

## UN SECURITY COUNCIL RATCHETS UP NORTH KOREA SANCTIONS IN RESOLUTION 2397

On December 22, 2017, the fifteen members of the United Nations Security Council ("**UNSC**") unanimously adopted Resolution 2397 ("**UNSCR 2397**") to enhance sanctions against North Korea in response to its November 28, 2017 launch of a Hwasong-15 intercontinental ballistic missile, bringing international multilateral sanctions closer in line with existing US and EU sanctions against the North Korean regime. Under the new sanctions, UN member states will further restrict sales of oil and refined petroleum products to North Korea, repatriate North Korean workers earning income abroad, and cease trading in several other sectors critical to the North Korean economy. UN member states are also now authorized to seize vessels in their territorial waters engaged in smuggling of oil or other commodities for the benefit of North Korea, mirroring existing obligations imposed by the European Union.

UNSCR 2397 is the third UNSC resolution adopted during 2017 in response to North Korea's nuclear weapons and missile development programs, following Resolution 2371 ("**UNSCR 2371**") of August 5, 2017, and Resolution 2375 ("**UNSCR 2375**") of September 11, 2017. Under UNSCR 2379, the UNSC reiterated its demands that North Korea avoid "any further launches that use ballistic missile technology, nuclear tests, or any other provocation" and cease activities related to its ballistic missile and weapons of mass destruction programs "in a complete, verifiable and irreversible manner."

## **TIGHTER CURBS ON NORTH KOREAN IMPORTS AND EXPORTS**

Key provisions of UNSCR 2397 include the following:

- prohibits the direct or indirect supply, sale, or transfer to North Korea of crude oil in excess of 4 million barrels, or 525,000 tons, annually starting on the date of UNSCR 2397's adoption, and requires UN member states that supply crude oil to North Korea to report to the UN North Korea Sanctions Committee every 90 days on the amount of crude oil provided to North Korea;
- reduces the amount of refined petroleum products that may be sold to North Korea from 4.5 million barrels per year, as established under UNSCR 2375, to 500,000 barrels per year beginning January 1, 2018;
- prohibits North Korea from supplying, selling, or transferring, directly or indirectly, food and agricultural products, machinery, electrical equipment, earth and stone including magnesite and magnesia, wood, and vessels; and clarifies that UNSCR 2371's ban on exports of seafood from North Korea includes the sale or transfer of fishing rights;
- prohibits UN member states from exporting to North Korea industrial machinery; transportation vehicles; iron, steel and other metals, with the exception of certain spare parts needed for the safe operation of commercial civilian passenger aircraft;
- orders UN member states to repatriate North Korean nationals earning income abroad immediately, but no later than 24 months from the adoption of UNSCR 2397, with the exception of North Korean nationals whose repatriation would be prohibited under applicable laws such as international refugee or human rights laws. Member states must provide a report within 15 months of all North Korean nationals repatriated and an explanation, if applicable, "of why less than half of such [North Korean] nationals were not repatriated" within 12 months of the adoption of UNSCR 2397;
- directs UN member states to seize, inspect, and impound any vessel, regardless of its nationality, within each member state's territorial waters where there is reasonable grounds to believe that the vessel is engaged in activities prohibited by UN sanctions against North Korea, such as exports or ship-to-ship transfers of prohibited commodities; and directs member states to prohibit the provision of insurance or re-insurance to such vessels reasonably believed to have been involved in prohibited activity.

## **DESIGNATIONS**

The resolution added sixteen individuals and one entity to the list of persons subject to asset freezes and travel bans pursuant to Resolution 1718 of October 14, 2006. These include the Ministry of the People's Armed Forces, the administrative and logistical arm of the Korean People's Army; numerous North Korean banking officials and representatives; and high-ranking officials serving in the Workers' Party of Korea Munitions Industry Department. A further four vessels were also designated by the relevant Security Council Committee pursuant to Resolution 2375 of September 11, 2017 before the end of the year, on December 28, 2017.

On the same day that UNSC 2397 passed, the consolidated list of financial sanctions targets in the UK was updated by HM Treasury's Office of Financial Sanctions Implementation ("**OFSI**") to include these additional names.

All but two of the listed individuals were already previously named as Specially Designated Nationals ("**SDNs**") by the US Treasury Department's Office of Foreign Assets Control ("**OFAC**") under OFAC's North Korea sanctions program, in June and September 2017. On December 26, 2017, OFAC updated the SDN List to include the two newest individual designees.

## **KEY TAKEAWAYS**

North Korea has been the subject of a tapestry of US and EU sanctions since first claiming to have conducted nuclear weapons tests in December 2006. This latest resolution, reflecting the growing resolve of UN Member States (including North Korea's perceived political allies) towards defusing this apparent threat to international security, further increases the mounting pressure on the North Korean regime to curtail its nuclear ambitions.

A comprehensive US trade embargo has been imposed on North Korea since the issuance of Executive Order 13722 in March 2016. Autonomous measures complementing and reinforcing the UN sanctions regime have also been adopted by the European Union over the years. This latest resolution continues the trend of bringing the UN's North Korea sanctions program in closer alignment with these existing EU restrictive measures and US policy under the Trump administration, as expressed in Executive Order 13810 of September 2017, targeting significant transactions with North Korea, and other recent international actions to isolate the North Korean government.

While the new measures may not have a material impact on existing EU or US primary sanctions, the resolution may also serve to strengthen the extraterritorial application of US sanctions. For example, under the North Korea Sanctions and Policy Enhancement Act of 2016 ("**NKSPEA**"), as amended in August 2017 by the Countering America's Adversaries Through Sanctions Act ("**CAATSA**"), the US President is directed to adopt mandatory sanctions against persons that he determines to have engaged in specified transactions involving vessels that are designated under UNSC resolutions, or owned or controlled by a person designated under a UNSC resolution. NKSPEA also gives the President discretion to designate persons that he determines to engage in transactions prohibited by applicable UNSC resolutions, including persons determined to knowingly facilitate a significant transfer of funds or property of the North Korean government that materially contributes to a violation of an applicable UNSC resolution.

What effect UNSC 2397 will have in practice (particularly on the supply of oil and refined petroleum products into North Korea) remains to be seen. As with previous UNSC resolutions, the success of UNSCR 2397 will depend on its implementation by UN member states, most notably China and Russia, especially with respect to the repatriation of North Korean workers. According to a US State Department fact sheet, the North Korean government earns more than \$500 million per year from nearly 100,000 overseas workers, approximately 80 percent of whom are located in China and Russia.

With the latest round of sanctions, the UNSC's remaining unutilized economic and diplomatic measures at its disposal to encourage North Korea to end its proliferation activities pursuant to Chapter VII, Article 41, of the UN Charter include, for example, new restrictions on North Korea's diplomatic activities, further reductions in petroleum sales, or the imposition of a comprehensive embargo by UN member states. Should Pyongyang fail to take heed, the UNSC is empowered to authorize other actions under Chapter VII to restore international peace and security with respect to North Korea.

The United States, the European Union and their allies are also likely to continue to apply sanctions and other measures outside of the UNSC framework in response to North Korea's ongoing threats.

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