

US Sanctions against North Korea: Turning into a country of mushrooms

Just a month after new US sanctions were announced in January 2015, Kim Jong-un, the leader of the Democratic People's Republic of Korea ("**North Korea**"), announced his 2015 political slogans, including the plan to "*turn ours into a country of mushrooms . . .*"¹ Through its economic sanctions programs, the United States has long reinforced Kim Jong-un's mushroom management of his country,² at least with regard to keeping the country in the dark leaving the dictator to fertilize the country as he sees fit.

In contrast to other US economic sanctions programs, which tighten and loosen periodically, such as those imposed on Cuba, Myanmar, and even Iran, in most part, the sanctions imposed on North Korea under the Obama administration have twisted only in one direction. The January 2015 sanctions further tighten the screws on this economically isolated country.

US Economic Sanctions and Export Controls

Under the economic sanctions administered by the US Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"):

- US Persons must block the assets of, and cannot do business with or provide services to Specially Designated Nationals ("**SDNs**") of North Korea, including entities 50 percent or more owned by the SDNs;
- US Persons are prohibited from leasing, operating or insuring a North Korean flagged vessel or registering a vessel in North Korea; and
- North Korean origin goods may not be imported into the United States.

The US import ban is particularly important for Chinese and South Korean companies that export goods to the United States, because it "*extends to goods, services, and technology from North Korea that are used as components of finished products of, or substantially transformed in, a third country.*" As such, companies that rely on North Korean products as part of the supply chain may face potential OFAC enforcement risk to the extent that they use North Korean components for exports to the United States.

¹ On February 15, 2015, the ruling party distributed 300 political slogans to regional officials. In addition to making mushroom cultivation scientific, intensive and industrialized, they also called for "*more stylish school uniforms*" and "*organic farming on an extensive scale.*"

² A public relations strategy used by government agencies, corporations and law enforcement officials, according to the Urban Dictionary. The origin: farmers use manure and wood chips to grow mushrooms in dark, steamy rooms. Hence, "*feed them manure and keep them in the dark.*"

US export controls, administered by the US Department of Commerce's Bureau of Industry and Security generally prohibit unlicensed exports and re-exports to North Korea of commercial and dual-use products. In addition, US export controls ban exports of luxury goods, such as wines, cigars, jewellery, art, clocks, clothes, and sports equipment. With regard to the last restriction, basketball celebrity Dennis Rodman found himself under investigation by OFAC for the high-end gifts he brought to North Korea in January 2014, including custom suits, a fur coat, bottles of Jameson and a designer handbag for the leader's wife, totalling about \$10,000.

Ongoing Vigilance and Enforcement by US Authorities

Because the North Korean economic sanctions are fairly comprehensive, OFAC tightens them by adding new individuals and entities to the SDN List. For example, in July 2014, sanctions were imposed on two North Korean shipping companies, Chongchongang Shipping Company and Ocean Maritime Management Company ("**OMM**") for attempting to ship concealed arms from Cuba to North Korea, and 18 vessels in which these companies have an interest.³ These designations have had an impact on the shipping industry as will a recent piece of proposed legislation, HR 1771, which would authorize the seizure of vessels or aircraft used in sanctionable activities.

Other industry sectors effectively banned for export to North Korea include: the entire defense sector; aeronautics; chemicals and equipment related to extraction, agriculture, the environment, pharmaceutical and medical. Export licenses are required for: medicine and medical equipment; software; electronics and power equipment; agricultural commodities; automobiles and parts; oil and gas products, equipment, and technology.

The effectiveness of the sanctions program is debatable. The United Nations issued a report by the Panel of Experts in March 2015, which suggests how adept North Korea is in evading sanctions in order to procure components for its nuclear and missile programs. According to the Report, despite its designation, OMM continues to provide support by re-registering its vessels in various countries, embedding within other corporations, and working with overseas diplomats to facilitate prohibited transactions. Moreover, to be effective, the cooperation and mutual interest in enforcement of North Korea's neighbors, such as China, is crucial.

Increasing the Pressure

On January 2, 2015, following the hacking of Sony Pictures, which intelligence sources link to North Korea, President Obama authorized the imposition of blocking sanctions against the Government of North Korea and the Workers' Party of Korea and designated three North Korean businesses and ten individuals, none of whom appear to be directly involved in cyber technologies, computers or telecom, but rather missile and weapons sales. OFAC has not to date used this authority to designate the entire North Korean Government as a sanctions target.

The entities are North Korea's intelligence organization, the Reconnaissance General Bureau; its primary arms dealer, the Korea Mining Development Trading Corporation; and the agency primarily responsible for procuring commodities and technology to support its defense research and development, Korea Tangun Trading Corp. The ten designated individuals work for the trading companies but are not members of North Korea's top leadership.

- It applies to any entity controlled by or 50% or more owned, individually or in the aggregate, directly or indirectly, by one or more designated individual or entity.

³ Chongchongang is owned by the North Korean government and OMM had provided the captain and crew of the North Korean flagged ship instructions as to how to conceal the weapons under 200,000 bags of sugar.

- It authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate persons that have "*materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, or acted on behalf of, directly or indirectly, the Government or persons blocked by the Executive Order.*"
- It does not designate the Government of North Korea, but provides "*authority to designate individuals and entities based solely on their status as officials, agencies, instrumentalities, or controlled entities of the Government of [North Korea] or the [Workers' Party] but also anyone acting on their behalf or providing them with material support.*"⁴

Predicting the Near Future

Companies and individuals conducting transactions with North Korean entities, particularly the Government of North Korea, must monitor the SDN list for additional designations.

In the case of Iran, we have seen instances where OFAC has used the designation authority under the so-called material assistance provision as an enforcement tool to target non-Iranian individuals and entities engaged as middlemen in trade with Iran. We can expect a similar approach to the North Korea sanctions in an effort to further isolate the regime.

⁴ Daniel Glaser, Assistant Secretary for Terrorist Financing, Office of Terrorism and Financial Intelligence, US Department of Treasury, Jan. 13, 2015 House Committee on Foreign Affairs.

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