



MARCH 9, 2018

CIRCULAR NO. 11/18

TO THE MEMBERS OF THE ASSOCIATION

Dear Member:

IMPLEMENTATION OF ECONOMIC SANCTIONS AGAINST NORTH KOREA BY THE PEOPLE'S REPUBLIC OF CHINA (PRC)

Your Managers have recently been informed that the government of the PRC has issued a series of Announcements (from April 12, 2016 to February 1, 2018) which implement UN Security Council Resolutions imposing economic sanctions against the Democratic People's Republic of Korea (DPRK).

According to recent reports, the Announcements set forth restrictions or prohibitions on vessels conducting shipments of certain types of goods to the DPRK, chartering vessels to the DPRK or chartering vessels flying the DPRK flag, providing crews to the DPRK, banning UN-sanctioned vessels from calling at Chinese ports, exporting certain types of goods to the DPRK, imposing a cap on oil supplies, etc.

During February 2018, the Ministry of Transport (MOT), the Ministry of Commerce and the General Administration of Customs released Announcements clamping down on trade and shipping as part of the UN sanctions against the DPRK. A summary of the main contents of the MOT Announcement and the other existing Announcements published by the PRC regarding DPRK sanctions can be found in the attached spread sheet.

The Announcements do not contain an explicit stipulation on penalties or punishment for violations of the sanctions by a PRC company. It would appear that such companies engaged in PRC-DPRK export and import business are requested to issue a Letter of Commitment to declare that they will not break the regulations contained in the Announcements. Violators of the PRC sanctions against the DPRK would probably be charged under the Criminal Law of the PRC, say, in relation to smuggling. The attached document on penalties outlines potential penalties for civil (administrative) and criminal violations. The third attached document discusses the crime of smuggling under PRC law.

Although the Announcements do not contain an express prohibition on the provision of insurance in relation to the carriage of certain types of cargo, vessels or other issues that may have a direct effect on insurance cover, it would appear reasonable to assume that the PRC's DPRK sanctions prohibitions would extend to the provision of insurance cover for any carriage, or, activity prohibited by the Announcements, by insurers subject to PRC jurisdiction.

Members are reminded that pursuant to American Club rules there is no cover for voyages where the extension of cover would violate or pose a risk of violating sanctions prohibition and also



that causing a violation could entail the imposition of sanctions or penalties. Members are accordingly reminded to proceed with extreme caution in dealing with the DPRK and to conduct additional sanctions compliance due diligence to ensure their own and the American Club's compliance with sanctions prohibitions.

Should Members wish to discuss any questions or need additional guidance regarding any aspect of the foregoing or other sanctions in general, or for confirmations as to the availability of cover for voyages involving countries (Iran, Syria, Cuba, DPRK, Russia, Crimea region of Ukraine, Venezuela) or entities or individuals subject to US economic sanctions (e.g., the OFAC SDN List), they are invited to contact the Managers accordingly.

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

Announcement Made by Chinese Government against DPRK

up till 14 Feb 2018

No.	Ref.	Implementation Date	Publishing Organ	UN Security Council Resolution No.	Main Points
9	(2018) No. 19	14th Feb 2018	Ministry of Transport	Resolution 2397	<p>9.1 Prohibitions on ships that carried banned cargoes related to DPRK and were listed into the sanction list of UN Security Council to call at Chinese ports;</p> <p>9.2 Prohibitions on Chinese citizens and enterprises to charter DPRK flag ships, or charter ships to DPRK, and restrictions on providing crews to DPRK or hiring DPRK crews;</p> <p>9.3 Prohibitions on providing ship flag registration services, insurance or re-insurance services, or ship classification certification services;</p> <p>9.4 Prohibitions on ships owned by Chinese citizens or enterprises to hand over DPRK-related cargoes at sea from one ship to another.</p>
8	(2018) No.17	5th Feb 2018	Ministry of Commerce, Industry and Information Technology, National Defense Bureau, National Atomic Energy Agency, General Administration of Customs	Resolution 2371	<p>8.1 Prohibitions on exporting to the DPRK dual-use items and technologies related to weapons of mass destruction and their means of delivery, and dual-use conventional weapons.</p>
7	(2018) No. 4	6th Jan 2018	Ministry of Commerce, General Administration of Customs	Resolution 2397	<p>7.1 A total ban on the export of iron, steel and other metals, industrial machinery, and transport vehicles to North Korea;</p> <p>7.2 Restrictions on crude oil exports to North Korea;</p> <p>7.3 Restrictions on the export of refined petroleum products to North Korea;</p> <p>7.4 As of the date of implementation of the announcement, the import of some grain and agricultural products from North Korea, including magnesite and magnesium oxide, soil and stone, timber, machinery, electrical equipment and ships will be completely banned.</p>
6	(2017) No.35	18th Sept 2017	Ministry of Transport	Resolution 2371	<p>6.1 As from the date of implementation of the Notice, unless in emergency situations or ships need to return to their home ports, ships that are identified by the Sanction Committee of Security Council as having conducted activities in violation of Security Council Resolutions will be prohibited from calling at ports of China. When under the purposes of humanitarian a sanctioned vessel has to enter Chinese ports, a prior approval of the Sanction Committee must be acquired.</p> <p>6.2 Chinese citizens and Chinese companies are prohibited to own, lease or operate ships flying DPRK flag.</p>

5	(2017) No. 40	14th Aug 2017	Ministry of Commerce, General Administration of Customs	Resolution 2371	<p>5.1 The import of coal, iron, iron ore, lead, lead ore and aquatic products from Korea has been completely prohibited since the date of execution of the announcement.</p> <p>5.2 The above-mentioned goods which have arrived at our port before the date of execution of the announcement may be released, but after zero hour of 5th Sept 2017, the above-mentioned goods will be totally banned;</p> <p>5.3 The above measures do not apply to coal that is confirmed by the exporting State on the basis of credible information to be of non-Korean origin and trans-shipment through the port of Rozin, Korea, provided that the exporting State notifies in advance the Committee established by the United Nations Security Council pursuant to resolution 1718;</p> <p>5.4 A batch of banned goods are enclosed pursuant to Resolution 2371.</p>
4	(2017) No.9	25th Jan 2017	Ministry of Commerce, Ministry of Industry and Information, National Defense Industry Bureau, National Atomic Energy Agency, General Administration of Customs	Resolution 2321	<p>4.1 Prohibit exports to North Korea in the announcement released with weapons of mass destruction and their means of delivery related dual-use items and technologies, conventional weapons activities.</p> <p>4.2 List of dual-use items and technologies prohibited from export to North Korea this list is made in accordance with UN Security Council Resolution 2321.</p>
3	(2016) No. 81	23th Dec 2016	Ministry of Commerce, General Administration of Customs	Resolution 2321	<p>3.1 Since January 1st 2017, North Korea are entitled to export no more than \$ USD 400,870,018 or 7500000 metric tons of coal (whichever is lower) annually to all member states, according to UN Security Council Resolution 2321. Since the date of implementation of the announcement, all imports of coal from North Korea (including goods shipped and arrived at Chinese port) have been prohibited;</p> <p>3.2 The import of copper, nickel, silver and zinc from Korea is prohibited. The goods shipped before the date of the announcement and arrived at our port will be released;</p> <p>3.3 Prohibition of the import of statues from North Korea, unless the 1718 Committee prior approval on a case-by-case basis;</p> <p>3.4 Export of helicopters and vessels to the DPRK is prohibited, unless previously authorized on a case-by-case basis by the 1718 Committee.</p>

2	(2016) No. 22	14th June 2016	Ministry of Commerce, Ministry of industry and information technology, National Atomic Energy Agency, General Administration of customs	Resolution 2270	2.1 Announcement on list of dual-use items and Technologies Prohibited from being exported to North Korea.
1	(2016) No. 11	12nd April 2016	Ministry of Commerce, General Administration of Customs	Resolution 1718, 1874, 2087, 2094, 2270	<p>1.1 The import of coal, iron and iron ore from North Korea is prohibited, except in the following two cases, i.e.:</p> <p>1.1.1 Determined to be solely for livelihood purposes and not involved in North Korea's nuclear or ballistic missile programs;</p> <p>1.1.2 Proved not to be originated from North Korea, and are trans-shipment from port of Rason, and the profit generated will not be adopted to activities banned by Security Council's Resolutions.</p> <p>1.2 Ban on imports of gold, titanium, vanadium and rare earth minerals from North Korea;</p> <p>1.3 Ban on the export to North Korea of aviation fuel, including aviation gasoline, naphtha, kerosene, rocket fuel, except in the following two cases, i.e.:</p> <p>1.3.1 The UN Security Council Sanctions Committee has specifically approved the transfer to North Korea of aviation fuel verified for basic humanitarian needs on a case-by-case basis, subject to special arrangements for effective monitoring of deliveries and usage;</p> <p>1.3.2 Sale or supply of aviation fuel to civilian airliners outside the DPRK for use only during flights to and from the DPRK.</p> <p>1.4 List of banned mineral products is enclosed.</p> <p>□</p>

Penalties for Violations of Chinese Sanctions Against the DPRK (North Korea)

Administrative Penalty

Ships violating these sanctions Announcements against DPRK will violate the Customs Law of PRC, and will be punished by administrative penalties. Pursuant to Article 82 of the Customs Law, when acts of smuggling are not serious enough to constitute a crime, the Customs shall confiscate the smuggled goods, articles and illegal gains and it may also impose a fine on the person; the Customs shall confiscate ships that are specially or repeatedly used for smuggling; when such act constitutes a crime, then it shall be investigated for criminal responsibility in accordance with the Criminal Law. In addition, Article 6 of the Customs Law grant various administrative powers to the Customs for examining and checking ships suspected of being involved in smuggling, and the Customs are entitled to detain those suspected ships, check upon the bank accounts of the suspected entities and persons.

The General Administration of Customs also released the Regulations on Implementing Customs Administrative Penalty in accordance with the Customs Law, so as to better implement the latter. We summarize the related articles as follows:

- i) Article 9 states that ships made, alternated or purchased specially for smuggling, as well as ships used for smuggling three times or more in two years shall be confiscated;
- ii) Article 10 stipulates that anyone provide the smugglers with convenience of transporting shall be dealt with as a co-party of the smugglers, and the illegal gains obtained shall be confiscated, and a penalty shall be imposed;
- iii) Article 38 to Article 41 provides for detailed procedures for the detain and release of ships, where the time limit for detaining the ships shall not exceed one year and can be extended for less than one year upon the approval of competent director of Customs office;
- iv) Before the Customs making a decision on administrative penalty, the penalized party shall be entitled to request a hearing (Article 49); and
- v) If the penalized party have not made the payment of fine, illegal gains, or the amount of money recovered equivalent to the value of the ships used in smuggling, the legal

representative or main principal of the penalized party shall be restricted from leaving the territory of China (Article 59).

Criminal Penalty

When the circumstances of the smuggling act are serious enough to constitute a criminal offense, Article 153 of the Criminal Law of PRC shall be applied. Where a company commits the offense of smuggling, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are especially serious, they shall be sentenced to fixed-term imprisonment of not less than 10 years.

We are attaching the free English translation of related articles from the Customs Law of PRC, the Regulations on Implementing Customs Administrative Penalty and the Criminal Law of PRC for your easy reference. We also attach herewith the Announcements in Chinese. Should you have any enquiries, please feel free to contact us.”

End

Customs Law of the People's Republic of China

Article 6 The Customs shall exercise the following powers:

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(3) to examine and duplicate contracts, invoices, account books, bills, records, documents, business letters and cables, audio and video products and other material that are related to the inward and outward means of transport, goods and articles, and detain those involved in the means of transport, goods or articles entering or leaving the territory in violation of this Law or other relevant laws and administrative regulations;

(4) to search, within a Customs surveillance zone and the specified coastal or border area in the vicinity of a Customs office, the means of transport suspected of being involved in smuggling, and the places suspected of concealing smuggled goods and articles, and search the body of the persons suspected of smuggling; to detain, with the approval of the director of a Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, the means of transport, goods or articles suspected of being involved in smuggling, and the persons suspected of being guilty of smuggling; the length of time for detention of the persons suspected of being guilty of smuggling shall be not longer than 24 hours, which may be extended to 48 hours under special circumstances.

When investigating smuggling cases beyond the Customs surveillance zone and the specified coastal or border area in the vicinity of a Customs office, the Customs may, with the approval of the director of a Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, search the means of transport suspected of being involved in smuggling and, with the exception of citizens' residence, the places suspected of concealing smuggled goods or articles, which shall be conducted in the presence of the parties concerned. Where the parties fail to show up, the Customs may effect the search in the presence of witnesses and may detain the means of transport, goods or articles suspected of smuggling which is supported by evidence.

The specified coastal or border area in the vicinity of a Customs office shall be delimited by the General Customs Administration and the public security department under the State Council in conjunction with the relevant people's government at the provincial level;

(5) When investigating smuggling cases, the Customs may, with the approval of the director of a Customs office directly under the General Customs Administration or the director of the Customs office subordinate to and authorized by the former, check up on the bank accounts and remittances the suspected entities and persons have in financial institutions or postal services;

(6) to chase the means of transport or persons defying and escaping from Customs control to places beyond a Customs surveillance zone or the specified coastal or border area in the vicinity of a Customs office and bring them back to be dealt with;

Article 82 Anyone who, in violation of this Law and other relevant laws or administrative regulations, commits any of the following acts by evading Customs control, duties payable, or State control over the goods or articles the importation or exportation of which is

prohibited or restricted is committing smuggling:

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(3) to commit other acts by evading Customs control that constitute smuggling.

Anyone who commits any of the acts listed in the preceding paragraph, which is not serious enough to constitute a crime, the Customs shall confiscate the smuggled goods, articles and illegal gains and it may also impose a fine on the person; the Customs shall confiscate the goods or articles that are specially or repeatedly used for shielding smuggling and the means of transport that are specially or repeatedly used for smuggling, and it shall order that the equipment specially made for concealing smuggled goods or articles be demolished or confiscated them.

Anyone who commits any of the acts listed in the first paragraph, which constitutes a crime, shall be investigated for criminal responsibility in accordance with law.

Regulations of the People's Republic of China on Implementing Customs Administrative Penalty

Article 9.....

Means of transport specially used for smuggling or goods or articles specially used for shielding smuggling, as well as means of transport used for smuggling or goods or articles used for shielding smuggling three times or more in two years shall be confiscated. Equipment, interlayer and hidden layers specially made for concealing smuggled goods or articles shall be confiscated or demolished. Anyone who uses such specially made equipment, interlayer or hidden layers in smuggling shall be heavily penalized.

Article 10 Anyone who conspires with smugglers and provides them with loans, funds, account numbers, invoices, certificates or Customs documents, or conspires with smugglers and provides them with such conveniences as picking up, forwarding, transporting, storing and mailing smuggled goods or articles or other conveniences shall be dealt with as a co-party of the smugglers. The illegal gains obtained thereof shall be confiscated, and a penalty shall be imposed according to the provisions of Article 9 of these implementing Regulations.

Article 38 The following goods, articles, means of transport and related materials such as account books and bills may be detained by Customs according to the law:

(1) goods, articles and means of transport suspected of being involved in smuggling;

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Article 39 Where the goods, articles or means of transport suspected of violating the law cannot be detained or are not suitable for detention, the party or the person in charge of the means of transport shall provide to the Customs a bond of the equivalent value, and if such a bond is not provided, the Customs may detain any other property of equivalent value belonging to that party.

Article 40 The time limit during which the Customs can detain goods, articles, means of

transport and related materials such as account books and bills shall not exceed one year. Where necessary for investigation of a case, the time limit may be extended on approval of the director of a regional Customs office or the director of a subordinate Customs office authorized by the former, but the extended time shall not exceed one year. However, the period of administrative reconsideration and legal proceedings shall not be counted.

Article 41 In case of any one of the following circumstances, the Customs shall lift the detention promptly:

- (1) suspicion of violating the law is removed;
- (2) the time limit of detention or the extended period expires;
- (3) the decision on Customs administrative penalty has already been fulfilled; or
- (4) any other circumstances in which the detention shall be cancelled as provided by the laws or administrative regulations.

Article 49 The Customs shall, before making a decision on administrative penalty that involves suspension from engaging in the related businesses, suspension from the practice in declaring to the Customs, revocation of Customs registration, revocation of qualifications for declaration, imposition of a fine of not less than 10, 000 yuan upon a citizen or a fine of not less than 100, 000 yuan upon a legal person or other organization, or confiscation of goods, articles or means of transport used for smuggling, notify the party that he has the right to request a hearing. If the party requests a hearing, the Customs shall arrange for the hearing. Measures for hearings on Customs administrative penalty shall be formulated by the General Administration of Customs.

Article 59 The party or its legal representative or main principal subject to penalty by the Customs shall, before he leaves the territory, pay the fine, illegal gains or the amount of money recovered in accordance with law equivalent to the value of the goods, articles or means of transport used in smuggling. If he has not made the payment as abovementioned before he leaves the territory, he shall provide to the Customs a bond of an amount equivalent to the payment as abovementioned. If the bond is not provided, the Customs may notify the exit administration authority to prevent him from leaving the territory when the party is a natural person, or notify the said authority to prevent its legal representative or main principal from leaving the territory when the party is a legal person or other organization.

Criminal Law of the People's Republic of China

Article 153 Whoever smuggles goods or articles not specified in Article 151, Article 152 and Article 347 herein shall, depending on the severity of the circumstances, be punished in accordance with the following provisions respectively:

- (1) If he smuggles the goods and articles to evade or dodge the payable duties to a larger amount or commits smuggling again after being given administrative penalties twice against smuggling within one year, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and be concurrently subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged;

(2) If the amount of payable duties evaded or dodged for smuggling the goods and articles is huge or there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years, and shall be concurrently subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged; and

(3) If the amount of payable duties evaded or dodged for smuggling the goods and articles is especially huge or there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment, and shall be concurrently subject to a fine of not less than one time but not more than five times the amount of payable duties evaded or dodged or confiscation of property.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are especially serious, they shall be sentenced to fixed-term imprisonment of not less than 10 years.