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North Korea: Legislative Basis for U.S. Economic Sanctions

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Summary

U.S. economic sanctions imposed on North Korea are instigated by that country's activities related to weapons proliferation; regional disruptions; terrorism; narcotics trafficking; undemocratic governance; and illicit activities in international markets, including money laundering, counterfeiting of goods and currency, and bulk cash smuggling. The sanctions have the following consequences for U.S.-North Korea relations:

- **Trade is minimal** and mostly limited to food, medicine, and other humanitarian-related goods. North Korea has no advantageous trade status and is outright denied certain goods—including luxury goods—and trade financing, primarily due to its proliferation activities. The Department of Commerce places North Korea in the two most restricted country groups for exports; imports require a license from the Treasury Department's Office of Foreign Assets Control; using a North Korea-flagged vessel for any transaction is prohibited.
- **Foreign aid is minimal** and mostly limited to refugees fleeing North Korea; broadcasting into the country; nongovernmental organization programs dedicated to democracy promotion, human rights, and governance; emergency food aid; and aid related to disabling and dismantling the country's nuclear weapons program. By law, U.S. representatives in the international financial institutions (IFI) are required to vote against any support for North Korea due to its nuclear weapons ambitions. Human rights and environmental activities would also likely result in U.S. objections to North Korea's participation in the IFI.
- **Arms sales and arms transfers** are fully denied.
- **Assets are blocked** for certain individuals and entities, should such assets come under U.S. jurisdiction.

Since the outbreak of the Korean War in 1950, the United States had imposed fairly comprehensive economic, diplomatic, and political restrictions on North Korea. In 1999, however, President Clinton announced he would lift many restrictions on U.S. exports to and imports from North Korea in areas other than those controlled for national security concerns; the Departments of Commerce, Treasury, and Transportation issued new regulations a year later that implemented the new policy. On June 26, 2008, President George W. Bush removed restrictions based on authorities in the Trading With the Enemy Act and the terrorism designation, replacing them with more circumscribed economic restrictions related to proliferation concerns.

The U.S. sanctions in place are a result both of requirements incorporated into U.S. law by Congress and decisions made in the executive branch to exercise discretionary authorities. Though the President, in accordance with the Constitution, leads the way in conducting foreign policy, Congress holds substantial power to shape foreign policy by authorizing and funding programs, advising on appointments, and specifically defining the terms of engagement in accordance with U.S. political and strategic interests. This report presents the legislative basis for U.S. sanctions policy toward North Korea. These sanctions are a critical tenet of the larger bilateral relationship, and this report highlights Congress's role and responsibility in determining the nature of U.S.-North Korea relations.

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Background

The United States imposes economic sanctions on North Korea for activities related to weapons proliferation; regional disruptions; narcotics trafficking; undemocratic governance; and illicit activities in international markets, including money laundering, counterfeiting of goods and currency, and bulk cash smuggling. In addition, although President George W. Bush removed the government of North Korea from the list of state sponsors of acts of international terrorism in June 2008, the Department of Commerce continues to identify North Korea as a terrorism-supporter for purposes of export control policy.

United States law has been applied to North Korea in the following ways in response to the North Korean government's objectionable activities:¹

- North Korea poses a threat to U.S. national security because of “the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula”, as declared by President George W. Bush on June 26, 2008, under the terms of the National Emergencies Act (NEA) and the International Emergency Economic Powers Act (IEEPA);²
- North Korea is cited by the United Nations Security Council³ for its nuclear weapons and ballistic missiles pursuits, withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons, and contribution to regional tensions; the United States meets the requirements as a member state of the United Nations pursuant to the United Nations Participation Act of 1945 to implement sanctions adopted by the U.N. Security Council;
- North Korea committed an unprovoked attack that resulted in the sinking of a South Korean naval vessel, *Cheonan*; announced a new nuclear test and missile launches in 2009; engaged in money laundering, counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking, all in violation of U.N. Security Council Resolutions, leading to President Obama to expand the national emergency in 2010 and 2011;⁴

¹ **Appendix A** lists U.S. statutory authorities used to form the economic sanctions regime.

² Executive Order 13466, “Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals,” 73 F.R. 36787, June 26, 2008; 31 CFR Part 510, November 4, 2010. The same day, the President found that continuing the national emergency first proclaimed under authority of the Trading With the Enemy Act (Presidential Proclamation 2914; December 16, 1950; 15 F.R. 9029) was “no longer in the national interest of the United States.” Presidential Proclamation 8271; June 26, 2008; 73 F.R. 36785. That day, he also certified that the Government of North Korea had met the requirements of U.S. law to be found to no longer support acts of international terrorism. Memorandum of June 26, 2008; 73 F.R. 37351. The Secretary of State, a few months later, issued a rescission of North Korea’s listing as a terrorist supporter, as required by law. Department of State Public Notice 6415; October 11, 2008; 73 F.R. 63540. CRS Report RL31696, *North Korea: Economic Sanctions Prior to Removal from Terrorism Designation*, provides details on the statutes relating to a terrorism designation.

The President is required to continue annually any national emergency he issues under the National Emergencies Act, or it expires, along with the sanctions established under the International Emergency Economic Powers Act (IEEPA). President Obama renewed the national emergency declared in Executive Order 13466 in memoranda issued on June 24, 2009 (74 F.R. 30457), and annually since then, most recently on June 20, 2014 (79 F.R. 35909).

³ United Nations Security Council Resolution 1718 (2006), October 14, 2006 (U.N. document S/Res/1718 (2006)); United Nations Security Council Resolution 1874 (2009), June 12, 2009 (U.N. document S/Res/1874 (2009)).

⁴ Executive Order 13551, “Blocking Property of Certain Persons With Respect to North Korea,” 75 F.R. 53837, August 30, 2010; and Executive Order 13570, “Prohibiting Certain Transactions With Respect to North Korea,” 76 F.R. 22291, April 20, 2011. President Obama cited Section 5 of the United Nations Participation Act of 1945 (P.L. 79-264; 22 (continued...))

- North Korea is a Marxist-Leninist state, with a Communist government, and stated as such in the Export-Import Bank Act of 1945, as amended, and further restricted under the Foreign Assistance Act of 1961;
- North Korea has engaged in proliferation of weapons of mass destruction, the State Department finds pursuant to the Arms Export Control Act, Export Administration Act of 1979, Iran, North Korea, and Syria Nonproliferation Act of 2000, and a national emergency declared by President George H. W. Bush relating to the proliferation of such weapons;
- North Korea is not cooperating fully with U.S. antiterrorism efforts, the State Department has determined, under terms of the Arms Export Control Act;
- North Korea has detonated a nuclear explosive device, President George W. Bush has determined, pursuant to the Arms Export Control Act, the Atomic Energy Act, and the Export-Import Bank Act of 1945; and
- North Korea engaged in “provocative, destabilizing, and repressive actions and policies,” including “destructive, coercive cyber-related actions during November and December 2014,” actions in violation of a multitude of U.N. Security Council resolutions, and commission of serious human rights abuses.⁵

At the President’s discretion, North Korea also could be subject to economic sanctions provided in three provisions of law addressing human rights conditions: the Foreign Assistance Act of 1961, the International Religious Freedom Act of 1998, and the Trafficking Victims Protection Act of 2000.

The United States’ concerns about North Korea’s pursuit of nuclear weapons capability emerged in the 1980s when that country’s nuclear weapons program became apparent. In the 1990s, the two countries negotiated an Agreed Framework to freeze North Korea’s plutonium-based nuclear energy program and provide heavy fuel oil until light-water reactors could be brought on-line, all funded to varying degrees by the European Union, Japan, South Korea, and the United States. In October 2002, it came to light in negotiations between U.S. and North Korean government officials that North Korea was pursuing a uranium-based nuclear weapons capability. Diplomacy over North Korea’s nuclear weapons program then entered a new phase; the Agreed Framework was abandoned and the United States, North Korea, South Korea, China, Japan, and Russia convened a new forum—the Six Party Talks. Despite several steps forward, including the United States ending decades-long sanctions imposed at the outset of the 1950-1953 conflict and its delisting of North Korea as a supporter of international terrorism, the Six Party Talks collapsed in late 2008.

During this period and continuing today, North Korea engaged in a number of acts that the international community has deemed provocative. Over July 5-6, 2006, in April 2009, and again in December 12, 2012, North Korea tested short-range and long-range ballistic missiles with varying degrees of success, the first tests since 1998. On October 8, 2006, May 25, 2009 and again on February 12, 2013, North Korea reported that it had detonated a nuclear explosive

(...continued)

U.S.C. 287c) authorities in addition to those provided in NEA and IEEPA.

⁵ Executive Order 13687, “Imposing Additional Sanctions With Respect to North Korea, January 2, 2015, 80 F.R. 819. The Executive Order also draws on authorities granted the President in the Immigration and Nationality Act (8 U.S.C. 1182(f)) to deny entry into the United States of any person designated pursuant to IEEPA authorities. See Presidential Proclamation 8693 of July 24, 2011, “Suspension of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions,” 76 F.R. 44751.

device. The international community responded to the missile tests and nuclear detonations by taking the issue to the U.N. Security Council, which adopted resolutions that condemned the weapons tests and called on member states to impose economic sanctions.

On January 6, 2016, North Korea announced that it had successfully detonated a fourth nuclear device—this time a hydrogen bomb.⁶

On March 26, 2010, a South Korean Navy ship, the *Cheonan*, was struck by a torpedo while sailing in the West Sea. The ship sank and 46 crew members were killed. The South Korean Ministry of National Defense formed a Civilian-Military Joint Investigation Group—with participants from five other nations including the United States—which found that the *Cheonan* was torpedoed by a North Korean submarine. North Korea denied involvement. The U.N. Security Council, in a presidential statement, condemned the attack, and acknowledged both the findings of the Investigation Group and the disavowal by North Korea.⁷

President Obama assigned responsibility to North Korea for the sinking of the *Cheonan* when, on August 30, 2010, he announced he was expanding the scope of the national emergency declared in 2008, and the United States was taking additional steps to curtail economic activity with North Korea:

the continued actions and policies of the Government of North Korea, manifested most recently by its unprovoked attack that resulted in the sinking of the Republic of Korea Navy ship *Cheonan* and the deaths of 46 sailors in March 2010; its announced test of a nuclear device and its missile launches in 2009; its actions in violation of UNSCRs 1718 and 1874, including the procurement of luxury goods; and its illicit and deceptive activities in international markets through which it obtains financial and other support, including money laundering, the counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking, destabilize the Korean peninsula and imperil U.S. Armed Forces, allies, and trading partners in the region, and thereby constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.⁸

President Obama's explicit identification of all features of North Korea's objectionable behavior constituting the threat is unusual compared to other invocations of his IEEPA authorities.⁹ The statute requires only that the President find that a threat to U.S. national security, foreign policy, or economy exists, and that its source is "in whole or substantial part outside the United States." The President identified North Korea's attack of the *Cheonan* and other acts of regional destabilization, pursuit of weapons of mass destruction and the means to deliver them, noncompliance with U.N. requirements, money laundering, counterfeiting, smuggling, and narcotics trafficking as compounding the threat. To this list, the President added, in January 2015, "cyber-related actions ... and commission of serious human rights abuses," the latter a nod to ground-breaking efforts in December 2014 in the United Nations General Assembly to refer reports of human rights atrocities in North Korea's prison system to both the U.N. Security Council and the International Criminal Court. Justifying the declaration of the emergency based on these wide-ranging activities accomplishes a number of goals:

⁶ KCNA Watch. "DPRK Govt Declares H-bomb Test Successful," attributed to *Pyongyang Times*, January 7, 2016.

⁷ Civilian-Military Joint Investigation Group, *On the Attack Against the ROK Ship Cheonan*, Ministry of National Defense, Republic of Korea, September 2010; U.N. Security Council, Presidential Statement (U.N. document, S/PRST/2010/13, July 9, 2010).

⁸ Executive Order 13551, "Blocking Property of Certain Persons With Respect to North Korea," 75 F.R. 53837, September 1, 2010.

⁹ 50 U.S.C. 1701 notes.

- It confirms the United States' full support of and participation in implementation of the U.N. Security Council resolutions.
- It provides a clear list of concerns members of the U.S. diplomatic corps might raise and emphasize when speaking with North Korea's trading partners and benefactors.
- It states indisputable goals for North Korea to strive toward, meet, and surpass.

It should be noted, however, that each of these forms of objectionable behavior likely would be grounds, under current law, for restricting trade, aid, arms sales, and access to assets even if the national emergency were to be revoked.

U.S. Economic Sanctions Currently in Place

Contrary to commonly expressed views, the United States does not maintain a comprehensive embargo against North Korea. The U.S. government does not prohibit travel to North Korea, for example, nor does it deny trade in basic goods. United States economic sanctions imposed on North Korea, as a result both of requirements in U.S. law and decisions made in the executive branch to exercise discretionary authorities, have the following impact:

- **Trade is minimal** and mostly limited to food, medicine, and other humanitarian-related goods. North Korea has no advantageous trade status and is outright denied certain goods—including luxury goods—and trade financing, primarily due to its proliferation activities. The Department of Commerce places North Korea in the two most restricted country groups for exports; imports require a license from the Treasury Department's Office of Foreign Assets Control; using a North Korea-flagged vessel for any transaction is prohibited.
- **Aid is minimal** and mostly limited to refugees fleeing North Korea; broadcasting into the country; nongovernmental organization programs dedicated to democracy promotion, human rights, and governance; emergency food aid; and aid related to disabling and dismantling the country's nuclear weapons program. By law, U.S. representatives in the international financial institutions (IFI) are required to vote against any support for North Korea due to its nuclear weapons ambitions. Human rights and environmental activities would also likely result in U.S. objections to participation in the IFI.
- **Arms sales and arms transfers** are fully denied.
- **Access to assets** of certain individuals and entities, should such assets come under U.S. jurisdiction, is blocked.

Trade

The United States curtails trade with North Korea for reasons of regional stability, that country's support for acts of international terrorism (though North Korea is no longer designated as a state sponsor of terrorism), lack of cooperation with U.S. antiterrorism efforts, proliferation, and its status as a Communist country and a nonmarket economy. The United States also prohibits transactions relating to trade with certain North Korean entities identified as those who procure luxury goods, launder money, smuggle bulk cash, engage in counterfeiting goods and currency, and traffic in illicit narcotics.

National Emergency Because of Threat to U.S. National Security

Trade with North Korea is significantly restricted because of that country's demonstrated pursuit of nuclear weapons and the means to deliver them. Though President Bush, in June 2008, determined that North Korea had cleared the bar and would no longer be characterized as a state sponsor of acts of international terrorism, and Secretary of State Rice, in October 2008, removed the terrorism designation, the Department of Commerce continues to restrict exports to North Korea for anti-terrorism reasons.¹⁰

Commerce's primary means of controlling exports is through the administration of Export Administration Regulations (EAR), in which goods to be controlled for a variety of reasons—national security, foreign policy, short supply, compliance with international agreements, to name a few—are categorized. Recipient countries are also characterized, from allies for which little licensing is required, to rogue states for which export licensing is all but completely denied. Commerce identifies North Korea among the most restricted trade destinations—Country Group E:1, Terrorist Supporting Countries—which severely limits its access to computers, software, national security-controlled items, items on the Commerce Control List (CCL),¹¹ and service or repair of such items. A U.S. exporter intending to ship any goods subject to the Export Administration Regulations (EAR), except for food and medicine not on the CCL, is required to obtain an export license.

Commerce also identifies North Korea in the second most restrictive country group—Country Group D. U.S. exports to countries in Group D are restricted for reasons of national security [D:1], nuclear activities [D:2], chemical and biological weapons activities [D:3], missile technology activities [D:4], and countries subject to arms embargoes as identified by the State Department [D:5].¹² As a result, U.S. exporters are likely to be denied licenses to export any controlled item if North Korea is the destination. In June 2007, Commerce eased licensing requirements so that food, medicine, and humanitarian assistance items could be made available, but at the same time imposed new licensing prohibitions on the export and reexport of luxury goods to implement the terms of U.N. Security Council Resolution 1718.¹³

Thus, a U.S. company may apply for a license to export to North Korea, but for nearly all items other than food and medicine, there is a presumption of denial. The EAR identify license

¹⁰ See, especially, 15 CFR Part 742.19, "Anti-terrorism: North Korea."

¹¹ The Secretary of Commerce establishes and administers the Commerce Control List (CCL), goods controlled for national security reasons, pursuant to Section 5(c) of the Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2404(c)).

¹² For arms embargoed [D:5] country designations, see 22 CFR Part 126.1. See also 15 CFR Part 740 Supp. 1 for Country Group Lists.

¹³ Department of Commerce. Bureau of Industry and Security. 15 CFR Parts 732, 738, 740, 742, 746, 772, and 774. "North Korea: Imposition of New Foreign Policy Controls." January 26, 2007; 72 F.R. 3722-3730. The notice identifies luxury goods to include, in part:

...luxury automobiles; yachts; gems; jewelry; other fashion accessories; cosmetics; perfumes; furs; designer clothing; luxury watches; rugs and tapestries; electronic entertainment software and equipment; recreational sports equipment; tobacco; wine and other alcoholic beverages; musical instruments; art; and antiques and collectible items, including but not limited to rare coins and stamps. These and similar items have been imported by North Korea for the use and benefit of government officials and their families, rather than for the good of the North Korean people.

This language generally is stated at 15 CFR Part 746.4(b)(1). See also Supplement No. 1 to 15 CFR Part 746—Examples of Luxury Goods following 15 CFR Part 746.

exceptions; those wishing to export to North Korea, however, are not eligible for these exceptions except in highly circumscribed instances.¹⁴

The Office of Foreign Assets Control, within the Department of the Treasury, must approve any U.S. importation from North Korea, and weighs all requests in the context of proliferation, money laundering, counterfeiting, bulk cash smuggling, narcotics trafficking, or other illicit economic activity, and who in North Korea might profit. Any transfer involving the government of North Korea, any senior DPRK government official, or a DPRK person or entity designated as a Specially Designated National pursuant to any of the series of executive orders relating to North Korea, to a person under U.S. jurisdiction is prohibited.¹⁵ The President, in Executive Order 13570 of April 18, 2011, stated:

Except to the extent provided in statutes or in licenses, regulations, orders, or directives that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, the important into the United States, directly or indirectly, of any goods, services, or technology from North Korea is prohibited.¹⁶

United States persons are also prohibited from registering a vessel in North Korea; obtaining authorization to fly the North Korean flag on a vessel; or owning, leasing, operating, or insuring any vessel so flagged.¹⁷

Terrorism

North Korea is among those countries listed as being in violation of section 40A of the Arms Export Control Act, which prohibits the selling or licensing of defense articles or defense services to any country that the President finds “is not cooperating fully with United States antiterrorism efforts.” The President is required to make such a determination annually, and the prohibition may be waived on grounds that it is in the national interest to do so.¹⁸

Nonmarket Economy

The Trade Agreement Extension Act of 1951 required the suspension of Most-Favored-Nation trade status (MFN, which is now known as Normal Trade Relations [NTR]) for all Communist countries except Yugoslavia. As a result, North Korea was denied MFN trade status on September 1, 1951.

¹⁴ 15 CFR Part 746.4(b)(4) provides that licenses “are subject to a general policy of approval” if the intended export is a humanitarian item “(e.g., blankets, basic footwear, heating oil, and other items meeting subsistence needs) intended for the benefit of the North Korean people; items in support of United Nations humanitarian efforts; and agricultural commodities or medical devices items that are determined by BIS [Bureau of Industry and Security].” 15 CFR Part 746.4(c) provides that some licensing is possible for items used by news media, U.S. government, International Atomic Energy Agency (IAEA), the European Atomic Energy Community (Euratom), safe operation of civil aircraft, operation technology related to other legally exported commodities, and some gift parcels if no luxury goods are included.

¹⁵ 31 CFR Part 510.201.

¹⁶ Section 1, Executive Order 13570, 76 F.R. 22291, April 18, 2011.

¹⁷ Executive Order 13466, “Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals,” 73 F.R. 36787, June 26, 2008. See also 31 CFR Part 510, issued November 4, 2010.

¹⁸ 22 U.S.C. 2781. The most recent certification, Department of State Public Notice 9148 of May 11, 2015 (80 F.R. 30319; May 27, 2015), includes Eritrea, Iran, North Korea, Syria, and Venezuela. This section of law was added to the Arms Export Control Act in late 1996; North Korea has been included on the list each year since its inception.

North Korea remains listed in the headnotes of the Harmonized Tariff Schedule of the United States (HTSUS) as a Rate of Duty Column 2 country (along with Cuba). As a result, while trade is not prohibited with North Korea under the relevant trade laws, tariffs are set at the highest rates for imports from that country.¹⁹ A side result of being denied MFN or NTR status is that any such country is also denied preferential trade treatment under the Generalized System of Preferences (GSP), pursuant to the Trade Act of 1974.²⁰ As a nonmarket economy found to deny its citizens the right or opportunity to emigrate, North Korea is not eligible to participate in any U.S. government program that makes credit, credit guarantees, or investment guarantees available, nor may the President enter into any commercial agreement with the country.²¹

Proliferator

On several occasions, North Korean entities have been found to be in violation of U.S. missile nonproliferation laws.²² Once a finding is made, the imposition of sanctions is mandatory, though sanctions may be waived if the President finds it “essential to the national security of the United States” to do so. The severity of the sanction depends on the type of material or technology transferred. The duration of the sanction also depends on the material or technology involved; generally sanctions are imposed for two years or more.

Sanctions include, at a minimum, a denial of contracts with agencies of the U.S. government, denial of licenses for items on the U.S. Munitions List (USML),²³ and, at a maximum, a denial of all licenses for importing into the United States for the foreign person or entity.

Because North Korea is a nonmarket economy,²⁴ all relevant activities of the government of North Korea are also sanctioned when entities in North Korea are found to have engaged in proliferation under U.S. law.

With the nuclear weapons test of October 8, 2006, President Bush exercised the authority granted his office to cut off all foreign aid except humanitarian and food aid, deny sales or transfers of defense articles and defense services, deny export licenses for items on the USML, deny foreign military financing, deny credit underwritten or provided by government coffers, withhold U.S.

¹⁹ Harmonized Tariff Schedule of the United States, general note 3(b).

²⁰ Section 502(b)(1) of P.L. 93-618 (19 U.S.C. 2461).

²¹ Section 402 of the Trade Act of 1974, popularly referred to as the Jackson-Vanik amendment (19 U.S.C. 2432), and Section 409 of that Act (19 U.S.C. 2439).

²² Section 73 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797b), Section 11B of the Export Administration Act (P.L. 96-72; 50 U.S.C. App. 2410b), and secs. 2 and 3 of the Iran, North Korea, and Syria Nonproliferation Act of 2000 (P.L. 106-178; 50 U.S.C. 1701 note), as amended. North Korea was added to the latter Act on October 13, 2006, with the signing into law of the North Korea Nonproliferation Act of 2006 (P.L. 109-353; 120 Stat. 2015).

²³ “In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services.” To accomplish this, the President is authorized to designate items to be controlled—the United States Munitions List (USML). Section 38(a)(1) of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2778(a)(1)). The USML may be found at 22 CFR Part 121.1.

²⁴ Section 74(a)(8)(B) of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797c(a)(8)(B)) applies restrictions to a government of a country deemed to be a nonmarket economy when an entity under the jurisdiction of that government engages in missile proliferation activities, because the separation between government and commerce is not distinct. Section 74 provides, in part: “. . . in the case of countries with non-market economies . . . the term ‘person’ means . . . all activities of that government relating to the development or production of any missile equipment or technology; and . . . all activities of that government affecting the development or production of electronics, space systems or equipment, and military aircraft. . . .”

support in the international financial institutions, deny export licenses for dual-use items, and withhold Export-Import Bank support.²⁵ At the time, the United States already maintained a fairly comprehensive sanctions regime on North Korea, thus most of these relationships were already broken or limited.

Aid

North Korea's access to U.S. foreign assistance is limited in annual foreign operations appropriations measures.²⁶ Under the Department of State, Foreign Operations, and Related Programs Appropriations Act,²⁷ North Korea is generally denied direct foreign aid, economic support funds (ESF) for energy-related programs, and direct loans, credits, insurance and guarantees of the Export-Import Bank. The prohibitions on direct foreign aid to North Korea also make that country ineligible for Millennium Challenge Account programs.²⁸

At the President's discretion, North Korea is also subject to the economic sanctions provided in three provisions of law addressing human rights conditions: the Foreign Assistance Act of 1961,²⁹ under which North Korea is annually castigated for its human rights record; the International

²⁵ Section 102 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2799aa-1), popularly referred to as the Glenn amendment; Section 2(b)(4) of the Export-Import Bank Act of 1945 (P.L. 79-173; 12 U.S.C. 635(b)(4)); and the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (division F of the Consolidated Appropriations Act, 2010; P.L. 111-117; 123 Stat. 3034 at 3312), relating to Export-Import Bank funding. On December 7, 2006, President Bush determined that North Korea, a non-nuclear-weapon state, had detonated a nuclear explosive device, citing Section 102(b) of the Arms Export Control Act and Section 129 of the Atomic Energy Act. Presidential Determination No. 2007-07. *Public Papers of the President*. December 18, 2006.

²⁶ When appropriations law prohibits the availability of foreign aid, however, numerous exceptions to the law allow aid to be made available for targeted programs. Thus, programs in nonproliferation, demining, child survival, conservation and biodiversity, food aid, debt buybacks, health and disease prevention, unanticipated contingencies, international disaster assistance, and antiterrorism, may be funded or supported in spite of country-specific restrictions. The President also is authorized, under Section 614 of the Foreign Assistance Act of 1961 (22 U.S.C. 2364) to furnish foreign aid "without regard to any provision of this Act, the Arms Export Control Act, any law relating to receipts and credits accruing to the United States, and any Act authorizing or appropriating funds for use under this Act...."

²⁷ Division K of the Consolidated Appropriations Act, 2016 (P.L. 114-113; 129 Stat. 2242). See particularly Section 7007—Prohibition Against Direct Funding for Certain Countries; and Section 7043(d)—East Asia and the Pacific, which continues funding for the State Department's database of North Korea's gulags and prisons, begun by Section 7032(i) of P.L. 113-76 (128 Stat. 513). Previously, Section 2120(d)(6) of P.L. 112-10 removed a discretionary restriction on food aid for FY2011 stated in the FY2010 Act, which read, in part: "(6) ... the Secretary of State shall report to the Committees on Appropriations the amount the Secretary determines the Government of North Korea owes the Government of the United States for the unsupervised distribution of food assistance provided by the United States: Provided, that the Secretary of State should reduce any assistance made available to the Government of North Korea by such amount, unless the Secretary reports ... that the Government of North Korea provided such food assistance to eligible recipients as intended"

Subsequent to its nuclear tests, North Korea would also be denied U.S. Export-Import Bank support under this Act—see title VI (128 Stat. 2598). In the Korean Human Rights Act of 2004 (P.L. 108-333; 22 U.S.C. 7801 *et seq.*), as amended, Congress authorizes funding for FY2013 through 2017 for various aid and diplomacy programs for refugees from North Korea (migration and refugee assistance); up to \$2 million per year for broadcasting into the country; \$5 million per year in economic support funds for programs promoting democracy, human rights, and governance; and Economic Support Funds to promote human rights, address needs of North Korean refugees, improve accountability of humanitarian assistance inside the country, improve the flow of information into and out of the country, and promote a peaceful reunification of the peninsula under a democratic government.

²⁸ Millennium Challenge Act of 2003 (division D of title VI of P.L. 108-199; 22 U.S.C. 7701 *et seq.*); Millennium Challenge Corporation, "Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2016," Notice of September 22, 2015 (80 F.R. 58307).

²⁹ Sections 116 and 502B of P.L. 87-195 (22 U.S.C. 2151n and 2304, respectively), as amended.

Religious Freedom Act of 1998,³⁰ under which the administration has identified North Korea as a “country of particular concern” since 2001; and the Trafficking Victims Protection Act of 2000,³¹ under which the administration has, since 2003, classified North Korea as a Tier 3 (most severe) offender of standards pertaining to the trafficking of persons for slavery or sex trade. Because of North Korea’s failure to comply with minimum standards relating to trafficking in persons, President Obama, in 2010, strengthened the sanctions against North Korea to deny foreign assistance and also to deny “funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year.”³² Any sanctions imposed pursuant to these acts would be largely redundant, however, with penalties already prescribed to North Korea for the above-stated reasons.

Under Department of Defense Appropriations, 2015, North Korea is denied assistance under that act “unless specifically appropriated for that purpose.”³³

Nonmarket Economy

The Export-Import Bank Act of 1945 singles out Marxist-Leninist countries for denial of guarantees, insurance, credit, or other Bank funding programs. North Korea is specifically cited as a Marxist-Leninist country for purposes of the Export-Import Bank.³⁴

The Foreign Assistance Act of 1961 denies most non-humanitarian foreign assistance to any Communist country. North Korea is among five countries so designated, though the law is not limited to those countries named.³⁵

Several laws deny benefits or assistance to Communist countries, but do not explicitly name any particular state. Because North Korea has been denied such benefits or aid in the course of the events of the early 1950s and thereafter, these other sections of law would probably be redundant if applied to or cited for North Korea.

In some instances, the President may determine that, for purposes of a particular law, North Korea is no longer a “Marxist-Leninist state.” If, however, all other aspects of the U.S.-North Korea relationship were to improve, it would probably be necessary for Congress to remove North Korea from the list set out in the Export-Import Bank Act and the Foreign Assistance Act of 1961,

³⁰ P.L. 105-292 (22 U.S.C. 6401 *et seq.*). Department of State. “Secretary of State’s Determination Under the International Religious Freedom Act of 1998,” Public Notice 8875 of September 16, 2014 (79 F.R. 57171; September 24, 2014).

³¹ P.L. 106-386 (22 U.S.C. 7101 *et seq.*). Department of State. *Trafficking in Persons Report 2015*. July 2015. <http://www.state.gov/j/tip/rls/tiprpt/2015/>

³² Section 110(d)(1)(A)(ii) of P.L. 106-386; Presidential Determination No. 2011-15 of September 10, 2010 (75 F.R. 67017).

³³ Section 8042 of the Department of Defense Appropriations, 2015 (division C of P.L. 113-235).

³⁴ Section 2(b)(2) of P.L. 79-173 (12 U.S.C. 635(b)(2)); amended in 1986 to include this ban on funding to Marxist-Leninist states.

³⁵ Section 620(f) of P.L. 87-195 (22 U.S.C. 2370(f)). Consider also subsec. (h) of that section, which requires the President to “adopt regulations and establish procedures to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of subsection (f).” Consider also Section 5(b) of the Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2404(b)), which requires the President to “establish as a list of controlled countries those countries set forth in section 620(f) of the Foreign Assistance Act of 1961....”

or necessary for the President to exercise waiver authority made available to his office under those acts, to make these other laws inapplicable to North Korea.³⁶

Arms Sales and Arms Transfers

The International Traffic in Arms Regulations (ITAR), administered by the Department of State, begins:

It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States.³⁷

The first ITAR was issued on August 26, 1955; North Korea has been listed as a restricted country from the ITAR's inception. North Korea is also restricted under ITAR as the United States denies North Korea conventional arms to comply with U.N. Security Council requirements.³⁸

Importing of defense articles and defense services is similarly restricted by the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives, the regulations of which state:

It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Afghanistan, Belarus (one of the states composing the former Soviet Union), Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, and Vietnam. This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Democratic Republic of the Congo, Haiti, Liberia, Rwanda, Somalia, Sudan, and UNITA (Angola)). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.³⁹

Again, the President has the authority to change these regulations by removing North Korea from the list of restricted countries.

Access to Assets

Declaration of National Emergency

On June 26, 2008, when the Six Party Talks appeared to be making progress, President Bush determined it was no longer in the national interest to continue certain restrictions imposed on

³⁶ For example: Section 620(h) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2370(h)), secs. 502(b)(1) and (b)(2)(A) of the Trade Act of 1974 (P.L. 93-618; 19 U.S.C. 2462(b)(2)(A)), Section 5(b) of the Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2404(b)), and Section 43 of the Bretton Woods Agreements Act (P.L. 79-171; 22 U.S.C. 286aa), the latter of which requires the U.S. Executive Directors to the International Monetary Fund "to actively oppose any facility involving use of Fund credit by any Communist dictatorship...."

³⁷ 22 CFR Part 126.1(a), authorized pursuant to Section 38 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2778).

³⁸ U.N. Security Council Resolution 1718 (2006), October 14, 2006 (U.N. document S/Res/1718 (2006)); U.N. Security Council Resolution 1874 (2009), June 12, 2009 (U.N. document S/Res/1874 (2009)).

³⁹ 27 CFR Part 447.52, also authorized under Section 38 of the Arms Export Control Act.

trade and transactions with North Korea, in place since 1950.⁴⁰ At the same time, however, he found that—⁴¹

...the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby declare a national emergency to deal with that threat. I further find that, as we deal with that threat through multilateral diplomacy, it is necessary to continue certain restrictions with respect to North Korea that would otherwise be lifted pursuant to a forthcoming proclamation that will terminate the exercise of authorities under the Trading With the Enemy Act.... Accordingly, I hereby order... the following are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

- all property and interests in property of North Korea or a North Korean national that ... were blocked as of June 16, 2000,⁴² and remained blocked immediately prior to the date of this order.
- United States persons may not register a vessel in North Korea, obtain authorization for a vessel to fly the North Korean flag, or own, lease, operate, or insure any vessel flagged by North Korea.

To date, three of the four executive orders to address North Korea events issued by Presidents Bush and Obama block access to assets of designated individuals and entities:

- Executive Order 13466 of June 26, 2008 (President Bush; 73 F.R. 36787)—continuing the block of assets that were blocked as of June 16, 2000;
- Executive Order 13551 of August 30, 2010 (President Obama; 75 F.R. 53837)—blocking assets of Kim Yong Chol, and the entities Green Pine Associated Corporation, Reconnaissance General Bureau, and Office 39;⁴³ and
- Executive Order 13687 of January 2, 2015—blocking assets that come under U.S. jurisdiction of any agency, instrumentality, or controlled entity of the North Korean government or the Workers' Party of Korea, or any official of those entities; those found to materially support transactions with or act on behalf of those blocked entities.⁴⁴

⁴⁰ The President. "Termination of the Exercise of Authorities Under the Trading With the Enemy Act With Respect to North Korea," Proclamation 8271 (June 26, 2008; 73 F.R. 36785). On December 16, 1950, President Truman invoked authority granted his office under the Trading With the Enemy Act (TWEA) to declare that a U.S. national emergency existed because of the outbreak of the Korean War (and events elsewhere, as "world conquest by communist imperialism is a goal of the forces of aggression that have been loosed upon the world") (Proclamation 2914; 15 F.R. 9029). A few days later, the Department of the Treasury issued Foreign Assets Control Regulations (FACR; 31 CFR Part 500; 15 F.R. 9040, December 19, 1950, and subsequently amended) to forbid any financial transactions involving, or on behalf of, North Korea and China, including transactions related to travel or the access to North Korean assets that were subject to U.S. jurisdiction. Korea-related FACR have been modified on numerous occasions to take into consideration new circumstances (i.e., transactions relating to technology not in existence at the time the regulations were issued) or to ease restrictions in response to changing conditions (i.e., signing of the Agreed Framework, emerging reports of famine, North Korea's announced moratorium on missile testing).

⁴¹ Executive Order 13466, "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," 73 F.R. 36787, June 26, 2008. 31 CFR Part 510, November 4, 2010.

⁴² In 1999, President Clinton announced he would lift many restrictions on U.S. exports to and imports from North Korea in areas other than those controlled for national security concerns; the Departments of Commerce, Treasury, and Transportation issued new regulations a year later, effective June 16, 2000, to implement the new policy.

⁴³ OFAC may add to this list at any time. The Specially Designated Nationals list may be searched online at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

⁴⁴ OFAC, on January 2, 2015, designated three entities and 10 individuals under this executive order: Reconnaissance (continued...)

Generally, the President has the authority to change regulations, as long as those changes meet the requirements of any relevant law. He must also annually revisit his declaration of a state of national emergency; it expires if the President does not renew it. He could allow the declaration to expire, or he could lift it at any time. And Congress could terminate a declaration of national emergency by passing a joint resolution under terms of the National Emergencies Act.

Proliferation of Weapons of Mass Destruction

On June 28, 2005, President George W. Bush expanded the authority granted his office to address the threat posed by the proliferation of weapons of mass destruction—authority first exercised by President George H. W. Bush in 1990—to freeze assets and property of those engaged in the proliferation of weapons of mass destruction. The 41st President had declared that the United States faced a national emergency relating to weapons proliferation (in the absence, at the time, of a reauthorized Export Administration Act), and thus took steps in 1990 to control the exports of certain goods and services, and authorized a ban on foreign aid and credit, procurement contracts, imports and exports, support in international financial institutions, and landing rights.⁴⁵ Fifteen years later, the 43rd President’s executive order took additional steps to block property and assets under U.S. jurisdiction of any person found, in part—

... to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern;

... to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described [above] ... or any person whose property and interests in property are blocked pursuant to this order ...⁴⁶

At its outset, Executive Order 13382 identified eight foreign entities as contributors to proliferation, of which three were North Korean. The Department of the Treasury’s Office of Foreign Assets Control (OFAC) subsequently added another 19 North Korean entities and four

(...continued)

General Bureau, Korea Mining Development Trading Corporation, and Korea Tangun Trading Corporation; and Kil Jong Hun, Kim Kwang Yon, Jang Song Chol, Yu Kwang Ho, Kim Yong Chol, Jang Yong Son, Kim Kyu, Ryu Jin, Kang Ryong, Kim Kwang Chun—all officers of either the government or the sanctioned entities. Department of the Treasury. “Treasury Imposes Sanctions Against the Government of the Democratic People’s Republic of Korea,” press release, January 2, 2015, Department of the treasury Notice, 80 F.R. 13667, March 16, 2015. Treasury designated an additional four individuals—Sok Chol Kim, Kwang Hyok Kim, Chong Chol Ri, and Su Man Hwang—and one entity—EKO Development and Investment Company—effective November 13, 2015. Department of the treasury Notice, November 18, 2015, 80 F.R. 72147.

⁴⁵ Executive Order 12735 of November 16, 1990. On the same day, the President announced his intention to pocket veto H.R. 4653—the Omnibus Export Amendments Act of 1990—with which Congress intended to reauthorize the then-expired Export Administration Act of 1979. In his announcement, President Bush stated his intentions to curtail significantly trade in goods and services that lent themselves to the proliferation of weapons of mass destruction. See “Memorandum of Disapproval for the Omnibus Export Amendments Act of 1990,” *Public Papers of the President*, November 16, 1990. 26 Weekly Comp. Pres. Doc. 1839. E.O. 12735 was subsequently overhauled by President Clinton with the issuance of Executive Order 12938 (November 14, 1994; 59 F.R. 59099; 50 U.S.C. 1701 note). The national emergency therein is renewed annually.

⁴⁶ Executive Order 13382, *Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters* (June 28, 2005; 70 F.R. 38567).

individuals to this restricted list. In the same findings, OFAC identified entities operating out of Switzerland, Iran, China, South Korea, Russia, Sudan, Syria, United Arab Emirates, Venezuela, Belgium, and Belarus, as entities engaging in WMD proliferation.⁴⁷

Counterfeiting and Money-Laundering

On September 12, 2005, the Treasury Department found that Banco Delta Asia—a Macau-based bank in which North Korea had holdings of more than \$ U.S. 50 million—was a “financial institution of primary money laundering concern.”⁴⁸ The Treasury Department’s Financial Crimes Enforcement Center (FinCen) found that North Korea may reap as much as \$500 million annually from counterfeiting, and another \$100 million to \$200 million annually from narcotics trafficking. The finding authorizes the Secretary of the Treasury to require “special measures”⁴⁹ on the part of U.S. financial institutions and financial agencies that involve increased record keeping and reporting on Banco Delta Asia’s transactions. Treasury issued a final rule, effective April 18, 2007, to impose the most stringent fifth special measure—to prohibit certain bank transactions—and issued regulations to implement the rule.⁵⁰ The finding and initial proposed rulemaking had a chilling effect on Banco Delta Asia’s international business relations. Department of the Treasury officials testified that—

some two dozen financial institutions across the globe have voluntarily cut back or terminated their business with North Korea, notably including institutions in China, Japan, Vietnam, Mongolia, and Singapore. The result of these voluntary actions is that it is becoming very difficult for the Kim Jong-Il regime to benefit from its criminal conduct.⁵¹

⁴⁷ See Department of the Treasury. Office of Foreign Assets Control. “Nonproliferation: What You Need to Know About Treasury Restrictions.” *Information Bulletin*, most recently updated September 19, 2012, <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/wmd.pdf>. See also testimony of Robert W. Werner, Director of the Office of Foreign Assets Control, Department of the Treasury, before the House Committee on Financial Services, February 16, 2006.

On January 9, 2007, the Department of the Treasury announced that it had designated Bank Sepah, a state-owned Iranian financial institution, as an entity materially contributing to Iran’s proliferation activities. Bank Sepah, coincidentally, according to Treasury, is credited with transferring more than \$500,000 for an associate of the Korean Mining Development Corporation. That entity was cited on December 28, 2006, under the Iran, North Korea, and Syria Nonproliferation Act of 2000, for exporting missile technology to Iran. Department of the Treasury. Press release. *Iran’s Bank Sepah Designated by Treasury: Sepah Facilitating Iran’s Weapons Program*. January 9, 2007. HP-219; Weisman, Steven. “U.S. Prohibits All Transactions with a Major Iranian Bank,” *The New York Times*. January 10, 2007. p. 3. Korean Mining Development Corporation is cited multiple times under Executive Order 13882.

⁴⁸ Pursuant to 31 U.S.C. 5318A, as enacted by the USA PATRIOT Act (Section 311 of P.L. 107-56; 115 Stat. 298). Effective September 12, 2005, the Treasury Department’s Financial Crimes Enforcement Network issued a finding (70 F.R. 55214) and a notice of proposed rulemaking (to amend 31 CFR Part 103; 70 F.R. 55217). Documentation on the use of this authority may be found at http://www.fincen.gov/statutes_regs/patriot/section311.html

⁴⁹ 31 U.S.C. 5318A(b) defines “special measures” as (1) record keeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibitions or conditions on opening or maintaining in the United States correspondent accounts or payable-through accounts.

⁵⁰ Department of the Treasury. “Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Banco Delta Asia, Including Its Subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited, as a Financial Institution of Primary Money Laundering Concern,” Final Rule, 31 CFR Part 103 (72 F.R. 12730).

⁵¹ Senate Committee on Banking, Housing and Urban Affairs hearings, September 12, 2006, testimony of Treasury Deputy Under Secretary Daniel Glaser. *Congressional Quarterly*.

North Korea's funds held in Banco Delta Asia were released in 2007; Banco Delta Asia shuttered its operations in 2010.

President Obama also addresses money laundering and counterfeiting in Executive Order 13551 as one of North Korea's many objectionable behaviors to be deterred. The order requires the access to property and interests in property be blocked for any individual or entity identified by the Secretary of the Treasury to have, directly or indirectly:⁵²

- imported, exported, or reexported to, into, or from North Korea any arms or related materiel;
- provided training, advice, or other services or assistance, or engaged in financial transactions, related to the manufacture, maintenance, or use of any arms or related materiel to be imported, exported, or reexported to, into, or from North Korea, or following their importation, exportation, or reexportation to, into, or from North Korea;
- imported, exported, or reexported luxury goods to or into North Korea;
- engaged in money laundering, the counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit economic activity that involves or supports the Government of North Korea or any senior official thereof;
- materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, prohibited activities or any person whose property and interests in property are blocked; or
- be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked.

Concluding Observations

The U.S. economic sanctions imposed on North Korea exemplify both the independent and intertwined aspects of the relationship between the legislative and executive branches. Congress defers the broadest power to the President, in the National Emergencies Act and the International Emergency Economic Powers Act, to curtail trade and transactions between the United States and North Korea. Congress authorizes the President to fine-tune the relationship with North Korea for foreign policy and national security reasons with each waiver authority it incorporates into legislation. At the same time, Congress closely influences the President's choices by enacting issue-driven legislation—addressing human rights matters or proliferation concerns, for example—and by adopting North Korea-specific statutes—most particularly the North Korean Human Rights Act of 2004 (P.L. 108-333), the North Korean Human Rights Reauthorization Act of 2008 (P.L. 110-346), and the inclusion of North Korea into the Iran, North Korea, and Syria Nonproliferation Act of 2000 (P.L. 106-178).

As Congress and the President consider proposals to reform foreign aid, streamline export controls, fund defense and international programs, keep proliferation regimes relevant, assess and enter into treaties and international agreements, and participate in multilateral fora, the effectiveness of economic sanctions as a foreign policy and national security tool is likely to be considered. U.S. policy toward North Korea, expressed both unilaterally and in the United States' position in multilateral fora, is further complicated by other considerations—not the least of

⁵² Executive Order 13551, "Blocking Property of Certain Persons With Respect to North Korea," 75 F.R. 53837, September 1, 2010.

which include relations with other states in the region, security responsibilities with South Korea, trade with China, a determination to keep key stakeholders engaged in nonproliferation efforts in both North Korea and elsewhere, and finding the means to balance all U.S. foreign policy and national security interests in a meaningful way.

Appendix A. North Korea – Economic Sanctions Currently Imposed in Furtherance of U.S. Foreign Policy or National Security Objectives

Rationale	Restriction	Statutory Basis [regulation]	Authority to impose	Authority to lift or waive
General foreign policy reasons	Limits the export of goods or services	Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2401 et seq.) [15 CFR Part 730-774]	President, Secretary of Commerce, generally	President, Secretary of Commerce, generally
General foreign policy reasons	Limits proportionate share to international organizations which, in turn, expend funds in North Korea	Sec. 307, Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2227)	Statutory requirement	No waiver; exemption for certain IAEA programs
General foreign policy reasons	Prohibits bilateral assistance	Sec. 7007, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (P.L. 114-113; 129 Stat. 2242)	Statutory requirement	No waiver
General foreign policy reasons	Prohibits Economic Support Funds	Sec. 7043(d), Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (P.L. 114-113; 129 Stat. 2242)	Statutory requirement	No waiver
General foreign policy reasons	Prohibits DOD funds	Sec. 8044, Department of Defense Appropriations, 2016 (division C of P.L. 114-113).	Statutory requirement	No waiver
Diplomatic relations severed	Prohibits most foreign aid and agricultural sales under P.L. 480	Sec. 620(t), Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2370(t))	Statutory requirement	No waiver
National security controls, Communism	Limits the export of goods or services	Sec. 5, Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2404) [15 CFR Part 730-774]	President	President
Communism	Prohibits foreign aid	Sec. 620(f), Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2370(f))	Statutory requirement	President

Rationale	Restriction	Statutory Basis [regulation]	Authority to impose	Authority to lift or waive
Communism	Limits proportionate share to international organizations which, in turn, expend funds in North Korea	Sec. 307, Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2227)	Statutory requirement	No waiver; exemption for certain IAEA programs
Communism	Prohibits Export-Import Bank funding to Marxist-Leninist states	Sec. 2(b)(2), Export-Import Bank Act of 1945 (P.L. 79-173; 12 U.S.C. 635(b)(2))	Statutory requirement	President
Communism	Prohibits support in the IFIs	Sec. 43, Bretton Woods Agreements Act (P.L. 79-171; 22 U.S.C. 286aa)	Statutory requirement	Secretary of the Treasury
Communism	Limits the export of goods or services	Sec. 5(b), Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2404(b))	Statutory requirement	President
Communism	Denies favorable trade terms	Sec. 401, Trade Act of 1974 (19 U.S.C. 2431)	Statutory requirement	President
Nonmarket economy and emigration	Denies favorable trade terms	Sec. 402, Trade Act of 1974 (19 U.S.C. 2432)	Statutory requirement	President
Nonmarket economy and emigration	Denies favorable trade terms	Sec. 409, Trade Act of 1974 (19 U.S.C. 2439)	President	President
Communism and market disruption	Denies favorable trade terms	Sec. 406, Trade Act of 1974 (19 U.S.C. 2436)	President	President
Communism	Prohibits the acquisition of property in U.S. for diplomatic mission	Sec. 205, State Department Basic Authorities Act (P.L. 84-885; 22 U.S.C. 4305)	Secretary of State	Secretary of State
Terrorism, failure to cooperate with U.S. efforts	Prohibits transactions related to defense articles and defense services	Sec. 40A, Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2781)	President	President, at annual review, or waived by the President if he finds it "important to the national interests of the United States."
Excessive military expenditure, human rights violations	Prohibits the cancellation or reduction of certain debt	Sec. 501, Miscellaneous Appropriations, 2000 (H.R. 3425, enacted by reference in P.L. 106-113; 22 U.S.C. 2395a note)	Statutory requirement	President

Rationale	Restriction	Statutory Basis [regulation]	Authority to impose	Authority to lift or waive
National emergency, proliferation of weapons of mass destruction	Blocks assets of named proliferators of weapons of mass destruction	International Emergency Economic Powers Act (P.L. 95-223; esp. at 50 U.S.C. 1702); National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 et seq.)	President [Executive Order 13382, June 28, 2005; 50 U.S.C. 1701 note]	President
National emergency	Prohibits imports, exports, transactions related to transportation	International Emergency Economic Powers Act (P.L. 95-223; esp. at 50 U.S.C. 1702); National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 et seq.) [31 CFR Part 510]	President [Executive Order 13466, June 26, 2008; 50 U.S.C. 1701 note]	President
National emergency, proliferation of weapons of mass destruction, attack of the <i>Cheonan</i> , nuclear detonations, missile launches, violation of UNSCR resolutions, counterfeiting of goods and currency, money laundering, smuggling, narcotics trafficking, destabilizing the region	Blocks assets of, and transactions with or on behalf of, named entities	International Emergency Economic Powers Act (P.L. 95-223; esp. at 50 U.S.C. 1702); National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 et seq.) Sec. 5, United Nations Participation Act of 1945 (P.L. 79-264; 22 U.S.C. 287c) [31 CFR Part 510]	President [Executive Order 13551, August 30, 2010; 50 U.S.C. 1701 note] [expands on the national emergency declared in E.O. 13466]	President
To ensure implementation of import restrictions agreed to in the U.N. Security Council	“Except to the extent provided in statutes or in licenses, regulations, orders, or directives that may be issued pursuant to this order...” prohibits “importation into the United States, directly or indirectly, of any goods, services, or technology from North Korea”	International Emergency Economic Powers Act (P.L. 95-223; esp. at 50 U.S.C. 1702); National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 et seq.) Sec. 5, United Nations Participation Act of 1945 (P.L. 79-264; 22 U.S.C. 287c)	President [Executive Order 13570, April 18, 2011; 50 U.S.C. 1701 note] [expands on the national emergency declared in E.O. 13466]	President
Provocative, destabilizing, and repressive actions of DPRK, including cyber-related actions; violation of UNSC resolutions; human rights abuses	Prohibits transactions with and blocks assets of any entity of the government of North Korea or the Workers’ Party of Korea	International Emergency Economic Powers Act (P.L. 95-223; esp. at 50 U.S.C. 1702); National Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 et seq.) Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f))	President [Executive Order of January 2, 2015 (as yet unnumbered; 50 U.S.C. 1701 note)]	President

Rationale	Restriction	Statutory Basis [regulation]	Authority to impose	Authority to lift or waive
Proliferation of weapons of mass destruction: missiles	Prohibits a range of transactions—U.S. Government contracts, export licenses, imports into United States	Sec. 73, Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797b)	President	President
Proliferation of weapons of mass destruction: nuclear enrichment transfers	Prohibits foreign aid, military aid	Sec. 101, Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2799aa)	President	President
Proliferation of weapons of mass destruction: nuclear reprocessing transfers, nuclear detonations	Prohibits foreign aid (except humanitarian), military aid, USG defense sales and transfers, export licenses for USML goods and services, U.S. Government-backed credits, support in the international banks, agricultural credits or financing, U.S. commercial bank financing, licenses for export of certain goods and services	Sec. 102, Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2799aa-1)	President	President
Proliferation of weapons of mass destruction: nuclear detonations	Prohibits Export-Import Bank financing	Sec. 2(b)(4) of the Export-Import Bank Act of 1945 (P.L. 79-173; 12 U.S.C. 635(b)(4))	Statutory requirement	President
Proliferation of weapons of mass destruction: nuclear detonations	Prohibits Export-Import Bank financing	Title VI of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Division K, P.L. 114-113; 129 Stat. 2242)	Statutory requirement	No waiver
Proliferation of weapons of mass destruction: missiles	Prohibits a range of transactions—contracts, export licenses, imports into US	Sec. 11B, Export Administration Act (P.L. 96-72; 50 U.S.C. App. 2410b)	President	President
Proliferation of weapons of mass destruction	Prohibits a range of transactions—arms sales and exports, dual-use exports, procurement contracts, assistance, imports, support in the international banks, credit, landing rights	Sec. 3, Iran, North Korea, and Syria Nonproliferation Act of 2000 (P.L. 106-178; 50 U.S.C. 1701 note)	President	President

Rationale	Restriction	Statutory Basis [regulation]	Authority to impose	Authority to lift or waive
Human rights (trafficking in persons)	Prohibits non-humanitarian foreign aid, cultural exchanges, support in international financial institutions	Sec. 110, Trafficking Victims Protection Act of 2000 (P.L. 106-386; 22 U.S.C. 7107)	President	President, waiver if in the national interest
Counterfeiting, money-laundering	Prohibits certain commercial bank transactions	31 U.S.C. 5318A (generally referred to by its amendatory vehicle—Sec. 311, USA PATRIOT Act)	Secretary of the Treasury	Secretary of the Treasury

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