

The Act

In late July 2017, the US Congress passed H.R. 3364, the Countering America's Adversaries Through Sanctions Act (CAATSA). It was signed into law by President Trump on August 2. It is a sprawling and messy law that tightens US sanctions and authorizes the imposition of additional sanctions targeting Iran, Russia, North Korea and, to a lesser extent, Syria.

CAATSA's Russian provisions were initially driven by a Congressional desire to provide Congress with a means of blocking any relaxation of existing sanctions targeting Russia. This was opposed by the Trump Administration, but survived in the bill as passed. So Congress will now have the ability to override any relaxation of the current Russian sanctions that might be proposed by the Trump Administration (or any successor administration). CAATSA also tightens existing US Russia sanctions somewhat, for example, by amending three of the four directives defining the United States' "sectoral sanctions" targeting Russia.

Otherwise, the bill serves primarily to authorize a greatly expanded list of sanctions targeting Iran, Russia and North Korea (additional Syria-related sanctions are authorized by Section 234 of the bill). Many of these are "secondary sanctions," i.e., sanctions that are intended to harm the targeted country, but that are actually authorized or imposed against third-country companies (e.g., companies in the EU or Asia). Between 2010 and 2013, US laws were passed or amended to authorize a dizzying variety of secondary sanctions targeting Iran. In fact, few secondary sanctions were imposed, but the threatened imposition of US sanctions kept many non-US companies from engaging in transactions that US law defined as sanctionable. That same pattern may emerge with respect to the many sanctions authorized by CAATSA.

Several European governments have already strongly criticized the secondary sanctions authorized by CAATSA, especially its Section 232, which authorizes the imposition of sanctions against third-country companies that finance the construction of Russia energy export pipelines such as Nord Stream 2. Germany in particular has characterized the bill as an unwarranted interference in European energy policy, decried the absence of US and EU solidarity that has characterized the imposition of sanctions targeting Russia to date, and hinted that the bill may be intended in part to increase exports of LNG from the US to the EU.

If this sentiment becomes widespread within the EU there is a possibility that the EU will adopt "blocking legislation," as it did in 1996 after US passage of the Libertad Act (authorizing the imposition of secondary sanctions targeting Cuba) and the Iran and Libya Sanctions Act (authorizing the imposition of secondary sanctions targeting the Iranian and Libyan petroleum sectors).

However, a late amendment to Section 232 added the requirement that the President impose sanctions under this section "in coordination with allies of the United States," which makes the imposition of sanctions under this section less likely.

Sanctionable Transactions or Activities

We list below the most significant of the transactions or activities that will now expose non-US companies to the potential imposition of US sanctions.

Iran

- Engaging in any activity that materially contributes to the activities of the Government of Iran with respect to its ballistic missile program.
- Engaging in any activity that materially contributes to the supply, sale or transfer directly or indirectly to or from Iran, or for the use in or benefit of Iran, of any battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems or providing to Iran any related technical training, financial resources or other services or assistance.

Russia

- Engaging in significant activities undermining cybersecurity against any person, including a democratic institution or government, on behalf of the Russian Government.
- Making a significant investment in a project intended to extract crude oil from: (1) the Exclusive Economic Zone of the Russian Federation in waters more than 500 feet deep; (2) Russian Arctic offshore locations; or (3) shale formations located in the Russian Federation.
- Violating, attempting to violate, conspiring to violate or causing a violation of any US sanction targeting Russia.
- Facilitating a significant transaction or transactions for or on behalf of any person subject to US sanctions imposed with respect to the Russian Federation, or a family member of such a person.
- Engaging in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation.

- Making an investment that directly and significantly contributes to the enhancement of the ability of the Russian Federation to construct energy export pipelines.
- Selling, leasing or providing to Russia goods, services, technology, information or support that facilitates the maintenance or expansion of the construction, modernization or repair of energy export pipelines.
- Making a sizeable investment that contributes to the ability of the Russian Federation to privatize state-owned assets in a manner that “unjustly benefits” officials of the Government of the Russian Federation or their family members.
- For foreign financial institutions, facilitating a significant financial transaction on behalf of any Russian person that has been placed on the US list of “specially designated nationals” pursuant to the US sanctions targeting Russia/Ukraine.
- Acquiring significant types or amounts of textiles from the Government of North Korea.
- Facilitating a significant transfer to or from the Government of North Korea of bulk cash, precious metals, gemstones or other stones of value.
- Selling, transferring or otherwise providing to the Government of North Korea significant amounts of crude oil, condensates, refined petroleum or other types of petroleum or petroleum byproducts, liquified natural gas or other natural gas resources.
- Engaging in, facilitating or being responsible for the online commercial activities of the Government of North Korea, including online gambling.
- Acquiring fishing rights from the Government of North Korea.
- Acquiring significant types or amounts of food or agricultural products from the Government of North Korea.
- Engaging in, facilitating or being responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the Government of North Korea or by the Workers’ Party of Korea.

North Korea

- Acquiring from North Korea any significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc or rare earth minerals.
- Transferring to North Korea any significant amounts of rocket, aviation or jet fuel.
- Providing significant amounts of fuel or supplies or bunkering services, or facilitating a significant transaction or transactions to operate or maintain, a vessel or aircraft that is sanctioned by the US or UN or owned or controlled by a person that is sanctioned by the US or UN.
- Insuring, registering, facilitating the registration of, or maintaining insurance or a registration for a vessel owned or controlled by the Government of North Korea.
- Maintaining a correspondent account with any North Korean financial institution, except as specifically approved by the UN Security Council (UNSC).
- Importing, exporting or reexporting luxury goods to or into North Korea.
- Facilitating any transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable UNSC resolution.
- Conducting a significant transaction or transactions in North Korea’s transportation, mining, energy or financial services industries.
- Facilitating the operation of any branch, subsidiary or office of a North Korean financial institution.
- Acquiring from the Government of North Korea significant quantities of coal, iron or iron ore in excess of the limitations provided in applicable UNSC resolutions.

Syria

- Knowingly exporting, transferring or otherwise providing to Syria significant financial, material or technological support that contributes materially to the ability of the Government of Syria to:
 - Acquire or develop chemical, biological, or nuclear weapons or related technologies.
 - Acquire or develop ballistic or cruise missile capabilities.
 - Acquire or develop destabilizing numbers and types of advanced conventional weapons.
 - Acquire significant defense articles, defense services, or defense information.

Obviously, the preceding list of activities now declared “sanctionable” under US law is extremely long. In some cases, it is also vague or ambiguous. We recommend that all companies with activities in or related to Iran, Russia, North Korea or Syria review those operations carefully to assure that they do not expose the company to the potential imposition of US sanctions.

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