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**North Korea: Economic Sanctions and
U.S. Department of Treasury Actions
1955-September 2007**

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This paper aims to present a clear discussion of the history of U.S. and UN actions against the Democratic Peoples Republic of Korea (DPRK), the official name of North Korea, in order to place current and future measures in context. 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, a summary of the measures taken by other relevant governments, particularly following the July 5, 2006² missile test and October 9, 2006 nuclear test and the UN Resolutions adopted in response. The paper concludes with a summary of U.S. sanctions against North Korea from 2000-June 2007, and a time-line listing major events in U.S.-DPRK relations and the imposition and relaxing of U.S. sanctions.

This paper is being updated at a time when economic actions against North Korea are a prominent bilateral bargaining chip in the multilateral effort to end North Korea's nuclear weapons programs. The February 13, 2007 "Initial Actions for the Implementation of the Joint Statement" agreed to by the six parties declares that the US will "begin the process" of removing North Korea from the "State Sponsors of Terrorism" list as well as "advance the process" of changing the DPRK's status under the Trading with the Enemy Act and subsequent laws that replaced that Act.³ News reports following the October 3, 2007⁴ release of the "Second-Phase

¹The authors would like to thank the following people for providing their insights, comments and assistance: Brad Babson, Alexander Ilitchev, John Feffer, Frank Jannuzi, Marcus Noland, James Paul, C. Kenneth Quinones, Dianne Rennack, and James Schoff. All errors remain the responsibility of the authors. Eli Magaña, Sarah Malachowsky and Matt Schaaf provided much-appreciated research assistance for the November 2007 update.

² This paper uses the dates of the actors to discuss events; thus the July missile test launch, which took place in the DPRK on July 5 and in the U.S. on July 4th is known as the July 5th missile launch; whereas UN Resolution 1718 is shown as being adopted on October 14, the date in New York when it was adopted.

³ "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.

Actions for the Implementation of the Joint Statement” indicate that the removal from the terrorism list could come by the end of 2007. There is likely to be some public debate in the United States about whether North Korean actions have been sufficient to warrant these changes to its status.

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

Overview

The history of U.S. sanctions against the DPRK can be divided into six 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. 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.” 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.

Although the George W. Bush administration’s approach to the DPRK differed considerably from that of the Clinton administration, no economic sanctions were re-imposed during President Bush’s first term, although two North Korean companies were cited for WMD and missile proliferation.⁵

⁴ “Second-Phase Actions for the Implementation of the Joint Statement” Oct. 3, 2007, accessed at http://www.ncnk.org/resources/publications/North-South%20Declaration.doc/file_view

⁵ 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. One of these companies, the Changgwant Sinyong Corporation, was first cited in May 1996, and had been cited thirteen times by October 2006.

In March 2005, North Korea declared that because the “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.”⁶ The DPRK then tested short range missiles first on May 1, 2005⁷ and again on March 8, 2006.⁸ 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 froze the assets under U.S. jurisdiction of three DPRK firms that it accused of engaging in WMD proliferation, and in October 2005 froze the assets of an additional eight firms.⁹

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, proved to have considerable impact on 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

⁶ “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.)

⁷ 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>.)

⁸ 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.)

⁹ Rennack, Dianne op. cited., 19, 31-32.

company and its owner and banned U.S. entities from doing business with the firm or owner.¹⁰ 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 immediately re-impose sanctions lifted by the Clinton administration in exchange for the moratorium.

North Korea tested a nuclear device on October 9, 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 the President called for the imposition of 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.¹¹ In January 2007, 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.¹²

In the "Initial Actions" agreement signed by the Six Parties on February 13, 2007, the United States agreed to "begin the process of removing the designation of the DPRK as a state

¹⁰ U.S. Department of Treasury Press Release, JS4144, March 30, 2006, accessed at <http://www.treas.gov/press/releases/js4144.htm>

¹¹ 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.)

¹² 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.)

sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK.” If these actions are taken they will herald a seventh phase of U.S. policy.

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 maintains sanctions against North Korea under five primary rationales: first, the state is considered a national security threat; second, it is on the State Department’s list of state sponsors or supporters of terrorism; third, the DPRK is a Marxist-Leninist state; fourth, the country has been implicated in the proliferation of weapons of mass destruction,¹³ and fifth, the country is a non-nuclear weapons state that has denoted a nuclear device. In addition to diplomatic sanctions,¹⁴ the U.S. government maintains various economic sanctions on trade, aid, arms sales and transfers, and access to assets under U.S. jurisdiction based on these four principles. Sanctions under the first rationale are specific to North Korea while the latter three apply to various country groupings of which North Korea is a 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.¹⁵ 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. Under changes in the law, the president must now annually

¹³ Rennack, Dianne E., op. cited, 1.

¹⁴ The United States has never normalized relations with the DPRK.

¹⁵ Rennack, Dianne E., op. cited, 9-10.

renew North Korea's status under the Act, as each president has done up until the present.¹⁶ The president has the authority to lift or waive a country's classification under the Act.¹⁷

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.¹⁸ 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."¹⁹

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,²⁰ and North Korea remained on the most restricted list.²¹

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.²² This reinforced Washington's rationale for restricting trade and financial transactions with the DPRK. Under the Foreign Assistance Act of 1961, state sponsors

¹⁶ Rennack, Dianne E., op. cited 18. 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's status now takes place under the IEEPA

¹⁷ Rennack, Dianne E. op. cited 26.

¹⁸ 12 U.S.C. Section 95a, 65th Congress, October 6, 1917, also codified as 50USC app5.

¹⁹ Rennack, Dianne E., op cited 17

²⁰ "Major Provisions: Export Administration Act of 2001," 107th Congress, September 6, 2001. (Accessed at: <http://banking.senate.gov/docs/eea/mprov01.htm>)

²¹ Rennack, Dianne E., op cited 10.

²² Ibid, 11

of terrorism may not receive US government foreign assistance, although many exceptions are provided by law – for example, for non-proliferation, child survival, etc.²³

The State Department’s Annual “Country Reports on Terrorism” for 2006 observes that the DPRK “is not known to have sponsored any terrorist acts since the bombing of a Korean Airlines flight in 1987.”²⁴ However, the report also notes that four Japanese Red Army members who participated in a jet hijacking in 1970 remain in North Korea, and that the Japanese government is seeking “a full accounting of the fate of the 12 Japanese nationals believed to have been abducted by DPRK state entities.”

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 sales of items on the U.S. Munitions List, Export-Import bank assistance, and support through international financial institutions.²⁵ 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.²⁶ 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.²⁷ (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. Some sanctions require legislation to undo.²⁸) North Korea’s designation as a state supporter of

²³ Ibid, 14

²⁴ Country Reports on Terrorism 2006, Chapter 3: State Sponsors of Terror, (Accessed at: <http://www.state.gov/s/ct/rls/crt/2006/82736.htm>)

²⁵ Rennack, Dianne E., op cited 11.

²⁶ Ibid, 11

²⁷ Ibid, 11

²⁸ 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.

terrorism in 1988, in essence, provided additional rationale for the sanctions already in place against the DPRK at this time.

There have been periodic discussions about removing North Korea from this list, for example when the U.S. was pursuing improved relations with the DPRK in 2000.²⁹ Apparently 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.³⁰ North Korea made the request again in the context of the six party meetings in late 2003 and early 2004.³¹

Meanwhile, however, 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 is resolved.³² 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.³³

The February 13, 2007 “Initial Actions for the Implementation of the Joint Statement” agreed to by the six parties declares 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

²⁹ 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>)

³⁰ Nicksch, 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/fileview). DRPK National Defense Committee Chairman Jo Myong Rok visited DC in October 2000 without any changes to the DPRK’s terrorism list status.

³¹ Ibid, 2.

³² Nicksch, 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>)

³³ “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, 109th Congress, passed in the House and was received and referred to the Senate Committee on Foreign Relations July 12, 2005.

the application of the Trading with the Enemy Act with respect to the DPRK.” This will be discussed further below.

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.³⁴ Other changes in U.S. restrictions that year eased travel restrictions for certain activities as well as the flow of information to the DPRK.³⁵ 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 1994.³⁶ 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

³⁴ Ibid, 10

³⁵ Ibid, 17. The changes affecting the flow of information reflect changes in technology, and are not DPRK specific.

³⁶ 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 proliferation on the Korean peninsula, 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.

transactions related to North Korea diplomatic missions in the U.S., and U.S. missions in the DPRK.³⁷

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.³⁸ 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.”³⁹ Despite these adjustments, there remained several sanctions related to the DPRK’s continued status as a threat to national security and as a state supporter of terrorism.

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, with the required approval from the Treasury Department’s Office of Foreign Assets Control (OFAC).⁴⁰ Approval reportedly became routine,⁴¹ providing

³⁷ 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)

³⁸ Foreign Assets Control Regulations, Title 31, Part 500, Sections 500.580- 500.584, February 16, 1995.

³⁹ 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)

⁴⁰ 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

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.”⁴² Most travel restrictions were also eased in 2000.

Other Barriers to U.S.-DPRK Trade

However, 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.⁴³ 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 Column 2 of the Schedule’s two column tariff system.⁴⁴ (Column 1 presents the duty rates charged to all nations with which the United States has normal trade relations.)⁴⁵

Similarly, the Export-Import Bank Act of 1945 denies “guarantees, insurance, credit or other Bank funding programs” to Marxist-Leninist countries.⁴⁶ Not only is the DPRK denied trade assistance from the Ex-Im Bank, but the United States also limits U.S. subsidization of

Agricultural Products from US Sanctions: Status on Implementation, Updated April 18, 2006.” Accessed at <http://www.opencrs.com/document/IB10061/>.”

⁴¹ 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>)

⁴² 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)

⁴³ Rennack, Dianne E., op. cited 12.

⁴⁴ The Harmonized Tariff Schedule of the United States can be accessed online at: <http://www.usitc.gov/tata/hts/bychapter/index.htm>. 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.

⁴⁵ US International Trade Commission, Tariff Information Center (Accessed at: <http://www.usitc.gov/tata/index.htm>)

⁴⁶ Rennack, Dianne E., op. cited 15.

foreign investment by excluding the DPRK from the Overseas Private Investment Corporation (OPIC).⁴⁷ 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.^{48 49}

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.”⁵⁰ Although significant amounts of humanitarian aid have flowed from the United States to North Korea over the years,⁵¹ particularly in response to famine or flooding, prohibition of non-humanitarian assistance may prove an impediment to development assistance including infrastructure rehabilitation in the future.⁵²

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

⁴⁷ Noland, Marcus, “US Economic Diplomacy Toward North Korea,” Op-Ed in JoongAng Ilbo, May 21, 2004.

⁴⁸ Noland, Marcus, “The Legal Framework of US–North Korea Trade Relations,” op. cited.

⁴⁹ An additional hurdle is the perception of U.S. companies that the DPRK provides an inhospitable investment climate. In contrast, South Korean and Chinese companies have been investing vigorously for the last 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) 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/>).

⁵⁰ Rennack, Dianne E., op. cited 15.

⁵¹ U.S. government assistance (i.e. USAID) has flowed through UN programs and during a brief period through a private voluntary organization consortium. 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.)

⁵² The North Korean Human Rights Act (P.L. 108-33, signed into law October 18, 2004) 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.

moratorium unraveled.⁵³ Although these relatively looser restrictions on trade and travel remained in place until 2007, the other measures imposed 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.⁵⁴ 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.⁵⁵ The Treasury Department action also froze any of their assets under U.S. jurisdiction. Then in April 2006 a new OFAC

⁵³ 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)

⁵⁴ 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

⁵⁵ 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.

regulation prohibited as of May 8 “US persons from owning, leasing, operating or insuring any vessel flagged by North Korea.”⁵⁶

More significantly, as noted above, beginning in 2005 the Treasury Department used the powers authorized by the U.S. Patriot Act to address counterfeiting concerns. In September 2005, under Article 311 of the Patriot Act,⁵⁷ 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.⁵⁸ Some U.S. officials believe a number of the accounts belong to members of North Korea’s ruling elite.⁵⁹ 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.⁶⁰ The U.S. stated

⁵⁶ OFAC’s “What you Need to Know about Sanctions: North Korea,” accessed at <http://www.treasury.gov/offices/enforcement/ofac/programs/nkorea/nkorea.pdf>

⁵⁷ Section 311 of the Patriot Act has been codified as 31 USC 5381A, and the Department of Treasury actions take place under that code.

⁵⁸ Some analysts, noting that the timing of the most significant action (Banco Delta Asia) shadowed progress in negotiations, have concluded that the Treasury actions demonstrate a continuing mistrust of the diplomatic process, on the part of some members of the administration, or at least their hope that North Korea can be forced to collapse. 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, 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 administration maintains that the Department of State and the Department of Treasury were in communication but that their actions were independent.

⁵⁹ Mihm, Stephen, “No Ordinary Counterfeit,” *New York Times Magazine*: New York, July 23, 2006.

⁶⁰ 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

that the BDA designation is “not meant as a sanction”⁶¹ and presented the designation as 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. The Treasury Department also stresses that sanctions and the BDA designation take place under different legislative authorities.

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 is 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.⁶² By 2007, when US-DPRK bilateral discussions on the issue took place, the terminology debate was abandoned.

included the Banco Delta Asia designation a precondition of their return to the Six-Party Talks. The DPRK did return to negotiations, at least for the time being, once the BDA matter was resolved.

⁶¹ “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>.

⁶² Rennack, Diane, op. cited, 4

In December 2005 the Treasury Department issued an advisory⁶³ 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 institutions worldwide to take similar measures." Although this advisory did not receive as much public attention, and there has been no debate about whether or not 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.⁶⁴ Australia, Vietnam, Mongolia, and China reportedly took similar measures.⁶⁵

In April 2006, U.S. officials testified regarding the involvement of North Koreans in counterfeiting, money laundering, and narcotics trafficking.⁶⁶ 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

⁶³ "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.

⁶⁴ 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>.

⁶⁵ "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>

⁶⁶ 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" believed to originate from the DPRK. See Testimony of Michael Merrit, accessed at <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.

about the risks of doing any North Korea-related business.”⁶⁷ Rejecting the concept that there is no legitimate business in the DPRK, Nigel Cowie has argued that the BDA action curtailed legal business activities, driving North Korean businesses to engage in illegitimate practices.⁶⁸

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, which outlines the first steps to implementing the September 19, 2005 Six Party Statement. Although not articulated in the agreement itself, BDA 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.

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."⁶⁹

The rule ostensibly affects only transactions between BDA and US banks, so Macau authorities were *technically* free to unfreeze DPRK accounts with the end of the investigation.

⁶⁷ 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>)

⁶⁸ 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>). Cowie says "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."

⁶⁹"Treasury Finalizes Rule Against Banco Delta Asia: BDA Cut Off From U.S. Financial System." March 14, Department of Treasury HP-315

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.⁷⁰ However, fearful of Treasury regulatory action, no bank agreed to accept the funds directly from BDA.⁷¹

Eventually, with assurances from the U.S. Department of Treasury that there would not be negative consequence, 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 25.⁷² The involvement of the Federal Reserve prompted six Republican lawmakers, headed by Rep. Ileana Ros-Lehtinen, to ask the U.S. Government Accountability Office to determine if U.S. money-laundering laws were violated in transferring the assets to the Federal Reserve.⁷³

⁷⁰ 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&vgnnextfint=teaser&ss=Asia&s=News>).

⁷¹ 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>).

⁷² "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>).

⁷³ 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. 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.

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, the US administration raised the possibility of additional sanctions, but, although the U.S. joined with others condemning the tests, no new sanctions were imposed by the administration. Instead, Congress responded to the missile test 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 (Public Law 106-178; 50 U.S.C. 1701 note), as amended by this Act."⁷⁴

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."⁷⁵ As noted above, such actions were already taking place under existing law. The act was introduced and passed in the Senate in July 2006, passed in the House in September and signed by the president in October of that year.

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

⁷⁴ S. 3728 (109th Congress), "The North Korea Non-Proliferation Act of 2006," became Public Law No: 109-353.

⁷⁵ See

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

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.⁷⁶ Yet even with this high rate of compliance, the U.S. report promised that the United States is 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"),⁷⁷ and the Atomic Energy Act, 42 U.S.C. 2158. The Atomic Energy Act law reiterated sanctions already in place; the Glenn Amendment sanctions prohibit 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 may block the US government from implementing certain aspects of current and future agreements with North Korea unless new legislation is passed that waives the sanctions or gives the President power to waive the sanctions.

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

⁷⁶ “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.)

⁷⁷ 22 U.S.C. 2799aa-1 accessed at http://www.ncnk.org/resources/publications/The_Glenn_Amendment.doc/file_view

North Korea, except food and medicines not listed on the CCL [Commerce Control List]."⁷⁸ 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 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 was unlikely to have much impact on US-origin goods sent to North Korea, other than the possible delays created by the licensing process.

The February 13, 2007 "Initial Actions" and Removal from TWEA and Terrorism Act

The February 13, 2007 "Initial Actions for the Implementation of the Joint Statement" agreed to by the six parties declares 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."

The guidelines for including a given country on the list of State Sponsors of Terrorism were created by Congress when passing the Anti-Terrorism and Arms Export Amendments Act

⁷⁸ 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.)

of 1989.⁷⁹ 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. However, 45 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."⁸⁰

Congress has the option of passing legislation blocking the removal of North Korea from the State Sponsors of Terror list.⁸¹ Perhaps anticipating the administration's request, on September 25, 2007 Representative Ros-Lehtinen, along with 12 cosponsors, 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."⁸² However, at the time this report is being written, passage of the bill does not seem likely.

On December 10, 2006, five Senators introduced S. Res. 339, a resolution similar to the House act.⁸³ The most significant difference is that this is a resolution, not an Act. Resolutions, if adopted, register the Senate's (or House's or Congress's) opinion. Unlike the act introduced

⁷⁹ Nicksch, Larry and Perl, Raphael, *op. cited.*, 11. This is under (6)(j)(4) of the Export Administration Act.

⁸⁰ *Ibid.*, 11.

⁸¹ Nicksch, Larry and Perl, Raphael, *op. cited.*, 11.

⁸² North Korean Counterterrorism and Non-Proliferation Act, 110th Congress, H.R. 3650, introduced September 25, 2007. (Accessed at: http://www.ncnk.org/resources/publications/North_Korean_Counterterrorism_and_Non-Proliferation%20_Act%20_2007.pdf/file_view)

⁸³ See http://www.ncnk.org/resources/publications/S_Res_339_Senate_CounterTerrorism_07.doc/file_view.

by the House, resolutions do not have the power to require the administration to do something or to prevent the administration from doing something. Because resolutions do not have the force of law, they can be easier to pass than acts, and therefore can be an effective way to send the administration a signal. By mid-January 2007 no co-sponsors had been added.

As noted above, inclusion on the State Sponsor of Terrorism list triggers a host of controls and laws. 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.⁸⁴

However, removal from the State Sponsor of Terrorism List and waiving TWEA would not automatically significantly alter North Korea's trade relationships with the US and the rest of the world.⁸⁵ 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 would still be prohibited from purchasing arms, dual-use items, support in the

⁸⁴ 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.

⁸⁵ 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.

International Financial Institutions, credit and so-on under the “North Korea Non-Proliferation Act of 2006” and the “Iran, North Korea and Syria Non-Proliferation Act of 2000.”⁸⁶ 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.⁸⁷ 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.” The North Korean Human Rights Act of 2004 has a Sense of Congress provision⁸⁸ conditioning non-humanitarian assistance to certain benchmarks in human rights conditions, but, as with the resolution on Japanese abductees mentioned above, it registers Congress’s opinion without imposing any legal barriers.

Meanwhile, however, the administration has already taken steps to ease restrictions on US government funds. On September 28, 2007, the President determined under the section 614(a)(1) of the Foreign Assistance Act that up to \$25 million be made available for energy assistance to the DPRK.⁸⁹ And 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

⁸⁶ Ibid., 28.

⁸⁷ Cited in Semoon Chang, "Should US Economic Sanctions against North Korea Be Lifted?" North Korean Review, Fall 2006, pp. 36-46, p. The conditions outlined in the act become increasingly complex in subsequent authorization and appropriation bills. See Karin Lee and Adam Miles, *op. cited*.

⁸⁸ North Korea Human Rights Act of 2004 (PL 108-333), section 202(b)(2), signed into law on October 18, 2004,

⁸⁹ “Presidential Determination on Energy Assistance for the Democratic People's Republic of Korea,” September 28, 2007 (accessed at: <http://www.whitehouse.gov/news/releases/2007/09/20070928-5.html>).

programs with the DPRK, despite provisions in the Trafficking Victims Protection Act of 2000 that would normally bar such activities.⁹⁰

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 DPRK had acceded in 1985.⁹¹ 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."⁹² 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.⁹³

During the following year, the Council issued three president's statements concerning the DPRK's nuclear program and its compliance with IAEA safeguards.⁹⁴ 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

⁹⁰ "Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons," October 18, 2007 (Accessed at: <http://www.whitehouse.gov/news/releases/2007/10/20071018-5.html>)

⁹¹ 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.

⁹² United Nations Security Council, Resolution 825, S/RES/825 (1993), May 11, 1993. (Accessed at: <http://daccessdds.un.org/doc/UNDOC/GEN/N93/280/49/IMG/N9328049.pdf?OpenElement>)

⁹³ "Joint Statement of the Democratic People's Republic of Korea and the United States of America," New York, June 11, 1993. (Accessed at: <http://www.armscontrol.org/factsheets/1993NKagreement.asp>)

⁹⁴ Statements by the President of the United Nations Security Council in 1994 concerning North Korea can be viewed at: <http://www.un.org/docs/sc/statements/1994/sprst94.htm>

U.S. and DPRK had successfully negotiated and acknowledged North Korea's decision to comply with IAEA safeguards.⁹⁵ 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 should be involved.⁹⁶ Following the 1994 statements, the Council remained officially silent on DPRK WMD issues, until the adoption of Resolution 1695.⁹⁷

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. U.S., South Korean, Japanese 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.

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. Departing from the more subdued responses that had characterized the Security Council's dealings with the DPRK for the

⁹⁵ Although the U.S. consulted with Japan and South Korea, and they and other nations ultimately became members of KEDO, the negotiations were bilateral.

⁹⁶ Of course this situation of deadlock within the Security Council is not unique to issues involving the DPRK.

⁹⁷ 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.

previous decade, Resolution 1695 condemned the missile tests, demanded that North Korea cease all activities related to its ballistic missile program, and called on all Member States to comply with measures limiting North Korea's access to, and ability to sell, missile-related materials or technology. South Korea had already suspended food aid,⁹⁸ and Japan and Australia had already enacted measures in response to the missile tests, mainly targeting the flow of finances from suspect entities to the DPRK.⁹⁹

As stated above, no international law prohibited North Korea from testing its missiles. In 2005, it declared that the conditions warranting the moratorium had changed, and it was therefore no longer bound by its bilateral agreement with the United States to voluntarily suspend missile testing moratorium. However, the September 17, 2002 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."¹⁰⁰ After the test, Ambassador Pak Gil Yon 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" – essentially voiding the declaration.¹⁰¹ North Korea maintained that the July missile tests were its "legitimate right as a sovereign state" and

⁹⁸ The ROK reinstated food aid in response to reports of extensive flooding and mud slides in the North.

⁹⁹ As noted above, the US said it might implement new measures in response to 1695, but it did not.

¹⁰⁰ Japan-DPRK Pyongyang Declaration, September 17, 2002. (Accessed at: http://www.mofa.go.jp/region/asia-paci/n_korea/pmv0209/pyongyang.html.)

¹⁰¹ Pak Gil Yon, "Statement by Ambassador Pak Gil Yon, North Korean Permanent Representative to the United Nations, Following A Security Council Vote to Sanction North Korea," July 17, 2006. (Accessed at: <http://www.un.org/News/Press/docs/2006/sc8778.doc.htm>.)

condemned the resolution as an attempt by “some countries to misuse the Security Council,” North Korea rejected Resolution 1695.¹⁰²

Until Resolution 1718 was passed, Resolution 1695 represented the strongest reprimand the Security Council had adopted against North Korea since 1950.¹⁰³ Resolution 1695 “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 without precondition.”¹⁰⁴

Resolution 1695 outlines measures required of all Member States, which appear to be in line with what the UN describes as targeted sanctions. 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.”¹⁰⁵

The resolution also urges the DPRK to show restraint in its actions and to return to the Six-Party Talks. However, although the resolution includes the Security Council’s first sanctions

¹⁰² Ibid

¹⁰³ 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) are the most severe UN condemnations of the DPRK to date.

¹⁰⁴ United Nations Security Council, Resolution 1695, S/RES/1695 (2006), July 15, 2006. (Accessed at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/431/64/PDF/N0643164.pdf?OpenElement>.) 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) that truly 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>)

¹⁰⁵ United Nations Security Council, Resolution 1695, S/RES/1695 (2006), July 15, 2006. (Accessed at: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/431/64/PDF/N0643164.pdf?OpenElement>)

against North Korea, it does not call for the establishment of an oversight committee.¹⁰⁶ Thus, although its measures are mandatory, the resolution lacks a mechanism to ensure compliance. It also lacks reference to Chapter VII, which reportedly had appeared in Japan's first draft of the resolution but was later removed under PRC pressure.

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.¹⁰⁷ China might have chosen to use the resolution's "escape hatch" to avoid implementing additional punitive measures.

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 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 proliferation activities. The resolution's significance comes from the apparent readiness for compromise demonstrated by the five permanent Security Council members.

The North Korean Nuclear Test and UN Resolution 1718

¹⁰⁶ As noted above, 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, as mandated by 1718. UN Security Council Website, "Security Council Sanctions Committees: An Overview." (Accessed at: <http://www.un.org/Docs/sc/committees/INTRO.htm>)

¹⁰⁷ Cotton, James, "Missiles and Sanctions: Has a Watershed Been reached in the Korean Nuclear Crisis?" Nautilus Institute: San Francisco, Policy Forum Online 06-75A, September 13, 2006. (Accessed at: <http://www.nautilus.org/fora/security/0675Cotton.html>) Despite this suspension, the ROK sent a scheduled shipment in the days immediately following the missile launches and proceeded to resume shipments on a limited scale following the 2006 flooding.

On October 3, North Korea announced its intention to conduct a nuclear test.¹⁰⁸ Three days later, the UNSC issued UN Presidential Statement S/PRST/2006/41, warning that if a test is conducted, the UN “will act consistent with its responsibility under the Charter of the United Nations,” perhaps alluding to its authority under Chapter VII, eventually invoked in 1718.¹⁰⁹ 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 VII¹¹⁰, 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,

¹⁰⁸ “DPRK Foreign Ministry Clarifies Stand on New Measures to Bolster War Deterrent.” (Accessed at <http://www.kcna.co.jp/index-e.htm>; look at the articles for October 4).

¹⁰⁹ United Nations Security Council, Statement by the President of the Security Council, S/PRST/2006/41, October 6, 2006. (Accessed at <http://www.un.org/News/Press/docs//2006/sc8849.doc.htm> or <http://daccessdds.un.org/doc/UNDOC/GEN/N06/557/05/PDF/N0655705.pdf?OpenElement>). 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.

¹¹⁰ 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, however, apparently 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.” In addition to the use of sanctions, 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.

- 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, 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.¹¹¹

The resolution also mandates the establishment of a Committee of the Security Council to monitor the implementation of the resolution.¹¹²

DPRK Ambassador Pak Gil Yon called the resolution “gangster-like,” and an example of the UN’s partiality,¹¹³ and later said that the sanctions were an act of war.¹¹⁴

¹¹¹United Nations Security Council, Resolution 1718, S/Res/1718 (2006). October 14, 2006. (Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/572/07/PDF/N0657207.pdf?OpenElement>.) For a copy of the September 19, 2005 statement, see the NCNK 1718 Resources webpage:

http://www.ncnk.org/resources/publications/September_19_2005_Joint_Statement.doc/file_view.

¹¹²UN 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, as mandated by 1718, and as was the case in resolutions calling for international sanctions adopted by the Council against countries such as Somalia (Resolution 751 in 1992), Rwanda (Resolution 918 in 1994), Sierra Leone (Resolution 1132 in 1997), Liberia (Resolution 1521 in 2003), the Democratic Republic of the Congo (Resolution 1533 in 2004), Cote D’Ivoire (Resolution 1572 in 2004), and the Sudan, (Resolution 1591 in 2005), UN Security Council Website, “Security Council Sanctions Committees: An Overview.” (Accessed at:

<http://www.un.org/Docs/sc/committees/INTRO.htm>). 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/>.

¹¹³“Security Council Condemns Nuclear Test by Democratic People’s Republic of Korea, Unanimously Adopting Resolution 1718 (2006), UN Press Release SC/8853.” (Accessed at <http://www.un.org/News/Press/docs//2006/sc8853.doc.htm>.)

¹¹⁴ BBC News, “N. Korea says Sanctions are War”, October 17, 2006. (Accessed at <http://news.bbc.co.uk/2/hi/asia-pacific/6057718.stm>.)

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.¹¹⁵ For example, Ambassador Cesar Mayoral from Argentina indicated that “Argentina did not intend to legislate the control of material for dual use.”¹¹⁶

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

Meanwhile, the statement reports that U.S. Ambassador Bolton asserted that 1718 would “target the way Kim Jong Il financed his related weapons programmes, including through

¹¹⁵ 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.)

¹¹⁶ “Security Council Condemns Nuclear Test by Democratic People’s Republic of Korea,” op. cited. 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>).

money-laundering, counterfeiting and selling narcotics”¹¹⁷ 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 Guangya 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. In contrast, although the statement of U.S. Ambassador John 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 report for the period ending July 10, 2007, Sanctions Committee chair Ambassador Marcello Spatarfora said that 71 countries and the EU had submitted reports regarding their implementation of 1718.¹¹⁸ While information about all countries is not available, according to

¹¹⁷ Emphasis not in the original.

¹¹⁸ “Briefing to the UN Security Council on behalf of the Committee established pursuant to resolution 1718 (2006) by Ambassador Marcello Spatarfora, Permanent Representative of Italy to the United Nations. July 10, 2007 (Accessed at <http://www.un.org/sc/committees/1718/pdf/briefing10072007.pdf>.)

an April 16, 2007 report from Ambassador Spatafora, at that point 31 states already had legislation in place¹¹⁹ to implement Paragraph 8 (a)(ii) of the resolution regarding preventing the supply, sale of, or transfer to the DPRK of material and technology that can be used for chemical, biological, ballistic missile, or nuclear weapons programs. Twenty-seven countries were putting measures in place, and ten had referred the matter to the appropriate national authorities.¹²⁰

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 earnestly made 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."¹²¹

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.¹²² It has also been reported that at one time or

¹¹⁹ UNSC Resolution 1540, adopted April 28, 2004 to address the danger of the proliferation of WMD, particularly through illicit trafficking and to non-state actors, mandates laws to tighten the control of WMD materials and their means of delivery, including export, trans-shipment and re-export controls. Some of the legislation already in place when 1718 was adopted may have been developed in response to 1540. I am indebted to Dr. Daniel Pinkston for drawing this to my attention.

¹²⁰ "Briefing to the UN Security Council on behalf of the Committee established pursuant to resolution 1718 (2006) by Ambassador Marcello Spatafora, Permanent Representative of Italy to the United Nations. April 16, 2007, (Accessed at [http://www.un.org/sc/committees/1718/pdf/Report_12%20\(g\)%20April_2007.pdf](http://www.un.org/sc/committees/1718/pdf/Report_12%20(g)%20April_2007.pdf)).

¹²¹ "Letter dated 1 December 2006 from the Permanent Representative of Albania to the United Nations Addressed to the Chairman of the Committee," S/ac.49/2006/38. (Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/670/28/PDF/N0667028.pdf?OpenElement>.)

¹²² "CNS Special Report on North Korean Ballistic Missile Capabilities, March 22, 2006," Monterey Institute of International Studies Center for Non-proliferation Studies, 4 (Accessed at: <http://cns.miis.edu/pubs/week/pdf/060321.pdf>) and The Nuclear Threat Initiative's "North Korea Profile," produced by the Monterey Institute of International Studies Center for Non-proliferation Studies," (Accessed at: http://www.nti.org/e_research/profiles/NK/index.html.) 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

another Egypt, Ethiopia, Iran, Libya, The United Emirates, Vietnam and Yemen have been recipients of North Korea's WMD products.¹²³

Several of the 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 1718.¹²⁴ 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.¹²⁵

However, Ethiopia, Iran, and Yemen have not even submitted reports. The New York Times reported that in January 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.¹²⁶ Ethiopia argued that the arms they had purchased were not prohibited by 1718; the State Department refused to comment.¹²⁷

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.

¹²³ 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 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>.) I am indebted once again to Dr. Pinkston for drawing this to my attention.

¹²⁴ Letter dated 11 January 2007 from the Permanent Representative of Pakistan to the United Nations addressed to the Chairman of the Committee, SAAC.49/2007/15. (Accessed at: <http://daccessdds.un.org/doc/UNDOC/GEN/N07/244/88/IMG/N0724488.pdf?OpenElement>.)

¹²⁵ North Korea profile, op. cited and Pinkston, Daniel, "Six-Parties Adopt Steps for North Korean Denuclearization but Uranium Enrichment Controversy Looms as Major Obstacle," *WMD Insights*, April 2007, (Accessed at: http://www.wmdinsights.com/I14/I14_EA1_SixPartiesAdopt.htm)

¹²⁶ Gordon, Michael R. and Mazzetti, Mark, "North Koreans Arm Ethiopians as U.S. Assents," The New York Times, Sunday, April 8, 2007 (Accessed at: <http://select.nytimes.com/search/restricted/article?res=F30D1FFD3F5B0C7B8CDDAD0894DF404482#>)

¹²⁷ Gordon, Michael, "Ethiopia Denies Shipment From Korea Violated Ban," April 15, 2007 (Accessed at: <http://select.nytimes.com/search/restricted/article?res=F30E10F83B5B0C768DDDAD0894DF404482#>).

For non-WMD-related trade, China is the most important State. China submitted its report on November 15, 2006, but its report is not available on the web, perhaps because it has requested that its report be kept confidential.¹²⁸

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.¹²⁹ In its January 15, 2007 report, the ROK said that it was in the process of compiling a list of luxury items for exclusion.¹³⁰ As described below, however, the US has unofficially pressured the ROK to go beyond the mandate of the resolution, indicating that the ROK should curb inter-Korean projects such as Geumgangsan Mountains.

Russia was the last of the five parties to indicate compliance with the resolution. In its November 30 report, Russia revealed its ambivalence by coupling its promise to issue a decree implementing the resolution with a reminder 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.” On June 1, 2007, Russia informed the committee that a decree had been signed by President Putin on May 27.¹³¹

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. Several measures had been taken in response to the July missile test, and immediately after the nuclear test, before

¹²⁸ Briefings by Sanctions Committee Chair Ambassador Marcello Spatafora indicate confidentiality is an option.

¹²⁹ Annex to the note verbale dated November 13 2006 from the Permanent Mission of the Republic of Korea to the United Nations addressed to the Chairman of the Committee, S/ac.49/2006/8 (Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/637/24/IMG/N0663724.pdf?OpenElement>.)

¹³⁰ Annex to the *note verbale* dated January 15, 2007 from the Permanent Mission of the Republic of Korea to the United Nations addressed to the Chairman of the Committee, S/ac.49/2006/8/add.1 (Accessed at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/213/77/PDF/N0721377.pdf?OpenElement>).

¹³¹ "Указ Президента РФ от 27.05.2007 г. N 665, О мерах по выполнению резолюции Совета Безопасности ООН 1718 от 14 октября 2006 года, [Decree of the Russian Federation, May 27, 2007, on the measures for the implementation of UN Security Council 1718 of Oct 14, 2006]." (Accessed at: <http://document.kremlin.ru/doc.asp?ID=039664>.)

1718 was adopted. Japan was the first country to list prohibited luxury items. Japan's further measures are discussed below.

Initially 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."¹³² 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.¹³³ 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 provision with the potential to do the most damage and insult to individual North Koreans is (8)(e), which 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-

¹³² Secretary Condoleezza Rice, "Briefing of Upcoming Trip to Asia," October 17, 2006. (Accessed at <http://www.state.gov/secretary/rm/2006/74047.htm>.)

¹³³ See http://www.nenk.org/resources/publications/1718_Luxury-Items_Matrix.pdf/file_view for a matrix of prohibited items for each country.

related programmes.”¹³⁴ Even family members of such individuals are to be banned from travel. Although the resolution included a waiver for “humanitarian need,” or when “the Committee concludes that an exemption would otherwise further the objectives of the present resolution,”¹³⁵ the provision itself, depending on how liberally “supporting or promoting” is interpreted, has the potential to greatly constrict North Korean intercourse with the rest of the world.

However, no list of persons banned from travel had been developed by the Sanctions Committee, nor had any names been submitted to the Committee by July 10, 2007, the date of the last report by the Sanctions Committee Chair. Perhaps this provision will never be implemented if the Six Party Talks now in process reach a satisfactory conclusion.

Other Unilateral Sanctions against the DPRK

Japan

Japan has had the most robust response to both the missile and the nuclear tests. The very day of the 2006 test-launch, Japan immediately renewed a ban on the Wonson–Nigata ferry, the *Mangyongbong-92* and halted charter flights from Pyongyang.¹³⁶ The suspension of the *Mangyongbong-92* not only temporarily shuts down trade and travel facilitated by the ship, but also tightens restrictions on the *Chosen Soren*, an organization of ethnic Koreans living in Japan with close ties to North Korea.¹³⁷ Japan also banned the travel of North Korean government officials.¹³⁸

¹³⁴ UNSCR 1718 8(e).

¹³⁵ UNSCR 1718 (10)

¹³⁶ BBC News, “New Sanctions Target North Korea,” BBC News: London, September 19, 2006. (Accessed at: <http://news.bbc.co.uk/2/hi/asia-pacific/5358660.stm>)

¹³⁷ Schoff, James, “Political Fences & Bad Neighbors: North Korea Policy Making in Japan & Implications for the United States,” Institute for Foreign Policy Analysis: Cambridge, MA, June 2006, 2. (Accessed at: <http://www.ifpa.org/projects/SRF-Japan-DPRK.htm>) Although the organization, which 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

Resolution 1695 was adopted on July 15. On September 19, coinciding with the first anniversary of the September 19 Statement, Japan and Australia announced the imposition of financial sanctions similar to those being implemented by the U.S. Treasury Department.¹³⁹ 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.¹⁴⁰ Shinzo Abe, Prime Minister-Elect at the time, announced that Japan's new sanctions require Japanese financial institutions to seek prior approval before conducting any transactions with the fifteen specified companies and one individual, essentially banning such transactions.

Australia announced similar measures, blocking the transactions of twelve companies and one individual.¹⁴¹ The list of sanctioned companies includes Kohas¹⁴², Korea Kwangsong Trading, Korea Mining Development Trading, Tanchon Commercial Bank and Korea Ryonbong General¹⁴³ —companies that are also among those that the United States has targeted. 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

remittances between the two countries for decades and the ferry has served as a physical link between the organization and North Korea.

¹³⁸ Personal communication with an official from the Japanese Embassy in Washington, DC, August 15, 2007.

¹³⁹ 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. 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.

¹⁴⁰ The Japan Times, "Japan Adds 20 N. Korean, 4 Iranian Firms to Export Control List," April 4, 2006. (Accessed at <http://search.japantimes.co.jp/cgi-bin/nn20060405a7.html>)

¹⁴¹ BBC News, "New Sanctions Target North Korea," September 19, 2006.

¹⁴² Kohas president, Jakob Steiger, has also been sanctioned by Japanese authorities. Both the company and Steiger were sanctioned by the U.S. Department of Treasury in March 2006.

¹⁴³ Choe, Sang-Hun, "Australia and Japan put penalties on North Korea," International Herald Tribune, September 19, 2006. (Accessed at: <http://www.iht.com/articles/2006/09/19/business/nkorea.php>)

Taniguchi.¹⁴⁴ Japan also introduced a “set of measures for prevention of the transfer of financial resources to the DPRK,” on September 19.¹⁴⁵

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 1718.¹⁴⁶ 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 import of all items from the DPRK to Japan. The new 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.”¹⁴⁷ These bans were renewed in April 2007 and again in October 2007. Australia also closed its ports to DPRK ships in response to 1718.¹⁴⁸

For Japan, these actions continue a trend toward limiting DPRK trade and access to Japanese resources that began at the least as far back as the North Korean missile launch in 1998, when the Japanese government temporarily blocked the entry of the *Mangyongbong*.¹⁴⁹ The ferry’s current was preceded by an intensification of monitoring that led to a seven-month ban in 2003 and only one trip during January through April 2006.¹⁵⁰

¹⁴⁴ Press Conference with Tomohiko Taniguchi, Ministry of Foreign Affairs: Japan. September 19, 2006. (Accessed at: <http://www.mofa.go.jp/announce/press/2006/9/0919.html>). 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.

¹⁴⁵ Oshima, Kenzo, Address to the United Nations, September 26, 2006) (Accessed at <http://www.mofa.go.jp/announce/speech/un2006/un0609.html>). 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.

¹⁴⁶ “Security Council Condemns Nuclear Test by Democratic People’s Republic of Korea,” op. cited.

¹⁴⁷ Ibid.

¹⁴⁸ BBC, “Australia to Ban North Korean Ships,” October 16, 2006. (Accessed at <http://news.bbc.co.uk/1/hi/world/asia-pacific/6054186.stm>.)

¹⁴⁹ The weekly ferry is the primary means of travel for *Chosen Soren* (pro-DPRK Koreans in Japan residents' association) between the two nations. Quinones, C. Kenneth, Personal communication, September 27, 2006.

¹⁵⁰ Schoff, James, “Political Fences,” 2.

North Korean trade with Japan has been significantly curtailed since 2001 due to worsening bilateral relations, Japan's tightening of export controls and customs regulations and citizen boycotts of North Korean products.¹⁵¹ 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. Over 70% of North Korean ships were cited between January and August of that year.¹⁵² In 2005 a Japanese law preventing all foreign ships with inadequate insurance from docking at Japanese ports further limited, though did not entirely ban, North Korean trade with, and shipping to and from, Japan.¹⁵³ 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 2005.¹⁵⁴

The boycott of mollusks is just one sign 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*.¹⁵⁵ In February 2005, a petition calling for sanctions against North Korea was signed by five million citizens.¹⁵⁶ The Japanese legislature also got involved: a human rights bill authorizing the government to impose economic sanctions

¹⁵¹ Ibid, 18.

¹⁵² Manyin, Mark, "Japan-North Korea Relations: Selected Issues," Report for Congress, Congressional Research Service, The Library of Congress, November 26, 2003, RL32161, 5. (Accessed at: <http://fpc.state.gov/documents/organization/27531.pdf#search=%22Japan-North%20Korea%20Relations%3A%20Selected%20Issues%22>)

¹⁵³ 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.

¹⁵⁴ Schoff, James, "Political Fences," 7. The deficit in trade with Japan, however, has reportedly been offset by increasing trade with China and the ROK, casting doubts on the how effective additional Japanese economic sanctions could actually be, if imposed.

¹⁵⁵ International Crisis Group, "Japan and North Korea: Bones of Contention," Asia Report No. 100, June 27, 2005.

¹⁵⁶ Karasaki, Taro, "5 million signatures in call for sanctions," *Asahi Shimbun* accessed at <http://www.asahi.com/english/nation/TKY200502090145.html>, as cited in Schoff, "Political Fences," 19.

“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 2006.¹⁵⁷ In addition, Japan’s Ministry of Foreign Affairs (MOFA) has complied with U.S. recommendations on Banco Delta Asia in Macau.¹⁵⁸

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. However, his replacement by Yasuo Fukuda on September 25, 2007 may mean that Japan will be able to parlay its concern about the abduction issue into a satisfactory conclusion. However, progress has yet to be made, and on October 9, 2007 the Japanese Cabinet renewed those sanctions that would expire on October 14,¹⁵⁹ a move they had signaled as early as September 6.

China and the Republic of Korea

When UN Resolution 1695 was adopted, both South Korea and China indicated that they did not view pursuit of extraordinary measures as necessary for compliance, and 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.¹⁶⁰ Although both South Korea and Japan responded to North Korea’s July 2006 missile test launches before UN Resolution 1695 was adopted, the scale of

¹⁵⁷ Schoff, *Political Fences*, op. cited, 19.

¹⁵⁸ *Ibid*, 19.

¹⁵⁹ Mari Yamaguchi, “Japan Cabinet approves extension of sanctions on North Korea for 6 more months,” October 9, 2007, Daily Yomiuri On-line. (Accessed at: http://hosted.ap.org/dynamic/stories/A/AS_GEN_JAPAN_NKOREA_SANCTIONS_ASOL-?SITE=YOMIURI&SECTION=HOSTED_ASIA&TEMPLATE=ap_national.html).

¹⁶⁰ BBC News, “New Sanctions Target North Korea,” September 19, 2006.

their responses was quite different: South Korea announced only that it would suspend further fertilizer and humanitarian assistance.¹⁶¹

The ROK initially seemed to take the nuclear test much more seriously than it did the missile test. ROK 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."¹⁶²

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 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.¹⁶³ The first shipment of fertilizer aid was made on March 27,¹⁶⁴ and deliveries of flood aid assistance were also resumed at that time,¹⁶⁵ despite delays in resolving the BDA issue. Thirteen million in contributions for WHO, UNICEF, and IVI [International Vaccine Institute] for projects aiding North Korean children was announced a month later on April 26, 2007.¹⁶⁶

¹⁶¹ Despite the ROK's announcement, it sent one assistance shipment already scheduled before the DPRK's missile launch, and it has provided emergency assistance after intensive flooding in the DPRK.

¹⁶² China View "South Korea Denounces North Korea Nuclear Test," October 9, 2006. (Accessed at: http://news.xinhuanet.com/english/2006-10/09/content_5180667.htm)

¹⁶³ "The Result of the 182nd Meeting of the Inter-Korean Exchange Promotion Committee," March 26, 2007, Press Release, Ministry of Unification, uni4101. (Accessed at: <http://www.unikorea.go.kr/english/EPA/EPA0201R.jsp>).

¹⁶⁴ "The First Shipment of the Fertilizer Aid," Press Release, ROK Ministry of Unification, Uni4101, , March 26, 2007. (Accessed at: <http://www.unikorea.go.kr/english/EPA/EPA0201R.jsp>.)

¹⁶⁵ "S. Korea Resumes Aid to N. Korea," *The Chosun Ilbo*, March 29, 2007. (Accessed at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/DHRV-6ZS7XF?OpenDocument&rc=3&emid=ACOS-635NSY>.)

¹⁶⁶ "Provide fund to International Organizations for their projects to support North Korean children," Briefing by Vice Minister of Unification Shin Eonsang, April 26, 2007. (Accessed at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/KHII-75T37D?OpenDocument&rc=3&emid=ACOS-635NSY>)

As for rice, on April 22 the ROK government announced 400,000 MT of rice to be provided in the form of a loan.¹⁶⁷ However, the ROK did not deliver the aid, reportedly because of U.S. pressure¹⁶⁸ since the first period of the February 13 agreement had passed without the shutdown at Yongbyon. 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,¹⁶⁹ in what could have been a compromise with the U.S. government 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 shut down of the reprocessing plant at Yongbyon seemed imminent¹⁷⁰ – that the first ROK shipment of 3,000 MT was announced.¹⁷¹ After heavy rains in August 2007 resulted in flooding, substantial property damage and crop loss in the DPRK, the ROK provided millions in assistance to the DPRK, and pledged millions more.

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 Complex¹⁷² 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

¹⁶⁷ “13th Round of Inter-Korean Economic Cooperation Meeting,” April 22, 2007 (Accessed at: http://www.ncnk.org/resources/publications/April_07_North_South_Eco_Coop.pdf/file_view).

¹⁶⁸ “South Korea Agrees to Delay Rice Aid to North Korea: Report,” Agence France-Presse, May 24, 2007. (Accessed at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/DHRV-73H7VB?OpenDocument&rc=3&emid=ACOS-635NSY>.)

¹⁶⁹ “South Korean Donation to WFP allows major boost to its feeding programs in DPRK,” World Food Programme Press Release, June 14, 2007. (Accessed at: <http://www.wfp.org/english/?ModuleID=137&Key=2530>.)

¹⁷⁰ 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.

¹⁷¹ “Providing Rice Aid in the Form of a Loan to the North,” Ministry of Unification, June 26, 2007. (Accessed at: http://www.unikorea.go.kr/english/EPA/EPA0101R.jsp?main_uid=1903.)

¹⁷² 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 has refused to include products made in Gaeseong in the US-ROK Free Trade Agreement currently under consideration by the legislatures in both countries. The U.S. rejection of Gaeseong-manufactured products would make it challenging for Gaeseong to be successful.

could be considered a “reform” project, but critiqued Mount Guemgang as no more than a way to give money to the DPRK.¹⁷³ 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.”¹⁷⁴ Instead, the programs will be “adjusted.” After Yongbyon was shut down, President Roh announced an Inter-Korean summit to take place August 28-30 in Pyongyang; because of the August flooding, it was postponed until October.

Despite an overt reluctance to chastise the DPRK according to U.S. or Japanese standards, China’s stance toward the DPRK has appeared to harden. 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 are 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,”¹⁷⁵ 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, reports stated that China’s inspection of trucks going across its border seems to have increased, those reports also say that the inspections themselves are not thorough.¹⁷⁶ One newspaper reported that China has not renewed visas for

¹⁷³ Chosun Ilbo, “U.S. Takes Issue with Inter-Korean Projects,” October 18, 2006. (Accessed at <http://english.chosun.com/w21data/html/news/200610/200610180017.html>.)

¹⁷⁴ Lee Joo-Hee, “Seoul Urged to get Tough on North Korea,” The Korea Herald, October 19, 2006. (Accessed at http://www.koreaherald.co.kr/SITE/data/html_dir/2006/10/19/200610190001.asp.)

¹⁷⁵ China View “China Resolutely Opposes DPRK Nuclear Test,” October 9, 2006. (Accessed at: http://news.xinhuanet.com/english/2006-10/09/content_5180203.htm.)

¹⁷⁶ International Herald Tribune, “China Steps up Inspections of North Korea Trade after U.S. Sanctions,” October 16, 2006. (Accessed at http://www.iht.com/articles/ap/2006/10/16/asia/AS_GEN_Koreas_Nuclear_China_Sanctions.php.)

North Koreans working legally in China,¹⁷⁷ an action that would further dampen PRC-DPRK trade already negatively affected by the Banco Delta Asia ripple effect. Observers still doubt that China will take any actions that would hasten North Korea's collapse (such as a severe reduction in food or energy aid.) However, China has apparently accelerated extension of a barbed wire fence along the DPRK-China border, which has been 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.¹⁷⁸

Meanwhile, US-China tension over the BDA designation was compounded by the Treasury Department's Ruling in March 2007.¹⁷⁹ 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."¹⁸⁰

Conclusion

Over the last several years, Japan and the United States, among other nations, have introduced separate measures designed to restrict the DPRK's access to funds and WMD materials. With UN Resolution 1718, other nations were compelled to institute their own laws, and the United States implemented new sanctions. Considering the actual amount of trade conducted between the DPRK and the United States, such actions signaled the gravity of American displeasure with DPRK actions, but had a minimal effect on the North Korea economy as a whole or on the DPRK ruling elite.

However, the Treasury Department actions apparently put pressure on the DPRK.

Historians may always be divided, but some will likely claim that the BDA inquiry brought the

¹⁷⁷ Chosun Ilbo, "Chinese Banks Restricting Cash Flow to North Korea," October 17, 2006. (Accessed at <http://english.chosun.com/w21data/html/news/200610/200610170004.html>.)

¹⁷⁸ International Herald Tribune, "China Erects Barbed Wire Fence along Border with North Korea," October 16, 2006. (Accessed at http://www.ihrt.com/articles/ap/2006/10/17/asia/AS_GEN_China_NKorea_Fence.php.)

¹⁷⁹ Treasury Finalizes Rule Against Banco Delta Asia, Ibid.

¹⁸⁰ "Foreign Ministry Spokesman Qin Gang's Remarks on US Treasury Department's Ruling on BDA." (Accessed at: <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t305748.htm>).

DPRK back to the bargaining table. The Bush administration and future administrations may well conclude 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.”¹⁸¹ The administration has also asserted that the partnership of the private sector made the new measures more successful and increased the efficacy of the remaining sanctions.¹⁸²

On September 6 2007 Israel bombed a site in Syria rumored to be a nuclear facility. At the time this report is being written, Congress and the press continue to raise questions regarding both the nature of the site and whether or not North Korea was involved in any way. Should both the rumors prove true, some elements of the U.S. government will undoubtedly press for renewed or more punishing sanctions.¹⁸³ However, both the truth about the Syria bombing and potential U.S. responses are unknown.

Meanwhile, as these questions circulate, the United States, which had been one of the most ardent supporters of sanctions and financial pressure on the DPRK, is poised to lift key elements of its sanctions framework, although prohibitions against trade, export of dual use items, and full access to the International Financial Institutions would remain. It is not possible to tell if the anticipated (but not definite) removal of the DPRK from the State Sponsors of Terrorism List would have a substantive effect granting the DPRK greater access to the global financial community.

¹⁸¹ Levey, Stuart, Prepared Remarks, op. cited.

¹⁸² Ibid

¹⁸³ See Semoon Chang’s “Lessons from U.S. Economic Sanctions on Cuba,” (p. 34-55), [Economic Sanctions Against a Nuclear North Korea: An analysis of United States and United Nations Actions since 1950](#), Suk Hi Kim and Semoon Chang, ed.s), for an interesting discussion of possible next steps.

Other nations have not signaled their intentions regarding their own sanctions frameworks, and there has not yet been an indication of whether the anticipated U.S. actions would influence the implementation of UN Resolutions 1695 and 1718. Another unanswered question is the fate of the U.S. Department of Treasury's December 2005 advisory urging "financial institutions worldwide" to "guard against the abuse of their financial services by North Korea." Will it be formally revoked, or will it linger on, preventing North Korea from re-establishing an international banking base?

Even if laws are changed, country-by-country bilateral discussions will likely be necessary regarding additional steps the DPRK must take before other nations and multilateral organizations are willing to join the ROK in bilateral investment in North Korea's infrastructure. The questions above, which may not be answered until months or even years have passed, will indicate whether the anticipated US actions, if they occur, will be merely a symbolic gesture honoring a period of improved bilateral US-DPRK relations, or the first steps toward changes in the international and bilateral sanctions regimes and a transformation in how the DPRK is able to interact with the rest of the world.

*This report will be updated as necessary.
Please check the NCNK website for revised reports*

Summary of U.S. Sanctions from 2000- Until August 2007¹⁸⁴

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| <p>Travel: 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>Imports: 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 DPRK military, WMD programs, or support of international terrorism.</p> |
| <p>Exports: 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>North-Korean Flagged Vessels Announced in April 2006 and effective on May 8: Foreign Assets Control Regulations prohibit “US persons from owning, leasing, operating or insuring any vessel flagged by NK.”</p> |
| <p>Sanctions Targeting Specific Companies 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.¹⁸⁵</p> |
| <p>Other U.S. Department of Treasury Actions: 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”¹⁸⁶ 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> |

¹⁸⁴ 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.

¹⁸⁵ 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/whwmdeo.pdf> For a list of other companies that have been sanctioned as proliferators also see Rennack, Dianne E., op.cited.

¹⁸⁶ 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>.

Timeline: U.S. Sanctions and other Treasury Departments Actions Against The DPRK

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| 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. |
| 1992-2002 | 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. |

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| 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. 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</p> |

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| | 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.” |
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