

## Summary of the Korean Interdiction and Modernization of Sanctions Act

April 6, 2017

On March 21, 2017, House Foreign Affairs Committee Chairman Ed Royce (R-CA) introduced H.R. 1644, the [Korean Interdiction and Modernization of Sanctions Act](#) (Kims Act), a sanctions bill that would expand upon the North Korea Sanctions and Policy Enhancement Act (NKSPEA) which was signed into law in February 2016. (The text of NKSPEA is available [here](#), and NCNK's summary is [here](#).) Shortly after its introduction, the new legislation was unanimously [approved](#) by the House Foreign Affairs Committee, with minor amendments. The legislation may have to be considered by other House Committees before advancing to the House floor for a full vote. Similar legislation has not yet been introduced in the Senate.

Core components of the bill include:

- An expansion of NKPSEA's list of activities that trigger mandatory sanctions, including the purchase of certain minerals from North Korea, the provision of goods or services to North Korean vessels sanctioned by the UN or U.S., or the maintenance of a correspondent account with a North Korean financial institution. (Sanctioned entities may face civil or criminal penalties, as well as loss of access to the U.S. financial system.)
- New discretionary sanctions targeting North Korea's major sources of export earnings (such as coal, iron, textiles, seafood, and overseas workers), as well as against entities providing petroleum or telecommunications services to North Korea.
- Strengthened penalties against international ports and countries that do not adequately enforce UN sanctions against North Korea, including a ban on vessels from such countries from entering U.S. waters or ports.
- Strengthened sanctions regarding forced or overseas labor by North Korean workers.

The legislation would not change the humanitarian exemptions or waivers found in the International Emergency Economic Powers Act (IEEPA) or NKPSEA, other than to apply these exemptions to the new sanctions provisions the bill introduces. It would modestly change the conditions under which sanctions could be lifted by adding a requirement that Pyongyang allow for unrestricted family reunions of Korean-Americans prior to the termination of sanctions.

*We thank NCNK Member James Min for his contribution to this summary. Please note that this summary should not be construed as legal advice or as a comprehensive assessment of the legislation's implications.*

<i>Issue</i>	<i>Summary</i>	<i>Notes</i>
<b>Current Status</b>	<i>Introduced in the House, awaiting Committee action.</i>	
<b>Sanctions Designations</b>	<p>The President is required to sanction individuals/entities determined to have knowingly, directly or indirectly:</p> <ul style="list-style-type: none"> <li>• Purchased significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc, or rare earth minerals from North Korea;</li> <li>• Provided significant amounts of rocket or aviation fuel to North Korea, except for consumption by civilian passenger aircraft on round-trip flights;</li> <li>• Provided significant amounts of fuel, supplies, or other services to ships or aircraft that are subject to UN or U.S. sanctions designations, or that are controlled by entities designated by the UN or U.S.;</li> <li>• Facilitated transactions to operate or maintain vessels or aircraft designated or owned and controlled by an entity subject to UN or U.S. sanctions designations;</li> <li>• Insured or registered a vessel controlled by the North Korean government, except as approved by the UN Security Council; or</li> <li>• Maintained a correspondent banking account with a North Korean financial institution, except as approved by the UN Security Council.</li> </ul> <p>The President has discretionary authority to sanction individuals/entities who have knowingly:</p> <ul style="list-style-type: none"> <li>• Supported any person sanctioned by the UN Security Council or by U.S. laws and regulations;</li> <li>• Purchased significant amounts of coal, iron, or iron ore in excess of the limitations imposed by UN Security Council resolutions;</li> <li>• Purchased significant amounts of textiles from the North Korean government;</li> <li>• Facilitated the transfer of North Korean government funds or property in conjunction with activities that violate UN Security Council resolutions;</li> <li>• Directly or indirectly transferred or facilitated significant transfers of bulk cash, precious metals, or gemstones to or from North Korea;</li> </ul>	<p>This section builds upon the mandatory and discretionary sanctions introduced by NKSPEA, providing the President with new legal requirements or legal authorities to apply sanctions designations to certain individuals or entities. Some of these new sanctions are based on UN Security Council resolutions adopted after the passage of NKSPEA, while others do not have a basis in existing UN sanctions.</p> <p>The provision on maintaining aircraft subject to U.S. designations could have significant impact on Air Koryo, which was designated by the U.S. in December 2016. This provision does not appear to include a civil aviation safety exemption as other U.S. sanctions programs do.</p> <p>The discretionary sanctions in the bill would give the President the authority to impose far-reaching secondary sanctions on North Korea's commercial activities, targeting key sources of North Korean export earnings as well as the country's energy imports. Secondary sanctions would not be limited to targeting entities that violate UN Security Council resolutions.</p> <p>As outlined in NKSPEA, sanctioned individuals/entities may face civil or criminal penalties, forfeiture of assets under U.S. jurisdiction, and loss of access to the U.S. financial system.</p>

	<ul style="list-style-type: none"> <li>• Provided significant amounts of crude oil or other petroleum products to North Korea, other than heavy fuel oil, gasoline, or diesel for humanitarian use or aviation fuel for civilian travel;</li> <li>• Facilitated online commercial activities of the North Korean government, including online gambling;</li> <li>• Purchased fishing rights from the North Korean government;</li> <li>• Provided telecommunications services into or out of North Korea, other than for humanitarian or diplomatic purposes or as exempted under IEEPA for personal correspondence and communication;</li> <li>• Purchased significant amounts of food or agricultural products from the North Korean government;</li> <li>• Facilitated the export of workers from North Korea in a manner intended to generate revenue for the North Korean government or Workers' Party;</li> <li>• Conducted significant transactions in North Korea's transportation, mining, energy, or financial services industries; or</li> <li>• Facilitated the operation of a branch or office of a North Korean financial institution.</li> </ul>	
<b>Requirements for Sanctions Findings</b>	<p>Lists six specific North Korean and Chinese entities and individuals that may have violated sanctions, and requires the President to determine, within 180 days, whether they should be designated.</p>	<p>This list includes significant North Korean economic institutions, such as the DPRK Central Bank and the DPRK Chamber of Commerce.</p>
<b>Cargo Inspections and Shipping Sanctions</b>	<p>The President is required to submit an annual report which:</p> <ul style="list-style-type: none"> <li>• Identifies the operators of foreign seaports and airports which have failed to implement inspections required by UN Security resolutions; facilitated the transfer of cargo, vessels, or aircraft controlled by UN-sanctioned entities; or facilitated any of the activities triggering mandatory U.S. sanctions;</li> <li>• Describes foreign countries' implementation of UN Security Council resolution requirements that they de-register any vessel owned, controlled, or operated by the North Korean government;</li> <li>• Describes Iranian compliance with UN Security Council resolutions on</li> </ul>	<p>While the enhanced inspection authority in this section builds upon provisions found in NKSPEA, the prohibition on certain foreign vessels from entering U.S. waters would be a significant new addition to U.S. sanctions authorities.</p>

	<p>North Korea;</p> <ul style="list-style-type: none"> <li>• Identifies vessels and aircraft owned or controlled by North Korea's Reconnaissance General Bureau; and</li> <li>• Includes specific findings with respect to certain ports and airports in China, Iran, Russia, and Syria.</li> </ul> <p>The Department of Homeland Security may require enhanced screenings for any cargo which:</p> <ul style="list-style-type: none"> <li>• Has been transported through a port that has failed to comply with UN Security Council resolutions' inspection requirements;</li> <li>• Is aboard a vessel or aircraft that has entered North Korean territory within the past year, unless for exclusively humanitarian purposes; or</li> <li>• Is aboard a vessel registered by a country that has not complied with UN Security Council resolution requirements regarding the de-registration of North Korean vessels.</li> </ul> <p>Vessels owned or operated by North Korea, or by any country found to be non-compliant with UN Security Council resolutions, are prohibited from entering U.S. waters or transferring cargo in any U.S. ports. If a country has registered a vessel owned or operated by North Korea or by any non-compliant country, than all vessels registered by that country are similarly prohibited from entering U.S. waters or ports. Entry to U.S. waters for such vessels may be allowed for safety reasons or for the right of innocent passage as recognized under international law.</p>	
<p><b>Financial Sanctions</b></p>	<p>Requires the President to report to Congress on entities that provide specialized financial messaging services to North Korean financial institutions sanctioned by the UN, and requires the Treasury Department to work to end the provision of these services.</p> <p>U.S. financial institutions are obligated to end correspondent accounts with foreign financial institutions, if those U.S. financial institutions become aware that the correspondent accounts are being used on behalf of sanctioned entities or individuals.</p>	<p>Earlier this year, a UN Panel of Experts report found that the SWIFT financial messaging network had continued to provide service to North Korean banks designated by the UN for sanctions violations. After the report's release, SWIFT <a href="#">barred transactions</a> with those banks.</p>

<p><b>Human Rights</b></p>	<p>The State Department is required to report a list of foreign individuals or entities that employ North Korean laborers. Any such individuals or entities are subject to sanctions penalties, unless the President certifies that their employment of North Korean laborers does not provide funding to the North Korean government, that all wages are provided directly to the laborers, and that the laborers' working conditions meet international standards.</p> <p>Directs the State Department to consider a foreign country's use of North Korean laborers when making determinations for the Department's annual Trafficking in Persons Report.</p> <p>Creates a presumption that any goods produced by North Korea nationals are produced by forced labor, and are therefore prohibited from import to the United States unless the Commissioner of U.S. Customs and Border Protection finds that such goods were not produced by forced labor.</p>	
<p><b>Arms Trade</b></p>	<p>The President is directed to withhold foreign aid (other than for human rights, democracy, rule of law, or humanitarian assistance) to the government of any country that provides or receives defense articles or defense services to or from North Korea, for a period of two years. This provision may be waived if the Secretary of State deems it to be in the national interest.</p> <p>The Secretary of State is required to report annually on foreign countries' compliance with curtailing the arms trade with North Korea.</p>	<p>This section strengthens a provision of NKPSEA, which calls for a one-year ban on aid to countries that provide lethal military equipment to North Korea.</p>
<p><b>Humanitarian and Other Exemptions</b></p>	<p>The humanitarian waiver found in NKSPEA is amended to apply to the new sanctions authorities introduced by the Kims Act.</p>	<p>Under NKSPEA, the President may waive certain sanctions for renewable periods of between 30 days and one year, if doing so is necessary for humanitarian assistance or the promotion of North Korean human rights.</p>
<p><b>Waivers &amp; sanctions removal</b></p>	<p>Requires that North Korea must make significant progress toward planning for unrestricted family reunion meetings, including for those in the Korean-American community, before sanctions can be lifted.</p>	<p>NKSPEA requires North Korea to meet several conditions before sanctions can be fully lifted, including that Pyongyang make significant</p>

		progress regarding its compliance with UN Security Council resolutions, human rights, and illicit activities. This section of the Kims Act adds to that list of conditions.
<b>Iran-North Korea Linkages</b>	Requires the President to report annually on North Korean cooperation with Iran concerning WMD or conventional weapons programs, including a determination of whether such activities violate UN Security Council Resolution 2231.	UNSCR 2231 was adopted by the Security Council to endorse the Joint Comprehensive Plan of Action on Iran’s nuclear program.
<b>Terrorism</b>	Requires the President to submit, within 90 days, a report including a determination of whether North Korea is a state sponsor of terrorism.	Separately from this legislation, Rep. Ted Poe (R-TX) and Sen. Ted Cruz (R-TX) have introduced bills in the <a href="#">House</a> and <a href="#">Senate</a> , respectively, which would require the State Department to submit a report on whether North Korea meets the criteria for being designated a State Sponsor of Terrorism. The Poe bill, after being amended to more closely match the language of the Cruz bill, passed the House on April 3, 2017.
<b>Rewards for Informants</b>	Authorizes the State Department to provide financial rewards to informants who provide information leading to: <ul style="list-style-type: none"> <li>• The identification or location of any person who has committed a state-sponsored cybercrime; or</li> <li>• The disruption of financial mechanisms of individuals or entities engaging in sanctioned activities.</li> </ul>	This section builds upon existing State Department programs offering rewards for information concerning terrorist activities or narcotics trafficking (the “Rewards for Justice” and “Narcotics Rewards” programs). The bill’s language on cybercrime appears to apply to any state-sponsored cybercrime, not only cybercrime sponsored by North Korea.
<b>Regulatory Requirement</b>	Requires the President to promulgate new North Korea sanctions regulations within 180 days.	Current <a href="#">North Korea sanctions regulations</a> , as promulgated in the Code of Federal Regulations, have not been updated to reflect passage of NKSPEA or recent Executive Orders concerning North Korea sanctions.
<b>Funding</b>	The bill does not authorize new funds to carry out its requirements, which are to be carried out using funds previously authorized.	