

Sleight of Law and U.S.-North Korea Relations: Re-nuclearization and Re-sanctioning

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Summary

In the waning months of the Bush administration in 2008, certain changes to U.S. legal and regulatory frameworks were made to facilitate improved U.S. bilateral relations with North Korea. These changes were made in return for Pyongyang's progress on disabling its nuclear facilities and in accordance with the Six-Party talks agreements. Among the most notable were the removal of North Korea from the Trading with the Enemy Act (TWEA) and the rescission of North Korea's designation as a State Sponsor of Terrorism (SST). However, closer examination reveals that these instruments were replaced with new or different legal restrictions which

essentially rendered the actions moot.

On the same day that President Bush issued the proclamation terminating the exercise of authority under TWEA with respect to North Korea, he also reauthorized Executive Order 13466 (http://en.wikisource.org/wiki/Executive_Order_13466). This order characterized North Korea's nuclear activities as an "unusual and extraordinary" threat to U.S. national security, and authorized the continuation of certain restrictions with respect to North Korea and North Korean nationals. Similarly, although the U.S. rescinded North Korea's designation as an SST, the legal restrictions that were applicable under the SST remain in place under the auspices of different laws.



President Bush lifting the designation of SST

With only symbolic changes to the U.S. legal regime regarding North Korea, the Bush administration left itself vulnerable to charges of duplicity, potentially giving Pyongyang another justification to reject the Six-Party talks. The wide-ranging restrictions placed on North Korea can only mean U.S.-North Korea relations will remain tenuous at best. In order to bring North Korea to negotiations, whether the Six-Party or some other negotiations format, encourage its continued denuclearization, and ultimately put US-North Korean relations on a normal footing, the Obama administration must be willing to make significant changes in the application of U.S. legal sanctions.

Editor's note: This text was completed prior to Bill Clinton's visit to North Korea and the release of the two imprisoned American

reporters. The U.S. continued pursuit of legal sanctions in the wake of that visit, based on Treasury Department regulations, remains a major obstacle to the resumption of negotiations.

Introduction

On June 27, 2008, North Korea destroyed the symbolic emblem of its nuclear power, the cooling tower at Yongbyon, broadcast live for the world to witness. This momentous event was a consequence of arduous negotiations between the Democratic People's Republic of Korea (or North Korea) and the U.S. in collaboration with the other four members of the Six-Party talks. In a succession of landmark developments, North Korea nearly completed the disablement of its Yongbyon nuclear facility, provided a full declaration of its nuclear activities, and agreed to certain verification protocols. In accordance with the principle of "action for action," the U.S., in similar landmark fashion, ended 58 years of applying the Trading with the Enemy Act to North Korea and rescinded its 20-year long designation as a State Sponsor of Terrorism.



Destroying the cooling tower at Yongbyon

By removing North Korea from the ledgers of U.S. laws and regulations, the U.S. government eradicated a number of significant U.S. legal restrictions on North Korea. This seemingly cleared an avenue for a free flow of goods and capital to and from North Korea, and for Pyongyang to apply for international financial assistance. Further down the road, normalized U.S.-North Korean relations now appeared possible. Less clear, however, is that U.S. policies, laws, and regulations with respect to North Korea are filled with replication and overlap. Despite the significant legal actions taken by the U.S. in June, what remained was not a clear path toward improved U.S.-North Korean diplomatic and economic relations but multiple layers of U.S. executive orders, legal actions, and public laws that continued to place onerous restrictions on North Korea.

The most well-known sanctions placed on North Korea in recent years is the U.S.A.

Patriot Act banking restrictions placed on a small Chinese bank that had the effect of disrupting North Korea's connections to global finance, trade and credit. These banking sanctions, discussed by John McGlynn in the *Asia Pacific Journal* (<http://japanfocus.org/-John-McGlynn/2423>), also brought Six Party negotiations toward Korean Peninsula nuclear denuclearization and a Northeast Asian regional peace framework to a halt. McGlynn details the authority that the Department of Treasury wields on U.S. legal and economic policy toward North Korea, in ways that are relevant to the issues addressed in this paper.

This paper attempts to sort out the depth and overlap of laws and regulations regarding the TWEA removal and SST rescission with respect to North Korea. It is broadly divided into two sections: Trading with the Enemy Act and State Sponsors of Terrorism. In both sections I will highlight the consequences of those laws. Then I will show how other executive or legislative authorities leave those same laws and regulations in place. Lastly, I will provide recommendations for moving forward with negotiations with North Korea.

I. Trading with the Enemy Act

During the Korean War, President Truman

used the Trading with the Enemy Act (TWEA) to apply financial sanctions against North Korea and China beginning on December 16, 1950. Since then, the U.S. has maintained North Korea on a list of countries subject to the TWEA and has continued to maintain prohibitive financial measures against North Korea. However, on June 26, 2008, after North Korea submitted a declaration of its nuclear programs, took steps to complete and commit to disablement of its nuclear facilities as delineated by the October 3, 2007 Second Phase Actions for the Implementation of the Joint Statement agreed to by the six parties, and reached an agreement with the U.S. with regard to verification (although North Korea later disagreed with a verification protocol), the Bush administration reciprocated, under the “action-for-action” principle of the October 3 agreement and lifted the application of the TWEA¹ with respect to North Korea.

The TWEA had previously given the President, through Congress, wide authority and discretion during times of war to control transactions involving foreign exchange, currency, securities, banking, and property that fall within U.S. jurisdiction.² The President’s authority to restrict these transactions was revoked once North Korea’s designation under the TWEA was

removed.

Executive Order 13466

On the same day that President Bush removed the application of TWEA, he issued Executive Order (E.O.) 13466, which continued certain restrictions on North Korea and its nationals. The power to issue this E.O. derives from several legal authorities: the National Emergencies Act, which allows the President to declare national emergencies³ as he deems fit; United States Code Title 3 Section 301, which allows the President to delegate and empower any agency in the executive branch;⁴ and the International Emergency Economic Powers Act (IEEPA), which will be discussed below.

In a statement, Bush explained that “the current existence and risk of proliferation of weapons-usable fissile material on the Korean Peninsula constitute an unusual and extraordinary threat to the national security and foreign policy of the United States,”⁵ and thus E.O. 13466 declared the U.S. in a state of national emergency to respond to that threat.

Important to note here is section five⁶ of the E.O., in which the President authorized the Secretary of Treasury to promulgate the rules and regulations and employ all powers granted to the President by the IEEPA in

order to carry out his mandate with respect to North Korea. The IEEPA, as will be discussed in the following section, grants the President and relevant executive agencies sanctioning powers broader than those found in the TWEA.

International Emergency Economic Powers Act (IEEPA)

Through E.O. 13466, President Bush invoked another presidential authority, the International Emergency Economic Powers Act,⁷ to apply to North Korea. The IEEPA, enacted by Congress in 1977, substantially broadened the power and authority of the President with regard to national emergencies. It grants the President, during times of “unusual and extraordinary threat,”⁸ the authority to control and regulate transactions involving foreign exchange, banking, currency, and securities,⁹ and to control and prohibit imports, exports, and property transactions that are subject to U.S. jurisdiction.¹⁰

Under the IEEPA, the President’s authority not only almost exactly replicates the TWEA but extends it in two important ways. First, it allows the President to execute his authority during times of “unusual and extraordinary threat” rather than during times of war as under the TWEA. This is an important distinction because the phrasing

“unusual and extraordinary threat” is quite broad in its application and may be used for potentially any circumstance considered a threat to national security. This is especially important to note in the event U.S. diplomacy someday includes negotiations toward a peace treaty with North Korea. A peace treaty would render the TWEA ineffective, but the IEEPA could remain applicable. Second, under the IEEPA, the President has the authority to prohibit the import or export of property subject to U.S. jurisdiction, which the President did not have under the TWEA. However, an opposing provision later in the act that states that the President does not have authority to regulate or prohibit the trade of items that do not infringe upon the non-proliferation and antiterrorism policies of the United States. But any apparent contradiction in presidential powers is overridden by the fact that the President has broad authority to regulate trade with North Korea under the Export Administration Act, which will be discussed later.

Although President Bush terminated the exercise of his authority under the TWEA with respect to North Korea, the continued application of the IEEPA means no real lessening of US economic restrictions on North Korean. In fact, the broader authority of the IEEPA enables the President to inflict

even more painful economic restrictions at any time. And as with the TWEA, the application of the IEEPA to North Korea requires annual renewal and its revocation requires a presidential declaration and a 45-day notification period to Congress, during which time Congress can either allow revocation by remaining passive or block it.

Foreign Assets Control Regulations

The Office of Foreign Assets Control (OFAC) under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence of the U.S. Department of Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals.¹¹ Today's OFAC is a successor to the Office of International Finance, which is a successor of the Office of Foreign Funds Control, itself a creation of the Trading with the Enemy Act of 1917.

The removal of North Korea from the list of TWEA states is equivalent to removing North Korea from the list of designated states in Chapter V of the Foreign Assets Control Regulations (FACR). However, a provision in the FACR stipulates that the removal is subject to the "Trading With the Enemy Act, the Foreign Assistance Act of 1961, or any proclamation."¹² Of significance in this provision is that authority under this

law is subject to the Foreign Assistance Act and *any proclamation*. This means that while North Korea's TWEA designation has been removed, it is still subject to the OFAC, for two reasons. First, North Korea is still subject to the Foreign Assistance Act (Cold War-era presidential authority that regulates assistance to foreign countries and is discussed below). Second, the proclamation of E.O. 13466 discussed earlier gives the President the authority to re-apply Treasury sanctions against North Korea. This is evident as North Korea remains a designated state under the Chapter V regulations enforced by Treasury's OFAC.

The President enforces his executive authority through the various executive agencies at his disposal by delegating and handing mandates to the secretaries to execute or enforce through their departments. In this case, the TWEA gave the President the authority to create what is now OFAC and mandated the Secretary of Treasury to act on presidential authority as delineated in the TWEA.¹³ Federal regulations,¹⁴ in this case the Foreign Assets Control Regulations, were then created to enumerate and regulate how the Secretary of Treasury could direct the OFAC and the Treasury Department to carry out the President's orders.

Furthermore, FACR, which is one of various

regulations under OFAC, mirror the legal authorities set forth in the TWEA and IEEPA. While all or a majority of the FACR are applicable to North Korea, the following specific regulations are of greatest relevance.¹⁵ FACR prohibits transactions in banking, securities, and property with a designated foreign country such as North Korea in much the same language as is written in the TWEA and IEEPA. Additionally, FACR explicitly prohibits importation of licensed or unlicensed merchandise that has undergone any alteration or improvement in North Korea. FACR outlines that, in order to prevent falsification of documents, licenses for importation of goods requires that the origin of the goods be verified by an independent third party. These regulations also contain a variety of other provisions related to travel to North Korea, authorization of sole proprietorships or partnerships of or related to emigrants from North Korea, humanitarian assistance donations to North Korea, etc.

The IEEPA and FACR are the most salient and relevant U.S. regulations covering trade and business with North Korea. It should be kept in mind that the actual number of laws and regulations that are applicable to North Korea is considerably larger and cover a much broader scope (for example, in

connection with alleged terrorist actions, which will be discussed below, and human rights). The sanctions applied to North Korea by the United Nations Security Council in 2006 and last month has put the focus on restricting the movements and assets of members in the highest circles of the country's leadership. But as this brief discussion illustrates, the U.S. alone, acting mainly through governmental powers granted the Treasury Department, has given itself the authority to place restrictions on almost any good traded between the US and North Korea, authority that can be invoked anytime by any US president, with potentially devastating consequences for North Korea's ability to prosper and develop its economy.

II. State Sponsors of Terrorism

States that are deemed State Sponsors of Terrorism (SST¹⁶) by the US government are designated as such pursuant to three laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act.¹⁷ Following an SST designation, these three mutually reinforcing laws ban the export and sale of arms and arms-related goods, control exports of dual-use items, prohibit economic assistance, and impose financial restrictions, including prohibitions on transactions with

US financial institutions and certain international financial-aid bodies that have US representation.

On October 11, 2008, US Secretary of State Condoleezza Rice rescinded the designation of North Korea as an SST, thus removing these restrictions on North Korea. However, similar to the Trading with the Enemy Act, there are alternate laws ready to continue the same constraints on North Korea that were in place under the SST designation.

A. Export Administration Act

Section 6(j) of the Export Administration Act (EAA) is the first of the three SST laws. The EAA is the statutory authority for the Export Administration Regulations (EAR), which govern exports of sensitive dual-use goods and technology. The EAA originally began as a post-WWII export control directed at the former Soviet Union and its supporters. It evolved to today include export controls on U.S.-designated terrorist or terrorism-supporting countries.

Under the authority provided by the EAA, the President is empowered to prohibit any and all exports of goods and technology from the United States to North Korea. Exceptions are possible if the Secretary of State declares the absence of a threat to the US and a positive US interest.¹⁸ As the EAA and other legislation outlines, in order to

remove a country from the list of terrorist states, the President can either rescind or waive its designation.¹⁹ Rescission involves two steps. First, the President must submit a report to the Speaker of the U.S. House of Representatives and the chairman of the U.S. Senate Foreign Relations committee certifying that the designated country has undergone a regime or leadership change, has demonstrated non-involvement in supporting international terrorism, and will provide assurances of non-cooperation with international terrorism in the future. Second, at least 45 days prior to the rescission, the President must submit a report that the country concerned has not supported international terrorism in the preceding six months and will not do so in the future. The waiver process also involves two steps. First, a presidential determination is required that states that removing the prohibitions on the country of concern is essential to the national security interests of the U.S. Second, 15 days prior to waiving the sanctions, the President must consult with the Committee on Foreign Affairs in the House of Representatives and the Committee on Foreign Relations in the Senate and submit a report to Speaker of the House of Representatives and the Committee on Foreign Relations outlining the reasons for waiving the designation. These procedures and the corresponding

language mirror exactly what is found in the Arms Export Control Act and the Foreign Assistance Act, the other two laws propping up SST restrictions.

However, as will be discussed below, other sections of the EAA continue to apply to North Korea due to how Congress has decided to interpret the Act.

Executive Order 13222

The EAA nearly expired in 1989 following the belief that export controls had fulfilled their role in bringing about the fall of the Soviet Union.²⁰ In that year, Congressional debate on relaxing the stringency of export controls centered on whether the EAA should be renewed. Congress eventually decided on a temporary extension of the EAA, allowing export controls to continue from 1989 to 1994. When the EAA expired in 1994, the Clinton administration invoked the IEEPA from 1994 to 2000 in the form of Executive Order 12924 to continue the EAA's export controls, including those on North Korea.²¹ In November of 2000, the House and Senate agreed to revive the EAA until August 2001. On August 17, 2001, with the expiration of the EAA, President Bush issued Executive Order 13222, which once again invoked the IEEPA authority, and annually renewed the IEEPA to continue the EAA's export controls, including those on

North Korea.²² On August 3, 2007, US Senator Christopher Dodd introduced a bill for the Export Enforcement Act, which would reauthorize the EAA for five years;²³ however, the bill has not yet become a law. Essentially, the EAA has expired, but its export control functions continue under the IEEPA, which remains in effect against North Korea (and also partially substitutes for the rescinded TWEA designation).

Export Administration Regulations (EAR)

As the Foreign Assets Control Regulations prevent the import of goods from North Korea, the Export Administration Regulations (EAR) regulate and prohibit the export of goods from the US to North Korea. EAR enforcement actions are handled by the Department of Commerce's Bureau of Industry and Security and are based on the EAA. Even though the EAA has expired, the EAR survives because EAR language is replicated in the IEEPA (apparently to guard against such a situation) and presidential executive orders under IEEPA have "directed and authorized the continuation and force of the EAR."²⁴

The following paragraphs will highlight the most relevant EAR provisions to North Korea. The first paragraph²⁵ will introduce the definition of exports and dual use goods and the scope of coverage. The second²⁶ will

introduce regulations specific to North Korea. As will be seen, the prohibition of exporting and reexporting is replicated numerous times and reiterated in various ways.

The scope and definition of exports overlap and are repeated in three parts of the EAR: Scope of the EAR, General Prohibitions, and Commerce Control List (CCL). One of the first provisions under the "Scope of the EAR" states that EAR statutory authority provided by the EAA can also be authorized by the IEEPA. Dual use goods are defined as goods that can be both military/strategic and civilian/commercial in their use. Of note here is the EAR's term strategic, which can be very broad in its application. Moreover, EAR's definition of "export" is very expansive. Covered exports include items that have been exported from the United States and then re-exported elsewhere, exports from any destination that are based on U.S. technology, equipment returned to a foreign national after having been manipulated or repaired in the United States, shipments from a U.S. foreign trade zone, and any exporting done by a U.S. national anywhere in the world. For any export good not covered, the EAR specifically mentions that those exports are already subject to the regulations of the departments of State, Treasury, and Energy,

the U.S. Nuclear Regulatory Commission and the Patent and Trademark Office. Second, General Prohibitions duplicate the coverage of prohibitions found in "Scope of the EAR" and add the prohibition of exports that uses transport through the designated country. Third, the Department of Commerce's Bureau of Industry and Security has the authority to restrict items for export, as defined above, by placing them onto a "commerce control list" (CCL). The CCL is divided into ten numbered categories ranging from "nuclear materials" (0) to "propulsion systems" (9). Items within each category are further classified into five letter groups from "equipment, assemblies and components" (A) to "technology" (E). Within each group items are again classified on the basis of an Export Control Classification Number (ECCN), which gives the justification for control. Justification for control includes national security reasons, nuclear nonproliferation, and anti-terrorism.²⁷

Specific North Korea regulations include "CCL based control policy," "Control policy: end-user and end-use based," and "Embargoes and other special controls." Under CCL based control policy, North Korea is listed as a terrorist state, which prohibits any export or re-exports as defined by EAR to North Korea and requires a U.S.

exporter wishing to export an item to North Korea to obtain a license (generally denied). However, exports of humanitarian goods that could benefit the North Korean people, United Nations humanitarian efforts, and agricultural commodities are permitted. "End-use and end-user based" control policy reiterates the same prohibitions but with regard to individuals engaged in any stage of export to North Korea. Finally, "Embargoes and other special controls" duplicates the essence of EAR's restrictions and includes additional regulations. This section generally prohibits export of luxury good items, UN specified items, and items that promote nuclear proliferation or advance missile technology.

B. Arms Export Control Act

The Arms Export Control Act (AECA) was established in 1976 to prevent the acquisition of arms by America's Cold War enemies. This Act attempts to regulate exports that may contribute to an arms race or the development of weapons of mass destruction, support international terrorism, create or increase the possibility of conflict, or disrupt negotiations leading to arms control or non-proliferation agreements.²⁸

Section 40 of the AECA (Transactions with Countries Supporting Acts of International Terrorism), which forms part of the SST

designation process, states that direct and indirect munitions transactions by or facilitated to an SST-designated country is prohibited.²⁹ This section replicates prohibitions found in the EAR but has greater detail regarding the definition of munitions and munitions transactions. Essentially, the direct or indirect exportation, including lease, loan, grants, provision of credits, of military arms, military construction, exchange of training, or anything having to do with military goods to North Korea is prohibited. North Korea can only receive U.S. arms if the president issues a national security waiver, undergoes a regime change or is delisted by the president provided Congress receives 45-day notification. This process is the same as that found under the EAA.

Unlike the EAA, the AECA has not expired. However, like the EAA, the AECA continues restrictions on North Korea through other provisions within the AECA regardless of official SST status. These other restrictions are described below.

Not Fully Cooperating List

Section 40A³⁰ of the AECA states that countries "not fully cooperating" with the antiterrorism efforts of the United States are prohibited from receiving exports of defense articles or services as stipulated under

Section 40. The U.S. Deputy Secretary of State first determined that North Korea was a not fully cooperating state on May 15, 2002 and has renewed this designation every year since.³¹ In effect, this designation nullifies the removal of North Korea's SST designation. It should be noted that North Korea can be removed from this list through presidential waiver.

North Korea Nonproliferation Act 2006

After North Korea's nuclear device test in October 2006, the U.S. House and Senate enacted P.L. 109-353 otherwise known as the North Korea Nonproliferation Act. This Act serves to "impose sanctions on persons who transfer such weapons, and goods and technology related to such weapons, to and from North Korea in the same manner as persons who transfer such items to and from Iran and Syria."³³ Moreover, it urges all governments to comply with United Nations Security Council Resolution 1695, and it amends the Iran and Syria Nonproliferation Act to read the Iran, North Korea, and Syria Nonproliferation Act.³⁴

Iran, North Korea, Syria Nonproliferation Act

This Act prohibits the U.S. government from selling any defense articles, defense services, or design and construction services under the Arms Export Control Act.³⁶ Additionally, it requires the denial of "licenses and

suspension of existing licenses for the transfer of the export, including dual use exports, of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations."³⁷ The Act also stipulates provision for exceptions, written justifications, and procedures for removal which mirrors those found in the EAA. Of note, this act invokes the authorities of not only the AECA but also the EAA, if it is someday renewed, or the EAR.

C. Foreign Assistance Act

The last of the three SST legislative legs, Section 620A Prohibition on Assistance to Governments Supporting International Terrorism of the Foreign Assistance Act (FAA), regulates development assistance. The FAA restrictions on assistance in this Act are separate from the commercial and military restrictions already described. The FAA is another form of U.S. presidential authority leftover from the Cold War that arose from the U.S. belief that a nation's susceptibility to communism was directly correlated to how poor it was. The FAA was created to financially aid emerging countries and in so doing prevent the advance of communism.

Section 620A of the FAA stipulates that the "U.S. shall not provide any assistance to any

country if the government of that country has repeatedly supported acts of international terrorism.”³⁸ This section essentially prohibits development assistance to North Korea. It also contains the procedures (exactly the same as those found in the EAA and AECA) for removal of North Korea’s SST designation. Secretary of State Rice’s action in accordance with Bush administration policy in 2008 to rescind North Korea’s SST designation eliminated U.S. restraints on the provision of development assistance. However, the following provisions serve to annul the Secretary’s rescission.

Prohibitions Against Furnishing Assistance

Section 620 of the FAA (entitled “Prohibitions Against Further Assistance”),³⁹ which is not part of the SST regulatory framework, disallows U.S. assistance to any state listed as a communist country, with North Korea explicitly named. Thus, any benefits North Korea is entitled to under a recession of an SST designation are reversed by this provision. Removal from this list is the same as that enumerated in the EAA.

Prohibition Against Direct Funding

Even if North Korea were to be removed from the “Prohibitions Against Further Assistance” list, Section 607 “Prohibition Against Direct Funding for Certain

Countries” of the Consolidated Appropriations Act of 2008⁴⁰ explicitly prohibits any financial assistance to North Korea, including direct loans, credits, and other services of the Export-Import Bank. In response to North Korea’s first nuclear device test in 2006, the U.S. Congress started in that year to insert language into its annual appropriations bills to deny financial assistance,⁴¹. This Act is not tied to any determination by the President or the Secretary of State. Removal of its application to North Korea requires Congressional inaction when the Act comes up for renewal or a Congressional determination that application is no longer warranted.

III. International Financial Institutions

Anti-Terrorism and Effective Death Penalty Act 1996

Although not formally stated as part of the SST regulations, Section 327 of the Anti-Terrorism and Effective Death Penalty Act (Opposition to Assistance by International Financial Institutions to Terrorist States⁴²) instructs the U.S. executive directors at each of the international financial institutions, including the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund, “to use the voice and vote of the United States to

oppose any loan or other use of funds to a country”⁴³ that the Secretary of State has made a determination under 6(j) of the EAA or 620a of FAA. The act also places “secondary sanctions” on third-party countries providing aid to terrorist countries and penalties on U.S. persons engaged in financial activities with terrorist states.

Withholding of U.S. Proportionate Share for Certain Programs of International Organizations

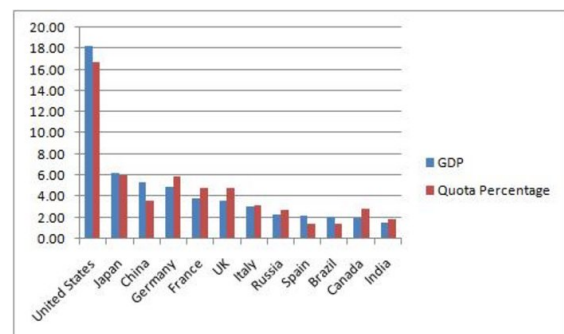
Section 307 of the FAA, "Withholding of United States Proportionate Share for Certain Programs of International Organizations," expressly prohibits U.S. funding of programs managed by international organizations operating in North Korea.⁴⁴ Moreover, the FAA outlaws U.S. contributions to international organizations that could benefit North Korea.

In theory, international organizations are free to fund programs benefitting North Korea or use U.S. contributions towards North Korean programs. Were that to happen, however, U.S. domestic law would compel the withdrawal of US funds.⁴⁵ Since U.S. contributions to international assistance programs are by far the largest, any cutoff of U.S. funds as punishment for assisting North Korea would jeopardize the

continued existence of the international organization.

Politics of International Organizations

International financial institutions are each governed by a board of directors that determines the funding and policy direction of each particular organization. The board of directors is filled by countries who financially contribute to these organizations and shares of votes or voting power are determined by each country’s level of financial contributions. The U.S. is the major funds contributor to many of these institutions. According to 2009 figures,⁴⁶ the U.S. controls 16.77% of the votes in the International Monetary Fund (IMF). Next is Japan with 6.02% voting power. The trend continues at the World Bank Group’s four leading aid institutions,⁴⁷ where the U.S. voting power share averages 16.76%, with Japan the next closest at an average of 6.89%.⁴⁸ Thus, the influence of U.S. policy and regulations on blocking international expenditures on programs that could benefit North Korea is significant.



IMF quotas, 2009

Moreover, the other major contributors do not vary much by organization. They are usually the U.K., Japan, France, and Germany, all allies of the U.S. and supporters of U.S. policy on North Korea. These countries plus the U.S. comprise the overwhelming majority of funding and consequently control voting rights and policymaking at these institutions. Furthermore, these nations have declared their willingness to enforce UN Security Council resolutions on North Korea. Specifically, UN Security Council resolution 1718 stipulates that all UN member states must not supply, directly or indirectly, North Korea with arms; transfer information, advice, or services that facilitates proliferation of arms; and must freeze all funds and economic transactions with North Korea that support nuclear, weapons of mass destruction, and ballistic missile-related programs.⁴⁹ Furthermore, UN Security Council resolution 1874 reinforces 1718 and adds provisions for a ban on all arms transfers, requests states to search and seize suspected cargo, and bans any and all financial assistance.⁵⁰

IV. Conclusion

U.S. legislative restrictions pertaining to North Korea is a tale of cautionary

duplication and replication of broad and comprehensive legislation with substantial discretionary authority. For example, the presidential authority invested in the Trading with the Enemy Act (TWEA) is also reproduced in the International Emergency Economic Powers Act (IEEPA). Both acts empower the President to regulate and prohibit transactions in banking, securities, property and specific imports and exports. Both also allow the President to authorize the Department of Treasury to create and enforce the Foreign Assets Control Regulations (FACR). Moreover, many of these regulations can also derive their authority from other presidential declarations.

Similarly, laws and regulations deriving from the State Sponsors of Terrorism (SST) legislation are also comprehensive and redundant in multiple ways. The president's power to apply a SST designation is based on three laws: section 6(j) of the Export Administration Act (EAA), section 40 of the Arms Export Control Act (AECA), and section 620A of the Foreign Assistance Act (FAA). The EAA gives the President the authority to regulate exports overseas. After the Cold War, Congress temporarily extended the EAA but eventually allowed it to expire. However, by invoking the IEEPA, the President has continued enforcing

export controls using authorities originally contained in the EAA. The AECA also empowers the President to prohibit the export of arms. The removal of North Korea's SST designation did not cancel the application of AECA sanctions because of the additional designations of North Korea as a "Not Fully Cooperating State" and its inclusion in the Iran and Syria Nonproliferation Act. Finally, North Korea's removal from the FAA list of states at first glance allows the U.S. to provide development assistance to North Korea. However, language elsewhere in the FAA concerning North Korea's status as a communist state prevents that assistance.

U.S. legislation regarding contributions to international financial assistance organizations impose similar hurdles that leave North Korea entrapped in a legal matrix. While removal from the list of state terrorists allows U.S. approval of financing for development programs in North Korea, other legislation exists to prevent this. A set of redundant laws and regulations even go so far as to direct the U.S. representative at these organizations to vote against aid programs for North Korea and to withdraw sizeable U.S. contributions if these organizations act contrary to US law. Additionally, as long as the top contributors to these organizations are the U.S. and its

allies, which is currently the case, the likelihood of any international aid organization ignoring U.S. policy on North Korea is essentially zero.

It should be further noted that there exist U.S. laws with regard to alleged human rights violations in North Korea that are not discussed here. These laws provide further redundancy by adding yet another layer of penalties and restrictions on direct or indirect U.S. trade with and development assistance to North Korea.

Lastly, as this brief discussion demonstrates, the U.S. executive branch, with backing from the U.S. legislative branch, has almost unlimited power to turn on or off the spigot of regulations that impose severe economic restrictions on U.S. and international trade and business with North Korea. True engagement by the U.S. with North Korea will depend not on fine tuning certain laws and regulatory authorities, but on wholesale changes in the policy desires of the White House.

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Appendix: U.S. Legislation on North Korea with respect to TWEA and SST ⁵¹

Trading with the Enemy Act

(b)(1)(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin bullion, currency, or securities and

(b)(1)(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for

the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes;...

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission... The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979..., or under section 6 of that Act... to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code

Executive Order 13466

(Sec. 2) Except to the extent provided in statutes or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order, United States persons may not register a vessel in North Korea, obtain authorization for a vessel to fly the North Korean flag, or own, lease, operate, or insure any vessel flagged by North Korea.

(Sec. 5) the Secretary of Treasury, after consultation with the Secretary of State, is

hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

International Emergency Economic Powers Act

(1701)(a)(1)(A) investigate, regulate, or prohibit--

(i) any transactions in foreign exchange,
(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,
 by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or

transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(b) The authority granted to the President does not include the authority to regulate or prohibit, directly or indirectly

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the

extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission... The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of the Appendix to this title, or under section 2405 of the Appendix to this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of Title 18

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages

Office of Foreign Assets Control: Foreign Assets Control Regulations

500.201 *Transactions involving designated foreign countries or their nationals; effective date.*

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of any designated foreign country, or any national thereof, or such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.

(b)(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of

indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(d) The term “designated foreign country” means a foreign country in the following schedule, and the terms “effective date” and “effective date of this section” mean with respect to any designated foreign country, or any national thereof, 12:01 a.m. eastern standard time of the date specified in the following schedule, except as specifically noted after the country or area.

Schedule: North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950

500.204 *Importation of and dealings in certain merchandise.*

(a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations or rulings, instructions, licenses, or otherwise, persons subject to the jurisdiction of the United States may not purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States specified in following paragraph (a)(1) of this section.

(1) *Merchandise the country of origin of which is North Korea, North Viet-Nam, Cambodia, or South Viet-Nam. Articles which are the growth, produce or manufacture of these areas shall be*

deemed for the purposes of this chapter to be merchandise whose country of origin is North Korea, North Viet-Nam, Cambodia, or South Viet-Nam, notwithstanding that they may have been subjected to one or any combination of the following processes in another country:

(i) Grading; (ii) Testing; (iii) Checking; (iv) Shredding; (v) Slicing; (vi) Peeling or splitting; (vii) Scraping; (viii) Cleaning; (ix) Washing; (x) Soaking; (xi) Drying; (xii) Cooling, chilling or refrigerating; (xiii) Roasting; (xiv) Steaming; (xv) Cooking; (xvi) Curing; (xvii) Combining of fur skins into plates; (xviii) Blending; (xix) Flavoring; (xx) Preserving; (xxi) Pickling; (xxii) Smoking; (xxiii) Dressing; (xxiv) Salting; (xxv) Dyeing; (xxvi) Bleaching; (xxvii) Tanning; (xxviii) Packing; (xxix) Canning; (xxx) Labeling; (xxxi) Carding; (xxxii) Combing; (xxxiii) Pressing; (xxxiv) Any process similar to any of the foregoing.

500.411 *Dealings abroad in commodities subject to the Regulations.*

Section 500.204 prohibits the unlicensed importation into the United States of commodities of North Korean, North Vietnamese, Cambodian, or South Vietnamese origin. It also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing with such commodities which are outside the United States.

500.412 *Process vs. manufacture.*

A commodity subject to § 500.204 remains subject howsoever it has been processed. It

should not be assumed that a commodity which has undergone operations other than those listed in § 500.204(a)(1), has become a manufactured form of the commodity rather than a processed form thereof. In case of question, a ruling should be requested from the Office of Foreign Assets Control. Requests for rulings in the form of license applications or otherwise should include adequate technical detail. It should be noted that it is quite possible for merchandise to have North Korea, North Viet-Nam, Cambodia, or South Viet-Nam as its "country of origin" for Foreign Assets Control purposes while having some other country as its "country of origin" for marking or statistical purposes.

500.549 Proof of origin.

Specific licenses for importation of goods the origin of which is North Korea, North Viet-Nam, Cambodia, or South Viet-Nam are generally not issued unless the applicant submits satisfactory documentary proof of the location of the goods outside North Korea, North Viet-Nam, Cambodia, or South Viet-Nam prior to the applicable effective date and of the absence of any interest of North Korea, North Viet-Nam, Cambodia, or South Viet-Nam in the goods at all times on or since that date. Since the type of documents which would constitute satisfactory proof varies depending upon the facts of the particular case, it is not possible to state in advance the type of documents required. However, it has been found that affidavits, statements, invoices, and other documents prepared by manufacturers, processors, sellers or

shippers cannot be relied on and are therefore not by themselves accepted by the Office of Foreign Assets Control as satisfactory proof of origin. Independent corroborating documentary evidence, such as insurance documents, bills of lading, etc., may be accepted as satisfactory proof.

State Sponsors of Terrorism

Export Administration Act

(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the

chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate--

(A) before the proposed rescission would take effect, a report certifying that--

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that--

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

Executive Order 13222

By the authority vested in me as President by the Constitution and the laws of the United States of America, including but not limited to section 203 of the International Emergency Economic Powers Act ("Act") (50 U.S.C. 1702), I, GEORGE W. BUSH, President of the United States of America, find that the unrestricted access of foreign parties to U.S. goods and technology and the existence of certain boycott

practices of foreign nations, in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 et seq.), constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and hereby declare a national emergency with respect to that threat.

Accordingly, in order (a) to exercise the necessary vigilance over exports and activities affecting the national security of the United States; (b) to further significantly the foreign policy of the United States, including its policy with respect to cooperation by U.S. persons with certain foreign boycott activities, and to fulfill its international responsibilities; and (c) to protect the domestic economy from the excessive drain of scarce materials and reduce the serious economic impact of foreign demand, it is hereby ordered as follows:

Section 1. *To the extent permitted by law, the provisions of the Export Administration Act of 1979, as amended, and the provisions for administration of the Export Administration Act of 1979, as amended, shall be carried out under this order so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the Export Administration Act of 1979, as amended. The delegations of authority set forth in Executive Order 12002 of July 7, 1977, as amended by Executive Order 12755 of March 12, 1991, and Executive Order 13026 of November*

15, 1996; Executive Order 12214 of May 2, 1980; Executive Order 12735 of November 16, 1990; and Executive Order 12851 of June 11, 1993, shall be incorporated in this order and shall apply to the exercise of authorities under this order. All actions under this order shall be in accordance with Presidential directives relating to the export control system heretofore issued and not revoked.

Sec. 3. Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative actions issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).

Export Administration Regulations

730.2 Statutory authority

The EAR have been designed primarily to implement the Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401–2420 (EAA). There are numerous other legal authorities underlying the EAR. ...From time to time, the President has exercised authority under the International Emergency Economic Powers Act with respect to the EAR (50 U.S.C. 1701–1706 (IEEPA)). The EAA is not

permanent legislation, and when it has lapsed, Presidential executive orders under IEEPA have directed and authorized the continuation in force of the EAR.

730.3 Dual use exports

The convenient term dual use is sometimes used to distinguish the types of items covered by the EAR from those that are covered by the regulations of certain other U.S. government departments and agencies with export licensing responsibilities. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses and in civil applications from those that are weapons and military related use or design and subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission. Note, however, that although the short-hand term dual use may be employed to refer to the entire scope of the EAR, the EAR also apply to some items that have solely civil uses.

730.5 Coverage of more than exports

The core of the export control provisions of the EAR concerns exports from the United States. You will find, however, that some provisions give broad meaning to the term “export”, apply to transactions outside of the United States, or

apply to activities other than exports.

(a) Reexports. Commodities, software, and technology that have been exported from the United States are generally subject to the EAR with respect to reexport. Many such reexports, however, may go to many destinations without a license or will qualify for an exception from licensing requirements.

(b) Foreign products. In some cases, authorization to export technology from the United States will be subject to assurances that items produced abroad that are the direct product of that technology will not be exported to certain destinations without authorization from BIS.

(c) Scope of “exports”. Certain actions that you might not regard as an “export” in other contexts do constitute an export subject to the EAR. The release of technology to a foreign national in the United States through such means as demonstration or oral briefing is deemed an export. Other examples of exports under the EAR include the return of foreign equipment to its country of origin after repair in the United States, shipments from a U.S. foreign trade zone, and the electronic transmission of non-public data that will be received abroad.

(d) U.S. person activities. To counter the proliferation of weapons of mass destruction, the EAR restrict the involvement of “United States persons” anywhere in the world in exports of foreign-origin items, or in providing services or support, that may contribute to such proliferation. The EAR also restrict technical assistance by U.S. persons with respect to

encryption commodities or software.

734.3 *Items subject to the EAR*

(a) Except for items excluded in paragraph (b) of this section, the following items are subject to the EAR:

- (1) All items in the United States, including in a U.S. Foreign Trade Zone or moving intransit through the United States from one foreign country to another;*
- (2) All U.S. origin items wherever located;*
- (3) Foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are ‘bundled’ with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, and foreign-made technology that is commingled with controlled U.S.-origin technology.*
- (4) Certain foreign-made direct products of U.S. origin technology or software, as described in § 736.2(b)(3) of the EAR. The term “direct product” means the immediate product (including processes and services) produced directly by the use of technology or software; and*
- (5) Certain commodities produced by any plant or major component of a plant located outside the United States that is a direct product of U.S.-origin technology or software, as described in § 736.2(b)(3) of the EAR.*

(b) The following items are not subject to the EAR:

- (1) Items that are exclusively controlled for export or reexport by the following departments*

and agencies of the U.S. Government which regulate exports or reexports for national security or foreign policy purposes:

(i) Department of State. The International Traffic in Arms Regulations (22 CFR part 121) administered by the Directorate of Defense Trade Controls relate to defense articles and defense services on the U.S. Munitions List. Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(ii) Treasury Department, Office of Foreign Assets Control (OFAC). Regulations administered by OFAC implement broad controls and embargo transactions with certain foreign countries. These regulations include controls on exports and reexports to certain countries (31 CFR chapter V). Trading with the Enemy Act (50 U.S.C. app. section 1 et seq.), and International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.)

(iii) U.S. Nuclear Regulatory Commission (NRC). Regulations administered by NRC control the export and reexport of commodities related to nuclear reactor vessels (10 CFR part 110).

Atomic Energy Act of 1954, as amended (42 U.S.C. part 2011 et seq.).

(iv) Department of Energy (DOE). Regulations administered by DOE control the export and reexport of technology related to the production of special nuclear materials (10 CFR part 810).

Atomic Energy Act of 1954, as amended (42 U.S.C. section 2011 et seq.).

(v) Patent and Trademark Office (PTO).

Regulations administered by PTO provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement thereto or division thereof (37 CFR part 5). BIS has delegated authority under the Export Administration Act to the PTO to approve exports and reexports of such technology which is subject to the EAR. Exports and reexports of such technology not approved under PTO regulations must comply with the EAR.

(2) Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous

736.2 General prohibitions and determination of applicability

(b)(1) General Prohibition One—Export and reexport of controlled items to listed countries (Exports and Reexports). You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin

(2) General Prohibition Two—Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (U.S. Content Reexports).

(3) General Prohibition Three—Reexport and export from abroad of the foreign-produced direct product of U.S. technology and software (Foreign-Produced Direct Product Reexports)

(7) General Prohibition Seven—Support of proliferation activities (U.S. person proliferation activity)—(i) Support of proliferation activities (U.S. person proliferation activity).

(8) General Prohibition Eight—In transit shipments and items to be unladen from vessels or aircraft (Intransit)—

(i) Unlading and shipping in transit. You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) Country scope. This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

738.2 Commerce Control List (CCL) structure

(a) Categories. The CCL is divided into 10 categories, numbered as follows:

0—Nuclear Materials, Facilities and Equipment and Miscellaneous

1—Materials, Chemicals, “Microorganisms,” and Toxins

2—Materials Processing

3—Electronics

4—Computers

5—Telecommunications and Information Security

6—Lasers and Sensors

7—Navigation and Avionics

8—Marine

9—Propulsion Systems, Space Vehicles and Related Equipment

(A) The “Controls” header identifies all applicable Reasons for Control, in order of restrictiveness, and to what extent each applies (e.g., to the entire entry or only to certain subparagraphs). Those requiring licenses for a larger number of countries and/ or items are listed first. As you read down the list the number of countries and/ or items requiring a license declines. Since Reasons for Control are not mutually exclusive, items controlled within a particular ECCN may be controlled for more than one reason. The following is a list of all possible Reasons for Control:

AT Anti-Terrorism

CB Chemical & Biological Weapons

CC Crime Control

CW Chemical Weapons Convention

EI Encryption Items

FC Firearms Convention

MT Missile Technology

NS National Security

NP Nuclear Nonproliferation

RS Regional Stability

SS Short Supply

UN United Nations Embargo

SI Significant Items

SL Surreptitious Listening

742.19 Anti-terrorism: North Korea

(a) License Requirements.

(1) All items on the Commerce Control List (CCL) (i.e., with a designation other than EAR99) that are controlled for anti-terrorism reasons require a license for export or reexport to North Korea.

(2) The Secretary of State has designated North Korea as a country whose Government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy on terrorism-supporting countries, BIS maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement 2 to part 742.

(ii) ... When it is determined that an export or reexport could make a significant contribution to the military potential of North Korea, including its military logistics capability, or could enhance North Korea's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

(b) Licensing policy.

(1) Applications for export and reexport to all end-users in North Korea of the following items will generally be denied:

(2) Applications for export and reexport to North Korea of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for nonmilitary end-users or for

non-military end-uses will be considered on a case-by-case basis. Applications to export or reexport humanitarian items intended for the benefit of the North Korean people; items in support of United Nations humanitarian efforts; and agricultural commodities and medical devices will generally be approved.

744.19 *Licensing policy regarding persons sanctioned pursuant to specified statutes*

Notwithstanding any other licensing policy elsewhere in the EAR, BIS will deny any export or reexport license application if the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user is subject to one or more of the sanctions described in paragraphs (a), (b), and (c) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if such party is subject to a sanction described in paragraph (d) of this section.

(b) A sanction issued pursuant to the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 106–178, 114 Stat. 38 (March 14, 2000), as amended by Pub. L. No. 109–112, 119 Stat. 2366 November 22, 2005) and Pub. L. No. 109–353, 120 Stat. 2015 (October 13, 2006)) that prohibits the granting of a license for the transfer to foreign entities of items, the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended, and as carried out by Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of items controlled pursuant to the Export Administration Act of 1979.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended (Missile Technology Control Act of 1990), and as carried out by an Executive Order 13222 of August 17, 2001, that prohibits the issuance of new licenses for exports to the sanctioned entity of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979.

746.4 North Korea

(a) Licensing Requirements. As authorized by section 6 of the Export Administration Act of 1979, as amended, and consistent with United Nations Security Council Resolution 1718, a license is required to export or reexport any item subject to the EAR (see part 734 of the EAR) to the Democratic People's Republic of Korea (North Korea), except food and medicines classified as EAR99 (definitions in part 772 of the EAR). Portions of certain license exceptions, set forth in paragraph (c) of this section, may be available. Exporters should be aware that other provisions of the EAR, including parts 742 and 744, also apply to exports and reexports to North

Korea.

(b) Licensing Policy. Items requiring a license are subject to case-by-case review, except as follows:

(1) Luxury Goods. Applications to export or reexport luxury goods, e.g., luxury automobiles; yachts; gems; jewelry; other fashion accessories; cosmetics; perfumes; furs; designer clothing; luxury watches; rugs and tapestries; electronic entertainment software and equipment; recreational sports equipment; tobacco; wine and other alcoholic beverages; musical instruments; art; and antiques and collectible items, including but not limited to rare coins and stamps are subject to a general policy of denial.

(2) Applications to export or reexport arms and related materiel are subject to a general policy of denial. In addition, applications to export or reexport items specified by UN documents S/ 2006/ 814, S/ 2006/ 815 and S/ 2006/ 853 and other items that the UN Security Council or the Sanctions Committee established pursuant to UN Security Council Resolution 1718 has determined could contribute to North Korea's nuclear- related, ballistic missile-related or other weapons of mass destruction related programs are also subject to a general policy of denial.

(3) Applications to export or reexport items controlled for NP and MT reasons (except ECCN 7A103 items) are subject to a general policy of denial.

(4) Applications to export or reexport humanitarian items (e.g., blankets, basic footwear, heating oil, and other items meeting

subsistence needs) intended for the benefit of the North Korean people; items in support of United Nations humanitarian efforts; and agricultural commodities or medical devices items that are determined by BIS, in consultation with the interagency license review community, not to be luxury goods are subject to a general policy of approval.

Arms Export Control Act

(a) Prohibited Transactions by the United States Government

The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be

suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government. The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(d) Countries Covered by Prohibition. The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this

subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.

(f) Rescission

(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate

(A) before the proposed rescission would take effect, a report certifying that

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2) (A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows:

“That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on [] is hereby prohibited.”, the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) Waiver. The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed

transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, ...;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

Arms Export Control Act: Section 40A

SEC. 40A. *Transactions with Countries Not Fully Cooperating with the United States*

Antiterrorism Efforts

(a) Prohibited Transactions: No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) Waiver: The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

Public Notice 5411: Determination and Certification Under Section 40A of Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba

Iran

North Korea

Syria

Venezuela

I hereby notify that the decision not to include Libya on the list of countries not cooperating fully with U.S. antiterrorism efforts comes as the result of a comprehensive review of Libya's record of support for terrorism over the last three

years. Libya has taken significant and meaningful steps during this time to repudiate its past support for terrorism and to cooperate with the United States in our antiterrorism efforts.

This determination and certification shall be transmitted to the Congress and published in the Federal Register.

North Korea Non Proliferation Act

Sec. 2. Statement of Policy

(a) In view of

(1) North Korea’s manifest determination to produce missiles, nuclear weapons, and other weapons of mass destruction and to proliferate missiles, in violation of international norms and expectations; and
(2) United Nations Security Council Resolution 1695, adopted on July 15, 2006, which requires all Member States, in accordance with their national legal authorities and consistent with international law, to exercise vigilance and prevent

(A) missile and missile-related items, materials, goods, and technology from being transferred to North Korea’s missile or weapons of mass destruction programs; and
(B) the procurement of missiles or missile-related items, materials, goods, and technology from North Korea, and the transfer of any financial resources in relation to North Korea’s missile or weapons of mass destruction programs, it should be the policy of the United States to impose

sanctions on persons who transfer such weapons, and goods and technology related to such weapons, to and from North Korea in the same manner as persons who transfer such items to and from Iran and Syria currently are sanctioned under United States law.

Sec. 3. Amendments to Iran and Syria Nonproliferation Act

(a) Reporting Requirements.—Section 2 of the Iran and Syria Nonproliferation Act (Public Law 106–178; 50 U.S.C. 1701 note) is amended—

(1) in the heading, by inserting “, NORTH KOREA,” after “IRAN”; and

Sec. 4. Sense of Congress on International Cooperation

Congress 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.

Foreign Assistance Act

Sec. 620A. Prohibition on Assistance to Governments Supporting International Terrorism

(a) Prohibition—The United States shall not

provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

(b) Publication of Determinations—*Each determination of the Secretary of State under subsection (a), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.*

(c) Rescission

(d) Waiver

Opposition to Assistance by International Financial Institutions to Terrorist States

Sec. 327. Opposition to Assistance by International Financial Institutions to Terrorist States

The International Financial Institutions Act (22 U.S.C. 262c et seq.) is amended by inserting after section 1620 the following new section:

“Sec. 1621. Opposition to Assistance by International Financial Institution to Terrorist States

“(a) In General The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of

the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

“(b) Definition For purposes of this section, the term ‘international financial institution’ includes—

“(1) the International Bank for Reconstruction and Development, the International Development Association, and the International Monetary Fund;

“(2) wherever applicable, the Inter-American Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the African Development Bank, and the African Development Fund; and “(3) any similar institution established after the date of enactment of this section.”.

Sec. 328. Antiterrorism Assistance

(a) Foreign Assistance Act Section 573 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa–2) is amended —

(1) in subsection (c), by striking “development and implementation of the antiterrorism assistance program under this chapter, including”;

(2) by amending subsection (d) to read as follows:

“(d)(1) Arms and ammunition may be provided under this chapter only if they are directly related to antiterrorism assistance.

“(2) The value (in terms of original acquisition cost) of all equipment and commodities provided under this chapter in any fiscal year shall not exceed 30 percent of the funds made available to carry out this chapter for that fiscal year.”; and
(3) by striking subsection (f).

(b) Assistance to Foreign Countries to Procure Explosives Detection Devices and Other Counterterrorism Technology

(1) Subject to section 575(b), up to \$3,000,000 in any fiscal year may be made available—

(A) to procure explosives detection devices and other counterterrorism technology; and

(B) for joint counterterrorism research and development projects on such technology conducted with NATO and major non-NATO allies under the auspices of the Technical Support Working Group of the Department of State.

(2) As used in this subsection, the term “major non-NATO allies” means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10, United States Code.

(c) Assistance to Foreign Countries Notwithstanding any other provision of law (except section 620A of the Foreign Assistance Act of 1961) up to \$1,000,000 in assistance may be provided to a foreign country for counterterrorism efforts in any fiscal year if—

(1) such assistance is provided for the purpose of protecting the property of the United States Government or the life and property of any United States citizen, or furthering the

apprehension of any individual involved in any act of terrorism against such property or persons; and

(2) the appropriate committees of Congress are notified not later than 15 days prior to the provision of such assistance.

Withholding of United States Proportionate Share for Certain Programs of International Organizations

(a) Covered programs

Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this part shall be available for the United States proportionate share for programs for Burma, Iraq, North Korea, Syria, Libya, Iran, Cuba, or the Palestine Liberation Organization or for projects whose purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it, or at the discretion of the President, Communist countries listed in section 2370 (f) of this title.

(b) Review and report by Secretary of State

The Secretary of State

(1) shall review, at least annually, the budgets and accounts of all international organizations receiving payments of any funds authorized to be appropriated by this part; and

(2) shall report to the appropriate committees of the Congress the amounts of funds expended by each such organization for the purposes described in subsection (a) of this section and the amount contributed by the United States to each such organization.

(c) Exceptions

(1) Subject to paragraph (2), the limitations of subsection (a) of this section shall not apply to contributions to the International Atomic Energy Agency or the United Nations Children's Fund (UNICEF).

(2) (A) Except as provided in subparagraph (B), with respect to funds authorized to be appropriated by this part and available for the International Atomic Energy Agency, the limitations of subsection (a) of this section shall apply to programs or projects of such Agency in Cuba.

(B) (i) Subparagraph (A) shall not apply with respect to programs or projects of the International Atomic Energy Agency that provide for the discontinuation, dismantling, or safety inspection of nuclear facilities or related materials, or for inspections and similar activities designed to prevent the development of nuclear weapons by a country described in subsection (a) of this section.

UN Resolution 1718

"The Security Council,

"Recalling its previous relevant resolutions, including resolution 825 (1993), resolution 1540 (2004) and, in particular, resolution 1695 (2006), as well as the statement of its President of 6 October 2006 (S/ PRST/ 2006/ 41),

"Reaffirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security,

"Expressing the gravest concern at the claim by the Democratic People's Republic of Korea (DPRK) that it has conducted a test of a nuclear weapon on 9 October 2006, and at the challenge such a test constitutes to the Treaty on the Non-Proliferation of Nuclear Weapons and to international efforts aimed at strengthening the global regime of non-proliferation of nuclear weapons, and the danger it poses to peace and stability in the region and beyond,

"Expressing its firm conviction that the international regime on the non-proliferation of nuclear weapons should be maintained and recalling that the DPRK cannot have the status of a nuclear-weapon state in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons,

"Deploing the DPRK's announcement of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons and its pursuit of nuclear weapons,

"Deploing further that the DPRK has refused to return to the six-party talks without precondition,

"Endorsing the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States,

"Underlining the importance that the DPRK respond to other security and humanitarian concerns of the international community,

"Expressing profound concern that the test claimed by the DPRK has generated increased tension in the region and beyond, and

determining therefore that there is a clear threat to international peace and security,

“Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

“1. Condemns the nuclear test proclaimed by the DPRK on 9 October 2006 in flagrant disregard of its relevant resolutions, in particular resolution 1695 (2006), as well as of the statement of its President of 6 October 2006 (S/ PRST/ 2006/ 41), including that such a test would bring universal condemnation of the international community and would represent a clear threat to international peace and security;

“2. Demands that the DPRK not conduct any further nuclear test or launch of a ballistic missile;

“3. Demands that the DPRK immediately retract its announcement of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons;

“4. Demands further that the DPRK return to the Treaty on the Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency (IAEA) safeguards, and underlines the need for all States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons to continue to comply with their Treaty obligations;

“5. Decides that the DPRK shall suspend all activities related to its ballistic missile programme and in this context re-establish its pre-existing commitments to a moratorium on missile launching;

“6. Decides that the DPRK shall abandon all

nuclear weapons and existing nuclear programmes in a complete, verifiable and irreversible manner, shall act strictly in accordance with the obligations applicable to parties under the Treaty on the Non-Proliferation of Nuclear Weapons and the terms and conditions of its International Atomic Energy Agency (IAEA) Safeguards Agreement (IAEA INFCIRC/ 403) and shall provide the IAEA transparency measures extending beyond these requirements, including such access to individuals, documentation, equipments and facilities as may be required and deemed necessary by the IAEA;

“7. Decides also that the DPRK shall abandon all other existing weapons of mass destruction and ballistic missile programme in a complete, verifiable and irreversible manner;

“8. Decides that:

(a) all Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of:

(i) any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms, or related materiel including spare parts, or items as determined by the Security Council or the Committee established by paragraph 12 below (the Committee);

(ii) all items, materials, equipment, goods and

technology as set out in the lists in documents S/ 2006/ 814 and S/ 2006/ 815, unless within 14 days of adoption of this resolution the Committee has amended or completed their provisions also taking into account the list in document S/ 2006/ 816, as well as other items, materials, equipment, goods and technology, determined by the Security Council or the Committee, which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;

(iii) luxury goods;

(b) the DPRK shall cease the export of all items covered in subparagraphs (a) (i) and (a) (ii) above and that all Member States shall prohibit the procurement of such items from the DPRK by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the DPRK;

(c) all Member States shall prevent any transfers to the DPRK by their nationals or from their territories, or from the DPRK by its nationals or from its territory, of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of the items in subparagraphs (a) (i) and (a) (ii) above;

(d) all Member States shall, in accordance with their respective legal processes, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of the adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons or entities designated by the Committee or by the Security

Council as being engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of such persons or entities;

(e) all Member States shall take the necessary steps to prevent the entry into or transit through their territories of the persons designated by the Committee or by the Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to the DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, provided that nothing in this paragraph shall oblige a state to refuse its own nationals entry into its territory;

(f) in order to ensure compliance with the requirements of this paragraph, and thereby preventing illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action including through inspection of cargo to and from the DPRK, as necessary;

"9. Decides that the provisions of paragraph 8

(d) above do not apply to financial or other assets or resources that have been determined by relevant States:

(a) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant States to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within five working days of such notification;

(b) to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee; or

I to be subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered prior to the date of the present resolution, is not for the benefit of a person referred to in paragraph 8 (d) above or an individual or entity identified by the Security Council or the Committee, and has been notified by the relevant

States to the Committee;

“10. Decides that the measures imposed by paragraph 8 (e) above shall not apply where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would otherwise further the objectives of the present resolution;

“11. Calls upon all Member States to report to the Security Council within thirty days of the adoption of this resolution on the steps they have taken with a view to implementing effectively the provisions of paragraph 8 above;

“12. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks:

(a) to seek from all States, in particular those producing or possessing the items, materials, equipment, goods and technology referred to in paragraph 8 (a) above, information regarding the actions taken by them to implement effectively the measures imposed by paragraph 8 above of this resolution and whatever further information it may consider useful in this regard;

(b) to examine and take appropriate action on information regarding alleged violations of measures imposed by paragraph 8 of this resolution;

I to consider and decide upon requests for exemptions set out in paragraphs 9 and 10 above;

(d) to determine additional items, materials,

equipment, goods and technology to be specified for the purpose of paragraphs 8 (a) (i) and 8 (a) (ii) above;

(e) to designate additional individuals and entities subject to the measures imposed by paragraphs 8 (d) and 8 (e) above;

(f) to promulgate guidelines as may be necessary to facilitate the implementation of the measures imposed by this resolution;

(g) to report at least every 90 days to the Security Council on its work, with its observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by paragraph 8 above;

“13. Welcomes and encourages further the efforts by all States concerned to intensify their diplomatic efforts, to refrain from any actions that might aggravate tension and to facilitate the early resumption of the six-party talks, with a view to the expeditious implementation of the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States, to achieve the verifiable denuclearization of the Korean peninsula and to maintain peace and stability on the Korean peninsula and in North-East Asia;

“14. Calls upon the DPRK to return immediately to the six-party talks without precondition and to work towards the expeditious implementation of the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States;

“15. Affirms that it shall keep DPRK’s actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in paragraph 8 above, including the strengthening, modification, suspension or lifting of the measures, as may be needed at that time in light of the DPRK’s compliance with the provisions of the resolution;
“16. Underlines that further decisions will be required, should additional measures be necessary;

UN Resolution 1874

The Security Council,

Recalling its previous relevant resolutions, including resolution 825 (1993), resolution 1540 (2004), resolution 1695 (2006), and, in particular, resolution 1718(2006), as well as the statements of its President of 6 October 2006(S/PRST/2006/41) and 13 April 2009 (S/PRST/2009/7),

Reaffirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security,

Expressing the gravest concern at the nuclear test conducted by the Democratic People’s Republic of Korea (“the DPRK”) on 25 May 2009 (local time) in violation of resolution 1718 (2006), and at the challenge such a test constitutes to the Treaty on Non-Proliferation of Nuclear Weapons (“the NPT”) and to international efforts aimed at strengthening the global regime of non-

proliferation of nuclear weapons towards the 2010 NPT Review Conference, and the danger it poses to peace and stability in the region and beyond,

Stressing its collective support for the NPT and commitment to strengthen the Treaty in all its aspects, and global efforts towards nuclear non-proliferation and nuclear disarmament, and *recalling* that the DPRK cannot have the status of a nuclear-weapon state in accordance with the NPT in any case,

Deploing the DPRK's announcement of withdrawal from the NPT and its pursuit of nuclear weapons,

Underlining once again the importance that the DPRK respond to other security and humanitarian concerns of the international community,

Underlining also that measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of the DPRK,

Expressing its gravest concern that the nuclear test and missile activities carried out by the DPRK have further generated increased tension in the region and beyond, and *determining* that there continues to exist a clear threat to international peace and security,

Reaffirming the importance that all Member States uphold the purposes and principles of the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Condemns* in the strongest terms the nuclear test conducted by the DPRK on 25 May 2009 (local time) in violation and flagrant disregard of its relevant resolutions, in particular resolutions 1695 (2006) and 1718 (2006), and the statement of its President of 13 April 2009 (S/PRST/2009/7);
2. *Demands* that the DPRK not conduct any further nuclear test or any launch using ballistic missile technology;
3. *Decides* that the DPRK shall suspend all activities related to its ballistic missile programme and in this context re-establish its pre-existing commitments to a moratorium on missile launches;
4. *Demands* that the DPRK immediately comply fully with its obligations under relevant Security Council resolutions, in particular resolution 1718 (2006);
5. *Demands* that the DPRK immediately retract its announcement of withdrawal from the NPT;
6. *Demands* further that the DPRK return at an early date to the NPT and International Atomic Energy Agency (IAEA) safeguards, bearing in mind the rights and obligations of States Parties to the NPT, and *underlines* the need for all States Parties to the NPT to continue to comply with their Treaty obligations;

7. *Calls upon* all Member States to implement their obligations pursuant to resolution 1718 (2006), including with respect to designations made by the Committee established pursuant to resolution 1718 (2006) (“the Committee”) pursuant to the statement of its President of 13 April 2009 (S/PRST/2009/7);

8. *Decides* that the DPRK shall abandon all nuclear weapons and existing nuclear programs in a complete, verifiable and irreversible manner and immediately cease all related activities, shall act strictly in accordance with the obligations applicable to parties under the NPT and the terms and conditions of the IAEA Safeguards Agreement (IAEA INFCIRC/403) and shall provide the IAEA transparency measures extending beyond these requirements, including such access to individuals, documentation, equipment and facilities as may be required and deemed necessary by the IAEA;

9. *Decides* that the measures in paragraph 8 (b) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms or materiel;

10. *Decides* that the measures in paragraph 8 (a) of resolution 1718 (2006) shall also apply to all arms and related materiel, as well as to

financial transactions, technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such arms, except for small arms and light weapons and their related materiel, and *calls upon* States to exercise vigilance over the direct or indirect supply, sale or transfer to the DPRK of small arms or light weapons, and further *decides* that States shall notify the Committee at least five days prior to selling, supplying or transferring small arms or light weapons to the DPRK;

11. *Calls upon* all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargo to and from the DPRK, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions;

12. *Calls upon* all Member States to inspect vessels, with the consent of the flag State, on the high seas, if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c)

of resolution 1718 (2006) or by paragraph 9 or 10 of this resolution, for the purpose of ensuring strict implementation of those provisions;

13. *Calls upon* all States to cooperate with inspections pursuant to paragraphs 11 and 12, and, if the flag State does not consent to inspection on the high seas, decides that the flag State shall direct the vessel to proceed to an appropriate and convenient port for the required inspection by the local authorities pursuant to paragraph 11;

14. *Decides* to authorize all Member States to, and that all Member States shall, seize and dispose of items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 or by paragraph 9 or 10 of this resolution that are identified in inspections pursuant to paragraph 11, 12, or 13 in a manner that is not inconsistent with their obligations under applicable Security Council resolutions, including resolution 1540 (2004), as well as any obligations of parties to the NPT, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 29 April 1997, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction of 10 April 1972, and *decides* further that all States

shall cooperate in such efforts;

15. *Requires* any Member State, when it undertakes an inspection pursuant to paragraph 11, 12, or 13, or seizes and disposes of cargo pursuant to paragraph 14, to submit promptly reports containing relevant details to the Committee on the inspection, seizure and disposal;

16. *Requires* any Member State, when it does not receive the cooperation of a flag State pursuant to paragraph 12 or 13 to submit promptly to the Committee a report containing relevant details;

17. *Decides* that Member States shall prohibit the provision by their nationals or from their territory of bunkering services, such as provision of fuel or supplies, or other servicing of vessels, to DPRK vessels if they have information that provides reasonable grounds to believe they are carrying items the supply, sale, transfer, or export of which is prohibited by paragraph 8 (a), 8 (b), or 8 (c) of resolution 1718 (2006) or by paragraph 9 or 10 of this resolution, unless provision of such services is necessary for humanitarian purposes or until such time as the cargo has been inspected, and seized and disposed of if necessary, and *underlines* that this paragraph is not intended to affect legal economic activities;

18. *Calls upon* Member States, in addition to implementing their obligations pursuant to paragraphs 8 (d) and (e) of resolution 1718

(2006), to prevent the provision of financial services or the transfer to, through, or from their territory, or to or by their nationals or entities organized under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs or activities, including by freezing any financial or other assets or resources on their territories or that hereafter come within their territories, or that are subject to their jurisdiction or that hereafter become subject to their jurisdiction, that are associated with such programs or activities and applying enhanced monitoring to prevent all such transactions in accordance with their national authorities and legislation;

19. *Calls upon* all Member States and international financial and credit institutions not to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK, except for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of denuclearization, and also *calls upon* States to exercise enhanced vigilance with a view to reducing current commitments;

20. *Calls upon* all Member States not to provide public financial support for trade

with the DPRK (including the granting of export credits, guarantees or insurance to their nationals or entities involved in such trade) where such financial support could contribute to the DPRK's nuclear-related or ballistic missile-related or other WMD-related programs or activities;

21. *Emphasize* that all Member States should comply with the provisions of paragraphs 8 (a) (iii) and 8 (d) of resolution 1718 (2006) without prejudice to the activities of the diplomatic missions in the DPRK pursuant to the Vienna Convention on Diplomatic Relations;

22. *Calls upon* all Member States to report to the Security Council within forty-five days of the adoption of this resolution and thereafter upon request by the Committee on concrete measures they have taken in order to implement effectively the provisions of paragraph 8 of resolution 1718 (2006) as well as paragraphs 9 and 10 of this resolution, as well as financial measures set out in paragraphs 18, 19 and 20 of this resolution;

23. *Decides* that the measures set out at paragraphs 8 (a), 8 (b) and 8 (c) of resolution 1718 (2006) shall also apply to the items listed in INFCIRC/254/Rev.9/Part 1a and INFCIRC/254/Rev.7/Part 2a;

24. *Decides* to adjust the measures imposed by paragraph 8 of resolution 1718 (2006) and this resolution, including through the

designation of entities, goods, and individuals, and directs the Committee to undertake its tasks to this effect and to report to the Security Council within thirty days of adoption of this resolution, and further *decides* that, if the Committee has not acted, then the Security Council will complete action to adjust the measures within seven days of receiving that report;

25. *Decides* that the Committee shall intensify its efforts to promote the full implementation of resolution 1718 (2006), the statement of its President of 13 April 2009 (S/PRST/2009/7) and this resolution, through a work programme covering compliance, investigations, outreach, dialogue, assistance and cooperation, to be submitted to the Council by 15 July 2009, and that it shall also receive and consider reports from Member States pursuant to paragraphs 10, 15, 16 and 22 of this resolution;

26. *Requests* the Secretary-General to create for an initial period of one year, in consultation with the Committee, a group of up to seven experts (“Panel of Experts”), acting under the direction of the Committee to carry out the following tasks: (a) assist the Committee in carrying out its mandate as specified in resolution 1718 (2006) and the functions specified in paragraph 25 of this resolution;

(b) gather, examine and analyze information

from States, relevant United Nations bodies and other interested parties regarding the implementation of the measures imposed in resolution 1718 (2006) and in this resolution, in particular incidents of non-compliance; (c) make recommendations on actions the Council, or the Committee or Member States, may consider to improve implementation of the measures imposed in resolution 1718 (2006) and in this resolution; and (d) provide an interim report on its work to the Council no later than 90 days after adoption of this resolution, and a final report to the Council no later than 30 days prior to termination of its mandate with its findings and recommendations;

27. *Urges* all States, relevant United Nations bodies and other interested parties, to cooperate fully with the Committee and the Panel of Experts, in particular by supplying any information at their disposal on the implementation of the measures imposed by resolution 1718 (2006) and this resolution;

28. *Calls upon* all Member States to exercise vigilance and prevent specialized teaching or training of DPRK nationals within their territories or by their nationals, of disciplines which could contribute to the DPRK’s proliferation sensitive nuclear activities and the development of nuclear weapon delivery systems;

29. *Calls upon* the DPRK to join the Comprehensive Nuclear-Test-Ban Treaty at

the earliest date;

30. *Supports* peaceful dialogue, *calls upon* the DPRK to return immediately to the Six Party Talks without precondition, and *urges* all the participants to intensify their efforts on the full and expeditious implementation of the Joint Statement issued on 19 September 2005 and the joint documents of 13 February 2007 and 3 October 2007, by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States, with a view to achieving the verifiable denuclearization of the Korean Peninsula and to maintain peace and stability on the Korean Peninsula and in north-east Asia;

31. *Expresses* its commitment to a peaceful, diplomatic and political solution to the situation and welcomes efforts by Council members as well as other Member States to facilitate a peaceful and comprehensive solution through dialogue and to refrain from any actions that might aggravate tensions;

32. *Affirms* that it shall keep the DPRK's actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in paragraph 8 of resolution 1718 (2006) and relevant paragraphs of this resolution, including the strengthening, modification, suspension or lifting of the measures, as may be needed at that time in light of the DPRK's compliance with relevant

provisions of resolution 1718 (2006) and this resolution;

33. *Underlines* that further decisions will be required, should additional measures be necessary;

34. *Decides* to remain actively seized of the matter.

Notes

¹ United States Code, Title 50 War and National Defense, Chapter 106, 40 Statute 411, Section 5; TWEA.

² The specific language, which can be found in the appendix, states that the President has the authority to "investigate, regulate, or prohibit, transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin bullion, currency, or securities and "investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property."

³ United States Code, Title 3 The President, Chapter 34 National Emergencies.

⁴ United States Code, Title 3 The President, Chapter 4 Delegation of Functions, Section 301 General authorization to delegate functions.

⁵ Executive Order 13466

⁶ Ibid

⁷ United States Code, Title 50 War and National Defense, Chapter 35 International Emergency Economic Powers.; Public Law 95-223 IEEPA.

⁸ Ibid

⁹ “investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution to the extent that such transfers or payments involve any interest of any foreign country or a national thereof the importing or exporting of currency or securities by any person, or with respect to any property, subject to the jurisdiction of the United States.”

¹⁰ “investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation or exportation* of, or dealing in, or exercising any right, with respect to, or transactions involving, any property subject to the jurisdiction of the United States.”

¹¹ Office of Foreign Assets Control. “Our Mission.” U.S. Department of Treasury.

¹² “no license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, the Foreign Assistance Act of 1961, or any proclamation, order, regulation or license issued pursuant thereto.”; United States Code of Federal Regulations, Title 31 Money and Finance, Chapter V Office of Foreign Assets Control, Part 500 Foreign Assets Control Regulations, Section

101 Relation of this part to other laws and regulations.

¹³ United States Code, Title 50 War and National Defense, Chapter 106, 40 Statute 411, Section 5; TWEA.

¹⁴ United States Code of Federal Regulations, Title 31 Money and Finance, Chapter V Office of Foreign Assets Control

¹⁵ Part 500 Foreign Assets Control Regulations, Sections: 201, 204, 411, 412, 549.

¹⁶ SST is an abbreviation used by the U.S. Department of State

¹⁷ U.S. Department of State. “State Sponsors of Terrorism.”

(<http://www.state.gov/s/ct/c14151.htm>)

¹⁸ the EAA allows the export to such countries as long as the “Secretary of State notifies the Committee on International Relations of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license. Public Law 96-72 Export Administration Act; Public Law 106-48 To provide for increased penalties for violations of the Export Administration Act of 1979, and for other purposes.

¹⁹ Public Law 96-72 Export Administration Act; Public Law 106-48 To provide for increased penalties for violations of the Export Administration Act of 1979, and for other purposes.

²⁰ Ferguson, Ian F. “The Export Administration

Act: Evolution, Provisions, and Debate.” CRS Report for Congress. RL31832. January 9, 2008.

²¹ Ibid

²² Ibid

²³ Ibid

²⁴ United States Code of Federal Regulations, Title 15 Commerce and Foreign Trade, Chapter VII Bureau of Industry and Security.

²⁵ United States Code of Federal Regulations, Title 15 Commerce and Foreign Trade, Chapter VII Bureau of Industry and Security, Part 730 General Information, Sections: 730.2, 730.3, 730.5; Part 734 Scope of Export Administration regulations, Section 734.3; Part 736 General Prohibitions, Section 736.2; and Part 738 Commerce Control List.

²⁶ United States Code of Federal Regulations, Title 15 Commerce and Foreign Trade, Chapter VII Bureau of Industry and Security, Part 742 Control Policy—CCL Based Control, Sections: 742.2 – 742.6, 742.11-742.19; Part 744 Control Policy: End-User and End-Use Based; and Part 746 Embargoes and Other Special Controls, Section 746.4

²⁷ United States Code of Federal Regulations, Title 15 Commerce and Foreign Trade, Chapter VII Bureau of Industry and Security. Part 738 Commerce Control List.

²⁸ Arms Export Control Act; United States Code, Title 22 Foreign Relations and Intercourse, Chapter 39 Arms Export Control; Public Law 90-629.

²⁹ Ibid

³⁰ Ibid

³¹ Department of State Public Notice No. 4023; 67 F.R. 36062

³² Public Law 109-353; 50 USC 1701

³³ Ibid

³⁴ Ibid

³⁵ Public Law 106-178; 50 USC 1701

³⁶ Ibid

³⁷ Ibid

³⁸ United States Code, Title 22 Foreign Relations and Intercourse, Chapter 32 Foreign Assistance, Section 2371; Public Law 87-195; Foreign Assistance Act, Part III, Chapter 1 General Provisions, Section 620a

³⁹ Foreign Assistance Act, Part III, Chapter 1 General Provisions, Section 620; or United States Code, Title 22 Foreign Relations and Intercourse, Chapter 32 Foreign Assistance, Section 2370.

⁴⁰ H.R. 2764; Public Law 110-161

⁴¹ Public Law 109-102

⁴² United States Code, Title 22 Foreign Relations and Intercourse, Chapter 7 International Bureaus, Congresses, Etc, Section 262p-4q; Antiterrorism and Effective Death Penalty Act; Public Law 104-132.

⁴³ Ibid

⁴⁴ With exception to UNICEF and the IAEA; United States Code, Title 22 Foreign Relations and Intercourse, Chapter 32 Foreign Assistance, Section 2227; Public Law 87-195; Foreign Assistance Act, Part III, Chapter 1 General Provisions, Section 307

⁴⁵ Ibid

⁴⁶ “Voting Powers.” (<http://go.worldbank.org/VKVDQDUC10>) World Bank.; Kamieniecka, Monika. “Voting Share at the IMF and World Bank 2009.” (<http://www.globalpolicy.org/soecon/inequal/income/tables/bwivote.htm>) Global Policy Forum.

⁴⁷ The World Bank is composed of the International Bank for Reconstruction and Development, International Finance Corporation, International Development Association, and Multilateral Investment Guarantee Association.

⁴⁸ Kamieniecka (2009)

⁴⁹ “Resolution 1718 (2006).” (<http://daccessdds.un.org/doc/UNDOC/GEN/N06/572/07/PDF/N0657207.pdf?OpenElement>) United Nations Security Council. October 14, 2006.

⁵⁰ “Resolution 1874 (2009).” (<http://daccessdds.un.org/doc/UNDOC/GEN/N09/368/49/PDF/N0936849.pdf?OpenElement>) United Nations Security Council. May 25, 2009.

⁵¹ The laws listed are not given in entirety but display sections that are most relevant to the situation pertaining to North Korea today.