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North Korea: Economic Sanctions

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North Korea: Economic Sanctions

Summary

U.S. economic sanctions are imposed against North Korea for four primary reasons: (1) North Korea is seen as posing a threat to U.S. national security; (2) North Korea is designated by the Secretary of State as a state sponsor or supporter of international terrorism; (3) North Korea is a Marxist-Leninist state, with a Communist government; and (4) North Korea has been found by the State Department to have engaged in proliferation of weapons of mass destruction. In accordance with U.S. law, the United States limits some trade, denies trade in dual-use goods and services, limits foreign aid, and opposes entry into or support from international financial institutions.

In October 2002, in meetings between high-level U.S. and North Korean government officials, North Korea confirmed suspicions that it had reactivated its nuclear weapons program. An international crisis ensued, with North Korea expelling International Atomic Energy Agency (IAEA) inspectors and declaring that it would withdraw from the Non-Proliferation Treaty. Participants in the Korean Energy Development Organization (KEDO) – including United States, Japan, South Korea and the European Union – in turn suspended shipments of fuel oil. Continued pursuit of nuclear weapons capability on the part of North Korea could result in new economic sanctions ordered by the United Nations Security Council. This approach is controversial, however, particularly with North Korea's neighbors, which generally favor a greater emphasis on negotiations and engagement.

The 108th Congress has before it two measures addressing recent actions of North Korea: **H.J. Res. 2**, the **continuing resolution** to provide appropriations to several departments, agencies, and offices of the U.S. government for Fiscal Year 2003, to which the Senate added an amendment, introduced by Senator McCain, expressing the sense of the Senate on a variety of approaches to North Korea's nuclear announcements; and **S. 145, North Korea Democracy Act of 2003**, which would impose a new range of sanctions on North Korea in response to the nuclear efforts.

This paper explains the U.S. economic sanctions currently in place, and summarizes recent events as they relate to the potential application of additional restrictions. It will be updated as necessary.

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North Korea: Economic Sanctions

Background

U.S. Economic Sanctions Against North Korea

U.S. economic sanctions are imposed against North Korea for four primary reasons: (1) North Korea poses a threat to U.S. national security, as determined by the President and renewed annually under the terms of the Trading with the Enemy Act and National Emergencies Act; (2) North Korea is designated by the Secretary of State as a state sponsor or supporter of international terrorism, pursuant to the Export Administration Act of 1979; (3) North Korea is a Marxist-Leninist state, with a Communist government, and stated as such in the Export-Import Bank Act of 1945, and further restricted under the Foreign Assistance Act of 1961; and (4) North Korea has been found by the State Department to have engaged in proliferation of weapons of mass destruction – to date only missile proliferation – pursuant to the Arms Export Control Act, Export Administration Act of 1979, and Iran Proliferation Act of 2000.

In 1999 President Clinton announced that the United States would ease economic sanctions against North Korea affecting trade and travel. Today, though restrictions are in place related to the national security threat, terrorism, communism, and proliferation, one may engage in many transactions with the Government of North Korea, the country's business entities or its people, if overarching requirements are met. Thus, trade and related transactions are generally allowed for other than dual-use goods. U.S. citizens may travel to North Korea; there are no restrictions on the amount of money one may spend in transit or while there. The sanctions related to proliferation of weapons of mass destruction generally target the offending entities. Assets frozen prior to June 19, 2000, however, remain frozen.

Recent developments in North Korea could result in multilateral efforts to contain and isolate that country, primarily through new economic sanctions ordered by the United Nations Security Council. This approach is controversial, however, particularly with North Korea's neighbors, which generally favor a greater emphasis on negotiations and engagement.

The Current Crisis¹

Events and international response. Even with the advantage of hindsight, there is no consensus as to when the current crisis began. Some would see the beginning in the President's 2002 State of the Union speech, in which he declared North Korea part of an "axis of evil."² The subsequent escalation of threat against another member of the of the axis – Iraq – some contend, left North Korea feeling vulnerable to the threat of attack in the foreseeable future. Some would cite the October 2002 meeting between State Department and North Korean government officials, in which North Korea revealed it was renewing its nuclear weapons program and thus breaking the terms of the 1994 Agreed Framework and several other international agreements and obligations to which it is party. Other analysts might point to the crisis of 1993-1994, during which North Korea announced it was withdrawing from the Non-Proliferation Treaty, asserting that the crisis never ended but instead has evolved into the current situation.³ Still others contend that origins of the crisis might be found in the nuclearization of India and Pakistan in 1998, by which the concept of nuclear weapons states and non-nuclear weapons states as a basis for international agreements was challenged, and the subsequent world reaction toward those events, which many cast as short-lived and relatively mild.

The recent string of events evokes the possibility of an imposition of new economic sanctions, either by each affected country shaping its foreign policy or by the United Nations Security Council requiring action. Because a U.N. agency, the International Atomic Energy Agency (IAEA), is primarily involved in recent events, U.N. action is certainly an option.

On January 6, 2003, the International Atomic Energy Agency Board of Governors, by consensus, adopted a resolution condemning North Korea's reactivation of its nuclear weapons program. The resolution called on North Korea to (1) allow the reestablishment of containment, surveillance, and other safeguards measures at nuclear facilities that North Korea had abruptly ended in December, (2)

¹ It should be noted that not everyone is calling the current turn of events a "crisis." Policymakers, analysts, and the media have all given consideration to the Bush Administration's steadfast avoidance of that word. Many discuss the term "crisis" by juxtaposing events in North Korea with developments in Iraq. See, for example: Lieberman, Joseph I., "Crisis of Our Own Creation." *Washington Post*, January 8, 2003. p. A19; Kessler, Glenn, "Bush Stresses Iraq, N. Korea Differences." *Washington Post*, January 3, 2003. p. A14; Sanger, David E., "President Makes Case That North Korea is No Iraq." *The New York Times*, January 1, 2003. p. 1; Christopher, Warren M., "Iraq Belongs on the Back Burner." *The New York Times*, December 31, 2002, p. and its counterpoint by Berger, Samuel R. and Robert L. Gallucci, "Two Crises, No Back Burner." *Washington Post*, December 31, 2002, p. A17.

² President George W. Bush. *State of the Union*. January 29, 2002.
[<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>]

³ The scope of this paper is to consider economic sanctions; other CRS products discuss in detail the U.S.-Korea relationship and North Korea's nuclear program. See CRS Issue Brief IB91141, *North Korea's Nuclear Weapons Program*, by Larry A. Niksch; CRS Issue Brief IB98045, *Korea: U.S.-Korean Relations – Issues for Congress*, by the same author.

clarify its uranium enrichment and nuclear weapons programs in a verifiable manner, (3) arrange for the IAEA to be able to verify that all materials in question are declared and subject to safeguards, and (4) meet immediately with IAEA officials.

The IAEA chose to delay the logical next step: referring the issue to the United Nations Security Council. In a statement to the IAEA Board of Governors and in public interviews after the resolution was adopted, the IAEA's Director General, Dr. Mohammed El Baradei, stressed that a pause would not deny the inevitable, that North Korea would be held accountable. Indeed, he expanded the concern beyond the current crisis in Asia to the greater issue of compliance with international agreements, stating,

This is clearly an unsustainable situation and sets a dangerous precedent, namely that non-compliance with non-proliferation obligations can be tolerated. If we aim to maintain and preserve the integrity of the non-proliferation regime then it must be incumbent on all parties to that regime to fully meet their respective obligations, and all cases of non-compliance must be consistently addressed in a uniform fashion – namely zero tolerance.⁴

The Bush administration's position appears to have evolved over the last few weeks. As recently as December 23rd, Defense Secretary Rumsfeld declared that "The United States military has the might to counter threats from North Korea and Iraq simultaneously. We are perfectly capable of doing that which is necessary."⁵ Barely two weeks later, administration officials emerged from meetings with delegations from South Korea and Japan supporting the IAEA resolution and stating that the "the United States is willing to talk to North Korea about how it will meet its obligations to the international community."⁶

Nonetheless, the option of international economic sanctions under a United Nations mandate still looms and, having said that, it should be noted that North Korea has stated that any imposition of sanctions under the auspices of the United Nations will be considered an act of war. While few states have fully normalized relations with North Korea, only the United States has, until recently, maintained fairly comprehensive economic sanctions against North Korea since the conflict in 1950-53. Indeed, some analysts contend that North Korea's recent actions have been calculated to increase pressure to remove the remaining sanctions – particularly those associated with its designation as a supporter of international terrorism. A desire for increased economic assistance and a nonaggression pact between North Korea and the United States might also be motivating factors.

In response to the nuclear program start-up, and without a U.N. Security Council resolution, North Korea's trading partners have imposed unilateral economic and

⁴ El Baradei, Dr. Mohammed, IAEA Director General. *Introductory Statement to the Board of Governors*, January 6, 2003, Vienna, Austria. [<http://www.iaea.org>]

⁵ Schweid, Barry. "Bush Administration Faces Wide Choices, None Guaranteed To Offset Nuclear Threat." *Associated Press*, December 24, 2002.

⁶ U.S. Department of State, *Joint Statement by the Trilateral Coordination and Oversight Group*. January 7, 2003. [<http://usinfo.state.gov>]

diplomatic sanctions. For example, Japan has suspended rice shipments and legislators are considering a ban on remittances and trade transactions, prohibiting port access to a ferry between the two countries, and suspending cultural and sports exchange programs. Japan has also stated that relations between the two countries will not be normalized until North Korea is verifiably denuclearized. In December 2002, Japan, South Korea, and the United States suspended oil shipments, committed to under the 1994 Agreed Framework. Australia has delayed opening an embassy in Pyongyang, scheduled to open by mid-2003, until the nuclear weapons issue is resolved.

Any new economic sanctions mandated by the United Nations would barely tax the United States economy because of its relative lack of economic engagement with North Korea.⁷ North Korea's neighbors – China, Japan, and South Korea – however, conduct limited but ever-increasing trade with North Korea. In 2000, North Korea exported \$708 million in goods, mostly to the three neighboring states, and imported another \$1.686 billion, mostly from the same three.⁸ These figures were expected to grow dramatically in the coming years; South Korea/North Korea trade, for example, increased by about 50 percent in the past year over the previous year.⁹ Thus, efforts to isolate and contain the country would require some economic sacrifice from the trading partners. The sacrifice by North Korea, on the other hand, would be enormous, as it has come to rely on the United States and other trading partners for substantial food aid and fuel oil shipments.

In the past two years, some South Korean companies have invested in North Korea, in part to alleviate South Korea's domestic labor shortage, though few have found it profitable to operate there. North Korea, after years of negotiation with South Korea, enacted a law in November 2002 to guarantee visa-free access and corporate tax incentives to encourage cross-border development and investment. It is likely that North Korea sees benefits in South Korea's Sunshine Policy of greater engagement, inasmuch as its own gross domestic product (GDP) per capita at \$1000 pales to that of \$18,000 in South Korea.

Congressional response. The 108th Congress has before it two measures addressing recent actions of North Korea:

- **H.J. Res. 2, the continuing resolution** to provide appropriations to several departments, agencies, and offices of the U.S. government for Fiscal Year 2003, to which the Senate added an amendment, introduced by Senator McCain, by voice vote, expressing the sense of the Senate, that: (1) North Korea is not abiding by terms of the

⁷ In 1999, President Clinton announced that most export restrictions against North Korea would be lifted; new regulations were implemented the following year. In 2000, the United States exported \$2.7 million in goods to North Korea; in the first 10 months of 2002, \$22.7 million. [<http://dataweb.usitc.gov>]

⁸ Central Intelligence Agency. *The World Factbook 2002: North Korea*. [<http://www.cia.gov/cia/publications/factbook/print/kn.html>]

⁹ Brooke, James. "Threats and Responses: The Asian Arena." *New York Times*. December 30, 2002. p. A8.

Agreed Framework, the North-South Joint Declaration on the Denuclearization of the Korean Peninsula, and the Treaty on the Non-Proliferation of Nuclear Weapons; (2) the current situation presents a serious threat to the region, to the United States, and to U.S. forces in the region; (3) the United States and its allies in the region “should take measures” to deter and make ready, should the worst scenario occur; and (4) Radio Free Asia should increase its broadcasts to North Korea to 24 hours each day. The Senate passed the amended H.J.Res. 2 by a vote of 69 - 29 and appointed conferees on January 23, 2003.

- **S. 145, North Korea Democracy Act of 2003:** (1) prohibits assistance to North Korea under the Agreed Framework, directly or through KEDO; (2) limits the entry into force of any nuclear cooperation agreement between the United States and North Korea, including the transfer or trade of materials; and (3) requires that agencies charged with enforcing sanctions against North Korea enforce nothing “that is less restrictive than the sanctions regime in effect against North Korea immediately prior to the September 17, 1999” easing of licensing and travel restrictions announced by President Clinton. Nonbinding language similar to that which was agreed to by the Senate as an amendment to H.J.Res. 2 is also included in S. 145. Introduced by Senator Kyl on January 13, 2003; referred to the Committee on Foreign Relations.

U.S. Economic Sanctions Currently In Place

Because of what has been found to be a demonstrated threat to U.S. national security, support of international terrorism, maintaining a communist, nonmarket economy, and engaging in the proliferation of weapons of mass destruction, U.S. law authorizes the President to restrict trade, aid, arms sales and arms transfers to North Korea, and that country’s access to assets held under U.S. jurisdiction.

Trade

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

Three days after North Korean Armed Forces launched a full-scale invasion of South Korea in June 1950, the United States invoked a total embargo on exports to North Korea.¹⁰ The Department of Commerce imposed the most restrictive export controls against North Korea. Over the years, export controls were restated as the Export Administration Regulations, or EARs. In 1965, for example, the EARs were revised

¹⁰ Pursuant to authority in sec. 3 of the Export Control Act of 1949 (P.L. 11, 81st Congress; 63 Stat. 7). Superseded by subsequent export administration laws.

to sort countries into categories of relative restriction; North Korea was classified as a member of Country Group Z, the most restricted lot.¹¹

In 1989, the EARs were again modified to allow the export to North Korea of commercially-supplied goods intended to meet basic human needs. The regulations stipulated that shipments would require validated licenses on a case-by-case basis.¹²

In September 1999, President Clinton announced the lifting of most export restrictions applied to North Korea, in response to that country's willingness to cease missile testing. Regulations issued the following June amended the EARs to reflect North Korea's new relatively unfettered status. Many items that previously had required a license were now eligible for export without a license; certain items on the Commerce Control List (CCL) moved from a policy of denial status to case-by-case review. Departments issuing the new regulations, however, stated that "[t]his easing of sanctions does not affect U.S. anti-terrorism or nonproliferation export controls on North Korea, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative."¹³

Today, the remaining export restrictions against North Korea include a range of terms related largely to that country's place on the State Department's list of state supporters of international terrorism.¹⁴ Thus, items that are controlled for national security concerns generally are not available to North Korea. The country is on the most restrictive list – Country Group E – which severely limits its access to computers, software, national security-controlled items, items on the Commerce Control List (CCL), and service or repair of such items. North Korea also is limited as an end-user by some licenses because it is a communist state, though this problem can be overcome by license exceptions issued by the Department of Commerce.

The President currently has authority to ease export restrictions imposed against North Korea. Even if considered a supporter of international terrorism, licensing exceptions may be considered by the Commerce Department. To lift all the export controls applied to North Korea, that country would, at a minimum, have to be removed from the list of countries supporting acts of international terrorism maintained by the State Department pursuant to section 6(j) of the Export Administration Act of 1979. The President holds the authority to make such a change in the sec. 6(j) list.

¹¹ Export Administration Regulations originally set at 15 CFR Part 730; later moved to 15 CFR Part 785.

¹² 15 CFR Part 785.1, as amended (54 FR 16360). In most cases, when a validated license is required on a case-by-case basis, there is a presumption of denial for licensing.

¹³ 65 FR 38148-38166 (June 19, 2000), in which Departments of Commerce, Transportation, and the Treasury each issued changes to regulations (15 CFR Part 730 *et al.*, 44 CFR Part 403, and 31 CFR Part 500, respectively) to implement the President's June 1999 announcement. Items for which licensing was eased included computers, software, and related technology.

¹⁴ Terrorist states comprise those countries found by the Secretary of State to be supporters of international terrorism pursuant to sec. 6(j) of the Export Administration Act, currently North Korea, Cuba, Libya, Iran, Iraq, Syria and Sudan.

Terrorism. Following the November 29, 1987, destruction of Korean Air Lines 007, in flight, by a bomb reportedly planted by two North Korean agents, Secretary of State George Shultz placed North Korea on the list of countries supporting international terrorism. Most elements of trade, Beneficiary Developing Country status, sales of items on the U.S. Munitions List, most foreign aid, Export-Import Bank funding, and support in international financial institutions are denied to countries found to be supporting international terrorism under the Export Administration Act of 1979.¹⁵ North Korea was added to the list effective January 20, 1988.¹⁶ Placement on the sec. 6(j) list not only results in the constriction of trade possibilities; placement also may trigger denial of beneficial trade designation (NTR or GSP), unfavorable tax status for investors, new limits on diplomatic relations, opposition in international financial institutions, and stricter licensing requirements for trade with the United States in food and medicine.¹⁷

Following the easing of sanctions that pertained to trade, travel, and related transactions in 2000, there was some speculation that North Korea would be the first country to be removed from the sec. 6(j) list of state sponsors of terrorism. North Korea was particularly interested in changing its status so that it could effectively apply for membership in the World Bank and the International Monetary Fund. The United States is required by law to oppose membership in the international financial institutions, or financial support, to terrorist states. The United States discussed the matter with South Korea and Japan in 2000. South Korea supported North Korea's bid for this step toward normalization; Japan opposed a change in status until the

¹⁵ Section 6(j) of 96-72 (50 U.S.C. App. 2405). Also currently listed as supporters of international terrorism are Cuba, Libya, Iran, Iraq, Syria, and Sudan. See also sec. 40 of the Arms Export Control Act and sec. 620A of the Foreign Assistance Act of 1961. Each of these sections of law authorizes the promulgation of a list of supporters of international terrorism, though no list has ever been generated under either section. It is generally considered that the list maintained pursuant to the Export Administration Act of 1979 applies to all three laws.

¹⁶ Once a country is designated as a supporter of international terrorism pursuant to sec. 6(j) of the Export Administration Act of 1979, restrictions in several other laws are triggered. For example, any third country is likely to be denied U.S. aid if it has conducted business with a country listed under sec. 6(j), pursuant to secs. 620G and 620H of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. 2377, 2378), or the annual foreign aid appropriations act.

¹⁷ See sec. 502 of the Trade Act of 1974 (P.L. 93-618; 19 U.S.C. 2462); sec. 901(j) of the International Revenue Code (26 U.S.C. 901(j)); 10 United States Code § 2327 (General Military Law); sec. 40 of the State Department Basic Authorities Act of 1956 (P.L. 84-885; 22 U.S.C. 2712); sec. 205 of the State Department Basic Authorities Act of 1956 (P.L. 84-885; 22 U.S.C. 4305); sec. 1621 of the International Financial Institutions Act (P.L. 95-118; 22 U.S.C. 262p-4q); sec. 501 of Miscellaneous Appropriations, 2000 (H.R. 3425, enacted by reference in Public Law 106-113; 22 U.S.C. 2395a); and sec. 906 of the Trade Sanctions Reform and Export Enhancement Act (H.R. 5426, enacted by reference in Public Law 106-387; 22 U.S.C. 7205), as amended.

matter of kidnaped Japanese citizens was resolved.¹⁸ North Korea remains on the sec. 6(j) list.

North Korea is also 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.¹⁹

Nonmarket State. The Trade Agreement Extension Act of 1951 required the suspension of Most-Favored-Nation trade status (which has since been replaced by Normal Trade Relations status) for all communist countries except Yugoslavia. As a result, North Korea was denied MFN trade status on September 1, 1951.

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 Laos and 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.²⁰ A side result of being denied MFN or NTR is that any such country is also denied preferential trade treatment under the Generalized System of Preferences (GSP), pursuant to the Trade Act of 1974.²¹

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.

¹⁸ See. sec. 1621 of the International Financial Institutions Act (P.L. 95-118; 22 U.S.C. 262p-4q). See also Nicksch, Larry A. and Raphael Perl. *North Korea: Terrorism List Removal?* CRS Report RL30613.

¹⁹ 22 U.S.C. 2781. The most recent certification, issued by the Secretary of State on May 15, 2002 (67 F.R. 36062), included Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, in other words, the countries already found to be supporters of international terrorism under sec. 6(j), EAA. This section of law was added to the AECA in late 1996; the first list issued in May 1997 included these seven countries and Afghanistan. Afghanistan was removed from the list in 2002.

²⁰ Harmonized Tariff Schedule of the United States, general note 3(b). See also section 402 of the Trade Act of 1974, popularly referred to as the Jackson-Vanik amendment (19 U.S.C. 2432).

²¹ Section 502(b)(1) of P.L. 93-618 (19 U.S.C. 2461).

²² Section 73 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797b), sec. 11B of the Export Administration Act (P.L. 96-72; 50 U.S.C. App. 2410b), and secs. 2 and 3 of the Iran Nonproliferation Act of 2000 (P.L. 106-178; 50 U.S.C. 1701 note).

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), 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, 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. Recent citations of violations, and country in which the trading partner was likely based, include:

- Lyongaksan Machineries and Equipment Export Corporation (Iranian and Syrian entities cited in same findings) (twice cited in 1992);
- Changgwang Credit Corporation (Iranian and Syrian entities cited in same findings) (twice cited in 1992);
- Changgwang Sinyong Corporation (Iranian entity cited in same finding) (1996);
- Lyongaksan General Trading Corporation (Iranian entity cited in same finding) (1996);
- Korea Pugang Trading Corporation (unnamed entity cited in same finding) (1997);
- Changgwang Sinyong Corporation (Pakistani entity cited in same finding) (1998);
- Changgwang Sinyong Corporation (Iranian entities cited in same finding) (2000);
- Changgwang Sinyong Corporation (trading with Iran entities) (twice cited in 2001); and
- Changgwang Sinyong Corporation (unnamed entity cited on same date, separate finding) (2002).

Aid

Terrorism. Aside from restrictions imposed on any country found to be supporting international terrorism stated in laws that authorize foreign assistance and military assistance programs, North Korea's access to U.S. foreign assistance is limited in annual foreign operations appropriations measures. In most instances, it is not expressly stated that the restriction or prohibition is associated with North Korea's place on the terrorist list. And even if the appropriations law prohibits the availability of foreign aid, there are numerous exceptions to the law. Thus, programs in nonproliferation, demining, child survival, conservation and biodiversity, food aid, debt buybacks, health and disease prevention, unanticipated contingencies, international disaster assistance, antiterrorism, may be funded or supported in spite of country-specific restrictions.

In the current Foreign Operations, Export Financing, and Related Programs Appropriations Act, North Korea is cited for exclusion or conditional limits on foreign aid as follows:²³

- no direct funding [sec. 507]; and
- no indirect funding [sec. 523].

And supporters of international terrorism, of which North Korea is one, are cited for denial of foreign assistance as follows:

- no bilateral assistance [sec. 527]; and
- no special debt relief for the poorest [sec. 551].

Nonmarket State. The Export-Import Bank Act of 1945 also 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.²⁴

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.²⁵

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, 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.²⁶

²³ P.L. 107-115, continued into Fiscal Year 2003 by P.L. 107-229, as amended. FY 2003 foreign assistance appropriations is currently under consideration as part of an omnibus continuing resolution, H.J. Res. 2.

²⁴ 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.

²⁵ 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 sec. 5(b) of the Export Administration Act of 1979, 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...”.

²⁶ For example: sec. 620(h) of the Foreign Assistance Act of 1961 (P.L. 87-195; 22 U.S.C. (continued...))

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, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire) or wherever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States.²⁷

The first ITAR was issued on August 26, 1955; North Korea has been listed as a restricted country from the ITAR's inception. The ITAR further states that any country found to be a supporter of international terrorism is subject to the ITAR prohibitions and those stated in section 40 of the Arms Export Control Act, which denies the export, directly or indirectly, of any munitions item, lease or loan, credits, guarantees, or other financial assistance to a terrorist country. Section 40 further prohibits U.S. individuals from engaging in such trade or support of such a country.

Importing of defense articles and defense services is similarly restricted by the Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms, 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."²⁸ Defense articles and defense services from North Korea, along with those of nearly two dozen countries, are so restricted.

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

Access to Assets

On December 16, 1950, President Truman invoked authority granted his office under the Trading with the Enemy Act to declare that a U.S. national emergency existed because of recent events in Korea (and elsewhere, as "world conquest by communist imperialism is a goal of the forces of aggression that have been loosed

²⁶ (...continued)

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)), sec. 5(b) of the Export Administration Act of 1979 (50 U.S.C. App. 2404(b)), and sec. 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..."

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

²⁸ 27 CFR 47.52.

upon the world”).²⁹ A few days later, the Department of the Treasury issued Foreign Assets Control Regulations (FACR) 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.³⁰ Korea-related FACR have been modified on numerous occasions, to:

- prohibit transactions related to agricultural products from a third country if the raw goods originated in North Korea (1975);
- unblock assets of North Koreans who emigrated and established U.S. residency (1976); ease travel-related restrictions for special activities (1989);
- allow freer flow of informational materials (and change in legislation not specifically targeting North Korea, 1989);
- establish telecommunication between the two countries (1992);
- authorize travel-related transactions, greater telecommunications, news bureaus, banking, and importing magnesite from North Korea after the Agreed Framework was reached (1995);
- authorize donations targeting basic human needs after flooding and famine events (1996);
- authorize certain aviation-related fee payments (1997);
- allow transactions related to the exporting of computer hardware and software, provided there is adherence to the relevant Export Administration Regulations (2000);
- allow North Koreans to invest in property under U.S. jurisdiction, provided the property interest is created on or after June 19, 1999 (the date of President Clinton’s announcement to ease U.S.-North Korea relations) (2000);
- allow imports from North Korea that do not violate various proliferation laws and regulations (2000); and
- engage in transactions with the government of North Korea provided those transactions do not constitute a donation to a U.S. individual and do not violate laws and regulations relating to terrorism (2000).

Generally, the President has the authority to change regulations, as long as those changes meet the requirements of any relevant law.³¹ He also annually renews the state of national emergency, in place against North Korea since 1950. He could allow the declaration to expire or he could lift it at any time. Congress could terminate a declaration of national emergency by passing a joint resolution, under terms of the National Emergencies Act.

²⁹ Proclamation No. 2914, December 16, 1950, 15 FR 9029.

³⁰ 31 CFR Part 500.

³¹ In instances pertaining to other countries (most notably, Cuba), Congress has legislated what should be covered in regulations, as well as their flexibility or duration. Congress has also influenced specific regulations as they pertain to aspects of using sanctions in foreign policy, most recently by determining that food and medicine should not generally be restricted when sanctions are applied. That action required a restatement of several sections of regulations.