



DanishShipping

**WINSTON
& STRAWN**
LLP

Implications for the Danish Maritime Community – Recent US Sanctions Guidance

Tuesday, June 2, 2020





Maritime Sanctions Advisories - Timeline



- **February 23, 2018** North Korea Sanctions Advisory – Sanctions Risk Related to North Korea's Shipping Practices
- **November 20, 2018** Advisory to the Maritime Petroleum Shipping Community – Sanctions Risks Related to Shipping Petroleum to Syria
- **March 25, 2019** Advisory to Maritime Petroleum Shipping Community – Sanctions Risks Related to Petroleum Shipments involving Iran and Syria
- **May 2, 2019** A Framework for OFAC Compliance Commitments
- **September 4, 2019** Advisory to the Maritime and Petroleum Shipping Community – Sanctions Risk Related to Shipping Petroleum and Petroleum Products from Iran
- **February 26, 2020** Panel of Experts Report – North Korea
 - Illicit imports of refined petroleum
 - Illicit exports of commodities (coal and sand)
 - Illicit imports of luxury goods (vehicles, alcohol, robotic machinery)
- **March 6, 2020** Interview with DAS Peyman



May 14, 2020 Maritime Advisory

Guidance to Address Illicit Shipping and Sanctions Evasion Practices

- Sanctions programs covered – Syria, North Korea, and Iran
- Target Audience:

Ship owners	Managers	Operators	Brokers	Ship chandlers
Flag registries	Port operators	Shipping companies	Financial institutions	Freight forwarders
Classification services providers	Commodity traders	Insurance companies	Port Authorities	

Deceptive Practices

Disabling/manipulating AIS on vessels

Physical alteration of vessel identification

Falsifying cargo and vessel docs

Ship to ship transfers

Deceptive Practices (cont.)

Voyage irregularities

- Disguise destination or origin of cargo
- Disguise recipients (front companies)
- Obligation for parties is to scrutinize routes and destinations that deviate from normal business practices, as appropriate

False flags and flag hopping

Complex ownership or management

Obligation to identify corporate structure; if not available, conduct EDD

High Level Take-Aways – the Compliance Program

Compliance must be risk-based - Institutionalize sanctions compliance program

- Conduct risk assessment – but local law concession
- Written policies – with whistleblower and audit function
- Require counter parties to have a compliance program – which includes sanctions compliance and AIS monitoring

High Level Take-Aways: AIS Best Practices

Establish AIS best practices and contractual requirements

- “may wish to consider” based on a risk assessment, researching a ship’s AIS history
- Conduct pre-contract due diligence to review for AIS manipulation
- Include contractual provisions to invalidate the contract for illicit AIS manipulation [compliance with law provision will already exist]
- Port Authorities are encouraged to reiterate AIS broadcasts; should consider banning vessels who violate the term

Counterpoint

- Compliance with laws provisions already exists in insurance cover
- AIS was not designed for vessel tracking
- Different industry types will have different capabilities for due diligence
- How to verify licit v illicit AIS activity (emitting AIS does not always equal receiving AIS)

High Level Take-away: Due Diligence and Information Sharing

Monitor ships throughout the entire transaction lifecycle

- This is a call to governments to take action (to port authorities)

KYC/KYV and Counterparty

Exercise supply chain Due Diligence

- Verify source of origin for commodities; counterparties should request copies of export licenses, bills of lading
- Review details of the voyage, vessel, cargo, origin, destination, parties to transaction

Contractual language – should incorporate the May 14 Advisory and the May 2, 2019 Framework

Industry Information Sharing

- Similar to 314(b) of the USA PATRIOT Act - but with redactions
- EU data privacy concerns
- Anti-competition and US Anti trust considerations

**The industry already has
addressed some of these
recommendations . . .**

(Re)insurance and Sanctions Exclusion Clauses

Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100

15 September 2010

EU Blocking Measure & Iran, AIS Exclusions

EU Blocking Measure (Commission Delegated Regulation (EU) 2018/1100) amended Aug. 2018: Prohibits EU “operators” from complying with US sanctions against Cuba and now Iran post-JCPOA withdrawal by the US

- Exception: EU operators are free to make business decisions to start, continue, or cease business operations in (Cuba or) Iran “on the basis of their assessment of the economic situation”
- May include economic reasons such as no access to financing, AML concerns, no access to US inputs required for production, etc.

(Re)Insurance Coverage – Additional Exclusions

EU Blocking Measure

- Concerns that territorial or other exclusions may be required in addition to sanctions exclusions for EU insurers to effectively exclude Iranian exposures
- Some introduction of Iran specific exclusions and consideration of AIS exclusions

Notwithstanding anything to the contrary, the cover provided under this policy expressly excludes any loss or damage: (i) resulting in Iran or its territorial waters; (ii) incurred by persons or entities located in Iran or its territorial waters; or (iii) resulting in, or involving activities that directly or indirectly involve or benefit the government entities or nationals of Iran.

(Re)Insurance Coverage – Additional Exclusions

Illicit Shipping Activity & Automatic Identification System (AIS)

- Concerns about AIS manipulation/switch off and implications of OFAC Advisories is leading to consideration of “AIS switch off” clauses for insurance
- May not be necessary; implicate legitimate coverage concerns

The policy will not provide any coverage for any vessel that is operating in a manner designed to preclude, disguise or otherwise impede the detection of its identity or location, including but not limited to by deactivating its Automatic Identification System ("AIS") or manipulating AIS data. In case of an event of precluded, impeded or disguised identity or location in conjunction with activities or locations that may be prohibited by any applicable economic sanctions laws or rules, including those administered by the EU, US or UN, the (re)insurer has the right to unilaterally terminate this coverage immediately on giving notice to the policyholder. This exclusion and termination shall not apply where such inability to detect the vessel's identity and location is due to a demonstrable malfunctioning or other similar demonstrable external event beyond the control of the owners or operators of the vessel. In cases where the inability to detect the vessel's identity or location is due to demonstrable malfunction or external event, the policyholder must notify the (re)insurer and the (re)insurer will confirm in writing to the policyholder whether: (i) cover for that vessel will continue; or (ii) cover for that vessel will cease from such date as is specified by the (re)insurer

Recent Maritime Enforcement Actions

Civil Penalties & Secondary Sanctions

RECEIVED
AUG 16 2019
Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
OIL TANKER – “GRACE 1” (IMO 9116412),
ALL PETROLEUM ABOARD OIL
TANKER – “GRACE 1” (IMO 9116412),
- and -
\$999,950.00 AT U.S. BANK 1
ASSOCIATED WITH PARADISE GLOBAL
TRADING LLC
Defendants.

Civil Action No. 1:19-cv-1989-(JEB)

AMENDED UNITED STATES’ VERIFIED COMPLAINT
FOR FORFEITURE *IN REM*

From the Netherlands to North Korea, Kim Jong Un’s Mercedes Take a Long Trip

The sanctions-evading journey of the luxury limousines took three state-owned cargo jets, five countries and about four months

WORLD | LATIN AMERICA

Iran Ships Fuel to Venezuela, Flouting U.S. Pressure on Its Foes

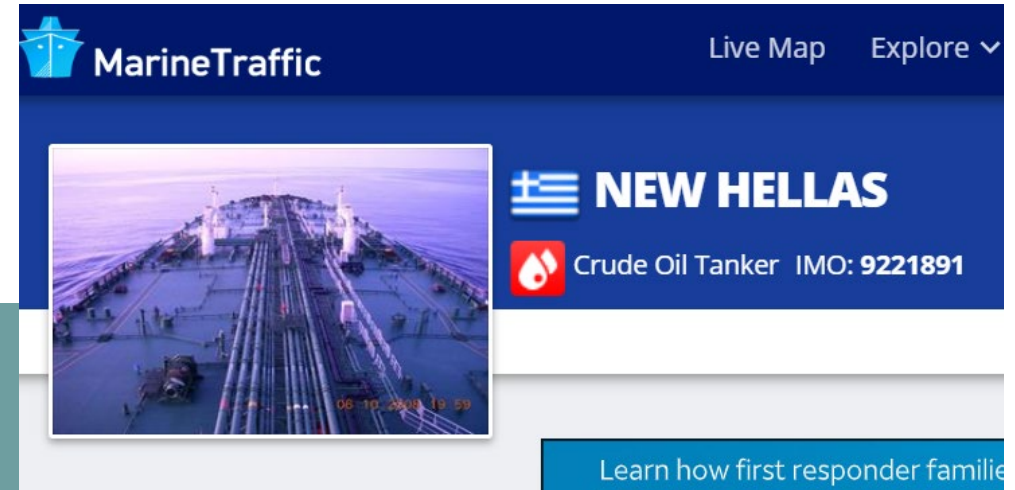
Show of defiance comes in face of Trump administration sanctions aimed at unseating their authoritarian governments

Enforcement Actions

- **American International Group (AIG)** | June 2017 | \$148,698
- **Apple** | November 2019 | \$466,912
- **ACE Limited / Chubb** | December 2019 | \$66,212
- **Allianz Global Risks US Insurance Co.** | December 2019 | \$170,535
- **Eagle Shipping International** | January 2020 | \$1,125,000

Secondary Sanctions – Distinction between Violation of Law and Violation of Foreign Policy

- PB Tankers
- LIMA Shipping
- COSCO



中远海运集装箱运输有限公司
COSCO SHIPPING LINES CO., LTD.

Contacts



DanishShipping

**WINSTON
& STRAWN**
LLP



THOMAS SYLVEST

Danish Shipping
SENIOR ADVISOR
Denmark
ths@danishshipping.dk



CHRISTOPHER MONAHAN

Winston & Strawn LLP
PARTNER
Washington, D.C.
+1 (202) 282-5778
cmonahan@winston.com



CHARLIE PAPAIVIZAS

Winston & Strawn LLP
CHAIR, MARITIME & ADMIRALTY PRACTICE
Washington, D.C.
+1 (202) 282-5732
cpapavizas@winston.com



JARED MANES

Winston & Strawn LLP
CO-CHAIR, NORDIC PRACTICE
New York
+1 (212) 294-6736
jmanes@winston.com



CARI STINEBOWER

Winston & Strawn LLP
CHAIR, INTERNATIONAL TRADE PRACTICE
Washington, D.C.
+1 (202) 282-5788
cstinebower@winston.com