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Sanctions: How to Deal with a Constantly Moving Target

For those of us trade geeks who struggle with explaining to our friends and family what exactly it is that we do, it's always a little exciting when trade compliance news makes headlines and becomes a topic of discussion. In the case of the Russian and Ukraine sanctions, and economic sanctions in general, it has become a major topic of discussion in the news, and has emphasized how fluid sanctions can be. For those of us whose job it is to ensure that U.S. goods and exports don't end up in the wrong hands, it presents a particularly difficult challenge: how do you deal with a constantly changing list of entities with varying degrees of sanctions and restrictions around them?

As we have seen in the last couple of years, sanctions violations and enforcement are on the rise. It seems that the Office of Export Enforcement, the Treasury Department, the Department of Justice, and others are quick to investigate voluntary disclosures, or required reporting from banks, to identify those who may be in violation of sanctions. With civil and criminal penalties ranging from $250,000, or twice the value of the transaction, up to $1M per violation, in addition to possible export privilege revocation and even jail time, the entire world is taking sanctions much more seriously. The recent BNP Paribas bank settlement of approximately $9 billion is a perfect example; yes that is ***billion*** with a "b". OFAC shows that civil penalties and enforcement actions are already up to $222 million this year; 2013 was "only" $137M.

So, what is a compliance manager to do when sanctions lists are being updated on (what seems to be) an all too frequent basis, and responsibility to know your customer and business partners runs beyond just screening the name of the company against a couple of government websites? Now is the perfect time to step back and reflect on your screening program, and on how your company is managing business partner data, including customers and financial institutions.

Let's start with the master data itself. Developing or improving on a good screening program requires a company to take a hard look at how customers, suppliers, vendors, banks and other business partners are assessed, selected, and how their data is collected and maintained. In almost all companies, this type of review includes your finance team. Many companies will review a potential business partner from a financial soundness perspective prior to engaging in business with them. This is a perfect opportunity to go through some steps around getting to know your business partner that can be leveraged for sanctions and trade compliance, as well. Ensure that when a company is reviewed, that the company name and address information is gathered, as well as the controlling entities and majority shareholders especially in cases where the company is located in, or associated with, a sanctioned country or a Specially Designated National (SDN). Direct or indirect ownership or control above 50% by a SDN will cause that company to be considered sanctioned, as well. As a result, all of these parties should be reviewed and screened.

The next step is to consider how that business partner will play into your supply chain. Will they be working through specific banks? Will they be handling certain products? Will they have a particular buying profile, or terms of sale? The trade compliance team needs to have visibility to this level of information, as some additional business partners or information may come to light that can make compliance easier down the road. It is critical to remember that banks and financial flows must be considered when dealing with sanctions compliance!

The last element that we'll touch on is around automation, and the lists themselves. As we are all aware, there are a tremendous amount of lists out there; beyond the many lists that the U.S. manages alone. Regardless of your company's size, it makes sense to investigate automating your screening in such a way that minimizes your costs, but mainly that minimizes your risk. If you deal heavily in Eastern Europe, the Middle East, or other countries that are traditionally higher risk markets, it may also make sense for you to consider implementing a "dynamic" screening situation – where your master data is reviewed every time a list is changed, or your data is changed. Automated screening really can be a seamless and easy to manage process when it is set up correctly. Take the time to plan it out!

Thank you for investing your valuable time reviewing this BPE Global Hot Topic. Our hope is that you will benefit from this information for your Trade Compliance program.