

## Developments in U.S., EU, and UN Sanctions Against North Korea

March 8, 2016

International Trade Controls

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The United States recently enacted the North Korea Sanctions and Policy Enhancement Act of 2016 (the “Act”).<sup>1</sup> The Act significantly broadens the sanctions against the Democratic People’s Republic of Korea (“North Korea”) by imposing secondary sanctions on any entity that facilitates weapons proliferation, illicit activities, arms trafficking, cyberterrorism, imports of luxury goods, serious human rights abuses, cash smuggling, and censorship by the Government of North Korea. Further, the Act requires blocking the assets of the Government of North Korea. The legislation received overwhelming and bipartisan support among U.S. lawmakers.

On March 2, the United Nations Security Council unanimously adopted [United Nations Security Council Resolution 2270](#) which imposes strong new sanctions against North Korea, including measures covering cargo inspections, prohibitions on aviation fuel, and sectoral sanctions on North Korean trade in natural resources.

Also on March 2, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) designated [10 individuals and two entities](#) with ties to the Government of North Korea and its nuclear and weapons proliferation activities, and the U.S. State Department designated two individuals and three entities for activities related to the proliferation of weapons of mass destruction for North Korea.

Similarly, on March 4, the Council of the European Union added 15 individuals and five entities to the list of targets subject to EU restrictive measures against North Korea. These new measures implement the asset freezing imposed by UN Security Council Resolution 2270.

The new U.S., EU, and UN measures follow North Korea’s recent nuclear test and missile launch and are aimed at halting Pyongyang’s efforts to advance its illicit pursuit of nuclear and missile programs. The U.S., EU, and UN measures are complementary and strengthen and expand sanctions against North Korea.

### North Korea Sanctions and Policy Enhancement Act of 2016

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On February 18, 2016, President Obama signed into law the Act, which went into effect on the same date. The Act received broad support among U.S. lawmakers; it was passed unanimously by the Senate and cleared by a vote of 408 to 2 in the House of Representatives before it was presented to the President for signature.

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<sup>1</sup> Public Law 114-122, 130 Stat. 93. The Public Law has not yet been published by the Government Printing Office but the text as enacted can be accessed [here](#).

## **Sanctionable Conduct under the Act**

### Mandatory Designations For Sanctions

The Act broadens the existing U.S. sanctions against North Korea by making it mandatory for the President to investigate and designate for sanctions any individual or entity that the President determines:

- knowingly, directly or indirectly, transfers to/into/from North Korea any goods, services or technology controlled for export by the United States because of the use of such items for weapons of mass destruction or their delivery systems, and materially contributes to the use, development, production, possession, or acquisition by any person of a nuclear, radiological, chemical, or biological weapon or any device or system designed to deliver such a weapon;
- knowingly, directly or indirectly, provides training, advice, or other services or assistance, or engages in significant financial transactions, relating to the manufacture, maintenance, or use of any such weapon, device, or system to be transferred to/into/from North Korea;
- knowingly, directly or indirectly, transfers luxury goods to or into North Korea;
- knowingly engages in, is responsible for, or facilitates censorship or serious human rights abuses by the Government of North Korea;
- knowingly, directly or indirectly, engages in money laundering, counterfeiting, bulk cash smuggling, or narcotics trafficking that supports the Government of North Korea or any senior official or person acting for or on its behalf;
- knowingly engages in significant activities undermining cybersecurity on behalf of the Government of North Korea;<sup>2</sup>
- knowingly, directly or indirectly, sells, supplies, or transfers to or from the Government of North Korea or any person acting for or on its behalf, 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 weapons of mass destruction and their delivery systems, 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;
- knowingly, directly or indirectly, transfers to/into/from North Korea any arms or related materiel; or
- knowingly attempts to engage in any of the conduct described above.

### Discretionary Designations For Sanctions

Under the Act, the President also has discretionary authority to designate for sanctions any individual or entity that the President determines:

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<sup>2</sup> Under the Act, the President is also required to submit a report describing significant activities by the Government of North Korea undermining cybersecurity aimed against the United States Government or any United States person.

- knowingly engages in, contributes to, assists, sponsors, or provides financial, material or technological support for, or goods and services in support of, any person designated pursuant to an applicable UN Security Council resolution;
- knowingly contributed to the bribery of or misappropriation, theft, or embezzlement of public funds by, or for the benefit of, a North Korean Government official or any person acting for or on behalf of that official, or the use of proceeds of any such activities; or
- knowingly and materially assisted, sponsored, or provided significant financial, material, or technological support for, or goods or services to or in support of, the activities described above.

The mandatory or discretionary designation of individuals or entities for sanctions applies to any person determined to be owned or controlled or to have acted or purported to have acted for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to designation under the Act.

### Consequences of Designation by the President

- **Blocking of Property:** The Act directs the President to block and prohibit all transactions in property and interests in property of an individual or entity designated under the Act, if any such property and interests in property are in or come within the United States, or are or come within the possession or control of a United States person.
- **Denial/Revocation of Licensing for Transactions:** The President is required to deny or revoke any license for any transaction that lacks sufficient financial controls to prevent facilitation of any of the sanctionable activities enumerated above.
- **Prohibition on Government Procurement:** The head of a U.S. executive agency is prohibited from procuring or entering into any contract for the procurement of, any goods or services from any person designated by the President for engaging in sanctionable conduct. (The President may impose this prohibition on persons subject to the President's discretionary designation authority.)
- **Travel Sanctions:** The Secretary of State is authorized to deny visas to, and the Secretary of Homeland Security is authorized to deny entry into the United States of, any alien who is a designated person and corporate officers or principal shareholders with controlling interest in a designated person.
- **Prohibition on Transactions Involving the U.S. Financial System:** For any individual or entity designated under the President's discretionary designation authority, the President may apply any applicable "special measures"<sup>3</sup> (requiring enhanced due diligence, recordkeeping and reporting, etc.); prohibit any transactions in foreign exchange that are subject to U.S. jurisdiction and in which the designated person has any interest; and prohibit credit transfers or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to U.S. jurisdiction and involve any interest of the designated person.

### Mandatory Asset Blocking

The Act directs the President to use the authority of the International Emergency Economic Powers Act ("IEEPA," 50 U.S.C. 1705) to block and prohibit all transactions in property and

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<sup>3</sup> The "special measures" are described in 31 U.S.C. § 5318A.

interests in property of the Government of North Korea or the Workers' Party of Korea, if any such property and interests in property are in or come within the United States, or are or come within the possession or control of a United States person. An existing Executive Order, [E.O. 13,687](#), blocks property of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be an agency, instrumentality, controlled entity, or official of the Government of North Korea or the Workers' Party of Korea. However, the Act goes further than the Executive Order, in that it requires the President to block all property in which there is a North Korean Government interest, regardless of whether a party to the transaction has been designated as acting on behalf of the Government of North Korea. The Administration will need to take action to implement the broader asset-blocking mandate of the Act.

The mandatory asset blocking applies to any person determined to be owned or controlled by or to have acted or purported to have acted for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked under the Act.

### **Penalties**

Civil and criminal penalties in the form of fines and imprisonment provided for under IEEPA apply to violations of the Act. IEEPA civil penalties are up to \$250,000 per violation or twice the value of the transaction, whichever is higher, and criminal penalties are up to \$1 million per violation and/or 20 years imprisonment.

### **Waiver, Suspension, and Termination of Sanctions**

The President may waive the application of certain sanctions for renewable periods of between 30 days and one year if necessary for humanitarian reasons. The President also has authority to waive sanctions on a case-by-case basis, for renewable periods of between 30 days and one year, if doing so is important to the national security interests of the United States, will further the enforcement of the Act, or is for an important law enforcement purpose.

Sanctions may be suspended for up to one year (and may be renewed for 180-day periods) if the President certifies that North Korea has made progress on issues such as verification of its compliance with applicable UN Security Council resolutions and financial transparency to comply with generally accepted protocols to cease and prevent money laundering.

The President also has the authority to terminate sanctions upon determining and certifying that the Government of North Korea has made progress in a number of areas, including "significant progress" toward fully dismantling all of its nuclear, chemical, biological, and radiological weapons programs including all programs for the development of their delivery systems; releasing all political prisoners; ceasing censorship of peaceful political activity; and establishing an open, transparent, and representative society.

### **Proliferation Prevention Sanctions**

Subject to limited waivers and exceptions, the Act requires a 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. Such goods and technology are listed under the "Anti-Terrorism" controls of the Commerce Department's Export Administration Regulations. Additionally, the Act prohibits approval of any defense exports for the Government of North Korea. The Act does not prohibit the export or reexport to North Korea of food or finished medicine, which are

permissible under the Export Administration Regulations.<sup>4</sup> Subject to the new asset-blocking requirements for dealings with the Government of North Korea, these activities should remain permissible.

### **Enhanced Inspection of Cargo and Seizure and Forfeiture**

The President is required to submit reports identifying foreign ports and airports at which inspections of ships and aircraft originating in North Korea, carrying North Korean property, or operated by the Government of North Korea are not adequate to prevent the facilitation of the activities that fall under the President's mandatory designation authority. The Secretary of Homeland Security may require enhanced inspections of any goods entering the United States that have been transported through such ports or airports. Additionally, vessels, aircraft, and other conveyances used to facilitate the conduct triggering mandatory and discretionary designations and under the jurisdiction of the United States may be seized and forfeited.

### **Money Laundering**

The Act urges the President "in the strongest terms" to immediately designate North Korea as a jurisdiction of primary money laundering concern and requires the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to determine within 180 days whether reasonable grounds exist for such a designation. If such a determination is made by the Secretary of the Treasury, one or more "special measures" under 31 U.S.C. § 5318A must be imposed with respect to North Korea.

## **U.S. Sanctions on North Korean Government Officials and Organizations Tied to its Missile and Nuclear Programs**

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Pursuant to its authority under E.O. 13,687, on March 2, 2016, OFAC designated seven individuals for being officials of the Government of North Korea and/or of the Workers' Party of Korea and also designated two entities for being agencies, instrumentalities, or controlled entities of the Government of North Korea or the Workers' Party of Korea. The designated individuals include North Korea's Ambassador to Egypt and the Director of the National Aerospace Development Administration (which organizes all of the North Korean Government's space development projects). The two entities designated under E.O. 13,687 are the Workers' Party of Korea Central Military Commission and the National Defense Commission.

OFAC also designated three individuals pursuant to its authority under [E.O. 13,382](#) which is aimed at freezing the assets of and financially isolating weapons of mass destruction proliferators and their supporters. Two of the individuals were designated for acting for or on behalf of North Korea's Mining Development Trading Corporation (North Korea's premier arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons). The third individual, who also was listed in UN Security Council Resolution 2270, was designated by OFAC for acting for or on behalf of the National Aerospace Development Administration.

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<sup>4</sup> The food and medicines eligible for export to North Korea do not include luxury items, including cosmetics, alcohol, and tobacco products.

Additionally, pursuant to E.O. 13,382, the U.S. State Department designated two individuals and three entities. These designations include the National Aerospace Development Administration; the Ministry of Atomic Energy Industry; the Academy of National Defense Science; the Director of the Second Academy of Natural Sciences; and a representative of Namhung Trading Corporation.

These actions by the U.S. Treasury and State Departments complement and help implement UN Security Council Resolution 2270, discussed below.

## **UN Security Council Resolution 2270 on North Korea**

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On March 2, 2016, the UN Security Council unanimously adopted tougher sanctions against North Korea. UN Security Council Resolution 2270, which is self-executing under U.S. law to the extent it supplements unilateral sanctions, includes the following measures, among others:

- Mandatory inspection of cargo originating from or destined for North Korea, or that has been brokered or facilitated by North Korea or its nationals, individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, or by designated individuals or entities, or that is being transported on a North Korean-flagged aircraft or vessel;
- Prohibition on the supply, sale, transfer, or procurement of coal, iron, and iron ore from North Korea, North Korean nationals or using North Korean-flagged vessels or aircraft, subject to certain limitations;
- Prohibition on the supply, sale, transfer, or procurement of gold, titanium ore, vanadium ore, and rare earth minerals from North Korea, North Korean nationals or using North Korean-flagged vessels or aircraft;
- Prohibition on the sale or supply to North Korea of aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel unless approved in advance for essential humanitarian needs;
- Prohibition on public and private financial support for trade with North Korea (including granting export credits, guarantees or insurance to North Korean nationals or entities involved in such trade) where such financial support could contribute to North Korea's nuclear or ballistic missile programs or other prohibited activities; and
- Mandatory asset freeze with respect to listed individuals and entities engaged in or providing support for North Korea's nuclear, other weapons of mass destruction, and ballistic missile programs.

## **New EU Sanctions against North Korea**

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On March 4, 2016, the European Union adopted [Commission Implementing Regulation \(EU\) 2016/315 amending Council Regulation \(EC\) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea](#). The new Implementing Regulation updates the pre-existing regime, set out in Regulation 329/2007 (March 27, 2007).

The pre-existing EU-North Korea sanctions (i.e., Regulation 329/2007) already included a range of export controls restrictions—including in relation to specified items capable of nuclear, military, weapons of mass destruction, and ballistic missile uses, together with certain metals,

diamonds, and luxury products—as well associated services restrictions. In addition, the pre-existing regime imposed asset freezing measures against a number of designated parties. The new Implementing Regulation expands these restrictions by transposing the new designated party listings imposed by UN Security Council Resolution 2270. There are now 48 individuals and 74 entities specially designated by the EU under the North Korea sanctions. (A number of the parties listed by the UN were already on the EU sanctions list, under earlier European Council Regulations, hence the EU has ultimately only added 20 new parties.)

As the current EU trade controls restrictions do not fully overlap with the new UN Security Council resolution—including the UN-mandated aviation fuel and metals/minerals restrictions noted above—we expect the EU will issue further measures in the near term implementing those restrictions.

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The impact of these recent sanctions with respect to U.S. persons will be limited given that North Korea is not a country that is currently viewed as an attractive destination for U.S. trade or investment. As a result, the most notable impact of the new U.S. sanctions will likely be due to the secondary sanctions which target any person involved in the conduct outlined above. The new EU sanctions are also likely to have only a limited practical impact. Nevertheless, taken together, the U.S., EU, and UN measures are significant in that they reflect a strong and unified response by the international community to the recent actions by the Government of North Korea.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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