

Congress Reaches Agreement on New Sanctions against Russia, North Korea, and Iran

July 27, 2017

On July 25, 2017, the United States House adopted H.R. 3364, the “Countering America’s Adversaries Through Sanctions Act” (“CAATS”), a compromise measure incorporating both House and Senate sanctions proposals. The vote was 419-3. CAATS is also expected to pass the Senate by a wide margin and to be signed by President Trump (who in any event appears to lack sufficient support to uphold a veto). Assuming it is adopted, CAATS will:

- codify all existing Russia sanctions and designations (meaning the Trump Administration cannot unilaterally lift them) and require congressional review for any subsequent changes in licensing policy;
- expand secondary sanctions against Russia, most notably by targeting any transaction by a non-U.S. person with a Russian SDN and Russian energy export pipelines, and reinvigorate existing but currently unenforced secondary sanctions against Russia (but leave enforcement of all these secondary sanctions in the hands of the Trump Administration);
- tighten existing sectoral sanctions against Russian state-owned energy, financial, and defense companies and threaten their expansion to the state-owned rail and mining/metal sectors; and
- expand authority to sanction Russian cyber-related activities.

These sanctions against Russia generally track those proposed in prior Senate legislation, with the addition of national interest waivers for certain new sanctions provisions.

CAATS also levies sanctions against North Korea and Iran. The North Korean provisions significantly expands secondary sanctions against that country, with a special emphasis on trade, shipping, financial services, and the energy sector. With respect to Iran, CAATS would impose a largely symbolic expansion of secondary sanctions against Iranian military activity and sharpen focus on the Iranian Revolutionary Guard Corps and its affiliates.

RUSSIA/UKRAINE-RELATED SANCTIONS

Codification of Existing Russian Sanctions.

CAATS would codify all of the existing sanctions related to Russia’s alleged activities in Ukraine and cyberattacks, meaning that only Congressional action can lift those sanctions programs in most cases.¹

¹ H.R. 3364, 115th Cong., § 222. Sanctions imposed under Executive Orders 13660, 13661, 13662, 13685, 13694, and 13757, together with all designations as of the day before final passage of CAATS, would be codified.

The designation of particular persons for sanctions because of their participation in specified activity could be lifted if the President certifies that he person has ceased or has taken significant verifiable steps toward ceasing the activity, and the President has received reliable assurances that the person will not knowingly engage in the activity in the future.² However, any such proposed termination would have to be notified to Congress, with an opportunity to disapprove the relevant changes under expedited procedures, as would any changes to licensing policy that would “significantly alter U.S. foreign policy,” and any proposal to return Russian access to diplomatic properties cut off during the Obama Administration.³

Modification of Current Sectoral Sanctions.

Pursuant to E.O. 13362, the Secretary of the Treasury is authorized to designate sectors of the Russian economy as potential sanctions targets. The Russian financial, energy, and defense sectors have been designated as eligible for sanctions, and OFAC has specified the limited sanctions applicable in Directives 1 through 4 and designated particular entities in those sectors to which they apply on the Sectoral Sanctions Identification List (“SSI List”).

CAATS modifies the sanctions applicable under Directive 1 (relating to the Russian financial sector) and Directive 2 (relating to the Russian energy sector), shortening the maximum permissible duration of new debt extended to designated entities. For designated SSI List entities in the financial sector, the maximum duration of new debt is cut from 30 days to 14 days; for entities in the energy sector, it is cut from 90 days to 60 days.⁴

CAATS also expands the scope of Directive 4, which prohibits 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 involving designated persons. Previously, Directive 4 was limited to projects in the territory or exclusive economic zone of Russia; now, it applies to such projects worldwide if SSI List entities designated under Directive 4 control the project or own a 33% or greater non-controlling interest in the project.⁵ Moreover, as discussed below, the provision of financial services in support of investment in these projects may now be subject to secondary sanctions.

Finally, CAATS permits the imposition of sectoral sanctions on state-owned entities in the railway or the metals and mining sector of the Russian Federation; however, it does not specify the terms of those sanctions or actually designate any particular entity.⁶

² *Id.* §§ 222, 230.

³ *Id.* § 216. Any termination or waiver of sanctions under the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (22 U.S.C. § 8901 *et seq.*, relating to the imposition of sanctions against certain persons engaged in human rights abuses, violence, or corruption in Ukraine) or the Ukraine Freedom Support Act of 2014 (22 U.S.C. § 8921 *et seq.*, as described below) would also have to be notified with an opportunity for disapproval. Initial application of cyber sanctions under Executive Orders 13694 or 13757 or Ukraine-related sanctions under Executive Orders 13660, 13661, 13662, or 13685) may be waived if “in the vital national security interests of the United States.”

⁴ H.R. 3364, 115th Cong., § 223(b)-(c).

⁵ *Id.* § 223(d).

⁶ *Id.* § 223(a).

Expansion of Secondary Sanctions

“Secondary sanctions” are U.S. sanctions programs that target activity by non-U.S. persons outside U.S. jurisdiction (as opposed to “primary” or “direct” sanctions, which require some act within U.S. jurisdiction, such as direct or indirect participation of U.S. persons, acts within the United States, or exports of U.S.-origin goods or services, including U.S. dollar clearing transactions). The enforcement mechanism is political rather than judicial; effectively, secondary sanctions threaten that if a foreign person engages in the targeted activity, the United States will add that foreign person to U.S. sanctions lists.

Typically, the sanctions available include designation as an SDN fully blocked from all interaction with the U.S. economy (“SDN sanctions”); imposition of a specified number of sanctions from a list of possible sanctions ranging from relatively mild (e.g., denial of export credit assistance) to severe (e.g., designation as an SDN) (“Menu-based sanctions”);⁷ or, for financial institutions, barring or severely restricting the institution’s access to U.S. correspondent accounts, impairing its ability to do dollar-denominated transactions (“Correspondent account sanctions”).

Reinforcement of Existing Secondary Sanctions

As noted in a prior memo,⁸ the Ukraine Freedom Support Act of 2014 (“UFSA”) provided for secondary sanctions against, among others:

- any person making a “significant investment” in Arctic offshore, shale, or deepwater projects with the potential to produce oil in the territory or exclusive economic zone of the Russian Federation (Menu-based sanctions);⁹ or

⁷ Menu-based sanctions under CAATS include five or more of the following: (1) denial of trade finance services from the Export-Import Bank of the U.S. for transactions involving the sanctioned person; (2) denial of export licenses for exports to the sanctioned person; (3) prohibition on U.S. banks lending more than \$10 million in any 12-month period to the sanctioned person; (4) U.S. opposition to any loan from an international financial institution, (5) blocking a financial institution from serving as a primary dealer in U.S. government debt instruments or serving as a depository of government funds; (6) a bar on U.S. government procurement; (7) prohibition on any transaction in foreign exchange that are subject to U.S. jurisdiction; (8) prohibition on any transfer of credit or payment through the U.S. financial system in which the sanctioned person has an interest; (9) blocking all property within U.S. jurisdiction in which the sanctioned person has an interest; (10) prohibition on U.S. persons’ investing in equity or debt of the sanctioned person; (11) visa bans on corporate officers and controlling shareholders; or (12) imposition of any of the sanctions above on the principal executive officers of the sanctioned person. *Id.* § 235.

⁸ See [Ukraine-related Sanctions: New U.S. Statute Creates Secondary Sanctions Targeting Certain Dealings with Russia](#) (Dec. 17, 2014).

⁹ Menu-based sanctions under UFSA include three or more of the following: (1) prohibition of assistance from the Export-Import Bank of the United States; (2) prohibition against procurement of goods and services by United States executive agencies; (3) prohibition of provision of defense goods and services to the sanctioned foreign person or entity; (4) prohibition of licensing of arms and other dual-use exports for the benefit of the sanctioned foreign person or entity; (5) prohibition against engaging in certain U.S. property transactions, but not including the authority to restrict the importation of goods; (6) prohibition against certain banking transactions, including transfers of credits and payments involving an interest of the sanctioned foreign person or entity; (7) prohibition of certain investments by U.S. persons in equity and debt transactions involving the foreign person; (8) exclusion of foreign sanctioned persons from the United States and revocation of visas or other documentation; and (9) imposition of any of the aforementioned sanctions against the executive officers of a foreign sanctioned entity. Ukraine Freedom Support Act of 2014, Pub. L. No. 113-272, 128 Stat. 2952, § 4.

- any financial institution knowingly engaging in significant transactions relating to the sale of weapons to Syria or investment in Arctic offshore, shale, or deepwater projects in the Russian Federation with the potential to produce oil (Correspondent account sanctions); or
- any financial institution facilitating significant financial transactions for any person or entity designated as an SDN under Ukraine-related sanctions (Correspondent account sanctions).

Shortly after the passage of UFSA, the Obama Administration indicated that it had no current intention to use the secondary sanction authority, which at the time was permissive only.¹⁰ However, the imposition of sanctions against persons engaged in targeted activities is now nominally mandatory, subject to a national interest waiver.¹¹ As a practical matter, the Trump Administration still has to take affirmative action to impose sanctions upon individuals or entities engaged in the targeted conduct, but the political pressure to do so may increase, and the validity of the previous statement of intent not to enforce is now questionable.

CAATS also reinforces existing secondary sanctions against corruption, making mandatory the imposition of SDN sanctions against “any official of the Government of the Russian Federation, or a close associate or family member,” who is responsible for “acts of significant corruption” in the Russian Federation or elsewhere as well as any person who has “materially assisted, sponsored, or provided financial, material, or technological support for” such corruption, unless the President makes a written determination that a waiver is in the vital national security interests of the United States.¹²

Expansion of Secondary Sanctions

CAATS also establishes a number of new secondary sanctions programs, all of which are also styled as “mandatory,” generally with waiver provisions for the “vital national security interests of the United States.” Targeted persons include those who do any of the following:

- Knowingly facilitate any significant transaction, including but not limited to a “deceptive” or “structured” transaction, on behalf of any person subject to U.S. Ukraine-related or cybersecurity sanctions, or a child, parent, spouse, or sibling of a sanctioned person, where “deceptive” transactions conceal the interest of a sanctioned person from any participant or regulator, and “structured” transactions are broken down into small amounts to avoid AML controls (SDN sanctions);¹³

¹⁰ “Statement by the President on the Ukraine Freedom Support Act” (Dec. 18, 2014), *available at*

<https://obamawhitehouse.archives.gov/the-press-office/2014/12/18/statement-president-ukraine-freedom-support-act>.

¹¹ H.R. 3364, 115th Cong., §§ 225, 226.

¹² *Id.* § 227; *see also* 22 U.S.C. § 8908(a).

¹³ H.R. 3364, 115th Cong., §228. Note that the provision does not distinguish between Russian persons subject to sectoral sanctions and SDNs, though at least with respect to non-deceptive transactions it would make little sense to make all transactions with an SSI List entity subject to SDN designation given that most transactions with SSI List entities are permissible. Note also that similar authority is inherent in most Executive Orders even if not specifically called out by statute. (*See, e.g.*, Executive Order 13660, §1(a)(v) (authorizing designation of any person found “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in subsection (a)(i) or (a)(ii) of this section or any person whose property and interests in property are blocked pursuant to this order.”))

- Knowingly materially violate U.S. Ukraine/Russia-related sanctions (SDN sanctions);¹⁴
- Knowingly engage in any significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Russian Federation (Menu-based sanctions);¹⁵
- Knowingly invest in, or provide goods, services, or technology for, any Russian energy export pipelines in an amount exceeding \$1 million in any transaction or \$5 million over any 12-month period (Menu-based sanctions);¹⁶
- Engage in, direct, or be complicit in serious human rights abuses in territory controlled by the Russian Federation, or materially assist, sponsor, or provide material, financial, or technological support for, or goods or services to, such a person (SDN sanctions);¹⁷
- Knowingly engage in significant activities undermining cybersecurity against any person, including any government or democratic institution, on behalf of the Government of the Russian Federation (SDN sanctions);¹⁸
- Knowingly materially assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of, the foregoing activities undermining cybersecurity, or knowingly provide any financial services in support of any such activities (Menu-based sanctions);¹⁹
- Knowingly invest more than \$10 million, individually or in an aggregate of transactions of at least \$1 million in any 12-month period, or facilitate such an investment, if it “directly and significantly contributes to the ability of the Russian Federation to privatize state-owned assets in a manner that unjustly benefits” Russian officials or their family members or close associates (Menu-based sanctions);²⁰ and
- Knowingly provide to Syria significant financial, material, or technical support that contributes materially to Syria’s ability to acquire or develop significant weaponry, particularly weapons of mass destruction (SDN sanctions).²¹

Impact of Secondary Sanctions

It remains to be seen whether the marked expansion of secondary sanctions programs targeting Russia will have a significant impact. Such programs did influence international behavior with respect to Iran, but most of the sanctions here (aside from the new sanctions targeting pipelines) relate to activities of lesser commercial importance. It is also unclear how market participants will assess the risk of the Trump Administration (or future administrations) taking affirmative action to designate non-U.S. parties under these authorities; even where the imposition of sanctions is nominally mandatory (or mandatory absent an explicit waiver), historically U.S. administrations have not in fact sanctioned all relevant conduct.

¹⁴ *Id.*

¹⁵ *Id.* § 231(a).

¹⁶ *Id.* § 232.

¹⁷ *Id.* § 228; *See also* 22 U.S.C. § 8901 et seq. (2014).

¹⁸ H.R. 3364, 115th Cong., § 224.

¹⁹ *Id.*

²⁰ *Id.* § 233.

²¹ *Id.* § 234.

Reports & Strategy

CAATS calls for a number of reports, notably on:

- Russian oligarchs and parastatal entities of the Russian Federation;
- The effects of expanding sanctions to target sovereign debt and derivative products;
- Illicit financial flows in and out of Russia, and Russian influence on European or Eurasian elections; and
- Media organizations controlled and funded by the Government of the Russian Federation.

None of the reports will result directly in action to expand sanctions, but they may indicate potential areas of interest for future proposals.

NORTH KOREA SANCTIONS

CAATS builds on last year's imposition of secondary sanctions against activities involving North Korea. U.S. secondary sanctions now broadly threaten most dealings with North Korea, focusing in particular on cutting off supplies of fuel, interdicting trade with North Korea, and isolating North Korea from the international financial system.²² Specifically, CAATS adds the following activities to those subject to "mandatory" secondary sanctions under the North Korea Sanctions and Policy Enhancement Act of 2016,²³

- Knowingly purchasing or otherwise acquiring from North Korea significant amounts of rare earth minerals or other precious metals including: gold, titanium ore, vanadium ore, copper, silver, nickel and zinc;
- Knowingly selling or transferring significant amounts of rocket, aviation, or jet fuel (other than to civilian passenger aircraft outside North Korea for consumption on flights to and from North Korea);
- Knowingly supplying fuel, supplies, or other transactions to operate or maintain North Korean vessels or aircraft that are U.S.- or UN-sanctioned or owned by sanctioned persons;
- Knowingly insuring, registering, or facilitating the registration for a vessel owned or controlled by the Government of North Korea unless specifically approved by the United Nations Security Council ("UNSC"); and
- Knowingly maintaining a correspondent account with any North Korean financial institution unless specifically approved by the UNSC.

CAATS also expands the list of activities subject to discretionary designations for secondary sanctions to include persons who have:²⁴

- Knowingly provided goods, services, or support to any U.S.-sanctioned (as well as any UN-sanctioned) North Korean person or entity;

²² See [United States Ratchets Up North Korean Sanctions while Continuing to Ease Cuban Sanctions](#) (April 5, 2016).

²³ H.R. 3364, 115th Cong., § 311(a); 22 U.S.C. § 9214(a).

²⁴ H.R. 3364, 115th Cong., § 311(b); 22 U.S.C. § 9214(b).

- Knowingly purchased or acquired significant quantities of coal, iron, or iron ore in excess of the amounts permitted by the UNSC;
- Knowingly purchased or otherwise acquired significant types or amounts of textiles from the Government of North Korea;
- Knowingly facilitated a significant transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable UNSC resolution;
- Knowingly facilitated a transfer of bulk cash, precious metals, gemstones or other valuables to or from the Government of North Korea;
- Knowingly sold, transferred, or otherwise provided significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum byproducts, liquefied natural gas, or other natural gas resources to the Government of North Korea, subject to limited humanitarian exceptions;
- Knowingly engaged in, facilitated, or was responsible for the online commercial activities of the Government of North Korea, including online gambling;
- Knowingly purchases or otherwise acquired fishing rights from the Government of North Korea;
- Knowingly purchased or otherwise acquired significant types or amounts of food or agricultural products from the Government of North Korea;
- Knowingly engaged in, facilitated, or was responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue for use by the Government of North Korea or the Workers' Party of Korea; and
- Knowingly conducted a significant transaction or transaction in North Korea's transportation, mining, energy, or financial services industries, or facilitated the operation of a North Korean financial institution (except as authorized by the United Nations).

CAATS also:

- Cuts off U.S. foreign aid to any country supplying or receiving significant military equipment or services to or from North Korea;²⁵
- Bars vessels from any country that flags North Korean vessels from entering U.S. ports;²⁶ and
- Bars goods made with North Korean labor from the U.S., and render persons using North Korean labor subject to secondary sanctions, unless it is proven that the labor was not coerced.²⁷

IRAN SANCTIONS

With respect to Iran, CAATS is notable primarily for being the first legislative expansion of Iranian sanctions since the JCPOA nuclear agreement was implemented, underlining the desire of both Congress and the Trump Administration to maintain pressure on Iran (as has also been illustrated by the ongoing designation of Iranian sanctions targets under existing authorities). The sanctions are focused on Iranian ballistic missile programs and support for terrorism, and their practical impact is limited given that comprehensive direct U.S. sanctions against Iran remain in place.

²⁵ *Id.* § 313.

²⁶ *Id.* § 315.

²⁷ *Id.* § 321.

The new sanctions would:

- Require secondary sanctions against any person materially contributing to Iran’s development of ballistic missiles or other systems capable of delivering weapons of mass destruction (SDN sanctions);²⁸
- Authorize secondary sanctions against any person responsible for or supporting extrajudicial killings, torture, or other gross human rights violations against persons seeking to expose illegal activities carried out by officials of the Government of Iran or to promote human rights (authority that likely overlaps existing human rights sanctions programs) (SDN sanctions);²⁹
- Designate of the Iranian Revolutionary Guard Corps as a terrorist entity (a largely symbolic step, since the IRGC is already blocked under multiple other U.S. sanctions programs).³⁰
- Provide for secondary sanctions on any person who “knowingly engages in any activity that materially contributes to the supply, sale, or transfer directly or indirectly to or from Iran” certain major weapons systems (SDN sanctions).³¹

These sanctions largely overlap existing authorities and seem intended as a political statement that the U.S. is still concerned about and applying pressure regarding Iran’s ballistic missile, terrorism, and regional military activities. There is no direct impact on the JCPOA, and given the modest practical impact it seems that significant political consequences are also unlikely.

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²⁸ *Id.* § 104.

²⁹ *Id.* § 106.

³⁰ *Id.* § 105.

³¹ *Id.* § 107.