

# Effectiveness and circumvention II

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# Departing debate

If you see this sign –  
it's your time to  
take over the  
conversation 😊



- Rank 3 obstacles to sanctions working effectively you find the most impactful/relevant
  - Which actor do the impediments lie with?
  - Think of the difference between national and international sanctions.
- Is circumventing sanctions easier or harder now?

# Effectiveness challenges

- built to succeed, prevent collateral damage, and foster peace
- **is the lighter touch too light?**
- creating transnational crime
  - not only in target, but also neighbors
  - fostering dependence of leader upon organized crime
- no forcing compliance
  - problematic actors – black knights, not only Russia, China, proxies, and norm-breakers
- need for overcoming non-compliance creates more complex systems
  - US, EU, and regional measures to replace UN inaction
- maintaining consistency with threats and imposition
  - building sender resolve to enforce codes of conduct
- targeting non-state actors as a novel challenge
- building institutions with lessons learned capabilities

## **Black knight support**

- external actors, be they democratic or authoritarian, great powers or regional powers, states or international organizations, that act as guardians of autocracy or challengers of democracy in specific contexts.
- political ally that provides the sanctioned state with significant assistance

# Effectiveness challenges

- **Reporting fatigue**
- **Reporting hindrance** on the part of member states – lack of due process or judicial findings of transgressions amount to summary judgements of own citizens
- Opposite also true, when states were allowed to submit names of targets **without justification or provision of sufficient evidence**
- Inability of outright consensus vote still often leads to **impartiality at outset**
- **Adverse impacts on population** still present, most vulnerable segments of society still suffer steep price increases for basic goods, medicines, as well as safety concerns as target regimes shift costs (Iran, DPRK)
- Building **dependence on specific foreign assistance**
- Even **environmental impacts** when coping states attempt to hastily replace foreign imports by domestic production or refinement

# National implementation

- remains the **most complex challenge**
  - willingness and support remain politicized
- targeted measures exacerbate the obstacles of implementation
- automatic **“enabling” national legislation insufficient for targeted measures**
  - months-long lag of even the EU behind UN SC financial measures
- administrative capacity
- legal competence
- frequency of updates, alterations, listings and de-listings
- determining scope
- **definition issues:** differing categories of “luxury goods”, dual use, even military
- licensing issues, legal recourse and **litigation in breaching require the enactment of separate legislation**
- EU Court ruling means specific legislation must observe all potential rights

# Impact on design

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- Daily practice of implementation (2015)
- Burgeoning administration
- Shift of competencies to bureaucracy
- Huge enforcement spectrum
  - Decisions to litigate vary broadly
  - Rely on national follow-through
  - Demand further capacity
- Reputation costs increase in industry sectors
- High threshold for listing becoming even higher due to recourse litigation for national and international senders

40,000

Names on lists

1 day

List updates

4 billion +

Fuzzy logic combinations

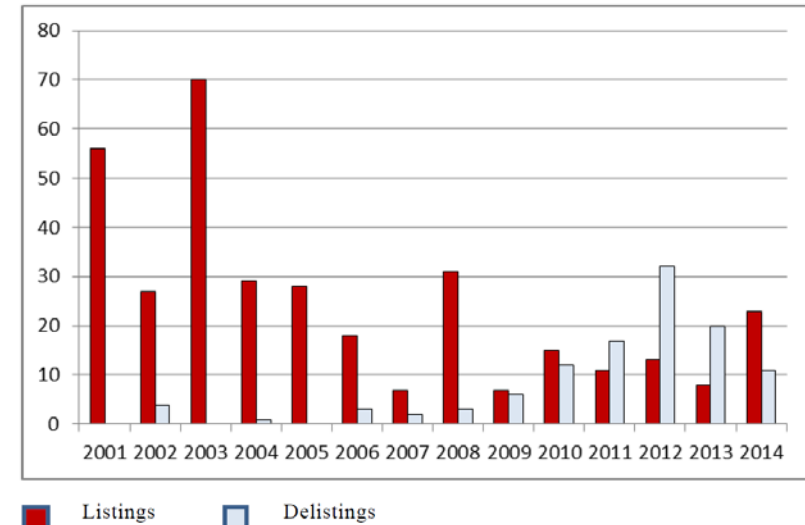
20%

Annual growth of lists

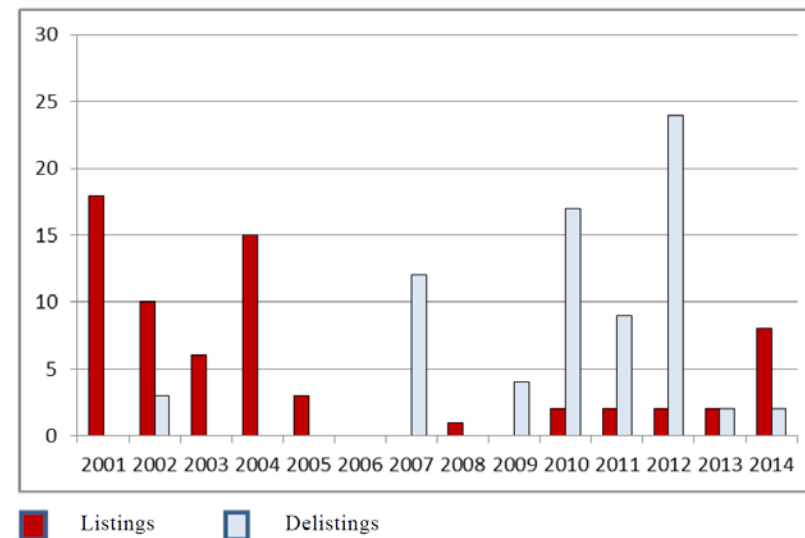
# Targeting as limitation?

- **International law breached?**
- **“due process”** including the right to a fair hearing, the right to judicial review, and the right to an effective remedy
- **Delisting required unanimous vote** in Sanctions Committee
- European Court of Justice - EC vs. Kadi 2008 + 2010 +2012
  - Case in Al-Qaeda sanctions implementation listing a SA businessman
- 2008 – every listing contains **“narrative summary”** of reasons for listing
- 2009 – UN establishes **Ombudsperson** – weak at first
- 2011 – Ombudsperson’s delisting proposal becomes **effective in 60 days unless blocked** by consensus vote in the Sanctions Committee (9/15)
- **However!** – Ombudsperson is only for the Al-Qaeda regime and no other listings of people or entities in UN (and thus EU) sanctions

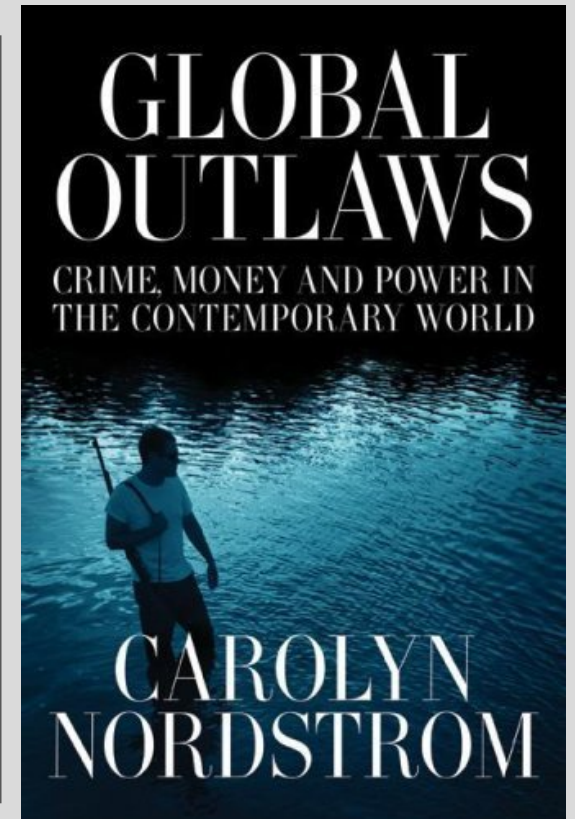
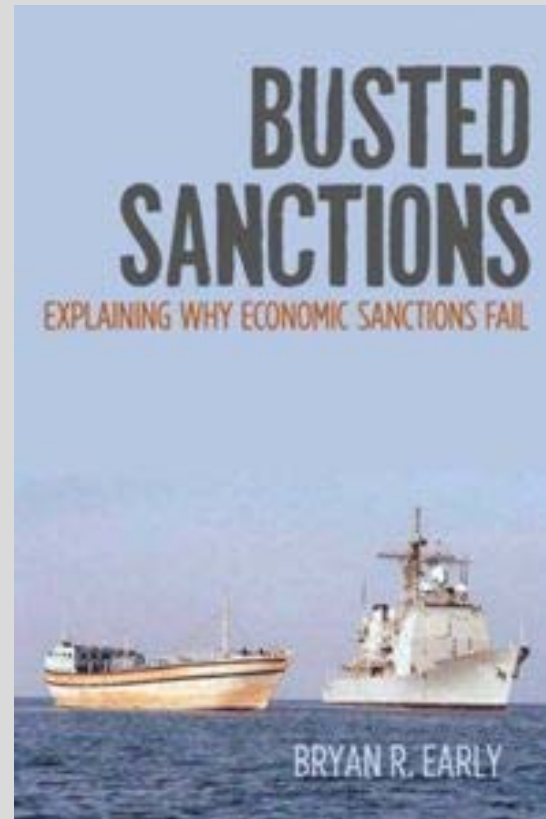
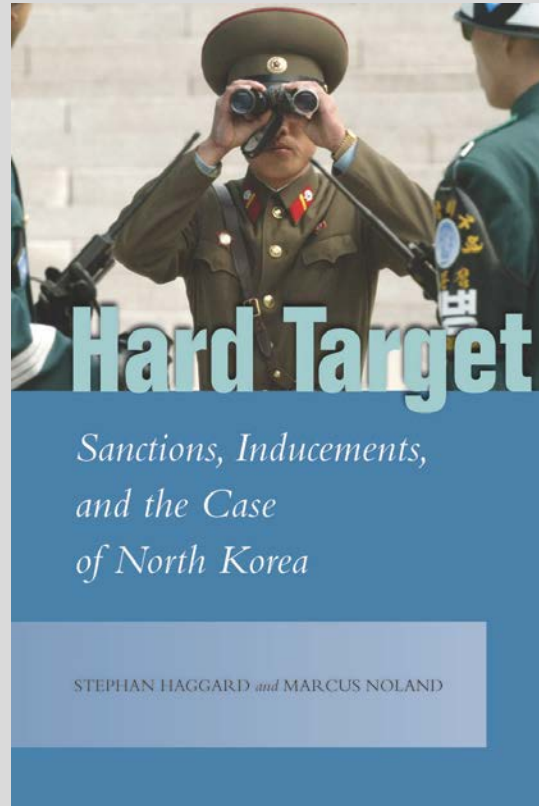
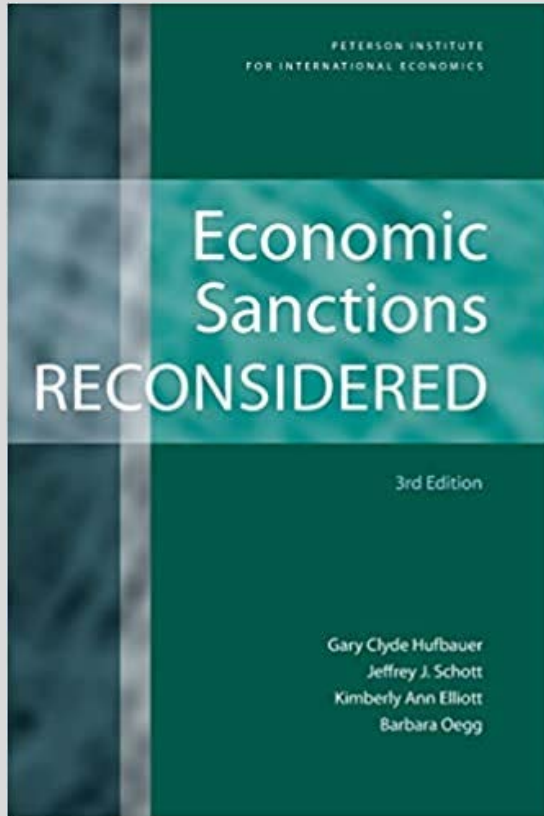
Listings and delistings of individuals



Listings and delistings of entities







# Sanctions effectiveness and circumvention

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# Circumventing sanctions



- Is circumventing sanctions easier or harder now?
- What factors do you consider when answering?

## *Offshore Survival Kit*

### The Complete Offshore Package for The International Man

1. Central American Citizenship — excellent visa-free travel opportunities (*click here*) & Driving Permit (retail: US\$40,000).
2. Anonymous Panama Corporation with Nominee Directors (retail: US\$999).
3. Asset Protection Offshore Trust (retail: US\$150).
4. International Driving Permit — 5 years validity (retail: US\$200).
5. Travel Agent ID Card — lifetime validity (retail: US\$300).
6. Anonymized Visa Gold Credit Card with immediate US\$170 credit line (retail: US\$900).
7. Baltic Offshore Bank Account without banking reference (retail: US\$250).
8. 2 Czech Anonymous Savings Accounts (retail: US\$1,000).
9. Swiss Maildrop Service with street address, phone, fax and US\$250 deposit, 3 years (retail: US\$800).
10. Anonymized Mobile Phone with Card (GSM) and 1 year's basic fees paid in advance, plus US\$300 connect charges deposit (retail: US\$1,200).
11. The Offshore Manual & Directory (retail: US\$147).
12. Multiple DHL air courier deliveries: US\$250.

The above items do normally retail together for *US\$46,146*. Our price: *US\$39,000*.

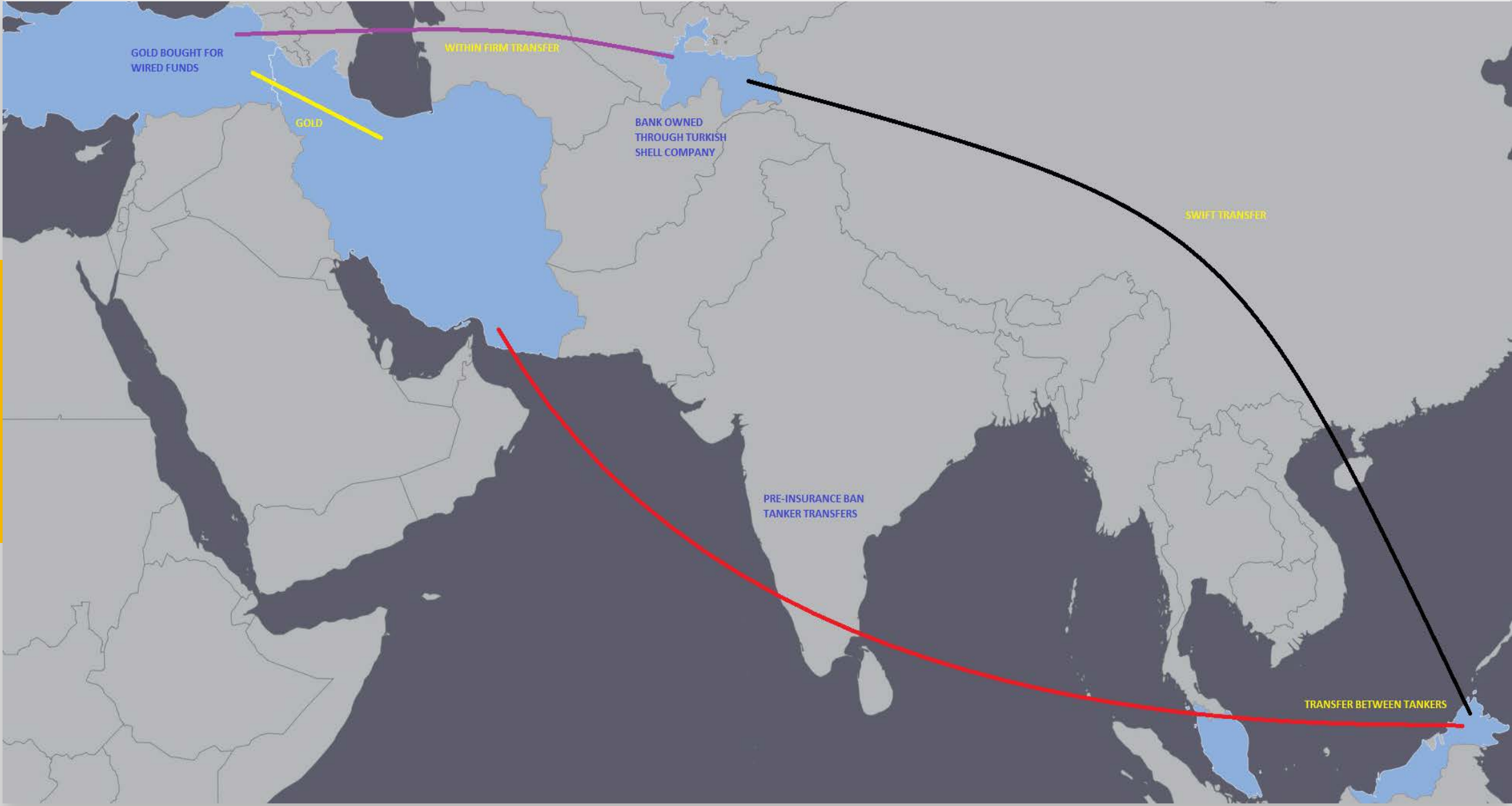
Delivery Time: 3–4 weeks.

# Circumventing sanctions

Illicit trade summer school, deadline in 2 months

<https://www.rug.nl/education/summer-winter-schools/illicit-trade/>

- Apart from large scale illicit trade i.e. not smuggling (*is permanent and illegal, illicit means temporary*)
    - Smuggling entails all manners of circumventing taxes, tolls, local legislation and accounts for as much as 60% of world trade (Nordstrom 2007)
  - Specifically designated items (arms, oil, finances, resources, etc.)
  - crucial role of
1. **volume**  
*Inspection of cargo flowing even through most modern ports stays below 5% of the transported shipments*
  2. **offshore banking**  
*Ownership of banks or financial institutions abroad greatly decreases transparency, with obvious tax detriments and through self loans*
  3. **covert ownership and laundering**  
*Within-corporation transfers, shell corporations, holdings allow for easy laundering*
  4. **brokering leniency**  
*Complex networks make tracking nigh impossible, and prosecution even harder by requiring multinational investigations and cross-border information sharing with extradition*  
– *high profile brokers become employed by governments (or even the UN) and can virtually be granted immunity ( Babak Zanjani...)*



# End user

- What would you expect and End User Certificate to look like?
- Who is capable of verifying its authenticity?



REPUBLIC OF TURKEY  
MINISTRY OF THE INTERIOR  
GENERAL DIRECTORATE OF SECURITY

Number : 11837526 – 65439(81220)-6060/141663  
Subject : End User Certificate

31/07/2013

## END USER CERTIFICATE

1. END USER			
NAME OF FIRM	REPUBLIC OF TURKEY, MINISTRY OF INTERIOR, GENERAL DIRECTORATE OF SECURITY.		
ADDRESS	DIKMEN STR. NR 11 CANKAYA		
CITY	ANKARA	COUNTRY: TURKEY	
TELEPHONE	+90 312 4623158	POSTAL CODE : 06400	
FAX	+90 312 4623129		
2. REPRESENTATIVE OF FIRM			
NAME	BEKIR AKARSU	TITLE	Head of Security Department
E-MAIL	bekir.akarsu@egm.gov.tr		
3. CONTACT PERSON			
NAME	ALI RASIT AMASYALI	TITLE	Inspector
TELEPHONE	+90 312 4623085	FAX	+90 312 4623029
E-MAIL	alirasit.amasyali@egm.gov.tr		
4. TYPE OR NATURE OF BUSINESS			
5. CONTRACT OF PURCHASE			
ITEM (Including S/W & Technology)	40 mm CS CARTRIDGES		
QUANTITY	160.050 PCS		
VALUE(USD)			
PURPOSE OF USE	CROWD CONTROL – RIOT CONTROL		
PLACE OF STORAGE	TURKISH GENERAL DIRECTORATE OF SECURITY WAREHOUSES		
IMPORTER OR ULTIMATE CONSIGNEE	IMPORTER: MERCAN PAZARLAMA VE TIC. LTD. ISTANBUL/TURKEY ULTIMATE CONSIGNEE: GENERAL DIRECTORATE OF SECURITY ANKARA/TURKEY		
6. STATEMENT OF END USER			
We, as end user of the above item(s), certify that we:			
1. will use it only for the purpose described above, and will not use it or its derivatives for the development or manufacturing of "Weapons of Mass Destruction", such as nuclear, biological and chemical weapons, or missiles.			
2. will not resell or reexport it or its derivatives. If it should be resold or reexported with appropriate reasons, we will get the prior acceptance from the exporter. (For the Nuclear Trigger items specified in the NSG Guideline Part 1, this prior acceptance is not necessary on the condition that exporter's government written permission is provided)			
3. will use it in compliance with International laws such as International Covenants on Civil and Political Rights and only for peaceful purposes through legitimate procedures.			
7. SIGNATURE OF AUTHORIZED PERSON			
NAME OF PERSON SIGNING THIS DOCUMENT	TITLE OF PERSON SIGNING THIS DOCUMENT	DATE(mm dd,yy)	
 Mustafa B. DEMIRER	On Behalf of the Minister Governor Deputy Undersecretary	31/07/2013	

# Terms of the trade

- **EUC - End User Certificate**
  - Document produced by the importing government to the exporting government **certifying that the importing government** has demanded the import and is in fact the **last destination of cargo** for which the export license is demanded
  - NOT STANDARDIZED
- **PDD – Point of Departure Diversion**
  - The production of a fake EUC to domestic authorities in order to acquire an export license
  - Typically – one legal shipment followed by EUC forgery, some countries do not verify EUC issuance by export destination
- **PDOD – Point of Delivery Onward Diversion**
  - More frequent and easier in countries marred by corruption
  - EUC is original, but confirmed fraudulently, strong broker role
  - No enforcement or even monitoring of EUC observance
  - Diversion usually occurs instantly, but not necessarily
- **C&C Circumvention and Concealment**
  - Popular in the “Ant Trade”
  - Concealment generally involves hiding items in among other goods

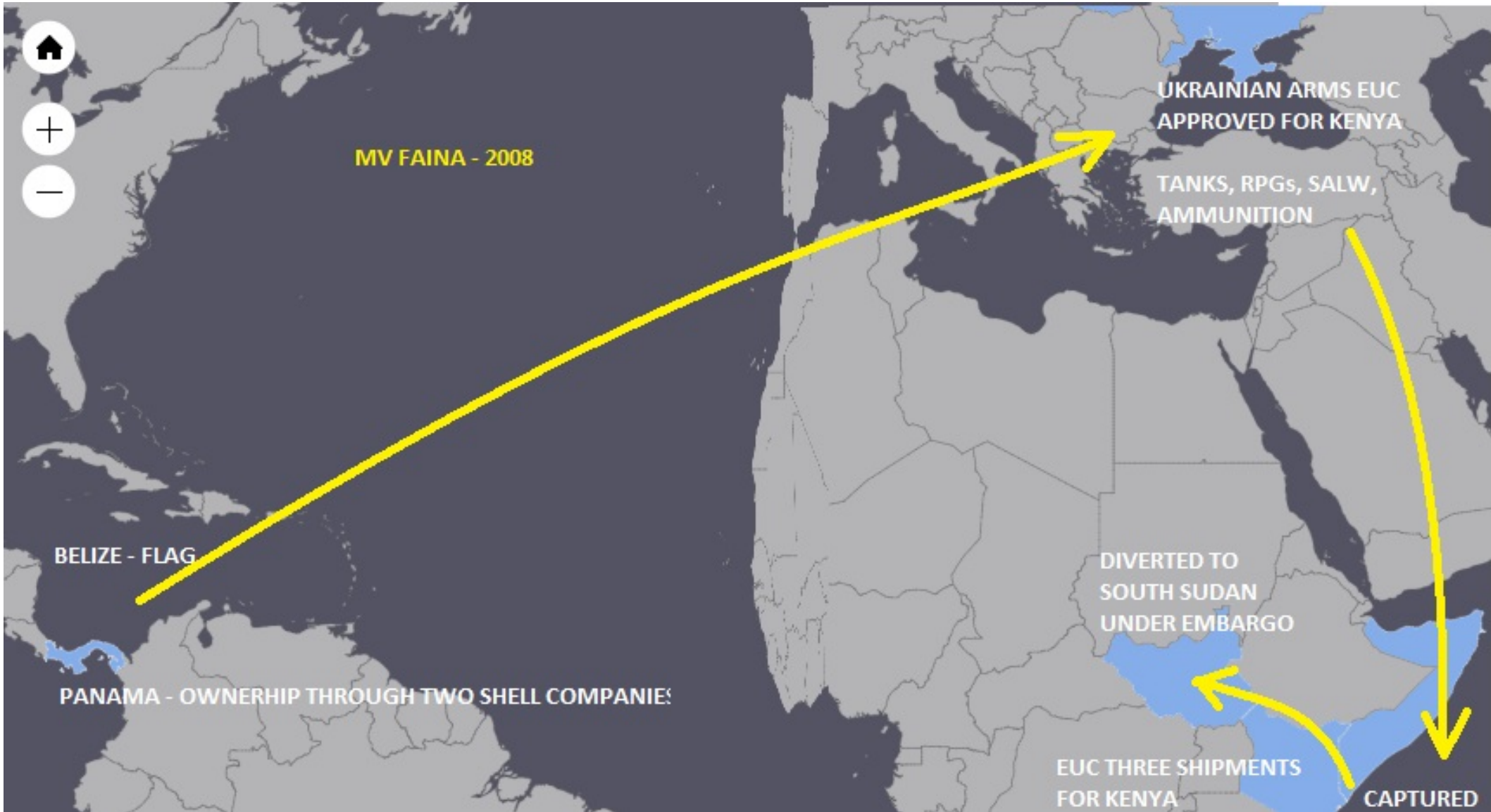
How much responsibility or “due diligence” should be observed by the seller?



## Destinations on flight plan of seized plane\*









# Secondary sanctions, circumvention, and effectiveness

- Instrument of punishment for breaches of primary sanctions
- Measure far more efficient than “naming and shaming”
- **Hard to achieve a consensus** vote on in any IO due to multiple alliances
  - UN council membership (repeated Guinea blocking )
  - AU Panel of the wise authoritarian membership
  - EU member alliances and nature of CFSP – **no EU secondary sanctions on states so far**
- **First UN** – Liberia for supporting RUF fighters in neighboring Sierra Leone
- **Second UN** – Eritrea for supplying arms to Somalia in breach of UN embargo
- **Since** – no country has been subject, although **entities are regularly being listed for breach of existing sanctions regimes**
- **US major secondary sanctions sender, shift around 2014 from minor fines to major fines, and then ACCESS**
  - Loss of access to US markets
  - Prohibition of US citizens to trade with entity
  - Travel bans and in country asset freezes
  - Forfeitures and fines most often against banking houses

# Secondary sanctions - extraterritoriality

- Primarily US
- Any activity that facilitates, approves, or supports transactions with sanctioned entities
- **Does not only concern US persons** – i.e. US citizens anywhere in the world
  - This is still an issue with EU countries, which selectively apply their own measures to its citizens ONLY on its territory
  - Particular issue with **brokering**
- 1996 Libya and Iran acts first mentioned “persons”
- 2010 Iran (Cisada) Act introduced expansion to any subsidiaries controlled or participated in by US companies
- Promoting **strict liability** – i.e. individual entities are responsible for their own transactions
  - States do not issue broader guidelines imposing heavy investigation burdens on fast altering sanctions regimes
  - Especially debatable with anti-terrorism sanctions
- Possibility for a **non-US bank to get sued in the US by non-US citizens** for breaching US sanctions by maintaining a terrorist affiliate account (NatWest, or Lloyd’s 2009)

# CAATSA

- 07/2017 Countering America's Adversaries Through Sanctions Act
- First bi-partisan act of Congress to curtail president
- President in turn cancelled the Office of Coordinator for Sanctions Policy in OFAC
- Russia, Iran, North Korea
  
- impose sanctions on persons in violation of UN or US sanctions
- impose sanctions on countries importing Russian arms (India, Indonesia, Turkey) S-400, Su-35
- Impose sanctions on support to Iran or DPRK export or import
  
- The Act converted the punitive measures previously imposed by Executive Orders into law to prevent the President the easing, suspending or ending of sanctions without the approval of Congress
  
- Lists get published, but not acted upon (famous 2018 Forbes oligarch fiasco)

# Secondary sanctions - extraterritoriality

- EU blocking regulation against US extraterritorial application
- The Regulation prohibits anyone bound by it from complying with any requirement or prohibition set out in a number of US sanctions
- No embargo on Cuba
- Iran and anti-terror sanctions observed by both

MAJOR U.S. SANCTIONS VIOLATIONS CASES 2009–2016

BANK NAME	HEADQUARTERS	YEAR	FINE
BNP PARIBAS	France	2014	\$8.9 Billion
CREDIT AGRICOLE	France	2015	\$787 Million
STANDARD CHARTERED	UK	2012	\$667 Million
ING	Netherlands	2012	\$619 Million
CREDIT SUISSE	Switzerland	2009	\$536 Million
ABN AMRO	Netherlands/UK	2010	\$500 Million
HSBC	UK	2012	\$375 Million*
LLOYD'S	UK	2009	\$350 Million
COMMERZBANK	Germany	2015	\$342 Million*
BANK OF TOKYO - MITSUBISHI	Japan	2014	\$315 Million
BARCLAYS	UK	2010	\$298 Million
DEUTSCHE BANK	Germany	2015	\$258 Million
BANK OF TOKYO - MITSUBISHI	Japan	2013	\$250 Million
CLEARSTREAM	Luxembourg	2014	\$152 Million
ROYAL BANK OF SCOTLAND	UK	2013	\$100 Million

Note: Major settlement threshold >/\$100 million. Fines may include penalties for anti-money laundering laws violations.  
\*Fines are part of larger settlements involving related financial crimes.

Sources: U.S. Department of Justice, Department of Treasury, NY Department of Financial Services, Financial Times, Wall Street Journal, Royal Bank of Scotland

Credits: Jonathan Masters, Julia Ro

COUNCIL ON FOREIGN RELATIONS

