



SANCTIONS UPDATE: INCREASED SANCTIONS ON RUSSIA, IRAN AND NORTH KOREA

On Wednesday 2 August 2017 President Trump signed into law the “Countering America’s Adversaries Through Sanctions Act”¹ (the Act) which tighten US sanctions against Russia, Iran and North Korea. The United Nations Security Council partially followed suit on Saturday 5 August 2017 by voting to strengthen sanctions on North Korea for its long range ballistic missile testing.

¹ <https://www.congress.gov/115/bills/hr3364/BILLS-115hr3364enr.pdf>

“The Act aims to close loopholes in the US sanctions against Russia, strengthen those sanctions and increase their enforcement. It codifies sanctions previously imposed on certain Russian entities and individuals by presidential executive orders, enables additional persons and entities to be listed, and introduces measures which will make it harder subsequently to relax the sanctions on Russia.”

US measures against Russia, Iran and DPRK – Summary of Top Ten Issues

- 1 Those dealing with Russian Counterparties should be aware that further state-owned entities in the railway, mining and metals sectors may be subject to further listings.
- 2 Care should be taken to consider sanctions and payment clauses that anticipate counterparty listings. Listings are without prior notice and may affect the legality of a contract and its ability to be financed, paid or logistically serviced.
- 3 Further entities are likely to be added to the Sectoral Sanctioned Identifications (SSI) List as the controls on financing for persons listed for contributing to the situation in the Ukraine are tightened. Executive Order No 13662 as it pertains to Directive 1 has been tightened to restrict the financing of new debt to a limit of only 14 days maturity, down from the current 30 days.
- 4 Suppliers providing investment, technology, services or support to Russian export pipeline projects, including Russia’s TurkStream and Nord Stream 2 pipelines to Turkey and Germany, could potentially be affected depending on the nature of the investment and the aggregate value of the technology, services or support being provided.
- 5 The Act provides for new sanctions (including asset freezes and travel bans) on individuals and entities as punishment for human rights abuses or cyber attacks against the US, targets senior political figures in Russia, and restricts investment in or facilitation of privatization of assets owned by the Russian State. Investment funds dealing in Russia will need to scrutinize terms ever more carefully.
- 6 Under the Act, current Specially Designated Nationals (SDNs) under sanctions against Russia will be codified into law and Congressional Committee approval will be required for any such SDN to be delisted, rather than this being within the scope of Presidential pardon.
- 7 Russia has flagged that economic and political measures against the US will be taken by Russia in retaliation. Immediate measures have included ordering the US to reduce dramatically its diplomatic presence in Moscow.
- 8 The Act includes measures against Iran, imposing sanctions against Iran’s ballistic missile and weapons of mass destruction programs, the sale or transfer to Iran of military equipment or provision of related technical or financial assistance to Iran, and Iran’s Islamic Revolutionary Guard Corps and affiliated foreign persons.
- 9 The Act provides for very wide ranging sanctions against persons who interact with North Korea. Activities which attract listing include for example: supplying fuel or bunkering services to listed vessels or aircraft; maintaining insurance or registration for vessels owned or controlled by the North Korean Government; purchasing significant amounts of coal, iron or iron ore from the North Korean Government; facilitating significant transfer of funds or property of the North Korean Government which materially contributes to any violation of an applicable UNSC Resolution; supplying crude oil or petroleum products or natural gas resources to the Government of North Korea (with some exceptions); and facilitating the exportation of workers from North Korea.
- 10 The final text makes it clear that the US should work with its allies when imposing sanctions. The extent of such cooperation remains to be seen.



US Sanctions on Russia

The Act aims to close loopholes in the US sanctions against Russia, strengthen those sanctions and increase their enforcement. It codifies sanctions previously imposed on certain Russian entities and individuals by presidential executive orders, enables additional persons and entities to be listed, and introduces measures which will make it harder subsequently to relax the sanctions on Russia.

Some key elements of the Act are as follows:

- **Energy pipelines:** Most controversially, the Act empowers (but does not require) the President to impose sanctions on persons who either:
 - Make an investment which directly and significantly contributes to the enhancement of the ability of the Russian Government to construct energy export pipelines; or
 - Provide goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of the construction, modernization or repair of energy export pipelines by

the Russian Federation. This only applies where the goods etc have a fair market value of USD 1 million or more, or an aggregate fair market value of USD 5 million or more during a 12 month period.

This could potentially affect European companies who are involved in Russia's TurkStream (currently under construction) and Nord Stream 2 (currently in planning) pipelines to Turkey and Germany, as well as projects to upgrade old pipeline systems. However, the Act does clarify that such sanctions should be imposed *"in coordination with allies of the United States"*. There are over 200 companies from 17 countries currently working on Nord Stream 2, most of them European.

- **Railway, mining and metals sectors:** The Act gives the Secretary of the Treasury the power to impose asset freezes on State-owned entities operating in Russia's railway, mining and metals sectors as punishment for contributing to the situation in Ukraine. Previous drafts included the shipping sector but the final text does not.
- **Exploration or production for new deepwater, Arctic offshore or shale projects:** The Act prohibits the provision,

exportation or re-exportation (directly or indirectly) by US persons of goods, services (except for financial services) or technology of exploration or production for new deepwater, Arctic offshore or shale projects which have the potential to produce oil where any designated entity has a controlling interest or a non-controlling interest in the project of 33% or more, amending Directive 4 of Executive Order 13662. Previously, the aggregate controlling interest prohibited by designated entities was 50% or more (the "50 Percent Rule"). Although the Act applies to "new" projects, it is unclear what allowance will be made for existing projects entered into prior to the Act. This could affect non-US companies supplying deepwater, Arctic or shale projects commenced when the test for a SDN-controlled designated entity was 50% in the aggregate.

- **Restrictions on finance:** The Act reduces the periods for which US persons can provide financing the Restrictions Russian financial institutions (from 30 days to 14 days under Directive 1 of Executive Order 13662), and for the Russian energy sector (from 90 days to 60 days under Directive 2 of Executive Order 13662). The

“The Act directs the Departments of State, Defence, and Treasury and the Director of National Intelligence to submit a strategy 180 days after the date that the Act became law, and every two years after that for deterring conventional and asymmetric Iranian activities that threaten the United States and key allies in the Middle East, North Africa, and beyond.”

President will be required to impose asset freezes, travel bans and other financial sanctions on a foreign person who knowingly makes a significant investment in a special Russian crude oil project.

- **Cyber attacks:** The Act requires the President to impose asset freezes, travel bans and other financial sanctions on persons who knowingly engage in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Russian Government. This includes persons acting on behalf of such persons.
- **Restrictions on transfer of arms to Syria:** The Act requires the President to impose asset freezes and travel bans on non-US persons who knowingly export, transfer or otherwise provide to Syria significant financial material, or technological support that contributes materially to the ability of the Government of Syria to acquire or develop certain weapons.
- **Human Rights Abuses:** The Act provides for new sanctions (including asset freezes and travel bans) on non-US individuals and entities as punishment for human rights abuses.

- **Transactions with Russian intelligence or defence sectors:** The Act requires President Trump to impose financial sanctions on persons who engage in significant transactions with the Russian defence or intelligence sectors unless he can justify a decision not to do so in accordance with provisions of the Act.
- **Privatization of State-owned assets:** The Act restricts investment above certain thresholds in, or facilitation of privatization of, assets owned by the Russian State.
- **Reports on oligarchs and key Russian figures:** The Act also requires detailed reports to be submitted on senior foreign political figures and oligarchs in Russia with a view to imposing secondary sanctions on them in the future.

Review process

The Act sets up a review process whereby Congress must approve proposed changes to sanctions on Russia. This means that President Trump will not have the power to change the sanctions without Congressional oversight.

The President will have the power to de-list persons from certain lists or waive certain sanctions only by

submitting paperwork to relevant Congressional committees which fulfil the requirements set out in the Act. For example, the President can waive the application of certain cyber related sanctions if he provides to Congress a written determination that the waiver is in the interests of vital US national security, or will further the enforcement of the sanctions, together with a certification that the Russian Government has made significant efforts to reduce the number and intensity of its “cyber intrusions”.

US Sanctions on Iran

The Act directs the Departments of State, Defence, and Treasury and the Director of National Intelligence to submit a strategy 180 days after the date that the Act became law, and every two years after that for deterring conventional and asymmetric Iranian activities that threaten the United States and key allies in the Middle East, North Africa, and beyond.

Key provisions include:

- **Ballistic missile/weapons of mass destruction:** The President must impose asset blocking and U.S. exclusion sanctions against any person that materially contributes to Iran’s ballistic missile or weapons of mass destruction programs.

- **Military equipment:** The President must impose asset blocking and U.S. exclusion sanctions against any person that materially contributes to the sale or transfer to Iran of specified military equipment or the provision of related technical or financial assistance.
- **Islamic Revolutionary Guard Corps (IRGC):** The President must impose sanctions on Iran's Islamic Revolutionary Guard Corps, affiliated foreign persons, and other foreign persons who commit or support terrorism. These sanctions would block the property of these persons and entities and prohibit US persons from carrying out transactions with the blocked entities and persons.
- **Human rights abuses:** The President may also impose asset blocking sanctions against any person identified by the State Department as responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against certain individuals in Iran.

The Act exempts certain humanitarian and national security activities from sanctions and the President may temporarily waive the imposition or continuation of sanctions under specified circumstances.

US Sanctions on North Korea

The Act introduces sweeping measures against North Korea, aimed at cutting off sources of income for the North Korean Government. Some of the key provisions are as follows:

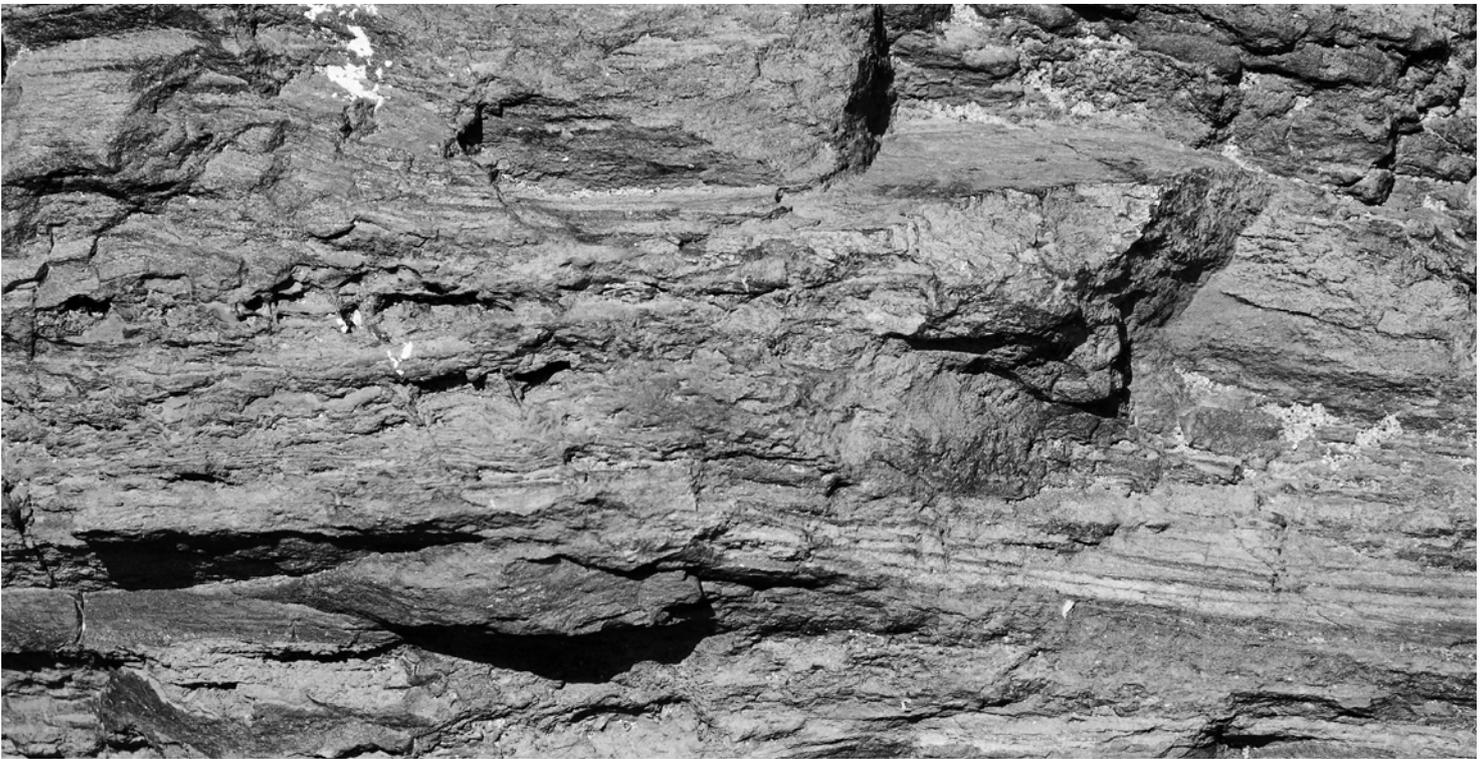
- **Shipping:** There are a number of provisions in the sanctions on North Korea which affect the shipping sector, as follows.
 - **Services/fuel to designated vessels or persons:** The Act requires the President to impose sanctions on persons who knowingly, directly or indirectly, provide significant amounts of fuel, supplies or bunkering services, or facilitate a significant transaction

or transactions to operate or maintain a vessel which is designated under US or applicable United Nations Security Council (UNSC) sanctions, or owned or controlled by a person so designated.

- **Insurance or registration services for North Korean vessels:** The Act requires the President to impose sanctions on persons who provide insurance or registration services for vessels owned or controlled by the North Korean Government.
- **Travel restrictions on certain vessels:** The Act prohibits North Korean ships from operating in US waters, including docking at US ports, and also refuses US access to ships owned by countries which refuse to comply with UN resolutions against North Korea.
- **Enhanced screening of vessels and cargo:** The Act also provides for enhanced screenings of vessels and cargo where the operator has been identified by the President as having repeatedly failed to comply with applicable UNSC resolutions, or the vessel has been to North Korea (waters or territory) within the last 365 days, or it is registered by a country or jurisdiction whose compliance has been identified by the President as being in breach of International sanctions against North Korea. Exceptions to this include where the vessel entered North Korean territory exclusively for humanitarian purposes.
- **Purchase of precious metals:** The Act requires the President to impose sanctions on persons who purchase or otherwise acquire from North Korea any significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc or rare earth minerals.
- **Supply of rocket, aviation or jet fuel:** The Act requires the

President to impose sanctions on persons who sell or transfer to North Korea any significant amounts of rocket, aviation or jet fuel (except for use by a civilian passenger aircraft outside North Korea, exclusively for consumption during its flight to North Korea or its return flight).

- **Supply of fuel or services to designated aircraft:** The Act requires the President to impose sanctions on persons who supply fuel or supplies, or facilitate a significant transaction or transactions to operate or maintain, an aircraft which is designated under US or UN sanctions regimes or is owned or controlled by a person so designated.
- **Banking:** The Act requires the President to impose sanctions on persons who knowingly, directly or indirectly, maintain a correspondent account with any North Korean financial institution except as specifically approved by the UNSC.
- **Supply of crude oil, petroleum products, natural gas or aviation fuel:** The Act gives the President the power to impose sanctions on persons who supply crude oil or petroleum products, liquefied natural gas or other natural gas resources to the Government of North Korea (except for heavy fuel oil, gasoline or diesel fuel for humanitarian use or for use by a civilian passenger aircraft outside North Korea, exclusively for consumption during its flight to North Korea or its return flight).
- **Purchase of coal, iron and iron ore:** The Act gives the President the power to impose sanctions on persons who purchase coal, iron or iron ore from the North Korean Government in excess of the limitations provided in applicable UNSC resolutions.
- **Transferring funds of the North Korean Government:** The Act gives the President the power to impose sanctions on persons who facilitate the significant transfer of funds or property of the North Korean Government which



materially contributes to any violation of an applicable UNSC Resolution.

- **North Korean workers and goods made with slave labour:** The Act gives the President the power to impose asset freeze sanctions on persons who knowingly directly or indirectly engaged in, facilitated or were responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly for use by the North Korean Government or the Workers' Party of Korea. Note that "facilitation" may have broad interpretation. In addition, significant goods deemed to be produced or manufactured by the labour of North Korean nationals or citizens are prohibited from entry into the US unless the Commissioner of US Customs and Border Protection finds by clear and convincing evidence that the goods were not produced with forced labour.
- **Additional listed persons:** The Act requires the President to submit a report to determine whether certain additional entities and individuals should be designated. These include:

- The Korea Shipowners' Protection and Indemnity Association.
- Chinpo Shipping Company (Private) Limited.
- The Central Bank of the Democratic People's Republic of Korea.
- Kumgang Economic Development Corporation.
- Sam Pa (also known as Xu Jinghua, Xu Songjua, Sa Muxu, Samo, Sampa or Sam King) and any entities owned or controlled by such individual.
- The Chamber of Commerce of the Democratic People's Republic of Korea.

Reporting requirements

The Act sets out a number of reporting requirements, for example on:

1. Persons contributing to Iran's ballistic missile program.
2. Coordination between the US and the European Union on sanctions.
3. US citizens detained by Iran.
4. Russian oligarchs and parastatal entities.

5. Media organisations controlled and funded by the Russian Government, and on Russian influence on elections in Europe and Eurasia.
6. Each use of the President's waiver authority.

UN Resolution against North Korea

A Resolution² unanimously adopted by the UNSC on Saturday 5 August strengthens UNSC sanctions on North Korea.

The Resolution:

- Imposes a full ban on the export of coal, iron and iron ore from North Korea - these could previously be exported in limited quantities and for livelihood purposes.
- Limits the number of North Korean nationals who may work in UN territories.
- Bans new joint ventures or cooperative entities with North Korean entities or individuals.
- Bans additional investments in existing joint ventures with North Korean individuals or entities.
- Designates several additional individuals for a travel ban and

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assets freeze and designates additional entities for an assets freeze.

UN Member States must report to the UNSC within 90 days to confirm the concrete measures which they have taken to implement the Resolution effectively.

The UNSC also called for resumption of talks between China, North Korea, Japan, South Korea, Russia and the US, with the aim of the verifiable denuclearization of the Korean Peninsula and peaceful coexistence between North Korea and the US.

Conclusions

The UN has followed the US lead in increasing sanctions against North Korea. North Korea has threatened to retaliate but the UN hopes to rekindle productive talks in order to de-escalate the situation.

The intensification of US sanctions against Russia has been more controversial. Moscow has already retaliated. The EU remains supportive of sanctions against Russia's activities in Ukraine (the EU imposed fresh sanctions on certain individuals and entities on Friday 4 August for moving turbines to the Black Sea peninsula). But the provisions, particularly relating to Russia's energy export pipelines,

have not been well received. The US has taken into account EU interests by including significant consultation provisions in the Act. The EU remains poised to respond.

HFW is monitoring the situation as it develops.

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