

RESTRICTED PARTIES AND THE TRANSPORT SECTOR

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INTRODUCTION

By the nature of its business, the transport sector is well placed to counter the proliferation of weapons of mass destruction (WMD): its potential for contributing to global counterproliferation efforts should not be underestimated. All parties in the international supply chain have a responsibility to ensure that a transaction complies with the numerous requirements captured under the general description of ‘export controls’ or ‘strategic trade management’. This may include the fulfilment of export, transit and trans-shipment licence requirements; and end-use, dual-use and restricted-party screening. Complying with export control regulations can be particularly complex for the transport sector since transactions involve multiple jurisdictions and, in some situations, have extraterritorial implications.

The SIPRI Good Practice Guides on the transport sector as counterproliferation partner have been developed to support partnerships between the transport sector and government authorities to counter proliferation and to implement proliferation-related United Nations Security Council resolutions. The series identifies and explores various aspects of the transport sector as a counterproliferation partner, with the aim of strengthening the sector’s contribution in this area.

This guide pays specific attention to the concepts of ‘restricted party’ and ‘restricted-party lists’ and their association with export control compliance. It aims to support good practices in relation to restricted parties and restricted-party lists.

WHAT ARE RESTRICTED PARTIES AND RESTRICTED PARTY LISTS?

‘Restricted party’ is a term commonly used to describe an individual, company or organization that is subject to a trade restriction imposed by international or regional intergovernmental organizations—such as the UN via the UN Security Council or the European Union (EU)—or by individual states. The relevant bodies place the restricted party on a list, and the list is then made available to the general public. A party’s inclusion on a list usually stems from its prior involvement in illegal activity, such as terrorism, organized crime, nuclear proliferation, corruption, arms trafficking, drugs trafficking, human trafficking and wildlife trafficking. Restricted parties can be subject to a broad spectrum of trade restrictions—from prohibiting all activity to requiring permits for specific activities.

SERIES SUMMARY

● The SIPRI series of good practice guides on the transport sector as counterproliferation partner is the culmination of a MacArthur-funded research project that recognizes the importance of the transport sector to counterproliferation efforts and seeks to encourage the sector’s enhanced activity and partnerships with government authorities.

Throughout 2015 the project team engaged with a broad range of transport sector stakeholders in Asia, Europe, the Middle East and the United States to better understand their compliance challenges; to explore risks and obligations; and to identify, share and test good practice. In doing so, the team also hosted regional good practice workshops that brought together government officials, experts and transport sector representatives and provided a rare opportunity for a spectrum of stakeholders to engage directly on counterproliferation issues.

The guides reflect the main findings of the project’s research, engagement and workshops. They explore an array of counterproliferation activities and can be used individually or combined to support training, awareness raising or the development of internal compliance programmes. The format and focus have been developed in consultation with the transport sector.



When moving from the international to the national level, the number of entities listed increases and so does the scope of their restrictions. The terms for restricted parties and the lists that catalogue them differ between countries, organizations and even industries. Such terms include ‘denied persons list’ (DPL), ‘denied parties’, ‘denial list’, ‘specially designated national (SDN) list’, ‘export-denied party list’, ‘trade party list’, ‘consolidated sanctions list’, ‘consolidated screening list’, ‘sanctions list’ and ‘embargo list’.

WHERE DO RESTRICTED PARTY LISTS COME FROM?

The highest-level restricted-party lists are compiled and published by the UN Security Council, and the incorporation of these lists into national legislation is obligatory for all UN member states. The Security Council is mandated to take action to maintain or restore international peace and security under Chapter VII of the UN Charter. Sanctions measures, under Article 41, encompass a broad range of enforcement options that do not involve the use of armed force.¹ Security Council sanctions have taken a number of different forms, in pursuit of a variety of goals. The measures have ranged from comprehensive economic and trade sanctions to more targeted measures, such as arms embargoes, travel bans, and financial or commodity restrictions.

As of December 2015 there were 16 UN Security Council sanctions regimes that focus on supporting the political settlement of conflicts, nuclear non-proliferation and counterterrorism.² A sanctions committee administers each regime, with each committee having its own individual sanctions list and being chaired by a non-permanent member of the Security Council. In order to simplify the use and application of these lists, the Security Council publishes a ‘Consolidated United Nations Security Council Sanctions List’—also known as the ‘consolidated sanctions list’.³ In order to be effective, UN Security Council sanctions need to be incorporated into the national law of all UN member states—UN membership mandates such incorporation.

In addition to the UN Security Council, regions and countries (which face different trade-related threats) produce their own sanctions lists that include entities of particular concern. In general, countries follow a sanctions structure similar to the Security Council, and they may introduce additional lists to control commodities or trade to specific countries or entities. Globally, there are many restricted-party lists, with each list containing several hundred to several thousand entities. These lists change frequently, sometimes daily.

WHAT IS SCREENING AND HOW IS IT DONE?

Screening for restricted parties is the act of searching various lists for the names of individuals, companies or organizations involved in the transaction at hand (see box 1). Such screening is commonly recognized as the

¹ United Nations, Security Council, The Charter of the United Nations, 1945, Article 41, ‘Measures not involving the use of armed force’, signed 26 June 1945, entered into force 24 Oct. 1945, <<http://www.un.org/en/sc/repertoire/actions.shtml#rel3>>.

² See SIPRI Arms Embargoes Database, <<https://www.sipri.org/databases/embargoes>>.

³ United Nations, Security Council, ‘Consolidated United Nations Security Council sanctions list’, <<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>>.



most efficient and accurate way of ensuring compliance with some of the legal requirements associated with export controls, particularly with high-volume transactions.

Most governments publish national restricted party lists online and these are usually free of charge. Some governments provide these lists in different media formats, including PDF and HTML (increasing the options for their use), a hard copy printout (for manual checking) or an XML file (for electronic profiling). Checking large volumes of transactions against multiple lists can be a complicated task. As a result, much of the trade compliance software uses tools that can screen multiple lists in a single transaction. This software is available as a stand-alone product or is embedded in an organization's systems software.

WHO SHOULD BE SCREENED?

All parties in the supply chain are responsible for ensuring that a transaction with a restricted party does not take place. Transport companies should consider restricted-party screening for five aspects of a transaction.

1. Existing and new customers.
2. The physical aspects of the transaction: (a) exporter, (b) collection address, (c) importer, and (d) delivery address.
3. Suppliers, such as subcontractors, airlines and handling companies.
4. Business partners, such as shareholders and associates.
5. Employees (although data protection and privacy laws in a number of countries may prevent this).

In theory, the shipper should have already screened the receiver/importer before transferring the transaction to the transporter company for forwarding. However, this is often not the case, and the shipper's failure to screen does not remove responsibility from the transporter.

WHICH LISTS SHOULD BE SCREENED?

At a minimum, transport sector actors should screen transactions against the national restricted-party lists that are applicable in their own country. These national lists usually include all parties on the UN Security Council sanctions lists and additional entities that have been added by the country

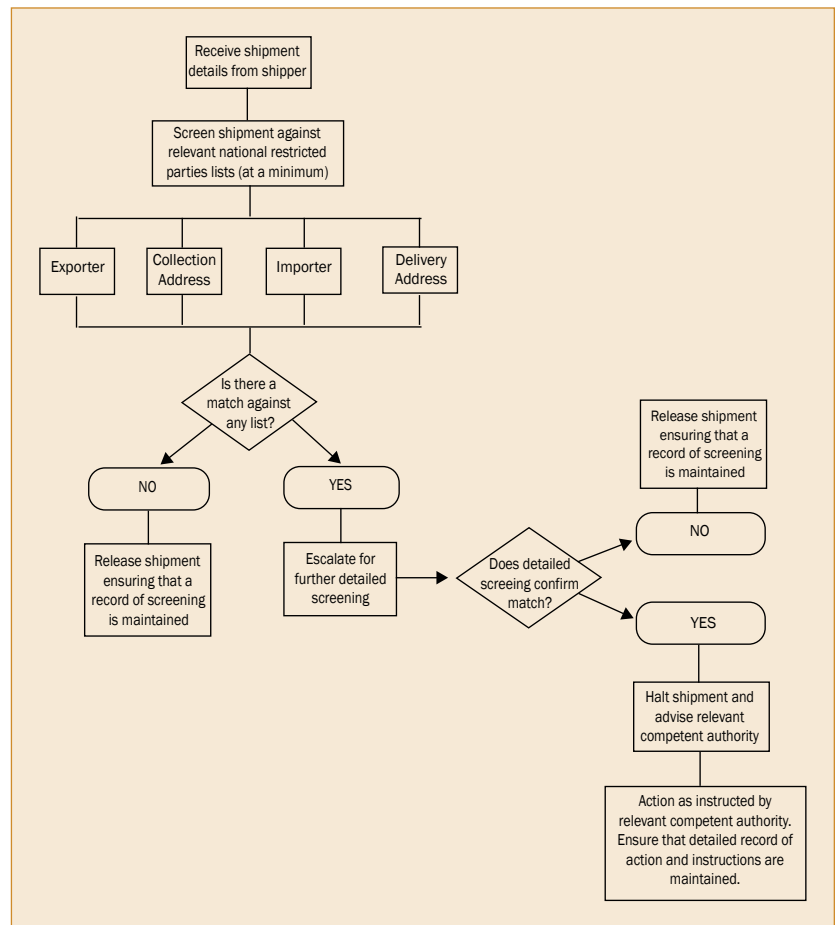


Figure 1. Overview of a standard shipment screening process



concerned. However, in certain situations, and depending on particular criteria, transport sector actors may also need to consider screening against other countries' lists. Transport sector actors should take account of the following questions and consequences when determining whether to widen the screening process to other jurisdictions.

1. What is the legal nationality of the transport sector actor's company? Some countries require an entity from a particular country to be compliant with their regulations, regardless of where that entity is located or operates. For example, companies that are headquartered in the United States or are listed on the US stock market, or consist of commodities of US origin are required to screen against the relevant US restricted-party lists even if their location of operation is outside of the USA.

2. Which countries will the shipment transit en route to its final destination? A party involved in a transaction may be included on a restricted-party list for a transit country.

3. What are the destination countries linked to the transaction? A party involved in the transaction may appear on a restricted-party list for the relevant destination countries. If so, it is likely that it will not be possible to complete the shipment or that special import licences will be required at the destination.

WHAT ARE THE NEXT STEPS IN THE CASE OF A MATCH?

To enable worldwide screening, trade compliance software often accesses in excess of 300 different lists. Many of the entities that appear on the lists have limited data available, and in some cases only the name of an individual is shown. The process of matching a transaction to an actual restricted party is not an exact science and, therefore, 'false positive' matches are a frequent occurrence. A false positive is when a screened entity appears to match an entity on one of the restricted-party lists but is in fact only similar—not identical. In order to decide whether the match is correct or merely a false positive, the details of the transaction need to be carefully compared to those contained within the restricted-party lists. While trade compliance software uses sophisticated algorithms to provide a more accurate return or match, manual intervention is still required to make an informed decision.

In the event of an apparent match, the appropriate competent authority should be contacted as soon as possible. The contact details of the appropriate authority are usually included in national restricted-party lists. If there is some uncertainty as to whether a particular match is correct, the appropriate competent authority should be contacted for advice.

Maintaining records of screening processes, decision making and actions is of the utmost importance, as these may be required at a later date in order to demonstrate that the necessary level of diligence was employed.

WHY IS IT IMPORTANT FOR A TRANSPORT COMPANY TO SCREEN FOR RESTRICTED PARTIES?

While there is no legal obligation to screen for transactions involving restricted parties, it is illegal to knowingly facilitate a transaction with a



restricted party. Sanctions and embargoes are applicable at all levels of society and apply equally to professional and private life. This means that in many countries, in addition to the employer company being liable, employees are also personally liable for breaches of any laws and regulations applicable to restricted parties. Failure to comply can lead to the imposition of civil penalties and fines, disciplinary action, reputational damage and, in some circumstances, even criminal penalties, including custodial sentences. These penalties could dramatically affect the future of the company and, by extension, its employees. Employees must, therefore, be aware of the risks of failing to take appropriate action.

There is a common misconception that the legal requirements relating to restricted parties are only applicable to international transactions. This is not the case and restrictions can also apply to national transactions. Entities that are located within a transport sector actor's own country may feature on the UN Security Council list and/or national lists. If a domestic entity is listed on an applicable national list, the transaction should be handled with the same diligence as would be used in an international transaction.

Many transport companies have been penalized for export control violations, particularly by US authorities, and the majority of these cases have been for the facilitation of transactions to restricted parties. Transport companies that repeatedly violate restricted party requirements have found themselves subject to sanctions and have been listed as restricted parties in their own right.

KEY FACTS ABOUT RESTRICTED PARTIES AND RESTRICTED-PARTY LISTS

- 'Restricted party' is a term commonly used to describe an individual, company or organization that appears on a sanctions list imposed by intergovernmental organizations such as the UN Security Council and the EU or by individual countries.
- A restricted party is an individual, company or organization on which government authorities have imposed restrictions or bans on the right to trade.
- Restricted-party lists can be known by different names depending on the country or organization involved.
- The highest-level restricted-party lists come from the UN Security Council and are applicable to all UN member states.
- For UN Security Council sanctions to be effective at the country level, the individual sanctions regimes need to be adopted into the national law of the member state.
- Countries produce their own sanctions lists, which include individuals, companies or organizations that are of particular interest to them.
- Sanctions and embargoes are applicable at all levels of society and apply equally to both businesses and individuals.



- There is a common misconception that the term ‘restricted party’ is only applicable to international transactions. This is not the case: it applies equally to domestic transactions.
- Many transport companies have been penalized for export control violations and many of these cases have been for the facilitation of transactions to restricted parties.

USEFUL WEBSITES

United Nations, Security Council, ‘Sanctions Committee information’, <<https://www.un.org/sc/suborg/en/sanctions/information>>.

European External Action Service, ‘Sanctions policy’, <http://eeas.europa.eu/cfsp/sanctions/index_en.htm>.

British Government, Export Control Organisation, <<https://www.gov.uk/government/organisations/export-control-organisation>>.

US Department of the Treasury, Office of Foreign Assets Control, ‘Sanctions programs and information’, <<http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>>.

US Department of Commerce, Bureau of Industry and Security, <<https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations>>.

Hong Kong Trade and Industry Department, ‘United Nations sanctions’, <https://www.tid.gov.hk/english/import_export/uns/uns_countrylist.html>.

Monetary Authority of Singapore, ‘Lists of designated individuals and entities’, <<http://www.mas.gov.sg/regulations-and-financial-stability/anti-money-laundering-counter-terror/fin-sanctions/targeted-financial-sanctions/lists-of-designated-individuals-and-entities.aspx>>.

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