



Denied Party Screening – Know Your Company's Tool & Customer

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Classification: PUBLIC

“Only the best products are selected for export ...”

- Wisdom from Armenian Radio.
- Soviet-era jokes which pretended to come from a Question & Answer series of the Armenian Radio.
- If only exporting was so simple ...
- The best-laid plans of mice and men often go awry ...



Presentation Overview

- 1) Denied party screening intro
- 2) EU, US, and Swiss approach to DPs
- 3) DP screening risks – what are we trying to mitigate?
- 4) Syngenta's approach to DP screening
- 5) DP screening advice



1. Denied Party Screening Intro

“Denied Party” – Definition

- **Denied parties** = persons or entities to which the export of goods is forbidden due to their presence in a listing regime under which a company must remain legally compliant.
 - **Examples:**
 - Involvement in the support of terrorism
 - Criminal activities
 - Drug trafficking
 - Involvement in the proliferation of weapons of mass destruction



What is Denied Party Screening?

- The UN, US, EU, and many national governments (e.g. CH) forbid the export, re-export or domestic sale of goods to a **“denied person or entity”**.
- Currently there are more than 350 **“denied party lists”** which are constantly being updated and changed.
- **Denied Party Screening** is the process of screening for denied parties (people or entities) listed on one or more of the denied party lists.
- At Syngenta, the Global Trade Affairs department is responsible for Denied Party Screening worldwide.



2. EU, US, and Swiss Approach to Denied Parties

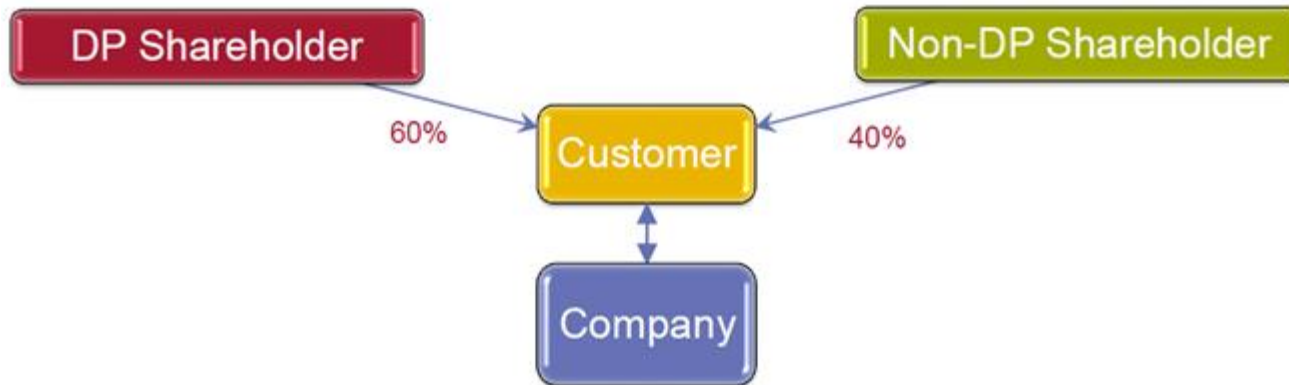
EU & Switzerland: Controls on Designated Parties

- EU and Swiss list-based sanctions programmes: Designated Parties (“DPs”).
- Swiss DPs: relevant for financial intermediaries (report existing business relations).
- EU sanctions on DPs
 - Prohibition on “making available” “funds” or “economic resources” directly or indirectly, to or for the benefit of DPs.
 - Freeze on funds and economic resources belonging to, owned, held or controlled by DPs.
 - Administered and enforced by a National Authority in each EU Member State.

US: Controls on Specially Designated Nationals

- US list-based sanctions programme: US Specially Designated Nationals (“SDNs”).
- Prohibition on US Persons dealing with SDNs, directly or indirectly, and any entity 50% or more owned by one or more SDNs, or “facilitation” of such dealings.
- Requirement to block SDN property and interests in property.
- Administered and enforced by Office of Foreign Assets Control (“OFAC”).
- Prohibition under EU and US sanctions in relation to acts of circumvention/facilitation.
- Non-US Persons may also have liability for causing a US Person to violate sanctions (e.g. US dollar payments, ordering goods from US for supply to SDNs).

EU & Switzerland: Dealings with Affiliates of Denied Parties

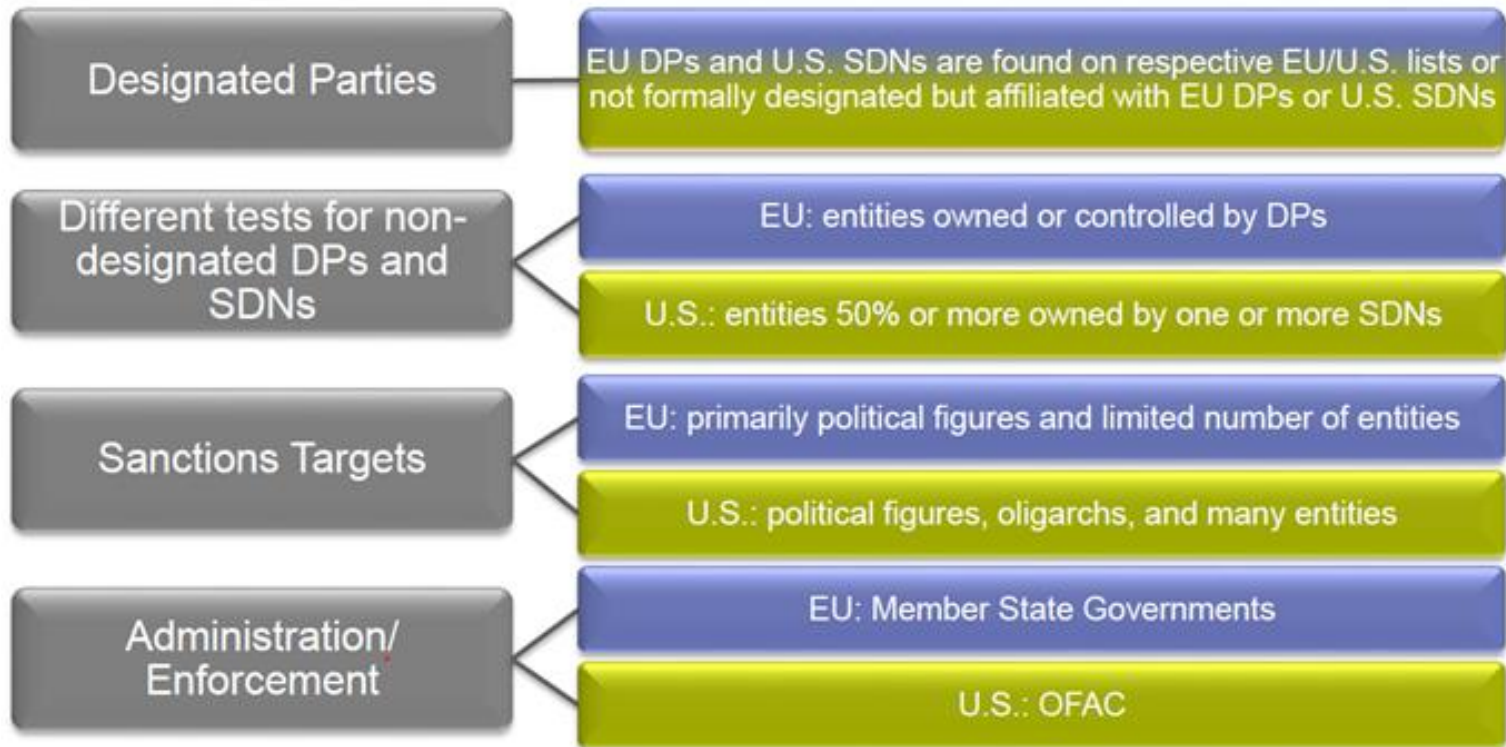


- **Swiss:** no fixed rule but 50% test in practice.
- **EU:** Assess whether counterparty is majority-owned or controlled by one or more DPs: test is complex and subject to EU Member State interpretation
 - 2008 guidance document: 6 criteria of control to assess whether controlling party will benefit from dealing with the non-listed company

US: Dealings with Affiliates of SDNs

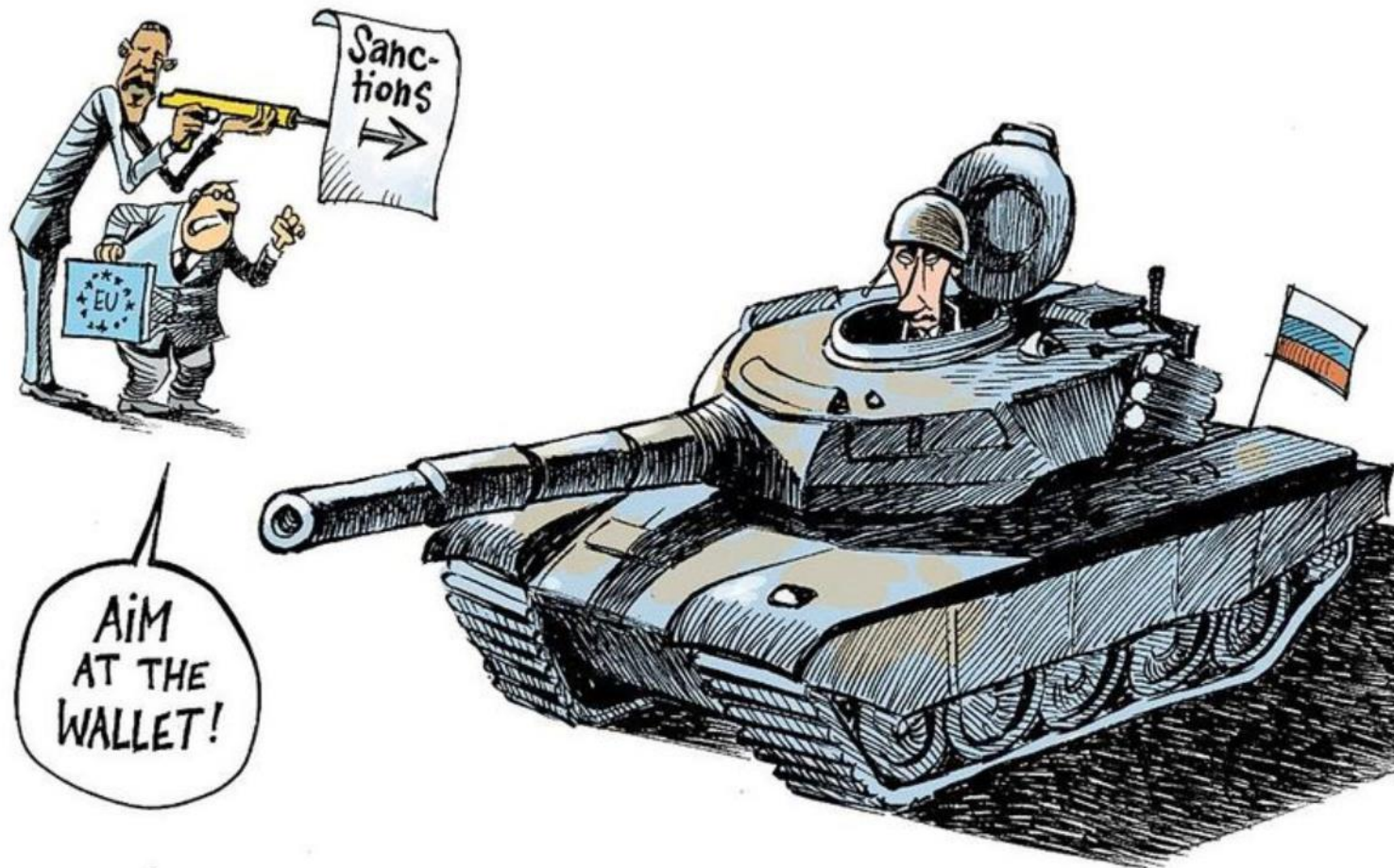
- **US:** assess whether counterparty is 50% or more owned by SDNs.
- OFAC guidance released 13 August 2014:
 - OFAC now aggregates ownership interests of SDNs when determining whether the 50% rule applies.
 - Example: if Blocked Person X owns 25 percent of Entity A and Blocked Person Y also owns 25 percent of Entity A, then Entity A is blocked, because Entity A is owned 50 percent or more in the aggregate by blocked persons.
 - Aggregation applies even if Person X and Person Y are blocked under different sanctions programs.
 - Change brings US sanctions into closer alignment with EU sanctions, which also aggregate interests of blocked persons.

EU & US: Compare & Contrast



3. DP Screening Risks—what are we Trying to Mitigate?

But a very real cost for companies ...



CHAPPAÏE International New York Times

Denied Party Transactions – Risks for Companies

- Doing business with a denied party poses the following risks :
 - 1) Loss of export privileges
 - 2) Large fines
 - 3) Loss of reputation
 - 4) Imprisonment (extreme cases)

- Syngenta aims to ensure that a proper process is in place for screening against denied parties
 - minimize risks above

Recent Increase in OFAC Penalties

- OFAC recently increased maximum penalties for breach of US sanctions.
- OFAC notorious for imposing most severe penalties of any governmental agency worldwide. E.g. \$9 billion settlement reached by BNP Paribas in 2015.
- Penalties per transaction are highlighted below. Multiple dealings with denied parties would quickly increase the total fine amount.

Statute	Existing penalty amount	Penalty amount effective August 1, 2016
<i>TWEA</i>	\$65,000	\$83,864.
<i>IEEPA</i>	The greater of \$250,000 or twice the amount of the underlying transaction.	The greater of \$284,582 or twice the amount of the underlying transaction.
<i>AEDPA</i>	The greater of \$55,000 or twice the amount of which a financial institution was required to retain possession or control.	The greater of \$75,122 or twice the amount of which a financial institution was required to retain possession or control.
<i>FNKDA</i>	\$1,075,000	\$1,414,020.
<i>CDTA</i>	\$10,000	\$12,856.

Federal Register / Vol. 81, No. 127 / Friday, July 1, 2016

PayPal Case – Failure in a Screening Process

- 25 March 2015 OFAC civil liability settlement agreement with PayPal: \$7,658,300
- 486 apparent sanctions violations.
- Screening failures for almost 4 years: PayPal repeatedly conducted transactions with an SDN account.
- Why these failures?
 - Tool failure: screening tool did not effectively identify PayPal account holders as potential matches to OFAC's SDN List.
 - Escalation failure: Even when tool worked, PayPal agents dismissed alerts on six separate occasions after failing to obtain or review documentation corroborating the identity of the individual.

Screening: how to minimize the “unknown unknowns”?

“There are known knowns; there are things we know that we know.

There are known unknowns; that is to say there are things that, we now know we don't know.

But there are also unknown unknowns – there are things we do not know we don't know.”

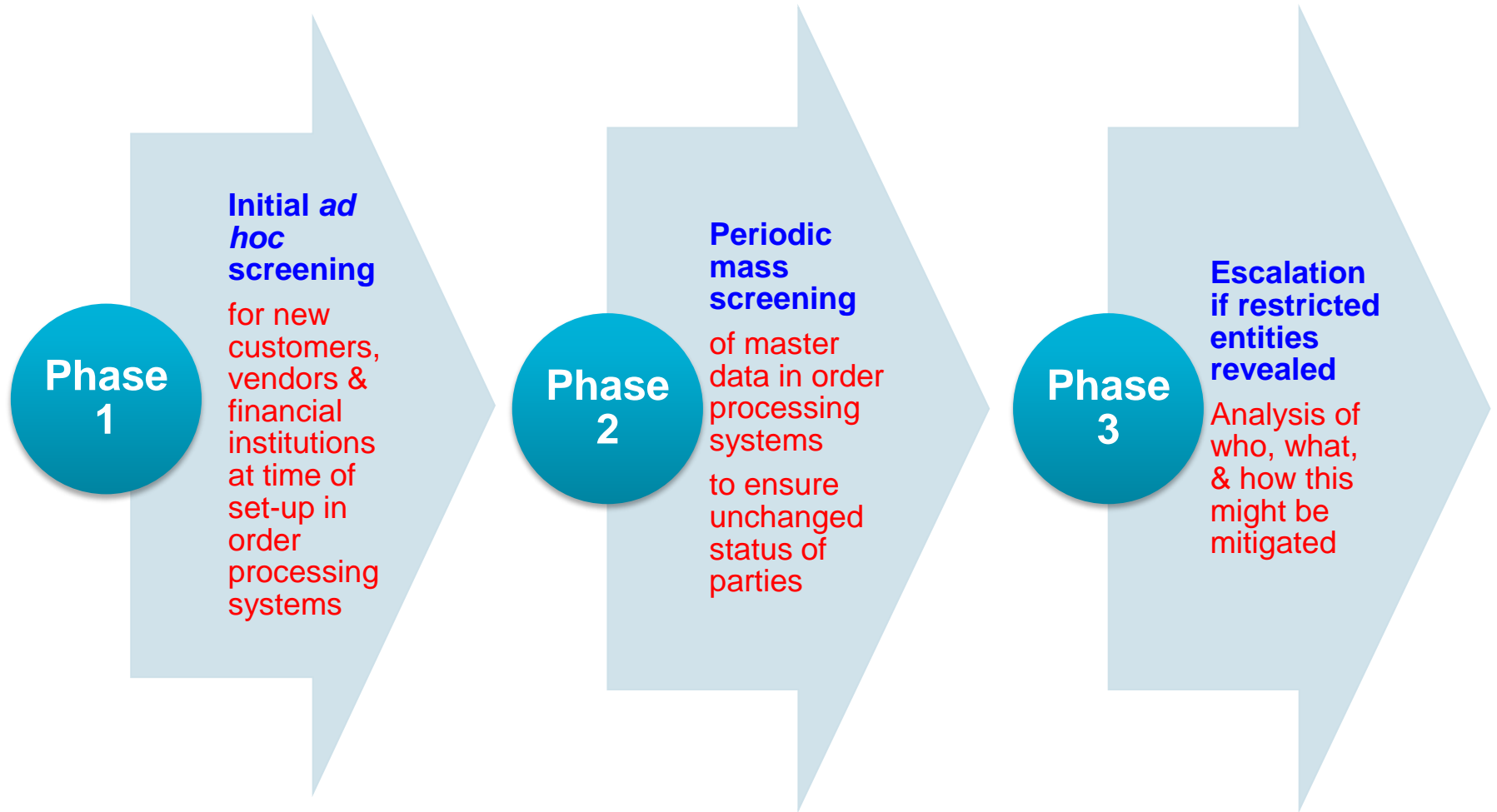


4. Syngenta's Approach to DP Screening

Denied Party Screening – Syngenta's Methodology (1)

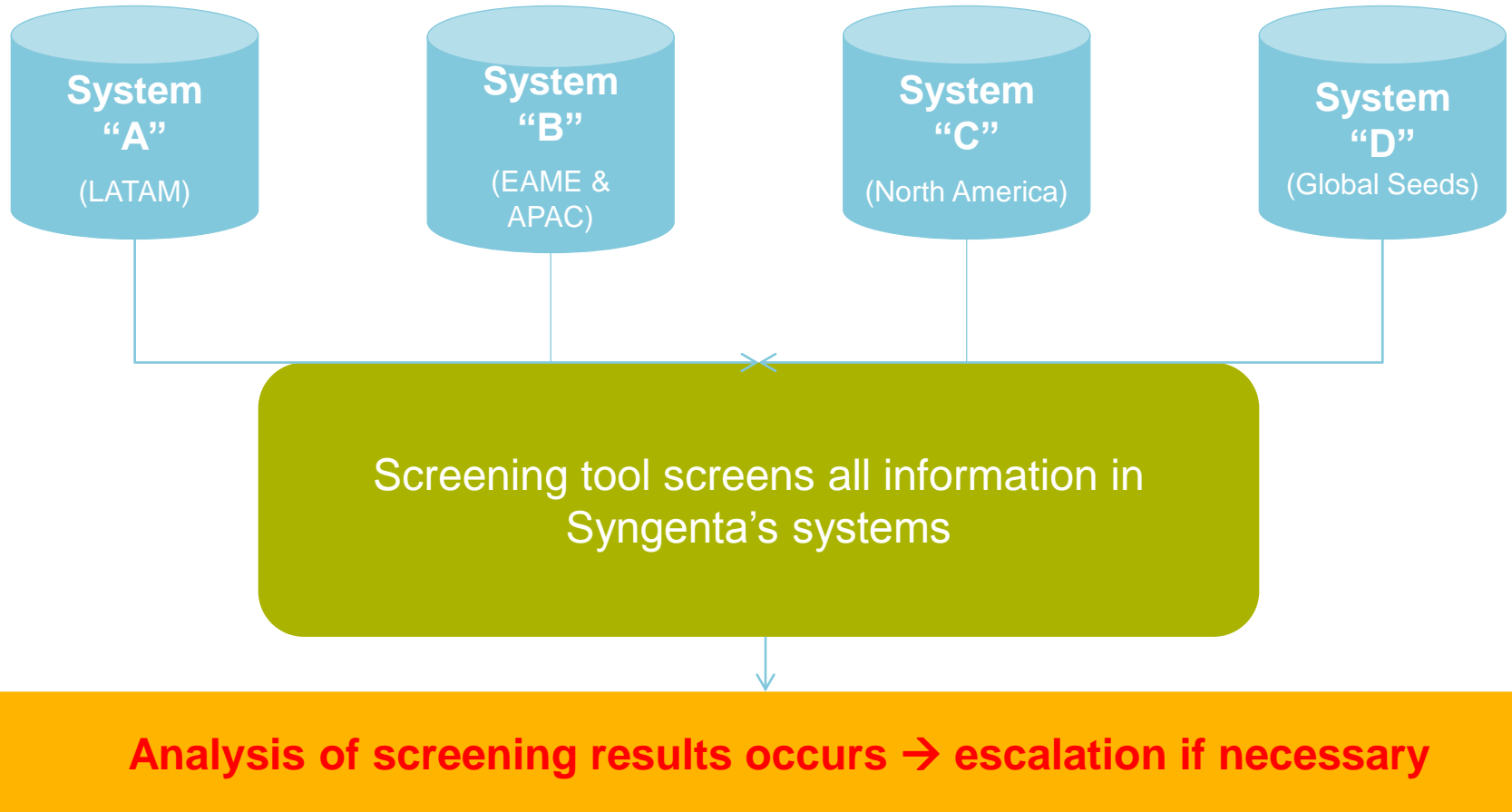
- Screening conducted for crop protection products, seeds, and samples.
- Syngenta's products: typically EAR99 (but still export compliance requirements).
- 3rd party provider is used to conduct screenings.
- Mass screenings completed based on customer and vendor master data lists in master data systems.
- Also *ad hoc* manual screening for parties not in master data system (e.g. banks for letters of credit).

Denied Party Screening – Syngenta’s Methodology (2)



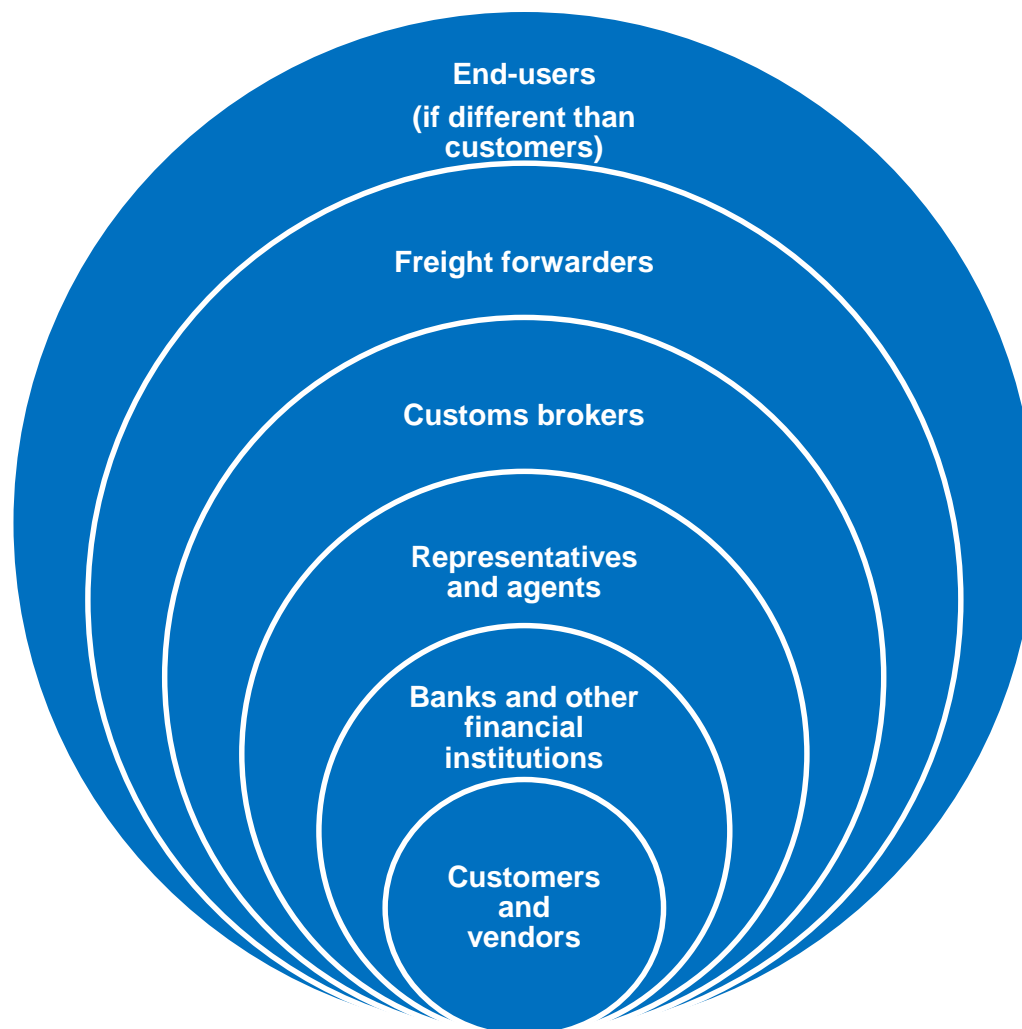
Denied Party Screening – Syngenta’s Methodology (3)

Regular mass uploads of Customer and Vendor Master Data



Denied Party Transactions – Who to Screen?

- **NOT a complete list!**
- **Should be periodically revised to add new business partners**



Denied Party Transactions – How Far to Screen?

Vendors

- Direct vendors?
- Vendors of the vendor?

Shareholders

- All major shareholders?
- Directors?

Deep Dives Necessary

- Internal company thresholds must be set

Enhanced Screening Scrutiny – Use of Internal Sharepoints

- Internal approval sharepoints can be used for certain sensitive markets

Year of Delivery	<input type="text"/>	Selling Entity	<input type="text"/>
Order Reference	<input type="text"/>		
Order Value	<input type="text"/>		
Product(s)	<input type="text"/>	Origin of Products	<input type="text"/>
Date of Planned Shipment	<input type="text"/>		
Sold to Customer	<input type="text"/>		
Ship To Customer	<input type="text"/>		
Forwarding Agent	<input type="text"/>		
Any other Parties Involved	<input type="text"/>		
Requested By	<input type="text"/>		
Assigned To	<input type="text"/>		
Approval Status	Requested		
Compliance & Trade Affairs	<input type="text"/>		
Supply Chain	<input type="text"/>		
Comments	<input type="text"/>		
Attachments	Click here to attach a file		

Enhanced Screening Scrutiny – Use of Due Diligence Questionnaires

- Due diligence questionnaires can be invaluable tools in sensitive markets
- Use of local employees to determine shareholder information

No.	Questions	Answer
D.1	Please describe customer's business activities (incl. size, number of employees)	<p>Sugar Production and business</p> <p>Raw sugar importation and refinery</p> <p>Agricultural materials (Seeds, Fertilizer and CP)business to be provided for farmers</p> <p>Company, in stock market of Tehran.</p> <p>Bank Diposit: 100,000 USD</p>
D. 2	Please describe main shareholders (if applicable)	Pooya Gostar Donya Trading Company (LTD). 91.68%, Natural persons
D.3	Source of capital/funds	Private share holders
D.4	Is the customer directly or indirectly government owned/controlled?	No
D.5	Media search English Please document any hits against the following key search terms: <i>Negative News</i> <i>Corporate Crime/Legal</i>	No hits

5. Denied Party Screening Advice

Key Screening Challenges (1)

- Screening of counterparty's name does not address risk of dealing with non-designated entity that is owned/controlled by DP/SDN.
- Other forms of indirect dealings can be caught (e.g. distributor relationships).
- Language issue:
 - Cyrillic alphabet – problem for some screening providers.
- Government agencies/private entities headed by listed individuals.
- Opaque ownership structures
 - Holding companies
 - Resistance to providing ownership information

Key Screening Challenges (2)

- PayPal case tells us that the simple existence of a screening tool/programme is not sufficient to avoid significant financial liability.
- Functionality of tools can change in subtle ways—do not count on automatically being alerted regarding:
 - Newly-added Restricted Party Lists
 - Changes in fuzzy language screening
 - Changes in tool operability—tool functionality is re-engineered frequently
 - Temporary tool disruptions due to maintenance

Screening Advice – Know Your Company’s Tool

- Once set up, do not assume that a screening tool can operate with no further intervention.
- If you are in-house counsel, don’t allow your strategic high-level role to make you disinterested in tool functionality.
 - Remember: the existence of a screening tool may mitigate but will not remove the possibility of liability.
- Work closely with operational employees managing the tool—ensure that there is proper “ownership” of the tool.
- Consider scheduling annual training workshops with representatives of the screening company.

Screening Advice – General

- Screening of counterparty's name may not be enough.
- For high-risk markets, best to screen counterparty and all intermediaries in the project, and end-users of products/equipment/services at issue.
- How much screening is enough?
 - Should determine higher-risk customers (screen shareholders → directors → CEO)
- Obtain detailed information on products in question—origin of products and their US CCL classification are important.
- If in doubt: request that the counterparty disclose its ownership.

Be Aware of “Red Flags” (1)

- The Bureau of Industry and Security (BIS) has published the following list of “red flag” indicators:
 - Customer or customer’s address is similar to one of the parties found on a denied party list.
 - Customer or purchasing agent is reluctant to offer information about end use of an item.
 - Buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.
 - Product's capabilities do not fit the buyer's line of business.
 - Item ordered is incompatible with technical level of country to which it is being shipped.
 - Customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.

Be Aware of “Red Flags” (2)

- BIS “Red Flags” continued ...
 - Customer has little or no business background.
 - Customer declines routine installation, training or maintenance services.
 - Delivery dates are vague or deliveries are planned for out-of-the-way destinations.
 - Freight forwarding firm is listed as product's final destination.
 - Shipping route is abnormal for the product and destination.
 - Packaging is inconsistent with the stated method of shipment or destination.

Screening Advice – Basic Checklist

- 1) Are any parties to proposed transaction on denied party lists?
- 2) Are any of the shareholder(s) of any party to the prospective transaction on applicable denied party lists?
- 3) What type of denied party are they?
- 4) What end-uses is the customer involved in generally?
- 5) What are the products, technologies or services to be supplied in the transaction?
- 6) Are the products/technologies subject to specific controls?
- 7) What is the specific end-use of the products, technology or services to be supplied to the prospective customer?
- 8) What is the specific location where the products will be installed/used?
- 9) What are the financial arrangements for payment for the products, technology or services to be supplied in the transaction?

Employee training – use relevant, real-life examples

- Example of Syngenta training slide:

EU Export and Embargo Restrictions – Example



1. EU origin seeds are supplied and sold to an entity located in Egypt. Note: Unlike the US sanctions, the fact that goods are of EU origin does not automatically trigger the applicability of EU sanctions.
2. The EU seeds are then re-sold to a customer located in Syria. This customer is a barred entity according to the applicable EU embargo and sanctions regulations.
3. The EU person who arranged the delivery of seeds to the Egyptian entity should have been aware of the intended end-use of the seeds (i.e. that the seeds were intended to be shipped to a barred entity in Syria).

Conclusions – Key Takeaways

- ✓ Company officials responsible for denied party screening must be aware of necessary rules and fluent with 3rd party screening systems.
- ✓ Analysis of new regulatory risks (e.g. new sanctions) cannot be left to a 3rd party provider.
- ✓ Creative approaches must be used to identify parties not yet in a 3rd party screening system.
- ✓ Be curious—a high-level role does not mean that you need not ask detailed questions about tool functionality.



Thank you for your time

