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Letter dated 15 January 2015 from the Permanent Representatives of Australia and Singapore to the United Nations addressed to the President of the Security Council

On 12 September 2014, the Governments of Australia and Singapore hosted a symposium in Singapore for the shipping and maritime transportation sector to raise awareness of United Nations sanctions and explore issues relating to compliance with such sanctions. More than 100 representatives participated from across the supply chain and related services, including ship owners and agents, freight forwarders, insurance companies, brokers and port operators, as well as industry associations, regulators and think tanks.

Together with King's College London, we have documented the good practices in compliance identified at the symposium to produce the attached report (see annex). We expect that the report will be useful not only to industry but also to Member States and Security Council committees in better understanding the role and good practices of the maritime transportation sector, which is an essential partner in realizing the effective implementation of United Nations sanctions.

For this reason, we would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

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Annex to the letter dated 15 January 2015 from the Permanent Representatives of Australia and Singapore to the United Nations addressed to the President of the Security Council

Sanctions compliance for the maritime transportation sector

Summary

The present paper identifies considerations and effective practices to help the maritime transportation sector to comply with United Nations sanctions prohibiting the transfer of arms, weapons-of-mass-destruction-related items and other goods, such as oil and charcoal, for the purpose of maintaining peace and security. It draws on the views expressed by industry representatives and regulators at a symposium entitled "Managing sanctions risk in the maritime transportation sector", held in Singapore on 12 September 2014 and hosted by the Governments of Australia and Singapore.

Assisting in the trade in goods prohibited under a sanctions regime, whether knowingly or unknowingly, poses a number of risks for the transportation sector. The most obvious is enforcement action by State authorities, either in port or on the high seas. This can result in the delay or diversion of vessels, the interruption of the movement of licit goods on the same vessel or in the same container as the suspected illicit cargo, legal liability and other costs and damage to reputation. Some cases, such as the interdiction of the *Chong Chon Gang*, which was carrying arms in violation of the arms embargo applied to the Democratic People's Republic of Korea, and the explosion at the Evangelos Florakis naval base, at a Cypriot port, demonstrate the risk of physical danger to vessels and crew, as well as ports and other facilities and staff.

Freight forwarders and carriers, financial service providers and port operators carry out similar and complementary practices to comply with laws implementing sanctions, based on two basic due diligence risk indicators: the country of destination and the good itself. Freight forwarders should obtain sufficient information from the consignor to enable them to determine whether the consigned good is prohibited or restricted in the country of destination. Freight forwarders can also ask their clients to provide information on the control status of the goods that they are shipping or seek an active declaration or compliance statement from the client that legal requirements have been met. Information of this kind acts as a deterrent to illicit trade.

Whereas freight forwarders can verify the accuracy of client-provided information through the physical inspection of the goods, financial service providers will often rely on other indicators, including whether the client's instructions for the transfer of funds matches the client's description of the destination of the goods. Insurance companies conduct designated entity screenings before policies are taken out and at multiple points over the course of a policy's life. Insurers are increasingly including contractual clauses to ensure that the sanctions status of clients and transactions can be taken into account from a contractual perspective. Many port operators have adopted vessel tracking and sanctions checking solutions, and consider a vessel's safety certification and records and whether the vessel has appropriate liability insurance, as risk indicators.

Common practices across the supply chain to promote compliance include: understanding risk indicators to identify suspicious transactions; systematically conducting due diligence of customers (for example by asking: Does the client have a sanctions compliance process? Does the client deal with countries to which sanctions apply? Is the client based in a country to which sanctions apply?); increasing confidence in transactions and clients by using certification and accreditation schemes; monitoring vessels; and relying on audit trails and record-keeping.

Knowing how far to go to ensure compliance can be complex, but an adequate compliance structure is needed to ensure that companies remain current with changing sanctions, regulations and requirements. Companies, depending on their industry, size and potential exposure to risk, will approach their compliance structure in different ways. More recently, there has been a move towards the concept of "virtual compliance", whereby an empowered official or consultant is responsible for overall compliance within the company. While a compliance programme can generally mitigate sanctions compliance risks, it should be noted that inadvertent non-compliance does occur. Companies should take action to identify such non-compliance, report it to the authorities, as appropriate, and improve the compliance process so that it does not recur.

Contents

I. Introduction

1. Resolutions of the Security Council adopted under Chapter VII of the Charter of the United Nations often require States to adopt and enforce measures intended to prevent their business community from contributing to activities that could threaten international peace and security. A core feature of these measures, known as "sanctions", is usually a restriction on the export or import of goods that the Council believes to be contributing to that threat. Usually, these are military goods, including weapons, but sanctions are also applied to goods that could be used to produce weapons of mass destruction or their means of delivery, such as missiles. In some cases, the Council may also require restrictions on the import or export of natural resources, such as oil or diamonds, where it is concerned that the proceeds of such trade are funding terrorism or insurgencies. Importantly, these measures apply not only to exporters and importers, but also to service providers associated with the activity. Since the advent of targeted sanctions in the early 2000s, the Council has applied sanctions in relation to around 20 situations.[a] The Council has also adopted its resolution 1540 (2004), by which it requires all States to take a range of measures to prevent the proliferation of weapons of mass destruction to non-State actors.

2. These resolutions leave it up to individual Governments to decide how such measures should be implemented, which means that the business community must look to the laws on sanctions of the jurisdiction in which they are operating to be certain of how those laws will affect their business. Where trade crosses multiple jurisdictions, variations in their respective laws need to be taken into consideration. To date, some national authorities have provided only limited practical guidance for businesses on compliance with United Nations sanctions. In the guidance that has been issued, the focus has tended to be on the importer or exporter of the goods subject to the measure, with little attention being paid to how the implementation of the measures affects the providers of ancillary services to that trade, including those involved in the maritime transport sector.

3. The purpose of the present paper is to set out effective practices for compliance with sanctions for industry involved in maritime, air and other forms of transportation, including freight forwarding and the insurance industry. It also covers measures that should be taken by port operators. While it is not the purpose of the paper to provide guidance for all business sectors, many of the considerations set out herein are applicable to other sectors, including the financial, manufacturing and export sectors.

4. These effective practices are intended as guidance only and need to be considered in terms of the relevant laws of the jurisdiction or jurisdictions in which a business is operating and the sanctions that apply in the territory through which they transit or trans-ship.

5. First, the present paper provides an overview of how the various sanctions measures are relevant to the maritime transport and related sectors. Second, it explores, on a sectoral basis, what is required of businesses to comply with national laws implementing sanctions obligations and what effective compliance practices

[a] For more information on the work of the Security Council sanctions committees, see www.un.org/sc/committees (accessed on 8 December 2014).

exist in that regard. Third, it identifies certain effective practices that are applicable to multiple sectors. Fourth, it sets out considerations associated with the creation of a risk-based sanctions compliance policy in companies. It concludes by summarizing the paper's key messages and exploring possible future work.

6. The paper is an outcome of the symposium hosted by the Governments of Australia and Singapore entitled "Managing sanctions risk in the maritime transportation sector", held in Singapore on 12 September 2014. That event, which was attended by more than 100 participants from the maritime transportation and related industries, aimed to build an understanding of sanctions compliance requirements. Some of the effective practices identified during the event have since been expanded upon. The Governments of Australia and Singapore are grateful to Ian Stewart of Project Alpha at King's College London and Martin Palmer of Supply Chain Compliance for their contributions to this paper.

II. Requirements of sanctions[b]

A. Sanctions related to goods and services

7. United Nations sanctions on goods generally require States to do one or both of the following:

(a) To prevent the supply, sale or transfer of a particular good to a particular State. The purpose of supply bans is usually to prevent items that contribute directly to the threat being targeted by the sanctions, such as weapons, including weapons of mass destruction and related dual-use goods, but can also apply to normally harmless goods that can be used as currency or for control (see, for example, the ban on luxury goods to the Democratic People's Republic of Korea);

(b) To prevent the procurement of a particular good from a particular State. The purpose of procurement bans is usually to prevent the proliferation from a State of dangerous items, such as weapons, including weapons of mass destruction and related dual-use goods or technology, but can also prevent the generation of revenue from the trade in goods, including natural resources such as oil, rough diamonds and charcoal.

8. At the national level, this usually means that the import from or the export to the relevant State of sanctioned goods is either prohibited outright or subject to the possession of permits or licences, in accordance with any exemptions provided for under the relevant sanctions regime. Where the Security Council has defined goods only in general terms, some States may produce lists of materials or technologies that they have determined fall within the scope of the ban. In many cases, these lists will be the same as the lists used by that State for its own controls on the general import or export of those items (under export control legislation and related mechanisms).

9. While such controls are primarily aimed at the sellers or purchasers of sanctioned goods, in some cases the Security Council specifically requires States to prevent the provision of assistance for any trade that is prohibited under the

[b] The present paper focuses solely on sanctions adopted by the Security Council. At the conference held on 12 September 2014, however, it was highlighted that businesses should focus on implementing the measures through national laws. In certain jurisdictions, this means adhering not only to United Nations sanctions but to any complementary national sanctions.

sanctions regime. The term “assistance” is generally given a broad meaning (and is often understood as financial or other assistance related to the supply, sale or transfer of sanctioned goods) and thus would apply to freight forwarding firms, maritime transport firms and insurers, among others.

10. Even where the Security Council does not specifically require States to prevent such assistance, the way a State implements the trade prohibition may well apply to any person facilitating the trade (for example, under general criminal law principles extending liability to aiding and abetting, conspiracy, etc.). Thus, industrial entities providing support for international trade need to take measures to ensure that their services are not utilized to assist in any activity in breach of sanctions.

11. Finally, a number of sanctions regimes require States to prevent their nationals or persons in their territory from providing bunkering services to certain vessels. In some cases, this ban applies to vessels for which there is information providing reasonable grounds to believe that they are carrying cargo prohibited by the sanctions. In one current case (related to sanctions applied to illicit transfers of oil from Libya), the ban applies to vessels specifically designated by a committee of the Security Council.

12. States are required to prevent their nationals or individuals in (or from) their territory from carrying out the activities described above. In other words, a State’s law implementing these obligations must apply extraterritorially to the conduct of the nationals of that State.

B. Sanctions related to designated persons and entities

13. Targeted financial sanctions or asset freezes, as they are also known, require States to do both of the following:

(a) To freeze the funds, other financial assets and economic resources that are in their territories on the date on which the measure is applied or at any time thereafter and that are owned or controlled by designated persons or entities or by persons or entities acting on their behalf or at their direction or by entities owned or controlled by them, including through illicit means;

(b) To ensure that no funds, financial assets or economic resources are being made available by their nationals or by any persons or entities within their territories, to or for the benefit of these persons and entities.

14. The Security Council designates persons and entities as subject to targeted financial sanctions for a number of reasons, including for posing a direct threat to or being directly responsible for a breach of international peace and security (for example, armed groups and their commanders, terrorist organizations and their leaders, agencies involved in sensitive government programmes on the proliferation of weapons of mass destruction and related officials), as well as for facilitating or otherwise supporting those directly responsible (for example, arms brokers, financiers and trading or front companies).

15. State implementation of these obligations varies. In general, because the obligation to freeze assets is not intended to affect the title to the assets, States implement the freeze by requiring the person who is in possession of the assets at the time of the measure’s application to continue to hold the assets and to not use or deal with them in any way. The obligation to freeze assets generally applies to financial

institutions and other deposit takers, such as casinos, as well as professional trustees (lawyers and accountants), real estate agencies and other property managers, and title registries. It would also apply to the bailee of such assets.

16. The obligation to prevent making assets available is more straightforward: no asset may be made available to the designated person or entity. Assets, in this case, would include any good that the designated person or entity seeks to purchase, or the purchase price for any good that the designated person or entity seeks to sell. Any commercial dealing with a designated person or entity is therefore prohibited, unless subject to an exception to the sanctions set out under the relevant sanctions regime.

III. Compliance

17. Assisting in the trade in goods prohibited under a sanctions regime, whether knowingly or unknowingly, poses a number of risks for the transportation sector. The most obvious is enforcement action by State authorities, either in port or on the high seas. Even where there is no question of criminal liability on the part of the transporters of the goods, law enforcement action can still result in the delay or diversion of vessels, the interruption of the movement of licit goods on the same vessel or in the same container as the suspected illicit cargo, legal liability and other costs and damage to reputation. Bearing in mind the hazardous nature of some sanctioned goods (in particular ammunition and other explosives, as well as radiological, chemical and biological agents), their handling can place vessels and crew members, as well as the port and other facilities and staff, in physical danger. Such goods, when packaged to avoid detection by authorities because of their prohibited character, may therefore not be handled using the required precautions.

18. Finally, vessels themselves can be assets owned or controlled by designated persons or entities and may, therefore, be subject to being frozen by the authorities; any cargo on such vessels is at risk of being detained if any enforcement action is taken in relation to the vessel.

Box 1
Case study: interdiction by Panama of the *Chong Chon Gang*[c]

In 2013, the Panamanian authorities interdicted the *Chong Chon Gang*, a vessel that was apparently carrying sugar back to the Democratic People's Republic of Korea, its flag State. The vessel had come to the attention of the authorities because of various suspicious activities, including the deactivation of the ship's automatic identification system, used to track vessels. Upon boarding the ship, the authorities found numerous weapons systems concealed under the sugar, including MiG jets and air defence systems. The Security Council requires States to prevent the supply, sale or transfer of these kinds of weapons to the Democratic People's Republic of Korea. In an attempt to evade detection (given the prohibited nature of the cargo), the arms were improperly stored, risking a detonation that could have blocked the Panama canal.

[c] See, for example, the report of the Panel of Experts established pursuant to resolution 1874 (2009) of 6 March 2014 (S/2014/147, para. 124).

The ship was under the control and direction of its operator, Ocean Maritime Management Company Limited, which was subsequently designated by the United Nations.[d] The shipping agent, Chinpo Shipping Company, which shared an address with the Embassy of the Democratic People's Republic of Korea in Singapore, was subsequently charged by the Singaporean authorities.

Box 2

Case study: the explosion at the Evangelos Florakis naval base

In 2009, the navy of the United States of America intercepted a vessel, the *Monchegorsk*, travelling from the Islamic Republic of Iran to the Syrian Arab Republic in the Red Sea. The ship was found to be transporting 98 containers of ammunition and other explosives in violation of paragraph 5 of Security Council resolution 1747 (2007). The ship was escorted to a Cypriot port and the explosives were moved to the Evangelos Florakis naval base a month later, where they were left in the open for over two years. On 11 July 2011, the explosives self-detonated, killing 13 people and injuring 62. The explosion severely damaged hundreds of nearby buildings, including all the buildings in Zygi and the island's largest power station, which supplied over half of the country's electricity. As a result, much of Cyprus was without power in the immediate aftermath of the incident and rolling blackouts were initiated in order to conserve supplies. The European Union estimated that the cost of the explosion could be equal to just over 10 per cent of the country's economy.

19. The transportation sector is not unfamiliar with the risks posed by trafficked goods or the improper handling of hazardous materials, and all entities in the supply chain, including vessel operators, port operators and freight forwarders, have in place systems to comply with the relevant legal and safety requirements. The question is: What additional elements are needed to comply with sanctions? The purpose of the present section is to explore how United Nations sanctions requirements can be met by three types of service provider: freight forwarders and carriers, financial service providers, and port operators.

A. Freight forwarders and carriers

20. At the conference held in Singapore, it was recognized that freight forwarders and carriers face numerous challenges when it comes to complying with sanctions laws. They typically deal with thousands or millions of shipments per week, do not manufacture or pack the items being shipped, are almost entirely reliant on the information provided by the consignor and must function across numerous

[d] Security Council, press release entitled "Security Council committee designates entity subject to measures imposed by resolution 1718 (2006)", www.un.org/press/en/2014/sc11499.doc.htm (accessed on 8 December 2014).

jurisdictions with different legal requirements. Freight forwarders specialize in bringing together multiple service providers that jointly provide a seamless service to trade. These individual service providers are located at different points along the supply chain and often within different countries, thus bringing into play multiple legal systems and transit regimes.

21. Nevertheless, it was also recognized that freight forwarders and carriers gain commercial advantage from building a reputation for being leaders in compliance, particularly as this typically also results in expedited clearance times.[e] In other words, compliance is good for business.

Compliance risk indicators

22. When it comes to complying with sanctions on goods, the primary responsibility rests, of course, with the exporter/consignor (for sanctioned exports) or the importer/consignee (for sanctioned imports). As explained above, freight forwarders and carriers must nevertheless comply with the obligation to not assist with the sale, supply or transfer of a good to or from a country in breach of a sanctions regime. The issue for freight forwarders is the degree to which they can rely upon the client (whether consignor or consignee) to have compliance arrangements in place.

23. The primary risk indicators are the country of destination and the good itself. When facilitating trade with a country subject to sanctions, the freight forwarder needs to be confident either that the goods concerned are not prohibited under that sanctions regime or, if they are, that they are covered by the necessary permit or licence. When facilitating trade in goods (such as arms) that have been singled out under certain sanctions regimes, the freight forwarder needs to be confident that the destination for those goods is not a country where such goods are banned, unless properly permitted or licensed.

24. This is a straightforward proposition when the consignor of the good has accurately and honestly declared both the good and its destination. Complexities arise when consignors obfuscate either the nature of the good (whether by omitting a description altogether, providing an ambiguous or incomplete description or providing a false description) or its destination (usually by trans-shipping the goods through a third country). Furthermore, consignors may themselves be misled by the purchaser of the goods as to the final destination of the goods or their intended end use.

25. The basic elements of good practice compliance are the following:

(a) Freight forwarders and carriers should know which goods are prohibited from being supplied or require authorization to be supplied to which country;

(b) Freight forwarders should obtain sufficient information from the consignor to enable them to determine whether the supply of the consigned good is

[e] See the answers to frequently asked questions prepared by HM Revenue and Customs of the United Kingdom of Great Britain and Northern Ireland, available from http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageImport_ShowContent&id=HMCE_PROD1_027461&propertyType=document#P98_11454 (accessed on 8 December 2014), and those prepared jointly by the Customs and Border Protection of the United States of America and the Directorate-General for Taxation and Customs Union of the European Commission, available from http://ec.europa.eu/taxation_customs/resources/documents/common/whats_new/13_01_31_eu-us_questions-answers.pdf.

prohibited or restricted for the country to which it is consigned (carriers can screen by comparing manifest information against lists of controlled commodities,[f] but this can be labour intensive, in particular as many countries have their own specific lists of controlled items and materials);

(c) Freight forwarders can also ask their clients to provide information on the control status of the goods that they are shipping and to confirm that an appropriate export licence has been granted; they can also ask for a licence reference number. Doing this prompts an active declaration from the client that legal requirements have been met. While it is relatively easy for clients to provide a false declaration, when combined with other measures, these declarations can help provide assurance that clients are not shipping prohibited items;

(d) Freight forwarders can require their clients to provide information on control status and licensing (it is normally required by the national customs authorities, although in low-compliance jurisdictions this may not be the case). While it is not possible to delegate legal responsibility, this would demonstrate that the forwarders have carried out acts of due diligence. Making requests for information of this kind can deter illicit trade (many clients willing to be blind about the destination of goods will be much more circumspect about committing to a written falsehood);

(e) For particularly sensitive traffic routes or commodities, obtaining a signed compliance statement from the customer could be a productive way of highlighting to the customer the kinds of issues that could arise and the controls that need to be in place;

(f) Freight forwarders and carriers should take steps to ensure that consignors have appropriately declared the content of their packages.[g] For example, leading freight forwarding companies typically open the first shipment from a new customer to ensure that it is consistent with the declarations provided. Leading freight forwarding firms may also sample shipments randomly or on a targeted basis to ensure ongoing compliance by consignors. Such periodic inspection may be less likely when the consignor has in place appropriate certifications, for example if it has Authorized Economic Operator status in the European Union.

26. Freight forwarders should save these data stores for ex post facto "suspicious transaction" analysis, to help further refine compliance arrangements and to provide information to compliance authorities.

27. When it comes to designated persons and entities, the primary responsibility of freight forwarders and carriers is to not provide shipping services to entities that

[f] See the draft working group standards on restricted-party screening of the Coalition for Excellence in Export Compliance at www.ceecbestpractices.org/uploads/9/1/2/6/9126226/ceec_-_screening_28_nov_2011.pdf (accessed on 8 December 2014).

[g] See guidance provided by the United States Department of Commerce, Bureau of Industry and Security, at www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/freight-forwarder-guidance (accessed on 8 December 2014).

have been designated in accordance with national laws. In practice, this requires shipping companies to screen entities to ensure that they have not been designated.[h]

B. Financial service providers

28. The financial services sector must also refrain from assisting in the sale, supply or transfer of goods to countries subject to sanctions. Many of the same principles that apply to compliance by freight forwarders and carriers also apply to financial service providers. Providers of financial services for international shipping should be aware of which goods cannot be supplied to which countries and should obtain from their clients sufficient information to determine whether the transaction is prohibited under the sanctions regimes. Whereas freight forwarders can verify the accuracy of client-provided information by physically inspecting the goods themselves, financial service providers often rely on other indicators, including whether the client's instructions on the transfer of funds matches its description of the destination of the goods.

29. Insurers also have a role in defining the risk landscape for businesses. Insurers should not issue policies for unlawful activities, nor should they turn a blind eye to the nature of the activities covered by their policies.

30. Given that, typically, there is a time lag between the creation of a policy and the payment of a claim, insurance firms should put into place processes to ensure that they know whether an entity that they already insure has been designated. In practice, this typically involves screening entities multiple times during the course of a policy's validity. Certainly, such screening should be conducted before a policy is taken out or renewed and be repeated before any claims are paid.

31. Insurers should also consider including in contracts a clause to ensure that the sanctions status of a client and of a transaction can be taken into account from a contractual perspective. At the conference held in Singapore, it was highlighted that the following clause was increasingly being used in industry:

> No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under

[h] This is also known as denied party screening, restricted party screening, etc. Sanction, restricted and denied party lists are usually available free of charge from the websites of regulatory authorities. Lists of persons and entities sanctioned by the United Nations are usually either embedded in the applicable country lists or set out separately. Some authorities provide free access to a web-based screening tool for exporters, shippers and freight forwarders. Numerous "trade compliance" software companies provide sophisticated screening tools that encompass multiple lists and allow for the lists to be tailored to the company's individual risk.

United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.[i]

32. The banking sector, in part as a result of the adoption by the Financial Action Task Force of guidance on countering the financing of proliferation, has recently introduced a number of additional controls to ensure that it is not unwittingly facilitating illegal transactions through its customers. Companies opening new accounts with banks or renegotiating the terms of existing accounts will find that banks are insisting that their customers confirm that they trade in compliance with various sanction regimes.

C. Port operators

33. Port operators are responsible for the loading and unloading of cargo at ports. They are generally commercial or semi-commercial entities. In relation to sanctions compliance, port operators have a responsibility to ensure that no assistance is provided for the supply or transfer of goods subject to sanctions. In addition, to the extent that the port operators control the provision of bunkering services, they need to ensure that no such services are provided to vessels for which there is information giving reasonable grounds to believe that the vessel is carrying sanctioned cargo.

34. Port operators should also consider following the lead of Panama in adopting vessel tracking and sanctions checking solutions.[j]

35. Port operators should also consider whether vessels entering their jurisdiction have appropriate liability insurance. As vessels owned and operated by designated entities are often unable to get protection and indemnity insurance from the main providers, they are often insured by sovereign schemes instead. The cover afforded by such schemes can be in keeping with international standards. There is a clear risk, however, that coverage provided by certain countries, such as the Democratic People's Republic of Korea, will provide insufficient protection to cover reparations in the event of a major incident.

IV. Cross-sectoral issues

A. Designated persons and entities[k]

36. In order to comply with sanctions, many businesses also employ screening solutions to identify designated persons and entities. These systems automatically

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[i] Andy Wragg, "Lloyds sanctions guidance: sanctions clauses", available from www.lloyds.com/~/media/files/the%20market/communications/market%20bulletins/2014/10/y4832.pdf; Arthur J. Gallagher and Co., "Ship owners take note: the impact of sanctions imposed against Russia", available from www.ajg.com/media/980927/Impact-of-Sanctions-Against-Russia-Marine.pdf; Centriq, "Insurance and the sanctions clause", available from www.centriq.co.za/2012/09/insurance-and-the-sanctions-clause; and Raets Marine News, "Liability policy for shipowners (updates to policy wording", available from www.raetsmarine.com/news/marine-liability-policy-shipowners-updates-policy-wording. All accessed on 8 December 2014.

[j] The Panama Canal Authority recently adopted Pole Star's PurpleTRAC solution. See http://web.polestarglobal.com/ (accessed on 7 December 2014).

[k] Businesses often refer to designated entities as "denied parties" or "restricted parties". These are the main names commonly used to refer to the persons and entities on lists other than the United Nations sanctions lists.

compare the names of parties to a business transaction against lists of designated persons and entities and highlight matches or potential matches for closer examination.[l]

37. The amount and quality of information available to conduct such screenings varies. While the United Nations has worked to improve its lists of persons and entities subject to targeted financial sanctions, there is often insufficient information to determine conclusively whether two parties are identical. This problem is compounded by issues relating to the transliteration of names from non-Roman scripts, the misspelling of names (be it accidental or resulting from an attempt to render a name phonetically), the occasional duplication of names and the general lack of biodata (date and place of birth).

38. Given that businesses rely on lists of designated persons or entities to screen for the purpose of sanctions compliance, these challenges need to be overcome. This can be done, to some extent, through the use of fuzzy logic and phonetic matching algorithms, but even these lead to challenges, as such algorithms typically result in an increased "false positive" rate. False positives occur when a searched-for name is sufficiently similar to the name of a designated person or entity for the system to indicate a match. For financial, insurance and freight forwarding firms, which can handle millions of transactions per day, even a false positive rate of 1-1.5 per cent, which is the commercial standard, can require a significant investment in resources for manual assessment.

39. In the event of a match, or any uncertainty, the business doing the screening should make formal contact with the relevant competent authority in its jurisdiction.

40. United Nations sanctions apply not just to designated persons and entities, but also to any entity they own or control. Businesses must, therefore, also put into place measures to identify whether their business partners or clients are owned or controlled by a designated person or entity.

41. The United Nations has not issued guidance on the precise meaning of "owned or controlled", but guidance issued by certain States or groups of States provides a useful baseline. Where possible, pursuant to the requirements of national law, States should adopt the same definitions to minimize the localization challenges associated with sanctions compliance. The definitions contained in box 3 are extracted from European Union guidance on the issue.[m]

Box 3

Ownership

The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50 per cent of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.

[l] See http://export.gov/ecr/eg_main_023148.asp (accessed on 8 December 2014).

[m] Council of the European Union, No. 9068/13 "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy".

Control

The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia:

(a) Having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;

(b) Having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;

(c) Controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;

(d) Having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its memorandum or articles of association, where the law governing that legal person or entity permits its being subject to such agreement or provision;

(e) Having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right;

(f) Having the right to use all or part of the assets of a legal person or entity;

(g) Managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;

(h) Sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

B. Transactions

42. The purpose of due diligence is to understand compliance and other risks associated with a transaction. While the ultimate goal of compliance should be to differentiate clearly between a permitted and a prohibited business, regardless of how well sanctions are written, the reality faced by companies is that they will encounter four categories of transactions: those that are prohibited absolutely, those that are permitted, those that are ambiguous and those that are suspicious. In ambiguous transactions, it is a matter of interpretation whether the transaction is permitted or prohibited (i.e. does the good fall into the category "arms" or into the category "dual-use goods"?). In suspicious transactions, there are inconsistencies in the transaction, for example a discrepancy between the apparent destination of the goods and the country of origin of the payment for those goods, or a discrepancy between the consignee/end user's business and the nature of the goods. Ultimately,

employees need to understand what may constitute a compliance issue and where to go to within their company if they have any concerns.

43. A company's ability to comply with sanctions ultimately hinges upon its access to information. Within the transportation sectors, and particularly the freight forwarding industry, there is a major reliance upon multiple business partners, including companies providing collection, packaging, handling, storage, airline, shipping, customs brokerage and other services. Each transaction to which the company is a party is therefore likely to involve multiple entities, not all of which are equally able to assess whether the transaction complies with sanctions. The accuracy of documentation and the completeness of data from the shipper of the commodities are critical factors in helping the transportation company to make an informed decision as to whether a particular export may give rise to sanctions compliance issues and otherwise demonstrating prior due diligence.

44. Designated persons and entities should not be involved in transactions. An examination of past sanctions violations highlights that designated entities are often involved in the shipment of goods in defiance of sanctions, although these entities and individuals usually attempt to hide their involvement. Each of these partners must be screened to ensure that they have not been designated.

45. Companies should also know their business partners or clients, and ask the following question: Do they have in place a compliance process that provides confidence that they are not involved, whether knowingly or otherwise, in the shipment of goods in violation of sanctions? For a risk-based compliance programme, businesses should ensure that their main business partners have robust compliance programmes in place and prioritize their risk management policies towards companies and service providers in which they have less confidence or on whose compliance procedures they have less knowledge.

C. Client due diligence

46. Due diligence is expected of all firms, but there is no single answer as to the level of due diligence that is necessary. Making such an assessment depends on the appetite for risk of the company and the risk posed by a particular transaction.

47. Nonetheless, there are certain approaches and practices that should be adhered to by all firms in the maritime and transport industry. These relate to due diligence process and escalation points.

48. In order to systematically conduct due diligence, certain questions can be asked of a client to identify risks associated with the transaction: Does the client have a sanctions compliance process? Does the client deal with countries to which sanctions apply? Is the client based in a country to which sanctions apply? These questions are in addition to standard due diligence checks conducted in business, such as credit checks, which serve to confirm the bona fides of an entity.

D. Information collection and sharing

49. An entity in the transportation sector may, in the course of its usual business activities, come across information that could lead to the discovery of covert proliferation activities. When companies detect suspicious activities or transactions, they are encouraged to report the relevant information (for example on the entities involved and the nature of the transaction) to their national authorities.

E. Vessel monitoring

50. Firms in each of the three sectors, as well as users of vessel transportation services, should be aware of any suspicion concerning the sanctions status of a vessel. Sufficient due diligence should be undertaken to identify whether the vessel is owned, controlled or operated by a designated person or entity and to determine whether the vessel is owned in or sails under the flag of a State that has a government programme that is subject to sanctions. This due diligence effort should also help to identify whether a vessel has previously been involved in activities that indicate non-compliance with sanctions. It should also flag whether the activities of a vessel that utilizes its services are suspicious. Vessel monitoring includes the following:

(a) Ensuring that vessels or vessel owners and operators are not designated persons or entities;

(b) Checking not only vessel names, but also International Maritime Organization numbers, as vessels involved in proliferation-related activities frequently change name and flag State in order to evade controls.[n] The Security Council has not yet designated specific vessels but it has designated ship owners and operators, and the descriptions included in its sanctions lists may include the names of specific vessels (for example, the *Chong Chon Gang* (see the case study in box 1) is mentioned in the entry for the Ocean Maritime Management Company in the Consolidated List of entities and individuals subject to sanctions);

(c) Ensuring that ships owned in or sailing under the flag of countries with enabling environments for the evasion of sanctions do not carry prohibited cargo;

(d) Conducting appropriate levels of due diligence to reduce the possibility of servicing vessels in breach of sanctions. United Nations resolutions on sanctions typically include prohibitions on the import or export of arms, equipment that can be used in weapons-of-mass-destruction programmes and, in the case of Libya, oil;

(e) Ensuring that ships with any flag calling at territories to which sanctions apply do not carry prohibited cargo.

51. Some resolutions, such as Security Council resolution 1718 (2006) concerning the Democratic People's Republic of Korea, give States the authority to inspect vessels (regardless of flag and ownership) for which there is information providing reasonable grounds to believe they are carrying prohibited cargo.

52. In order to manage these risks, the port operators, ship operators, insurers and, to a lesser extent, freight forwarders should implement a range of measures, including:

(a) Screening vessel owners and vessels by comparing their names against lists of designated entities in order to determine whether they are subject to sanctions;

(b) Monitoring the movement of vessels in and around ports or vessels that are subject to sanctions.

[n] See the final report of the Panel of Experts established pursuant to resolution 1929 (2010) (S/2013/331).

53. There are two main systems that can be used for vessel monitoring. The first uses the automatic identification system, which is required on all vessels with a gross tonnage above 300. A second system, based on the Inmarsat communications system, can also be used by flag States. While the two systems should routinely correspond to the true location of the vessel, it has been noted that ship captains do, on occasion, switch off the automatic identification system when engaging in clandestine activity. In some such cases, the Inmarsat system has made it possible to continue tracking the vessel.[o]

F. Certification and accreditation schemes

54. There are various certification schemes that can increase confidence that a transaction does not breach sanctions. Principally, these include measures related to the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), such as the Authorized Economic Operator, the Customs-Trade Partnership Against Terrorism and the Container Security Initiative, among other schemes. At the time of writing, 168 of the 179 States members of the World Customs Organization are participants in the SAFE Framework, with mutual recognition between programmes increasing.

55. In order to gain certification under the various secured supply chain programmes, the approving authority must undertake an assessment of the company's business and processes to ensure that the relevant criteria are met. The criteria are usually driven by customs compliance (as opposed to export control and sanctions), but there are elements that are complementary. The existence of a certification scheme also provides confirmation of the bona fides of the company. In some jurisdictions, there are a substantial number of certified companies. In Germany, for example, more than 5,000 companies are accredited as Authorized Economic Operators.

56. Meeting the standards set by these various, specific frameworks can go some way towards mitigating the sanctions compliance risks associated with a transaction, although the exact manner in which the risk has been reduced depends on the sector and type of measure.

57. It should be noted that the presence or absence of a certification scheme does not mitigate specific compliance risks. It is generally the case, however, that shipments by companies with secured supply chain accreditations are likely to pose less of a risk than those that are not, which generally results in expedited clearance or, at least, in the reduced likelihood that a container will be detained for inspection by customs authorities. The presence or absence of a certification scheme related to the SAFE Framework can also help to inform the assessment of the transaction and customer risk.

G. Unintended consequences and unmanaged liabilities

58. The implementation of mechanisms aimed at ensuring compliance with sanctions generally reduces risks for the maritime and transport sectors. There are a

[o] For tracking using the automatic identification system, see https://www.ihs.com/products/ais-live-ship-tracker.html. For tracking using both the automatic identification system and Inmarsat, see Pole Star's PurpleTRAC at http://purpletrac.polestarglobal.com/why-purpletrac (accessed on 7 December 2014).

number of scenarios, however, in which an excessive appetite for risk can have unintended and negative consequences.

59. This is true, for example, with regard to third-party liability insurance. It is in the interest of society as a whole to ensure that all operating vessels have insurance policies that will cover the costs of dealing with an oil spill or other major catastrophic event. Simply denying vessels access to protection and indemnity insurance policies may not result in the vessel being held in the port: instead, the ship operator may be able to gain inferior coverage from either national pools or from less scrupulous providers. Such a "drive to the bottom" carries the clear risk that the insurer will either not pay out or that it will provide insufficient coverage to compensate for damages caused by the ship.

H. Audit trails and record-keeping

60. While it is for Member States to determine how to implement the requirements of binding United Nations sanctions resolutions, States should adhere to certain common standards with regard to record-keeping. It is largely through records that potential cases of non-compliance can be investigated. It is also through records that businesses can prove that they are compliant (or at least not wilfully non-compliant).[P] Companies may also be required to provide audit trails and records of international transactions for which they are responsible. They should therefore ensure that business partners are aware of the record-keeping requirements and it is good practice to have these included in contractual agreements.

V. Risk-based compliance

61. Businesses operating in the shipping, freight forwarding, insurance and port operating sectors must put in place measures that respect the laws implementing sanctions in relevant jurisdictions. The reality of business for each of these sectors is more complex, however, and it is usually the case that a business must consider the compliance status not only of its own activities, but also that of the activities of clients and business partners. The compliance status of the jurisdiction in which the business is operating, and in which the clients and business partners are operating, is also important: jurisdictions that do not properly implement sanctions create an enabling environment for non-compliance and thus pose a higher risk for businesses operating in and from those jurisdictions.

62. This is an evidently challenging aspect of sanctions compliance that often raises the question: How much is enough? There is no single answer to this question, but the nature of the question itself suggests that there is often a risk management aspect to sanctions compliance. Firms must decide how much due diligence will be undertaken on clients and business partners, what will be required of business partners and clients with regard to sanctions compliance and what steps the business will take if it is not satisfied with the responses received from the business partners and clients.

63. Industry is also best placed to understand where in the supply chain sanctions compliance checking is most critical. In other words: Who in the supply chain can

[P] A number of jurisdictions (Australia and the United States, among others) hold businesses strictly liable for not complying with sanctions.

best verify the nature of a good that is traded, including its point of origin and its end use? Who can best verify who owns or controls an asset to be transported?

64. To ensure that the company is compliant and remains current with changing sanctions, regulations and requirements, an adequate compliance structure is needed. Compliance structures are known by many different names and may be referred to as compliance management structures, export control management programmes or global trade compliance schemes. Companies, depending on their industry, size and potential exposure to risk, will approach their compliance structure in different ways. For example:

(a) A single compliance structure overseeing all compliance factors relevant to a particular industry and reporting to the management board;

(b) Individual compliance areas of expertise specializing in particular disciplines and reporting to the various functional areas of responsibility (in this example, the audit activity must maintain independence from the functional area);

(c) More recently, there has been a move towards the concept of "virtual compliance", in which an empowered official is responsible for overall compliance within the company and the individual specialist expertise is contracted from a variety of companies offering these services.

65. Whichever compliance structure is determined by the company to offer the most efficient and effective solution, there are a number of key areas that need to be managed to ensure success. The individual elements of a compliance management system are key to ensuring an efficient and optimized structure. The following elements are generally recognized as key to creating an effective compliance programme (see also enclosure II): management commitment; compliance organization; policies and procedures; communication and training; contracts and licences; documentation and record-keeping; security, including but not limited to restricted party screening, criminal background checks, facility security and vehicle security; tracking; continuous validation and improvement; and voluntary self-disclosure.

66. While a compliance programme can generally mitigate sanctions compliance risks, it should be noted that inadvertent non-compliance does occur. The company should take actions to identify such non-compliance, report it to the authorities, as appropriate, and improve the compliance process so that it does not recur.

VI. Conclusions

67. The transportation sector provides vital services for the furtherance of economic prosperity and, as a result, international peace and security. There is a real risk that the sector could be misused by proliferators in order to transfer sensitive commodities. The United Nations has thus adopted sanctions to counter the risk that the sector could be used to carry out activities prohibited by Security Council resolutions.

68. The sanctions require States to adopt and enforce measures prohibiting their business sectors from becoming involved in sanctioned activities. In practice, this means that businesses must exercise vigilance to ensure that they do not conduct prohibited transactions or deal with designated entities.

69. In order to ensure that sanctions compliance risks are appropriately managed, companies should take a systematic approach to compliance. This includes training staff, conducting “know your customer” and “know your business partner” activities and screening entities. Businesses should also validate their supply chain and contractually demand that their business partners have adequate compliance programmes.

70. The present report, and the event upon which it is based, is a first step in producing sector-specific guidance on the implementation of sanctions. More work is required to ensure that sanctions can be effectively implemented.

Enclosure I

Extracts from Security Council resolutions

Security Council resolution 1970 (2011) concerning Libya

11. *Calls upon* all States, in particular States neighbouring the Libyan Arab Jamahiriya, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Libyan Arab Jamahiriya, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items, the supply, sale, transfer or export of which is prohibited;

Security Council resolution 1718 (2006) concerning non-proliferation/Democratic People's Republic of Korea

(8) *Decides* that:

…

(f) In order to ensure compliance with the requirements of this paragraph, and thereby preventing illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action, including through inspection of cargo to and from the Democratic People's Republic of Korea, as necessary;

Security Council resolution 2094 (2013) concerning non-proliferation/Democratic People's Republic of Korea

16. *Also decides* that all States shall inspect all cargo within or transiting through their territory that has originated in the Democratic People's Republic of Korea or that is destined for the Democratic People's Republic of Korea or has been brokered or facilitated by the Democratic People's Republic of Korea or its nationals or by individuals or entities acting on their behalf if the State concerned has credible information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013) or the present resolution, for the purpose of ensuring strict implementation of those provisions;

Security Council resolution 1929 (2010) concerning non-proliferation

14. *Calls upon* all States to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Islamic Republic of Iran, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items, the supply, sale, transfer or export of which is prohibited by … resolution 1737 (2006), … resolution 1747 (2007), … resolution 1803 (2008) or … the present resolution, for the purpose of ensuring strict implementation of those provisions;

15. *Notes* that States, consistent with international law, in particular the law of the sea, may request inspections of vessels on the high seas with the consent of the flag State, and calls upon all States to cooperate in such inspections if there is information that provides reasonable grounds to believe that the vessel is carrying items, the supply, sale, transfer or export of which is prohibited by paragraphs 3, 4 or 7 of resolution 1737 (2006), paragraph 5 of resolution 1747 (2007), paragraph 8 of resolution 1803 (2008) or paragraphs 8 or 9 of the present resolution, for the purpose of ensuring strict implementation of those provisions;

…

21. *Calls upon* all States, in addition to implementing their obligations pursuant to resolutions 1737 (2006), 1747 (2007), 1803 (2008) and the present resolution, to prevent the provision of financial services, including insurance or reinsurance, or the transfer to, through or from their territory, or to or by their nationals or entities organized under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources if they have information that provides reasonable grounds to believe that such services, assets or resources could contribute to the Islamic Republic of Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are related to such programmes or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation;

Security Council resolution 2182 (2014) concerning Somalia

15. *Authorizes*, for a period of 12 months from the date of the present resolution, Member States, acting nationally or through voluntary multinational naval partnerships, such as "combined maritime forces", in cooperation with the Federal Government of Somalia and which the Federal Government of Somalia has notified to the Secretary-General and which the Secretary-General has subsequently notified to all Member States, in order to ensure strict implementation of the arms embargo on Somalia and the charcoal ban, to inspect, without undue delay, in Somali territorial waters and on the high seas off the coast of Somalia extending to and including the Arabian sea and the Persian Gulf, vessels bound to or from Somalia that they have reasonable grounds to believe are:

(a) Carrying charcoal from Somalia in violation of the charcoal ban;

(b) Carrying weapons or military equipment to Somalia, directly or indirectly, in violation of the arms embargo on Somalia;

(c) Carrying weapons or military equipment to individuals or entities designated by the Security Council Committee established pursuant to resolution 751 (1992) and 1907 (2009);

Enclosure II

Elements of the policy

The following elements are generally recognized as key to creating an effective compliance programme:

(a) Management commitment. This is vital for any compliance programme. Without compliance being led by the most senior managers within an organization, it will be almost impossible to cascade the requirements and standards throughout the workforce. A management commitment statement is a clear way of emphasizing the importance of the programme and senior management support;

(b) Compliance organization. Empowered officials need to be appointed to ensure that the required compliance standards are embedded within the organization. These individuals' roles and responsibilities need to be clearly communicated and the individuals should be supported with adequate resources, including financial resources, to ensure that the company remains compliant with relevant sanctions and controls;

(c) Policies and procedures. These will need to be created and embedded in daily business dealings. They will also provide a basis against which compliance can be audited;

(d) Communication and training. These areas are key to the success of any compliance programme. By their nature, sanctions and export controls will be amended or added to on a regular basis. An efficient communications and training platform is important to ensure that relevant personnel remain current with requirements;

(e) Contracts and licences. Contracts with all business partners need to require partners to be in compliance with sanctions and export control legislation and include the right to have compliance programmes validated or confirmed. An ineffective compliance programme can have major implications for the business. Licences may be required for the transportation of certain commodities or for their transportation to certain countries or individuals. A process is required to ensure recognition of a licensable transaction and that such a transaction is processed according to requirements;

(f) Documentation and record-keeping. Accurate and complete documentation is absolutely key for a company to be able to determine sanction and export control implications. For freight forwarders, much of this documentation is provided by business partners and then becomes the basis for making further declarations. Problems with original documentation will often result in further compliance issues within the supply chain. Record-keeping in all its forms is a vital element of any compliance programme;

(g) Security. This covers a wide range of activities, including but not limited to restricted party screening, criminal background checks, facility security and vehicle security. These are just some of the controls that need to be part of a compliance structure;

(h) Tracking. Companies may transport, on behalf of their customers, controlled, restricted or dual-use commodities. A consignment tracking system is

required to retain full control over such consignments, ensure that the consignments do not transit through countries that may present secondary compliance issues and flag potential diversion concerns;

(i) Continuous validation and improvement. Compliance is truly a journey and not a destination. The nature of sanctions and export controls requires that, once a compliance management system has been created, processes are regularly reviewed (audited) to ensure that they are correctly executed and that they reflect the latest controls and changes;

(j) Voluntary self-disclosure. No matter how effective the compliance management system, there is always the possibility that someone will make a mistake, either internally, within the organization, or externally, with a consignment that the organization is transporting.

Enclosure III

Red flags

Red flags in the area of sanctions are acts that could be classed as abnormal and as indicators of intended violations. These can be very simple or subtle indicators, such as:

(a) Change of delivery address. Last-minute or after-dispatch changes to a delivery address can indicate an intention to divert the commodity. This is particularly relevant when the change in delivery address involves delivery to another country. All changes to delivery addresses should be screened;

(b) Delivery to unusual addresses, i.e. the delivery of commodities to addresses not compatible with the business the commodities are usually associated with. For example, communication equipment being delivered to a bakery or chemist, or industrial-scale consignments being delivered to private addresses;

(c) Hotels. When used as a delivery address, hotels can be used as drop-off locations. They provide an element of anonymity, making it difficult to follow up on deliveries with the recipients;

(d) Freight forwarders. The freight forwarding industry is sometimes misused by organizations or individuals attempting to violate sanctions and controls. On occasion, transport companies, logistics service providers and freight forwarders will be used as consignees or receivers of consignments. Once received by the freight forwarder, these consignments may then be split or reconsigned as separate transactions;

(e) Free-trade zones. Because free-trade zones have simplified import and export and processing procedures and benefit from the minimal involvement of regulatory authorities such as customs, and because these zones are commonly used as storage and transit facilities, they are prime targets for the diversion of commodities to sanctioned countries and individuals;

(f) Delivery of consignments to the freight forwarders' premises. Such deliveries can be made so that the nature of the consignor's business cannot be identified or to hide information on the actual consignor. You should always request to see government-issued identification and obtain a photocopy of it;

(g) Cash payments. A request by a shipper to pay for a large or expensive transport transaction in cash could be considered unusual in these times of invoicing and extended credit terms;

(h) High freight rates. The willingness of shippers to charge freight rates that do not appear to correspond with the nature of the commodities being shipped constitute a red flag;

(i) Payment of freight rates by third parties;

(j) Commodities that appear to be incompatible with a country's technical capabilities, such as semiconductor manufacturing equipment being shipped to a country that does not have an electronics industry;

(k) Size of the transaction. The size of the shipment appears to be inconsistent with the scale of the regular business activities of the exporter or importer;

(l) Paperwork. Hand-amended documents and valuations that appear not to be in line with the commodities being shipped or the weight of the consignment;

(m) Descriptions. The description of the commodities is vague or misleading;

(n) Consolidations. Shipments from consolidators or wholesalers that provide only limited data on consignments.