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Enhanced North Korea Sanctions Adopted

MARCH 8, 2016

The United Nations Security Council ("UNSC") approved a Resolution last week imposing new sanctions against North Korea in response to its recent nuclear and missile tests. This UNSC action follows the enactment of the North Korea Sanctions and Policy Enhancement Act of 2016 (the "Act") by the United States in late February.

Collectively, these measures will further curtail trade with North Korea through a rigorous inspection regime and impose new requirements on shipping companies relating to North Korea. Under the Act, the President will have new authority to impose "secondary sanctions" against third-country (e.g., non-US and non-North Korean) nationals determined to have supported North Korea's illicit weapons, money laundering, and related activities—a jurisdictional reach that had previously extended only to requirements set forth under the Iran sanctions program.[1] The implementation of these measures requires close monitoring by US and foreign firms with operations in the Asia-Pacific region.

UNSC Resolution 2270

On March 2, 2016, the UNSC unanimously agreed to Resolution 2270, which imposes a variety of new restrictions on financial and commercial dealings with North Korea. The Resolution is particularly significant given its approval by China, which has historically been reluctant to impose new sanctions against neighboring North Korea. Resolution 2270 will require all member states to take the following measures.

- inspect all cargo transiting to and from North Korea, not just cargo suspected of containing prohibited items;
- prohibit leasing or chartering vessels or aircraft and providing crew or other services to North Korea and require all states to ban North Korean flights and deny entry into ports of any vessel suspected of carrying prohibited items;
- freeze the assets and other economic resources owned or controlled by the North Korean government if associated with its nuclear weapons program or the development of prohibited delivery systems;
- freeze the assets of and impose a travel ban against numerous individuals and entities associated with North Korea's nuclear, military, and intelligence apparatus;[2]

- prohibit the export of an expanded list of "luxury" goods to North Korea;[3]
- ban the opening of offices of North Korean financial institutions abroad and the opening of any new offices of foreign financial institutions within North Korea; and
- expand the North Korean arms embargo to include small arms and light weapons.[4]

These measures will generally be implemented by United Nations member states through additional legal measures and guidance.

North Korea Sanctions and Policy Enhancement Act of 2016

On February 18, 2016, President Obama signed the North Korea Sanctions and Policy Enhancement Act of 2016. Its scope is substantially broader than Resolution 2270 in targeting North Korea's weapons development and illicit financing activities and in creating new secondary sanctions against third-country firms that engage in certain types of activities in or with North Korea.

The Act provides for both mandatory and discretionary sanctions based on several criteria. The President must designate any firm or person determined to have knowingly assisted with the development of North Korea's weapons of mass destruction program, delivery systems, or other military programs; exported luxury goods to North Korea; engaged in money laundering, counterfeiting, or narcotics trafficking on behalf of North Korea; engaged in cyber-attacks on behalf of North Korea; or dealt in precious metals, minerals, or software related to weapons development. If a firm is designated under this "mandatory" subsection of the Act, then the President must impose asset-blocking requirements and prohibit all transactions in the property and property interests of that firm.

The President also has "discretionary" authority to select from a menu of sanctions to impose against persons who provide any material assistance to persons designated under UNSC resolutions, engage in bribery in North Korea, assist in the misappropriation of North Korean funds, or financially support any of these activities. Those designated under this discretionary provision of the Act may be subject to one or more of the sanctions described in the Act, including the application of special measures for US financial institutions to address money laundering; prohibitions on foreign exchange; prohibitions on transfers of credit or payments in or through the US financial system; and certain other measures related to procurement, travel, and shipping.[5]

Finally, within 180 days of enactment, the Secretary of the Treasury (via authority delegated to the Financial Crimes Enforcement Network ("FinCEN")) must determine whether North Korea is a "jurisdiction of primary money laundering concern" under Section 311 of the USA PATRIOT Act. Upon such a finding, FinCEN must impose one or more "special measures" under Section 311, which range from new diligence and recordkeeping requirements for US financial institutions to a prohibition on direct or indirect provision of correspondent and payable-through accounts for North Korean financial institutions. If finalized, this action would result in further extraterritorial impact of US policy toward North Korea.[6]

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Key sanctions provisions under the Act will only come into effect when the President makes determinations pursuant to these new authorities. For example, the President could utilize these authorities to curtail the access of foreign financial institutions to the US financial system (and their overall financial dealings with US firms) if they were found to have facilitated North Korea's illicit activities. Under comparable provisions in the Iran sanctions program, the US government designated only a small handful of relatively minor foreign financial institutions, effectively minimizing possible disruptions to global trade caused by designations. A similar pattern may occur in this case. Implementation of the Act will require close monitoring in the weeks and months ahead.

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[1] However, under recently-issued Iran sanctions relief, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") has lifted most Iran-related secondary sanctions, as we have previously described.

[2] Upon passage of Resolution 2270, OFAC blocked a number of these North Korean persons as well.

[3] In 2010, the United States also prohibited the export of luxury goods into North Korea under Executive Order 13551.

[4] The United States maintains a separate embargo against North Korea for the export of armaments and dual-use goods. *See* 22 C.F.R. Part 126; 15 C.F.R. Part 746.

[5] The Act is ambiguous as to whether those designated under this discretionary authority would also be subject to the same asset-blocking requirements as those named under the mandatory provision. However, the construction and intent of the Act, as well as its parallel to similar Iran sanctions legislation, suggest that exercise of the discretionary authority under the Act would not likely result in an automatic asset-blocking requirement.

[6] *See* 31 U.S.C. § 5318A.

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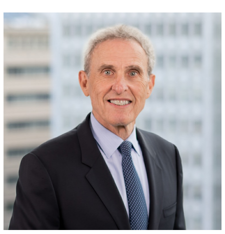

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