President Expected to Sign New Sanctions Bill to Constrain Presidential Authority While Expanding "Sanctions Toolkit" for Russia, Iran, and North Korea

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On July 27, the US Senate passed the Countering America's Adversaries Through Sanctions Act (CAATSA), a comprehensive sanctions bill that expands US sanctions against three countries: Russia, Iran, and North Korea. The legislation has also passed the US House of Representatives and is now awaiting the President's signature. One notable aspect of CAATSA is the codification of existing sanctions against Russia, which were previously implemented through executive action. As a result, the legislation constrains the President's ability to ease such sanctions without congressional approval.

CAATSA also establishes and expands a wide range of authorities for the imposition of new sanctions to address US national security and foreign policy challenges in the three countries. For example, the legislation further tightens US sectoral sanctions against Russia, which has been an ongoing compliance challenge for financial, energy, and other firms since their 2014 implementation. CAATSA also targets certain investments and commercial activities, including those related to Russia's construction of energy export pipelines.

With respect to Iran and North Korea, the legislation authorizes the expansion of existing US sanctions against these countries, including their potential applicability to non-US firms, e.g., by establishing mandatory sanctions for those engaged in defense trade with Iran and both mandatory and discretionary sanctions for those engaged in a wide range of trading activity with North Korea.

Russia

Codification and Congressional Review

As noted, CAATSA codifies existing sanctions against Russia and requires that the President submit notices or reports to Congress prior to taking certain actions with respect to such sanctions. This requirement covers not only Obama-era executive orders concerning Ukraine and cyber-enabled threats and prior statutory sanctions, but also additional Russia sanctions established by CAATSA. In doing so, the legislation effectively constrains presidential action on the termination of sanctions, the waiver of the applicability of sanctions, and “a licensing action that significantly alters United States' foreign policy with regard to” Russia. For actions requiring reports by the President, Congress would generally have 30 days to review the action, during which time “the President may not take that action unless a joint resolution of approval with respect to that action is enacted” by Congress. If Congress enacts a joint resolution of disapproval, then the President may not take the action. CAATSA also delineates limitations on action during presidential consideration of a joint resolution of disapproval (e.g., between the time it is enacted and the time he may veto the joint resolution) and establishes procedural rules for the enactment of a joint resolution.

Modification of US Sectoral Sanctions

CAATSA makes several important modifications to existing Russia sanctions. First, it specifically authorizes the Secretary of the Treasury to subject Russian state-owned entities operating in the railway and metals and mining sectors to “sectoral sanctions” imposed under Executive Order 13662. Second, CAATSA shortens the tenor for “new debt” of designated Russian financial firms under Directive 1 from 30 to 14 days. Because such tenor applies to permissible payment terms, this action effectively precludes most US financial dealings with such firms. The legislation similarly shortens the permissible tenor for “new debt” of designated Russian energy firms under Directive 2 from 90 to 60 days. Finally, CAATSA would expand the territorial applicability of Directive 4. Currently, Directive 4 prohibits the direct or indirect provision, exportation, or reexportation of goods, services (other than financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects in Russia and its claimed maritime area. Under CAATSA, the prohibition applies to deepwater, Arctic offshore, or shale projects that have the potential to produce oil anywhere, if the project involves designated Russian firms under Directive 4 that have a property interest of at least 33 percent in such a project.

New Sanctions Authority

CAATSA also empowers the President to make new sanctions designations for certain conduct. Against the wishes of some European countries, CAATSA authorizes the President to impose five or more measures from a sanctions “menu” against any person found to have “knowingly” made an investment that directly and significantly contributes to the enhancement of Russia's ability to construct energy export pipelines, or against those who sell, lease, or provide to Russia for the construction of such pipelines certain goods, services, technology, information, or support with a fair market value of $1 million or more or an aggregate fair market value of $5 million or more over a 12-month period.[1] This authority is similar to that of secondary sanctions imposed against non-US persons for engaging in targeted dealings with Iran.[2]

Other new sanctions authorized under CAATSA target:

- Persons investing ($10 million or more, including through any combination of $1 million or greater investments within a 12-month period) in or facilitating the “unjust” privatization of state-owned Russian assets;
- Persons supporting the supply of financial, material, or technological support that materially contribute to Syria's acquisition or development of WMD and certain conventional

weapons; and

- Persons engaging in significant transactions with the Russian intelligence or defense sectors.

CAATSA newly authorizes the President to impose blocking sanctions against those who knowingly engage in significant activities undermining cybersecurity against any person or government on behalf of Russia. The legislation also authorizes the imposition of restrictive measures from a sanctions “menu” against those who provide financial services in support of such activities.

Other Modifications of Existing Sanctions

CAATSA modifies two existing statutes, the Ukraine Freedom Support Act of 2014 (UFSA) and the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SIDESUA). Sections 225 and 226 of CAATSA amend UFSA so that the President would be required – unless he determined it was not in the national interest to do so – to (i) impose measures from a sanctions menu against foreign persons who knowingly make a significant investment in projects intended to extract crude oil from deepwater, Arctic offshore, and shale formations in Russia (UFSA currently provides discretionary authority for such action); and (ii) prohibit correspondent and payable-through accounts in the United States by foreign financial institutions that knowingly engage in certain significant transactions, such as those involving support for Syrian arms acquisition and Russian deepwater, Artic offshore, and shale oil projects.

In addition, Section 227 of CAATSA would require the President under SIDESUA (subject to presidential waiver and certification) to impose blocking sanctions against Russian government officials, their associates and family members found to be engaged in significant corruption. Section 228 of CAATSA also contains a comparable measure making mandatory the imposition of sanctions against those who evade or attempt to evade Russia sanctions.

Iran

Under the Joint Comprehensive Plan of Action, the United States committed to lifting nuclear-related sanctions against Iran. Under CAATSA, Congress would impose new sanctions against Iran for non-nuclear related reasons, such as activities relating to Iran's ballistic missile program, support for terrorism, and human rights abuses.

Section 104 of CAATSA requires the imposition of blocking sanctions against any person determined to knowingly engage in activity that materially contributes to Iran's ballistic missile program and other Iranian WMD activities. Section 105 of CAATSA would apply existing terrorism-related sanctions against the Iran's Islamic Revolutionary Guard Corps (IRGC), which is already sanctioned under WMD and human rights sanctions, in addition to the Quds Force that is already targeted by US terrorism-related provisions. Section 106 of CAATSA requires that the Secretary of State identify, and notify Congress concerning, Iranian human rights abusers. The legislation also grants the President discretionary authority to impose blocking sanctions against such human rights abusers. Section 107 of CAATSA generally requires the imposition of blocking sanctions against persons who knowingly violate the arms embargo against Iran. In addition, Section 108 requires at least a quinquennial review of existing blocking sanctions against Iranian persons to determine whether WMD and/or terrorism-related sanctions can be applied to such persons. All of these sanctions could be waived by the President on a case-by-case basis based on a determination that such waiver is vital to the national security interests of the United States. In sum, these provisions are intended to reinforce and expand existing, non-nuclear-related US sanctions measures against Iran.

North Korea

CAATSA contains several modifications and new sanctions authorities to address the escalating tensions in east Asia caused by the North Korea nuclear program. In connection with such action, Senator Bob Corker, chairman of the Senate Foreign Relations Committee, has insisted on a commitment from the House of Representatives to impose further enhancements to North Korea sanctions "in the near future."

Section 311 of CAATSA expands the North Korea Sanctions and Policy Enhancement Act of 2016 (NKSPEA) in several ways. It increases mandatory blocking sanctions, including by applying them to those connected to trade with North Korea in certain extractives and rare earth minerals and in rocket, aviation, or jet fuel (with a limited exception for non-North Korean passenger aircraft). This section also broadens the scope of NKSPEA's defense export controls, mandates sanctions against those engaged in transactions involving vessels or aircraft designated by the United States or United Nations, and mandates sanctions against those who knowingly maintain a correspondent account with any North Korean financial institution.

Furthermore, CAATSA expands discretionary sanctions under NKSPEA, including with respect to transactions with the government of North Korea in coal, iron, or iron ore; in textiles; in crude oil, refined petroleum, natural gas, and other energy products; in food and agricultural products; and in funds or property transfers that materially contribute to a violation of a United Nations Security Council resolution. The legislation also requires the President to consider the imposition of sanctions against several specific entities, including The Korea Shipowners' Protection and Indemnity Association, Chinpo Shipping Company (Private) Limited (Singapore), The Central Bank of the Democratic People's Republic of Korea, and Kumgang Economic Development Corporation (KKG).

CAATSA imposes new restrictions on the entry into the navigable waters of the United States, and on the transfer of cargo in any US port, of vessels owned by North Korea or other countries identified by the President as acting inconsistently with US and United Nations sanctions targeting North Korea trade.

Other key areas in which CAATSA expands NKSPEA sanctions include:

- Establishing a general prohibition on correspondent accounts used by foreign financial institutions to provide significant financial services indirectly to persons designated pursuant to NKSPEA;
- Increasing the scope of defense trade by foreign governments that would result in a prohibition on their receipt of US foreign assistance; and

– Broadening the President's reporting requirement to Congress under NKSPEA on foreign seaports and airports that knowingly facilitate sanctioned trade with North Korea or fail to implement effective enforcement measures (Congress seeks particular findings with respect to ports in China (Dandong and Dalian), Iran (including Bandar-e ʻAbbās and Kish), Russia (Nakhodka, Vanino, and Vladivostok), and Syria).

Conclusion

As noted above, CAATSA expands the scope of sanctions applicable to Russia, Iran and North Korea in key sectors and types of transactions. The legislation also affects the manner in which the President can exercise sanctions authority with respect to targeted dealings with these countries. On the one hand, CAATSA seeks to constrain presidential authority, particularly concerning possible steps to ease or waive Russia sanctions, on the other hand, the legislation expands the "sanctions toolkit" available to the President in addressing difficult geopolitical challenges presented by Russia, Iran and North Korea.

In light of these changes, global companies should remain vigilant in monitoring possible sanctions designations and restrictions that are likely to result from the implementation of CAATSA and consider how best to ensure that internal compliance policies properly address CAATSA-related sanctions risks in ongoing business dealings.

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[1] The menu of options includes: limitations on financing from the Export-Import Bank of the United States, restrictions on US export privileges, prohibitions on US financial institutions from providing credit to sanctioned persons, prohibitions on the sanctioned person's ability to receive a US Federal Reserve designation as a primary dealer or act as a repository of US government funds, prohibitions on US procurement, prohibitions on foreign exchange, prohibitions on banking transactions, prohibitions on acquiring or transferring property subject to US jurisdiction, exclusion of corporate officers from the United States, and application of any of these sanctions measures on principal executive officers.
[2] E.g., 22 U.S.C. § 8742.

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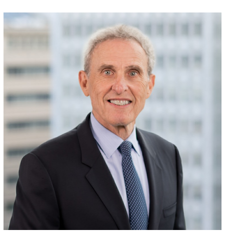

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