

NORTH KOREAN DEVELOPMENT ASSISTANCE AND U.S. LEGAL RESTRICTIONS

Anticipation intensifies on the eve of the fourth round of six-party talks. While the United States has hinted that a failure to move forward this time would signal the death of the talks, repositioning on many sides shows potential for movement forward in resolving the nuclear issue. The buzzword now is 'development.' The general mood of those involved with peninsular and regional issues is that DPRK development could help to stabilize both the country and the region, benefiting many concerned nations. Ten years of delivering humanitarian aid with no end in sight is weighing heavily on donor countries and organizations, and a switch to development assistance seems highly possible. However, the provision of development assistance faces many obstacles even if the nuclear impasse is resolved, most of which are due to U.S. policy and many of which are likely to be brought up at the talks in Beijing.

The United States has sanctioned North Korea for over forty years -- longer than any other country. A variety of sanctions imposed at various times for myriad reasons tend to overlap, burying themselves in a pile of policy paperwork and leaving lawmakers with a tangled web of legalities that would have to be untied in order to free up not only U.S. but international assistance to North Korea. Most sanctions have been applied to a group of countries, of which North Korea is included, rather than directly aimed at the DPRK. While some directly target the North for a given circumstance or situation, and would thereby require the repealing of the mandate, many could be lifted by removing the DPRK from the list of offending states.

The following are the set of restrictions that would need to be removed before the United States could participate in development assistance:

National Emergency Due to Threat to National Security

Following the North Korean attack on South Korea in June of 1950, a comprehensive embargo was imposed under the Trading With the Enemy Act (TWEA). While revision of the laws took place in 1977 and the “national emergency” authorities were removed from the TWEA, the International Emergency Economic Powers Act continued to enforce the embargo. North Korea was classified as a member of Country Group Z, the most restrictive group under the Export Administration Regulations imposed by the Department of Commerce. Since 1989, shipments to the North of commercially-supplied goods have been permitted only if intended to meet basic human needs (with validated licenses on a case-by-case basis required). In 1999, many export restrictions were lifted by then-President Bill Clinton as a reward for the North’s freeze on missile testing. More items were allowed for license-free export, but many restrictions remain. The North is now on Country Group E, which limits its access to items on the Commerce Control List (commonly known as the strategic items list), including computers, software, and other items deemed important to national security.

Pitfalls of Communism

Several U.S. laws limit trade with communist states. The Trade Agreement Extension Act (1951) resulted in the denial of Most Favored Nations trade status to all communist countries (with the exception of the former Yugoslavia). This means that the North is subject to tariffs not faced by countries it would presumably need to compete with. Since it falls under the Rate of Duty Two column of the Harmonized Tariff Schedule of the United States (along with only Laos and Cuba) tariffs are set so high -- as high as 90 percent on some items -- a defacto embargo is still in effect.

The Export-Import Bank Act (1945) also denies guarantees, insurance, credit, or any other bank

funding programs to “Marxist-Leninist” countries, and the Foreign Assistance Act (1961) limits most non-humanitarian aid to communist states.

Terrorism

Under the Export Administration Act (1979), countries found to be supporting terror are denied Beneficiary Developing Country status, sales of items on the U.S. Munitions List, all but the most basic foreign aid, and Export-Import Bank assistance. The United States also puts pressure on these countries by applying harsh tax status for U.S. investors in these countries, limits diplomatic ties, and imposes more strict licensing requirements for trade in food and medicines. Foreign Operations Appropriations legislation instructs all U.S. executive directors to any international financial institution to oppose any and all loans to a country that is on the list of terror-sponsoring states. North Korea was added to the list on January 20, 1988.

Weapons Traffic

U.S. missile nonproliferation laws require that any state that goes afoul must be sanctioned unless it is in the interest of national security not to. A range of sanctions and time-frames, generally two years, are available to Washington. North Korea has violated these laws on a number of occasions. In addition, the International Traffic in Arms Regulations specifically labels North Korea as one of the states to which “it is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services.” It also prohibits Americans from engaging in any trade or support of North Korea. Many items that would be most helpful in the North’s development, including computers, equipment, and technology, are on dual-use lists that would prohibit their export. The incumbent U.S. President George Bush recently signed an executive order granting the Treasury Department the

ability to freeze assets of companies believed to be helping North Korea develop weapons of mass destruction, including missiles, as well as nuclear, biological, and chemical weapons.

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