>intervento entro il:</th>
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Thank you!

www.alhagroup.com
Session on Perishables
Continued….

Edwin Kalischnig
Board Member
Cool Chain Association
The Perishable Session
Edwin Kalischnig

Internet of Things veteran (15+ years) with a passion for using innovative technologies to deliver business value

Board Member of the Cool Chain Association

The CCA is the community for Cool Chain Professionals, providing Thought Leadership, Networking and Results

CEO of Xtreme Technologies

Linking the World to the Web
Providing Consulting Services and advanced Cool Chain Logistics Solutions
“Without Data you’re Just a Guy with an Opinion”
Temperature is Key for Vase Life

- After cutting flowers continue to give off heat
- Post-harvest cooling is essential
- **Temperature over time is a key variable**
- Measuring “Degree-hours”
- Sharing information throughout the Cool Chain
1 Day = 24 hours  
Temperature at your home is 21 °C  

500 Degree-hours  
“Energy” per Day

7 Days “Vase Life Guarantee”  
3,500 Degree-hours “budget” left after customer delivery
Ideal Temperature for Storage & Transportation: Between 0-2 °C
Total Budget: 4,000 degree-hours

- Post-harvest cooling
- Storage
- Truck
- Tarmac
- Flight
- Tarmac
- Storage
- Truck
- Auction
- Storage
- Truck
- Shop
- Vase Life

Cool Chain Budget

3,500 degree-hours
Vase Life

Each step in the Cool Chain can budget their required/allowed number of Degree-hours
Cloud-Based Solutions by a Trusted 3rd Party ... or

1. Establishing electronic connections between non-adjacent trading partners
2. Establishing trust between these trading partners
3. Sharing required data without inadvertently exposing proprietary information
4. Reduce the potential activity required of trading partners
5. Designing for expansion beyond compliance
6. Funding the architecture
IATA Initiative: “Interactive Cargo” 1/2

WHAT DOES IT MEAN?

- Cargo ‘says’ it’s complete, under which circumstances, where it is and if it’s fine
- Safe/secure, data transparency, end-to-end connectivity, actively telling how it feels and what it needs at all times
- Enabling visibility (for all stakeholders) and remote control
- Integrated solutions, ‘visible’ for all stakeholders, can access and exchange information to potentially trigger process & tech
- Linking hardware, communication, software, security & standards
IATA Initiative: “Interactive Cargo” 2/2

KEY OUTCOMES OF THE KICK-OFF MEETING:

❖ Good vision for what Interactive Cargo means for the industry and what is required/needed to make ‘cargo talk’
❖ Clear link with Smart ULD - close team collaborations
❖ Strong need from Air Cargo Customers to get better visibility and transparency about their shipments
❖ Solutions already exist but a regulatory framework, guidance materials and tools are necessary for efficient & safe operations
❖ A number of challenges were identified, need to be addressed
❖ We can’t afford to let it evolve by itself: Standards & Guidelines
Next Steps

Creation of the Interactive Cargo Task Force (ICTF)

Development by the ICTF of Standards & Guidance Materials to ‘Make Cargo Talk’

Temporary ICTF established as a Sub-Group of the Cargo Operations & Technology Board

20 Elected Members
With Observers and Strategic Partners
For any questions, please feel free to contact me

ek@xtreme-technologies.com

edwin.kalischnig@coolchain.org
Session on Perishables

Questions & Answers
Networking break 10:30 – 11:00

Kindly sponsored by;
Judges Corner

**Moderator:**
Bart Banino  
Partner, Condon & Forsyth

**Panelists:**
Reem Bangina, Senior Attorney, Kennedys  
Holger Burskens, Partner, Arnecke Sibeth Dabelstein  
Pierre Fruhling, Partner Aerospace, Holman Fenwick Willan  
Jiri Hornik, Partner, Kocian Solc Balastik
Networking Lunch 12:30 – 14:00

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IATA Cargo Claims and Loss Prevention Conference

Case Studies

1. The Spears That Didn’t Pass The “Smell Test”
2. Football “Remains” A Most Popular Sport
3. Oktoberfest In The Shire Down Under

Bart Banino: Partner, Condon & Forsyth LLP
Frank Montbach: Partner, Mound Cotton Wollan & Greengrass LLP
Dan Soffin: International Cargo Advisory Services
IATA Cargo Claims and Loss Prevention Conference

29 – 31 October, Amsterdam, Netherlands

Case Study

“The Spears That Didn’t Pass The Smell Test”
"The Spears That Didn’t Pass The Smell Test"

Photos: 11 October 2019 1:00 PM
Most Common Claims

• Air shipped responsible for claims

• Perishables
  • Fruits 17.1%
  • Fish & seafood 13.6%
  • Cut flowers 10.2%
  • Vegetables 9.1%
  • Meat & meat products 9.1%

  59.1%

• Vegetables
  • Asparagus 37.5% (of all vegetables shipped)

Source: IATA Perishable Cargo Regulations 18th Edition 2019
Most Common Claims

• Most common reasons for claims

  • Appearance 33.3%
    • Color 7.4%
    • Texture 3.7%
    • Odor 11.1%
    • Bruises 11.1%

  • Decay 22.2%
  • Damaged packaging 21.7%

77.2%

Source: IATA Perishable Cargo Regulations 18th Edition 2019
Cargo Services Resolution CSR 622

“...acceptance, packing and handling of Perishables for transportation by air shall be in accordance with the principles and provisions of the IATA Perishable Cargo Regulations Manual (PCR)...”

PCR Key Principles and Provisions

1.3 Carrier Responsibilities

4.1 No guarantee that carrier can maintain stated temperature environment through the entire transportation

6.1.4 Risk Management in Perishables Handling

- Preconditioning and preparation for carriage at shipper’s site
- Transportation to airport
- Reception at airport
- Storage at airport
- Ground operations
- Air transport
- Pickup and transfer to consignee’s site

Source: IATA Perishable Cargo Regulations 18th Edition 2019
PCR Key Principles and Provisions

6.3.3 Packaging of Perishable Shipments
“…the carrier will not be able to assess the precise quality and condition of the perishable commodity during the acceptance process…”

6.4.3.1.2 Types of ULDs
“Pallets…offer the greatest area of exposure to environmental conditions (least protection) amongst all of the ULD types used…”

Source: IATA Perishable Cargo Regulations 18th Edition 2019
"The Spears That Didn’t Pass The Smell Test"
"The Spears That Didn’t Pass The Smell Test"

LOGISTICS

- Consignee Handling
- Cargo Release & Road Carriage
- LIM Handling, Flight & LHR Handling
- Intake, Processing & Road Carriage
- Open Field

DAYS

0 1 2 3 4 5 6 7 8 9 10
"The Spears That Didn’t Pass The Smell Test"

The diagram represents a timeline of events involving different parties:
- **Consignee**: Represents a pink bar reaching 71 hours.
- **Consignee Agent**: A gray bar reaching 3 hours.
- **Airline / GHA**: An orange bar reaching 77 hours.
- **Consignor**: A yellow bar reaching 35 hours.
- **Grower**: A green bar reaching 12 hours.

The timeline is measured in hours, with increments of 24 hours up to 216 hours.
“The Spears That Didn’t Pass The Smell Test”

TIMELINE

Consignee
Consignee Agent
Airline / GHA
Consignor
Grower

77 Hours
“The Spears That Didn’t Pass The Smell Test”

AIRLINE & GHA HANDLING TIMELINE

- LHR Arrival, Unload, Warehouse, Storage & Delivery
- Flight
- LIM Preflight, Tarmac, Load & Departure
- LIM Storage
- LIM Acceptance

77 HOURS
"The Spears That Didn’t Pass The Smell Test"

TEMPERATURE RECORDING OPPORTUNITIES

- Consignee
- Consignee Agent
- Airline / GHA
- Consignor
- Grower

Direct USB temperature monitoring
“The Spears That Didn’t Pass The Smell Test”

AREAS OF INVESTIGATION

GROWER
- Claimant

PROCESSOR / CONSIGNOR
- Claimant

LIM GROUND HANDLER
- Defendant

FLIGHT / AIRLINE INTERNAL INFORMATION
- Defendant

LHR GROUND HANDLER
- Defendant

CONSIGNEE CLEARING AGENT
- Claimant

CONSIGNEE & CONTRACTED RETAIL END USER
- Claimant
“The Spears That Didn’t Pass The Smell Test”

DOCUMENTS & EVIDENCE NEEDED

General Principles

CLAIMANT

• Relationships between parties including terms of business
• Logistical handling continuum including harvest, processing and road transport
• Biological and agricultural science of perishable commodity
• Industrial and commercial documentation at each logistical stage
• Industry standards for the commodity

DEFENDANT

• Logistical handling continuum covering departure airport handling, flight, and arrival airport handling
• Available handling resources including storage
• Air carriage product purchased
• Actual handling
The Spears That Didn’t Pass The Smell Test

DOCUMENTS & EVIDENCE NEEDED

GROWER

• Time & date of harvest
• Weather, including temperatures
• Storage prior to tender to agro-consolidator
• Documents related to tender to processor
• Biological & agricultural status / history
DOCUMENTS & EVIDENCE NEEDED

PROCESSOR / CONSIGNOR

- All documents prepared by processor at tender from growers
- Date & time of pickup from grower & type of truck
- Initial entry QC report into processing facility
- Date & time into processing & temperatures at all processing stages
- Packaging, packing, & packing list
- Time & temperature of cargo & truck on dispatch to LIM
- Type of truck on dispatch
- Weather conditions *en route*
- Temperature of truck on arrival at LIM
- Direct USB temperature monitoring?
- Documents of carriage including:
  - Air Waybill
  - Shipper invoice
  - Certificate of origin
- Financial Documentation including proof of payments
LIM GROUND HANDLER

- Intake manifest, time & temperature of intake
- Cargo inspection notes, including build & packaging (if possible)
- Storage records, including location & cooler temperatures
- Time out of cooler
- Time on tarmac & weather conditions
- How held on tarmac
- Time of loading & aircraft departure
- Photographs (if available)
- Cargo irregularity or damage report (if raised)
- Full statement of GHA with all assertions supported by relevant documents
DOCUMENTS & EVIDENCE NEEDED

AIRLINE INTERNAL INFORMATION

- Air Waybill / House Air Waybill(s)
- Flight manifest and cargo positions
- Flight departure & arrival times
- Hold temperature
- Flight time
- Flight irregularities
- Transfer manifests
- Computerized cargo history
- Written notice of complaint & all claims related correspondence***
- Photographs if available
- Cargo damage / irregularity handling reports from all relevant stations
- Full statement on carriage and explaining documents with all assertions supported by relevant documents
"The Spears That Didn’t Pass The Smell Test”

DOCUMENTS & EVIDENCE NEEDED

LHR GROUND HANDLER

• Weather at destination
• Time of flight unloading
• Time of cargo delivery to warehouse
• Warehouse storage details, including temperature & location
• Times of AMS entries and any communications with consignee
• Proof of delivery / release note, including time
• Cargo damage / irregularity report (if raised)
• Photographs
• Full statement of handling staff supported by documents
“The Spears That Didn’t Pass The Smell Test”

DOCUMENTS & EVIDENCE NEEDED

CONSIGNEE CLEARING AGENT

- Time of pickup (compare with airline documentation)
- Truck refrigeration documentation, including temperatures
- Time & temperature of delivery to consignee
- Proof of delivery (compare with airline documentation)
- Delivery receipt from consignee
DOCUMENTS & EVIDENCE NEEDED

CONSIGNEE & CONTRACTED RETAIL END USER

- Written notice of complaint
- Proof of delivery (compare to clearing agent)
- Arrival check report
- Intake temperatures
- Storage temperature, time & location
- QC intake survey & QC Internal Rejection Report, including times
- Time of Consignee survey & survey report
- Direct USB temperature monitoring (if applicable)
- Photographs
- Contracted retail end user contract
- Supplier / Shipper invoice
- Invoice to contracted retail end user & UK Consignee & Supermarket evidence of non-payment
- Destruction report / proof of disposition
- Consignee commodity inventory records
- Historical prices / sales to contracted retail end user
- Proof of payment to LIM consignor
- Itemized quantum calculation
- Internal correspondence between surveyor & claimant
DOCUMENTS & EVIDENCE NEEDED

• EARLY identification of relevant personnel & witnesses at all stations
• EARLY documentation
• EARLY investigation including like cargo on same flight & claimant history
• EARLY statements from GHAs & airline
  ➢ Explanation of carrier documents
  ➢ Explanation of handling process
  ➢ Explanation of packing, temperature, storage issues or other non-conformity, including airline / GHA-caused loss, damage or delay
LIABILITY
Issues & Assessment

• Ownership / proper claimant
• Loss, damage or delay?
• Where?
  ➢ Air?
  ➢ Road?
  ➢ Unknown?
• Applicable law
  ➢ Convention carriage
  ➢ Non convention carriage
• If Convention Carriage:
  ➢ Extinguishment
  ➢ Proper written notice of complaint
• If *not* Convention Carriage:
  ➢ Air Waybill contractual terms
  ➢ Airline General Conditions of Carriage for Cargo
LIABILITY
Issues & Assessment

- Defences
  - AWB: “Apparent good order and condition”
  - Recorded inspection including temperatures and damage noted
- Convention Defences
  - Event?
  - Limit of liability
    - Special Declaration of Value?
  - Damage (Article 18)
    - Inherent defect, quality or vice
    - Defective packaging
    - Act of public authority
- Delay (Article 19)
  - Damage occasioned by delay
  - All measures that could reasonably be required or impossibility
LIABILITY
Issues & Assessment

• Expert evidence

• Quantum / Measure of Damages
  ➢ Sound arrived value
  ➢ Replacement value plus shipping
  ➢ Salvage
  ➢ Contractual damages?

• Settlement
  ➢ Release Discharge and Indemnity
  ➢ GHA inclusion

• Airline v Ground Handling Agent
  ➢ Prompt notification of claim
  ➢ SGHA or other contractual indemnity
PRAGMATIC CLAIMS HANDLING ISSUES TO CONSIDER

- Difficulty obtaining documentation, statements & evidence
- Quality of claimant evidence & documentation, including survey
- Does magnitude of damage equate with ascertainable facts of carriage
- Availability of expert evidence on exact nature of damage and causation
- Salvage, destruction & verifiable proof
- Ascertaining value, price & quantum
- Airline handling vs claimant handling and condition of cargo
- Customer Service and Claims History
  - Agreed Shipper / Consignee Contractual Indemnity and Hold Harmless
  - Circumstances with no identifiable event during carriage by air
- Economics of defense
Networking break 15:30 – 16:00

Kindly sponsored by;

![Sponsor Logo]
Session on Trade Sanctions

Silvia Gawronski
Counsel
Nauta Dutilh N.V.
Sanctions & Trade Restrictions
Silvia Gawronski LL.M. M.Jur.
NautaDutilh N.V. Benelux Full Service Law Firm since 1724

Specialised in QHSE, supervision & enforcement

Counsel | Advocaat / Lawyer (admitted in the Netherlands, Rotterdam Bar)

Leiden & Oxford Graduate
Owns two cats: Kiwi & Riesling

Married

Runner

Volunteer for KidsRights
Politics

Trump Revives China Talks With Tariffs
Truce, Break for Huawei
Programme

1. Sanctions & Exportrestrictions → The basics
2. EU (and Dutch) Legal Framework → The bit boring part
3. US impact → The…”&%#$?!-really?” part
4. EU vs US: Dealing with Anti-Boycott Legislation → The interesting part
5. Client-screening & Red-Flags → The usefull part
6. Questions…. And then off to drinks & dinner → The fun part
1. The Basics - What, why, how?

**What?**
Sanctions are measures/restrictions to enforce certain behaviour from a State, (legal) persons or organisations.

**Why?**
Promote peace and security and prevent or end certain undesirable (political) situations, e.g. terrorism, proliferation of nuclear weapons, human rights violations, annexation of areas, destabilising of sovereign states.

**How?**
Preventative/reactive: weapons embargoes, import and/or export restrictions, limiting (financial) services (freeze orders, prohibition to provide funds) etc.
1. The basics – Where?
1. The basics – What kind of restrictions?

Sanctions may include restrictions on:

• certain parties (organisations, (legal) persons, etc.);
• certain areas;
• certain goods (e.g. dual use, military);
• certain projects or markets (e.g. deep sea oil & gas); and
• a combination of the foregoing factors.
1. The basics – Sanctioned/listed parties?

- Parties (entities, organisations, individuals, groups etc.) on the sanction lists (listed)
  - Often sanctions also apply to parties that more than 50% in the hands of listed parties, which ‘subsidiaries’ are not directly listed on the lists!
- Indirectly against parties active in certain geographical areas, branches, projects, etc.
- Other parties, groups, organisations, markets such as:
  - Terrorists (Al-Qaeda / ISIS)
  - Magnitsky
  - Non-proliferation
  - Cyber-related
  - Blood diamonds
  - International criminal organisations
1. The basics – Examples

- **Arms embargo**: prohibition of import and/or export of weapons and army vehicles
- **Import and/or export restrictions**: prohibition on the import and/or export of certain goods (including 'dual use' and military goods)
  - Goods = items, technology & software and related tech. services
  - Dual use = items that can be used for both civilian and military purposes; more items than you think!
- **Restricting services**: e.g. prohibition of (in)direct provision of brokering services, technological and financial support
- **Financial sanctions**: freezing order and provision of funds and resources, and limiting access to financial markets and services (loans, securities)
- **Entry and visa restrictions**: think of visa ban for people
2. Legal Framework EU

- UN sanctions are often the basis for EU decisions on common foreign and security policy (CFSP-decisions)
- CFSP-decisions are aimed at Member-States and explain how the EU will execute sanctions
- EU regulations: direct effect, contain material sanctions (the restrictions)
- Regulations contain no rules regarding supervision, enforcement and punishments. This is included in national legislation!
- Netherlands: Sanctions Act 1977, underlying sanctions regimes, and Economic Offences Act
- **Note**: Additional material (export) restrictions may be included in national sanctions regimes, and in strategic goods/services regulations
2. Legal Framework EU - Jurisdiction

EU Regulation apply:

- within the **territory** of the Union, including its airspace;
- **on board** any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the Union who is a **national** of a Member State;
- to any legal person, entity or body, inside or outside the territory of the Union, which is **incorporated or constituted** under the law of a Member State;
- to any legal person, entity or body in respect of any **business done** in whole or in part within the Union.
2. Legal Framework EU – Broad definitions

(h) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services;
(k) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;
(l) 'funds' means financial assets and benefits of every kind:
(m) 'goods' includes items, materials and equipment;
(r) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance.
2. Legal Framework EU – Note on listed parties!

Date of UN designation: 23.12.2006.

(12) Ahmad Derakhshandeh. Function: Chairman and Managing Director of Bank Sepah, which provides support for the AIO and subordinates, including SHIG and SBIG, both of which were designated under resolution 173 (2006). DOB: 11 August 1956. Address: 33 Hormozan Building, Pirozan St., Sharaj Ghods, Tehran, Iran (Islamic Republic of).
Date of UN designation: 24.3.2007.

(13) Mohammad Eslami. Title: Dr. Other information: Head of Defence Industries Training and Research Institute. A.k.a.: Mohammad Islami; Mohamed Islami; Mohammed Islami. Other information: Served as Deputy Defence Minister from 2012 to 2013.
Date of UN designation: 3.3.2008.

Date of UN designation: 23.12.2006.

(15) Mohsen Fakhrizadeh-Mahabadi. Senior MODAFL scientist and former head of the Physics Research Centre (PHRC). Passport no: (a) A0009228 (Unconfirmed (likely Iran)) (b) 4229533 (Unconfirmed (likely Iran)). Other information: The IAEA have asked to interview him about the activities of the PHRC over the period he was head but Iran has refused.
Date of UN designation: 24.3.2007.
## 2. Legal Framework EU – Note on Dual Use!

| 1A227 | High-density (lead glass or other) radiation shielding windows, having all of the following characteristics, and specially designed frames therefor:  
|       | a. A ‘cold area’ greater than 0.09 m²;  
|       | b. A density greater than 3 g/cm³; and  
|       | c. A thickness of 100 mm or greater.  
|       | **Technical Note:**  
|       | In 1A227 the term ‘cold area’ means the viewing area of the window exposed to the lowest level of radiation in the design application. | 1A.1. | High-density (lead glass or other) radiation shielding windows, having all of the following characteristics, and specially designed frames therefor:  
|       | a. A ‘cold area’ greater than 0.09 m²;  
|       | b. A density greater than 3 g/cm³; and  
|       | c. A thickness of 100 mm or greater.  
|       | **Technical Note:**  
|       | In Item 1A.1.a. the term ‘cold area’ means the viewing area of the window exposed to the lowest level of radiation in the design application. |

**distillation towers.**
2. Legal Framework EU – Anti-circumvention

“It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in Articles 2, 4 and 5, including by acting as a substitute for the entities referred to in Article 5.”
3. US Impact

Broad extraterritorial application in case of a US nexus. US sanctions may already apply when:

- US (legal) person is involved (‘US person’);
- this also regards an EU subsidiary of an US entity;
- payment in dollars;
- product (partly) originates from US (‘US origin/content’);
- territorial (e.g. location of a server);
- otherwise (government/practice).

Note: most NL banks obligate customers to act in accordance with US sanctions!
3. US Impact – US person

“The term United States person or U.S. person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.”
3. US Impact – Transaction in $

US claims jurisdiction over any financial transaction in US $

A financial transaction is: “Any transfer of value involving a financial institution.”
3. US Impact – Territory

US territory, but also:

• Server on US territory

• US Clearing agency
3. US Impact – US origin (content)

For example:
“Except as otherwise authorized pursuant to this part, [...] the reexportation from a third country, directly or indirectly, by a person other than a United States person, of any goods, technology, or services that have been exported from the United States is prohibited, if: [...]”

10% rule:
“The prohibitions [...] shall not apply to those goods or that technology [...] if such goods or technology have been: [...] incorporated into a foreign-made product outside the United States if the aggregate value of such goods and technology [...] constitutes less than 10 percent of the total value of the foreign-made product to be exported from a third country.”
4. Dealing with Anti-Boycott

EU Anti-Boycott Regulation 2271/1996)

- Not allowed to adhere to US sanctions
- Protects parties within EU from US enforcement and civil claims
- Protection only within EU
- **Note**: Most banks will follow US sanctions, do not allow Iran related trade

“All contracting parties shall comply with applicable US, EU and national sanctions regulations.”
5. Client screening & red flags – Ask yourself

1. What countries are involved?
   • Where is the client registered & where does the client perform its activities?
   • Where are the client’s clients located?
   • Where are other involved parties located/active?

2. Which parties are involved (in transactions)?
   • Client, banks, intermediaries (agents), counterparties, financier?

3. What does the client do (activities or goods restricted)?

4. What services do you provide to the client?
5. Client screening & red flags – Ask your client

- Ask the client for information/confirmation;
- Check website of client for confirmation;
- Perform check via google on information;
- Perform check in world-wide database (such as World-Check);
- Request copies of independent documentation, e.g.: annual accounts (preferably from or approved by an auditor/accountant); tax filings; shareholder’s register; extract from the (local) Chamber of Commerce; Articles of association/incorporation/bylaws (oprichtingsakte/statuten);
- The higher the risk the more recent (max. 6 months old) the provided documentation must be;
- Request Certified copies of aforementioned independent documentation;
- Confirmation by a lawyer, notary or accountant of information provided by client with regard to its shareholders, directors etc.
5. Client screening & red flags – Red flags

- Indications that someone else (other than client) is pulling the strings or is involved behind the scenes
- Involvement of an intermediary (e.g. agent) whose role is unclear
- Conflicting, incomplete or incorrect information/refusal to provide information
- Urgent job/client is willing to pay much more than normal
- Combination of the aforementioned factors

*If it looks to good to be true, it usually is.*
Contact details

Silvia Gawronski
Counsel
T  +31 10 22 40 407
M  +31 6 20 21 05 66
E  silvia.gawronski@nautadutilh.com
Day 2 Closing Remarks

Christian Piaget
Senior Manager, Cargo Border Management & Claims
IATA
6 – 8 October 2020
Manchester, UK
Save the date!
Thank you to all our sponsors!
Gala Dinner

Lucky Draw

Amsterdam, Netherlands
29-31 October 2019