



THE NATIONAL  
COMMITTEE ON  
NORTH KOREA

*North Korea: Unilateral and Multilateral  
Economic Sanctions and  
U.S. Department of Treasury Actions  
1955-April 2009*

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## Introduction

This paper aims to present the history of U.S. and UN sanctions against the Democratic Peoples Republic of Korea (DPRK), the official name of North Korea.\* A brief review of phases in US economic policy toward the DPRK is followed by longer sections tracking the major changes in U.S. and UN sanctions against North Korea over the past six decades. Next, there is a summary of measures taken by other relevant governments, particularly following the missile test and nuclear test in 2006 and the rocket launch in April 2009. The paper concludes with a summary of U.S. sanctions against North Korea from 2000-April 2009, a timeline listing major events in U.S.-DPRK relations and the imposition and relaxing of U.S. sanctions, and a matrix of luxury items prohibited for export to the DPRK in compliance with UN Security Council Resolution (UNSCR) 1718 (2006).

On April 5, 2009, claiming a sovereign right to explore space, the DPRK launched a rocket, and stated that they had successfully launched a satellite into orbit. On April 13, the United Nations Security Council (UNSC) issued a Presidential Statement saying the launch “contravened” UNSCR 1718 (2006) and agreeing to “adjust” the measures listed in paragraph 8 of that Resolution. On April 24<sup>th</sup>, the UN Sanctions Committee overseeing UNSCR 1718 (2006) issued a list of three North Korean companies to be sanctioned under the resolution. The UNSC also banned the import and export of a list of dual-use items that can be used for the development of long-range missiles.

This chapter of sanctions history is still being written: on April 13<sup>th</sup>, the DPRK said it will never return to the Six Party Talks and on the 24<sup>th</sup> the DPRK announced it is beginning to

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take the steps necessary to reprocess nuclear fuel rods. The Republic of Korea's decision regarding participation in the Proliferation Security Initiative still hovers. Japan may consider further sanctions. While the reverberations from the April 5<sup>th</sup> launch and the international response will continue, we hope this report helps to put the April 24, 2009 UN sanctions and the DPRK's actions into historical context.

## **U.S. Sanctions and Treasury Department Actions against the DPRK**

### *Overview*

The history of U.S. sanctions against the DPRK can be divided into seven stages. The U.S. maintained fairly comprehensive economic sanctions from the time of the Korean War until 1989, occasionally increasing the level of restriction during this period. The second stage, between 1989 and 1995, the export of goods from the U.S. commercial sector was permitted solely for the purposes of meeting "basic human needs." In the third stage, a more extensive easing of sanctions accompanied the negotiation of the Agreed Framework in 1994.

In 2000, President Clinton eased many remaining trade and travel sanctions in response to the DPRK's 1999 voluntary halt in missile testing. Licensing and trade regulations on most items for civilian use were significantly relaxed at this time, the fourth stage.

George W. Bush administration's approach to the DPRK differed considerably from that of the Clinton administration, and was considered to be more "hard-line." However, no economic sanctions were re-imposed during President Bush's first term, although two North Korean companies were cited for weapons of mass destruction (WMD) and missile proliferation.<sup>1</sup>

In March 2005, North Korea declared that because "the DPRK-U.S. dialogue" on which the missile-test moratorium was based had been "totally suspended when the Bush

administration took office in 2001,” the DPRK is “not bound to the moratorium on the missile-launch at present.”<sup>2</sup> The DPRK then tested short range missiles first on May 1, 2005<sup>3</sup> and again on March 8, 2006.<sup>4</sup> These short-range tests, which did not break any international laws, garnered only limited public attention and condemnation from the United States and international community, and no U.S. economic sanctions were re-imposed.

Instead, in this fifth phase, the U.S. administration focused on financial sanctions, including the assets of individual companies suspected of proliferating weapons of mass destruction (WMD). On June 28, 2005 the United States accused three DPRK firms of engaging in WMD proliferation and froze assets of the firms under U.S. jurisdiction.<sup>5</sup> In October 2005 the administration froze the assets of an additional eight firms.

In September 2005, the U.S. Department of Treasury designated Banco Delta Asia as a bank of “primary money laundry concern.” This action, coupled with a December 2005 Treasury Department advisory warning financial institutions against transactions with the DPRK, may have had affected the DPRK’s ability to do business, and may have had a greater impact than sanctions that had been lifted during the Clinton administration.

In March 2006, the U.S. Department of Treasury accused a Swiss company of doing business with one of the sanctioned North Korean firms, and froze the assets of the Swiss company and its owner and banned U.S. entities from doing business with the firm or owner.<sup>6</sup> In April 2006, the Department of Treasury issued an Office of Foreign Assets Control (OFAC) regulation banning U.S. persons from owning or leasing North Korean-flagged vessels.

On July 5, 2006, the DPRK test-launched an array of ballistic missiles, including a long-range Taepodong-2. As examined in the section on UN sanctions, the United Nations Security Council adopted Resolution 1695 ten days later, although, as with the earlier short-range tests,

the long-range test broke no international laws. Even with the adoption of 1695, the Bush Administration did not re-impose sanctions that had been lifted by the Clinton administration in exchange for the missile test moratorium.

North Korea tested a nuclear device on October 9, 2006, after which the UN Security Council quickly adopted UN Resolution 1718 in response on October 15. As described below, 1718 makes considerable demands on member states regarding their interactions and transactions with the DPRK. On December 7, 2006 President Bush imposed sanctions applied to non-nuclear weapons states\* that have detonated a nuclear device, as mandated by the Atomic Energy Act and the "Glenn Amendment" to the Nuclear-Non Proliferation Act, ushering in a sixth phase of sanctions.<sup>7</sup> In December 2006, the Bush administration re-imposed some of the sanctions lifted in the Clinton era, and published a list of luxury items prohibited for export to the DPRK.<sup>8</sup>

On February 13, 2007, following a series of US-DPRK Bilateral talks in December and January, the Six Parties signed the February 13, 2007 Agreement, which outlines the first steps to implement the September 19, 2005 Six Party Statement. On June 26, 2008, as part of the agreement, North Korea submitted a Declaration of its nuclear programs and President Bush proclaimed the termination of the exercise of the Authorities under the Trading with the Enemy Act provisions, to go into effect at 12:01 AM on June 27.<sup>9</sup> President Bush also announced that he was notifying Congress of his intent to remove North Korea from the State Department's list of State Sponsors of Terror in 45 days, if certain conditions were met.<sup>10</sup> On October 11, 2008, the State Department announced that the conditions had been met, and Secretary Rice rescinded North Korea's designation as a State Sponsor of Terror.<sup>11</sup>

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\* The law allow for nuclear tests by states recognized as "Nuclear Weapon States" in the Nuclear Non-Proliferation Treaty. That the DPRK had withdrawn from the NPT is immaterial to the application of these laws.

Public debate in the United States about whether North Korean actions were sufficient to merit such a change of status was immediate and will likely continue for some time. Although neither of these actions had a substantial impact on the ability of the North Korean entities to do business with the entities in the United States, they stand as signals of a seventh phase of U.S. sanctions policy.

As noted above, the DPRK's rocket launch on April 5, 2009 triggered a UN Security Council Presidential Statement calling for a more robust implementation of UNSCR 1718 (2006). On April 24, the UNSCR sanctioned three North Korean companies. Whether the United States will take measures beyond those agreed in the Presidential Statement, reversing the seventh phase, remains to be seen.

U.S. rationales for its sanctions against the DPRK are presented below, followed by summaries of the changes occurring under each sanctions regime from 1950 until the present.

### ***Rationale and Imposition of U.S. Sanctions***

The United States has maintained sanctions against North Korea under five primary rationales:<sup>12</sup> first, the state is considered a national security threat; second, the DPRK is a Marxist-Leninist state; third, the country has been implicated in the proliferation of weapons of mass destruction, and fourth, the country is a non-nuclear weapons state that has detonated a nuclear device.<sup>13</sup> During the period between January 20, 1988 and October 11, 2008, a fifth rationale, North Korea's designation as a State Sponsor of Terrorism, was also in effect. In addition to diplomatic sanctions,\* the U.S. government has maintained various economic sanctions on trade, aid, arms sales and transfers, and access to assets under U.S. jurisdiction based on these five principles. Sanctions under the first rationale are specific to North Korea while the latter four apply to various country groupings of which North Korea is or has been a

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\* The United States has never normalized relations with the DPRK.

part. Individual sanctions cannot necessarily be categorized neatly under one rationale or another but have sometimes been imposed under several different laws or regulations.

Following the outbreak of the Korean War in June 1950, the United States instituted a total embargo on exports to the DPRK.<sup>14</sup> In December 1950, under the Trading with the Enemy Act (TWEA) of 1917 President Truman declared a national state of emergency due to events in North Korea and elsewhere. The president must annually renew North Korea's status under the Act.<sup>15</sup> \* The president has the authority to lift or waive a country's classification under the Act;<sup>16</sup> North Korea's status was changed by President Bush on June 26, 2008.

The Trading with the Enemy Act and subsequent laws grant broad authority to the president to “investigate, regulate, or prohibit” financial transactions and importation/exportation, “through any agency that he may designate and under such rules and regulations as he may prescribe” during the time of war.<sup>17</sup> Foreign Assets Control Regulations (FACR), issued by the Department of Treasury in December 1950, also forbade “any financial transactions involving, or on behalf of, North Korea, including “transactions related to travel.”<sup>18</sup>

Changes to U.S. sanctions against the DPRK that occurred between 1950 and 1989, not always DPRK-specific, sometimes resulted in more detailed restrictions. The Department of Commerce revised its Export Administration Regulations (EARs) in 1965, grouping countries by level of restriction,<sup>19</sup> and North Korea remained on the most restricted list.<sup>20</sup>

Countries are placed on the State Sponsors of Terrorism List under the provisions of Section 6(j) of the Export Administration Act of 1979, as amended; the guidelines for including a given country on the list of State Sponsors of Terrorism are detailed in the Anti-Terrorism and

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\* TWEA now applies only during a time of war; authorities granted under TWEA were grandfathered into the National Emergencies Act (NEA) of 1976 which revised some of the authorities granted to the president in the Trading with the Enemy Act and the International Economic Emergency Powers Act (IEEPA) (1977). Renewal of the DPRK' status now takes place under the IEEPA



Arms Export Amendments Act of 1989.<sup>21</sup> The State Department placed North Korea on the list of State Sponsors of Terrorism in 1988, after the 1987 bombing of Korean Air Lines flight 858 which was reportedly carried out by two North Korean agents.<sup>22</sup> This designation reinforced Washington's rationale for restricting trade and financial transactions with the DPRK. Under the Foreign Assistance Act of 1961, state sponsors of terrorism may not receive US government foreign assistance, although many exceptions are provided by law – for example, for non-proliferation, child survival, etc.<sup>23</sup>

Under the Export Administration Act of 1979, governments of countries found to be sponsors and supporters of international terrorism can face a wide array of sanctions, including the forfeit of most trade and foreign aid, access to items on the U.S. Munitions List, Export-Import bank assistance, and support through international financial institutions.<sup>24</sup> Other restrictions can include the denial of beneficial trade statuses, higher tax hurdles for potential investors, and additional regulations that make trade in food and medicines more difficult.<sup>25</sup>

According to Dianne Rennack, North Korea's status as a terrorist state limits the export of goods and services under the Export Administration Act of 1979; prohibits licenses for arms exports and imports under the Arms Export Control Act; prohibits aid under the Foreign Assistance Act of 1961; prohibits imports under the International Security and Development Cooperation Act; denies Export-Import Bank financing under the Export-Import Bank Act of 1945; opposes funding through the international financial institutions under the International Financial Institutions Act; opposes loans or funding through the IMF under the Bretton Woods Agreements Act of 1978; limits export licensing for food and medicine under the Trade Sanctions Reform Act of 2000 and so on.<sup>26</sup>

However, the president wields significant discretion in how these sanctions are applied, since exceptions for export licensing can be made even if a country is designated as a sponsor or supporter of terror.<sup>27</sup> The president has the ability to waive many sanctions in all or part in order to implement policy determined to be in the “national interest” of the United States.\* In particular, the President has the authority to waive a country’s status under the TWEA and to remove it from the State Sponsors of Terrorism List without Congressional approval. Forty-five days prior to removing a country from the terrorism list, the president must submit a report to the House Committee on Foreign Affairs, and the Senate Committees on Banking, Housing, and Urban Affairs, and Foreign Relations. The report must either certify a substantial change in government leadership, or, if there is no change, certify that “(1) the government concerned has not provided support for international terrorism during the preceding 6-month period; and (2) the government concerned has provided assurances that it will not support acts of international terrorism in the future.”<sup>28</sup> Congress has the option of passing legislation blocking the removal of countries from the State Sponsors of Terror list.<sup>29</sup> North Korea’s designation as a State Sponsor of terror was rescinded on October 11, 2008 (see below). Other sanctions, such as the Glenn Amendment, can only be waived through legislation.

A 1989 revision to U.S. Export Administration Regulations (EARs) allowed for the export to the DPRK of “commercially-supplied goods for basic human needs,” providing that eligible goods were properly licensed. The new regulations stipulated that licenses would be granted on a case-by-case basis.<sup>30</sup> Other changes in U.S. restrictions that year eased travel

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\* For a discussion of the use of one of the presidential waivers in funding KEDO fuel shipments, see Karin Lee and Adam Miles, "North Korea on Capitol Hill" in John Feffer, ed., The Future of U.S.-Korean Relations: The Imbalance of Power (New York: Routledge, 2006), pp. 160-178.

restrictions for certain activities as well as the flow of information to the DPRK.<sup>31</sup> \* All other U.S. sanctions on trade, travel, and financial transactions remained intact.

### ***The Agreed Framework and the Missile Test Moratorium***

The next notable change in the U.S. sanctions regime against the DPRK came with the negotiation of the Agreed Framework in 1994.<sup>†</sup> Rather than opening up major trade or financial linkages between the U.S. and North Korea, these changes, which were enacted in 1995, appeared to demonstrate a willingness to begin a move toward normalized economic and diplomatic relations. The revisions of U.S. Foreign Assets Control Regulations (FACRs) included measures that eased the processing of financial transactions and authorized all transactions related to North Korea diplomatic missions in the U.S., and U.S. missions in the DPRK.<sup>32</sup>

The new regulations also allowed news organizations to establish offices in North Korea and permitted limited forms of international trade. North Korean magnesite and magnesia could be imported by licensed entities in the United States and U.S. entities involved in the provision of light water reactors, as laid out in the Agreed Framework, could be issued licenses authorizing transactions and deliveries pertaining to these projects.<sup>33</sup> Two more revisions in 1996 and 1997, respectively, allowed donations in response to flooding and famine in the DPRK and authorized payments to the DPRK for services to U.S.-owned or controlled aircraft “in connection with the overflight of,” or “emergency landing in North Korea.”<sup>34</sup> Despite these adjustments, multiple

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\* The changes affecting the flow of information reflect changes in technology, and are not DPRK specific.

† In the early 1990s U.S.-DPRK relations reached crisis level when DPRK officials admitted IAEA inspectors into the country for the first time, but refused inspectors access to a suspicious site. In 1993 the DPRK threatened to withdraw from the Nuclear Non-proliferation Treaty (NPT) and the U.S. renewed threats of additional sanctions, which the DPRK proclaimed would be tantamount to a declaration of war. In 1994 former President Jimmy Carter and Kim Il Sung reached an agreement to freeze nuclear production in the DPRK, halting the threat of UN sanctions against the DPRK. The resulting Agreed Framework stipulated that, in return for shipments of fuel and the construction of two light water reactors, North Korea would dismantle its nuclear weapons program. Both countries agreed to pursue normalized relations, which held the promise that the U.S. would ultimately eliminate all sanctions on the DPRK.

sanctions related to the DPRK's continued status as a Marxist-Leninist State, a threat to national security and as a state supporter of terrorism remained.

In 1999, responding to the DPRK's self-imposed moratorium on missile testing, President Clinton announced the most comprehensive easing of U.S. sanctions against North Korea since 1950. These revisions, implemented in 2000, significantly relaxed U.S. sanctions on travel, and imports from, and exports to the DPRK. Under these revisions, trade involving most goods for civilian use became legal, contingent on approval from the Treasury Department's Office of Foreign Assets Control (OFAC).<sup>\*</sup> Approval reportedly became routine,<sup>35</sup> providing that imported goods were not produced by entities cited as involved in missile proliferation or by entities of the DPRK government related to the development or production of "any missile equipment or technology," or "electronics, space systems or equipment, and military aircraft."<sup>36</sup> Most travel restrictions were also eased in 2000.

### ***Other Barriers to U.S.-DPRK Trade***

The DPRK faces economic barriers to trade with the United States other than outright trade sanctions. For example, the Trade Agreement Extension Act of 1951 stipulates that communist countries are not eligible for normal trade relations (formerly called Most Favored Nation, or MFN, status) with the United States.<sup>37</sup> Although imports from these countries may be legal, they face higher rates under the U.S. Harmonized Tariff Schedule (HTS). General Note 3(b) of the HTS stipulates that North Korea and Cuba are subject to statutory duty rates under

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<sup>\*</sup> During the same period, in the late 1990s, Congress moved to lift prohibitions of sales of food and medicine to states identified on the State Departments' list of state sponsors of terror. The Trade Sanctions Reform and Enhancements Act, which passed in 2000, codified the lifting of unilateral sanctions of sales of those items, with certain financing and licensing conditions. See the CRS Report by Remy Jurenas, "Exempting Food and Agricultural Products from US Sanctions: Status on Implementation, Updated April 18, 2006." Accessed at <http://www.opencrs.com/document/IB10061/>.

Column 2 of the Schedule's two column tariff system.<sup>38\*</sup> (Column 1 presents the duty rates charged to all nations with which the United States has normal trade relations.)<sup>39</sup>

Similarly, the Export-Import Bank Act of 1945 denies “guarantees, insurance, credit or other Bank funding programs” to Marxist-Leninist countries.<sup>40</sup> Not only is the DPRK denied trade assistance from the Ex-Im Bank, but the United States also limits U.S. subsidization of foreign investment by excluding the DPRK from the Overseas Private Investment Corporation (OPIC).<sup>41</sup> Thus, the DPRK faces two types of hurdles to accessing the U.S. market: explicit sanctions under the Trading with the Enemy Act, and a second layer of barriers presented by a number of laws conditioning economic engagement on a variety of U.S. concerns. Even in the absence of sanctions, trade would likely remain at negligible levels, most importantly due to the imposition of high column two tariffs on DPRK imports.<sup>42 †</sup>

A further restriction placed on communist countries, passed under the Foreign Assistance Act of 1961, “denies most non-humanitarian foreign assistance to any Communist country.”<sup>43</sup> Although significant amounts of humanitarian aid have flowed from the United States to North Korea over the years,<sup>44‡</sup> particularly in response to famine or flooding, prohibition of non-

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\* Tariffs on the Schedule are set in dollar amounts or percentages. For example, according to the HTS, the importation of salt or pure sodium chloride from Column 1 countries is 0, whereas Column 2 countries are taxed at a rate of 26%. Imports of certain types of natural sand from Column 1 countries are free, while the rate for Column 2 countries is \$1.97/t.

† The perception of U.S. companies that the DPRK provides an inhospitable investment climate is an additional hurdle. South Korean and Chinese companies have invested vigorously for several years. See for example Rank, Michael, “Minerals, Railways Draw China to North Korea,” (Asia Times On-Line, Nov 18, 2005, accessed at [http://www.atimes.com/atimes/China\\_Business/GK18Cb06.html](http://www.atimes.com/atimes/China_Business/GK18Cb06.html)) and Faiola, Anthony, “North Korea Shifts Toward Capitalism” (Washington Post, September 14, 2003, accessed at <http://www.nkeconwatch.com/2003/09/14/n-korea-shifts-towards-capitalism/>). ; South Korean investment has dropped as inter-Korean relations have worsened under the Lee Myung Bak administration. (“More Companies Cancel Contracts at Gaeseong Complex” The Hankyoreh, December 17, 2008. Accessed at: [http://english.hani.co.kr/arti/english\\_edition/e\\_northkorea/328171.html](http://english.hani.co.kr/arti/english_edition/e_northkorea/328171.html))

‡ U.S. government assistance (i.e. USAID) has flowed through UN programs and twice through private voluntary organization consortiums. NGOs have also provided aid provided by donations from private donors. For more information, see Flake, L. Gordon, and Snyder, Scott, Eds. Paved with Good Intentions: The NGO Experience in North Korea (Westport, CT: Praeger, 2003) and Smith, Hazel Hungry for Peace: International Security, Humanitarian Assistance, and Social Change in North Korea (Washington, DC: United States Institute for Peace, 2005.)

humanitarian assistance may prove an impediment to development assistance including infrastructure rehabilitation in the future.\*

Prior to the adoption of UN Resolution 1718, the Bush administration did not re-impose economic sanctions that were eased at the time of the signing of the Agreed Framework or under Clinton in 2000, although both the Agreed Framework and North Korea's missile test moratorium unraveled.† Although these relatively looser restrictions on trade and travel remained in place until 2007, these measures constricted the DPRK in new ways.

### ***U.S. Treasury Department Actions***

In September 2005, the United States sanctioned two North Korean companies accused of assisting proliferation activities in Iran. The new sanctions prohibit U.S. government agencies from buying or selling military equipment, services or technology from or to the companies or their subsidiaries. Because the United States has already identified both companies (Korean Mining and Industrial Development Corporation (KOMID) and Korea Pugang Trading Corporation) as WMD proliferators, and had previously frozen assets of the companies that were under U.S. jurisdiction, the measures appeared to be mostly symbolic.<sup>45</sup> In March 2006 the Treasury Department announced a prohibition on transactions between any U.S. person and a Swiss company, Kohas AG, and its owner, Jakob Steiger, for allegedly doing business with Korea Ryonbong General Corporation, another blacklisted company.<sup>46</sup> The Treasury Department

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\* The North Korean Human Rights Act (P.L. 108-33, signed into law October 18, 2004 and re-authorized October 7, 2008 by P.L. 110-346) included a "sense of Congress" section that calls for conditioning the provision of U.S. non-humanitarian assistance on improvement in a number of human rights, such as freedom of movement, religion and speech.

† According to U.S. government reports, in 2002 North Korea admitted to having a uranium-based nuclear program (an assertion North Koreans later denied) and, in talks with the U.S. and China, indicated the possibility of testing a nuclear weapon or exporting the nuclear material. As a result of the ensuing crisis, fuel shipments being delivered to North Korea through KEDO since the negotiation of the Agreed Framework were suspended. For more information on the deterioration of U.S.-DPRK relations during this period, including the collapse of the Agreed Framework, see works such as John Feffer [North Korea/South Korea, U.S. Policy in a Time of Crisis](#) (New York: 7 Stories Press, 2003) or Michael O'Hanlon and Mike Mochizuki, [Crisis on the Korean Peninsula](#) (New York: McGraw, Hill, 2003)

action also froze any of their assets under U.S. jurisdiction. Then in April 2006 a new OFAC regulation prohibited as of May 8, 2006 “US persons from owning, leasing, operating or insuring any vessel flagged by North Korea.”<sup>47</sup>

More significantly, as mentioned above, beginning in 2005 the Treasury Department used the powers authorized by the U.S. Patriot Act to address U.S. counterfeiting concerns. In September 2005, under Article 311 of the Patriot Act,<sup>48</sup> the U.S. Department of Treasury designated Banco Delta Asia (BDA), a bank in Macau at which North Korean entities maintained accounts, as a “primary money laundering concern” and proposed rules restricting U.S. financial institutions from engaging in financial transactions with it.\* Some U.S. officials believe a number of the accounts belong to members of North Korea’s ruling elite.<sup>49</sup> The Treasury Department’s designation resulted in a run on BDA by account holders; consequently, the Macau Monetary Authority assumed control of BDA and impounded the North Korean accounts.

Whether the BDA designation should be considered a “sanction” was a matter of U.S.-DPRK public rhetorical debate. The DPRK called the designation a sanction and announced that it would not return to nuclear negotiations until the BDA matter was resolved.<sup>†</sup> The U.S. stated

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\* Some analysts, noting that the timing of the Banco Delta Asia designation shadowed progress in negotiations, have concluded that the Treasury actions were a deliberate attempt to slow the pace of nuclear negotiations, or at least, demonstrated a split in the Bush Administration. See for example, Schoff, Jim, and Building Multi-Party Capacity for a WMD-Free Korean Peninsula, Multilateral Workshop Summary and Project Report (Institute for Foreign Policy Analysis, August 2006, pp 37-38 (Accessed at <http://www.ifpa.org/pdf/BuildMPC.pdf>), Mihm, Stephen, “No Ordinary Counterfeit,” *New York Times Magazine*: New York, July 23, 2006. (Accessed at: <http://www.nytimes.com/2006/07/23/magazine/23counterfeit.html?ei=5088&en=1532e77e2eabea37&ex=1311307200&partner=rssnyt&emc=rss&pagewanted=all>) and Fifield, Anna, “Bankers Challenge US Sanctions on North Korea,” *Financial Times*, September 5, 2006. (Accessed at: <http://www.ft.com/cms/s/711e49e8-3c3e-11db-9c97-0000779e2340.html>). The Bush administration maintained that the Department of State and the Department of Treasury were in communication but that their actions were independent.

<sup>†</sup> Multiple commentators assumed that the DPRK would have found other reasons to suspend negotiations – for example, the ongoing differences over the provision of light water reactors. The United States repeatedly asserted that the nuclear talks and the Treasury Department’s actions to protect U.S. currency were independent and unrelated. However, the DPRK conflated the two by making amelioration of “economic sanctions,” in which it included the Banco Delta Asia designation, a precondition of their return to the Six-Party Talks. The DPRK did

that the BDA designation is “not meant as a sanction;”<sup>50</sup> instead the designation was an action taken by the U.S. Department of Treasury to protect U.S. currency. “Regulatory action was taken against BDA primarily because of its extensive involvement with North Korean entities involved in criminal activities,” according to a Treasury Department statement.

Part of the argument is technical and involves the different legislation under which sanctions and the BDA actions were imposed; the BDA action took place under code created by the Patriot Act. There also may be an implicit argument that an economic sanction is typically directed at a specific country or countries in response to a delict in the realm of security threats or transgressions, with the sanctioning country hoping to alter or punish the sanctioned country’s behavior, whereas this was a regulatory action affecting U.S. entities (in this case banks) taken to address a suspected criminal activity believed to threaten U.S. financial institutions. However, the U.S. government also indicated that it considers counterfeiting of U.S. currency, one of the reasons for the BDA designation, an “act of war,” calling into question the nature of the US response. The Congressional Research Service refers to the BDA designation as a “financial sanction,” grouping it with financial sanctions imposed on North Korean and Iranian companies.<sup>51</sup> By 2007, when US-DPRK bilateral discussions on the issue took place, the terminology debate was abandoned.

In December 2005 the Treasury Department issued an advisory<sup>52</sup> predicting that the DPRK might seek financial services elsewhere following the BDA designation and warning U.S. financial institutions to "guard against the abuse of their financial services by North Korea," which might be seeking new accounts "for the purpose of conducting illicit activities." The advisory was also intended for an international audience, stating "We encourage financial

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return to negotiations once the BDA matter was resolved. However, the U.S. maintained in their conversations with the DPRK that discussions about BDA were about compliance with international standards, not negotiations (personal communication with administration official, May 4, 2009).



institutions worldwide to take similar measures." Although this advisory did not receive as much public attention as the BDA designation, and there has been no debate about whether it should be considered a "sanction," its impact seems to have been profound. To reinforce the advisory, Stuart Levey, Under Secretary for Terrorism and Financial Intelligence in the U.S. Department of Treasury, made visits to several countries during which he emphasized U.S. concerns about North Korea's financial dealings. By April 2006, at least two dozen financial institutions restricted or ended their financial dealings with North Korea.<sup>53</sup> Australia, Vietnam, Mongolia, and China reportedly took similar measures.<sup>54</sup>

In April 2006, U.S. officials testified regarding the involvement of North Koreans in counterfeiting, money laundering, and narcotics trafficking.<sup>55</sup> Citing such offences, Undersecretary Levey stated in September 2006 that "the line between illicit and licit North Korean money is nearly invisible" and urged financial institutions worldwide "to think carefully about the risks of doing any North Korea-related business."<sup>56</sup> Rejecting the concept that there is no legitimate business in the DPRK, Nigel Cowie argued that the BDA action curtailed legal business activities, driving North Korean businesses to engage in illegitimate practices.<sup>57</sup> \*

Bilateral talks focused solely on or including discussion of BDA were held in March and December 2006 and in January, March and April 2007. Such talks are thought to have contributed to the DPRK's willingness to sign the February 13, 2007 Agreement. Although not articulated in the agreement itself, the BDA issue is understood to have been one of the "pending bilateral issues" to have been resolved between the U.S. and the DPRK within the first phase, or sixty-day period of the February 13 Agreement (see below.)

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\* Cowie said "There is a danger of legitimate businesses being squeezed into routes that are more normally used by real criminals, and the result of these actions against banks doing business with the DPRK being that criminal activities go underground and harder to trace, and legitimate businesses either give up, or end up appearing suspicious by being forced to use clandestine methods."

On March 14, 2007 the U.S. Department of Treasury announced that it had completed its investigation and issued a ruling barring BDA from "accessing the U.S. financial system, either directly or indirectly." Undersecretary Levey said "Abuses at the bank [BDA] included the facilitation of financial transactions related to illicit activities, including North Korea's trade in counterfeit U.S. currency, counterfeit cigarettes, and narcotics. In addition, several front companies may have laundered hundreds of millions of dollars in cash through the bank."<sup>58</sup>

The rule ostensibly affects only transactions between BDA and US banks, so it would seem that Macau authorities were technically free to unfreeze DPRK accounts with the end of the investigation. Yet what the U.S. administration has described as "technical difficulties" hindered the transfer of assets to the DPRK. There appears to have been disagreement about whether or how funds would be released. Although the initial U.S. stance was that the DPRK could physically withdraw the funds at any time, according to most analysis North Korea insisted on a bank transfer as a means of challenging the treasury rule and re-entering the international financial system.<sup>59</sup> However, fearful of Treasury regulatory action, banks quietly refused to accept the funds directly from BDA.\*

Eventually, with assurances from the U.S. Department of Treasury that there would not be negative consequences, the funds were transferred to the Federal Reserve Bank of New York on June 14. The money was then transferred to the Russian central bank, which forwarded the funds to Russia's *Dalkombank*, which in turn transferred the funds to North Korea's Foreign Trade Bank on June 25.<sup>60</sup> The involvement of the Federal Reserve prompted six Republican lawmakers, headed by Rep. Ileana Ros-Lehtinen, to ask the U.S. Government Accountability Office

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\* For example, in mid-May news sources reported that Wachovia Bank was considering transferring the funds, but eventually this possibility evaporated without comment from the relevant parties or the press. (See Glenn Kessler, "Transfer of N. Korea Money Sought" May 17, 2007 (Accessed at, <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/16/AR2007051602487.html> ).

to determine if U.S. money-laundering laws were violated in transferring the assets to the Federal Reserve.<sup>61</sup>

### ***The DPRK July 2006 Missile Test and October 2006 Nuclear Tests***

As noted above, there was little international reaction to the DPRK's short range missiles tests on May 1, 2005 and March 8, 2006. After the long-range missile test on July 5, 2006, and the adoption of UNSC Resolution 1695 (see UN section below), the US administration raised the possibility of additional sanctions. Congress responded to the missile tests with the "North Korea Non-Proliferation Act of 2006," which "urges all governments to comply promptly with United Nations Security Council Resolution 1695 and to impose measures on persons involved in such proliferation that are similar to those imposed by the United States Government pursuant to the Iran, North Korea, and Syria Nonproliferation Act." However, although the bill became law in October 2006<sup>62</sup> and the U.S. joined with others condemning the tests, no new sanctions were imposed by the administration.

During the House consideration of the bill, Rep. Lantos asserted that the "ground-breaking" act would force the administration to "take concrete actions against foreign firms that engage in missile and WMD-related trade with North Korea."<sup>63</sup> As noted above, such actions were already taking place under existing law.

The U.S. rhetorical response to North Korea's October 9 nuclear test and UN Security Council Resolution 1718 was considerably greater, as discussed in context below. However, as stated in its November 13, 2006 report to the UN Sanctions Committee established to oversee the implementation of UN Resolution 1718, the US was already in compliance with most of the provisions of 1718 under existing laws, and in some cases, such as prohibitions against the export of dual-use biological and chemical items, exceeded 1718 mandates.<sup>64</sup> The U.S. report

promised that the United States was considering “a range of measures” to implement 1718 mandates not already covered by U.S. law, such as a prohibition on the export of luxury goods.

U.S. law requires the president to apply certain sanctions to non-nuclear weapon states that have detonated a nuclear device. On December 7, 2006 the President applied those sanctions under the Nuclear Nonproliferation Act, 22 U.S.C. 2799aa-1, (popularly known as the "Glenn Amendment"),<sup>65</sup> and the Atomic Energy Act, 42 U.S.C. 2158. The Atomic Energy Act law reiterated sanctions already in place. The Glenn Amendment sanctions prohibited all forms of assistance with exception of humanitarian assistance. These two sets of sanctions are the only significant new sanctions that have been applied to North Korea since U.S. assistance was provided to North Korea under the terms of the Agreed Framework. The Glenn Amendment blocks U.S.-funding of certain denuclearization activities, as described below.

Additional measures were announced on January 26, 2007 by the U.S. Bureau of Industry and Security (BIS) in an amendment of the Export Administration Regulations (EAR) "to impose license requirements for the export and re-export of virtually all items subject to the EAR to North Korea, except food and medicines not listed on the CCL [Commerce Control List]."<sup>66</sup> In addition, the BIS listed luxury items prohibited from export and re-export to the DPRK.\*

Although the new EAR go beyond 1718's requirements – the UN resolution does not require sanctions on commercial goods – it seems to have had limited impact. The BIS stated that applications to export or re-export "non-food, non-medical humanitarian items (e.g., blankets, basic footwear, eating 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 and medical devices that are determined not to be luxury goods" were

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\* See the appendix for a chart of luxury items prohibited for export to the DPRK by the Six Party governments and the EU.

likely to receive approval. Because the vast majority of US-origin items exported to the DPRK fall under the category of “non-food, non-medical humanitarian items,” the January 26, 2007 amendment did not have much impact on US-origin goods sent to North Korea, other than the time-consuming process and possible delays created by the licensing requirements.

***The February 13, 2007 “Initial Actions” and Removal from TWEA and Terrorism List***

The “Initial Actions for the Implementation of the Joint Statement” agreed to by the six parties on February 13, 2007 declared that in the context of resolving “pending bilateral issues” and “moving toward full diplomatic relations,” the US will begin the process of “removing the designation of the DPRK as a state-sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK.”<sup>67</sup>

Removal from the list of State Sponsors of Terror has been a bargaining chip in previous rounds of negotiations. For example, the DPRK made a request to be removed from the list in 2000, following a round of talks in Geneva.<sup>68</sup> Reportedly, the DPRK initially tried but did not succeed in making removal from the Terrorism List a precondition for the visit of a high-level North Korean envoy to Washington.<sup>69</sup> North Korea made the request again in the context of the Six Party Talks in late 2003 and early 2004.<sup>70</sup>

In the middle of the decade, removal from the Terrorism list seemed unlikely, particularly as the issues of Japanese and South Korean abductees gained increasing prominence, and the Japanese government urged the United States to keep North Korea on the State Department list until the issue was resolved.<sup>71</sup> A resolution condemning the abductions as “acts of terrorism and gross violations of human rights” passed in the House in July 2005, adding a congressional imprimatur to the link between the abductions and terrorism.<sup>72</sup>

No immediate actions were taken on TWEA and the Terrorism List immediately following the February 2007 agreement. On September 6, 2007 Israel bombed a site in Syria rumored to be a nuclear facility, and North Korea involvement was alleged. Some members of Congress were particularly concerned about a possible Syria-North Korea connection, leading them to be more critical of the administration's approach.<sup>\*</sup> However, the administration took steps to ease some restrictions on US government funding of projects in the fall of 2007 as implementation of the February 2007 agreement proceeded. The seventh phase of the sanctions regime was foreshadowed on September 28, 2007, when President Bush determined under section 614(a)(1) of the Foreign Assistance Act that up to \$25 million be made available for energy assistance to the DPRK.<sup>73</sup> Although no sanction was lifted at that time, the use of the 614(a)(1) authority recalled the Clinton era, when the same authority was used to circumvent sanctions in order to fund fuel oil shipments mandated by the Agreed Framework.

In the October 3, 2007 "Second-Phase Actions for the Implementation of the Joint Statement" agreed to in the Six Party Talks, the DPRK agreed to "provide a complete and correct declaration of all its nuclear programs" by the end of December.<sup>74</sup> The United States, "Recalling the commitments to begin the process of removing the designation of the DPRK as a state sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK," indicated that it would "fulfill its commitments to the

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<sup>\*</sup> See, for example, Hoekstra, Peter and Ros-Lehtinen, Iliana, "What Happened in Syria," Wall Street Journal, October 20, 2007, [http://www.ncnk.org/resources/publications/Ros-Lehtinen\\_Hoekstra\\_Oct\\_2007\\_Op\\_Ed.doc/file\\_view](http://www.ncnk.org/resources/publications/Ros-Lehtinen_Hoekstra_Oct_2007_Op_Ed.doc/file_view). At Congressional Hearings in late April 2008, the CIA presented videos they said provided conclusive evidence of North Korean involvement in Syria's development of a nuclear facility. While many observers were persuaded by the CIA video at the very least that site was a nuclear facility, others remain unconvinced. See for example, a debate at Arms Control Wonk about a presentation by outgoing IAEA Section Head Yousry Abushady which claimed 30-40 errors in the CIA report. (<http://www.armscontrolwonk.com/category/Syria/>). Although fault is found with Abushady's argument, the blog reveals some people hold ongoing doubts. There has been less public debate about the extent of the DPRK role.

DPRK in parallel with the DPRK's actions based on consensus reached at the meetings of the Working Group on Normalization of DPRK-U.S. Relations.”<sup>75</sup>

On October 18 President Bush determined that it would be in the “national interest of the United States” to provide funding for educational and cultural exchange programs with the DPRK, waiving provisions in the Trafficking Victims Protection Act of 2000 that would normally bar such activities.<sup>76</sup>

Towards the end of 2007, lawyers for the U.S. administration concluded that the “Glenn Amendment” sanctions triggered by the DPRK’s explosion of a nuclear device prohibited the use of available Department of Energy (DOE) funds to pay for equipment and activities needed by DOE nuclear experts working inside the DPRK to disable the North’s nuclear facilities. Early denuclearization activities were funded through the State Department’s Nuclear Disarmament Fund (NDF), which has the legal authority to spend funds despite Glenn Amendment sanctions. However, the administration knew it would need additional funds; the cost to dismantle North Korea’s nuclear facilities will far exceed the total annual NDF budget of \$30-\$40 million.

According to the law, Congress must pass legislation in order for Glenn Amendment sanctions to be waived. Meanwhile, as noted above, Congress can pass legislation to block the removal of countries from the State Sponsors of Terrorism List. Perhaps anticipating a request from the administration, on September 25, 2007 Representative Ros-Lehtinen and 12 co-sponsors introduced the North Korean Counterterrorism and Non-Proliferation Act, which “provides for the continuation of restrictions against the government of North Korea unless the President certifies to Congress that the Government of North Korea has met certain benchmarks, including ending the counterfeiting of US currency and releasing an estimated 600 South Korean POWs.”<sup>77</sup> This Act was never considered by Congress. However, a portion of the text from the

Act was incorporated as part of an early version of the Glenn Amendment waiver that was passed by the House in The Security Assistance and Arms Export Control Reform Act of 2008.<sup>78</sup> Eventually, more narrowly focused language was passed, providing the President with a waiver that can be used for five years after the enactment of the law.<sup>79\*</sup>

On June 10, 2008 the DPRK issued a statement opposing all forms of terrorism.<sup>80</sup> On June 26 North Korea submitted a declaration of its nuclear programs and President Bush proclaimed the termination of the exercise of the Authorities under the Trading with the Enemy Act, to go into effect at 12:01 AM on June 27.<sup>81</sup> President Bush also announced that he was notifying Congress of his intent to rescind North Korea's designation as a state sponsor of terror in 45 days -- if certain conditions were met.<sup>82</sup> In his remarks to the press President Bush stated “We will work through the six-party talks to develop a comprehensive and rigorous verification protocol. And during this period, the United States will carefully observe North Korea's actions - - and act accordingly.”<sup>83</sup>

A State Department Fact Sheet released the same day is more explicit:

The actual rescission of North Korea's designation as a State Sponsor of Terrorism can be carried out 45 days after the President's notification to Congress. The Administration plans to carry out that rescission only after: the Six Parties reach agreement on acceptable verification principles and an acceptable verification protocol; the Six Parties have established an acceptable monitoring mechanism; and verification activities have begun.<sup>84</sup>

The summer and early fall passed without a rescission. On Sunday, October 11, 2008, the State Department announced that agreements on verification had been reached:

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\*For comparison of various Glenn Amendment waivers considered in 2008, see [http://www.ncnk.org/resources/publications/Comparing\\_Glenn\\_Waivers\\_June-08.pdf/](http://www.ncnk.org/resources/publications/Comparing_Glenn_Waivers_June-08.pdf/). The waiver had yet to be enacted at the time this update was produced.



The Democratic People's Republic of North Korea has agreed to a series of verification measures that represent significant cooperation concerning the verification of North Korea's denuclearization actions. . . . Based upon the cooperation and agreements North Korea has recently provided and the fact that the DPRK has met the statutory criteria for rescission, the Secretary of State this morning rescinded the designation of the DPRK as a state sponsor of terrorism, and that was effective with her signature.<sup>85</sup>

Removal from the State Sponsor of Terrorism List and waiving TWEA have not significantly altered North Korea's trade relationships with the US and the rest of the world.\* As noted above, other laws not dependent on North Korea's status as an "enemy" or "State Sponsor of Terror" exist. The DPRK's continued status as a communist state bars it from foreign aid, Export-Import Bank funding, export of goods or services, and favorable trade terms. North Korea is still prohibited from purchasing arms, dual-use items, support in the International Financial Institutions, credit under the "North Korea Non-Proliferation Act of 2006" and the "Iran, North Korea and Syria Non-Proliferation Act of 2000."<sup>86</sup> The North Korea Threat Reduction Act (1999), part of the Congressional response to the Agreed Framework, withholds U.S. exports to North Korea of nuclear material or technology unless the President can certify that North Korea is in compliance with international agreements, including IAEA agreements and the Agreed Framework.<sup>87</sup> † The Foreign Operations, Export Financing and Related Appropriations Act and the Department of Defense Appropriations Act annually include language prohibiting bilateral assistance to the DPRK, although the Defense Act language is qualified with "unless specifically appropriated for that purpose."

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\* At an October 25, 2007 House joint subcommittee hearing, Rep. Royce questioned Assistant Secretary Christopher Hill regarding the release of 30 million dollars of DPRK assets frozen under TWEA. Hill responded that he thinks that "all of these assets are in dispute" and that it is not "envisioned" that any funds would be returned at this time.

† The conditions outlined in the act become increasingly complex in subsequent authorization and appropriation bills. See Karin Lee and Adam Miles, *op. cited*.

Importers of North Korean goods are still required to obtain approval from the Office of Foreign Assets control. Even if a license were granted to import goods from the DPRK, high tariffs on most of the retail goods the DPRK might export (for example, clothing) would most likely dampen interest from most investors. Luke Engan, an associate editor at *Inside U.S. Trade*, explains that U.S. citizens and entities can now “participate in the import of non-U.S. goods into North Korea and conduct certain financial transfers with the North Korean government.”<sup>88</sup> Other sanctions that would have been loosened by the TWEA termination (the unblocking of certain funds and the prohibition against the use of DPRK-flagged vessels) were re-instated through an executive order issued the same day.<sup>89</sup>

The rescission from the Terrorism List will be fully implemented once the Department of Commerce has written a new regulation. However, the new regulation is not expected to have a large impact. Even after the new regulation is issued, licenses will likely still be required for the export of all goods except food and medicine. According to the Department of Commerce, “The EAR lists the License Exceptions that are currently available to North Korea in Section 746.4(c). A determination regarding the availability of additional license exceptions for exports or reexports to North Korea will be made once the rescission is finalized.”<sup>90</sup> The new regulation will remove North Korea from Country group E:1 which will “raise the threshold value for calculating the *de minimis* level of foreign goods destined to North Korea to 25% controlled U.S. content. Currently as a member of Country Group E:1 the threshold value for North Korea is 10%.”<sup>91</sup>

Rescission of the Terrorist designation also means that the U.S. is no longer required by law to oppose any World Bank loans. However, the U.S. may still choose to oppose a World Bank loan without the statutory requirement, and the law still requires U.S. Executive Directors

to the International Monetary Fund to “actively oppose any facility involving use of Fund Credit.”<sup>92</sup>

### ***The Obama Administration and the April 5 2009 Launch***

Although the Obama administration made no announcement of its sanctions policy toward the DPRK, on its first full day in office it authorized sanctions against three North Korean firms under the Arms Export Control Act as well as a series of nonproliferation executive orders.<sup>93</sup> One of the firms, KOMID, was sanctioned for the eighth time; it appears that the other two entities – Sino-Ki and Moksong Trading Corporation – were sanctioned for the first time. Since the sanctions merely prevent the companies from trade with the United States, they have no economic impact.\*

During her confirmation hearing to become Secretary of State, Hillary Clinton reiterated Obama campaign rhetoric linking sanctions removal to the “complete and verifiable elimination of North Korea’s nuclear weapons program,” and warning that “If the North Koreans do not meet their obligations, we should move quickly to re-impose sanctions that have been waived, and consider new restrictions going forward.”<sup>94</sup>

The Obama administration’s policy on sanctions was first tested in its response to the DPRK’s April 5, 2009 rocket launch, as described more fully below. The United States took an early and prominent role, along with the ROK and Japan, in warning the DPRK that a launch would be seen as a provocative act in violation of UNSCR 1718 (2006). China and Russia’s moderate statements about the launch contrasted sharply with the tone taken by the US and its allies.

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\* However, the U.S. included all three entities on its list of 11 entities submitted to the UN Sanctions Committee overseeing UNSCR 1718 (2006), in response to the April 2009 Presidential Statement, as described below.

The Presidential Statement issued on April 13, 2009 called the launch a “contravention” of UN Resolution 1718 (2006) and called for stricter imposition of the resolution’s most punitive measures. The Statement was deemed by some to be a victory, with credit due to newcomers U.S. Ambassador to the UN Susan Rice and Chinese Ambassador to the UN Zhang Yesui.<sup>95</sup> However, although the Statement is perhaps stronger in tone and language than anticipated, unlike a UN resolution, it has no legal authority. Therefore, some observers critiqued the Statement as too weak. An editorial in the Wall Street Journal called the Statement a failure by the Obama administration to win UNSC support for a “serious” response to the launch.<sup>96\*</sup>

On April 24, the UN Sanctions Committee announced sanctions on Korea Mining Development Trading Corporation [KOMID], Korea Ryongbong General Corporation and Tanchon Commercial Bank.<sup>97</sup> All three of these entities had previously been cited by the United States for WMD proliferation: KOMID was sanctioned by the U.S. for the first time in 1992, and the other two were sanctioned for the first time in June 2005.<sup>98</sup> The UN action is discussed in more detail below.

## **UN Actions against the DPRK**

### ***Background: UN Actions since the Korean War***

Since the Korean War, the Security Council has employed two types of actions against the DPRK: president’s statements and resolutions. In April 1993, the Council issued its first president’s statement after an IAEA inspection raised concerns about whether North Korea was abiding by its commitments under the Nuclear Non-Proliferation Treaty (NPT), to which the

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\* As noted below, the resulting sanctions are, in fact, legally binding. However, this reference is a contemporary response to the Statement and an early critique of the Obama administration’s approach.

DPRK had acceded in 1985.\* The DPRK responded by announcing its intention to withdraw from the NPT.

A month later the Council adopted Resolution 825, calling on the DPRK to “honor its non-proliferation obligations under the Treaty.”<sup>99</sup> It urged Member States “to encourage the DPRK to respond positively,” but it did not call on members to implement any measures against North Korea. One month after the resolution’s adoption, North Korea announced its decision to “suspend as long as it considers necessary the effectuation of its withdrawal” from the NPT.<sup>100</sup>

During the following year, the Council issued three president’s statements concerning the DPRK’s nuclear program and its compliance with IAEA safeguards.<sup>101</sup> The statements, issued in March, May, and November 1994, recognized each of the DPRK’s steps toward compliance, and urged it to take the next step. The November statement noted the Agreed Framework which the U.S. and DPRK had successfully negotiated and acknowledged North Korea’s decision to comply with IAEA safeguards.<sup>†</sup> The November statement also acknowledged North Korea’s decision to freeze its graphite-moderated reactors as part of the Agreed Framework—a measure that the DPRK undertook voluntarily even though the IAEA-DPRK Safeguards Agreement did not require it. The three 1994 statements essentially relayed a single message, perhaps the only one on which Council Members could agree: the desire for a denuclearized Korean peninsula. Beyond this, it appeared that Council members were unwilling or unable to come to agreement on what the DPRK should be compelled to do, if anything, and how other member countries

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\* Statements by the Council president are recognized to be less forceful than resolutions, characterized as “a slap on the hand” by those in favor of more stern responses.

† Although the U.S. consulted with Japan and South Korea, and they and other nations ultimately became members of KEDO, the negotiations were bilateral.

should be involved.\* Following the 1994 statements, the Council remained silent on DPRK WMD issues, until the adoption of Resolution 1695 in 2006.†

### ***North Korea's July 2006 Missile Test and UN Resolution 1695***

In June 2006 intelligence reports suggested that North Korea might be planning a test launch of a long-range missile. South Korean, Japanese, United States and Russian government officials warned that a test launch would be seen as a provocative act. However, on July 5, 2006 (late in the afternoon of July 4 in the United States) the DPRK test-launched at least seven ballistic missiles, including a long-range Taepodong-2. Censure was immediate. South Korea suspended food aid,‡ and Japan and Australia enacted measures in response to the missile tests, mainly targeting the flow of finances from suspect entities to the DPRK.§

Ten days after the missile test, in its first official response to North Korean actions since 1996, the United Nations Security Council adopted Resolution 1695. Until Resolution 1718 was passed, Resolution 1695 represented the strongest reprimand the Security Council had adopted against North Korea since 1950.\*\* The resolution “condemns the multiple launches by the DPRK of ballistic missiles... demands that the DPRK suspend all activities related to its ballistic missile program” and “strongly urges the DPRK to return immediately to the Six-Party Talks

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\* Of course this situation of deadlock within the Security Council is not unique to issues involving the DPRK.

† A further UNSC president's statement regarding North Korea was issued in 1996, but this did not refer to the DPRK's nuclear aspirations. Instead, it addressed the North Korean spy submarine incursion in South Korean waters in September of that year. The DPRK issued an apology expressing “deep regret” over the incident three months later.

‡ The ROK reinstated food aid in response to reports of extensive flooding and mud slides in the North.

§ As noted above, the US said it might implement new measures in response to 1695, but it did not.

\*\* Three 1950 UN Resolutions regarding “Complaint of aggression against North Korea” and authorizing UN member involvement in the war (Resolution 82 (25 Jun), Resolution 83 (27 Jun), and Resolution 84 (7 Jul) were the most severe UN condemnations of the DPRK to date.

without precondition.”\* The resolution requires all UN Member States to take measures to combat missile proliferation by preventing the following:

- transfer of “missile and missile-related items, materials, goods and technology” to the DPRK,
- procurement of “missile and missile-related items, materials, goods and technology” from the DPRK, and
- transfer of “financial resources in relation to DPRK’s missile or WMD programmes.”<sup>102</sup>

The resolution also urges the DPRK to show restraint in its actions and to return to the Six-Party Talks. However, the resolution does not call for the establishment of an oversight committee.<sup>†</sup> Thus, although its measures are mandatory, the resolution lacks a mechanism to ensure compliance. It also lacks a reference to Chapter VII, which reportedly had appeared in Japan’s first draft of the resolution but was later removed under PRC pressure.<sup>‡</sup>

Measures are to be implemented by Member States, “in accordance with their national legal authorities and legislation and consistent with international law,” leaving room for interpretation. For example, according to one observer, South Korea had determined that their suspension of food and fertilizer aid met the resolution’s requirements.<sup>103</sup> China did not implement additional punitive measures.

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\* The UN website describes Security Council efforts to respond to growing concern about the efficacy of economic sanctions and the individuals (often women and children) who suffer from the imposition of mandatory sanctions. “Targeted” or “smart” sanctions, according to the UN, are a reflection of “a more refined approach to the design, application and implementation of mandatory sanctions” and can involve actions such as “freezing of assets and blocking financial transactions of political elites or entities whose behavior triggered sanctions in the first place.” (“Security Council Sanctions Committees: An Overview,” Accessed at: <http://www.un.org/Docs/sc/committees/INTRO.htm>)

<sup>†</sup> UN resolutions that include a call for Member States to implement sanctions are occasionally accompanied by the creation of a special committee that monitors and oversees members’ compliance with the measures of the resolution. UN Security Council Website, “Security Council Sanctions Committees: An Overview.” (Accessed at: <http://www.un.org/Docs/sc/committees/INTRO.htm>)

<sup>‡</sup> Chapter VII of the United Nations Charter gives the Security Council authority to determine the existence of a threat to, or breach of, peace and to call upon Member States to apply economic or diplomatic sanctions on countries in order to restore international peace and security. This authority comes with built-in flexibility, as Article 48 also states that actions decided on by the Security Council “shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.” Article 42 of Chapter VII of the UN Charter authorizes military action by the Security Council, should it determine that sanctions would be, or have proved to be, inadequate.

The different interpretations of Resolution 1695 are not surprising as the resolution itself reflects a compromise, balancing the draft resolution submitted by Japan and supported by the United States, with the draft president's statement submitted by China after the July 5 missile launches. While some observers who condemned the missile launch viewed Resolution 1695 as not severe enough, others applauded China and Russia's choice to support a definite and adamant stance against North Korea's missile activities. The resolution's significance comes from the apparent readiness for compromise demonstrated by the five permanent Security Council members.

As already noted, no international law prohibited North Korea from testing its missiles. The September 17, 2002 Japan-DPRK Pyongyang Declaration states that the "DPRK side expressed its intention that, pursuant to the spirit of this Declaration, it would further maintain the moratorium on missile launching in and after 2003."<sup>104</sup> But in 2005 the DPRK declared that the conditions warranting the moratorium had changed, and it was therefore no longer bound by its bilateral agreement with the United States.<sup>105</sup>

North Korea rejected Resolution 1695. DPRK Ambassador Pak Gil Yon retroactively addressed the agreement with Japan. After the test, he declared that the DPRK "had expressed its intention to extend beyond 2003 the moratorium on missile firing, in the spirit of the Declaration, on the premise that Japan would normalize its relations with his country and redeem its past . . . [Since Japan] abused his country's good faith and pursued a hostile policy," DPRK-Japan relations were "what they had been before the Declaration."<sup>106</sup> North Korea maintained that the July missile tests were its "legitimate right as a sovereign state" and condemned the resolution as an attempt by "some countries to misuse the Security Council."<sup>107</sup>



### ***The North Korean Nuclear Test and UN Resolution 1718***

On October 3, 2006 North Korea announced its intention to conduct a nuclear test.<sup>108</sup>

Three days later,<sup>\*</sup> the UNSC issued UN Presidential Statement S/PRST/2006/41, warning that if a test were conducted, the UN “will act consistent with its responsibility under the Charter of the United Nations,”<sup>109</sup> perhaps alluding to its authority under Chapter VII, which it eventually invoked in UNCR 1718. The coordination and cooperation involved in agreeing to Resolution 1695 may have contributed to the speed with which the Security Council was able to respond.

When the DPRK tested a nuclear device shortly after the Statement was issued, the Security Council acted relatively quickly, if not entirely in unison. UN Resolution 1718 (2006) is the strongest reprimand the Security Council has adopted against North Korea since the Korean War. Invoking Chapter VII<sup>†</sup>, and in a combination of punitive and preventive measures, the resolution “demands” that

- The DPRK return to the Nuclear Non-Proliferation Treaty and conduct no further nuclear tests nor launch any ballistic missiles,

and “decides” that

- The DPRK shall suspend its ballistic missile program, reinstate its missile launch moratorium and abandon its nuclear weapons program,
- All Member States shall prevent the direct or indirect supply to the DPRK of heavy military equipment (such as tanks, missile systems, etc), items and materials listed in certain UN documents as dual-use goods, and luxury goods,
- The DPRK shall “cease the export of” heavy military equipment and dual-use items,
- All Member States shall freeze funds and financial assets owned or controlled by “persons or entities designated by the Committee or Security Council as being engaged in providing support for” the DPRK’s WMD programs or “by persons or entities acting on their behalf or direction,” and ensure that funds are not “made available” to such persons,

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<sup>\*</sup> The fact that Japan had just assumed its one month presidency of the Security Council may have influenced the speed with which the Statement was announced.

<sup>†</sup> As noted above, Article 42 of Chapter VII of the UN Charter authorizes military action by the Security Council, should it determine that sanctions would be, or have proved to be, inadequate. Article 42 was not included in Resolution 1718, although it was reported that the U.S. and Japan pushed for its inclusion.

while specifically excluding financial resources deemed necessary by States for “basic expenses” including food, insurance, etc.,

- All Member States shall prevent North Koreans engaged in WMD development from entering their territories, although this measure does not apply to travel “justified on the grounds of humanitarian need, including religious obligations,” (the Committee must review this exemption on a case-by-case basis),
- All Member States shall engage in “cooperative action including the inspection of cargo to and from the DPRK as necessary,”
- And “calls on” the DPRK to return to the Six Party Talks and work towards implementation of the September 19, 2005 Joint Statement.<sup>110</sup>

The resolution also mandates the establishment of a Committee of the Security Council to monitor the implementation of the resolution.\*

DPRK Ambassador Pak Gil Yon called the resolution “gangster-like,” and an example of the UN’s partiality,<sup>111</sup> and later said that the sanctions were an act of war.<sup>112</sup>

At the time the resolution was passed, there was clearly some discord within the Security Council, as revealed by the resolution and in the official statements issued as the resolution was announced.† For example, Ambassador Cesar Mayoral from Argentina indicated that “Argentina did not intend to legislate the control of material for dual use.”<sup>113</sup>‡

The UN press release reported that Chinese Ambassador Wang Guangya was adamant that China “opposed the use of force,” referencing publicly if indirectly the debate about whether

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\* The Sanctions Committee established for UNCR 1718 may be accessed here: <http://www.un.org/sc/committees/1718/index.shtml>. For additional information about the resolution, see the NCNK website, available here: <http://www.ncnk.org/resources/news-items/1718resources/>.

† In general, the Security Council tries to speak with one voice and members strive for politeness. However, when the issue or resolution is contentious, these statements will often contain each country’s interpretation or viewpoint in the hope that their view will prevail as the resolution is implemented. This was certainly the case with the resolutions leading to war with Iraq. (Personal communication, James Paul, October 17, 2006.)

‡ It could be that Section 8(a)(ii) regarding which “dual use” list is used, and Ambassador Mayoral’s comment are not DPRK-specific. Instead they may be in reference to the larger debate over the scope of what constitutes “dual use,” an argument that came into sharp focus during the sanctions regime against Iraq, when pencils were famously stopped at the border because graphite can be used in weapons production. (Personal communication, James Paul, October 17, 2006.) See Phyllis Bennis, “Some Questions and Answers on the Iraq Crisis,” December 18, 1998, (accessed at <http://www.globalpolicy.org/security/issues/irq12-10.htm>.) and Global Policy Forum, “Iraq Sanctions: Humanitarian Implications and Options for the Future,” August 6, 2002, (accessed at <http://www.globalpolicy.org/security/sanction/iraq1/2002/paper.htm>).

or not to reference Chapter VII Article 42 in the resolution, which, had it been included would have authorized the use of force. Ambassador Wang's statement announced that China "did not approve of the practice of inspecting cargo to and from the DPRK," and underscored China's "reservations" about those provisions in the resolution.

Russian Ambassador to the UN Vitaly I. Churkin mentioned several reservations as well; the statement reports his reflections on the "tense negotiations," "concern over humanitarian consequences of strict measures," and the Russian Federation's opinion that sanctions should not "go on indefinitely."<sup>114</sup> In what seems to be direct criticism of Japan and the United States, his statement "emphasized that sanctions unilaterally adopted by States did not facilitate resolution of such problems, when the Council was working on joint approaches."

In contrast, the statement reports that U.S. Ambassador to the UN John Bolton asserted that 1718 would "target the way Kim Jong Il financed his related weapons programmes, including through *money-laundering, counterfeiting and selling narcotics*"<sup>115</sup> and that "Member States were bound to take action against those activities and freeze the assets of involved entities and individuals of the DPRK," although the resolution does not refer to DPRK engagement in these activities nor make that specific demand. Comments from Council President Kenzo Oshima (from Japan) include a mention of the Japanese abductees, an issue of primary importance to Japan not mentioned in the resolution.

Ambassadors of all five Permanent Members, particularly Ambassador Wang from China, endorsed the Six Party Talks as still viable. Ambassadors from four out of five Permanent Members of the Security Council (France, China, the United Kingdom and Russia) stressed that if the DPRK complies with the provisions of the resolution, the sanctions would be lifted, with Ambassador Emyr Jones Parry from the United Kingdom seeming to indicate that DPRK

participation in the Six Party Talks would be sufficient compliance to end the sanctions.

Although the statement of Ambassador Bolton also mentioned that sanctions would be lifted if the DPRK complied with the resolution, the tone differed since the comment was immediately followed by a list of possible additional UN measures to be taken if the DPRK did not comply.

### ***Implementing Resolution 1718***

In its annual report for the period ending December 31, 2008, Sanctions Committee chair Giulio Terzi di Sant'Agata said that 73 countries and the EU had submitted reports regarding their implementation of 1718.<sup>116</sup>

For the vast majority of member states, compliance with 1718 has very little impact on North Korea. For example, Albania's promise to "continue to fully comply with the provisions and requirements provided for in this resolution" while apparently made in earnest is not of great import given that "during the last decade all commercial and/all human interactions and exchanges with the Democratic People's Republic of Korea have been at zero level."<sup>117</sup>

As is the case with all international economic sanctions regimes, only those countries with which the target country has the greatest trade relationships are relevant beyond rhetorical value. At various times it has been reported that China, Europe (notably Germany), Egypt, Iran, Japan, Pakistan, the USSR and subsequently Russia, have provided material or technological expertise toward North Korea's WMD programs.<sup>118</sup> \* It has also been reported that at one time or another Egypt, Ethiopia, Iran, Libya, The United Emirates, Vietnam and Yemen have been recipients of North Korea's WMD products.<sup>†</sup>

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\* Not all of the above countries have been confirmed. Dr. Pinkston points out that sometimes rumors generated from a single, unverified source erroneously gain acceptance as fact through repetition. For example, the suspicion that the DPRK exported No-dong missiles to Libya in the 1990s was treated as fact until recently, when records revealed that Libya had purchased only Scud-C missiles from North Korea. Dr. Daniel Pinkston, personal communication, August 13, 2007.

† Again, not all countries have been confirmed. Egypt claims that it stopped arms trade with North Korea; it helped to uncover the sale of aluminum tubes to North Korea in 2003. In January 2004 when news emerged that North

Several of these key countries submitted reports to the Sanctions Committee. For example, Pakistan submitted a report on January 11 attesting to the Federal Government's decision to implement 1718.<sup>119</sup> But intent or legislation alone does not guarantee successful implementation of a provision. Germany's November 30 report to the Sanctions Committee asserts that "Exports to DPRK from Germany have been subject to specific restrictions since 1991." Presumably such measures should have prevented the 2003 sale of German aluminum tubing to the DPRK, which experts analyze would have been sufficient for 100-200 centrifuges.<sup>120</sup>

Ethiopia, Iran, and Yemen have not submitted reports. The New York Times reported that in January 2007 the U.S. allowed a DPRK arms sale to Ethiopia, which at the time was embroiled in a military offensive with Islamic militia in Somalia, a military struggle to which the U.S. gave its tacit approval.<sup>121</sup> Ethiopia argued that the arms they had purchased were not prohibited by 1718. The State Department refused to comment.<sup>122</sup>

The ROK has submitted two reports. In the first, submitted on November 30, 2006, it detailed existing legislation and stated its intention of strengthening the "customs clearance procedure" mandated by North-South trade laws.<sup>123</sup> In its January 15, 2007 report, the ROK said that it was in the process of compiling a list of luxury items for exclusion.<sup>124</sup> The US unofficially pressured the ROK to go beyond the mandate of the resolution, indicating that the ROK should curb inter-Korean projects such as Mount Geumgang. (See below for more information on ROK-DPRK measures.)

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Korea offered to provide Nigeria with missile technology, the U.S. threatened sanctions and Nigeria announced it had rejected the offer. ("Nigeria is Offered Arms," January 29, 2004, The New York Times, accessed at <http://query.nytimes.com/gst/fullpage.html?res=9D03E5DB1338F93AA15752C0A9629C8B63> and "World Briefing/Africa: Nigeria: U.S. says North Korea Missile Offer is Rejected," February 4, 2004, accessed at <http://query.nytimes.com/gst/fullpage.html?res=9C0CE4DD123BF937A35751C0A9629C8B63>.) We are indebted to Dr. Pinkston for drawing this to our attention.

Both China and Russia used their reports to underscore the limited role they expect the sanctions to play and their commitment to diplomacy. In its November 30, 2006 report, Russia stated that the main objective of 1718 “is not punishment of the DPRK but rather a political resolution of the issue of the country’s nuclear programme” and fails to give many details about how it will implement the resolution.<sup>125</sup> China, which is more forthcoming in describing its measures to implement 1718, also made extensive comments regarding its perspective of the intent of the resolution:

The Chinese Government considers that all countries have the obligation to implement seriously and fully the sanctions measures contained in resolution 1718 (2006), and does not approve of arbitrary interpretation or expansion of those sanctions. It has stressed on several occasions that sanctions are not an end in themselves. Resolution 1718 (2006) is not simply a resolution to impose sanctions on the DPRK, for it also includes many other important elements, such as a call for early resumption of the six-party talks and speedy implementation of the Joint Statement of September 2005, and the reversible nature of provisions of the sanctions. The resolution must be implemented in a comprehensive and balanced manner.<sup>126</sup>

Japan, in its comprehensive November 13 report to the Sanctions Committee, described the existing laws and new measures that would be used to implement 1718. Japan had already taken several measures in response to the July missile test and immediately after the nuclear test, before 1718 was adopted. Japan was also the first country to list prohibited luxury items.

Japan’s further measures are discussed below.

The United States promised a robust response, as indicated in U.S. Secretary of State Rice’s comments shortly after the resolution was passed: “As North Korea scorns the international community, we will collectively isolate North Korea from the benefits of participation in that community.”<sup>127</sup> However, despite the new EAR regulations noted above, because of the lack of a trade relationship, U.S. actions have little impact.

If the implementation of the luxury item ban is an indicator of the willingness of other countries to punish North Korea, the results are mixed.<sup>128</sup> While most of the provisions in 1718 could be considered non-proliferation and counter-proliferation measures, the luxury item prohibition is punitive. The United States has the most detailed list of prohibited items, despite the fact that it is not a big provider of luxury items to North Korea. However, Russia – a far likelier source of luxury goods for North Koreans – is far more generous. Whereas the United States prohibits all alcohol, including beer, Russia prohibits only vintage wine and spirits costing more than \$193. According to Russian standards, in order to be considered luxurious, fur coats must cost more than \$9,637 and watches need to cost nearly \$2,000.

The 1718 provisions with the potential to do the most damage and insult to individual North Koreans are (8)(d) and (8)(e). Section (8)(d) asks member states to freeze assets “owned or controlled, directly or indirectly, by the persons or entities designated by the Committee or by the Security Council as being engaged in or providing support for, including through other illicit means, DPRK’s nuclear-related, other weapons of mass destruction-related and ballistic missile related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals.” Section (8)(e) calls on Member States to “prevent the entry into or transit through their territories of the persons designated by the Committee or by the Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to the DPRK’s nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes.”\* Even family members of such individuals are to be banned from travel.

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\* UNSCR 1718 (8) (d) and 8(e). 8(e) includes a waiver for “humanitarian need,” or when “the Committee concludes that an exemption would otherwise further the objectives of the present resolution.”

However, no list of persons has been developed by the Sanctions Committee, nor had any names been submitted to the Committee by December 31, 2008, the date of the most recent Sanctions Committee Report. In fact, the Chairman reports that “Since 1 January 2008, no information relevant to the implementation of its mandate has been brought to the attention of the Committee.”<sup>129</sup>

### ***The April 5, 2009 Rocket Launch***

The end of 2008 and beginning of 2009 brought increasing signs of deterioration of the Six Party Talks process as well as worsening DPRK relations with Japan, South Korea and the United States.\* By early February, signs of preparations for a North Korean missile launch were widely reported.<sup>130</sup> Hillary Clinton, in Asia on her first trip as Secretary of State, warned the DPRK from Tokyo that a missile launch would be “unhelpful in moving [the US-DPRK] relationship forward.”<sup>131</sup>

The DPRK criticized assumptions that it was launching a long-range missile and defended its right to space exploration: “One will come to know later what will be launched.”<sup>132</sup> By the end of the month, North Korea announced the planned launch of the *Kwangmyongsong (Lodestar)-2* satellite using its *Unha (Galaxy)-2* rocket.<sup>133</sup> In mid-March, the DPRK joined the 1966 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space and the 1974 Convention on Registration of Objects Launched into Outer Space,<sup>134</sup> and soon after notified the International Maritime Organization and similar organizations that a launch would take place between April 4 and 8 in order to place an experimental communications satellite into orbit.<sup>135</sup>

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\* For example, the DPRK called for the elimination of Japan from the Six Party Talks in October; the DPRK and the US failed to finalize a written verification agreement in December and the DPRK announced that all inter-Korean agreements have been “nullified” in January. (See Aidan Foster-Carter, “Squeezing the Boarders,” Comparative Connections, April 2009. (Accessed at: “[http://www.csis.org/media/csis/pubs/0901qnk\\_sk.pdf](http://www.csis.org/media/csis/pubs/0901qnk_sk.pdf).”)



In providing information about the launch well in advance, the DPRK might have been addressing concerns by China and Russia that the July 2006 long-range missile launch had taken place without prior notification; ambassadors to the UN from both countries noted lack of notification as a primary concern following the adoption on of UNSCR 1695 (2006).<sup>136</sup>

The U.S., ROK and Japan rejected the DPRK's argument that a satellite launch should not be considered a missile launch, and would therefore be legal. Secretary Clinton said, "We have been absolutely clear [that] the intention, as stated by the North Koreans, to launch a missile, for any purpose, is a provocative act which we believe violates Security Council Resolution 1718," adding that there would be "consequences" if the DPRK went ahead with a launch.<sup>137</sup>

As the proclamations on all sides became more heated, the DPRK warned that even the discussion of the launch in the UNSC – let alone a presidential statement or resolution – would be viewed by the DPRK as a hostile act and an abrogation of the September 19, 2005 statement, resulting in the end of the six party talks, the reversal of dismantlement steps and the implementation of "necessary strong measures."<sup>138</sup>

On April 5, 2009 the DPRK launched its rocket. The DPRK issued a statement saying the launch had successfully placed a communications satellite into orbit,<sup>139</sup> although this has been denied by other countries. Leaders from the United States, Republic of Korea, Japan and European Union -- among others -- immediately condemned the rocket launch. President Obama called the launch "a clear violation of United Nations Security Council Resolution 1718, which expressly prohibits North Korea from conducting ballistic missile-related activities of any kind."<sup>140</sup>

China and Russia's reactions were more reserved: Russia's Deputy UN Envoy Igor Shcherbak said, "Every state has the right to the peaceful use of outer space;" Chinese Ambassador Zhang Yesui said that "Regarding the reaction of the Security Council, our position is that it has to be cautious and proportionate." <sup>141</sup>

The 15-member UNSC held the first of several meetings regarding the launch the afternoon of April 5. At that time, given the moderate comments from China and Russia, observers expected a fairly weak UN response. <sup>142</sup> On April 13, 2009 the UNSC issued a Presidential Statement calling the launch a contravention of UNSCR 1718 (2006) and stating that the Council "agrees to adjust the measures imposed by paragraph 8 of resolution 1718 (2006) through the designation of entities and goods." <sup>143</sup> The UNSC charged the Sanctions Committee with "the designation of entities and goods" pursuant to paragraph 8 by April 24, warning that "if the Committee has not acted, [by that date] then the Security Council will complete action to adjust the measures by 30 April 2009.

The DPRK rejected the "brigandish" presidential statement and said that it "will never participate in the talks any longer nor it will be bound to any agreement of the six-party talks." <sup>144</sup> The DPRK government also vowed to restart its nuclear program, and told IAEA and US government officials associated with the disablement of Yongbyon to leave the DPRK.

As with previous UN actions, Member States indicated different levels of commitment to implementing the Presidential Statement. Chinese Foreign Ministry Spokesperson Jiang Yu, in her remarks released on April 14, stated the following:

China always holds that the reaction of the Security Council should be aimed at ensuring the overall interests of peace and stability on the Korean Peninsula and in Northeast Asia, promoting the Six-Party Talks and the denuclearization process on the Peninsula, and safeguarding the international non-proliferation regime. In light of this spirit, China disagrees of a Security Council resolution on the launch, let alone new sanctions against the DPRK. <sup>145</sup>

In contrast, Japan and the United States quickly provided a list of 14 and 11 firms (respectively) to the Sanctions Committee for possible inclusion on the list of entities sanctioned by UNSCR 1718 (2006) paragraph 8.<sup>146\*</sup>

On April 24, 2009, as noted above, the UN Sanctions Committee announced sanctions on the Korea Mining Development Trading Corporation [KOMID], Korea Ryongbong General Corporation and Tanchon Commercial Bank, the first time that the UN has sanctioned individual North Korean companies.<sup>147</sup> One newspaper reported that the list of three was a compromise between the U.S./Japanese push for ten firms and Chinese/Russian resistance to any sanctions.<sup>148</sup>

Papers also reported that after the Sanctions Committee's announcement, North Korea's Deputy U.N. Ambassador Pak Tok Hun told reporters "The discussion on the sanctions in the Security Council against (North) Korea for its satellite launch is itself a wanton violation of the United Nations charter,"<sup>149</sup> and announced that it would begin reprocessing plutonium at its Yongbyon nuclear plant.<sup>150†</sup>

Although the Presidential Statement did not carry legal significance, following the announcement of the sanctioning of the three firms, Britain's U.N. Ambassador John Sawers pointed out that the sanctions themselves are legally binding and that UN Member States would now be required to freeze the assets of these firms.<sup>151</sup>

Tanchon Commercial Bank, called by Sawers "the DPRK's main financial agent for the sale of conventional arms and ballistic missiles,"<sup>152</sup> may be particularly vulnerable to the newly imposed sanctions. The bank scrambled to do business after the U.S. Treasury Department's September 2005 action on Banco Delta Asia and the U.S. Treasury Department December 2005

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\* The firms on the lists are already under U.S. and Japanese sanctions.

† On April 27, papers reported that reprocessing had not yet begun. See "No sign North Korea started plutonium work-report," Reuters, April 27, 2009 (Accessed at: <http://uk.reuters.com/article/latestCrisis/idUKSEO219689>).

Advisory resulted in limiting Tanchon's access to banks in other countries.<sup>153\*</sup> When its accounts at Vietnam's Military Commercial Bank were closed after a July 2006 visit to Vietnam by Under Secretary for Treasury Stuart Levey, Tanchon Commercial Bank was forced to move its money to other banks, reportedly in Germany and elsewhere.<sup>†154</sup>

However, despite this history, the effectiveness of the new sanctions remains to be seen. As with other "legally binding" resolutions, individual countries determine the extent to which they will implement the sanctions. It will be interesting to note whether or not Member States file reports with the Sanctions Committee to detail their implementation of these new sanctions.

## **Other Unilateral Sanctions against the DPRK**

### ***Japan***

A trend toward limiting DPRK trade and access to Japanese resources began at least as far back as the North Korean missile launch in 1998, when the Japanese government temporarily blocked the entry of the *Mangyongbong-92*.<sup>‡</sup> Then, an intensification of monitoring led to a seven-month ban in 2003 and only one trip during January through April 2006.<sup>155</sup>

North Korean trade with Japan has been significantly curtailed since 2001 due to worsening bilateral relations, tighter Japanese export controls and customs regulations and citizen boycotts of North Korean products.<sup>156</sup> In 2003 the Japanese government reinforced export controls on dual-use goods to North Korea and also tightened border security to stop illegal contraband from North Korea from entering the country.<sup>157</sup>

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\* See the U.S. section above for more information on the Treasury Advisory.

† One paper quoted unnamed skeptical "experts" who believe that both Tanchon and KOMID have since moved their WMD business to other companies.

‡ The weekly ferry is the primary means of travel for *Chosen Soren* (pro-DPRK Koreans in Japan residents' association) between the two nations. C. Kenneth Quinones, Personal communication, September 27, 2006.

In 2005, a Japanese law preventing all foreign ships with inadequate insurance from docking at Japanese ports further limited North Korean trade with Japan.\* The new shipping regulations, combined with a grassroots boycott of North Korean clams promoted by the National Association for the Rescue of Japanese Kidnapped by North Korea, resulted in a 50% drop in the import of mollusks from North Korea from 2004 to 2005.<sup>158 †</sup>

The boycott of mollusks was one of many signs of strong Japanese support for more sanctions against North Korea during times of bilateral tension. Over 70% of survey respondents thought that Japan “should consider economic sanctions as part of a tougher negotiating stance,” according to a 2004 poll conducted by *Nikkei Shinbun*.<sup>159</sup> In February 2005, a petition calling for sanctions against North Korea was signed by five million citizens.<sup>160</sup>

Japan had the most robust responses to the 2006 missile tests and nuclear test. The very day of the 2006 missile test-launch, Japan immediately renewed the ban on the Wonson–Nigata ferry, the *Mangyongbong-92* and halted charter flights from Pyongyang.<sup>161</sup> The suspension of the *Mangyongbong-92* not only temporarily shut down trade and travel facilitated by the ship, but also tightened restrictions on the *Chosen Soren*, an organization of ethnic Koreans living in Japan with close ties to North Korea.<sup>162‡</sup> Japan also banned the travel of North Korean government officials.<sup>163</sup>

Resolution 1695 was adopted on July 15. On September 19, coinciding with the first anniversary of the September 19 Statement, Japan announced the imposition of financial

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\* James Schoff points out that, although a *de facto* ban might have been imagined by the law’s authors, due to the size of the vessels affected by the ban and the unexpectedly high number of DPRK ships covered by insurance, 90 North Korean ships received certificates to enter Japanese ports in the first 8 months the law was in effect. Personal communication, October 2, 2006.

† The deficit in trade with Japan, however, was reportedly initially offset by increasing trade with China and the ROK, casting doubts on the how effective additional Japanese economic sanctions could actually be, if imposed. Inter-Korean trade has been trailing off in ce the trade bans were first put into effect.

‡ Although the organization, which Jim Schoff calls “North Korea’s de-facto embassy in Tokyo,” has lost much of the influence it once had, it has facilitated trade and transferred remittances between the two countries for decades and the ferry has served as a physical link between the organization and North Korea.

sanctions similar to those being implemented by the U.S. Treasury Department. \* Japan added fifteen entities to its Export Control List, which already listed 58 North Korean entities as of April 2006, targeting parties suspected of involvement in the North's nuclear weapons or missile programs.<sup>164</sup>

Shinzo Abe, Prime Minister-Elect at the time, announced that Japan's new sanctions required Japanese financial institutions to seek prior approval before conducting any transactions with the fifteen specified companies and one individual. In addition to the twelve companies targeted by the United States, Japan's sanctions also target three other companies, Korea Tonghae Shipping Company, Pyongyang Infomatics Center, and Ponghwa Hospital, according to statements made by Foreign Ministry Press Secretary Tomohiko Taniguchi.<sup>165†</sup> Japan also introduced a “set of measures for prevention of the transfer of financial resources to the DPRK,” on September 19.<sup>166‡</sup>

Japan responded quickly to North Korea's announcement of a nuclear test, announcing new sanctions on October 11, 2006 that were implemented on October 13, prior to the adoption of UN Resolution 1718.<sup>167</sup> The new sanctions expanded the ban on the *Manyongbong* Ferry to prohibit all North Korean vessels to enter Japanese ports for six months, and prohibited the

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\* September 19, 2006 was the one year anniversary of the “September Statement,” in which the six parties had agreed to a framework for ending North Korea's nuclear weapons program and providing North Korea with security guarantees and energy assistance. Australia announced similar measures on the 19th, blocking the transactions of twelve companies and one individual. The list of sanctioned companies includes Kohas, Korea Kwangsong Trading, Korea Mining Development Trading, Tanchon Commercial Bank and Korea Ryonbong General —companies that are also among those that the United States has targeted. The fact that Australia and Japan issued their sanctions on the same day was deemed significant in Japan, where it was reported on extensively by the press. Frank Jannuzi, personal communication, September 27, 2006.

† C. Kenneth Quinones believes that that the sanctions, rather than breaking new ground in response to 1695 are “consistent with the Proliferation Security Initiative (PSI).” Quinones believes that their main impact will be to motivate Japanese Maritime and Customs agencies to work harder to uncover illegal Japanese exports of controlled technology to the DPRK. Personal communication, September 28, 2006.

‡ However, personal remittances sent by Japanese Koreans to their relatives in North Korea have not yet been prohibited, a point first raised by Frank Jannuzi, personal communication, September 27, 2006.

import of all items from the DPRK to Japan. Australia also closed its ports to DPRK ships in response to 1718.<sup>168</sup>

The new Japanese sanctions also expanded the ban on visits by North Korean officials to a six-month “denial, in principle, of entry by DPRK nationals into Japanese territory.”<sup>169</sup> These bans were renewed for six-month periods in April 2007, October 2007, April 2008, October 2008 and for a twelve month period in April 2009 (see below).

The Japanese legislature also took action, passing a human rights bill authorizing the government to impose economic sanctions “when recognizing that there were no improvements in the abduction issue and other North Korean human rights abuses against the Japanese,” was introduced in the Diet in April 2006 and became law in September 2006.<sup>170</sup> In addition, Japan’s Ministry of Foreign Affairs (MOFA) has complied with U.S. recommendations on Banco Delta Asia in Macau.<sup>171</sup>

Shinzo Abe’s replacement of Koizumi as Japanese Prime Minister and leader of the Liberal Democratic Party in September 2006 did not make much of an impact on Japan’s policy toward North Korea. He was replaced by Yasuo Fukuda on September 25, 2007. Although some thought Fukuda’s accession might herald progress in Japanese/DPRK relations, on October 9, 2007, the Japanese Cabinet renewed sanctions that would have expired on October 14,<sup>172</sup> (a move they had signaled in early September) and renewed them again in April 2008.

In mid-June 2008, a round of Japanese-DPRK bilateral talks concluded with a promise from the DPRK to re-open investigations of the abduction of Japanese citizens. The North Koreans also agreed to discuss members of the Japanese Red Army responsible for the 1970 high-jacking of a jet; four of the high-jackers are believed to remain in North Korea.<sup>173</sup> In response, Japan agreed to partially lift sanctions, including the ban on chartered flights and trips

between the two countries. According to some analysts, North Korea's promise to Japan was an attempt to persuade the United States to remove them from The State Sponsors of Terrorism list<sup>174</sup> and to weaken the Japanese campaign to keep them on the list. An opinion poll taken in Japan late that month showed only 25% in favor of relaxing sanctions, with 61% against.<sup>175</sup>

No progress was made in the investigations that summer. Taro Asao became Prime Minister of Japan on September 24, 2008 (after Fukuda's surprise resignation) and renewed the sanctions for another six month period on September 30. In November 2008, citing the failure to make any progress on the abduction issue, the Democratic Party of Japan (the main opposition party) drafted legislation that would ban all Japanese exports to the DPRK and definitively ban all travel.<sup>176</sup>

In March 2009, as North Korea made preparations for a rocket launch, Japan responded with threats to shoot the missile out of the sky and impose new sanctions. On April 10, 2009, following the DPRK's April 5<sup>th</sup> rocket launch, existing sanctions were renewed for a full year, rather than the usual six month period. In addition, the Japanese government instituted stricter reporting requirements on the amount of funds people in Japan can remit or transfer to the DPRK. The new regulations reduce the amount of funds that can be transferred undeclared to the DPRK from 30 million yen (US\$298,000) to 10 million yen (\$99,000).<sup>177</sup> In addition, travelers can bring only 300,000 yen cash (\$2,980) to the DPRK without reporting it; this is down from a previous limit of over a million yen.

Although the new reporting requirements have been called a "new sanction," it does not seem to be a genuine sanction since it does not limit remittances to the DPRK. Japanese Chief Cabinet Secretary Takeo Kawamura told reporters, "The measure is aimed at getting a clearer picture of fund flows to North Korea (DPRK)." He also said that the move is "appropriate giving



consideration to the unsettled abduction issue."<sup>178</sup> Japan also considered but rejected, at least for the time being, a ban on all exports to the DPRK, apparently concluding that such a ban would have limited effect.<sup>179</sup> However, the Liberal Democratic Party, the majority party in Japan, is reportedly preparing a new sanctions proposal.<sup>180</sup>

### ***The Republic of Korea***

Although the ROK made its official reports to the UNSC Sanctions Committee regarding its compliance with UN Resolutions 1695 and 1718, throughout the Roh administration and into the Lee Myung Bak administration the provision of aid and the state of Inter-Korean economic cooperation has been the major indicator of ROK efforts to influence or punish DPRK behavior.

When UN Resolution 1695 was adopted, South Korea warned that hard-line attempts to block North Korean access to hard currency might push the country's ruling elite into a corner.<sup>181</sup> Although both South Korea and Japan responded to North Korea's July 2006 missile tests before UN Resolution 1695 was adopted, the scale of their responses was quite different: South Korea announced only that it would suspend further fertilizer and humanitarian assistance.\*

The ROK initially seemed to take the nuclear test much more seriously than it did the missile test. South Korean aid was again suspended, and the government issued a strong statement:

The act by the North (DPRK) has deserted the principle of the Sept. 19 joint statement of the countries engaged in the six-party talks. It is also an unpardonable provocation that challenged the UN Security Council's resolution 1695 adopted on July 15. It also nullified the 1991 Joint Declaration on the Denuclearization of the Korean Peninsula. We make it clear again that the North (DPRK) will be responsible for all inter-Korean issues that follow hereafter."<sup>182</sup>

The ROK suspension of its fertilizer and rice assistance following the missile test continued until after the February 13, 2007 agreement was signed. The end of the suspension

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\* Despite the ROK's announcement, it sent one assistance shipment already scheduled before the DPRK's missile launch, and it provided emergency assistance after intensive flooding in the DPRK.

was calibrated to respond to advances in the Six Party Talks. At a March 22 meeting of the Inter-Korean Exchange and Cooperation Promotion Committee, the ROK agreed to provide 300,000 MT of fertilizer and measles and malaria vaccines.<sup>183</sup> The first shipment of fertilizer aid was made on March 27,<sup>184</sup> and deliveries of flood aid assistance were also resumed at that time,<sup>185</sup> despite delays in resolving the BDA issue. Thirteen million dollars in contributions for WHO, UNICEF, and IVI [International Vaccine Institute] for projects aiding North Korean children was announced a month later on April 26, 2007.<sup>186</sup>

On April 22 the ROK government announced 400,000 MT of rice to be provided in the form of a loan.<sup>187</sup> However, the ROK did not deliver the aid, reportedly because of U.S. pressure<sup>188</sup> since the first period of the February 13 agreement had passed without the shutdown of the Yongbyon nuclear facility. On June 14, after inter-Korean disagreement over when aid would resume and in the wake of a World Food Programme announcement that assistance to 400,000 people in the DPRK would be suspended, the ROK announced a \$23 million donation to the World Food Programme,<sup>189</sup> in what could have been a compromise in response to U.S. pressure to continue to suspend its bilateral assistance. It was not until June 26, 2007 – the day after the BDA funds were finally transferred to the DPRK, and the shut down of the reprocessing plant at Yongbyon seemed imminent\* – that the first ROK shipment of 3,000 MT of rice was announced.<sup>190</sup> After heavy rains in August 2007 resulted in flooding, and substantial property damage and crop loss in the DPRK, the ROK provided millions dollars of assistance to the DPRK, and pledged millions more.

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\* The DPRK announced on July 15 that they had shut down the nuclear sites at Yongbyon, -- three nuclear power plants, a radiochemical laboratory and an atomic fuel factory.

Yet the ROK did not take extraordinary measures beyond the suspension of aid. South Korea continued its two joint economic projects with the DPRK, Gaeseong Industrial Complex\* and the tourist site Mount Guemgang, albeit with some modifications. According to newspaper reports, U.S. Assistant Secretary of State Chris Hill acknowledged that Gaeseong could be considered a “reform” project, but critiqued Mount Guemgang as no more than a way to give money to the DPRK.<sup>191</sup> However, Song Min-soon, President Roh Moo-hyun’s chief security advisor, stated “The government has never said we will suspend inter-Korean economic cooperation or Gaeseong Industrial complex or even the Mount Geumgang tour project.”<sup>192</sup> Instead, the programs will be “adjusted.”

After Yongbyon was shut down, President Roh announced an Inter-Korean summit to take place August 28-30 2007 in Pyongyang. Because of the August flooding, it was postponed until October 2-4. The Joint Declaration issued after the summit stated that the ROK and DPRK had agreed to “facilitate, expand, and further develop inter-Korean economic cooperation projects on a continual basis” and reached an agreement on “economic cooperation, including investments, pushing forward with the building of infrastructure and the development of natural resources.”<sup>193</sup> “Preferential conditions and benefits” were promised in the agreement.

However, the election of Lee Myung Bak in December, 2007 put the Joint Declaration on ice. When Lee took office in April, he promised to increase North Korean annual per capita income to \$3,000 within a decade – but linked inter-Korean economic cooperation to progress in the nuclear talks.<sup>194</sup> Lee also tied humanitarian assistance to the return of South Korean POWs

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\* Even before the nuclear test, Gaeseong Industrial Park was a symbol of the differences between the U.S. and ROK approaches. The ROK has invested million of dollars in the site in an attempt to gradually introduce the DPRK to international manufacturing and business practices while at the same time securing low-cost high-quality Korean-speaking workers for its own companies. The United States had refused to include products made in Gaeseong in the US-ROK Free Trade Agreement under consideration by the legislatures in both countries. The long-term U.S. rejection of Gaeseong-manufactured products would make it challenging for Gaeseong to be successful. The KORUS FTA was not ratified under the Bush Administration and does not seem to be a priority for the Obama Administration.

and abductees.<sup>195</sup> The Lee Myung Bak administration has continued to fund South Korean NGO activities, and made over \$15 million of contributions in 2008 to the World Health Organization (for malaria control and women and children's health) and UNICEF (humanitarian assistance).<sup>196</sup> All bilateral contributions and loans of food and fertilizer continue to be suspended, as well as food assistance through the WFP.

On April 1, 2008, the DPRK eventually responded by lambasting President Lee, the first direct insult by the North Koreans of a South Korean president since 2000. Later that month, the DPRK cancelled delegation visits to Kaesong and blocked the visits of individual Kaesong officials.<sup>197</sup> Following the July 11 fatal shooting of a South Korean tourist at Mount Geumgang by a member of the KPA, the tourism site was shut down, pending an on-site investigation demanded by the ROK. The DPRK has never agreed to a joint investigation, and the tourism site remains shuttered.

As the DPRK began preparations for a rocket launch in the spring of 2009, DPRK-ROK relationships further deteriorated, with the DPRK's periodic closure of the DPRK/ROK border at Gaeseong (in response to the US-ROK joint military exercises), sometimes leaving South Korean workers on the DPRK side as short-term hostages. On March 30, North Korea arrested a South Korean engineer working for Hyundai at Gaeseong Industrial Complex who they accused of insulting the DPRK in a conversation with a North Korean waitress.<sup>198</sup> On April 22, 2009, in response to a request from the DPRK, North and South Korea met for the first round of talks in over a year.\* The talks ended after 22 minutes when North Korea refused to allow South Koreans to see the imprisoned Hyundai employee.<sup>199</sup>

In March, as preparations for the launch intensified, the ROK announced that it was considering joining the Proliferation Security Initiative (PSI) if the launch took place. North

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\* At the talks, North Korea proposed new salaries for North Korean workers in Gaeseong.

Korea countered that they would consider South Korean membership in PSI “an act of war.”<sup>200</sup> After the launch, the ROK continued to publically discuss the possibility of joining PSI.<sup>201</sup> Some observers believe that South Korea has made an irrevocable decision to join PSI, and is merely withholding the announcement as a counter-threat to North Korea<sup>202</sup> or until the situation is right (for example, when the Hyundai employee has been released).

Even more than the loss of momentum in economic engagement, ROK participation in PSI would signal an end to the “engagement policy” pursued by the previous two South Korean administrations. The decision will likely be made over the next couple of weeks.

### *China*

Like the Republic of Korea, China indicated that it did not view pursuit of extraordinary measures as necessary for compliance to UN Resolutions 1695 and 1718. However, despite an overt reluctance to chastise the DPRK according to U.S. or Japanese standards, China’s stance toward the DPRK temporarily hardened as result of the 2006 missile and nuclear tests. China not only adopted the strongly worded UN Resolution 1695, but also had earlier allowed North Korean assets to be frozen in Macau, one of the PRC’s two Special Administrative Regions -- despite North Korea’s refusal to return to the Six-Party Talks unless U.S. financial sanctions were lifted.

China’s stance seemed to harden further with the nuclear test. The Foreign Ministry issued a statement calling the test “brazen” and saying that it “resolutely opposed the test,”<sup>203</sup> although, as noted above, China expressed reservations about some of the provisions of 1718, including inspections of DPRK cargo.

Soon after the resolution was adopted, China’s inspection of trucks going across its borders increased, although the inspections themselves were not thorough.<sup>204</sup> One newspaper

reported that China did not renew visas for North Koreans working legally in China,<sup>205</sup> an action that would further dampen PRC-DPRK trade already negatively affected by the *Banco Delta Asia* ripple effect. China also accelerated the extension of a barbed wire fence along the DPRK-China border, (interpreted by some as a prophylactic measure indicating that the PRC anticipates either regime collapse or a new influx of refugees pushed out by a new food crisis in the DPRK).<sup>206</sup>

Most significantly, four banks in China temporarily froze DPRK funds.<sup>207</sup> These sanctions were perceived by some observers to be “sudden and shockingly effective;” they left little room for the DPRK to maneuver.<sup>208</sup> The freezing of accounts did not last long; China lifted the ban soon as the DPRK returned to the Six Party Talks. Even so, the targeted sanctions were in effect long enough to demonstrate their ability to impede the DPRK’s ability to do business.

Yet while China was willing to implement such sanctions on a temporary basis, either as a punitive measure for the nuclear test or to pressure the DPRK back to the negotiating table, virtually all observers doubt that China would impose sanctions for the long term, or take any actions that would hasten North Korea’s collapse (such as a severe reduction in food or energy aid). For example, China reacted negative to the U.S. Treasury Department’s Ruling in BDA in March 2007.<sup>209</sup> Foreign Ministry Spokesman Qin Gang expressed “deep regret over the US decision on the BDA, mentioning “repeated concerns expressed by the Central and Macau SAR Government over the issue.”<sup>210</sup>

As noted in the UN section above, China’s reaction to the April 5, 2009 launch has been muted in comparison with its reaction to the July 5, 2006 long-range missile launch. A range of theories have circulated regarding China’s stance, including China’s appreciation of the advance notification provided by the DPRK (as noted above), China’s desire to preserve space

exploration as a sovereign right, an internal Chinese evaluation that they lost leverage over the DPRK by participating publically in multilateral measures in 2006, and even the possibility that, with the Olympics behind them, China is less inclined to back the United States diplomatic efforts in this regard.<sup>211</sup>

However, despite their reluctance to warn the DPRK against launching the rocket, China endorsed a Presidential Statement that, while stopping short of calling the rocket launch a “missile launch,” did say it contravened UNSCR 1718 (2006). By agreeing to the Statement, China supported language strengthening the implementation of paragraph 8 of the resolution. Then, as noted above, China immediately announced that they disagreed with new sanctions against the DPRK. However, a week and half later, China agreed to sanctioning the three DPRK firms.

China’s intentions can be difficult to interpret from its contradictory acts and statements. The real indicator of China’s support for the UNSC and Sanctions Committee actions will be its willingness to freeze the assets of the sanctioned firms. If any of those three firms hold funds in Chinese bank accounts, or if the Tanchon Bank relies on Chinese banks to do business, Chinese sanctions or a freeze have the potential to be effective.

## **Conclusion**

Over the last several years many nations, with the United States and Japan at the forefront, have introduced measures to restrict the DPRK’s access to funds and WMD materials. With UN Resolution 1718, other nations were compelled to institute or expand their own laws. The United States also implemented new sanctions. U.S. actions, although signaling the gravity of American displeasure with DPRK actions, had minimal effect on the North Korea economy as a whole or

on the DPRK ruling elite, given the actual amount of trade conducted between the DPRK and the United States.

Historians may always be divided, but some will likely claim that the Treasury Department actions in 2005 pushed the DPRK back to the bargaining table. The Bush administration has asserted that these types of measures hold advantages over broad-based sanctions programs, citing the ability “to single out those responsible for supporting terrorism, proliferation, and other criminal activities, rather than an entire country,” thus making them “more apt to be accepted by a wider number of international actors and governments.”<sup>212</sup> The Bush administration also believed that the partnership of the private sector made the new measures more successful and increased the efficacy of the remaining sanctions.<sup>213</sup>

In 2008, the United States lifted two key elements of its sanctions framework, the Trading with the Enemy Act authority and the State Sponsor of Terrorism designation. The impact of these actions was minimal from a legal perspective. Nearly all sanctions remain, including prohibitions against trade and the export and re-export of dual use items. Although DPRK access to the World Bank is no longer prohibited under U.S. law, the U.S. may still choose to block it, and the U.S. is still obligated not to support DPRK access to the IMF.

While these minor changes to US sanctions law may not have a significant economic impact on the DPRK, their potential symbolic impact seemed considerable at the time. This is particularly true in the post- 9/11 world, in which the word “terrorist” has a greater association in the United States with evil and enmity than ever before. Many members of Congress opposed the removal from the Terrorism List. Japan also criticized the U.S. for an action they considered premature.<sup>214</sup>



However, any momentum that might have been ushered in by these actions was slowed down by continuing disagreements over a verification protocol, which had ostensibly been resolved prior to the Terrorism List removal in October 2008. Any remaining possibility for continued progress vanished, at least temporarily, with the DPRK's April 5, 2009 rocket launch, the resulting UNSCR Presidential Statement on April 13, and the announcement of sanctions of three DPRK firms on April 24.

The effectiveness of these sanctions will depend, in large part, on the willingness of the Chinese government to implement them. At the same time, the ROK is poised to join PSI, an action that will likely severely hinder already deteriorating inter-Korean economic relations. And, based on KCNA reports, the DPRK has taken the international response to its launch as proof of bias and unfair UN and US treatment.

Although a "cooling off period" seems inevitable at this point, it seems likely that the Six Parties (or a new diplomatic grouping) will seek to return to the negotiating table at some point to re-open discussion of DPRK denuclearization and to explore again the possibility of economic and other types of DPRK engagement with the rest of the world. However, all sides may find it a difficult and slow process to rebuild the momentum lost in the last half a year. It will take a great deal of effort for the promise of sanction reversals implied by US actions in October 2008 to overcome the new momentum of April 2009.

*This report replaces a report dated February, 2009  
Please check the NCNK website for revised reports  
[www.ncnk.org](http://www.ncnk.org)*

## Summary of U.S. Sanctions April 2009 <sup>215</sup>

<p><b>Travel:</b> U.S. citizens do not need government permission before undertaking travel and travel services may organize group travel to the country. Normal travel transactions are not limited.</p>
<p><b>Imports:</b> Imports coming directly from the DPRK or through third countries must have prior notification and approval from OFAC. The licensing process is meant to ensure that imports are not contributing to the DPRK military or missile programs.</p>
<p><b>Exports:</b> Access to Commerce Control List (CCL) items such as “computers, software, national-security controlled items and service or repair of such items” is restricted. Trade and transfer of funds related to missile equipment or technology, and dual-use items such as electronics, space systems or equipment are prohibited. Items on the State Department’s Munitions List remain under sanction, the U.S. maintains an arms embargo against the DPRK and, under the U.S. Nuclear Regulatory Commission nuclear material also remains under sanction. As of January 26, 2007, licenses are required for “the export and re-export of virtually all items subject to the EAR to North Korea, except food and medicines not listed on the CCL.” In addition, a list of luxury items is explicitly prohibited from export and re-export to the DPRK. Applications for licenses to export or re-export “non-food, non-medical humanitarian items” are likely to be favorably considered.</p>
<p><b>North-Korean Flagged Vessels</b> Announced in April 2006: Foreign Assets Control Regulations prohibit “US persons from owning, leasing, operating or insuring any vessel flagged by NK.”</p>
<p><b>Sanctions Targeting Specific Companies</b> In addition to the general sanctions listed above, the U.S. Department of Treasury has identified certain North Korean companies as engaged in proliferation activities, and prohibits U.S. persons/entities from engaging in certain transactions with those companies.<sup>216</sup></p>
<p><b>Other U.S. Department of Treasury Actions:</b> On September 12, 2005, The U.S. Department of Treasury designated Banco Delta Asia (BDA), a bank in Macau with North Korean account holders, as a “primary money laundering concern”<sup>217</sup> and on March 14 2007 issued a rule barring Banco Delta Asia from “accessing the U.S. financial system, either directly or indirectly.” On December 13, 2005 the Treasury Department issued an advisory warning U.S. financial institutions to “guard against the abuse of their financial services by North Korea,” which might be seeking new accounts “for the purpose of conducting illicit activities.”</p>

## Timeline: U.S. Sanctions and other Treasury Departments Actions against the DPRK

1950	Korean War breaks out. United States institutes total embargo on exports to North Korea. President Truman declares a state of national emergency in U.S. because of Korean War. Department of Treasury issues Foreign Assets Control Regulations (FACR), forbidding financial transactions by, or on behalf of, North Korea, including transactions for travel. These regulations also froze North Korean assets held under U.S. jurisdiction.
1953	Armistice halts Korean War.
1955	U.S. issues first International Traffic in Arms Regulations (ITAR) which includes North Korea on list of countries that should be denied, “licenses, other approvals, exports and imports of defense articles and defense services.”
1965	When Export Administration Regulations (EARs) are revised categorizing countries according to level of restriction, North Korea continues to be on the list of most restricted countries—Country Group Z.
1975	Korea- related Foreign Asset Control Regulations (FACRs) revised to prohibit transactions related to agricultural products that contained raw goods originating in the DPRK.
1985	DPRK joins NPT.
1987	KAL flight 858 is bombed, reportedly by North Korean agents.
1988	North Korea is added to U.S. Department of State’s list of state sponsors or supporters of international terrorism.
1989	EARs revised to allow export of “commercially-supplied goods intended to meet basic human needs” to DPRK with licenses granted on a case-by-case basis. Revisions ease regulations concerning travel to DPRK for special activities. Revisions to the IEEPA to reflect advances in media (such as CDs, etc.) allow for ease in flow of information materials between U.S. and certain countries, including DPRK.
1991	North and South Korea join the UN.
1992	FACR revised to allow telecommunication between U.S. and DPRK.
1992-on-going	U.S. sanctions various North Korean entities for violation of U.S. missile nonproliferation laws found in sections of the Arms Export Control Act, Export Administration Act, and Iran Nonproliferation Act of 2000. Sanctions passed on North Korean entities in 1992, 1996, 1997, 1998, 2000, 2001, 2002 and 2006 often alongside sanctions on Iranian, Syrian or Pakistani entities.
1994	U.S. and DPRK Sign the Agreed Framework.
1995	A range of economic sanctions eased. New FACR revisions allow unlimited travel-related transactions, establishment of news organization offices and transactions related to provision of LWR. The revisions also allow for the importation of North Korean magnesite and magnesia.
1996	FACR revision allows for humanitarian donations in response to DPRK floods and famine.
1997	FACR revision authorizes payments for services rendered by North Korea to U.S aircraft in connection with overflight of, or emergency landing, in the DPRK.
1998	The DPRK test-fires a missile over Japan.

1999	The DPRK announces a self-imposed moratorium on missile testing. President Clinton announces the most significant easing of trade and travel restrictions since their imposition in 1950.
2000	EARs and FACRs revised to allow for easing of these trade and travel sanctions. Regulations on financial transactions are also loosened so that most transactions are permitted.
2002	The Agreed Framework begins to erode when North Korea reportedly admits to having a uranium enrichment program, reactivates its reactor at Yongbyon and expels IAEA inspectors and the United States stops oil shipments to DPRK.
2003	DPRK withdraws from NPT
2005	<p>March 2: North Korea announces an end to its missile-testing moratorium.</p> <p>May 1: North Korea tests a short-range missile.</p> <p>June 28: The US imposes financial sanctions on three North Korean entities it accuses of involvement in WMD proliferation</p> <p>September 12: The U.S. Department of Treasury designates Banco Delta Asia in Macau an institution of “money laundering concern;” Macanese authorities respond by freezing North Korean accounts.</p> <p>September 19: The Fourth Round of Six-Party Talks produces the “September Joint Statement,” in which parties agree to the goal of ending North Korea’s nuclear weapons program. The U.S. sanctions two North Korean companies.</p> <p>October 21: The U.S. Department of Treasury Freezes Assets of eight North Korean entities for involvement in WMD proliferation</p> <p>December 13: The U.S. Department of Treasury issues an advisory warning U.S. and international financial institutions to "guard against the abuse of their financial services by North Korea.”</p>
2006	<p>March: A North Korean Delegation visits the U.S. to discuss the BDA designation; the meeting is inconclusive. The following day, North Korea tests a short-range missile.</p> <p>March 30: The U.S. freezes the US-controlled assets of a Swiss firm and a Swiss individual that allegedly have business dealings with a North Korean entity named by the U.S. government as a WMD proliferator.</p> <p>April: New OFAC regulations, effective in May, make it illegal for U.S. persons to own, lease, operate or insure any vessel flagged by North Korea.</p> <p>July 5: The DPRK test-fires seven missiles, including a Taepo-Dong long-range missile.</p> <p>July 15: The UN Security Council unanimously adopts Resolution 1695.</p> <p>October 3: North Korea announces unspecific plans to test a nuclear device.</p> <p>October 6: The UNSC Issues SC 8859 warning North Korea not to test a nuclear device.</p> <p>October 9: North Korea announces that it has exploded a nuclear device.</p> <p>October 13: New Japanese sanctions, announced October 11, go into effect.</p> <p>October 14: The UN Security Council unanimously adopts Resolution 1718.</p> <p>November 13: The US submits a report to the UN describing implementation of 1718 under existing law and providing a provisional list of luxury goods prohibited for export.</p> <p>December 7: President announces imposition of “Glenn Amendment” and new Atomic Energy Act sanctions, mandated by law to be applied to non-nuclear-weapons states that detonate nuclear devices.</p>

2007	<p>January 26: The U.S. Bureau of Industry and Security (BIS) amends the EAR to impose license requirements for the export and re-export of “virtually all items subject to the EAR” except food and medicines not listed on the Commerce Control List and releases a list of luxury items prohibited for export and re-export to the DPRK.</p> <p>February 13: Agreement signed in which the U.S. agrees to “begin the process of removing the designation of the DPRK as a state-sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK.”</p> <p>October 3: “Second-Phase Actions for the Implementation of the Joint Statement” signed in which the U.S. reiterates TWEA and Terrorist list commitments.</p> <p>October 18: President Bush waives provisions of the Trafficking Victims Protection Act of 2000 to allow the use of U.S. government funds for cultural and other exchanges.</p>
2008	<p>June 26: President Bush announces the termination of the application of the Trading with the Enemy Act with respect to the DPRK, to go into effect on June 27, and notifies Congress of his intent to rescind North Korea's designation as a state sponsor of terror in 45 days, if certain conditions are met. President Bush also issues an executive order 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.”</p> <p>June 30: Legislation giving the President limited powers to waive “Glenn Amendment Sanctions” becomes Public Law 110-252.</p> <p>October 11: The State Department announces the rescission of the designation of the DPRK as a state sponsor of Terror.</p>
2009	<p>January 21: The Obama administration authorizes sanctions on three DPRK firms: KOMID, Sino-Ki and Moksong Trading Company</p> <p>April 5: The DPRK launched a rocket, claiming to put a satellite into orbit.</p> <p>April 13: The UNSC issued a Presidential Statement saying the launch contravened UNSCR 1718 (2006) and agreeing to “adjust” measures under UNSCR 1718 Paragraph 8.</p>

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	USA	European Union*	Australia	Japan	Switzerland	Canada	Singapore	Russia
<b>Transportation</b>	-Yachts & other aquatic recreational vehicles -Luxury automobile & other motor vehicles -Automobiles to transport people (other than public transportation) incl. station wagons -Racing Cars, snow mobiles, motorcycles -Personal transportation devices (standup motorized scooters)	-Luxurious vehicles for the transport of persons on earth, air, or sea as well as their accessories & spare parts	-Yachts & pleasure craft -Automobiles & other vehicles to transport people	-Motorboats, yachts & others -Motorcars -Motorcycles	-Luxury vehicles of air, water & their accessories & spare parts	-Private aircraft	-Luxury motorboats & yachts -Luxury cars	-Passenger cars, the cost of which exceeds three million rubles (\$15,653 USD)
<b>Cosmetics &amp; Makeup</b>	-Cosmetics, incl. beauty & make up -Perfumes & toilet waters	-Perfumes & toilet waters -High value beauty, make up & skin preparations	-All Cosmetics -Perfumes & toilet waters	-Makeup -Perfumes	-Perfumes & toilet waters	-Perfumes	-Perfumes -Cosmetics	-Perfumes, the total cost of which exceeds 5,000 rubles (\$192.75 USD)
<b>Foods, Alcohol, &amp; Tobacco</b>	-Tobacco products -Alcoholic beverages wine, liquor, ale & beer	-Cigars & cigarsillos -Wines (incl. sparkling), spirits & spirituous beverages -Caviar & caviar substitutes -Truffles & preparations thereof	-Tobacco products -All wine & spirits -Caviar -Crustaceans (e.g. rock lobster) -A balone -Mollusks & aquatic invertebrates (e.g. oysters)	-Tobacco -Alcoholic beverages -Caviar & caviar substitutes -Filets of tuna -Beef	-Cigars -Wines & spirits -Caviar	-Cigarettes -Alcoholic beverages -Lobster -Gourmet foods & ingredients	-Cigars -Wines & spirits	-Vintage brandy, wine & spirits, the total cost of which exceeds 5,000 rubles (\$192.75 USD)

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	USA	European Union*	Australia	Japan	Switzerland	Canada	Singapore	Russia
<b>Jewelry &amp; Precious Metals</b>	-Luxury watches: wrist, pocket & those with a case of precious metal -Jewelry with pearls, gems, precious stones, incl. diamonds, sapphires, rubies & emeralds -Jewelry of precious metal or clad with precious metal	-Clocks, watches & their parts of high value -Pearls, semi-precious stones, articles of pearls, jewelry, gold or silver-smiths -Cutlery of precious metal or plated with precious metal	-Watches & docks -Precious & semi-precious stones (incl. diamonds & pearls) -Jewelry -Precious metals -Silver & gold	-Wristwatches & other watches -Jewelry -Precious metals -Precious metalwork	-Watches & time pieces of high value -Pearls, gems & jewelry -Tablecloths with gold, silver & platinum	-Watches -Jewelry -Gems -Precious metals	-Watches of metal clad with a precious metal -Precious jewelry	-Gold & platinum jewelry, & those with diamonds & gems, the total cost of which exceeds 50,000 rubles (\$1,927 USD)
<b>Apparel, Fashion &amp; Designer Items</b>	-Leather articles -Fur skins & artificial furs -Fashion accessories: leather travel goods, vanity cases, binocular & camera cases, handbags, wallets, designer fountain pens, silk scarves -Designer clothing: leather apparel & clothing accessories -Silk articles	-Leather & travel goods, hand bags, & similar articles of high value -Garments, clothing, accessories & shoes of high value (regardless of their material)	-Leather travel goods, apparel, & clothing accessories -Furs -Fountain pens	-Leather bags, clothes, & others. -Fur skins & artificial fur products -Fountain pens	-Leather goods of high value -Fur products	-Designer clothing & accessories -Furs	-Leather bags & clothes -Fur products	-Fur, the cost of which exceeds 250,000 rubles (\$9,637 USD)



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- <sup>1</sup> Rennack, Dianne E., “North Korea: Economic Sanctions,” Report for Congress, Congressional Research Service, The Library of Congress: Washington, D.C., Updated October 17, 2006, 29-32. Accessed at: [http://www.ncnk.org/resources/publications/NCNK\\_Economic\\_Sanctions\\_Current/file\\_view](http://www.ncnk.org/resources/publications/NCNK_Economic_Sanctions_Current/file_view). One of these companies, the Changgwant Sinyong Corporation, was first cited in May 1996, and had been cited thirteen times by October 2006.
- <sup>2</sup> “Memorandum of DPRK Foreign Ministry on Resumption of Six-Party Talks,” March 2, 2005, 3-4. (Accessed at: [http://www.ncnk.org/resources/publications/DPRK\\_Foreign\\_Ministry\\_Ends\\_Missile\\_Test\\_Moratorium\\_March\\_2\\_2005.doc/file\\_view](http://www.ncnk.org/resources/publications/DPRK_Foreign_Ministry_Ends_Missile_Test_Moratorium_March_2_2005.doc/file_view).)
- <sup>3</sup> Gross, Donald G. “Good News Summit Kicks Disputes Down the Road,” in *Comparative Connections*, Vol 7, No. 2, July 2005. (Accessed at <http://www.csis.org/media/isis/pubs/0502q.pdf>.)
- <sup>4</sup> Glosserman, Brad “Forward on Trade as Nuclear Talks Sputter” in *Comparative Connections*, Vol 8, No. 1, April 12, 2006 (Accessed at [http://www.csis.org/images/stories/pacfor/0601qus\\_skorea.pdf](http://www.csis.org/images/stories/pacfor/0601qus_skorea.pdf).)
- <sup>5</sup> Rennack, Dianne op. cited., 19, 31-32.
- <sup>6</sup> U.S Department of Treasury Press Release, JS4144, March 30, 2006, accessed at <http://www.treas.gov/press/releases/js4144.htm>
- <sup>7</sup> Presidential Determination No. 2007-7 of December 7, 2006, “Presidential Determination on Sanctions Against North Korea for Detonation of a Nuclear Explosive Device”, January 16, 2007 Federal Register (Volume 72, no. 9) Presidential Documents; Page 1897-1899.) (Accessed at: [http://www.ncnk.org/resources/publications/President\\_Invokes\\_Glenn.doc/file\\_view](http://www.ncnk.org/resources/publications/President_Invokes_Glenn.doc/file_view).)
- <sup>8</sup> January 26, 2007 Federal Register (Volume 72, no. 17), 3722-3730, (Accessed at [http://www.ncnk.org/resources/publications/Fed\\_Register\\_Enacting\\_1718\\_Jan\\_07.pdf/file\\_view](http://www.ncnk.org/resources/publications/Fed_Register_Enacting_1718_Jan_07.pdf/file_view).)
- <sup>9</sup> Proclamation 8271 of June 26, 2008, Termination of the Exercise of Authorities Under the Trading With the Enemy Act With Respect to North Korea: Pages 36785-36786 of the June 26, 2008 Federal Register (Vol 73, no. 125) Accessed at: [http://www.ncnk.org/resources/publications/TWEA\\_Termination\\_Proclamation\\_USG\\_June\\_26\\_2008.pdf/file\\_view](http://www.ncnk.org/resources/publications/TWEA_Termination_Proclamation_USG_June_26_2008.pdf/file_view).
- <sup>10</sup> Certification of Rescission of North Korea’s Designation as a State Sponsor of Terrorism: Pages 3751-3752 of the Federal Register (Volume 73, no. 125), July 1, 2008 (Accessed at: [http://www.ncnk.org/resources/publications/Certification\\_Terrorism\\_List\\_Removal\\_USG\\_June\\_26\\_2008.pdf/file\\_view](http://www.ncnk.org/resources/publications/Certification_Terrorism_List_Removal_USG_June_26_2008.pdf/file_view).)
- <sup>11</sup> “Briefing on North Korea With Special Envoy for the Six-Party Talks Ambassador Sung Kim, Assistant Secretary of State for Public Affairs Sean McCormack, Assistant Secretary of State for Verification, Compliance, and Implementation Paula DeSutter, and Acting Assistant Secretary of State for International Security and Nonproliferation Patricia McNeerney” Sean McCormack, Spokesman, October 11, 2008. Accessed at: [http://www.ncnk.org/resources/publications/Verification\\_Agreement\\_US\\_Press\\_Briefing\\_Oct\\_11\\_08.doc/file\\_view](http://www.ncnk.org/resources/publications/Verification_Agreement_US_Press_Briefing_Oct_11_08.doc/file_view). See also Public Notice 6415: Rescission of Terrorism Determination, October 11 2008, printed in the Federal Register, Friday, October 24, 2008, Vol 73, No. 207, Page 63540 (Accessed at: [http://www.ncnk.org/resources/publications/Terrorism\\_List\\_Removal\\_Fed\\_Reg\\_Oct\\_11\\_2008.pdf/file\\_view](http://www.ncnk.org/resources/publications/Terrorism_List_Removal_Fed_Reg_Oct_11_2008.pdf/file_view))
- <sup>12</sup> Rennack, Dianne E., op. cited, pp. 9-10, p. 18.
- <sup>13</sup> Presidential Determination No. 2007-7 of December 7, 2006, op. cited.
- <sup>14</sup> Rennack, Dianne E., op. cited, 9-10.
- <sup>15</sup> Rennack, Dianne E., op. cited 18.
- <sup>16</sup> Rennack, Dianne E. op. cited 26.
- <sup>17</sup> 12 U.S.C. Section 95a, 65<sup>th</sup> Congress, October 6, 1917, also codified as 50USC app5.
- <sup>18</sup> Rennack, Dianne E., op cited 17
- <sup>19</sup> “Major Provisions: Export Administration Act of 2001,” 107<sup>th</sup> Congress, September 6, 2001. (Accessed at: <http://banking.senate.gov/docs/eea/mprov01.htm>)
- <sup>20</sup> Rennack, Dianne E., op cited 10.
- <sup>21</sup> Nicksch, Larry and Perl, Raphael, op. cited., 11. This is under (6)(j)(4) of the Export Administration Act.
- <sup>22</sup> Ibid, 11
- <sup>23</sup> Ibid, 14
- <sup>24</sup> Rennack, Dianne E., op cited 11.
- <sup>25</sup> Ibid, 11
- <sup>26</sup> See Rennack, Diane, op. cited, 22-28 for a fantastically useful and comprehensive chart displaying the laws triggered by TWEA and the State Sponsors of Terrorism list; this list is drawn entirely from Rennack’s chart.



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- <sup>27</sup> Ibid, 11
- <sup>28</sup> Ibid, 11.
- <sup>29</sup> Niksch, Larry and Perl, Raphael, op. cited., 11.
- <sup>30</sup> Ibid, 10
- <sup>31</sup> Ibid, 17.
- <sup>32</sup> Foreign Assets Control Regulations, Title 31, Part 500, Section 500.580, February 16, 1995.  
(Accessed at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/31cfr500\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/31cfr500_03.html))
- <sup>33</sup> Foreign Assets Control Regulations, Title 31, Part 500, Sections 500.580- 500.584, February 16, 1995.
- <sup>34</sup> Rennack, Dianne E., op. cited 17.  
Foreign Assets Control Regulations, Title 31, Part 500, Section 500.585, April 10, 1997.  
(Accessed at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/31cfr500\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/31cfr500_03.html))
- <sup>35</sup> Noland, Marcus, “The Legal Framework of US–North Korea Trade Relations,” Op-ed in *JoongAng Ilbo*, April 27, 2004. (Accessed at: <http://www.iie.com/publications/opeds/oped.cfm?ResearchID=206>)
- <sup>36</sup> Foreign Assets Control Regulations, Title 31, Part 500, Section 550.586, June 19, 2000.  
(Accessed at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/31cfr500\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/31cfr500_03.html))
- <sup>37</sup> Rennack, Dianne E., op. cited 12.
- <sup>38</sup> The Harmonized Tariff Schedule of the United States can be accessed online at:  
<http://www.usitc.gov/tata/hts/bychapter/index.htm>.
- <sup>39</sup> US International Trade Commission, Tariff Information Center  
(Accessed at: <http://www.usitc.gov/tata/index.htm>)
- <sup>40</sup> Rennack, Dianne E., op. cited 15.
- <sup>41</sup> Noland, Marcus, “US Economic Diplomacy Toward North Korea,” Op-Ed in *JoongAng Ilbo*, May 21, 2004.
- <sup>42</sup> Noland, Marcus, “The Legal Framework of US–North Korea Trade Relations,” op. cited.
- <sup>43</sup> Rennack, Dianne E., op. cited 15.
- <sup>44</sup> Mark E. Manyin and Mary Beth Nikitin, “Assistance to North Korea,” Congressional Research Report R40095, Updated April 1, 2009. (Accessed at:  
[http://www.ncnk.org/resources/publications/CRS\\_Assistance\\_to\\_DPRK\\_April\\_09\\_R40095.pdf/file\\_view](http://www.ncnk.org/resources/publications/CRS_Assistance_to_DPRK_April_09_R40095.pdf/file_view))
- <sup>45</sup> Chosun Ilbo, “U.S. Slaps Sanctions on Two North Korean Firms,” *Chosun Ilbo*, August 7, 2006. (Accessed at:  
<http://english.chosun.com/w21data/html/news/200608/200608070008.html>). KOMID was sanctioned again in September 2007. (Federal Register, September 26, 2007, (Volume 72, Number 186), Page 54709, Public Notice 5944. (Accessible at  
[http://www.ncnk.org/resources/publications/Federal%20Register\\_9\\_26\\_2007\\_KOMID\\_Sanction.doc/file\\_view](http://www.ncnk.org/resources/publications/Federal%20Register_9_26_2007_KOMID_Sanction.doc/file_view).)  
For a complete list of sanctioned North Korean entities, see the Treasury Department’s list of “Specially Designated Nationals” at <http://www.treas.gov/offices/enforcement/ofac/sdn/>” or  
<http://www.treas.gov/offices/enforcement/ofac/sdn/ctrylst.txt>.
- <sup>46</sup> United States Treasury, “Swiss Company, Individual Designated by Treasury for Supporting North Korean WMD Proliferation,” Press Release, United States Treasury: Washington, D.C., March 30, 2006.
- <sup>47</sup> United States Department of Treasury, Office of Foreign Assets Control, “What you Need to Know about Sanctions: North Korea,” accessed at  
<http://www.treasury.gov/offices/enforcement/ofac/programs/nkorea/nkorea.pdf>
- <sup>48</sup> Section 311 of the Patriot Act has been codified as 31 USC 5381A, and the Department of Treasury actions take place under that code.
- <sup>49</sup> Mihm, Stephen, op. cited.
- <sup>50</sup> “Treasury Briefs North Korea on U.S. Financial System Protections: Regulatory Action on Macau Bank Not meant as a Sanction on North Korea,” March 7, 2006, accessed at <http://usinfo.state.gov/eap/Archive/2006/Mar/08-685510.html>.
- <sup>51</sup> Rennack, Diane, op. cited, 4
- <sup>52</sup> “Guidance to Financial Institutions on North Korean Government Agencies and Associated Front Companies Engaged in Illicit Activities,” U.S. Department of Treasury, December 13, 2005, accessed at  
<http://www.fincen.gov/advisory.pdf>. The authors are indebted to Gordon Flake for bringing this to our attention.
- <sup>53</sup> Testimony of Stuart Levey, Under Secretary Terrorism and Financial Intelligence U.S. Department of the Treasury. Senate Appropriations Subcommittee, April 6, 2006, accessed at  
<http://www.treasury.gov/press/releases/js4163.htm>.

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- <sup>54</sup> "North Korea's Nuclear Test: The Fallout;" November 13, 2006 International Crisis Group, accessed from their home page, <http://www.crisisgroup.org/home/index.cfm?id=4502&l=1>. Also, the collection of articles under "Tanchon Commercial Bank" on the DPRK Economy Watch Website is particularly useful. (Accessed at <http://www.nkeconwatch.com/category/dprk-organizations/state-offices/state-fiscal-and-financial-committee/foreign-trade-bank/tanchon-commercial-bank/>.) Thanks to HyoJung Jang for identifying this source.
- <sup>55</sup> At an April 25, 2006 hearing of the Subcommittee on Federal Financial Management, Government Information, and International Security, of the U.S. Senate Committee on Homeland Security and Governmental Affairs Michael Merrit, Deputy Assistant Director, Office of Investigations U.S. Secret Service, testified regarding "supernotes" they believed originated from the DPRK. See Testimony of Michael Merrit, accessed at [http://hsgac.senate.gov/\\_files/042506Merritt.pdf](http://hsgac.senate.gov/_files/042506Merritt.pdf). For more information regarding North Korean illicit activities see Chapter 3 (pages 117-133) in Marcus Noland's *Avoiding the Apocalypse: The Future of the Two Koreas*, Institute for International Economics: Washington D.C., June 2000.
- <sup>56</sup> Levey, Stuart, Prepared Remarks By Stuart Levey Under Secretary for Terrorism and Financial Intelligence Before the American Enterprise Institute for Public Policy Research, September 8, 2006. (Accessed at: <http://www.ustreas.gov/press/releases/hp86.htm>)
- <sup>57</sup> Cowie, Nigel "The US Financial Allegations: What they Mean" Nautilus Institute, Policy Forum Online 06-35A: May 4th, 2006. (Accessed at <http://www.nautilus.org/fora/security/0635Cowie.html>.)
- <sup>58</sup> "Treasury Finalizes Rule Against Banco Delta Asia: BDA Cut Off From U.S. Financial System." March 14, Department of Treasury HP-315
- <sup>59</sup> See, for example, Anna Fifield, "North Korea may get back cash at a price," *Financial Times*, May 16, 2007, (Accessed at: <http://www.ft.com/cms/s/1cd01926-03cf-11dc-a931-000b5df10621.html>) and Greg Torode, "Pyongyang gets its cash, raising hopes of talks Funds transferred from Banco Delta to Russian Bank Account," *South China Morning Post*, June 15, 2007, (Accessed at: <http://www.scmp.com/portal/site/SCMP/menuitem.2c913216495213d5df646910cba0a0a0/?vgnextoid=228928e540b23110VgnVCM100000360a0a0aRCRD&vgnnextfmt=teaser&ss=Asia&s=News>).
- <sup>60</sup> "North Korea Confirms Fund Dispute Resolved", *The Financial Times*, June 25, 2007 (Accessed at: <http://news.moneycentral.msn.com/provider/providerarticle.aspx?feed=FT&Date=20070625&ID=7077006>).
- <sup>61</sup> Glen Kessler, "North Korea Gets \$25 Million Frozen by U.S. Probe," *The Washington Post*, June 15, 2007, Section A, Page 17. While the funds were in transit, the DPRK extended an invitation to an IAEA team to visit their nuclear facilities. Secretary of State Hill made a surprise visit to Pyongyang as the funds were received, underscoring the U.S. expectation that the shut down of North Korean nuclear facilities would soon follow.
- <sup>62</sup> S. 3728 (109<sup>th</sup> Congress), "The North Korea Non-Proliferation Act of 2006," became Public Law No: 109-353.
- <sup>63</sup> See [http://www.ncnk.org/resources/publications/House\\_Consideration\\_of\\_2006\\_DPRK\\_Non\\_Proliferation\\_Act.doc/file\\_view](http://www.ncnk.org/resources/publications/House_Consideration_of_2006_DPRK_Non_Proliferation_Act.doc/file_view); Sen. Frist expressed similar views. [http://www.ncnk.org/resources/publications/Senate\\_Consideration\\_of\\_2006\\_DPRK\\_Non\\_Proliferation\\_Act.doc/file\\_view](http://www.ncnk.org/resources/publications/Senate_Consideration_of_2006_DPRK_Non_Proliferation_Act.doc/file_view)
- <sup>64</sup> "Letter from the Permanent Representative to the United Nations addressed to the Chairman of the [1718 Sanctions] Committee." November 13, 2006 (Accessed at: [http://www.ncnk.org/resources/publications/US\\_Rpt\\_1718\\_Nov\\_2006.doc/file\\_view](http://www.ncnk.org/resources/publications/US_Rpt_1718_Nov_2006.doc/file_view).)
- <sup>65</sup> 22 U.S.C. 2799aa-1 accessed at [http://www.ncnk.org/resources/publications/The\\_Glenn\\_Amendment.doc/file\\_view](http://www.ncnk.org/resources/publications/The_Glenn_Amendment.doc/file_view)
- <sup>66</sup> Pages 3722-3730 of the January 26, 2007 Federal Register (Volume 72, no. 17), (Accessed at [http://www.ncnk.org/resources/publications/Fed\\_Register\\_Enacting\\_1718\\_Jan\\_07.pdf/file\\_view](http://www.ncnk.org/resources/publications/Fed_Register_Enacting_1718_Jan_07.pdf/file_view).)
- <sup>67</sup> "Initial Actions for the Implementation of the Joint Statement," February 13, 2007, accessed at [http://www.ncnk.org/resources/publications/Feb\\_13\\_2007\\_Agreement.doc/file\\_view](http://www.ncnk.org/resources/publications/Feb_13_2007_Agreement.doc/file_view)
- <sup>68</sup> The Associated Press, "U.S. Officials Could Remove North Korea from List of Terrorist Countries," *The Associated Press*, October 7, 2000. (Accessed at: <http://archives.cnn.com/2000/ASIANOW/east/10/07/nkorea.us.ap/index.html>) and Krik, Don, "North Korea May Lose Terrorism Label," *International Herald Tribune*, January 31, 2000. (Accessed at: [http://www.iht.com/articles/2000/01/31/kor.2.t\\_2.php](http://www.iht.com/articles/2000/01/31/kor.2.t_2.php))
- <sup>69</sup> Niksch, Larry, and Perl, Raphael "North Korea: Terrorism List Removal?," April 6, 2007, 1, 4,. (Accessed at: [http://www.ncnk.org/resources/publications/CRS\\_DPRK\\_Terrorism\\_List\\_Removal\\_April\\_2007\\_RL30613.pdf/file](http://www.ncnk.org/resources/publications/CRS_DPRK_Terrorism_List_Removal_April_2007_RL30613.pdf/file)

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view). DRPK National Defense Committee Chairman Jo Myong Rok visited DC in October 2000 without any changes to the DPRK's terrorism list status.

<sup>70</sup> Ibid, 2.

<sup>71</sup> Niksch, Larry, "Korea: U.S. - Korean Relations- Issues for Congress," April 14, 2006, 7. (Accessed at: <http://www.fas.org/sgp/crs/row/IB98045.pdf#search=%22Korea%3A%20U.S.%20-%20Korean%20Relations-%20Issues%20for%20Congress%22>)

<sup>72</sup> "Condemning the Democratic People's Republic of Korea for the abductions and continued captivity of citizens of the Republic of Korea and Japan as acts of terrorism and gross violations of human rights," H. CON Res 168, 109<sup>th</sup> Congress, passed in the House and was received and referred to the Senate Committee on Foreign Relations July 12, 2005.

<sup>73</sup> Presidential Determination on Energy Assistance for the Democratic People's Republic of Korea, Federal Register / Vol. 72, No. 192 / Thursday, October 4, 2007 / Presidential Documents, page 56873, Presidential Determination No. 2007-34 of September 28, 2007, accessed at [http://www.ncnk.org/resources/publications/Presidential\\_Determination\\_Re\\_Fuel\\_Assistance\\_September\\_07.pdf/file\\_view](http://www.ncnk.org/resources/publications/Presidential_Determination_Re_Fuel_Assistance_September_07.pdf/file_view)

<sup>74</sup> "Second-Phase Actions for the Implementation of the Joint Statement" Oct. 3, 2007, accessed at [http://www.ncnk.org/resources/publications/Second\\_Phase\\_Actions\\_Oct\\_07.doc/file\\_view](http://www.ncnk.org/resources/publications/Second_Phase_Actions_Oct_07.doc/file_view)

<sup>75</sup> "Second-Phase Actions for the Implementation of the Joint Statement" Oct. 3, 2007, accessed at [http://www.ncnk.org/resources/publications/Second\\_Phase\\_Actions\\_Oct\\_07.doc/file\\_view](http://www.ncnk.org/resources/publications/Second_Phase_Actions_Oct_07.doc/file_view)

<sup>76</sup> "Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons," October 18, 2007, accessed at

[http://www.ncnk.org/resources/publications/Oct\\_18\\_Memorandum\\_to\\_the\\_Secretary\\_of\\_State.doc/file\\_view](http://www.ncnk.org/resources/publications/Oct_18_Memorandum_to_the_Secretary_of_State.doc/file_view). The President made the same determination in October, 2008:

[http://www.ncnk.org/resources/publications/Presidential\\_Determination\\_Re\\_Trafficking\\_October\\_08.pdf/file\\_view](http://www.ncnk.org/resources/publications/Presidential_Determination_Re_Trafficking_October_08.pdf/file_view)

<sup>77</sup> North Korean Counterterrorism and Non-Proliferation Act, 110<sup>th</sup> Congress, H.R. 3650, introduced September 25, 2007. (Accessed at: [http://www.ncnk.org/resources/publications/North\\_Korean\\_Counterterrorism\\_and\\_Non-Proliferation%20Act%202007.pdf/file\\_view](http://www.ncnk.org/resources/publications/North_Korean_Counterterrorism_and_Non-Proliferation%20Act%202007.pdf/file_view)) Ros-Lehtinen might also have been responding to the allegations that the DPRK had transferred nuclear knowledge to Syria.

<sup>78</sup> HR 5916, The Security Assistance and Arms Export Control Reform Act of 2008. Around the same time, five senators introduced S. Res. 339, a "Sense of the Senate" resolution that was similar to the House act. The Senate resolution was not considered.

<sup>79</sup> Public Law No.110-256, "Making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2008, and for other purposes." Became law on June 30, 2008.

<sup>80</sup> "DPRK Opposes All Forms of Terrorism and Any Support to It," published by KCNA, accessed at [http://www.ncnk.org/resources/publications/DPRK\\_terrorism\\_renunciation\\_june08.doc/file\\_view](http://www.ncnk.org/resources/publications/DPRK_terrorism_renunciation_june08.doc/file_view)

<sup>81</sup> Proclamation 8271 of June 26, 2008, Termination of the Exercise of Authorities Under the Trading With the Enemy Act With Respect to North Korea: Pages 36785-36786 of the June 26, 2008 Federal Register (Vol 73, no. 125) accessed at

[http://www.ncnk.org/resources/publications/TWEA\\_Termination\\_Proclamation\\_USG\\_June\\_26\\_2008.pdf/file\\_view](http://www.ncnk.org/resources/publications/TWEA_Termination_Proclamation_USG_June_26_2008.pdf/file_view)

<sup>82</sup> Certification of Rescission of North Korea's Designation as a State Sponsor of Terrorism: Federal Register Pages 3751-3752 (Volume 73, no. 125), July 1, 2008 (Accessed at [http://www.ncnk.org/resources/publications/Certification\\_Terrorism\\_List\\_Removal\\_USG\\_June\\_26\\_2008.pdf/file\\_view](http://www.ncnk.org/resources/publications/Certification_Terrorism_List_Removal_USG_June_26_2008.pdf/file_view)).

<sup>83</sup> "President Bush Remarks on North Korea: United States seeks a Korean Peninsula free of all nuclear weapons, June 26, 2008," accessed at:

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<sup>84</sup> "North Korea: Presidential Action on State Sponsor of Terrorism (SST) and the Trading with the Enemy Act (TWEA)," State Department Fact Sheet, June 26, 2008, (Accessed at:

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- <sup>215</sup> Information for the following compiled from Treasury Department's Office of Foreign Assets Control website. (Accessed at: <http://www.treasury.gov/offices/enforcement/ofac/programs/nkorea/nkorea.shtml> and <http://www.treasury.gov/offices/enforcement/ofac/programs/wmd/wmd.shtml>), Dianne Rennack's "North Korea: Economic Sanctions" (Report for Congress, Congressional Research Service, The Library of Congress: Washington, D.C., October 17, 2006) and personal communication from Brad Babson.
- <sup>216</sup> Sanctions are authorized by the law, which is not DPRK-specific, and imposed in Executive Orders from the president, such as EO 12735(1990); EO 12938(1994) and EO 13094(1998). The most recent Executive Order, EO 13382, was issued July 1, 2005 -- Federal Register Vol. 70, No. 126, which can be accessed at: <http://www.treasury.gov/offices/enforcement/ofac/legal/eo/whwmdeeo.pdf>) For a list of other companies that have been sanctioned as proliferators also see Rennack, Dianne E., op.cited.
- <sup>217</sup> Article 311 added Section 5318A to the Bank Secrecy Act, which authorized "the Secretary of the Treasury to find a foreign financial institution, jurisdiction, class of transactions or type of account to be of 'primary money laundering concern.' See "Treasury warns against North Korean Money Laundering," accessed at <http://usinfo.state.gov/eap/Archive/2005/Dec/19-946101.html>.