

US Announces New North Korea Designations and Global Shipping Advisory

February 27, 2018

On February 23, 2018, the US Treasury Department's Office of Foreign Assets Control ("OFAC") announced what it described as the "largest North Korea-related sanctions tranche to date, aimed at disrupting North Korean shipping and trading companies and vessels to further isolate the regime and advance the US maximum pressure campaign."

OFAC added a total of 56 new entries to the US Specially Designated Nationals List, comprising one individual, 27 entities, and 28 vessels located, registered, or flagged in North Korea, China, Singapore, Taiwan, Hong Kong, Marshall Islands, Tanzania, Panama, and Comoros.

In a parallel action, OFAC, the US State Department and the US Coast Guard issued a global advisory to highlight the significant sanctions risks related to shipments of goods to and from North Korea, including for insurers, flag registries, shipping companies and financial institutions.

These new North Korea sanctions measures expand the growing set of US trade restrictions targeting North Korea, and implement authorities under the North Korea Sanctions Policy and Enhancement Act of 2016 and the North Korea sections of the Countering America's Adversaries Through Sanctions Act of 2017.

As the US continues to implement its "maximum pressure" economic campaign, active monitoring of the policy space will remain critical, particularly with respect to the potential for additional US designations and enforcement actions. This is because, as stated in the global shipping advisory, "the United States is committed to disrupting North Korea's illicit funding of its weapons programs, *regardless of the location or nationality* of those facilitating such funding." (emphasis added)

New sanctions designations

Pursuant to Executive Order 13810, OFAC designated nine "third country" (*i.e.*, not US, not North Korea) shipping companies and nine of their vessels. According to OFAC, these companies and vessels were used to export coal from North Korea - a revenue source that OFAC said is used to fund North Korea's weapons of mass destruction and missile programs. OFAC's designations were also based on the involvement of the companies and vessels in ship-to-ship transfers of refined petroleum products in violation of United Nations sanctions. OFAC also designated a Taiwanese citizen, along with two companies he owns or controls, for his role in facilitating sanctions evasion.

In addition to the sanctions imposed on international shipping companies, OFAC designated 16 North Korean shipping companies pursuant to Executive Order 13810 for operating in the transportation industry of North Korea and blocked 19 of their North Korean-flagged vessels.

US Persons (defined as US citizens, permanent residents, entities organized in the US (including foreign branches), and any person in the US) generally may not engage in any transaction with the designated individuals, entities or

vessels unless licensed by OFAC. US Persons are also required to block any property or interests in property of the designated persons that comes into their possession or control.

And, as with other US sanctions program, pursuant to OFAC's "50% Rule," all entities or property owned by a blocked person 50% or greater in the aggregate, directly or indirectly, is itself considered blocked by operation of law, regardless of whether the owned entity or property is designated under its own name.

Global shipping advisory

The February 23, 2018 global shipping advisory released alongside the sanctions designations flags what it says are "significant sanctions" risks to people who enable shipments of goods to and from North Korea, including related businesses, such as insurers, flag registries, shipping companies and financial institutions.

The alert highlights a range of what it says are North Korea's "deceptive shipping practices." This includes physically altering vessel identification information, conducting ship-to-ship transfers in violation of United Nations Security Council sanctions, falsifying cargo and vessel documents, and disabling and manipulating vessels' automatic identification systems.

The alert also outlines several types of risk mitigation measures, such as monitoring for automatic identification system manipulation, conducting pre-shipment due diligence and verification, reviewing all available shipping documentation, clearly communicating with all partners to a proposed shipment to align regarding applicable sanctions, and leveraging other available resources, including commercial databases.

Context and next steps

The February 23, 2018 expansion of US sanctions targeting North Korea is the latest step in the US "maximum pressure" campaign to isolate North Korea economically and to force individuals and entities around the world to choose between doing business with North Korea or doing business with the United States.

This campaign is increasingly targeting third-country individuals and entities. This is because, in addition to the general US embargo on North Korea, which applies to US Persons, US law requires the US to impose sanctions on any person - US or non-US- who, among other things, knowingly provides significant amounts of fuel or supplies, bunkering services, or otherwise facilitates a significant transaction to operate or maintain a vessel or aircraft that is the subject of US or UN sanctions. And, according to the global shipping advisory, the US is "aggressively targeting for designation" any person who more generally "facilitates a significant export to or import from North Korea" or engages in North Korea's transportation industry.

The recent round of North Korea designations, like previous ones, demonstrates how the United States uses its authority to impose restrictive measures on non-US, non-DPRK persons, entities, and vessels for engaging in conduct viewed as evading North Korea sanctions. The shipping advisory may provide helpful compliance guidance to companies seeking to identify and mitigate risks associated with the DPRK's shipping practices. At the same time, it makes explicit OFAC's expectations regarding compliance. As with other instances where enforcement agencies identify red flags and best practices, companies in or serving the maritime industry, particularly in areas where ship traffic relating to North Korea is likely, would be well served by assessing their compliance policies in light of the new guidance.

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