



**CLIENT ALERT:**

**U.S. ENACTS COMPREHENSIVE SANCTIONS LEGISLATION  
AGAINST IRAN, RUSSIA AND NORTH KOREA**

August 4, 2017

**Introduction**

On August 2, 2017 President Trump signed into law the “Countering America’s Adversaries Through Sanctions Act” (“the Act”), which had been passed in both houses of Congress with overwhelming support, by a vote of 419-3 in the House of Representatives and by a vote of 98-2 in the Senate. The Act imposes new and further sanctions on Iran, Russia and North Korea. This Client Alert will highlight the provisions of the Act which may impact international shipping and summarize the new sanctions. We also call attention to an assertion of Congressional authority that will limit the President’s ability to waive or lift sanctions.

**1. Congress Asserts Authority**

One of the most significant aspects of the new legislation is the restriction the Act places on the President’s ability to lift sanctions against Russia, and to waive some of the new sanctions against Iran, without the approval of Congress. The Act provides that the President can waive the sanctions against Iran imposed in Sections 104-108 of the Act, but only once 30 days have passed after the President has reported to Congress that such waivers are vital to U.S. national security issues. In addition, waivers can only be for a period of 180 days, although they are renewable after a further notice to Congress.

The Act imposes a more substantial restriction on the President’s ability to provide sanctions relief to Russia. Before taking any action to terminate any sanctions described in the Act, or to waive the application of those sanctions to any person, or to engage in a licensing action that significantly alters the U.S. foreign policy with respect to Russia, the President must submit to the appropriate Congressional committees and leadership a report that describes the action and the reasons for the action. The sanctions described in the Act are:

- A. All sanctions under the section of the Act entitled “Countering Russian Influence in Europe and Eurasia Act of 2017.”
- B. E.O.s 13660, 13661 and 13662 establishing Sectoral Sanctions in relation to developments in Ukraine and blocking the property of certain persons contributing to the situation in Ukraine.
- C. E.O. 13685 blocking the property of certain persons and prohibiting certain transactions with respect to the Crimea region of Ukraine.
- D. E.O.s 13694 and 13757 relating to significant malicious cyber-related activities.

- E. The Support for the Sovereignty, Integrity, Democracy, and Economic Stability of the Ukraine Act of 2014.
- F. Ukraine Freedom Support Act of 2014.
- G. The prohibition on access to properties owned by the Russian Federation in Maryland and New York, which President Obama previously ordered vacated.

After the President files a report on a proposed action to relieve sanctions, Congress has 30 days to review the proposed action and conduct hearings. The President may not take the proposed action during the Congressional review period and if Congress passes a joint resolution of disapproval, then the President cannot take the action for 12 days after the passage of the joint resolution. If the President vetoes the joint resolution of disapproval, he still cannot take any action for 10 days. During that period, Congress could override the Presidential veto. Essentially, this provision of the Act will make it difficult for President Trump to relieve any sanctions against Russia without first obtaining the approval of Congress.

## 2. Sanctions Against Iran

Two of the new sanctions against Iran which could implicate ocean carriers are as follows:

- A. **Section 104 - Imposition of Additional Sanctions in Response to Iran's Ballistic Missile Program:** Sanctions shall be imposed on any person determined to knowingly engage in any act that materially contributes to the Iranian ballistic missile program or any other program relating to the delivery of weapons of mass destruction. The sanctions are: (1) blocking of all property and interests in property of such a person in the U.S.; and (2) denying a visa to the U.S. to such a person. Should a shipowner knowingly transport to Iran cargoes that are intended for use in the Iranian weapons delivery programs described above, that shipowner could be subject to sanctions.
- B. **Section 107 – Enforcement of Arms Embargoes:** Sanctions shall be imposed on any person determined to knowingly engage in any act that materially contributes to the supply, sale or transfer to Iran, directly or indirectly, of various weapons, or who supplies technical training, financial resources or services, advice or other services or assistance related to said weapons. The sanctions are: (1) blocking of all property and interests in property of such a person in the U.S.; and (2) denying a visa to the U.S. to such a person. Should a shipowner knowingly transport to Iran the types of weapons described in the Act, that shipowner could be subject to sanctions.

The remaining new sanctions imposed on Iran do not appear to impact international shipping.

### 3. Sanctions Against Russia

The Act contains numerous additional sanctions against Russia, some of which may affect shipping.

- A. E.O. 13662 provided for the blocking of all property and interests in property in the U.S., or under the possession or control of a U.S. person, of any person or entity who may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be operating in certain sectors of the Russian economy, such as financial services, energy, metals and mining, engineering and defense and related material. Section 223 of the Act now provides that a state-owned entity operating in the railway or metals and mining sector of the Russian economy can be designated under this E.O. The E.O. also provides for the blocking of the property of any person who has materially assisted or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked under this Order.

However, E.O. 13662 was implemented by the issuance of four Directives under the Order, which more narrowly defined the prohibited activities. Three of those four Directives have been modified by the Act.

1. Directive 1 under E.O. 13622 prohibited U.S. persons from engaging in transactions involving debt of more than 30 days maturity or new equity with designated persons/entities in the Russian financial sector. Section 223(b) of the Act reduces 30 days to 14 days. This provision should not affect shipping unless a U.S. shipowner is engaging in transactions with a designated Russian financial institution.
2. Directive 2 under E.O. 13622 prohibited U.S. persons from engaging in transactions involving debt of more than 90 days maturity or new equity with designated persons/entities in the Russian energy sector. Section 223(c) of the Act reduces 90 days to 60 days. This provision could affect shipping in a situation where a Russian energy company designated under Directive 2 is the charterer of a U.S. owned or operated vessel. In that instance, a U.S. vessel owner or operator could not, for example, contractually extend the Russian charterer's time to pay freight or demurrage beyond 60 days.
3. Directive 4 under E.O. 13622 prohibited certain activities of U.S. persons relative to Russia's energy sector, namely: "the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime areas claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to this Directive, its property, or its interests in property."

Section 223(c) of the Act expands Directive 4. Firstly, it now applies not only to "U.S. persons" but also to "persons within the U.S." Secondly, the oil exploration and production projects which are the subject of the Directive are no longer restricted to those with the

potential to produce oil in the Russian Federation, but instead apply to projects worldwide. Finally, the projects to which the Directive applies now include not only projects involving persons designated under this Directive, but also projects that involve such a person "... who has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest."

This modification of Directive 4 means that any U.S. person or person within the U.S. who is considering supplying goods or services to a Russian deepwater, Arctic offshore, or shale oil project, located anywhere in the world, must not only check to see if a designated party owns the project, but also must determine whether any designated party has at least a 33% interest in the project.

- B. Section 232 of the Act provides that the President may impose sanctions on a person who is determined to have knowingly made an investment that directly and significantly contributes to the enhancement of the ability of the Russian Federation to construct an energy export pipeline, or who supplies to the Russian Federation, for the construction of energy export pipelines, goods, services, technology, information or support with a fair market value of \$1,000,000 or more, or an aggregate fair market value of \$5M during a 12 month period. Therefore, if a shipowner, U.S. or foreign, supplied transportation services, with a value of over \$1M, or over \$5M in a 12 month period, in support of a Russian energy export pipeline project, that shipowner could be subject to sanctions. There was a similar provision in the U.S. sanctions against Iran and the U.S. authorities never made it clear whether the monetary threshold would be based on the amount of freight/hire earned or on the value of the cargo carried.
- C. The Act contains further sanctions directed at Russia, relating to cybersecurity, investments in Russian crude oil projects, corruption in the Russian Federation, human rights abuses, the defense and/or intelligence sectors of the Russian Federation, and the privatization of a Russian state-owned asset. However, these additional sanctions do not appear to have any obvious implications for international shipping.
- D. Section 234 of the Act provides that the President "shall" impose sanctions on a "foreign person" if said person has knowingly exported, transferred, or otherwise provided to Syria significant financial, material or technological support that contributes materially to the ability of the Syrian government to acquire or develop: (1) biological, chemical or nuclear weapons; (2) ballistic or cruise missile capabilities; or (3) destabilizing numbers and types of advanced conventional weapons; (4) significant defense articles, services or information; or (5) items designated to the United States Munitions List under Section 38(a) of the Arms Export Control Act. Any shipowner asked to carry any military materiel to Syria must carefully analyze the shipment to insure that it does not violate this section of the Act.

#### 4. Sanctions Against North Korea

The Act contains sanctions against North Korea which are designed to deter North Korea's nuclear weapons program, as well as provisions which make sanctionable purchases of certain metals and minerals from North Korea and the sale or transfer to North Korea of certain fuels. The registration or insuring of a vessel owned or controlled by the Government of North Korea are also rendered sanctionable.

The sanctions in the Act against North Korea which could most directly implicate international shipping as are follows:

- A. Section 104(a) of the North Korean Sanctions and Policy Enhancement Act of 2016 provides that the President "shall" designate under the Act any person (not just U.S. persons) who engage in certain activities. The current Act, in Section 311, expands the categories of activities for which any persons shall be designated to include:
  1. knowingly, directly or indirectly, purchasing or otherwise acquiring from North Korea certain metals, ores and minerals;
  2. knowingly, directly or indirectly, selling or transferring to North Korea, significant amounts of rocket, aviation or jet fuel;
  3. knowingly, directly or indirectly, registering or insuring, or facilitating the registration of, a vessel owned or controlled by the Government of North Korea;
  4. knowingly, directly or indirectly, maintaining a correspondent account with a North Korean financial institution.
  
- B. Section 104(b) of the North Korean Sanctions and Policy Enhancement Act of 2016 provides that the President "may" designate under the Act any person (not just U.S. persons) who engage in certain activities. The current Act, in Section 311, expands the categories of activities for which any persons may be designated to include:
  1. knowingly, directly or indirectly, purchasing or otherwise acquiring from the Government of North Korea significant quantities of coal, iron or iron ore, in excess of the limitations in applicable U.N. resolutions;
  2. knowingly, directly or indirectly, purchasing or otherwise acquiring from the Government of North Korea significant amounts of textiles;
  3. knowingly, directly or indirectly, facilitating a significant transfer to or from the Government of North Korea of bulk cash, precious metals, gemstones, or other stores of value;
  4. knowingly, directly or indirectly, selling, transferring or otherwise providing to the Government of North Korea significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum by-products, liquefied natural gas or other natural gas resources. Exempted from this list are heavy fuel oil, gasoline or diesel fuel for humanitarian use;

5. knowingly, directly or indirectly, purchasing or otherwise acquiring from the Government of North Korea significant types or amounts of food or agricultural products;
  6. knowingly, directly or indirectly, engaging in, facilitating or being responsible for the exportation of workers from North Korea in a manner intended to generate revenue for the Government of North Korea or for the Workers' Party of Korea;
  7. Knowingly conducting a significant transaction in North Korea's transportation, mining, energy or financial services industries.
- C. A person or entity designated for any of the sanctionable activities listed in 4.A and 4.B above is essentially denied access to the U.S. financial system and has its property and interests in property in the U.S. blocked. In addition, a designated entity is excluded from U.S. government contracts. Designated individuals and the corporate officers or principal shareholders of designated entities may be denied visas to the United States. Any vessel under U.S. jurisdiction utilized in sanctionable activities may be seized and forfeited.
- D. Within 180 days of the passage of the Act, the President shall submit a report to Congress explaining why the Korea Shipowners' Protection and Indemnity Association and Chinpo Shipping Company (Private) Limited of Singapore, among others, should not be designated.
- E. Under Section 313 of the Act, a report shall be made to Congress within 180 days identifying the operators of seaports and airports who have knowingly: (1) failed to enforce regulations to inspect ships, aircraft and cargo in transit to or from North Korea, as required by U.S. Security Council resolutions, or (2) facilitate the transfer, transshipment or conveyance of significant types or quantities of cargo, vessels or aircraft owned or controlled by persons designated under applicable U.S. Security Council resolutions. Thereafter, there may be enhanced inspections of any cargo arriving in the U.S. that has been transported through a seaport or airport identified in the aforementioned report, or which is aboard a vessel that has called at North Korea in the last 365 days.
- F. Section 315 of the Act requires the periodic publication of a list of vessels which are:
1. owned or operated by or on behalf of the Government of North Korea or a North Korean person;
  2. owned or operated by or on behalf of any country in which a seaport is located which has been named in the report described in paragraph 4.E above;
  3. owned or operated by or on behalf of any country identified as a country which has not complied with applicable U.S. Security Counsel regulations.

No vessel so listed may enter any U.S. port. In addition, any vessel registered by a government the agents or instrumentalities of which are maintaining the registration of a vessel appearing on the list, is also banned from U.S. waters and ports. Finally, within 30 days of publication of the list, the U.S. will notify a government, the agents or instrumentalities of which are maintaining the registration of a vessel on the list, that all vessels registered under that government's authority are subject to being banned from U.S. waters and ports.

## Summary

President Trump signed the Act reluctantly, stating that he viewed it as misguided and as an attempt by Congress to usurp the President's power to conduct the foreign policy of the United States. Therefore, it remains to be seen how aggressively these latest sanctions will be enforced. Entities involved in trade with the Russian energy sector or with any trade to North Korea should carefully review the Act to insure that their activities do not risk the imposition of sanctions by the U.S. authorities.

*Disclaimer: This Client Alert provides only a general summary of the Countering America's Adversaries Through Sanctions Act, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the new legislation. For additional clarification, please feel free to contact Bill Juska ([juska@freehill.com](mailto:juska@freehill.com)), Gina Venezia ([venezia@freehill.com](mailto:venezia@freehill.com)) or Bill Pallas ([pallas@freehill.com](mailto:pallas@freehill.com)).*

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