

US sanctions: The changing landscape

This article provides a brief overview of the recent sanctions imposed upon North Korea, with an emphasis on how such sanctions impact the maritime community.



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Introduction

The United States sanctions regime is currently in a state of flux. Since January 2016, the US has lifted its secondary sanctions against Iran¹ and revoked the sanctions programmes against Sudan and Myanmar. While some sanctions programmes have been relieved, that does not mean that sanctions are not still playing a key role in US foreign policy. In the past year, sanctions have been ramped up against Russia, North Korea and Venezuela. In particular, the tension over North Korea's nuclear programme and testing of ballistic missiles has occasioned a substantial increase in sanctions designed to cripple the North Korean economy and bring about a change in that country's current belligerent stance.

Sanctions against North Korea

The current sanctions against North Korea are largely found in a series of Executive Orders (EOs), but are also contained in United Nations Security Council Resolutions and in the Countering America's Adversaries Through Sanctions Act. With respect to the maritime industry, the current North Korean sanctions prohibit the following activities:

- 1) the importation into the United States, directly or indirectly, of any goods, services or technology from North Korea²
- 2) the registering of a vessel in North Korea, or the owning, leasing, operating or insuring of a vessel flagged by North Korea³
- 3) the exportation or re-exportation, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services or technology to North Korea⁴
- 4) the exportation of certain commodities (including but not limited to coal, lead, iron ore, lead ore, seafood and textiles) from North Korea⁵
- 5) the provision of any services, including transportation services, to the Government of North Korea, officials of the Government of North Korea, the Workers' Party of Korea, officials of the Workers' Party of Korea, and numerous other individuals and entities that have been designated to the US Specially Designated Nationals List (SDN List).⁶

In addition, EO 13810 also imposes what is colloquially known as a '180 day rule' for all vessels calling at ports in North Korea. Under this rule, no vessel in which a foreign person has an interest that has called into a port in North Korea or engaged in a ship-to-ship transfer with a vessel that has called into a North Korean port in the previous 180 days may call at a port in the United States.



Please be advised that this article is not, and is not intended to be, a comprehensive analysis of all sanctions against North Korea.

Impact on shipping

While the majority of North Korean sanctions have been aimed at disrupting a wide variety of industries in North Korea, including shipping, the recent action issued by the US Office of Foreign Asset Control (OFAC) on 23 February 2018 is unique in that it is aimed directly at the shipping industry. This action was issued by OFAC to address the problem of North Korean shipping entities, and others, engaging in 'deceptive practices' to avoid the ramifications of US sanctions. Such deceptive practices include physically altering vessel identification (including IMO numbers), engaging in unauthorised ship-to-ship transfers, falsifying vessel or cargo documents, and disabling or manipulating vessel AIS systems. In an effort to dissuade shipping companies from aiding or abetting North Korean entities in engaging in such practices, OFAC designated 55 entities and vessels to the SDN List,⁷ which means that all US persons are prohibited from any dealings with those entities or vessels. It is anticipated that any additional shipping companies or vessels that are found to have assisted or engaged in any deceptive practice will also be added to the SDN List.

Also on 23 February, Reuters reported that the US is negotiating with key Asian allies over coordinated efforts to combat North Korean evasion of sanctions. The plans reportedly call for increased tracking, stepped-up inspections and possible seizures of vessels in Asia-Pacific waters suspected of violating sanctions against North Korea. As of the end of February, US authorities had declined to comment on the reported plans to expand the interception of suspected vessels or on reports that US Coast Guard officials might be deployed to Asia-Pacific waters to participate in vessel interdictions and inspections.

While the US authorities were quiet on the possibility of increased efforts to halt sanctions evasion, there is no question that it is a high priority. On 23 February, the Treasury Department issued a North Korea Sanctions Advisory.⁸ The advisory explains in some detail the deceptive shipping practices employed by North Korea to evade sanctions and lists suggested risk mitigation steps which shipowners can employ to ensure that they are not engaging in prohibited activities or dealing with entities or vessels on the US SDN List. Any shipowner trading near North Korea should review this advisory.

UN resolutions

In addition to this serious stance taken by the US, the UN is also aggressively enforcing its resolutions restricting trade with North Korea. On 30 March, the UN designated 27 vessels and 21 companies for their involvement in smuggling coal and oil in and out of North Korea. Under the latest UN designations, 13 vessels are subject to asset freezes and are prohibited from entry into ports of all UN member states, while another 12 are prohibited from port entry and are also subject to de-flagging by their flag states.

Conclusion

In sum, shipping companies should be very cautious when doing business with any entity that either is or may be connected in any way with North Korea. As this article goes to press, President Trump has accepted an offer to meet with Kim Jong-un, the leader of North Korea, possibly in June 2018. Although he has expressed hope that the meeting may result in an agreement that will resolve the issues over North Korea's nuclear programme, President Trump also stated on 28 March that 'unfortunately, maximum sanctions and pressure must be maintained at all cost' against North Korea in the meantime.

Given the potential upcoming meeting between President Trump and Mr Kim, it seems likely that OFAC will seek to strictly enforce all North Korean sanctions in order to place maximum pressure on the current North Korean regime leading up to any meeting. Accordingly, the advice of counsel should be sought in any situation in which the US sanctions against North Korea may be implicated.

Sanctions and club cover

By way of reminder to the club's members, the basic position is that club cover will not be prejudiced as long as no sanctions are breached. However, members should note that even in circumstances where they may not breach sanctions applicable to themselves, club cover may be prejudiced if any of the following sanctions are breached, as per the definition in the club's rules: UN, EU, UK, USA, the place of incorporation or domicile of the member or the ship's flag state.

The principal rules to note are:

- **Rule 17.2(5):** Club cover for any ship will cease automatically if this is employed in any trade/voyage which will expose the club to the risk of any adverse action or if such insurance is or becomes unlawful.
- **Rule 4.8:** No claim is recoverable if, eg it arises out of an unlawful trade or if it is unlawful to provide insurance for this (or if the Board determines that the trade was imprudent/improper).
- **Rule 6.22:** To the extent that the club is unable to recover any claim from reinsurers (or pooling partners in respect of poolable cover) due to any sanction, prohibition or adverse action, then any reimbursement from the club will be similarly reduced. This includes any failure or delay in recovery by the club caused by the reinsurers (or pooling partners) making payment into blocked accounts.

1 It should, however, be kept in mind that the primary sanctions against Iran affecting US persons remain in place and that non-US persons are still prohibited from dealing with Iranian entities on the US Specially Designated Nationals List or from involving the US financial system in any Iranian transactions.

2 EO 13570, dated 18 April 2011.

3 EO 13466, dated 6 June 2008.

4 EO 13722, dated 18 March 2016.

5 UN Security Council Resolution No 2371, dated 5 August 2017; UN Security Council Resolution No 2375, dated 11 September 2017.

6 EO 13551, dated 1 September 2010; EO 13687, dated 6 January 2015; EO 13722, dated 18 March 2016; Countering America's Adversaries Through Sanctions Act, 115 PL 44, 131 Stat. 886, 2017 Enacted HR 3364, 115 Enacted HR 3364; EO 13810, dated 17 September 2017.

7 A complete list of all shipping companies and vessels added to the SDN List through this action is available at: <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180223.aspx>.

8 The Advisory can be found at: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf