

U.S. ECONOMIC SANCTIONS AND RUSSIA

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*Doing Business in Today's Russia: Practical
Considerations for Minnesota Companies*
September 26, 2017



1. Background on U.S. Sanctions Laws and OFAC

U.S. Agencies Involved in Administering Sanctions Laws



O F A C

Office of Foreign Assets Control



OFAC Violation Penalties

- **Potential penalties can be quite significant**
 - Civil penalty can be up to greater of US\$284,582 or twice transaction value (strict liability regime)
 - Criminal fine can be up to US\$1 million;* up to 20 years in prison; or both
- **OFAC generally uses civil penalties when handling internally**
- **Criminal referrals require U.S. Department of Justice prosecution**
- **Reputational damage and breach of financial arrangements also potential penalties**

* Alternative Fines Act actually can make fines much higher

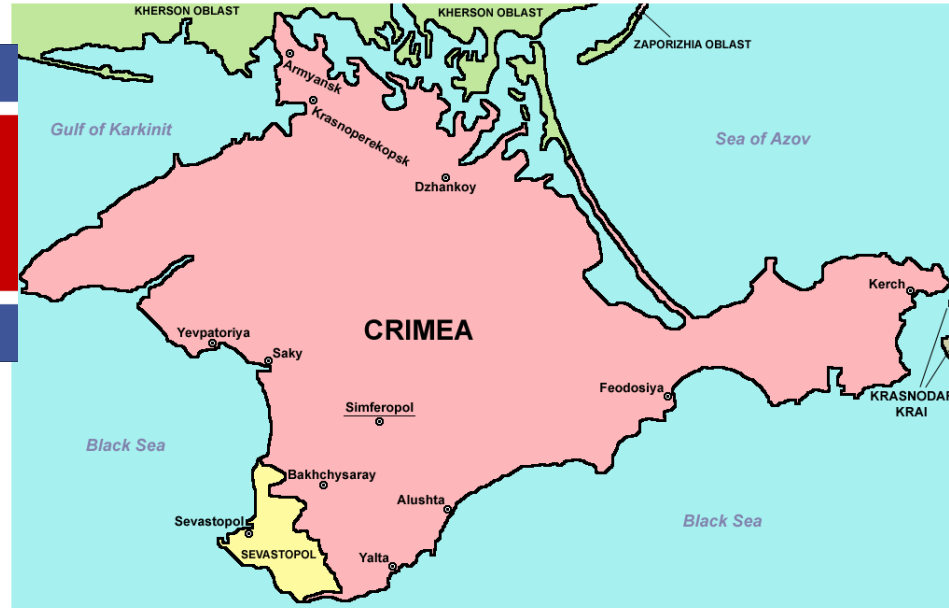
Legal Authority of Sanctions Laws

- **Most OFAC sanctions issued under either International Emergency Economic Powers Act (IEEPA) or Trading with the Enemy Act (TWEA)**
- **Executive Orders are also used to further instruct U.S. Government agencies, typically the State and Treasury Departments, how to implement certain sanctions**
 - **Ukraine-Related Sanctions Regulations largely implemented through Executive Orders**
- **Congressional actions are increasingly common**
- **United States also adheres to UN Resolutions and other international agreements**

Sanctions Basics

- **OFAC administers and enforces targeted economic and trade sanctions against**
 - Foreign governments
 - Individuals
 - Entities
 - Practices
- **OFAC sanctions deal generally with ALL U.S.-origin goods and services, transactions with U.S. persons, and banking facilities, regardless of military non-importance**
- **Bureau of Industry and Security, within U.S. Department of Commerce (BIS), and Directorate of Defense Trade Controls, within U.S. State Department (DDTC), also administer “embargoes”**
 - Control exports of U.S.-origin goods/technology to destinations and end-users worldwide
 - Jurisdiction includes actions of U.S. persons; U.S.-origin items and certain foreign-origin items that include U.S.-origin content

Comprehensive Sanctions Programs



Crimea

* Cuba, Iran, North Korea, Sudan and Syria

Targeted/List-Based Sanctions Programs

- **Balkans**
- **Belarus**
- **Burundi**
- **Central African Republic**
- **Congo**
- **Côte d'Ivoire***
- **Iraq**
- **Lebanon**
- **Liberia***
- **Libya**
- **Myanmar***
- **Russia**
- **Somalia**
- **South Sudan**
- **Ukraine**
- **Venezuela**
- **Yemen**
- **Zimbabwe**

* Programs against Côte d'Ivoire, Liberia and Myanmar became inactive but certain individuals/entities still targeted within those countries

Targeted/List-Based Sanctions Programs (cont.)

- **Other list-based programs target individuals and entities for engaging in activities contrary to U.S. interests**
 - Counter Narcotics Trafficking
 - Counter Terrorism
 - Cyber-related
 - Non-Proliferation
 - Rough Diamond Trade
 - Transnational Criminal Organizations



Lists of Sanctioned Persons and Entities

- **OFAC maintains several key lists of sanctioned persons and entities**
 - **Specially Designated Nationals and Blocked Persons List (SDN List)**
 - **Sectoral Sanctions Identifications List (SSI List)**
 - **Foreign Sanctions Evaders List**
 - **Part 561 List**
- **BIS and DDTC also maintain lists of sanctioned persons and entities**



List Checking



Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the List of Persons Identified as Blocked Solely Pursuant to E.O. 13599, the Non-SDN Iran Sanctions Act List, the Part 561 list, the Sectoral Sanctions Identifications List and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#)

[Visit The OFAC Website](#)

[Download the Consolidated Non-SDN List](#)

[Program Code Key](#)

Lookup

<p>Type: <input type="text" value="All"/></p> <p>Name: <input type="text"/></p> <p>ID #: <input type="text"/></p> <p>Program: <input type="text" value="All"/> 561List BALKANS BELARUS</p> <p>Minimum Name Score: <input type="text" value="100"/></p>	<p>Address: <input type="text"/></p> <p>City: <input type="text"/></p> <p>State/Province:* <input type="text"/></p> <p>Country: <input type="text" value="All"/></p> <p>List: <input type="text" value="All"/></p> <p style="text-align: right;"> <input type="button" value="Search"/> <input type="button" value="Reset"/> </p>
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Lookup Results:

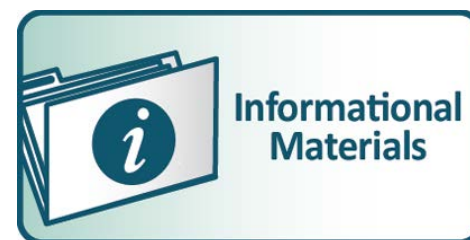
Name	Address	Type	Program(s)	List	Score

* U.S. states are abbreviated on the SDN and Non-SDN lists. To search for a specific U.S. state, please use the two letter U.S. Postal Service abbreviation.

SDN List last updated on: 1/6/2017 12:45:36 PM
 Non-SDN List last updated on: 12/20/2016 12:33:02 PM

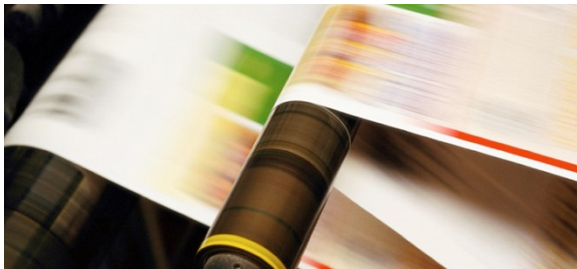
OFAC Exemptions

- **Most sanctions “exempt” some activities**
 - **Personal communications**
 - **Information and informational materials**
 - **Humanitarian donations**
 - **In IEEPA-based sanctions, travel**



OFAC Licensing

- **Even if activity is not exempt, may still be lawful under “general license”**
 - Publishing
 - Food and agricultural commodities
 - Medical devices
- **Even if activity is not subject to general license, may apply to OFAC for “specific license”**



Comprehensive Sanctions Programs

Major Prohibitions

Sanctions Programs	Exports Prohibited	Imports Prohibited	Facilitation Prohibited	Gov't Blocked	Travel Prohibited	Dealing in X Origin Items Prohibited
Crimea ¹	✓	✓	✓			
Cuba		✓ ²		✓	✓	✓
Iran	✓	✓	✓	✓		✓
North Korea	✓	✓	✓	✓		
Sudan	✓	✓	✓	✓		
Syria	✓	✓	✓	✓		✓ ³

Notes:

1. Crimea is not a country, it is a region of Ukraine.
2. All transactions in which Cuban or a Cuban national have a direct or indirect interest are prohibited.
3. Dealing in Syrian-origin petroleum and petroleum products is prohibited, but not other Syrian-origin items.

Source: OFAC Presentation at Pacific Northwest Defense Coalition Export Controls Summit, December 2016

Comprehensive Sanctions Programs

Major Export-Related Exemptions/General Licenses¹

Sanctions Programs	Export of Info. Materials	Export of Food	Export of Agricultural Commodities	Export of Medicine	Export of Medical Devices ²	Export of Medical Supplies
Crimea	✓		✓	✓		✓
Cuba	✓	✓ ³				
Iran	✓	✓	✓	✓	✓	✓
North Korea	✓					
Sudan	✓	✓	✓	✓	✓	✓
Syria	✓	✓		✓		

Notes:

1. All OFAC-issued general licenses are subject to certain conditions.
2. Medical devices must be classified as EAR 99 by the Bureau of Industry and Security.
3. The exportation of food to Cuba is authorized only when it is a donation.

Source: OFAC Presentation at Pacific Northwest Defense Coalition Export Controls Summit, December 2016



2. Sanctions on Russia

OFAC Sanctions on Russia

- **Range of sanctions on Russia includes**
 - Asset blocking
 - Travel bans
 - “Sectoral” sanctions
 - Export restrictions
 - Comprehensive embargo on region of Crimea
- **Implemented through series of EOs and now Congressional action**
- **Targeted sanctions on specific Russian officials, individuals, families, companies, banks, and industry sectors**

Sanctions Directives Target Certain Industry Sectors

- **Directive 1A → Targets financial services sector of Russian Federation economy**
- **Directive 2A → Targets energy sector**
- **Directive 3 → Targets defense and related materiel sector**
- **Directive 4 → Targets certain oil and gas projects**

OFAC Guidance on Entities Owned by Blocked Persons

- Issued by OFAC on August 13, 2014
- Key phrase: *“Persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC (blocked persons) are considered to have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest.”*
- Warning about dealing with entities that may appear to have significant ownership by blocked person but less than 50%
- U.S. person may not buy goods or services from such entity that is majority owned by blocked person

U.S. Restrictions on Dual-Use Exports

- **BIS rule regarding sanctions on Russian oil industry took effect on August 6, 2014**
- **Rule imposes controls on certain items when exporter, reexporter or transferor knows or is informed item will be used directly or indirectly in Russia's energy sector for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects that have potential to produce oil or gas in Russia**
 - Terminology defined in guidance and FAQs issued by BIS
- **Controls also imposed if exporter, reexporter or transferor is unable to determine if item will be used in such projects**

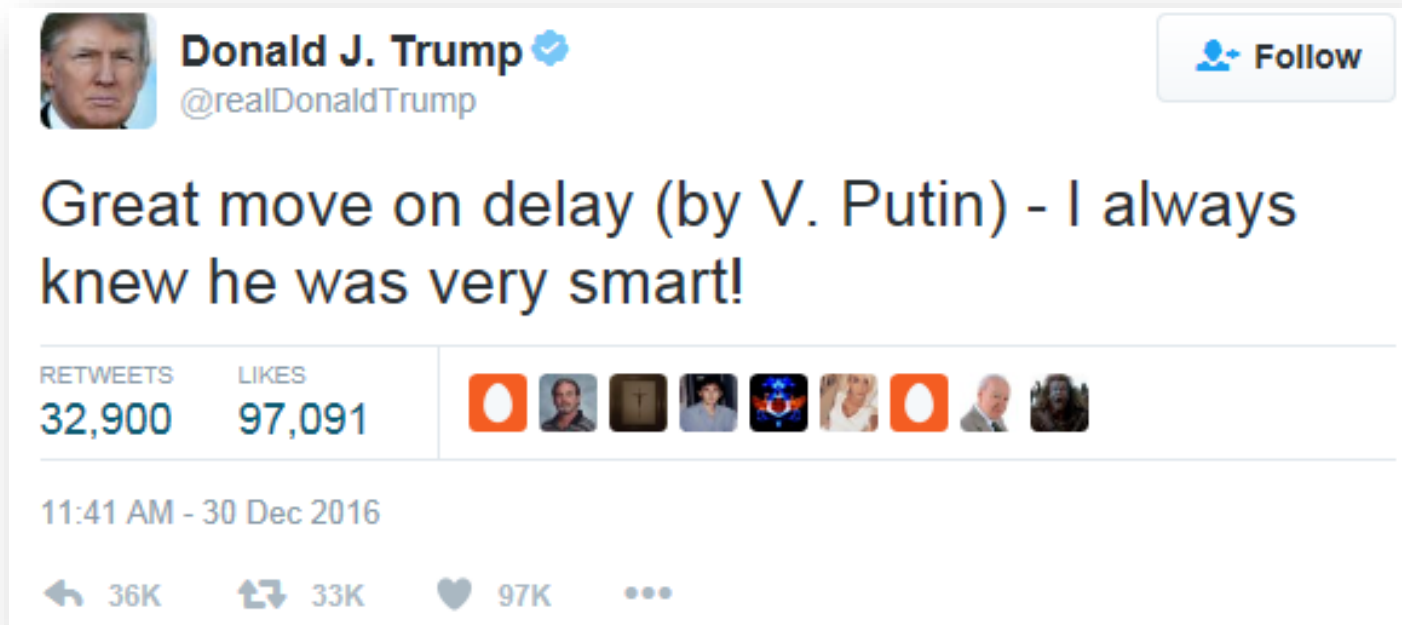
U.S. Restrictions on Dual-Use Exports (cont'd)

- **Presumption of denial for license applications**
- **Items subject to controls are those**
 - **Specified under ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992 and 8D992**
 - **Listed in Supplement No. 2 to EAR Part 746(*Russian Industry Sector Sanctions List*)**
 - **List of 52 Schedule B numbers for various items**
- **New license requirements/policy of denial for military end-uses or end-users in Russia imposed September 17, 2014**
- **Many Russian companies added to BIS Entity List subject to license requirements/policy of denial**


U.S. Restrictions on Defense Exports

- **DDTC continues to deny pending applications for export or reexport of any high technology defense articles/services it regulates to Russia or occupied Crimea that contribute to Russia's military capabilities**
- **DDTC revoked any existing export licenses that met these conditions**
- **All other pending applications and existing licenses will receive case-by-case evaluation to determine their contribution to Russia's military capabilities**

Politics!



A screenshot of a tweet from Donald J. Trump (@realDonaldTrump) dated December 30, 2016. The tweet text reads: "Great move on delay (by V. Putin) - I always knew he was very smart!". The tweet has 32,900 retweets and 97,091 likes. The interface includes a profile picture of Donald Trump, a verified account badge, a "Follow" button, and a row of user avatars who interacted with the tweet. At the bottom, there are icons for reply (36K), retweet (33K), like (97K), and a menu icon.





Donald J. Trump 
@realDonaldTrump

[Follow](#)

Great move on delay (by V. Putin) - I always knew he was very smart!

RETWEETS: 32,900 LIKES: 97,091

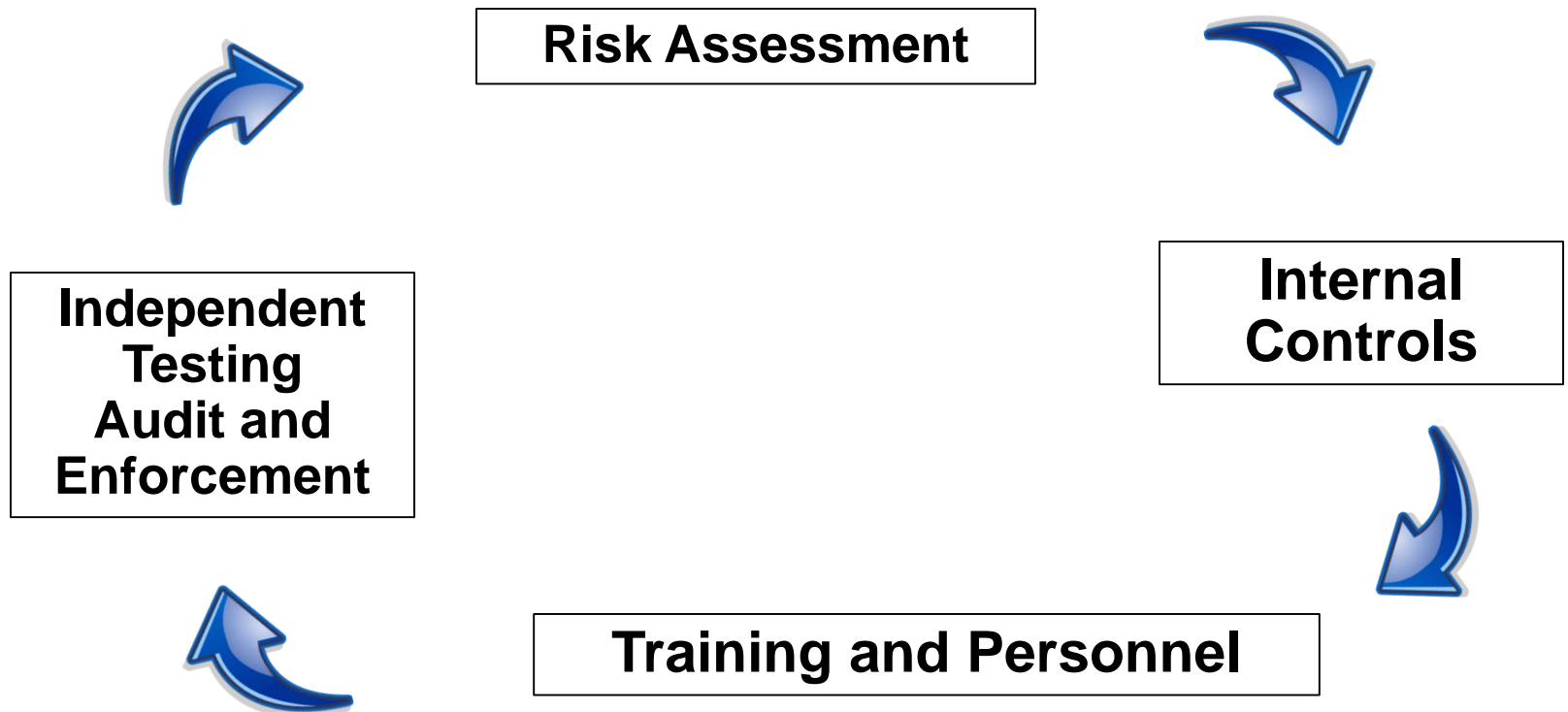
11:41 AM - 30 Dec 2016

 36K  33K  97K 



3. Compliance Tips

Sanctions Compliance



Risk Assessment

- **Identify high risk areas of business**
- **Understand which business units and individuals subject to jurisdictional scope of U.S. sanctions**
- **Gain insight into international partners (brokers, agents, intermediaries, suppliers)**
- **Know your customer**
- **Items containing U.S.-origin content present certain control concerns**

Internal Controls

- **Policies to outline what company should/should not be doing**
- **Procedures outline specific steps for specific employees to ensure policy compliance**
- **Prohibited persons screening**
- **Record keeping**

Training and Personnel

- **One or more individuals should be tasked with sanctions compliance**
- **“Red Flag” training**
- **Remediate deficiencies regularly**

OFAC Resources

- **Recent Actions**
- **Civil Penalties and Enforcement**
- **FAQs**
- **Search tools**

Independent Testing, Audit and Enforcement

- Regularly test procedures
- Conduct regularly scheduled audits of high-risk elements of business
- “Spot-checks” of great importance
- Ensure proper response when apparent violation has occurred
 - Implement remedial measures
 - Voluntary self-disclosure

Conclusion

- **Many non-U.S. companies and foreign subsidiaries of U.S. companies can face U.S. economic sanctions issues**
- **Complex, fluid U.S. legal environment requires consultation with qualified U.S. legal advisors to ensure nature, extent of exposure under such laws**
- **Russian sanctions will continue to evolve for foreseeable future!**

THANK YOU!

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