

CLIENT ALERT:

U.S. AND UN INCREASE SANCTIONS AGAINST NORTH KOREA – INTERNATIONAL SHIPPING IMPACTED

September 25, 2017

Introduction

In reaction to recent ballistic missile and nuclear weapons tests by North Korea, the U.S. and the UN have both imposed significant new sanctions against North Korea. On August 5th and September 11th the UN Security Council unanimously passed resolutions designed to prohibit the import and export of critical commodities to and from North Korea. On September 21st President Trump issued an Executive Order which expands the Treasury Department's authority to target companies engaged in transactions with North Korea and also establishes a North Korean "180 Day Rule."

Executive Order of September 21, 2017

In response to North Korea's ballistic missile launches on July 3 and 28, 2017, and its nuclear test on September 2, 2017, on September 21st President Trump issued an Executive Order intended to negatively impact the North Korean economy, by means of the following sanctions:

1. The Executive Order requires the blocking of all property and interests in property in the United States, or within the possession and control of a U.S. person, of any person, as determined by the Secretary of the Treasury, in consultation with the Secretary of State:
 - A. to operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles or transportation industries in North Korea;
 - B. to own, control or operate any port in North Korea;
 - C. to have engaged in at least one significant importation from or exportation to North Korea of any goods, services or technology;
 - D. to be a North Korean person, including a North Korean person that is engaged in commercial activity that generates revenue for the government of North Korea or the Workers Party of Korea;

E. to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of any person whose property is blocked pursuant to this order;

F. to be owned or controlled by, or to have acted on behalf of, directly or indirectly, any person whose property is blocked pursuant to this order.

The blocking of any property in the U.S. of any person or entity designated under this section of the sanctions effectively bars that person or entity from the U.S. financial system.

2. No aircraft or vessel in which a foreign person has an interest that has landed at North Korea can land in the U.S. within 180 days after departing North Korea. No vessel in which a foreign person has an interest that has called at a North Korean port, or that has engaged in a ship-to-ship transfer with a vessel that has called at a North Korean port, can call at a port in the U.S. within 180 days of the call at North Korea or of the ship-to-ship transfer. OFAC has issued General License 10 to permit vessels and aircraft in distress to call in the U.S., even if they are prohibited from doing so by the new 180 day rule.

3. The Executive Order authorizes the blocking of any funds within the U.S. which “originate from, are destined for, or pass through” a foreign bank account owned or controlled by a North Korean person, or used to transfer funds in which a North Korean person has an interest. In addition, no U.S. person, wherever located, can facilitate such a transaction by a foreign person.

4. The Executive Order authorizes the imposition of sanctions, including the blocking of assets in the U.S., of any foreign financial institution that: (a) has knowingly conducted or facilitated any significant transactions on behalf of certain persons whose property is blocked under various Executive Orders relating to North Korea, or (b) has knowingly conducted or facilitated any significant transaction in connection with trade with North Korea.

Any non-U.S. shipowners trading to Korea will have to exercise extreme due diligence to insure that they are not providing transportation services to any entity which has been designated by the U.S. authorities under this Executive Order, and that they are not dealing with any port operator which has been designated. Also, any vessel that calls at a North Korean port cannot call in the U.S. for 180 days.

While it remains to be seen exactly how the U.S. Department of the Treasury will exercise the new authorities granted under this E.O., the current escalation of tensions between the U.S. and North Korea raise the possibility that this E.O. will be aggressively implemented. Regarding the 180 day rule, Secretary of the Treasury Mnuchin stated that his department will be working very closely with the U.S. Coast Guard in implementing the ban. As to foreign financial institutions Secretary Mnuchin said: “Foreign financial institutions are now on notice that, going forward, they can choose to do business with the United States, or with North Korea, but not both.” To review a copy of the September 21, 2017 Executive Order, click [here](#).

UN Security Council Resolution No. 2371 of August 5, 2017

This Resolution imposed the following economic sanctions on North Korea:

1. Banned all exportation of coal, iron, iron ore, lead and lead ore from North Korea and prohibited the transport of said North Korean origin commodities by the vessels of any Member State of the United Nations;
2. Banned all exportation of seafood from North Korea, and prohibited the transport of North Korean origin seafood by the vessels of any Member State of the United Nations;
3. Authorized the UN Committee monitoring the sanctions against North Korea to designate any vessels engaged in activities prohibited by various UN Resolutions relating to North Korea, and called upon UN Member States to ban said vessels from entry to their ports;
4. Prohibited new joint ventures or cooperative entities with North Korean entities or individuals.

UN Security Council Resolution No. 2375 of September 11, 2017

Building upon the economic sanctions Resolution 2371, which is primarily aimed at North Korean exports, this Resolution took aim at imports into North Korea as follows:

1. Bans the supply, sale or transfer of all condensates or natural gas liquids to North Korea;
2. Imposes a cap of 2 million barrels per year of all refined petroleum products imported to North Korea;
3. Restricts the supply, sale or transfer of crude oil to North Korea in any 2 month period after the Resolution was passed to the amount which any UN Member State supplied, sold or transferred to North Korea in the 12 months before the Resolution was passed;
4. Bans the exports of textiles from North Korea;
5. Bans UN Member States from providing work authorizations for North Korean nationals, after the date of the Resolution;
6. Prohibits all joint ventures or the expansion of current joint ventures with North Korean entities or individuals;
7. Calls upon Member States to inspect vessels, with the consent of the flag State, if there are reasonable grounds to believe that such vessels are carrying cargoes whose supply, sale or export is prohibited under various UN Security Council Resolutions;

Summary

The latest U.S. and UN sanctions against North Korea could have far-reaching impact on the North Korean economy. Shipowners will need to exercise great caution in any dealings with North Korea to insure that they are not violating either the UN Security Council Resolutions or the U.S. sanctions. If a shipowner engages in sanctionable activity under the U.S. sanctions, that shipowner could lose access to the U.S. financial system. Additionally, any vessel that calls at a North Korean port is banned from U.S. ports for six months thereafter.

Disclaimer: This Client Alert provides only a general summary of the Executive Order of September 21, 2017 and of UN Security Council Resolutions 2371 and 2375 and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the new Executive Order and the UN Resolutions. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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