

# Trade Compliance Flash: Strengthened Economic Sanctions on North Korea: New Law in the United States and New Resolution in the United Nations Security Council

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On February 18, 2016, President Barack Obama signed into law strengthened economic sanctions on North Korea in response to its recent long-range missile launch. [H.R. 757](#) (North Korea Sanctions and Policy Enhancement Act of 2016) passed in the Senate 96-0 and in the House 402-0, showing the overwhelming bipartisan support for additional economic sanctions. On March 2, 2016, the U.N. Security Council (UNSC) also unanimously passed [UNSCR 2270](#), a resolution (jointly drafted by the United States and China) that tightens international sanctions on North Korea. Below is a short summary of the provisions in the new U.S. law, the UNSCR and our early takeaways for companies that may trade with North Korea.

## U.S. Law

### **Enhanced Designations of Persons Whose Assets May Be Frozen ("Blocked")**

The law requires the U.S. Department of the Treasury's Office of Foreign Assets Controls (OFAC) to block the assets of persons who knowingly take any of the following actions:

1. Mandatory designations of any persons who:
  - a. Import, export or re-export (directly or indirectly) to and from North Korea any goods, services or technology controlled for export by the U.S. because the item is used for weapons of mass destruction (WMD) or the delivery system for a WMD and the item materially contributes to a nuclear, radiological, chemical or biological weapon or its delivery system.
  - b. Provide training, advice or any other services or assistance, or engage in significant financial transactions, directly or indirectly, relating to any such weapon or system.
  - c. Import, export or re-export luxury goods to or into North Korea, directly or indirectly.
  - d. Participate in or facilitate censorship by the North Korean government.
  - e. Engage in, are responsible for or facilitate serious human rights abuses by the North Korean government.
  - f. Support the North Korean government or any government official by engaging in money laundering, counterfeiting of money or goods, bulk cash smuggling or narcotics trafficking.
  - g. Engage in significant activities undermining cybersecurity via computer networks or systems on behalf of the government of North Korea.
  - h. Sell, supply or transfer to or from the North Korean government or any person acting for that government, directly or

indirectly, a significant amount of precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal or software for use by or in industrial processes directly related to: WMDs and their delivery systems, other proliferation activities, the Korean Workers' Party, armed forces, internal security, intelligence activities, or related to political prison or forced labor camps, either inside or outside North Korea.

- i. Import, export or re-export any arms or related materiel to, into or from North Korea.
  - j. Attempt to engage in any of the above.
2. Discretionary designations of persons who:
- a. Assist, including providing financial, material or technological support for, any person designated by a UNSC resolution.
  - b. Contribute to bribing a North Korean government official or his agent; the misappropriation or embezzlement of public funds by such an official or his agent; or the use of any such proceeds.
  - c. Assist or provide significant support of any kind for the activities in a and b above.

## **What Assets may be Frozen/Blocked**

The law requires OFAC to block and prohibit all transactions in property (tangible and intangible, including financial instruments) and interests in property of designated persons, the North Korean government and the Workers' Party of Korea, if the property is in the United States, comes within the United States or is or comes with the possession or control of a U.S. person (the latter includes foreign subsidiaries of U.S. financial institutions).

This blocking provision applies also to any person acting on behalf of or owned or controlled by a blocked person. (This law does not specify, but other OFAC regulations and interpretations specify that ownership or control generally applies when a designated party owns directly or indirectly 50% of the other person.)

The law also provides that any property, real or personal, will be forfeited if it is involved in a violation, attempted violation or is derived from proceeds resulting from a prohibition.

## **Money Laundering**

Congress urges the president to designate North Korea as a "Jurisdiction of Primary Money Laundering Concern" (JPMLC). The law gives the president 180 days to decide whether to designate North Korea as a JPMLC. If so, the president shall impose one or more special measures, which, generally:

1. Require recordkeeping and reporting requirements by U.S. financial institutions of transactions involving foreign financial institutions and North Korea;
2. Require U.S. financial institutions to determine the beneficial owners of assets in any account, in or outside the United States, that relate somehow to North Korea;
3. Require U.S. financial institutions to identify all owners and customers of correspondent and pay-through accounts that somehow involve North Korea; and

4. Allow the president to prohibit or impose conditions on opening or maintaining a correspondent or pay-through account in the United States by a U.S. financial institution for a foreign financial institution when the account or its transactions are related somehow to North Korea.

## **Defense Exports**

The law requires a valid license for the export to North Korea of any goods or technology otherwise covered under section 6(j) of the Export Administration Act of 1979. In addition, no defense exports may be approved for the government of North Korea.

## **Other Provisions**

1. The U.S. government will provide no foreign assistance to any country that provides lethal military equipment to the North Korean government.
2. U.S. contractors must certify, on pain of debarment, that they do not engage in any prohibited activities.
3. Enhanced Inspection at Ports and Airports: The president has 180 days to report on foreign ports and airports whose inspections of ships, aircraft and conveyances originating in North Korea, carrying North Korean property or operated by the North Korean government are insufficient to prevent any facilitation of prohibited activities.
4. U.S. Customs may require enhanced inspections of any goods entering the U.S. from such ports or airports.
5. U.S. Customs may seize any vessel, aircraft or conveyance used to facilitate a prohibited activity.
6. Travel to North Korea is not prohibited, but is strongly discouraged.
7. Certain waivers are permissible, primarily for humanitarian missions involving agricultural goods, medicine or medical devices that are controlled only as EAR99 under U.S. export control regulations.
8. Cybersecurity: The president has 180 days to report on significant activities undermining cybersecurity against the U.S. government or U.S. persons conducted by the North Korean government or any person acting for or controlled by that government. The identity of persons knowingly engaged in such activities shall be listed and they shall be added to the U.S. Specially Designated Nationals and Denied Parties (SDN) list.
9. Serious Human Rights Abuses and Censorship: The president has 120 days to submit a report to Congress that describes serious human rights abuses or censorship by the North Korean government or any person acting for or controlled by that government. Specific findings shall be made regarding Kim Jong Un and all members of the National Defense Commission of North Korea and the Organization and Guidance Department of the Workers' Party of Korea. The identity of persons knowingly engaged in such activities shall be listed and they shall be added to the U.S. SDN list.
10. EU Cooperation: The law indirectly urges the president to work with the EU, as these are the two principal reserve currencies, to protect the international financial system from money laundering and illicit transactions emanating from North Korea. (This could lead to additional sanctions from the EU.)

11. China: The law notes that China's cooperation in enforcing UNSC resolutions is essential, given that China is the principal trading partner of North Korea.

Note: The additional prohibitions and restrictions took effect on February 18, 2016, the date of enactment. There is no exclusion for shipments already in transit.

## UNSCR 2270

U.N. Members agree to take the following measures to increase pressure on the government of North Korea to halt its pursuit of nuclear weapons, ballistic missiles and other weapons of mass destruction. To this end, U.N. Members agree that they, their nationals wherever located and parties within their territories shall:

1. Conduct mandatory inspections of cargo ships leaving and entering North Korea.
2. Prohibit all transfers and technical cooperation with North Korea related to items, material, equipment, goods and technology, including satellite launches and space launch vehicles, used for nuclear, ballistic missile or WMD purposes.
3. Deny takeoff, landing and overflight permission to any aircraft where reasonable grounds exist to believe the aircraft is engaged in sanctionable activity.
4. Deny entry into port to any vessel with reasonable grounds to believe the vessel is related to a designated individual or its cargo is prohibited by U.N. sanctions.
5. Prohibit imports and exports, directly or indirectly, of coal, iron and iron ore to and from North Korea unless the transaction is determined to be exclusively for livelihood purposes and unrelated to generating revenue for North Korea's nuclear or ballistic missile program or other sanctioned activities.
6. Prohibit imports of, and assistance by Member State nationals, directly or indirectly, in the sale or transfer of, gold, titanium ore, vanadium ore and rare earth minerals from North Korea.
7. Prohibit the supply of aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel and kerosene-type rocket fuel, to North Korea, without UNSC advance approval for humanitarian needs. An exception is provided for fuel for civilian aircraft outside North Korea to travel to and from North Korea.
8. Prohibit the establishment of new branches, subsidiaries and representative offices of North Korean banks in Member States; prohibit financial institutions subject to Member States' jurisdiction from maintaining ownership in or correspondent relationships with North Korean banks, unless approved by the UNSCR in advance; require Member States to close existing branches, subsidiaries and representative offices, as well as terminate joint ventures, ownership interests and correspondent banking relationships with North Korean banks by May 31, 2016.
9. Prohibit financial institutions subject to Member States' jurisdiction or in their territories from opening new representative offices, subsidiaries, branches or banking accounts in North Korea, as well as require such financial institutions to close such

facilities in North Korea within 90 days if reasonable grounds exist to believe these financial services could contribute to sanctioned activities.

10. Freeze assets of all funds and economic resources outside North Korea owned or controlled, directly or indirectly, by entities of the government of North Korea or the Worker's Party of Korea, or by parties acting for or controlled by them, where a Member State determines the funds or resources are associated with sanctioned activities, such as North Korea's nuclear or ballistic missiles program.
11. Freeze the assets of 16 more individuals, 12 new companies and 31 additional vessels and any individuals and entities acting on their behalf, and entities controlled by them as being engaged in prohibited activities involving nuclear, ballistic missile or other WMD. No sanctioned entity shall participate, directly or indirectly in any joint venture or other business arrangement; all such sanctioned parties shall close representative offices in Member States.
12. Expel North Korean diplomats and citizens, as well as individuals from any third country, who are working on behalf of a designated party to evade or violate U.N. sanctions.
13. Prohibit the supply, sale or transfer to North Korea of any item, other than food or medicine, which could assist the North Korean armed forces.
14. Prohibit the sale, service, training and financing of small arms and other conventional weapons to North Korea.
15. Prohibit the procurement from North Korea of technical training and assistance related to arms and related material.
16. Add luxury watches, snowmobiles, recreational water vehicles and lead crystal to the list of banned luxury items that North Korea is not allowed to import.
17. Prohibit Member State nationals from registering vessels in North Korea and from doing business with any North Korean-flagged vessel.

UNSCR 2270 states that these sanctions are not designed to have adverse humanitarian consequences to the civilian population. The resolution adds that the resolution should not negatively affect economic activities and cooperation that are not prohibited by UNSCRs relating to North Korea.

## Early Takeaways

### **Re U.S. Law:**

- The U.S. economic sanctions law and regulations on North Korea do not apply to trade involving only non-U.S. persons and only non-U.S. items, conducted entirely outside the United States.
- Any funds (even in a foreign currency) that flow through the foreign subsidiary of a U.S. financial institution involving a person or entity on the U.S. SDN list would be blocked by that financial institution.

- The U.S. sanctions against North Korea remain principally asset-freezing provisions.
- New North Korean persons, including high-level government officials, may be added to the U.S. SDN list.
- Congress has made more explicit that no exports of certain goods and technology controlled under the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) for anti-terrorism reasons or because they would contribute to the military capability of North Korea are permitted to North Korea or the North Korean government.
- Cooperation between the EU and U.S. governments could result in broader, coordinated sanctions designed to starve North Korea of hard currency.
- Foreign countries that provide lethal military equipment to the government of North Korea may lose their U.S. foreign aid.
- Companies involved in trade with North Korea of a significant amount of precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal or software should engage in due diligence to determine if these sales could lead to listing on the U.S. SDN list. The Executive Branch may designate "any person" under this authority without establishing any nexus to the United States. Such blocking would compel U.S. banks and their foreign branches to block or freeze property interests. The authority to designate, as stated in 1.h above, is limited to the use of such metals and minerals for use in or by "industrial processes directly related to weapons of mass destruction and delivery systems for such weapons, other proliferation activities, the Korean Workers' Party, armed forces, internal security, or intelligence activities, or the operation and maintenance of political prison camps or forced labor camps, including outside of North Korea."

## **Re U.N. Resolution:**

- The UNSCR applies to all U.N. Member States, their nationals wherever located and all entities located in Member States' territories.
- The UNSCR attempts to deny hard currency financial resources to North Korea by prohibiting North Korean financial institutions from opening new offices and branches in Member States and by prohibiting financial institutions subject to the jurisdiction of Member States from operating in North Korea.
- The overall impact of the UNSCR is unclear because exports for humanitarian purposes will still be permitted and each country will decide which exports meet that standard.
- North Korea's initial reaction was negative: North Korea fired six short-range projectiles (believed to be missiles or guided rockets) into the sea on March 3, 2016.

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