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BPE Global Hot Topic – March 2015 Russia/Ukraine Sanctions



Although the U.S. Government has been regularly updating the [Russia/Ukraine-related sanctions](#) they have provided little guidance on exactly how industry is supposed to successfully execute processes which allow those of us in compliance functions to meet the requirements of the sanctions.

BPE Global is regularly being asked for insight into industry best practices, and for guidance on how to proceed. Each client has definitely had different circumstances which impact their approach to these unique and difficult sanctions regulations.

Our opinion in this case is that our government seems a bit out of touch regarding the realities of running a successful and profitable business, while also being compliant, in these complex times. We love the concept of Export Control Reform, but it seems as soon as things start to head in a more efficient direction, with coherence and transparency, something happens to complicate the ability to comply and keep U.S. businesses competitive at the same time.

So, take a deep breath, sit back and let's break down an approach to compliance on this topic.

- 1) Russia/Ukraine Customer-base Analysis:** When was the last time you ran a report to see who your customers in Russia and Ukraine/Crimea are? Are you exporting direct, or are your channel partners doing the exports, and you're just getting the detail on POS (point of sale) reports at the end of the sales cycle?
- 2) Risk Analysis:** What is your historical volume into Russia/Ukraine/Crimea? Are your channel partners firms that have solid trade compliance departments? Have you sent them communications about the sanctions to ensure they are even aware of them? Have you asked exactly what they are doing to ensure compliance with U.S. (and E.U.) requirements? Have you conducted an audit to confirm they are screening their orders, and obtaining licenses when required, or declining orders when circumstances require?
- 3) Global Trade Management (GTM) System Settings:** Do you have your GTM system set up to put a hold on all orders for Russia, and Ukraine/Crimea for further screening? Are orders reviewed upon new customer set up and prior to export of each order? Important Note: Most systems are only capable of holding all orders for Ukraine, and trade compliance functions must manually review to determine if a customer is actually in Crimea, or customize systems to hold by postal code. Additionally, GTM systems do not check for 50%+ aggregate ownership which will be covered later in this article.
- 4) Are license exceptions and licenses being applied properly?** What is your product/ECCN/Schedule B/HTS number, end-user and end-use? No longer may you necessarily just use your favorite license exceptions. Review what license exceptions you have pre-loaded in your parts database, and what license exceptions are regularly used by trade compliance. Now may be the time to re-read the sanctions regulatory updates to determine if your license exceptions, and existing licenses are still valid.



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5) OFAC - Entities owned by persons whose properties and interests in property are blocked:

This is a big one, and from the inquiries we are receiving, there definitely seems to be some confusion. Enough so that OFAC issued additional guidance last August, which from feedback we have received was either missed, or misunderstood, by the trade.

To review, any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to an Executive order or otherwise placed on OFAC's list of Specially Designated Nationals ("SDNs"). What this means is that your customer, as an entity may not be blocked itself, but you could get caught up in a violation if your customer is owned, **in aggregate**, directly or indirectly by a blocked party or parties that equal 50% or more ownership. Industry, of course, wonders why OFAC itself has not done the research on these, and just updated the list of blocked parties. Instead each firm must do its own analysis, which is resource intensive.

CAVEAT: Be careful and don't presume that the GTM screening tools you subscribe to will catch these. At this time we are not aware of any GTM provider who is evaluating companies to see if they meet the aggregate rule and then adding them to their private/custom restricted party screening lists for export holds.

Once you have conducted this internal review of Russia/Ukraine sanctions issues unique to you and your company, a strategy can be developed to implement appropriate measures to strengthen your compliance with these sanctions. And remember - BPE Global is here to help!