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BPE Global Hot Topic – June 2017

In the trenches - Restricted Party Screening

For those of you in the trenches, dealing with a queue of restricted party screening matches on a daily basis, I feel your pain! I remember well the pressure of making sure those export holds were cleared as rapidly as possible, weighted down equally with conducting the appropriate amount of due diligence to ensure the company did not erroneously transact business with a party, whether in the U.S. or abroad, that was prohibited.

Now that I'm on the other side, working with companies at all stages of their trade compliance program development, I can share something that initially surprised me. It is quite common that many companies do no screening whatsoever. Additionally, some companies choose as a business decision not to screen certain elements. Some don't screen their domestic orders, some only screen their "ship to", and not the other parties to the transaction, despite the information being on the purchase order received. Some firms don't screen their POS reports (Those "gotcha" reports from distributors, post-sale, that provide end-user information on stocking orders.)

In these situations, I regularly get asked, what are "best practices" for restricted party screening. I remind people that nowhere in the export regulations does it say you must use certain methodology for screening and nowhere does it state you must invest in an automated solution. What it does say under the General Prohibitions is that you may not engage in actions prohibited by a denial order, you may not export or reexport to prohibited end-uses or end-users, you may not export or reexport to embargoed destinations, and you may not support proliferation activities, etc. I strongly suggest periodically reading the General Prohibitions, and assess how these prohibition impact the way you conduct your business and identify what risks are presented in that review.

The best way to prevent an inadvertent transaction with a restricted party is to invest in an automated screening tool. This needs to be done with a view toward all potential transactions – not just revenue orders, but also RMA's, software downloads, non-revenue shipments, whether going through the shipping department or tendered by employees at a courier drop-box or counter. Basically, any touch point where a physical or virtual export may occur. Then there are the hand carries, vendors, business partners, visitors, employees, and more which should be screened. A transaction is a transaction, whether a financial one or not. (Think about technology transfers and deemed exports too!)

The most common place companies start with screening integration is, as expected, the revenue shipments, with a focus on the physical ones. Don't forget however website software downloads, FTP sites, etc. are just as important. These can be big risk areas.

The decision of when and how to screen should be strategic. If you have 10 large customers that represent 95% of your business, and your customer master doesn't change often, the practical business approach may be to conduct periodic batch screening of the 10 customers, and a more frequent analysis of those other 5%. Are your customers large stable companies, who have robust trade compliance functions that you interact with? Do you know if they have an EMCP, conduct their own screening, and perform their own licensing analysis for your products they may sell downstream? Or, is your customer a rapid growth, young company, that when asked about "trade compliance" they say "Huh, what is that"?

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If you are a high-volume software company, who has a large volume of customers, that are unknown to your sales people and come to your website with no interaction with your company, and you have products with an export control classification number (ECCN) that triggers licensing, screening may need to be real-time and constant to ensure you don't get tripped up on the General Prohibitions, in addition to license screening.

I can share that investing in a screening tool pays for itself. Certainly, one could do manual screening using the consolidated screening list published on export.gov, but not if your company has a constantly changing customer base. It just doesn't scale. Automation of trade functions reduces risk, and improves efficiency.

I remember doing the hard pitch to get executive support for a screening tool with the world's smallest budget. We were so excited to finally have something automated in place when we integrated, did the user testing, and finally went live. My biggest win was that very first week after launch - we had a direct match to a restricted party located in the U.S. placed via purchase order from a large distributor. When we contacted the distributor to investigate why their system had not caught the 100% match, we found out that their company had made the business decision to not screen their U.S. customers. Think about that! How many U.S. parties are found on the multiple restricted party lists? Would you want to be the company that sold to a prohibited U.S. party? How would that sound when it hit the news, or showed up in your 10-K for all shareholders to see?

For those of you that have always wondered what other companies do to clear those restricted party close matches please watch for my next Hot Topic. I have some more insight to share!

We hope you enjoyed this Hot Topic and it inspired you to perform a review of your current restricted party screening strategy, process, and related business decisions on who to screen, and how frequently to screen.

If you have any questions, or need help with restricted party screening BPE Global is here to help! Renee Roe is a Director of BPE Global. You can reach Renee by email at Renee@bpeglobal.com.

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