

International Trade Currents

Expansion of Sanctions Against North Korea

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In response to growing concerns about North Korea's nuclear tests and other conduct that jeopardizes U.S. national security interests, as well as the security, economic, and humanitarian interests of the global community, the United States and the United Nations recently have ratcheted up sanctions targeting North Korea.

On February 18, President Obama signed into law the North Korea Sanctions and Policy Enhancement Act of 2016 (Pub. L. No. 114-122). On March 2, the UN Security Council adopted Resolution 2270. Together, these measures substantially expand the scope of North Korea sanctions. The European Union has also implemented the sanctions mandated by the UN Security Council, to add to its existing North Korea sanctions. These sanctions are binding on all nationals of and entities incorporated in each EU member state. Companies should take these new measures into account in their trade compliance procedures and in their transaction-related due diligence.

North Korea Sanctions and Policy Enhancement Act

Under existing law, U.S. nationals and companies already are prohibited from engaging in most activity involving North Korea. In general, imports from North Korea into the United States are prohibited;¹ exports and reexports to North Korea require a license, except for food and medicine;² and the property of North Korea and designated North Korean persons is blocked and may not be dealt in by U.S. persons.³ However, since these restrictions pertain primarily to the conduct of U.S. persons, they generally do not penalize conduct of non-U.S. persons that could frustrate the underlying U.S. national security and foreign policy goals. The newly enacted legislation changes that by requiring the President to impose sanctions on persons who engage in conduct that frustrates those goals. Thus, the President must designate as sanctions targets persons who engage in various dealings with North Korea related to (among other things): weapons or weapons delivery systems; trade in luxury goods; facilitation of censorship; facilitation of human rights abuses; supporting the government through money laundering, counterfeiting, smuggling, or narcotics trafficking; undermining cybersecurity; and trade in specified commodities.⁴

In addition to the foregoing mandatory sanctions targets, the law authorizes the President to designate other sanctions targets, including persons engaged in bribery or corruption involving North Korean officials.⁵

The consequences of a person's designation as a sanctions target under the North Korea Sanctions and Policy Enhancement Act of 2016 include:

- The property and interests in property of such persons are blocked and transactions in them are prohibited;⁶
- The blocking extends to a person determined to be owned or controlled by or to have acted or purported to have acted for or on behalf of a designated person;⁷
- Designated persons are barred from participating in U.S. government procurement;⁸ and
- Designated persons may be denied entry into the United States.⁹

In addition to the expansion of sanctions targets, the Act puts in place new measures related to traffic through ports and airports "at which inspections of ships, aircraft, and conveyances originating in North Korea, carrying North Korean property, or operated by the Government of North Korea are not sufficient to effectively prevent the facilitation" of the various activities found to be harming U.S. national security and foreign relations interests. Goods transported through such a port or airport may be subject to enhanced inspection before entering the United States, and vessels, aircraft, or conveyances found to have facilitated any conduct of concern may be seized and forfeited.¹⁰

UN Security Council Resolution 2270

The newly enacted U.S. law sanctions are reinforced by UN Security Council sanctions addressed to similar categories of conduct by North Korea.¹¹ Measures covered by the UN sanctions (and implemented in U.S. and EU law) include:

- Expansion of existing arms embargo to include "small arms and light weapons" (¶ 6);
- Obligation to expel persons determined to be acting as agents of North Korean sanctions targets or of persons assisting in the evasion or violation of North Korean sanctions (¶¶ 13-14);
- Prohibition on teaching or training North Korean nationals in areas that could contribute to North

Korea's nuclear proliferation activities, including advanced physics, geospatial navigation, and advanced computer simulation (¶ 17);

- Obligation to inspect cargo originating in or destined for North Korea or brokered or facilitated by North Korea or its nationals (¶ 18);
- Prohibition on leasing or chartering vessels or aircraft or providing crew services to North Korea, sanctioned persons, and persons determined to be assisting sanctions evasion (¶ 19);
- Obligation to deny permission to any aircraft to take off from, land in, or overfly a country's territory if there are reasonable grounds to believe the aircraft is carrying items prohibited by North Korean sanctions resolutions, unless the aircraft lands and is inspected (¶ 21);
- Embargo on trade with North Korea in coal, iron, and iron ore, and gold, titanium ore, vanadium ore, and rare earth minerals (¶¶ 29-30);
- Prohibition on sale or supply of aviation fuel to North Korea (¶ 31);
- Prohibition on opening and operation of new branches, subsidiaries, and offices of North Korean banks (and requirement to close existing ones within 90 days) (¶ 33);
- Prohibition on establishing joint ventures with or taking ownership interests in North Korean banks (and requirement to terminate such existing relationships within 90 days) (¶ 33);
- Prohibition on financial institutions opening new offices, subsidiaries, branches, or accounts in North Korea (and requirement to close existing ones within 90 days if there are reasonable grounds to believe that such financial services could contribute to North Korea's nuclear or ballistic missile programs or other prohibited activities) (¶¶ 34-35);
- Prohibition on financial support for trade with North Korea (including export credits and guarantees of credit), where such support could contribute to nuclear or ballistic missile programs or other sanctioned conduct (¶ 36).

1. Exec. Order No. 13570, § 1, 76 Fed. Reg. 22,291 (Apr. 20, 2011); *see also* 31 C.F.R. § 510.201(c) (codifying import ban).
2. 15 C.F.R. § 746.4; *see also* 22 C.F.R. § 126.1(a) & (c) (prohibition on trade with North Korea in ITAR-controlled articles and services). Food and medicine exports are allowed without a license, provided that the food or medicine is classified under the Export Administration Regulations as “EAR 99.”
3. 31 C.F.R. § 510.201(a) & (b).
4. Pub. L. No. 114-122, § 104(a).
5. *Id.* § 104(b).
6. *Id.* § 104(c).
7. *Id.* § 104(d).
8. *Id.* § 204(a).
9. *Id.* § 206.
10. *Id.* § 205.
11. S.C. Res. 2270, U.N.Doc. S/RES/2270 (Mar. 2, 2016).

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