

CLIENT ALERT:
**U.S. STEPS UP ENFORCEMENT OF SANCTIONS AGAINST
NORTH KOREA**

April 10, 2018

Introduction

In our Client Alert of September 25, 2017, we highlighted new U.S. and UN sanctions against North Korea. Notably, the U.S. sanctions imposed a “180 day rule” on any vessel which has called at a North Korean port or has engaged in a ship-to-ship transfer with a vessel that has called at a North Korean port. Such vessels are barred from U.S. ports for 180 days. The U.S. sanctions, contained in Executive Order 13810, also provided for the blocking of the property in the U.S. of any person determined to have engaged in at least one significant importation from or exportation to North Korea of any goods, services or technology. In our last Client Alert we warned that shipowners need to exercise great caution in any dealings with North Korea to insure that they are not violating either the UN Security Council Resolutions or the U.S. sanctions. Recent actions by the U.S. and the UN indicate that they intend to enforce their sanctions aggressively.

U.S. and UN Sanctions

Before discussing U.S. and UN enforcement actions, a recap of the principal U.S. and UN sanctions against North Korea is in order. The key U.S. sanctions apply primarily to U.S. persons¹ and prohibit, among other activities:

- the registering of a vessel in North Korea, or owning, leasing, operating or insuring a vessel flagged by North Korea;
- importation into the United States, directly or indirectly, of any goods, services or technology from North Korea;

¹ The U.S. North Korea Sanctions Regulations define a U.S. person as “...any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.”

- the exportation or re-exportation, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to North Korea;
- the provision of any services, including transportation services, to the Government of North Korea or the Workers' Party of Korea;
- In addition, E.O. 13810 also imposes a "180 day rule", barring from U.S. ports for 180 days all vessels which have called at ports in North Korea or which have engaged in a ship-to-ship transfer with a ship which has called at a North Korean port.

The UN Resolutions of August and September 2017 imposed the following international sanctions:

- Banned the exportation of numerous commodities from North Korea, including, among others, coal, iron, iron ore, lead, lead ore, textiles and seafood;
- Banned the supply of all condensates or natural gas to North Korea and restricted the amount of crude oil and refined petroleum products which can be supplied to North Korea;
- Prohibited new joint ventures with North Korean entities or individuals;
- Called for Member States to inspect vessel believed to be carrying prohibited cargoes;
- Prohibited owning, leasing, operating, chartering or providing classification or insurance or reinsurance services to any vessel flagged in North Korea or owned, controlled or operated by North Korean interests;
- Authorized the designation of vessels engaged in prohibited activities as banned from the ports of all Member States in the UN.

Enforcement Actions

On February 23, 2018, the U.S. Department of the Treasury designated one individual, 27 entities and 28 vessels to the U.S. Specially Designated Nationals List.² These designations were made because the entities and vessels were found to have engaged in deceptive shipping practices used by North Korea to evade sanctions.

Also on February 23rd the U.S. Office of Foreign Asset Control ("OFAC") issued a "North Korea Sanctions Advisory." To view same, click *here*. The Sanctions Advisory describes in some detail the deceptive

² To review the designations issued on February 23rd, click *here*.

shipping practices utilized by North Korea to evade sanctions, such as physically altering vessel identification, ship to ship transfers, falsifying cargo and vessel documents, and manipulating vessels' AIS systems. The Sanctions Advisory also lists "risk mitigation measures" which should be taken into consideration by any shipowner in formulating a due diligence protocol to avoid violating the U.S. sanctions relating to North Korea. Finally, the Sanctions Advisory notes that the penalty for violations of the U.S. sanctions against North Korea are equal to the greater of twice the value of the underlying transaction or \$289,238, for each separate violation. It is recommended that shipowners and others in international shipping community carefully review the OFAC North Korea Sanctions Advisory.

The UN is taking a similar active stance toward the enforcement of its sanctions against North Korea, although UN Security Council actions are subject to vetoes by Council members. In October 2017 the UN banned all Member States from permitting into their ports four vessels that had violated the UN sanctions against North Korea.³ On February 23, 2018, the U.S. asked the UN Security Council to ban 33 vessels from entry into the ports of the world. However, at the moment, that request has been placed on hold by China, a member of the Security Council. In addition to a global port of entry ban, the UN can also take additional actions against vessels found to have violated the sanctions against North Korea. The vessels could also be listed for: (a) deregistration by the flag state, (b) direction to a designated port for inspection, and (c) possible seizure.

Possible Increased Vessel Inspections

Is also possible that there may be an increase in inspections of vessels suspected of engaging in deceptive activities to evade the sanctions against North Korea. A February 23, 2018, Reuters report stated that the U.S. and key allies are preparing plans to increase inspections of vessels suspected of violating sanctions, including the possible deployment of U.S. Coast Guard personnel and vessels to the Asia-Pacific. While the U.S. declined any formal comment on the reports, the Reuters article cites unnamed senior U.S. officials as confirming that plans for increased tracking and inspections of vessels are underway.

An aggressive interdiction program would unquestionably heighten tensions with North Korea, but also may increase tensions with China and Russia. The U.S. may rely upon UN Security Council Resolution No. 2375 of September 11, 2017, which called upon Member States to inspect vessels (but with the consent of the Flag State) if there were reasonable grounds to believe vessels were evading UN sanctions. However, the Reuters report states that China's position may be that any such inspection should only be conducted under UN auspices.

³ Petrel 8, Hao Fan 6, Tong San 2 and Jie Shun.

Summary

In the last five months of 2017 U.S. and UN sanctions against trade with North Korea were significantly increased. Since then, both the U.S. and the UN have taken steps to penalize shipowners and vessels which have engaged in deceptive activities to evade sanctions. There is the possibility that such enforcement actions will be stepped up in the future. U.S. shipowners and shipping interests should not, of course, engage in any trade with North Korea, unless authorized by OFAC. Before embarking on trade with North Korea or with vessels that have traded to North Korea, non-US shipowners should carefully review the U.S. and UN sanctions against trade with North Korea, to ensure that they are not violating same.

Disclaimer: This Client Alert provides only a general summary of the U.S. and UN sanctions against North Korea and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the new Executive Order and the UN Resolutions. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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