



THE ATLANTIC COUNCIL
OF THE UNITED STATES

U.S.-North Korean Relations:

An Analytic Compendium of U.S.
Policies, Laws & Regulations

Kenneth Katzman

Occasional Paper

March 2007



THE ATLANTIC COUNCIL

OF THE UNITED STATES

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THE ATLANTIC COUNCIL
OF THE UNITED STATES

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Table of Contents

<i>Foreword</i>	iii
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<i>Overview</i>	v
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U.S. Policies, Laws and Regulations

Section 1: Policy and Diplomacy.....	1
Korean War Armistice Agreement.....	2
Joint Declaration on the Denuclearization of the Korean Peninsula	18
Agreed Framework Between North Korea and the United States.....	19
North Korea’s Moratorium on Missile Tests	22
Joint Statement on North Korea’s Nuclear Program.....	23
Resolution 1695	25
Resolution 1718	27
Nuclear Agreement	32
Section 2: Trade and Transaction Regulations and Restrictions	35
Trading with the Enemy Act	36
Relaxation of Trade Ban	38
Licensing of U.S. Exports of Dual Use Items to North Korea.....	42
Financial Transactions With and Imports From North Korea	45
Financial Transactions Related to Travel to North Korea Permitted.....	52
Additional Exports Banned Pursuant to U.N. Resolution 1718	53
30-Day Report on Efforts Toward Implementing UNSCR 1718.....	53
U.S. Luxury Items List	58
Regulations to Implement the Ban on Luxury Goods Exports.....	59
Section 3: Terrorism and Proliferation Related Sanctions	69
State Department Report on Terrorism for 2005: North Korea.....	70
Export Administration Act	71
Arms Export Control Act	82
Anti-Terrorism and Effective Death Penalty Act of 1996	88
Determination of States on the “Not Cooperating” List	102
Atomic Energy Act of 1954 and Energy Policy Act of 2005.....	103
Atomic Energy Act of 1954.....	103
Energy Policy Act of 2005.....	105
Iran-Syria Non-Proliferation Act	107
P.L. 109-353 North Korea Nonproliferation Act of 2006	114
Section 4: Other Foreign Assistance Sanctions	116
Foreign Assistance Act of 1961.....	116
Prohibitions Against Furnishing Assistance to Communist Countries .	116
Prohibitions on Assistance to Governments Supporting International	
Terrorism	117
Withholding of United States Proportionate Share for Certain Programs	
of International Organizations.....	119
Ban on Direct Assistance – Foreign Aid Appropriation for FY2006.....	121

Section 5: Laws on Human Rights Practices and Illicit Activity	123
Restrictions on Money Laundering.....	124
Finding on Macau-Based Banco Delta Asia	130
North Korea Human Rights Act of 2004.....	136
Sanctions Mandated by the International Religious Freedom Act of 1998.	148
Sanctions Mandated by the Trafficking Victims Protection Act of 2000	159
Prohibition on Use of North Korean Vessels.....	175
Removing Restrictions on North Korea - U.S. Relations	177
I. Lifting Restrictions on Trade, Aid, and Investment.....	179
II. Removing Economic Sanctions Imposed by the “Terrorism List”	179
III. Providing U.S. Foreign Aid.....	181
IV. Supporting International Lending.....	182
V. Arms and Technology Sales	183
VI. Human Rights and Illicit Financial Activity Sanctions	184
VII. Facilitating People-to-People Contacts	185
<i>Index of Topics</i>	187

Foreword

The United States has few foreign policy goals where the stakes are higher than its effort to end North Korea's nuclear weapons program. The risks range from regional insecurity to the danger that Pyongyang could transfer nuclear weapons and materials to other rogue states or terrorist groups. Success requires diplomatic skill behind a consistent and focused approach. It is for that reason that Atlantic Council Senior Fellow Donald Gross assembled a distinguished working group to consider U.S. strategic goals regarding North Korea and steps to achieve them. The resulting report, which can be found at [http://www.acus.org/070413 Framework for Peace and Security in Korea and Northeast Asia.pdf](http://www.acus.org/070413_Framework_for_Peace_and_Security_in_Korea_and_Northeast_Asia.pdf), calls for the U.S. to take a leadership role in creating a comprehensive peace settlement for the region that goes far beyond the critical denuclearization talks – involving arrangements ranging from an agreement to replace the 1953 armistice to a new Northeast Asian multilateral security organization.

While the working group deliberated, Dr. Kenneth Katzman of the Congressional Research Service compiled and analyzed the 186-page compendium that follows on active U.S. legislation on North Korea that severely limits relations with that country. Should the U.S. government seek permanent peace arrangements, it must undo these policies and legal strictures accumulated over more than fifty years of this adversarial relationship.

The Atlantic Council presents this compendium as a reference guide to accompany its working group report. Dr. Katzman compiled the compendium on behalf of the Atlantic Council with funding provided by the U.S. Institute of Peace. His analysis, intended to enhance study of the legislation herein, is his own and does not reflect the institutional position of his employer.

This work continues a series of Atlantic Council studies since the early 1990s that analyze U.S. relations with “adversary states” and recommended measures for improving relations to achieve strategic U.S. policy goals. Three years ago, we released our report entitled “U.S.-Libyan Relations: Toward Cautious Reengagement,” accompanied by a compendium much like this one. Our work proved helpful to U.S. officials as they negotiated and implemented the now celebrated agreement leading Libya to abandon its nuclear program. We are updating similar work we have done regarding Cuba for the day improved relations with that country may be possible.

The Council is grateful to Ken Katzman for bringing his unique expertise and analytic skill to the project. He was also the author of the earlier Atlantic Council compendia on U.S.-Libyan relations and U.S.-Iranian relations. The Atlantic Council also thanks the Korea Foundation for generously funding the working group's efforts and the publication of the report this compendium accompanies. I particularly acknowledge the wise leadership of project director Don Gross, as well as Banning Garrett, Dick Nelson, Jonathan Adams and Patrick deGategno for their critical roles in this project.

Frederick Kempe
President & CEO
Atlantic Council of the United States

Overview

This compendium contains the text of major regulations, laws, and other documents governing U.S. interactions with North Korea. Also provided are the text of U.N. Resolutions, agreements, and other documents that represent major policy decisions in U.S. relations with North Korea. Accompanying each major document, law, or regulation is a brief analysis discussing the policy reflected by that document and major significance of the provisions of the law or regulation promulgated.

As discussed in this compendium, changes in U.S. sanctions over time appear to reflect variations in U.S. approaches to North Korea and its nuclear program – at times reflecting a policy of engagement but at other times displaying a U.S. strategy of trying to isolate North Korea. The documents presented in this compendium demonstrate the wide latitude any U.S. Administration has in implementing sanctions on any country and the corresponding discretion to remove these sanctions.

Since the Korean War, North Korea has been viewed as a potential threat not only by the United States, but also by several major countries in northeast Asia. Although the United States, its allies in Asia, and other Asian countries might sometimes differ on how to deal with North Korea, the United States is not the only country that has imposed sanctions on North Korea. This compendium does not include sanctions laws and regulations imposed by other countries, but it does include U.N. Security Council resolutions that impose sanctions on North Korea. These Resolutions are considered binding on U.N. member states.

The laws and regulations contained in the compendium are not all North Korea-specific. Many of the laws that apply to North Korea do so because of its designation, under 6(j) of the Export Administration Act of 1979, as a state sponsor of terrorism. North Korea was placed on the terrorism list in November 1987 following the downing of KAL Flight 858 by two North Korean agents. At this time, four other countries are also on the “terrorism list” (Cuba, Syria, Iran, and Sudan) and the sanctions generated by inclusion on this list apply to those four countries as well.

Although North Korea is subject to a wide range of U.S. sanctions, there no longer is a ban on trade in civilian goods as was the case immediately following the 1950-1953 Korean War. Trade restrictions in place currently are designed not to prevent U.S.-North Korea trade in purely civilian goods, but primarily to prevent the flow of dual-use technology to North Korea and to prevent North Korea from earning hard currency through purported illicit activities.

Many of the sanctions documents presented in this compendium are incorporated into Title 31 of the Code of Federal Regulations. The major portions of the regulations that apply to North Korea are included in the compendium. The regulations are administered by the U.S. Treasury Department’s Office of Foreign Assets Control, which is responsible for evaluating and issuing specific licenses, when required, for commerce and financial transactions with North Korea.

Included in this compendium are provisions of law that establish “secondary sanctions” against North Korea – sanctions on third countries that provide prohibited assistance to the subject country. The most notable examples of secondary sanctions are provisions of the Foreign Assistance Act that were added by the Anti-Terrorism and Effective Death Penalty Act of 1996. U.S. allies and other governments widely criticize such sanctions as an extra-territorial application of U.S. law, and successive U.S. Administrations have been generally hesitant to impose actual penalties under these laws because of the likelihood of diplomatic backlash. Such backlash, in the view of successive Administrations, defeats the very purpose of U.S. diplomacy, which is to build international consensus on how to deal with states that are perceived as threats to U.S. or regional security arrangements.

U.S. – North Korean Relations:

An Analytic Compendium of U.S. Policies, Law and Regulations

Section 1: Policy and Diplomacy

The documents in this section represent major statements of U.S. and international policy on North Korea, beginning with the armistice agreement that led to a cessation of hostilities in the 1950-1953 Korean War. The documents reflect the major outstanding issues between North Korea and the United States and its regional allies. The documents in this section do not necessarily, in and of themselves, impose any U.S. or other sanctions on North Korea, with the exception of one of the latest documents, U.N. Security Council Resolution 1718. Also included is the February 13, 2007 agreement reached in the so-called “Six Party Talks” that could, if fully implemented, pave the way for U.S.-North Korea normalization and broader cooperation and peace agreements in Northeast Asia. However, there is widespread skepticism that this agreement will be fully implemented.

Korean War Armistice Agreement

The armistice signed at the end of hostilities in the Korean War – although South Korea declined to sign the document – is one of the most important documents in this compendium. Many experts doubt that there could ever be a full normalization of U.S. relations with North Korea unless there is a full peace treaty marking a permanent end to the Korean War – a conclusion that presumably would permit the approximately 25,000 U.S. troops in South Korea to leave.

Reflecting the long term significance of a peace treaty, in May 2006, the New York Times (May 18) reported that Bush Administration advisers were recommending a new strategy toward North Korea that would focus on negotiating a permanent U.S.-North Korea peace treaty alongside the ongoing efforts to curb North Korea's nuclear program. The purported thinking behind this possible strategy change was that a permanent peace treaty might provide North Korea with sufficient guarantee of its security – and an implicit pledge that no nation would try to change its regime – that it would have confidence to forswear a nuclear weapon capability. The possible U.S. strategy change appeared to have been overtaken by events – North Korea's missile test and its nuclear test – but the apparent February 2007 breakthrough in the Six Party talks might revive consideration of a possible peace treaty.

The issue of whether or not a full peace treaty is possible, and the implications were that to occur or not occur, is a broader issue that will be discussed in the working group report that accompanies this compendium. A related issue discussed among scholars is that of who should be parties to such a peace treaty – the United States and North Korea, or the United Nations and North Korea.

Begin text:

Bureau of Arms Control

Washington, DC

July 27, 1953

Agreement between the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers, on the other hand, concerning a military armistice in Korea.

Preamble

The undersigned, the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, on the other hand, in the interest of stopping the Korean conflict, with its great toil of suffering and bloodshed on both sides, and with the objective of establishing an armistice which will insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peaceful settlement is achieved, do individually, collectively, and mutually agree to accept and to be bound and governed by the conditions and terms of armistice set forth in the following articles and paragraphs, which said conditions and terms are intended to be purely military in character and to pertain solely to the belligerents in Korea:

Article I

Military Demarcation Line and Demilitarized Zone

1. A military demarcation line shall be fixed and both sides shall withdraw two (2) kilometers from this line so as to establish a demilitarized zone between the opposing forces. A demilitarized zone shall be established as a buffer zone to prevent the occurrence of incidents which might lead to a resumption of hostilities.
2. The military demarcation line is located as indicated on the attached map.
3. This demilitarized zone is defined by a northern and southern boundary as indicated on the attached map.
4. The military demarcation line shall be plainly marked as directed by the Military Armistice Commission hereinafter established. The Commanders of the opposing sides shall have suitable markers erected along the boundary between the demilitarized zone and their respective areas. The Military Armistice Commission shall supervise the erection of all markers placed along the military demarcation line and along the boundaries of the demilitarized zone.
5. The waters of the Han River Estuary shall be open to civil shipping of both sides wherever one bank is controlled by one side and the other bank is controlled by the other side. The Military Armistice Commission shall prescribe rules for the shipping in that part of the Han River Estuary indicated on the attached map. Civil shipping of each side shall have unrestricted access to the land under the military control of that side.
6. Neither side shall execute any hostile act within, from, or against the demilitarized zone.
7. No person, military or civilian, shall be permitted to cross the military demarcation line unless specifically authorized to do so by the Military Armistice Commission.
8. No, person military or civilian, in the demilitarized zone shall be permitted to enter the territory under the military control of either side unless specifically authorized to do so by the Commander into whose territory entry is sought.
9. No person, military or civilian, shall be permitted to enter the demilitarized zone except persons concerned with the conduct of civil administration and relief and persons specifically authorized to enter by the Military Armistice Commission.
10. Civil administration and relief in that part of the demilitarized zone which is south of the military of the military demarcation line shall be the responsibility of the Commander-in-Chief, United Nations Command; and civil administration and relief in that part of the demilitarized zone which is north of the military demarcation line shall be the joint responsibility of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers. The number of persons, military or civilian, from each side who are permitted to enter the demilitarized zone for the conduct of civil administration and relief shall be as determined by the respective Commanders, but in no case shall the total number authorized by either side exceed one thousand (1,000) persons at any one time. The number of civil police and the arms to be carried by them shall be as prescribed by the Military Armistice Commission. Other personnel shall not carry arms unless specifically authorized to do so by the Military Armistice Commission.

11. Nothing contained in this article shall be construed to prevent the complete freedom of movement to, from, and within the demilitarized zone by the Military Armistice Commission, its assistants, its Joint Observer Teams with their assistants, the Neutral Nations Supervisory Commission hereinafter established, its assistants, its Neutral Nations Inspection teams with their assistants, and of any other persons, materials, and equipment specifically authorized to enter the demilitarized zone by the Military Armistice Commission. Convenience of movement shall be permitted through the territory under the military control of either side over any route necessary to move between points within the demilitarized zone where such points are not connected by roads lying completely within the demilitarized zone.

Article II

Concrete Arrangements for Cease-Fire and Armistice

A. General

12. The Commanders of the opposing sides shall order and enforce a complete cessation of all hostilities in Korea by all armed forces under their control, including all units and personnel of the ground, naval, and air forces, effective twelve (12) hours after this armistice agreement is signed. (See paragraph 63 hereof for effective date and hour of the remaining provisions of this armistice agreement.)

13. In order to insure the stability of the military armistice so as to facilitate the attainment of a peaceful settlement through the holding by both sides of a political conference of a higher level, the Commanders of the opposing sides shall:

(a) Within seventy-two (72) hours after this armistice agreement becomes effective, withdraw all of their military forces, supplies, and equipment from the demilitarized zone except as otherwise provided herein. All demolitions, minefields, wire entanglements, and other hazards to the safe movement of personnel of the Military Armistice Commission or its Joint Observer Teams, known to exist within the demilitarized zone after the withdrawal of military forces therefrom, together with lanes known to be free of all such hazards, shall be reported to the MAC by the Commander of the side whose forces emplaced such hazards. Subsequently, additional safe lanes shall be cleared; and eventually, within forty-five (45) days after the termination of the seventy-two (72) hour period, all such hazards shall be removed from the demilitarized zone as directed by the under the supervision of the MAC. At the termination of the seventy-two (72) hour period, except for unarmed troops authorized forty-five (54) day period to complete salvage operations under MAC and agreed to by the MAC and agreed to by the Commanders of the opposing sides, and personnel authorized under paragraphs 10 and 11 hereof, no personnel of either side shall be permitted to enter the demilitarized zone.

(b) Within ten (10) days after this armistice agreement becomes effective, withdraw all of their military forces, supplies, and equipment from the rear and the coastal islands and waters of Korea of the other side. If such military forces are not withdrawn within the stated time limit, and there is no mutually agreed and valid reason for the delay, the other side shall have the right to take any action which it deems necessary for the maintenance of security and order. The term "coastal islands", as used above, refers to those islands, which, though occupied by one side at the time when this armistice agreement becomes effective, were controlled by the other side on 24 June 1950; provided, however, that all the islands lying to the north and west of the provincial boundary line between HWANGHAE-DO and

KYONGGI-DO shall be under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's volunteers, except the island groups of PAENGYONG-DO (37 58' N, 124 40' E), TAECHONG-DO (37 50' N, 124 42' E), SOCHONG-DO (37 46' N, 124 46' E), YONPYONG-DO (37 38' N, 125 40' E), and U-DO (37 36' N, 125 58' E), which shall remain under the military control of the Commander-in-Chief, United Nations Command. All the island on the west coast of Korea lying south of the above-mentioned boundary line shall remain under the military control of the Commander-in-Chief, United Nations Command.

(c) Cease the introduction into Korea of Reinforcing military personnel; provided, however, that the rotation of units and personnel, the arrival in Korea of personnel on a temporary duty basis, and the return to Korea of personnel after short periods of leave or temporary duty outside of Korea shall be permitted within the scope prescribed below: "Rotation" is defined as the replacement of units or personnel by other units or personnel who re commencing a tour of duty in Korea. Rotation personnel shall be introduced into and evacuated from Korea only through the ports of entry enumerated in Paragraph 43 hereof. Rotation shall be conducted on a man-for-man basis; provided, however, that no more than thirty-five thousand (35,000) persons in the military service shall be admitted into Korea by either side in any calendar month under the rotation policy. No military personnel of either side shall be introduced into Korea if the introduction of such personnel will cause the aggregate of the military personnel of that side admitted into Korea since the effective date of this Armistice Agreement to exceed the cumulative total of the military personnel of that side who have departed from Korea since that date. Reports concerning arrivals in and departures from Korea of military personnel shall be made daily to the Military Armistice Commission and the Neutral Nations Supervisory Commission; such reports shall include places of arrival and departure and the number of persons arriving at or departing from each such place. The Neutral Nations Supervisory Commission, through its Neutral Nations Inspection Teams, shall conduct supervision and inspection of the rotation of units and personnel authorized above, at the ports of entry enumerated in Paragraph 43 hereof.

(d) Cease the introduction into Korea of reinforcing combat aircraft, armored vehicles, weapons, and ammunition; provided however, that combat aircraft, armored vehicles, weapons, and ammunition which are destroyed, damaged, worn out, or used up during the period of the armistice may be replaced on the basis piece-for-piece of the same effectiveness and the same type. Such combat aircraft, armored vehicles, weapons, and ammunition shall be introduced into Korea only through the ports of entry enumerated in paragraph 43 hereof. In order to justify the requirements for combat aircraft, armored vehicles, weapons, and ammunition to be introduced into Korea for replacement purposes, reports concerning every incoming shipment of these items shall be made to the MAC and the NNSC; such reports shall include statements regarding the disposition of the items being replaced. Items to be replace which are removed from Korea shall be removed only through the ports of entry enumerated in paragraph 43 hereof. The NNSC, through its Neutral Nations Inspection Teams, shall conduct supervision and inspection of the replacement of combat aircraft, armored vehicles, weapons, and ammunition authorized above, at the ports of entry enumerated in paragraph 43 hereof.

(e) Insure that personnel of their respective commands who violate any of the provisions of this armistice agreement are adequately punished.

(f) In those cases where places of burial are a matter of record and graves are actually found to exist, permit graves registration personnel of the other side to enter, within a definite time limit after this armistice agreement becomes effective, the territory of Korea under their military control, for the purpose of proceeding to such graves to recover and evacuate the bodies of the deceased military personnel of that side, including deceased prisoners of war. The specific procedures and the time limit for the performance of the above task shall be determined by the Military Armistice Commission. The Commanders of the opposing sides shall furnish to the other side all available information pertaining to the places of burial of the deceased military personnel of the other side.

(g) Afford full protection and all possible assistance and cooperation to the Military Armistice Commission, its Joint Observer Teams, the Neutral Nations Supervisory Commission, and its Neutral Nations Inspection Teams, in the carrying out of their functions and responsibilities hereinafter assigned; and accord to the Neutral Nations Inspection Teams, full convenience of movement between the headquarters of the Neutral Nations supervisory Commission and the ports of entry enumerated in Paragraph 43 hereof over main lines of communication agreed upon by both sides, and between the headquarters of the Neutral Nations Supervisory Commission and the places where violations of this Armistice Agreement have been reported to have occurred. In order to prevent unnecessary delays, the use of alternate routes and means of transportation will be permitted whenever the main lines of communication are closed or impassable.

(h) Provide such logistic support, including communications and transportation facilities, as may be required by the military Armistice Commission and the Neutral Nations Supervisory Commission and their Teams.

(i) Each construct, operate, and maintain a suitable airfield in their respective parts of the Demilitarized Zone in the vicinity of the headquarters of the Military Armistice Commission, for such uses as the Commission may determine.

(j) Insure that all members and other personnel of the Neutral Nations Supervisory Commission and of the Neutral Nations Repatriation Commission hereinafter established shall enjoy the freedom and facilities necessary for the proper exercise of their functions, including privileges, treatment, and immunities equivalent to those ordinarily enjoyed by accredited diplomatic personnel under international usage.

14. This Armistice Agreement shall apply to all opposing ground forces under the military control of either side, which ground forces shall respect the Demilitarized Zone and the area of Korea under the military control of the opposing side.

15. This Armistice Agreement shall apply to all opposing naval forces, which naval forces shall respect the water contiguous to the Demilitarized Zone and to the land area of Korea under the military control of the opposing side, and shall not engage in blockade of any kind of Korea.

16. This Armistice Agreement shall apply to all opposing air forces, which air forces shall respect the air space over the Demilitarized Zone and over the area of Korea under the military control of the opposing side, and over the waters contiguous to both.

17. Responsibility for compliance with and enforcement of the terms and provisions of this Armistice Agreement is that of the signatories hereto and their successors in command. The Commanders of the opposing sides shall establish within their respective commands all

measures and procedures necessary to insure complete compliance with all of the provisions hereof by all elements of their commands. They shall actively co-operate with one another and with the Military Armistice Commission and the Neutral nations supervisory Commission in requiring observance of both letter and the spirit of all of the provisions of this Armistice Agreement.

18. The costs of the operations of the Military Armistice Commission and of the Neutral Nations supervisory Commission and of their Teams shall be shared equally by the two opposing sides.

B. Military Armistice Commission

1. Composition

19. A Military Armistice Commission is hereby established.

20. The Military Armistice commission shall be composed of ten (10) senior officers, five (5) of whom shall be appointed by the Commander-in-Chief, United Nations Command, and five (5) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Of the ten members, three (3) from each side shall be of general of flag rank. The two (2) remaining members on each side may be major generals, brigadier generals, colonels, or their equivalents.

21. Members of the Military Armistice Commission shall be permitted to use staff assistants as required.

22. The Military Armistice Commission shall be provided with the necessary administrative personnel to establish a Secretariat charged with assisting the Commission by performing record-keeping, secretarial, interpreting, and such other functions as the Commission may assign to it. Each side shall appoint to the Secretariat a Secretary and an Assistant Secretary and such clerical and specialized personnel as required by the Secretariat. Records shall be kept in English, Korean, and Chinese, all of which shall be equally authentic.

23. (a) The Military Armistice Commission shall be initially provided with and assisted by ten (10) Joint Observer Teams, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission.

(b) Each Joint Observer Team shall be composed of not less than four (4) nor more than six (6) officers of field grade, half of whom shall be appointed by the Commander-in-Chief, United Nations Command, and half of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. Additional personnel such as drivers, clerks, and interpreters shall be furnished by each side as required for the functioning of the Joint Observer Teams.

24. The general mission of the Military Armistice Commission shall be to supervise the implementation of this Armistice Agreement and to settle through negotiations any violations of this Armistice Agreement.

25. The military Armistice Commission shall:

(a) Locate its headquarters in the vicinity of PANMUNJOM (37 57'29" n, 126 40'00" e). The Military Armistice Commission may re-locate its headquarters at another point within the Demilitarized Zone by agreement of the senior members of both sides on the Commission.

(b) Operate as a joint organization without a chairman.

(c) Adopt such rules of procedure as it may, from time to time, deem necessary

(d) Supervise the carrying out of the provisions of this Armistice Agreement pertaining to the Demilitarized Zone and to the Han River Estuary.

(e) Direct the operations of the Joint Observer Teams.

(f) Settle through negotiations any violations of this Armistice Agreement.

(g) Transmit immediately to the Commanders of the opposing sides all reports of investigations of violations of this Armistice Agreement and all other reports and records of proceedings received from the Neutral nations supervisory Commission.

(h) Give general supervision and direction to the activities of the Committee for Repatriation of Prisoners of War and the Committee for Assisting the Return of Displaced Civilians, hereinafter established.

(i) Act as intermediary in transmitting communications between the Commanders of the opposing sides; provided, however, that the foregoing shall not be construed to preclude the Commanders of both sides from Communicating with each other by any other means which they may desire to employ.

(j) Provide credentials and distinctive insignia for its staff and its Joint Observer Teams, and a distinctive marking for all vehicles, aircraft, and vessels, used in the performance of its mission.

26. The Mission of the Joint Observer Teams shall be to assist the Military Armistice Commission in supervising the carrying out of the provisions of this Armistice Agreement pertaining to the Demilitarized Zone and to the Han River Estuary.

27. The Military Armistice Commission, or the senior member of either side thereof, is authorized to dispatch Joint Observer Teams to investigate violations of this Armistice Agreement reported to have occurred in the Demilitarized Zone or in the Han River Estuary; provided, however, that not more than one half of the Joint Observer Teams which have not been dispatched by the Military Armistice Commission may be dispatched at any one time by the senior member of either side on the Commission.

28. The Military Armistice Commission, or the senior member of either side thereof, is authorized to request the Neutral Nations Supervisory Commission to conduct special observations and inspections at places outside the Demilitarized Zone where violations of this Armistice Agreement have been reported to have occurred. 29. When the Military Armistice Commission determines that a violation of this Armistice Agreement has occurred, it shall immediately report such violation to the Commanders of the opposing sides.

30. When the Military Armistice Commission determines that a violation of this Armistice Agreement has been corrected to its satisfaction, it shall so report to the Commanders of the opposing sides.

3. General

31. The Military Armistice Commission shall meet daily. Recesses of not to exceed seven (7) days may be agreed upon by the senior members of both sides; provided, that such recesses may be terminated on twenty-four (24) hour notice by the senior member of either side.

32. Copies of the record of the proceedings of all meetings of the Military Armistice Commission shall be forwarded to the Commanders of the opposing sides as soon as possible after each meeting.

33. The Joint Observer teams shall make periodic reports to the Military Armistice Commission as required by the Commission and, in addition, shall make such special reports as may be deemed necessary by them, or as may be required by the Commission.

34. The Military Armistice Commission shall maintain duplicate files of the reports and records of proceedings required by this Armistice Agreement. The Commission is authorized to maintain duplicate files of such other reports, records, etc., as may be necessary in the conduct of its business. Upon eventual dissolution of the Commission, one set of the above files shall be turned over to each side.

35. The Military Armistice Commission may make recommendations to the Commanders of the opposing sides with respect to amendments or additions to this Armistice Agreement. Such recommended changes should generally be those designed to insure a more effective armistice.

C. Neutral Nations Supervisory Commission

1. Compositions

36. A Neutral Nations Supervisory Commission is hereby established.

37. The Neutral Nations supervisory Commission shall be composed of four (4) senior officers, two (2) of whom shall be appointed by neutral nations nominated by the Commander-in-Chief, United Nations Command, namely, SWEDEN and SWITZERLAND, and two (2) of whom shall be appointed by neutral nations nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, namely, POLAND and CZECHOSLOVAKIA. The term "neutral nations" as herein used is defined as those nations whose combatant forces have not participated in the hostilities in Korea. Members appointed to the Commission may be from the armed forces of the appointing nations. Each member shall designate an alternate member to attend those meetings which for any reason the principal member is unable to attend. Such alternate members shall be of the same nationality as their principals. The Neutral Nations supervisory Commission may take action whenever the number of members present from the neutral nations nominated by one side is equal to the number of members present from the neutral nations nominated by the other side.

38. Members of the Neutral nations Supervisory Commission shall be permitted to use staff assistants furnished by the neutral nations as required. These staff assistants may be appointed as alternate members of the Commission.

39. The neutral nations shall be requested to furnish the Neutral nations Supervisory Commission with the necessary administrative personnel to establish a Secretariat charged with assisting the Commission by performing necessary record-keeping, secretarial, interpreting, and such other functions as the Commission may assign to it.

40. (a) The Neutral Nations supervisory Commission shall be initially provided with, and assisted by, twenty (20) neutral Nations Inspection Teams, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission. The Neutral nations Inspection Teams shall be responsible to, shall report to, and shall be subject to the direction of, the Neutral Nations supervisory Commission only.

(b) Each Neutral Nations Inspection Team shall be composed of not less than four (4) officers, preferably of field grade, half of whom shall be from the neutral nations nominated by the Commander-in-Chief, United Nations Command, and half of whom shall be from the neutral nations nominated jointly by the Supreme Commander of the Korean People's Army, and the Commander of the Chinese People's Volunteers. Members appointed to the Neutral Nations Inspection Teams may be from the armed forces of the appointed. In order to facilitate the functioning of the Teams, sub-teams composed of not less than two (2) members, one of whom shall be from a neutral nation nominated by the Commander-in-Chief, United Nations Command, and one of whom shall be from a neutral nation nominated jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, may be formed as circumstances require. Additional personnel such as drivers, clerks, interpreters, and communications personnel, and such equipment as may be required by the Teams to perform their missions, shall be furnished by the Commander of each side, as required, in the Demilitarized Zone and in the territory under his military control. The Neutral nations Supervisory Commission may provide itself and the Neutral Nations Inspection Teams with such of the above personnel shall be personnel of the same neutral nations of which the Neutral nations supervisory Commission is composed.

2. Functions and Authority

41. The mission of the Neutral Nations Supervisory Commission shall be to carry out the functions of supervision, observation, inspection, and investigation, as stipulated in Sub-paragraphs 13(c) and 13(d) and Paragraph 28 hereof, and to report the results of such supervision, observation, inspection, and investigation to the Military Armistice Commission.

42. The Neutral nations Supervisory Commission shall:

(a) Locate its headquarters in proximity to the headquarters of the Military Armistice Commission.

(b) Adopt such rules of procedure as it may, from time to time, deem necessary.

(c) Conduct, through its members and its Neutral nations Inspection teams, the supervision and inspection provided for in Sub-paragraphs 13(c) and 13(d) of this Armistice Agreement at the ports of entry enumerated in Paragraph 43 hereof, and the special observations and inspections provided for in paragraph 28 hereof at those places where violations of this Armistice Agreement have been reported to have occurred. The inspection of combat aircraft, armored vehicles, weapons, and ammunition by the Neutral Nations Inspection Teams shall be such as to enable them to properly insure that reinforcing combat aircraft, armored vehicles, weapons, and ammunition are not being introduced into Korea; but this shall not be construed as authorizing inspections or examinations of any secret designs of characteristics of any combat aircraft, armored vehicle, weapon, or ammunition.

(d) Direct and supervise the operations of the Neutral Nations Inspection Teams.

(e) Station five (5) neutral nations Inspection Teams at the ports of entry enumerated in Paragraph 43 hereof located in the territory under the military control of the Commander-in-Chief, United Nations Command; and five (5) Neutral nations Inspection Teams at the ports of entry enumerated in Paragraph 43 hereof located in the territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers; and establish initially ten (10) mobile Neutral nations Inspection Teams in reserve, stationed in the general vicinity of the headquarters of the Neutral Nations supervisory Commission, which number may be reduced by agreement of the senior members of both sides on the Military Armistice Commission. Not more than half of the mobile Neutral Nations Inspection Teams shall be dispatched at any one time in accordance with requests of the senior member of either side on the Military Armistice Commission.

(f) Subject to the provisions of the preceding Sub-paragraphs, conduct without delay investigations of reported violations of this Armistice Agreement, including such investigations of reported violations of this Armistice Agreement as may be requested by the Military Armistice Commission or by the senior member of either side on the Commission.

(g) Provide credentials and distinctive insignia for its staff and its Neutral nations Inspection Teams, and a distinctive marking for all vehicles, aircraft, and vessels used in the Performance of this mission.

43. Neutral nations Inspection Teams shall be stationed at the following ports of entry. Territory under the military contrail of the United Nations Command

INCHON.....(37 28, 126 38'E)
 TAEGU.....(35 52'n, 128 36'E)
 PUSAN.....(35 45'N, 129 02'E)
 KANGNUNG.....(37 45'N, 128 54'E)
 KUNSAN.....(35 59'E, 126 43'E)

Territory under the military control of the Korean People's Army and the Chinese People's Volunteers

SINUJU.....(40 06'n, 124 24E)
 CHONGJIN.....(41 46'N, 129 49E)
 HUNGNAM.....(39 50'N, 127 37'E)
 MANPO.....(41 46'N, 126 18'E)
 SINANJU..... (39 36'N, 125 36'E)

These Neutral Nations Inspection Teams shall be accorded full convenience of movement within the areas and over the routes of communication set forth on the attached map.

3. General

44. The Neutral Nations Supervisory Commission shall meet daily. Recesses of not to exceed seven (7) days may be agreed upon by the members of the Neutral nations Supervisory Commission; provided, that such recesses may be terminated on twenty-four (24) hour notice by any member.

45. Copies of the record of the proceedings of all meetings of the Neutral Nations Supervisory Commission shall be forwarded to the Military Armistice Commission as soon as possible after each meeting. Records shall be kept in English, Korean, and Chinese.

46. The Neutral Nations Inspection Teams shall make periodic reports concerning the results of their supervision observations, inspections, and investigations to the Neutral Nations supervisory Commission as required by the Commission and, in addition, shall make such special reports as may be deemed necessary by them, or as may be required by the Commission. Reports shall be submitted by a Team as a whole, but may also be submitted by one or more individual members thereof; provided, that the reports submitted by one or more individual members thereof shall be considered as information only.

47. Copies of the reports made by the Neutral Nations Inspection teams shall be forwarded to the Military Armistice Commission by the Neutral Nations Supervisory Commission without delay and in the language in which received. They shall not be delayed by the process of translation or evaluation. The Neutral Nations Supervisory Commission shall evaluate such reports at the earliest practicable time and shall forward their findings to the Military Armistice Commission as a matter of priority. The Military Armistice Commission shall not take final action with regard to any such report until the evaluation thereof has been received from the Neutral Nations Supervisory Commission. Members of the Neutral Nations Supervisory Commission and of its Teams shall be subject to appearance before the Military Armistice Commission, at the request of the senior member of either side on the Military Armistice Commission, for clarification of any report submitted.

48. The Neutral Nations Supervisory Commission shall maintain duplicate files of the reports and records of proceedings required by this Armistice Agreement. The Commission is authorized to maintain duplicate files of such other reports, records, etc., as may be necessary in the conduct of its business. Upon eventual dissolution of the Commission, one set of the above files shall be turned over to each side.

49. The Neutral Nations Supervisory Commission may make recommendations to the Military Armistice Commission with respect to amendments or additions to this Armistice Agreement. Such recommended changes should generally be those designed to insure a more effective armistice.

50. The Neutral Nations Supervisory Commission, or any member thereof, shall be authorized to communicate with any member of the Military Armistice Commission.

Article III Arrangement Relating to Prisoners of War

51. The release and repatriation of all prisoners of war held in the custody of each side at the time this armistice agreement becomes effective shall be effected in conformity with the following provisions agreed upon by both sides prior to the signing of this armistice agreement.

(a) Within sixty (60) days after this agreement becomes effective each side shall, without offering any hindrance, directly repatriate and hand over in groups all those prisoners of war in its custody who insist on repatriation to the side to which they belonged at the time of capture. Repatriation shall be accomplished in accordance with the related provisions of this Article. In order to expedite the repatriation process of such personnel, each side shall, prior to the signing of the Armistice Agreement, exchange the total numbers, by nationalities, or personnel to be directly repatriated. Each group of prisoners of war delivered to the other

side shall be accompanied by rosters, prepared by nationality, to include name, rank (if any) and internment or military serial number.

(b) Each side shall release all those remaining prisoners of war, who are not directly repatriated, from its military control and from its custody and hand them over to the Neutral Nations Repatriation Commission for disposition in accordance with the provisions in the Annex hereto, "Terms of Reference for Neutral Nations Repatriation Commission."

(c) So that there may be no misunderstanding owing to the equal use of three languages, the act of delivery of a prisoner of war by one side to other side shall, for the purposes of the Armistice Agreement, be called "repatriation" in English, () "Song Hwan" in Korean and () "Ch'ien Fan" in Chinese, notwithstanding the nationality or place of residence of such prisoner of war.

52. Each side insures that it will not employ in acts of war in the Korean conflict any prisoner of war released and repatriated incident to the coming into effect of this armistice agreement.

53. All the sick and injured prisoners of war who insist upon repatriation shall be repatriated with priority. Insofar as possible, there shall be captured medical personnel repatriated concurrently with the sick and injured prisoners of war, so as to provide medical care and attendance enroute.

54. The repatriation of all of the prisoners of war required by Sub-paragraph 51 (a) hereof shall be completed within a time limit of sixty (60) days after this Armistice Agreement becomes effective. Within this time limit each side undertakes to complete repatriation of the above- mentioned prisoners of war in its custody at the earliest practicable time.

55. PANMUNJOM is designated as the place where prisoners of war will be delivered and received by both sides. Additional place(s) of delivery and reception of prisoners of war in the Demilitarized Zone may be designated, if necessary, by the Committee for Repatriation of Prisoners of War.

56. (a) A committee for Repatriation of Prisoners of War is hereby established. It shall be composed of six (6) officers of field grade, three (3) of whom shall be appointed by the Commander-in-Chief, United Nations Command, and three (3) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. This Committee shall, under the general supervision and direction of the Military Armistice Commission, be responsible for co-ordinating the specific plans of both sides for the repatriation of prisoners of war and for supervision the execution by both sides of all of the provisions of this Armistice Agreement relating to the repatriation of prisoners of war. It shall be the duty of this Committee to co-ordinate the timing of the arrival of prisoners of war at the place(s) of delivery and reception of prisoners of war from the prisoner of war camps of both sides; to make, when necessary, such special arrangements as may be required with regard to the transportation and welfare of sick and injured prisoners of war; to co-ordinate the work of the joint Red Cross teams, established in Paragraph 57 hereof, in assisting in the repatriation of prisoners of war; to supervise the implementation of the arrangements for the actual repatriation of prisoners of war stipulated in Paragraphs 53 and 54 hereof; to select, when necessary, additional place(s) of delivery and reception of prisoners of war; and to carry out such other related functions as are required for the repatriation of prisoners of war.

(b) When unable to reach agreement on any matter relating to its responsibilities, the committee for Repatriation of Prisoners of War shall immediately refer such matter to the Military Armistice Commission for decision. The Committee for Repatriation of Prisoners of War shall maintain its headquarters in proximity to the headquarters of the Military Armistice Commission.

(c) The Committee for Repatriation of Prisoners of War shall be dissolved by the Military Armistice Committee upon completion of the program of repatriation of prisoners of war.

57. (a) Immediately after this Armistice Agreement becomes effective, joint Red Cross teams composed of representatives of the national Red Cross Societies of countries contributing forces to the United Nations Command on the one hand, and representatives of the of the Red Cross Society of the Democratic People's Republic of Korea and representatives of the Red Cross Society of the People's Republic of China on the other hand, shall be established. The joint Red Cross teams shall assist in the execution by both sides of those provisions of this Armistice Agreement relating to the repatriation of all the prisoners of war specified in Sub-paragraph 51 (a) hereof, who insist upon repatriation, by the performance of such humanitarian services as are necessary and desirable for the welfare of the prisoners of war. To accomplish this task, the joint Red Cross teams shall provide assistance in the delivering and receiving of prisoners of war by both sides at the place(s) of delivery and reception of prisoners of war, and shall visit the prisoner-of-war camps of both sides to comfort the prisoners of war.

(b) The joint Red Cross teams shall be organized as set forth below:

(1) One team shall be composed of twenty (20) members, namely, ten (10) representatives from the national Red Cross Societies of each side, to assist in the delivering and receiving of prisoners of war by both sides at the place(s) of delivery and reception of prisoners of war. The chairmanship of this team shall alternate daily between representatives from the Red Cross Societies of the two sides. The work and services of this team shall be coordinated by the Committee for Repatriation of Prisoners of War.

(2) One team shall be composed of sixty (60) members, namely, thirty (30) representatives from the national Red Cross Societies of each side, to visit the prisoner-of-war camps under the administration of the Korean People's Army and the Chinese People's Volunteers. This team may provide services to prisoners of war while en route from the prisoner of war camps to the place(s) of delivery and reception of prisoners of war. A representative of a Red Cross Society of the Democratic People's Republic of Korea or of the Red Cross Society of the People's Republic of China shall serve as chairman of this team.

(3) One team shall be composed of sixty (60) members, namely, thirty (30) representatives from the national Red Cross Societies of each side, to visit the prisoner of war camps under the administration of the United Nations Command. This team may provide services to prisoners of war while en route from the prisoner of war camps to the place(s) of delivery and reception of prisoners of war. A representative of a Red Cross Society of a nation contributing to forces to the United Nations Command shall serve as chairman of this team.

(4) In order to facilitate the functioning of each joint Red Cross team, sub-teams composed of not less than two (2) members from this team, with an equal number of representatives from each side, may be formed as circumstances require.

(5) Additional personnel such as drivers, clerks, and interpreters, and such equipment as may be required by the joint Red Cross teams to perform their missions, shall be furnished by the Commander of each side to the team operating in the territory under his military control.

(6) Whenever jointly agreed upon by the representatives of both sides on any joint Red Cross team, the size of such team may be increased or decreased, subject to confirmation by the committee for Repatriation of Prisoners of War.

(c) The Commander of each side shall co-operate fully with the joint Red Cross teams in the performance of their functions, and undertakes to insure the security of the personnel of the Joint Red Cross team in the area under his military control. The Commander of each side shall provide such logistic, administrative, and communications facilities as may be required by the team operating in the territory under his military control.

(d) The joint Red Cross teams shall be dissolved upon completion of the program of repatriation of all of the prisoners of war specified in Sub-paragraph 51 (a) hereof, who insist upon repatriation.

58. (a) The Commander of each side shall furnish to the Commander of the other side as soon as practicable, but not later than ten (10) days after this Armistice Agreement becomes effective, the following information concerning prisoners of war:

(1) Complete data pertaining to the prisoners of war who escaped since the effective date of the data last exchanged.

(2) Insofar as practicable, information regarding name, nationality, rank, and other identification data, date and cause of death, and place of burial, of those prisoners of war who died while in his custody.

(b) If any prisoners of war escape or die after the effective date of the supplementary information specified above, the detaining side shall furnish to the other side, through the Committee for Repatriation of Prisoners of War, the data pertaining thereto in accordance with the provisions of Sub-paragraph 58 (a) hereof. Such data shall be furnished at ten-day intervals until the completion of the program of delivery and reception of prisoners of war.

(c) Any escaped prisoner of war who returns to the custody of the detaining side after the completion of the program of delivery and reception of prisoners of war shall be delivered to the Military Armistice Commission for disposition.

59. (a) All civilians who, at the time this Armistice Agreement become effective, are in territory under the military control of the Commander-in-Chief, United Nations Command, and who, on 24 June 1950, resided north of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Commander-in-Chief, United Nations Command, to return to the area north of the military Demarcation Line; and all civilians who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, and who on 24 June 1950, resided south of the Military Demarcation Line established in this Armistice Agreement shall, if they desire to return home, be permitted and assisted by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers to return to the area south Military Demarcation Line. The Commander of each side shall be responsible for publicizing widely throughout the territory under his military control the contents of the provisions of this Sub-paragraph, and for calling upon

the appropriate civil authorities to give necessary guidance and assistance to all such civilians who desire to return home.

(b) All civilians of foreign nationality who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers shall if they desire to proceed to territory under the military control of the Commander-in-Chief, United Nations command, be permitted and assisted to do so; all civilians of foreign nationality who, at the time this Armistice Agreement becomes effective, are in territory under the military control of the Commander-in-Chief, United Nations Command, shall, if they desire to proceed to territory under the military Control of the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, be permitted and assisted to do so. The Commander of each side shall be responsible for publicizing widely throughout the territory under his military control of contents of the provisions of this sub-paragraph, and for calling upon the appropriate civil authorities to give necessary guidance and assistance to all such civilians of foreign nationality who desire to proceed to territory under the military control of the Commander of the other side.

(c) Measures to assist in the return of civilians provided for in Sub-paragraph 59 (a) hereof and the movement of civilians provided for in Sub-paragraph 59 (b) hereof shall be commenced by both sides as soon as possible after this Armistice Agreement becomes effective.

(d) (1) A Committee for Assisting the Return of Displace Civilians is hereby established. It shall be composed of four (4) officers of field grade, two (2) of whom shall be appointed jointly by the Commander-in-Chief, United Nations Command, and two (2) of whom shall be appointed jointly by the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers. This committee shall, under the general supervision and direction of the Military Armistice Commission, be responsible for coordinating the specific plans of both sides for assistance to the return of the above-mentioned civilians. It shall be the duty of this Committee to make necessary arrangements, including those of transportation, for expediting and coordinating the movement of the above-mentioned civilians; to select the crossing point(s) through which the above-mentioned civilians will cross the Military Demarcation Line; to arrange for security at the crossing point(s); and to carry out such other functions as are required to accomplish the return of the above-mentioned civilians.

(2) When unable to reach agreement on any matter relating to its responsibilities, the Committee for Assisting the return of Displaced Civilians shall immediately refer such matter to the Military Armistice Commission for decision. The Committee for assisting the Return of Displaced Civilians shall maintain its headquarters in proximity to the headquarters of the Military Armistice Commission.

(3) The Committee for Assisting the Return of Displaced Civilians shall be dissolved by the Military Armistice Commission upon fulfillment of its mission.

Article IV

Recommendations to the Governments Concerned on Both Sides

60. In order to insure the peaceful settlement of the Korean question, the military Commanders of both sides hereby recommend to the governments of the countries

concerned on both sides that, within three (3) months after the Armistice Agreement is signed and becomes effective, a political conference of a higher level of both sides be held by representatives appointed respectively to settle through negotiation the questions of the withdrawal of all foreign forces from Korea, the peaceful settlement of the Korean question, etc.

Article V

Miscellaneous

61. Amendments and additions to this Armistice Agreement must be mutually agreed to by the Commanders of the opposing sides.

62. The Articles and Paragraphs of this Armistice Agreement shall remain in effect until expressly superseded either by mutually acceptable amendments and additions or by provision in an appropriate agreement for a peaceful settlement at a political level between both sides.

63. All of the provisions of this Armistice Agreement, other than Paragraph 12, shall become effective at 2200 hours on 27 July 1953.

Done at Panmunjom, Korea at 10:00 hours on the 27th day of July 1953, in English, Korean and Chinese, all texts being equally authentic.

NAM IL

General, Korea People's Army Senior Delegate, Delegation of the Korean People's Army and the Chinese People's Volunteers

WILLIAM K. HARRISON, JR.

Lieutenant General, United States Army Senior Delegate, United Nations Command Delegation

Joint Declaration on the Denuclearization of the Korean Peninsular (February 19, 1992)

This joint declaration between North and South Korea has been referred to in subsequent agreements on North Korea's nuclear program, including the September 2005 joint statement on North Korea's commitment to ending its nuclear program. Implementation of that September 2005 joint statement was the focus of the February 13, 2007 agreement, presented later.

Begin text:

South and North Korea,

In order to eliminate the danger of nuclear war through the denuclearization of the Korean peninsula, to create conditions and an environment favourable to peace and the peaceful unification of Korea, and thus to contribute to the peace and security of Asia and the world,

Declare as follows;

1. South and North Korea shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons.
2. South and North Korea shall use nuclear energy solely for peaceful purposes.
3. South and North Korea shall not possess nuclear reprocessing and uranium enrichment facilities.
4. In order to verify the denuclearization of the Korean peninsula, South and North Korea shall conduct inspections of particular subjects chosen by the other side and agreed upon between the two sides, in accordance with the procedures and methods to be determined by the South-North Joint Nuclear Control Commission.
5. In order to implement this joint declaration, South and North Korea shall establish and operate a South-North Joint Nuclear Control Commission within one month of the entry into force of this joint declaration;
6. This joint declaration shall enter into force from the date the South and the North exchange the appropriate instruments following the completion of their respective procedures for bringing it into effect.

Chung Won-shik

Chief Delegate of the South delegation to the South-North High-Level Negotiations Prime Minister of the Republic of Korea

Yon Hyong-muk

Head of the North delegation to the South-North High-Level Negotiations Premier of the Administration Council of the Democratic People's Republic of Korea

Agreed Framework Between the Democratic People's Republic of Korea and the United States of America (Geneva, October 21, 1994)

The 1994 “Agreed Framework” was a highly significant development because it held out the possibility that diplomacy and incentives might ultimately succeed in persuading North Korea to discontinue its nuclear weapons program. The Agreed Framework represented a promise of economic assistance to North Korea and nuclear assistance to ensure that its nuclear program could only be used for peaceful purposes. While full compliance with the Agreed Framework meant that North Korea would have had to give up its nuclear weapons ambitions, it also held out the promise of full normalization of relations with the United States, as stated in Section Two of the agreement.

The Agreed Framework broke down in mutual recrimination in October 2002, when North Korea confirmed to U.S. officials that it had restarted its nuclear weapons program. North Korea expelled the International Atomic Energy Agency inspectors and declared it would withdraw from the Nuclear Non-Proliferation Treaty. Participants in the consortium building proliferation-resistant light water reactors – the United States, Japan, South Korea, and the European Union linked in an organization set up for that purpose called the Korean Energy Development Organization (KEDO) – suspended construction of the reactors and shipments of fuel oil to North Korea. North Korea withdrew from the NPT on January 10, 2003.

The Bush Administration argues that the February 13, 2007 nuclear agreement is more favorable to the United States, and more easily verifiable, than the 1994 Agreed Framework. However, Administration critics say that the 2007 agreement is virtually indistinguishable in substance from the Agreed Framework, and just as likely to break down as did the Agreed Framework.

Begin text:

PYONGYANG, October 22 (KCNA), An agreed framework between the Democratic People's Republic of Korea and the United States of America was published.

Follows the full text of the agreed framework:

Delegations of the governments of the Democratic People's Republic of Korea (DPRK) and the United States of America (U.S.) held talks in Geneva from September 23 to October 21, 1994, to negotiate an overall resolution of the nuclear issue on the Korean Peninsula.

Both sides reaffirmed the importance of attaining the objectives contained in the August 12, 1994 agreed statement between the DPRK and the U.S. and upholding the principles of the June 11, 1993 joint statement of the DPRK and the U.S. to achieve peace and security on a nuclear-free Korean Peninsula. The DPRK and the U.S. decided to take the following actions for the resolution of the nuclear issue:

I. Both sides will cooperate to replace the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants.

1) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S. will undertake to make arrangements for the provision to the DPRK of a LWR project with a total generating capacity of approximately 2,000 MW (e) by a target date of 2003.

-- The U.S. will organize under its leadership an international consortium to finance and supply the LWR project to be provided to the DPRK. The U.S., representing the international consortium, will serve as the principal point of contact with the DPRK for the LWR project.

-- The U.S., representing the consortium, will make best efforts to secure the conclusion of a supply contract with the DPRK within six months of the date of this document for the provision of the LWR project. Contract talks will begin as soon as possible after the date of this document.

-- As necessary, the DPRK and the U.S. will conclude a bilateral agreement, for cooperation in the field of peaceful uses of nuclear energy.

2) In accordance with the October 20, 1994 letter of assurance from the U.S. President, the U.S., representing the consortium, will make arrangements to offset the energy forgone due to the freeze of the DPRK's graphite-moderated reactors and related facilities, pending completion of the first LWR unit.

-- Alternative energy will be provided in the form of heavy oil for heating and electricity production.

-- Deliveries of heavy oil will begin within three months of the date of this document and will reach a rate of 500,000 tons annually, in accordance with an agreed schedule of deliveries.

3) Upon receipt of U.S. assurances for the provision of LWRs and for arrangements for interim energy alternatives, the DPRK will freeze its graphite-moderated reactors and related facilities and will eventually dismantle these reactors and related facilities.

-- The freeze on the DPRK's graphite-moderated reactors and related facilities will be fully implemented within one month of the date of this document. During this one-month period, and throughout the freeze, the International Atomic Energy Agency (IAEA) will be allowed to monitor this freeze, and the DPRK will provide full cooperation to the IAEA for this purpose.

-- Dismantlement of the DPRK's graphite-moderated reactors and related facilities will be completed when the LWR project is completed.

-- The DPRK and the U.S. will cooperate in finding a method to store safely the spent fuel from the 5 MW (e) experimental reactor during the construction of the LWR project, and to dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

4) As soon as possible after the date of this document. DPRK and U.S. experts will hold two sets of experts' talks.

-- At one set of talks, experts will discuss issues related to alternative energy and the replacement of the graphite-moderated reactor program with the LWR project.

-- At the other set of talks, experts will discuss specific arrangements for spent fuel storage and ultimate disposition.

II. The two sides will move toward full normalization of political and economic relations.

1) Within three months of the date of this document, both sides will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions.

2) Each side will open a liaison office in the other's capital following resolution of consular and other technical issues through expert-level discussions.

3) As progress is made on issues of concern to each side, the DPRK and the U.S. will upgrade bilateral relations to the ambassadorial level.

III. Both sides will work together for peace and security on a nuclear-free Korean Peninsula.

1) The U.S. will provide formal assurances to the DPRK against the threat or use of nuclear weapons by the U.S.

2) The DPRK will consistently take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.

3) The DPRK will engage in north-south dialogue, as this agreed framework will help create an atmosphere that promotes such dialogue.

IV. Both sides will work together to strengthen the international nuclear non-proliferation regime.

1) The DPRK will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and will allow implementation of its safeguards agreement under the treaty.

2) Upon conclusion of the supply contract for the provision of the LWR project, ad hoc and routine inspections will resume under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. Pending conclusion of the supply contract, inspections required by the IAEA for the continuity of safeguards will continue at the facilities not subject to the freeze.

3) When a significant portion of the LWR project is completed, but before delivery of key nuclear components, the DPRK will come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), including taking all steps that may be deemed necessary by the IAEA, following consultations with the agency with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK.

North Korea's Moratorium on Missile Tests (September 1999)

This statement from North Korea announced a moratorium on new tests of ballistic missiles. The moratorium was extended several times in the context of multi-lateral efforts to negotiate and end to North Korea's nuclear weapons program, but was finally broken by North Korea with its July 4, 2006 missile tests. Those tests took place during a long suspension in the "six party talks" on North Korea's nuclear program.

Begin text:

September 24, 1999

As a result of the Berlin talks with the DPRK on September 17 the United States made public the lift of a series of sanctions imposed upon the DPRK by it under the trade with the enemy act for scores of years after defining the DPRK as an "enemy state," and so on. That is a step taken by the U.S. in a bid to fulfil its commitments to remove trade and investment barriers under the DPRK-U.S. agreed framework adopted in 1994.

The DPRK considers it to be a reflection of the U.S. political will to stop pursuing its policy hostile to the DPRK and to improve relations with the DPRK, though it is not comprehensive and came belatedly. We think that the step helps create an atmosphere favourable for a negotiated solution to outstanding issues between the two countries. The U.S. should not confine itself to the announcement of the lift of a series of sanctions concerning trade and investment, but put them into practice as soon as possible, completely discard hostile design against the DPRK and lift the remaining sanctions.

If the U.S. actually stops pursuing the policy hostile to the DPRK and works hard to improve relations with it, the DPRK will respond it with good faith and strive to remove the U.S. suspicions and apprehensions in the interests of the two sides. In response to the U.S. demand the DPRK will have high-level talks with the U.S. for the settlement of pending issues as an immediate task. It will not launch a missile while the talks are under way with a view to creating an atmosphere more favorable for the talks.

DPRK Foreign Ministry Spokesman

Source: <http://www.kcna.co.jp/item/1999/9909/news09/24.htm#1>

Joint Statement on North Korea's Nuclear Program (September 19, 2005)

The following joint statement is significant because it represented an apparent breakthrough for the “Six Party Talks” to end North Korea’s nuclear weapons program. The statement committed North Korea to give up its nuclear weapons program and rejoin the NPT. The joint statement held out the prospects for North Korea of normalization of relations with the United States and a permanent peace treaty on the Korean peninsula. However, the joint statement left vague the sequencing of North Korea’s steps to give up its nuclear weapons program and the providing of incentives to North Korea by the five negotiating powers (Japan, South Korea, the United States, Russia, and China). Because of the lack of trust between North Korea and the five powers on the sequencing issue, North Korea at first refused to return to the talks and then, in October 2006, conducted its nuclear test. North Korea insists it conducted the test to develop a deterrent to what it says is a U.S. hostile intent toward North Korea. However, perhaps in response to multilateral pressure, including interruptions of oil shipments from China, its main patron, North Korea did return to the talks in December 2006, and the February 13, 2007 agreement was reached.

Begin text:

Joint Statement of the Fourth Round of the Six-Party Talks’, Beijing, September 19, 2005.

The Fourth Round of the Six-Party Talks was held in Beijing, China among the People’s Republic of China, the Democratic People’s Republic of Korea, Japan, the Republic of Korea, the Russian Federation, and the United States of America from July 26th to August 7th, and from September 13th to 19th, 2005.

Mr. Wu Dawei, Vice Minister of Foreign Affairs of the PRC, Mr. Kim Gye Gwan, Vice Minister of Foreign Affairs of the DPRK; Mr. Kenichiro Sasae, Director-General for Asian and Oceanian Affairs, Ministry of Foreign Affairs of Japan; Mr. Song Min-soon, Deputy Minister of Foreign Affairs and Trade of the ROK; Mr. Alekseyev, Deputy Minister of Foreign Affairs of the Russian Federation; and Mr. Christopher Hill, Assistant Secretary of State for East Asian and Pacific Affairs of the United States attended the talks as heads of their respective delegations.

Vice Foreign Minister Wu Dawei chaired the talks.

For the cause of peace and stability on the Korean Peninsula and in Northeast Asia at large, the Six Parties held, in the spirit of mutual respect and equality, serious and practical talks concerning the denuclearization of the Korean Peninsula on the basis of the common understanding of the previous three rounds of talks, and agreed, in this context, to the following:

1. The Six Parties unanimously reaffirmed that the goal of the Six-Party Talks is the verifiable denuclearization of the Korean Peninsula in a peaceful manner.

The DPRK committed to abandoning all nuclear weapons and existing nuclear programs and returning, at an early date, to the Treaty on the Non-Proliferation of Nuclear Weapons and to IAEA safeguards.

The United States affirmed that it has no nuclear weapons on the Korean Peninsula and has no intention to attack or invade the DPRK with nuclear or conventional weapons.

The ROK reaffirmed its commitment not to receive or deploy nuclear weapons in accordance with the 1992 Joint Declaration of the Denuclearization of the Korean Peninsula, while affirming that there exist no nuclear weapons within its territory.

The 1992 Joint Declaration of the Denuclearization of the Korean Peninsula should be observed and implemented.

The DPRK stated that it has the right to peaceful uses of nuclear energy. The other parties expressed their respect and agreed to discuss, at an appropriate time, the subject of the provision of light water reactor to the DPRK.

2. The Six Parties undertook, in their relations, to abide by the purposes and principles of the Charter of the United Nations and recognized norms of international relations.

The DPRK and the United States undertook to respect each other's sovereignty, exist peacefully together, and take steps to normalize their relations subject to their respective bilateral policies.

The DPRK and Japan undertook to take steps to normalize their relations in accordance with the Pyongyang Declaration, on the basis of the settlement of unfortunate past and the outstanding issues of concern.

3. The Six Parties undertook to promote economic cooperation in the fields of energy, trade and investment, bilaterally and/or multilaterally.

China, Japan, ROK, Russia and the US stated their willingness to provide energy assistance to the DPRK.

The ROK reaffirmed its proposal of July 12th 2005 concerning the provision of 2 million kilowatts of electric power to the DPRK.

4. The Six Parties committed to joint efforts for lasting peace and stability in Northeast Asia.

The directly related parties will negotiate a permanent peace regime on the Korean Peninsula at an appropriate separate forum.

The Six Parties agreed to explore ways and means for promoting security cooperation in Northeast Asia.

5. The Six Parties agreed to take coordinated steps to implement the afore-mentioned consensus in a phased manner in line with the principle of "commitment for commitment, action for action".

6. The Six Parties agreed to hold the Fifth Round of the Six-Party Talks in Beijing in early November 2005 at a date to be determined through consultations.

Source: <http://www.fmprc.gov.cn/eng/topics/dslbj/t212707.htm>.

Resolution 1695 (July 15, 2006)

This U.N. Security Council resolution was imposed following North Korea's missile tests that day (July 5 in North Korea), even though North Korea's test of the long-range Taepodong 2 was deemed by U.S. officials to have failed. The tests that day of shorter range missiles were considered successful. The Resolution demands that North Korea re-commit itself to a September 1999 moratorium on further ballistic missile tests. It was North Korea's re-commitment to the moratorium in June 2000 that had led the Clinton Administration to substantially ease U.S. trade restrictions with North Korea, as discussed in Section 3 of this compendium. In September 2002, North Korea agreed, in talks with visiting Japanese Prime Minister Koizumi, to extend the moratorium beyond 2003. However, in March 2005, a reported North Korean Foreign Ministry memorandum said that North Korea no longer considered itself bound by the moratorium because the Bush Administration had discontinued missile talks with North Korea in March 2001.

The Resolution "requires" U.N. member states to prevent the transfer of missile related goods and technology, and financial resources associated with WMD programs, to North Korea. However, in order to achieve the united front on the Resolution among the five permanent Security Council members, the Resolution was not passed under Chapter VII of the U.N. Charter, which would have made compliance mandatory and referred to mechanisms for the United Nations to enforce compliance.

Begin text:

"The Security Council,

"Reaffirming its resolutions 825 (1993) of 11 May 1993 and 1540 (2004) of 28 April 2004,

"Bearing in mind the importance of maintaining peace and stability on the Korean peninsula and in north-east Asia at large,

"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 grave concern at the launch of ballistic missiles by the Democratic People's Republic of Korea (DPRK), given the potential of such systems to be used as a means to deliver nuclear, chemical or biological payloads,

"Registering profound concern at the DPRK's breaking of its pledge to maintain its moratorium on missile launching,

"Expressing further concern that the DPRK endangered civil aviation and shipping through its failure to provide adequate advance notice,

"Expressing its grave concern about DPRK's indication of possible additional launches of ballistic missiles in the near future,

"Expressing also its desire for a peaceful and diplomatic solution to the situation and welcoming efforts by Council members as well as other Member States to facilitate a peaceful and comprehensive solution through dialogue,

“*Recalling* that the DPRK launched an object propelled by a missile without prior notification to the countries in the region, which fell into the waters in the vicinity of Japan on 31 August 1998,

“*Deploring* the DPRK’s announcement of withdrawal from the Treaty on Non-Proliferation of Nuclear Weapons (the Treaty) and its stated pursuit of nuclear weapons in spite of its Treaty on Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency (IAEA) safeguards obligations,

“*Stressing* the importance of the implementation of the Joint Statement issued on 19 September 2005 by China, DPRK, Japan, Republic of Korea, the Russian Federation and the United States,

“*Affirming* that such launches jeopardize peace, stability and security in the region and beyond, particularly in light of the DPRK’s claim that it has developed nuclear weapons,

“*Acting* under its special responsibility for the maintenance of international peace and security,

“1. *Condemns* the multiple launches by the DPRK of ballistic missiles on 5 July 2006 local time;

“2. *Demands* that the DPRK 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;

“3. *Requires* all Member States, in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent missile and missile-related items, materials, goods and technology being transferred to DPRK’s missile or WMD programmes;

“4. *Requires* all Member States, in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent the procurement of missiles or missile related-items, materials, goods and technology from the DPRK, and the transfer of any financial resources in relation to DPRK’s missile or WMD programmes;

“5. *Underlines*, in particular to the DPRK, the need to show restraint and refrain from any action that might aggravate tension, and to continue to work on the resolution of non-proliferation concerns through political and diplomatic efforts;

“6. *Strongly urges* the DPRK to return immediately to the Six-Party Talks without precondition, to work towards the expeditious implementation of 19 September 2005 Joint Statement, in particular to abandon all nuclear weapons and existing nuclear programmes, and to return at an early date to the Treaty on Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency safeguards;

“7. *Supports* the six-party talks, calls for their early resumption, and urges all the participants to intensify their efforts on the full implementation of the 19 September 2005 Joint Statement with a view to achieving the verifiable denuclearization of the Korean Peninsula in a peaceful manner and to maintaining peace and stability on the Korean Peninsula and in north-east Asia;

“8. *Decides* to remain seized of the matter.”

Resolution 1718 (October 14, 2006)

This Resolution was adopted after North Korea's October 9, 2006 nuclear test. It imposes international sanctions on exports to North Korea of any arms or WMD-related technology as well as luxury goods, and requires the freezing of financial assets of entities deemed supporting North Korea's WMD programs. Subsequent to its adoption, the Bush Administration imposed restrictions on the export of luxury goods to North Korea.

Begin text:

“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,

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

“Deploring 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 judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or

judgement provided that the lien or judgement 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;

“17. *Decides* to remain actively seized of the matter.”

Nuclear Agreement (February 13, 2007)

The agreement below represents an apparent breakthrough in the Six Party Talks after several marginally productive rounds and side talks between the United States and North Korean officials. It signaled agreement by North Korea to, in effect, implement the September 2005 declaration (above) that it would end its nuclear program. However, there was opposition from some conservatives in the United States on the grounds that it leaves to future negotiations the fate of the nuclear weapons that North Korea has already acquired, and “front loads” the energy and other aid to North Korea before North Korea carries out any significant disarmament. Others argue that the agreement would inevitably falter when hard bargaining over North Korea’s existing stockpile begins.

The agreement, if implemented, has significant implications for the potential for U.S.-North Korea normalization because it establishes working groups on the possible removal of North Korea from the “terrorism list” and easing of other U.S. sanctions. The agreement also provides for separate U.S.-North Korea talks to resolve the Banco Delta Asia financial issues discussed later in this compendium.

Begin Text:

Official announcement on North Korea

Published: February 13 2007 09:55 | Last updated: February 13 2007 09:55

February 13 2007

The Third Session of the Fifth Round of the Six-Party Talks was held in Beijing among the People’s Republic of China, the Democratic People’s Republic of Korea, Japan, the Republic of Korea, the Russian Federation and the United States of America from 8 to 13 February 2007.

Mr. Wu Dawei, Vice Minister of Foreign Affairs of the PRC, Mr. Kim Gye Gwan, Vice Minister of Foreign Affairs of the DPRK; Mr. Kenichiro Sasae, Director-General for Asian and Oceanian Affairs, Ministry of Foreign Affairs of Japan; Mr. Chun Yung-woo, Special Representative for Korean Peninsula Peace and Security Affairs of the ROK Ministry of Foreign Affairs and Trade; Mr. Alexander Losyukov, Deputy Minister of Foreign Affairs of the Russian Federation; and Mr. Christopher Hill, Assistant Secretary for East Asian and Pacific Affairs of the Department of State of the United States attended the talks as heads of their respective delegations.

Vice Foreign Minister Wu Dawei chaired the talks.

I. The Parties held serious and productive discussions on the actions each party will take in the initial phase for the implementation of the Joint Statement of 19 September 2005. The Parties reaffirmed their common goal and will to achieve early denuclearization of the Korean Peninsula in a peaceful manner and reiterated that they would earnestly fulfill their commitments in the Joint Statement. The Parties agreed to take coordinated steps to implement the Joint Statement in a phased manner in line with the principle of “action for action”.

II. The Parties agreed to take the following actions in parallel in the initial phase:

1. The DPRK will shut down and seal for the purpose of eventual abandonment the Yongbyon nuclear facility, including the reprocessing facility and invite back IAEA personnel to conduct all necessary monitoring and verifications as agreed between IAEA and the DPRK.
2. The DPRK will discuss with other parties a list of all its nuclear programs as described in the Joint Statement, including plutonium extracted from used fuel rods, that would be abandoned pursuant to the Joint Statement.
3. The DPRK and the US will start bilateral talks aimed at resolving pending bilateral issues and moving toward full diplomatic relations. The US will begin the process of removing the designation of the DPRK as a state-sponsor of terrorism and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK.
4. The DPRK and Japan will start bilateral talks aimed at taking steps to normalize their relations in accordance with the Pyongyang Declaration, on the basis of the settlement of unfortunate past and the outstanding issues of concern.
5. Recalling Section 1 and 3 of the Joint Statement of 19 September 2005, the Parties agreed to cooperate in economic, energy and humanitarian assistance to the DPRK. In this regard, the Parties agreed to the provision of emergency energy assistance to the DPRK in the initial phase. The initial shipment of emergency energy assistance equivalent to 50,000 tons of heavy fuel oil (HFO) will commence within next 60 days.

The Parties agreed that the above-mentioned initial actions will be implemented within next 60 days and that they will take coordinated steps toward this goal. III. The Parties agreed on the establishment of the following Working Groups (WG) in order to carry out the initial actions and for the purpose of full implementation of the Joint Statement:

1. Denuclearization of the Korean Peninsula
2. Normalization of DPRK-US relations
3. Normalization of DPRK-Japan relations
4. Economy and Energy Cooperation
5. Northeast Asia Peace and Security Mechanism

The WGs will discuss and formulate specific plans for the implementation of the Joint Statement in their respective areas. The WGs shall report to the Six-Party Heads of Delegation Meeting on the progress of their work. In principle, progress in one WG shall not affect progress in other WGs. Plans made by the five WGs will be implemented as a whole in a coordinated manner.

The Parties agreed that all WGs will meet within next 30 days.

IV. During the period of the Initial Actions phase and the next phase – which includes provision by the DPRK of a complete declaration of all nuclear programs and disablement of all existing nuclear facilities, including graphite-moderated reactors and reprocessing plant – economic, energy and humanitarian assistance up to the equivalent of 1 million tons of heavy fuel oil (HFO), including the initial shipment equivalent to 50,000 tons of HFO, will be provided to the DPRK.

The detailed modalities of the said assistance will be determined through consultations and appropriate assessments in the Working Group on Economic and Energy Cooperation.

V. Once the initial actions are implemented, the Six Parties will promptly hold a ministerial meeting to confirm implementation of the Joint Statement and explore ways and means for promoting security cooperation in Northeast Asia.

VI. The Parties reaffirmed that they will take positive steps to increase mutual trust, and will make joint efforts for lasting peace and stability in Northeast Asia. The directly related parties will negotiate a permanent peace regime on the Korean Peninsula at an appropriate separate forum.

VII. The Parties agreed to hold the Sixth Round of the Six-Party Talks on 19 March 2007 to hear reports of WGs and discuss on actions for the next phase.

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Section 2: Trade and Transaction Regulations and Restrictions

The regulations discussed in this section bar a wide range of, but not all, trade and transactions with North Korea and North Korean citizens. The regulations reflect a variety of administrative decisions since the Korean War that have had the net effect of substantially easing the comprehensive embargo on the sale of all goods to that country imposed at the outbreak of that war. However, some additional trade restrictions have been re-imposed in connection with North Korea's testing of a nuclear device and other reputed transgressions.

The regulations, and major amendments to the regulations, presented below show that:

- imports from North Korea are allowed, subject to licensing to ensure that these imports are not in violation of any non-proliferation laws.
- exports of purely civilian goods to North Korea are permitted without a license. The exception is the export of certain luxury goods, export of which is subject to a presumption of denial, pursuant to Resolution 1718 adopted after North Korea's nuclear test. Certain items on the so-called Commerce Control List (CCL) are no longer under a policy of denial of licensing for export to North Korea; these license applications are now subject to case-by-case review.
- donations for human needs following natural disasters and such situations as drought are authorized
- travel, travel related transactions, the export of informational materials, and telecommunications ties between the United States and North Korea are authorized
- investments by North Koreans in property under U.S. jurisdiction are authorized
- assets of North Koreans who emigrated to the United States and established U.S. residency are not blocked
- U.S. persons are not permitted to own, lease, operate, or insure any vessel owned by North Korea.
- Transactions with the government of North Korea are permitted so long as those transactions do not constitute a donation to a U.S. person and would not be used to further any acts of terrorism.

The following are the texts of major applicable laws and regulations governing trade and transactions with North Korea. Additional laws and regulations stem from North Korea's designation as a terrorism list country and are discussed in that section of this compendium.

Trading With the Enemy Act: Authority of the President to Ban and Regulate Trade with North Korea

On December 16, 1950, President Truman used the authority of the President granted by the Trading With the Enemy Act to declare that a U.S. national emergency existed because of the Korean War. In conjunction with President Truman's proclamation, the Treasury Department issued regulations to forbid any financial transactions involving or, on behalf of North Korea and China. It is US Code Title 12, Section 95a.

Begin text of Section 95a:

Regulation of transactions in foreign exchange of gold and silver; property transfers; vested interests, enforcement and penalties

(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise

(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 or bullion, currency or securities, and

(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; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this section or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in

pursuance of and in reliance on, this section, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term “United States” means the United States and any place subject to the jurisdiction thereof; Provided, however, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.

(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, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 2404 of title 50, Appendix, or under section 2405 of title 50, Appendix 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.

Relaxation of Trade Ban (June 2000)

The Treasury Department measures discussed below represented a major relaxation of restrictions in U.S. trade with North Korea. The rulings eased licensing requirements for certain technology exports to civilian end users in North Korea, including opening up to review categories of goods that previously would have been presumed denied. The ruling also removed any licensing requirement for export of some goods to civilian end users in North Korea.

The ruling also allowed transactions in property owned by North Koreans. The relaxation, first announced in September 1999, represented a response by the Clinton Administration to North Korea's announcement of and subsequent recommitment to a moratorium on new missile tests. The relaxation also represented an effort by the Administration to provide North Korea the economic and diplomatic incentives implicitly promised by the 1994 Agreed Framework on North Korea's nuclear program.

Begin text:

[Federal Register: June 19, 2000 (Volume 65, Number 118)]

[Rules and Regulations]

[Page 38147-38164]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr19jn00-17]

Department of Commerce

Bureau of Export Administration

Department of Transportation

15 CFR Part 730, et al.

44 CFR Part 403

Easing of Export Restrictions on North Korea; Final Rules

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations in North Korea; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 730, 732, 736, 738, 740, 742, 744, 746, 758, and 774

[Docket No. 000605165-0165-01]

RIN 0694-AC10

Easing of Export Restrictions on North Korea

AGENCY: Bureau of Export Administration, Commerce.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to implement the President's statement of September 17, 1999 easing sanctions against North Korea. The United States is taking this action in order to pursue improved overall relations.

DATES: This rule is effective June 19, 2000. Comments must be received no later than July 19, 2000.

Background

On September 17, 1999, the President announced his decision to ease sanctions against North Korea. The United States is taking this action, which is consistent with the 1994 Agreed Framework and the 1999 Perry Report, in order to pursue improved overall relations.

Under this new policy, most items subject to the EAR designated as EAR99 may be exported or reexported to North Korea without a license. In addition, BXA is changing the licensing policy for certain items on the Commerce Control List (CCL) destined to North Korean civil end-users from a policy of denial to case-by-case review.

This regulation adds certain categories of items to the CCL for which a license will be required to North Korea. Consequently, this regulation identifies certain Export Control Classification Numbers (ECCNs) that are controlled for anti-terrorism (AT) reasons to North Korea only. These new ECCNs do not refer to any column on the Country Chart and therefore exporters are not required to consult the Country Chart in Supplement No. 1 to part 738 to determine licensing requirements for these entries.

This easing of sanctions does not affect U.S. anti-terrorism or nonproliferation export controls on North Korea, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative. This does not relieve exporters or reexporters of their obligations under General Prohibition 5 in Sec. 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to North Korea.

This rule does not affect the export license denial policy imposed under the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended, in place against Changgwang Sinyong Corporation and its subunits, successors, and affiliated companies, and certain sectors of North Korean government-related activity, set forth in 63 FR 24585 (May 4, 1998) and more recently in 65 FR 20239 (April 14, 2000). This license denial policy requires BXA to deny license applications submitted for exports to Changgwang Sinyong Corporation and the related entities listed above. This entity is not on the Entity List (see Supp. No. 4 to part 744) and does not appear on the list of projects in Supp. No. 1 to part 740 which have the effect of triggering a license requirement for items subject to the EAR (e.g., including all items classified as EAR99).

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR

42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 F.R. 44101).

The following represent Treasury Department's amended regulations to reflect the June 2000 easing of trade restrictions.

Begin text:

[Code of Federal Regulations]

[Title 31, Volume 3]

[Revised as of July 1, 2005]

From the U.S. Government Printing Office via GPO Access [CITE: 31CFR500.586] [Page 44-45]

TITLE 31--MONEY AND FINANCE: TREASURY CHAPTER V-OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY PART 500 FOREIGN ASSETS CONTROL REGULATIONS

Table of Contents

Subpart E Licenses, Authorizations and Statements of Licensing Policy Sec. 500.586 Authorization of new transactions concerning certain North Korean property.

(a) Subject to the limitations in paragraph (b) of this section, transactions in which North Korea or a national thereof has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of a person subject to the jurisdiction of the United States on or after June 19, 2000; or

(2) The interest in the property of North Korea or a North Korean national arises on or after June 19, 2000.

(b)(1) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of North Korea or its nationals that were blocked pursuant to subpart B of this part as of June 16, 2000, remain blocked and subject to the prohibitions and requirements of this part;

(2)(i) The importation of products into the United States from North Korea requires approval from the Office of Foreign Assets Control. The person seeking to import products into the United States must provide information relevant to the determination whether the product was produced by

(A) A foreign person whose actions triggered import sanctions under sections 73 and 74 of the Arms Export Control Act;

(B) An activity of the government of North Korea relating to the development or production of any missile equipment or technology; or

(C) An activity of the government of North Korea affecting the development or production of electronics, space systems or equipment, and military aircraft.

(ii) Those seeking to import products from North Korea into the United States must submit all available information satisfying the requirements of paragraph (b)(2)(i) of this section; the

name, address, telephone number, facsimile number, and e-mail address of the importer; a description of the product to be imported, including quantity and cost; the name and address of the producer of the product; the name of the location where the product was produced; and the name and address of the North Korean exporter. Requests for import review should be submitted by mail to North Korea Unit, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex, Washington, DC 20220. Upon review of the submitted information, the Office of Foreign Assets Control will issue a letter indicating the results of the review to the person seeking to import the product.

(3) Except as authorized by Sec. 500.580 or unless otherwise authorized by the Office of Foreign Assets Control, persons subject to the jurisdiction of the United States are prohibited from engaging in any transfer from the government of North Korea:

(i) Constituting a donation to a person subject to the jurisdiction of the United States; or

(ii) With respect to which a person subject to the jurisdiction of the United States knows (including knowledge based on advice from an agent of the United States Government), or has reasonable cause to believe, that the transfer poses a risk of furthering terrorist acts in the United States.

(4) This section does not affect any open enforcement action initiated by the U.S. government prior to June 19, 2000 or any seizure, forfeiture, penalty, or liquidated damages case that is considered closed in accordance with U.S. Customs or other agency regulations. This section also does not authorize the importation into the United States of goods that are under seizure or detention by U.S. Customs officials pursuant to Customs laws or other applicable provision of law, until any applicable penalties, charges, duties or other conditions are satisfied. This section does not authorize importation into the United States of goods for which forfeiture proceedings have been commenced or of goods that have been forfeited to the U.S. Government, other than through U.S. Customs disposition by selling at auction.

Note to Sec. 500.586(b): The exportation and reexportation of items may be subject to license application requirements under regulations administered by other federal agencies (see e.g., the Export Administration Regulations administered by the Department of Commerce). Section 500.533 of this part continues to provide authority for transactions incident to the exportation and reexportation of items authorized by the Department of Commerce. It should also be noted that the shipment of strategic goods from a foreign country to North Korea by persons subject to the jurisdiction of the United States remains prohibited by 31 CFR part 505. The application requirements for a specific license relating to such goods are found in 31 CFR 501.801. [65 FR 38165, June 19, 2000]

Regulations Stating Policy for Licensing of U.S. Exports of Dual Use Items to North Korea

The following regulations states U.S. policy for licensing dual use exports to North Korea and delineates those categories of goods – and end users in North Korea – for which export licensing applications have a “presumption of denial.” Such goods will almost always not be licensed for export, and most exporters are deterred from even applying to export such goods to the target country. The regulations are based on North Korea’s designation as a terrorism list state and because of proliferation concerns.

Begin text:

[Code of Federal Regulations]

[Title 15, Volume 2]

[Revised as of January 1, 2006]

From the U.S. Government Printing Office via GPO Access

[CITE: 15CFR742.19]

[Page 320-322]

TITLE 15--COMMERCE AND FOREIGN TRADE

CHAPTER VII--BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE

PART 742 CONTROL POLICY_CCL BASED CONTROLS--Table of Contents

Sec. 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 EAR 99) require a license for export or reexport to North Korea, except ECCNs 0A988 and 0A989. This includes all items controlled for AT reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License Requirements section of an ECCN; and ECCNs 0A986, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999.

(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.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA), if destined to military, police, intelligence or other sensitive end-users.

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraph (c)(6) through (c)(45) to all end-users, are controlled to North Korea under section 6(a) of the EAA. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a)

and 6(j) of the EAA and Sec. 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section 6(j).)

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

(i) Items controlled for chemical and biological weapons proliferation reasons to any destination. These items contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(ii) Items controlled for missile proliferation reasons to any destination. These items have an MT Column 1 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(iii) Items controlled for nuclear weapons proliferation reasons to any destination. These items contain NP Column 1 or NP Column 2 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(iv) Items controlled for national security reasons to any destination. These items contain NS Column 1 or NS Column 2 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(v) Military-related items controlled for national security reasons to any destination. These items contain NS Column 1 in the Country Chart column of the “License Requirements” section in an ECCN on the CCL and are controlled by equipment or material entries ending in the number “18”.

(vi) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. Such items contain an NS Column 1, NS Column 2, MT Column 1, or AT Column 1 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(vii) Cryptographic, crypto-analytic, and crypto-logic items controlled any destination. These are items that contain an NS Column 1, NS Column 2, AT Column 1 or AT Column 2 in the Country Chart column of the “License Requirements” section of an ECCN on the CCL.

(viii) Submersible systems controlled under ECCN 8A992.

(ix) Scuba gear and related equipment controlled under ECCN 8A992.

(x) Pressurized aircraft breathing equipment controlled under ECCN 9A991.

(xi) Explosives detection equipment controlled under ECCN 2A983.

(xii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(xiii) “Technology” (ECCN 2E983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(xiv) Commercial charges and devices controlled under ECCN 1C992.

(xv) Computer numerically controlled machine tools controlled under ECCN 2B991.

(xvi) Aircraft skin and spar milling machines controlled under ECCN 2B991.

(xvii) Semiconductor manufacturing equipment controlled under ECCN 3B991.

- (xviii) Digital computers with a CTP above 2000.
 - (xix) Microprocessors with a CTP of 550 or above.
 - (xx) Ammonium nitrate, including certain fertilizers containing ammonium nitrate, controlled under ECCN 1C997.
 - (xxi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals controlled under ECCN 1E355.
- (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 non-military end-users or for non-military end-uses will be considered on a case-by-case basis.
- (3) Applications for export and reexport to North Korea of items described in paragraphs (c)(12), (c)(24), (c)(34), (c)(37), (c)(38), and (c)(45) of Supplement No. 2 to part 742 will generally be denied if the export or reexport is destined to nuclear end-users or nuclear end-uses. Applications for non-nuclear end-users or for non-nuclear end-uses, excluding items described in (c)(24)(iv)(A) of Supplement No. 2 to part 742, will be considered on a case-by-case basis.
- (4) License applications for items reviewed under section 6(a) controls will also be reviewed to determine the applicability of section 6(j) controls to the transaction. 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.

[65 FR 38151, June 19, 2000, as amended at 66 FR 36682, July 12, 2001; 68 FR 16212, Apr. 3, 2003; 70 FR 54628, Sept. 16, 2005]

Regulations on Financial Transactions with and Imports from North Korea

The Treasury Department regulations below stipulate policy limiting financial transactions between U.S. persons and North Korea. The regulations also stipulate categories of goods for which a license is required to import from North Korea. As discussed in the regulations, import from (and export to) North Korea of informational materials is generally permitted.

Begin text:

[Code of Federal Regulations]

[Title 31, Volume 3]

[Revised as of July 1, 2006]

[CITE: 31CFR500]

TITLE 31--MONEY AND FINANCE: TREASURY

CHAPTER V--OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 500 FOREIGN ASSETS CONTROL REGULATIONS--Table of Contents

Subpart B Prohibitions

Sec. 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) 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 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 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.
- (c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraph (a) or (b) of this section is hereby prohibited.
- (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

- (1) North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950.
- (2) Cambodia: April 17, 1975.
- (3) North Vietnam; i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964.
- (4) South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.
- (e) When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in Sec. 501.806 of this chapter. [15 FR 9040, Dec. 19, 1950, as amended at 18 FR 2079, Apr. 14, 1953; 50 FR 27436, July 3, 1985; 62 FR 45101, Aug. 25, 1997]

Sec. 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.

Any article wheresoever manufactured 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, if there shall have been added to such articles any embroidery, needle

point, petit point, lace or any other article of adornment which is the product of North Korea, North Viet-Nam, Cambodia, or South Viet-Nam, notwithstanding that such addition to the merchandise may have occurred in a country other than North Korea, North Viet-Nam, Cambodia, or South Viet-Nam.

[40 FR 19202, May 2, 1975, as amended at 41 FR 16553, Apr. 20, 1976; 45 FR 7224, Jan. 31, 1980]

Sec. 500.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d), (e) and (f) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (h) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of Sec. 500.201 is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in paragraph (c)(3) of this section), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account is hereby authorized: Provided That:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and,

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (e.g., cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either:

(i) Pay the instrument (subject to paragraphs (c) (1) and (2) of this section) or

(ii) Credit a blocked account on its books with the amount payable on the instrument. In either event, the blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraph (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) of this section to the extent of the set-off: Provided however, That interest shall be due from 30 days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with Sec. 500.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) Property subject to the provisions of paragraphs (a) and (b) of this section, held by a state agency charged with the custody of abandoned or unclaimed property under Sec. 500.561 may continue to be held by the agency provided interest is credited to the blocked account in which the property is held by the agency, or the property is held by the agency in a blocked account in a domestic bank. The interest credited to such accounts by an agency which does not elect to hold such property in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the state.

(g) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held, provided however, that such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six-months, appropriate to the amounts involved.

(h) The following types of property are subject to paragraphs (a) and (b) of this section:

- (1) Any currency, bank deposit and bank accounts subject to the provisions of Sec. 500.201;
- (2) Any property subject to the provisions of Sec. 500.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and,
- (3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(i) For purposes of this section, the term "domestic bank" includes any FSLIC-insured institution (as defined in 12 CFR 561.1).

(j) For the purposes of this section the term "person" includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either:

- (1) It lacks statutory authority to comply with this section, or
- (2) The requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

[44 FR 11766, Mar. 2, 1979]

Sec. 500.206 Exemption of information and informational materials.

(a) The importation from any country and the exportation to any country of information or informational materials as defined in Sec. 500.332, whether commercial or otherwise,

regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of information or informational materials, including mail, between the United States and any foreign country designated under Sec. 500.201, are exempt from the prohibitions and regulations of this part.

(c) This section does not authorize transactions related to information or informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of information or informational materials, and payment or royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to information or informational materials imported from a designated national.

(d) This section does not authorize transactions incident to the exportation of restricted technical data as defined in section 799 of the Export Administration Regulations, 15 CFR parts 768-799, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in Sec. 500.201 of this part and Sec. 785.1 of the Export Administration Regulations.

Example #1: A U.S. publisher ships 500 copies of a book to Vietnam directly from San Francisco aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Vietnamese bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Vietnamese party exports a single master copy of a Vietnamese motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Vietnamese film in any medium, including home video distribution, for five years, with the Vietnamese party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or Sec. 500.550.

Example #3: A U.S. recording company proposes to contract with a Vietnamese musician to create certain musical compositions, and to advance royalties of \$10,000 to the musician. The music written in Vietnam is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under Sec. 500.201 from contracting for the Vietnamese musician's services, from transferring \$10,000 to Vietnam to pay for those services, and from providing the Vietnamese with production services through the use of its studio in the Bahamas. No informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Vietnamese musician, or to copy the recordings in the United States and pay negotiated royalties to Vietnam under this section or Sec. 500.550.

Example #4: A Vietnamese party enters into a sub-publication agreement licensing a U.S. party to print and publish copies of a musical composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and Sec. 500.550, except for adaptation and arrangement, which constitute artistic enhancement of the Vietnamese composition. Payment to the Vietnamese party may not reflect income received as a result of these enhancements.

[54 FR 5231, Feb. 2, 1989, as amended at 60 FR 8934, Feb. 16, 1995]

Financial Transactions Related to Travel to North Korea Permitted

The regulation below demonstrates that financial transactions related to travel to North Korea, including expenditure of monies while in North Korea, are permitted.

Begin text:

[Code of Federal Regulations]

[Title 31, Volume 3]

[Revised as of July 1, 2006]

From the U.S. Government Printing Office via GPO Access

[CITE: 31CFR500]

TITLE 31--MONEY AND FINANCE: TREASURY

CHAPTER V--OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE
TREASURY

PART 500 FOREIGN ASSETS CONTROL REGULATIONS--Table of Contents

Subpart E Licenses, Authorizations and Statements of Licensing Policy

Sec. 500.563 Transactions incident to travel to and within North Korea.

(a) All transactions of persons subject to U.S. jurisdiction, including travel service providers, ordinarily incident to travel to, from, and within North Korea and to maintenance within North Korea are authorized. This authorization extends to transactions with North Korean carriers and those involving group tours, payment of living expenses, the acquisition of goods in North Korea for personal use, and normal banking transactions involving currency drafts, charge, debit or credit cards, traveler's checks, or other financial instruments negotiated incident to personal travel.

(b) The purchase of merchandise in North Korea by persons subject to U.S. jurisdiction, and importation as accompanied baggage, is limited to goods with a foreign market value not to exceed \$100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in Sec. 500.206 of this part, information and informational materials are exempt from this restriction.

(c) This section does not authorize any debit to a blocked account.

[60 FR 8935, Feb. 16, 1995]

Additional Exports Banned Pursuant to U.N. Resolution 1718

The two documents below represent U.S. implementation of the ban on exports to North Korea of luxury goods, pursuant to U.N. Resolution 1718. The first document is a 30-day report to the U.N. Security Council on how the United States will implement U.N. Resolution 1718, in which the Administration defines a provisional list of luxury goods, the export of which to North Korea would carry a presumption of denial. The report also explains how the United States implements many of the proliferation-related sanctions discussed elsewhere in this section of this compendium. The second document contains the regulations issued January 26, 2007 to implement the presumption of denial for luxury goods exports to North Korea.

United States 30-Day Report for the UN Security Council on Efforts toward Implementing UNSCR 1718

Bureau of International Security and Nonproliferation

November 13, 2006

The United States believes it is essential that Member States fully and effectively implement their obligations under UNSCR 1718. The United States is considering a range of measures to implement UNSCR 1718. This includes application of further trade and assistance restrictions, where appropriate, and working with other states to prevent trade prohibited by the resolution.

For example, the process is underway regarding implementation of three national sanctions laws that are triggered when the President or Secretary of State determines that a non-nuclear weapon state has detonated a nuclear explosive device. These sanctions are spelled out in the Arms Export Control Act, the Atomic Energy Act, and the Export-Import Bank Act. The Arms Export Control Act provisions require a wide range of economic measures against sanctioned countries, with exceptions for humanitarian and food exports. The Atomic Energy Act sanctions specifically bar nuclear-related exports and the relevant Export Import Bank Act provision would prohibit Bank support for U.S. exports to sanctioned countries.

Following the structure of Operative Paragraph 8 of UNSCR 1718, U.S. actions to date are as follows:

Paragraph 8(a): All Member States shall prevent the direct or indirect supply, sale or transfer to the D.P.R.K., through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of:

Paragraph 8(a)(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; the United States does not permit the export to North Korea of any items on the U.S. Munitions List. The United States also does not approve the export or re-export to North Korea of any dual-use item covered by Paragraph 8(a)(i) of UNSCR 1718 that is included on the U.S.

Commerce Control List. In general, U.S. export control restrictions, include, but are far broader in scope than, the items listed in UNSCR 1718, subparagraph 8(a)(i).

The U.S. Munitions List can be found at the following website:

http://www.access.gpo.gov/nara/cfr/waisidx_01/22cfr121_01.html

The Commerce Control List can be found at the following website:

http://www.access.gpo.gov/bis/ear/ear_data.html#ccl

The United States also works with like-minded countries, including through the Wassenaar Arrangement, to prevent the transfer to or from North Korea of conventional arms, and transfers to North Korea of related dual-use technologies that could contribute to their conventional weapons programs as well as to the development, production, or delivery of Weapons of Mass Destruction and their delivery systems. The United States continues to monitor and assess reports of possible munitions and dual-use technology transfers to and from North Korea.

Paragraph 8(a)(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;

S/2006/814: Nuclear Material, Equipment and Technology; and Nuclear-related Dual-use Equipment, Materials, Software and Related Technology The United States does not permit the export to North Korea of any items that could contribute to North Korea's nuclear programs. This includes all of the items specifically listed in UN document S/2006/814. The United States also works with like-minded countries, including through the Nuclear Suppliers Group, the Zangger Committee, the Proliferation Security Initiative, and through outreach programs to non-member countries, to prevent the transfer of nuclear and nuclear-related equipment, materials, software and related technology to or from North Korea that could contribute to the development, production, or delivery of nuclear weapons.

S/2006/815: Missile Technology, Equipment, and Software

The United States does not permit the export to North Korea of any items that could contribute to North Korea's missile programs. This includes all of the items specifically listed in UN document S/2006/815. The United States also works with like-minded countries, including through the Missile Technology Control Regime and the Proliferation Security Initiative to prevent the transfer of missile-related materials to or from North Korea that could contribute to the development or production of missiles.

S/2006/853: Chemical Weapons Precursors, Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology, Dual-Use Biological Equipment and Related Technology, Biological Agents, Plant Pathogens, and Animal Pathogens all items on the dual-use chemical and biological list, as agreed in S/2006/853, require a license from the U.S. Department of Commerce for export or re-export to North Korea. Applications for export and re-export to all end users in North Korea of the items contained on this list are subject to a policy of denial. The United States also works with like-minded countries,

including through the Australia Group and the Proliferation Security Initiative, to prevent the transfer of chemical- or biological-related materials to or from North Korea that could contribute to the development, production, or delivery of chemical or biological weapons. It is also important to note that the United States controls more items than those contained in S/2006/853. The United States believes these additional items pose a significant proliferation risk and has proposed to the Committee to include them among the chemical and biological items controlled for transfer to or from North Korea.

Paragraph 8(a)(iii) Luxury goods: The United States is working on new controls intended to prevent the export of luxury goods to North Korea. We have also developed a provisional list (attached to this report) of items we consider to be luxury goods. The list is illustrative and not intended to be all-inclusive.

Paragraph 8 (b): The D.P.R.K. shall cease the export of all items covered in subparagraphs (a) (i) and (a) (ii) above and all Member States shall prohibit the procurement of such items from the D.P.R.K. by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the D.P.R.K.; Goods of North Korean origin may not be imported into the United States either directly or through third countries, without prior notification to and approval of the Office of Foreign Assets Control. In February 2006, President Bush reconfirmed that North Korean-flagged vessels are prohibited from entering U.S. ports. On April 6 2006, the U.S. Treasury Department's Office of Foreign Assets Control published an amendment to the Foreign Assets Control Regulations to prohibit U.S. persons from owning, leasing, operating, or insuring North Korean flagged vessels. The amendment went into effect on May 8, 2006. The United States has no air services agreement with North Korea, and there are no flights by U.S. airlines to North Korea or flights by the North Korean airline to the United States.

Paragraph 8 (c): All Member States shall prevent any transfers to the DPRK by their nationals or from their territories, or from the D.P.R.K. 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; U.S. restrictions on transfers of lethal military equipment, nuclear-related items, missile-related items, and chemical-biological items to North Korea include restrictions on providing related software, technology, assistance, training, advice or services. The United States works with like-minded countries, including through the Wassenaar Arrangement, the Nuclear Suppliers Group, the Zangger Committee, the Missile Technology Control Regime, the Proliferation Security Initiative, and through outreach programs to non-member countries, to prevent transfers to North Korea 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) of operative paragraph 8 of UNSCR 1718.

Paragraph 8(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, D.P.R.K.'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; The United States is currently reviewing possible candidates for submission to the Committee pursuant to paragraph 8(d) of UNSCR 1718.

In June 2005, the President signed Executive Order 13382 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters). The Order allows the United States to block or "freeze" the property and assets, subject to U.S. jurisdiction, of weapons of mass destruction (WMD) proliferators and their supporters. Persons that are designated under the Order are denied access to the U.S. financial and commercial systems, and U.S. persons, wherever located, are prohibited from engaging in transactions with them. This national authority will allow the United States to implement effectively the provisions set forth in 8(d) of UNSCR 1718.

The United States has designated 12 entities and one individual under Executive Order 13382 for D.P.R.K. proliferation activities. These entities and one individual can be found at the following website: <http://www.ustreas.gov/offices/enforcement/ofac/programs/wmd/wmd.pdf>. The United States intends to propose to the Committee that these same 12 entities and one individual be considered for designation and be subject to the measures in subparagraphs 8(d) of UNSCR 1718.

Paragraph 8(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, D.P.R.K. policies in relation to the D.P.R.K.'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; The United States intends to propose that the Committee consider the individual previously designated under E.O. 13382 for designation pursuant to subparagraph 8(e) of UNSCR 1718.

Paragraph 8(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 D.P.R.K., as necessary; The United States cooperates closely with allied and partner states to scrutinize closely North Korean exports and imports, in accordance with domestic law and international legal frameworks, that pass through their ports, airports, on their flagged ships, and border crossings, and takes appropriate steps to prevent the transfer of items prohibited by the resolution. The United States emphasizes that these actions are not intended to implement a blockade or embargo on North Korea. The United States anticipates inspections will take place in territorial waters, ports, airfields, and other border crossings and generally be conducted by state-sanctioned local officials such as customs authorities, coast guards, and navies.

U.S. efforts to take cooperative action to prevent the trafficking in nuclear, chemical, or biological weapons, their means of delivery, and related materials by North Korea and other proliferant states are embodied in the Proliferation Security Initiative (PSI). The PSI is an international counterproliferation effort aimed at preventing and disrupting shipments of weapons of mass destruction, their delivery systems, and related materials flowing to or from

states or non-State actors of proliferation concern. On September 4, 2003, PSI partners agreed on and published the PSI "Statement of Interdiction Principles" (SOP), which identifies steps necessary for effective interdiction efforts. The U.S. website for PSI is: <http://www.state.gov/t/isn/c10390.htm>. The SOP stresses that actions taken are consistent with national legal authorities and relevant international law and frameworks. The United States encourages all responsible states to endorse the PSI and be willing to assist in interdiction activities. The United States, in partnership with many PSI nations, has implemented a series of PSI training exercises through which states that have endorsed PSI will continue to enhance their operational interdiction capabilities. These exercises continue to raise the awareness of the steps that are necessary for successful interdictions, focus on improving communications, and forge closer relationships with our PSI partners.

The United States has concluded bilateral maritime boarding agreements with six key flag states in support of the PSI: Liberia, Panama, the Marshall Islands, Cyprus, Belize, and Croatia. These agreements will facilitate consent to board vessels suspected of carrying cargo banned under UNSCR 1718.

A new international legal tool that would also support PSI and maritime interdictions of WMD was adopted on October 14, 2005 at a Diplomatic Conference of the International Maritime Organization (IMO) in London. States Parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) approved Protocols containing several nonproliferation amendments to the SUA. The Protocols requires States Parties to criminalize under their domestic laws certain acts, including using a ship in terrorist activity, transporting WMD, their delivery systems and related equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a nuclear, biological or chemical weapon. These amendments will strengthen the international legal basis for maritime interdiction of shipments destined for WMD programs. The recently amended SUA also includes a new ship boarding regime based on flag state consent that establishes a comprehensive set of procedures and protections designed to facilitate the boarding of a vessel that is suspected of being involved in a SUA offense. The Protocol to the SUA Convention containing the new nonproliferation, counterterrorism and ship boarding provisions was opened for signature on February 14, 2006, but has not yet entered into force. The United States signed the Protocol, but has not yet ratified it.

U.S. Luxury Items List (Provisional)

This list is a baseline description of luxury goods the U.S. is considering controlling pursuant to UNSCR 1718. Goods may be added to this list taking into account national discretion on what constitutes a luxury good.

- **Tobacco and Tobacco Products**
- **Luxury Watches**
 - Wrist, pocket, and other with a case made of precious metal or of metal clad with precious metal
- **Apparel and Fashion Items**
 - Leather articles
 - Silk articles
 - Fur skins and artificial furs
 - Fashion accessories: leather travel goods, vanity cases, binocular and camera cases, handbags, wallets, designer fountain pens, silk scarves
 - Cosmetics, including beauty and make-up
 - Perfumes and toilet waters
 - Designer clothing: leather apparel and clothing accessories
- **Decorative Items**
 - Rugs and tapestries
 - Tableware of porcelain or bone china
 - Items of lead crystal
 - Works of art (including paintings, original sculptures and statuary), antiques (more than 100 years olds), and collectible items, including rare coins and stamps
- **Jewelry**
 - Jewelry with pearls, gems, precious and semi-precious stones (including diamonds, sapphires, rubies and emeralds), jewelry of precious metal or of metal clad with precious metal
- **Gems and Precious Metals**
 - Gold, silver, platinum, diamonds, precious and semi-precious stones (including sapphires, rubies and emeralds)
- **Electronic Items**
 - Flat-screen, plasma or LCD panel televisions or other video monitors or receivers (including high-definition televisions), and any television larger than 29 inches; DVD players
 - PDAs

- Personal digital music players
- *Computer laptops
- **Transportation Items**
 - Yachts and other aquatic recreational vehicles (such as jet skies)
 - *Luxury automobiles (and motor vehicles): automobiles and other motor vehicles to transport people (other than public transport) including station wagons
 - Racing cars, snowmobiles, and motorcycles
 - Personal transportation devices (Segways)
- **Recreational Items**
 - Musical instruments
 - Recreational and sports equipment
- **Alcoholic Beverages:** Wine, beer, ales, and liquor

* Categories of items with an asterisk will be exempted from the general denial if they are being imported by legitimate organizations involved in humanitarian relief efforts, other internationally sanctioned efforts, or items in the interest of the United States Government.

Regulations to Implement the Ban on Luxury Goods Exports

[Federal Register: January 26, 2007 (Volume 72, Number 17)]

[Rules and Regulations]

[Page 3722-3730]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID: fr26ja07-9]

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 740, 742, 746, 772 and 774

[Docket No. 070111012-7017-01]

RIN 0694-AD97

North Korea: Imposition of New Foreign Policy Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In accordance with recent United Nations (UN) Security Council resolutions and the foreign policy interests of the United States, the United States Government is imposing restrictions on exports and reexports of luxury goods to the Democratic People's Republic of Korea (North Korea), and is continuing to restrict exports and reexports of

nuclear or missile-related items and other items included on the Commerce Control List (CCL). To this end, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to impose license requirements for the export and reexport of virtually all items subject to the EAR to North Korea, except food and medicines not listed on the CCL.

BIS will generally deny applications to export and 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. BIS will continue to generally deny applications to export and reexport arms and related materiel controlled on the CCL and items controlled under the multilateral export control regimes (the Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group, and the Wassenaar Arrangement). This includes items specified in UN documents S/2006/814, S/2006/815 and S/2006/853. BIS will also generally deny applications to export and reexport other items that the UN determines could contribute to North Korea's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs.

BIS will also generally approve applications to export or reexport: non-food, non-medical 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 and medical devices that are determined not to be luxury goods. BIS will review on a case-by-case basis applications to export and reexport all other items subject to the EAR.

DATES: This rule is effective January 26, 2007.

SUPPLEMENTARY INFORMATION:

Background

On July 4, 2006, in defiance of international calls for restraint, the Democratic People's Republic of Korea (North Korea) proceeded with the launch and testing of a series of ballistic missiles. On July 15, 2006, the United Nations (UN) Security Council adopted Resolution 1695

(UNSCR 1695), condemning North Korea for its actions. In UNSCR 1695, the Security Council demanded that North Korea suspend all ballistic missile-related activity and reinstate its moratorium on missile launches. Subsequently, the President signed the North Korea Nonproliferation Act of 2006 (Pub. L. 109-353), which affirmed Congress' statement that it should be the policy of the United States to impose sanctions on persons who supported North Korea's missile or weapons of mass destruction programs.

On October 9, 2006, despite the adoption of UNSCR 1695, and in flagrant disregard of the admonitions of the international community, North Korea conducted a nuclear test. On October 14, 2006, the UN Security Council adopted Resolution 1718 (UNSCR 1718), which condemned the nuclear test and expressed the gravest concern over the challenge such a test constitutes to the Treaty on the Non-Proliferation of Nuclear Weapons, to peace and stability in the region, and to international efforts to strengthen the global nonproliferation regime. Among other things, UNSCR 1718 decides that all UN Member States shall prevent

the direct or indirect supply, sale, or transfer to North Korea of: (1) Certain arms and related materiel; (2) items set out in the lists in UN documents S/2006/814, S/2006/815, and S/2006/853 (available at <http://www.un.org/Docs/sc/committees/1718/1718SelEng.htm>), as well as other items identified by the Security Council or the Sanctions Committee established by UNSCR 1718 that could contribute to North Korea's nuclear-related, ballistic missile-related, and other weapons of mass destruction-related programs; and (3) luxury goods. UNSCR 1718 also decides that Member States shall prevent transfers to North Korea of technical training, advice, services, or assistance related to the provision, manufacture, maintenance or use of the items specified above. Furthermore, UNSCR 1718 demands that North Korea, in a verifiable and irreversible manner, abandon nuclear weapons, existing nuclear programs, and all other existing weapons of mass destruction programs. The Resolution also decides that North Korea must suspend all ballistic missile activities, demands that North Korea return to the Treaty on the Non-Proliferation of Nuclear Weapons, and requires that North Korea act in accordance with the terms and conditions of its International Atomic Energy Agency (IAEA) Safeguards Agreement.

On December 7, 2006, in accordance with Section 102(b) of the Arms Export Control Act, as amended (22 U.S.C. 2799aa-1), the President determined that North Korea had detonated a nuclear explosive device. The President directed the relevant agencies and instrumentalities of the United States to take the necessary actions to impose the sanctions described in Section 102(b)(2) of that Act. See 72 FR 1899 (Jan. 16, 2007). Section 102(b)(2)(G) of that Act provides that dual-use export control authorities shall be used to prohibit exports of specific goods and technology to any country so identified by the President.

Changes to Licensing Requirements and Policy

As a result of North Korea's test launch of ballistic missiles in July, 2006, and testing of a nuclear device in October, 2006, and consistent with UNSCR 1718, the United States is imposing new export and reexport controls on North Korea. Under this final rule, in accordance with UNSCR 1718 and the foreign policy interests of the United States, the Bureau of Industry and Security (BIS) will require a license for the export and reexport to North Korea of all items subject to the Export Administration Regulations (EAR), except food and medicines that are not on the Commerce Control List (CCL). Although a license is already required to export and reexport to North Korea all items controlled on the CCL for Nuclear Nonproliferation (NP) and Missile Technology (MT) reasons, BIS also will require a license for these items (except for items classified under Export Commodity Classification Number (ECCN) 7A103) in accordance with the President's December 7, 2006 directive regarding implementation of Section 102(b) of the Arms Export Control Act.

Pursuant to new Section 746.4(c) of the EAR, BIS will review license applications for the export or reexport of luxury goods to North Korea under a general policy of denial. This policy of denial applies to, but is not limited to applications to export and reexport luxury goods including, for example: 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. These and similar items have been imported by North Korea for the use and benefit of government officials and their families, rather than for the good of the North Korean people. In new Supplement No. 1 to part 746 of the EAR, BIS will provide further detail regarding the illustrative list of luxury goods set

forth in Section 746.4(c). The determination of whether an item is a luxury good will be made on a case-by-case basis. In some cases, the end-use or end-user will be relevant to this determination. For example, an item being exported to a humanitarian organization for purposes of providing humanitarian assistance to the people of North Korea may not be considered a luxury good, but the same item going to a different end-user might be considered a luxury good and might not be approved. Computer laptops and luxury automobiles will be exempted from the general policy of denial if they are being exported or reexported to organizations legitimately involved in humanitarian relief efforts, other internationally sanctioned efforts, or in the interest of the U.S. Government.

BIS will review under a general policy of approval license applications for the export or reexport of humanitarian items other than food or medicine (e.g., blankets, medical supplies, heating oil, and other items meeting subsistence needs) intended for the benefit of the North Korean people. This policy applies to license applications to export or reexport items in support of UN humanitarian efforts and programs. The general policy of approval also extends to agricultural commodities (as defined in Section 102 of the Agricultural Trade Act of 1978) and medical devices (as defined in Section 201 of the Federal Food, Drug, and Cosmetic Act) that are determined by BIS, in consultation with the interagency license review community, not to be luxury goods. Applications for all other exports and reexports of EAR99 items will be reviewed on a case-by-case basis.

Consistent with UNSCR 1718 and existing U.S. export control policy, BIS will review license applications for arms and related materiel controlled on the CCL and items controlled on the multilateral export control regime control lists (the Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group, and the Wassenaar Arrangement) under a general policy of denial. This includes items specified in UN documents S/2006/814, S/2006/815 and S/2006/853. BIS will also generally deny applications to export and reexports other items that the UN Security Council or the Sanctions Committee has determined could contribute to North Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programs. In addition, applications to export or reexport items controlled on the CCL for NP and MT reasons (except ECCN 7A103 items) will be reviewed under a general policy of denial. Applications to export or reexport other items on the CCL will be reviewed in accordance with the licensing policy set forth in Section 742.19 of the EAR (Anti-terrorism: North Korea). Section 742.19 is being amended to make technical corrections and also to provide that applications to export or reexport parts and components for safety-of-flight will be reviewed on a case-by-case basis.

License Exceptions

This final rule makes inapplicable for North Korea most license exceptions set forth in part 740 of the EAR. The only license exceptions that remain available for North Korea, as provided in new Section 746.4(b) are: TMP (15 CFR 740.9(a)(2)(viii) only) for items for use by the news media; GOV (15 CFR 740.11(a), (b)(2)(i), and (b)(2)(ii) only) for items for personal or official use by personnel and agencies of the U.S. Government, the IAEA, or the European Atomic Energy Community (Euratom); GFT (15 CFR 740.12) for the export or reexport of gift parcels not containing luxury goods by an individual to an individual or a religious, charitable or educational organization, and for the export or reexport by groups or organizations of certain donations to meet basic human needs; TSU (15 CFR 740.13(a) and (b) only) for operation technology and software for lawfully exported items and sales technology; BAG (15 CFR 740.14 (a) through (d) only) for exports of items by individuals

leaving the United States as personal baggage; and AVS (15 CFR 740.15(a)(4) only) for civil passenger aircraft on temporary sojourn.

Other Conforming Changes

Finally, to conform with the above-described changes and to make minor technical corrections, this rule makes limited revisions to Sections 732.1 and 732.3 (Steps for Using the EAR); Supplement No. 1 to Part 738 (the Country Chart); Sections 740.2 and 740.10 (License Exceptions); Sections 742.1 and 742.19 (Control Policy--CCL Based Controls); Section 746.1 (Embargoes and Other Special Controls); Section 772.1 (Definitions of Terms as used in the EAR); and Supplement No. 1 to Part 774 (Commerce Control List) of the EAR.

Expansion of Foreign Policy-Based Export Controls

This rule imposes new export controls for foreign policy reasons. As required by Section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to Congress on January 16, 2007. Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (Aug. 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Savings Clause

Items that did not require a license prior to the publication of this rule for export or reexport to North Korea and that are on dock for loading, on lighter, laden aboard an exporting carrier or en route aboard a carrier to a port of export on January 26, 2007, may be exported or reexported without being subject to this rule if the items are exported or reexported before midnight as of February 9, 2007. Any such item not actually exported or reexported before midnight February 9, 2007, may be exported or reexported only if authorized pursuant to this final rule. Exporters holding valid licenses for export or reexport to North Korea prior to January 26, 2007 are authorized to continue shipments pursuant to the terms and conditions of their licenses.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.
2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has previously been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. This rule is not expected to result in any change for collection purposes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ADDRESSES section of this rule.

3. This rule does not contain policies with Federalism implications as this term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to publiccomments@bis.doc.gov, by fax to (202) 482-3355, or to Jeffery Lynch, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

Sec. 742.1 Introduction.

(d) * * * If you are exporting or reexporting to Cuba, Iran, or North Korea, you should review part 746 of the EAR, Embargoes and Other Special Controls.

11. Section 742.19 is amended by revising paragraphs (a)(1) and (a)(3)(ii) and by adding a sentence to the end of paragraph (b)(1)(vi) and to the end of (b)(2) to read as follows:

Sec. 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. This includes all items on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License requirements section of an ECCN; and ECCNs 0A986, 0A988, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999. See also part 746 of the EAR.

(3) * * *

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraph (c)(6) through (c)(45) to all end-users, are controlled to North Korea under section 6(a) of the EAA. License applications for items reviewed under section 6(a) controls will also be reviewed to determine the applicability of section 6(j) controls to the transaction. 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. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a) and 6(j) of the EAA and Sec. 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section

6(j)

(b) * * *

(1) * * *

(vi) * * * (Not including parts and components for safety-of-flight, which will be reviewed on a case-by-case basis in accordance with paragraph (b)(2) of this section).

* * * * *

(2) * * * 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.

* * * * *

PART 746--[AMENDED]

14. Section 746.4 is added to read as follows:

Sec. 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. For further information on luxury goods, see Supplement No. 1 to part 746.

(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.

(5) Other items on the CCL. See Section 742.19(b) of the EAR.

(c) License Exceptions. You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the license exception subsections specified in this paragraph. To determine scope and eligibility requirements, you will need to refer to the sections or specific paragraphs of part 740 (License Exceptions). Read each license exception carefully, as the provisions available for countries subject to sanctions are generally narrow.

(1) TMP for items for use by the news media as set forth in Sec. 740.9(a)(2)(viii) of the EAR.

(2) GOV for items for personal or official use by personnel and agencies of the U.S. Government, the International Atomic Energy Agency (IAEA), or the European Atomic Energy Community (Euratom) as set forth in Sec. 740.11(a), (b)(2)(i), and (b)(2)(ii) of the EAR.

(3) GFT, except that GFT is not available to export or reexport luxury goods as described in this section to North Korea.

(4) TSU for operation technology and software for lawfully exported commodities as set forth in Sec. 740.13(a) and sales technology as set forth in Sec. 740.13 (b) of the EAR.

(5) BAG for exports of items by individuals leaving the United States as personal baggage as set forth in Sec. 740.14(a) through (d) of the EAR.

(6) AVS for civil aircraft as set forth in Sec. 740.15(a)(4) of the EAR.

(d) The Secretary of State has designated North Korea as a country the government of which has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Section 742.19 of the EAR.

(e) OFAC maintains controls on certain transactions involving persons subject to U.S. jurisdiction and North Korean entities or any specially designated North Korean national.

15. Supplement No. 1 to part 746 is added to read as follows:

Supplement No. 1 to Part 746. Examples of Luxury Goods

The following further amplifies the illustrative of list luxury goods set forth in Sec. 746.4(c):

(a) Tobacco and tobacco products

(b) Luxury watches: Wrist, pocket, and others with a case of precious metal or of metal clad with precious metal

(c) Apparel and fashion items, as follows:

(1) Leather articles

(2) Silk articles

(3) Fur skins and artificial furs

(4) Fashion accessories: Leather travel goods, vanity cases, binocular and camera cases, handbags, wallets, designer fountain pens, silk scarves

- (5) Cosmetics, including beauty and make-up
- (6) Perfumes and toilet waters
- (7) Designer clothing: Leather apparel and clothing accessories
- (d) Decorative items, as follows:
 - (1) Rugs and tapestries
 - (2) Tableware of porcelain or bone china
 - (3) Items of lead crystal
 - (4) Works of art (including paintings, original sculptures and statuary), antiques (more than 100 years old), and collectible items, including rare coins and stamps
- (e) Jewelry: Jewelry with pearls, gems, precious and semi-precious stones (including diamonds, sapphires, rubies, and emeralds), jewelry of precious metal or of metal clad with precious metal
- (f) Electronic items, as follows:
 - (1) Flat-screen, plasma, or LCD panel televisions or other video monitors or receivers (including high-definition televisions), and any television larger than 29 inches; DVD players
 - (2) Personal digital assistants (PDAs)
 - (3) Personal digital music players
 - (4) Computer laptops
- (g) Transportation items, as follows:
 - (1) Yachts and other aquatic recreational vehicles (such as personal watercraft)
 - (2) Luxury automobiles (and motor vehicles): Automobiles and other motor vehicles to transport people (other than public transport), including station wagons
 - (3) Racing cars, snowmobiles, and motorcycles
 - (4) Personal transportation devices (stand-up motorized scooters)
- (h) Recreational items, as follows:
 - (1) Musical instruments
 - (2) Recreational sports equipment
- (i) Alcoholic beverages: wine, beer, ales, and liquor

Sec. 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Food. Specific to exports and reexports to North Korea and Syria, food means items that are consumed by and provide nutrition to humans and animals, and seeds, with the exception of castor bean seeds, that germinate into items that will be consumed by and provide nutrition to humans and animals. (Food does not include alcoholic beverages.)

* * * * *

.PART 774--[AMENDED]

17. The authority citation for part 774 is revised to read as follows: Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C.7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c, 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

Dated: January 22, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

Section 3: Terrorism and Proliferation Related Sanctions

The sanctions in this section are among the most significant in their application to North Korea. Were North Korea to be removed from the terrorism list, for example, many of the sanctions in this section would be rendered inapplicable, and U.S.-North Korea trade would be relatively normalized.

Of course, the major question is what steps by North Korea would cause the Administration to remove North Korea from the terrorism list. It was placed on the terrorism list on January 20, 1988 following the downing of Korea Air Flight 858 on November 29, 1987, by North Korean agents. During the Clinton Administration, and in the context of agreements with North Korea on its nuclear program (the Agreed Framework, for example) and the October 1999 “Perry initiative” (diplomatic negotiations with North Korea by former Secretary of Defense William Perry), there had been speculation that North Korea might be removed from the terrorism list. That speculation had faded over the past few years as North Korea has not held to any nuclear agreements and pursued its nuclear program to its partly successfully October 9, 2006 nuclear test.

Most experts would say that North Korea’s removal from the terrorism list depends more on its nuclear cooperation than any strict assessments of its terrorism sponsorship activity. The February 13, 2007 nuclear agreement, discussed above, establishes U.S.-North Korea talks on removing North Korea from the terrorism list. Recent State Department annual assessments of international terrorism – the most recent of which is presented below – have not cited North Korea for any new or particularly active sponsorship of terrorist activity. However, there are some unresolved terrorism cases that could potentially hold up North Korea’s removal from the terrorism list even if it were to fully implement the February 2007 agreement. Japan, in particular, insists that past acts of North Korean terrorism, including the kidnapping of Japanese citizens in the 1970s and 1980s and the presence of Japanese Red Army terrorists in North Korea, be addressed before the United States should remove North Korea from the terrorism list. It is largely on this issue that Japan expressed reservations about providing aid to North Korea in the context of the February 2007 agreement.

Although South Korea has been the victim of North Korean terrorism to a greater extent than has Japan (for example the bombing South Korean cabinet and presidential officials in Rangoon, Burma in 1983), South Korea’s position is that whether or not North Korean is retained on the U.S. terrorism list is a decision for the United States to make alone. South Korean officials add that they are against all forms of terrorism, including from North Korea, and that North Korean terrorism against South Korea would be discussed in the context of inter-Korean bilateral relations.

State Department Report on Terrorism for 2005: Discussion of North Korea

Below is the text of State Department discussion of North Korean sponsorship of terrorism from the "Country Reports on Terrorism" report for 2005:

Begin text:

Released by the Office of the Coordinator for Counterterrorism

April 28, 2006

North Korea

The Democratic People's Republic of Korea (DPRK) is not known to have sponsored any terrorist acts since the bombing of a Korean Airlines flight in 1987.

Pyongyang in 2003 allowed the return to Japan of five surviving abductees, and in 2004 of eight family members, mostly children, of those abductees. Questions about the fate of other abductees remain the subject of ongoing negotiations between Japan and the DPRK. In November, the DPRK returned to Japan what it identified as the remains of two Japanese abductees, whom the North had reported as having died in North Korea. The issue remained contentious at year's end. There are also credible reports that other nationals were abducted from locations abroad. The ROK government estimates that approximately 485 civilians were abducted or detained since the 1950-53 Korean War. Four Japanese Red Army members remain in the DPRK following their involvement in a jet hijacking in 1970; five of their family members returned to Japan in 2004.

Export Administration Act

This Act (which has been extended by Executive order after its expiration) became the basis of an ever expanding pattern of U.S. sanctions triggered by countries that are designated as providing repeated and material support for international terrorism. Those countries have been known as “terrorism list” states. The Act gives the President the authority to impose controls of exports of U.S. goods and technology by requiring licenses for such exports, and requires that licenses be issued for exports to terrorism list states of any goods that would enhance that country’s military capability or its ability to support acts of terrorism. The Act also lays out procedures, laid out in other laws discussed later (such as the Arms Export Control Act) for removing a country from the terrorism list.

Begin text:

§ 2405. Foreign policy controls

(a) Authority

(1) In order to carry out the policy set forth in paragraph (2)(B), (7), (8), or (13) of section 3 of this Act [section 2402 (2)(B), (7), (8), or (13) of this Appendix], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Agriculture, the Secretary of the Treasury, the United States Trade Representative, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Any export control imposed under this section shall apply to any transaction or activity undertaken with the intent to evade that export control, even if that export control would not otherwise apply to that transaction or activity.

(3) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (f). Any such extension and any subsequent extension shall not be for a period of more than one year.

(4) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(5) In accordance with the provisions of section 10 of this Act [section 2409 of this Appendix], the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(6) Before imposing, expanding, or extending export controls under this section on exports to a country which can use goods, technology, or information available from foreign sources and so incur little or no economic costs as a result of the controls, the President should, through diplomatic means, employ alternatives to export controls which offer opportunities of distinguishing the United States from, and expressing the displeasure of the United States with, the specific actions of that country in response to which the controls are proposed. Such alternatives include private discussions with foreign leaders, public statements in situations where private diplomacy is unavailable or not effective, withdrawal of ambassadors, and reduction of the size of the diplomatic staff that the country involved is permitted to have in the United States.

(b) Criteria

(1) Subject to paragraph (2) of this subsection, the President may impose, extend, or expand export controls under this section only if the President determines that—

(A) such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls, and that foreign policy purpose cannot be achieved through negotiations or other alternative means;

(B) the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

(C) the reaction of other countries to the imposition, extension, or expansion of such export controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or to be counterproductive to United States foreign policy interests;

(D) the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or on the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

(E) the United States has the ability to enforce the proposed controls effectively.

(2) With respect to those export controls in effect under this section on the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985], the President, in determining whether to extend those controls, as required by subsection (a)(3) of this section, shall consider the criteria set forth in paragraph (1) of this subsection and shall consider the foreign policy consequences of modifying the export controls.

(c) Consultation with industry

The Secretary in every possible instance shall consult with and seek advice from affected United States industries and appropriate advisory committees established under section 135 of the Trade Act of 1974 [19 U.S.C. 2155] before imposing any export control under this

section. Such consultation and advice shall be with respect to the criteria set forth in subsection (b)(1) and such other matters as the Secretary considers appropriate.

(d) Consultation with other countries

When imposing export controls under this section, the President shall, at the earliest appropriate opportunity, consult with the countries with which the United States maintains export controls cooperatively, and with such other countries as the President considers appropriate, with respect to the criteria set forth in subsection (b)(1) and such other matters as the President considers appropriate.

(e) Alternative means

Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(f) Consultation with Congress

(1) The President may impose or expand export controls under this section, or extend such controls as required by subsection (a)(3) of this section, only after consultation with the Congress, including the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The President may not impose, expand, or extend export controls under this section until the President has submitted to the Congress a report

(A) specifying the purpose of the controls;

(B) specifying the determinations of the President (or, in the case of those export controls described in subsection (b)(2), the considerations of the President) with respect to each of the criteria set forth in subsection (b)(1), the bases for such determinations (or considerations), and any possible adverse foreign policy consequences of the controls;

(C) describing the nature, the subjects, and the results of, or the plans for, the consultation with industry pursuant to subsection (c) and with other countries pursuant to subsection (d);

(D) specifying the nature and results of any alternative means attempted under subsection (e), or the reasons for imposing, expanding, or extending the controls without attempting any such alternative means; and

(E) describing the availability from other countries of goods or technology comparable to the goods or technology subject to the proposed export controls, and describing the nature and results of the efforts made pursuant to subsection (h) to secure the cooperation of foreign governments in controlling the foreign availability of such comparable goods or technology.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations.

(3) To the extent necessary to further the effectiveness of the export controls, portions of a report required by paragraph (2) may be submitted to the Congress on a classified basis, and shall be subject to the provisions of section 12(c) of this Act [section 2411 (c) of this Appendix].

(4) In the case of export controls under this section which prohibit or curtail the export of any agricultural commodity, a report submitted pursuant to paragraph (2) shall be deemed to be the report required by section 7(g)(3)(A) of this Act [section 2406 (g)(3)(A) of this Appendix].

(5) In addition to any written report required under this section, the Secretary, not less frequently than annually, shall present in oral testimony before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives a report on policies and actions taken by the Government to carry out the provisions of this section.

(g) Exclusion for medicine and medical supplies and for certain food exports

This section does not authorize export controls on medicine or medical supplies. This section also does not authorize export controls on donations of goods (including, but not limited to, food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies) that are intended to meet basic human needs. Before export controls on food are imposed, expanded, or extended under this section, the Secretary shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Administrator of the Agency for International Development in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Administrator with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Secretary of that determination. If the Secretary is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Administrator of the Agency for International Development, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act [50 U.S.C 1701 et seq.]. This subsection shall not apply to any export control on medicine, medical supplies, or food, except for donations, which is in effect on the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985]. Notwithstanding the preceding provisions of this subsection, the President may impose export controls under this section on medicine, medical supplies, food, and donations of goods in order to carry out the policy set forth in paragraph (13) of section 3 of this Act [section 2402 (13) of this Appendix].

(h) Foreign availability

(1) In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries

and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(2) Before extending any export control pursuant to subsection (a)(3) of this section, the President shall evaluate the results of his actions under paragraph (1) of this subsection and shall include the results of that evaluation in his report to the Congress pursuant to subsection (f) of this section.

(3) If, within 6 months after the date on which export controls under this section are imposed or expanded, or within 6 months after the date of the enactment of the Export Administration Amendments Act of 1985 [July 12, 1985] in the case of export controls in effect on such date of enactment, the President's efforts under paragraph (1) are not successful in securing the cooperation of foreign governments described in paragraph (1) with respect to those export controls, the Secretary shall thereafter take into account the foreign availability of the goods or technology subject to the export controls. If the Secretary affirmatively determines that a good or technology subject to the export controls is available in sufficient quantity and comparable quality from sources outside the United States to countries subject to the export controls so that denial of an export license would be ineffective in achieving the purposes of the controls, then the Secretary shall, during the period of such foreign availability, approve any license application which is required for the export of the good or technology and which meets all requirements for such a license. The Secretary shall remove the good or technology from the list established pursuant to subsection (l) of this section if the Secretary determines that such action is appropriate.

(4) In making a determination of foreign availability under paragraph (3) of this subsection, the Secretary shall follow the procedures set forth in section 5(f)(3) of this Act [section 2404 (f)(3) of this Appendix].

(i) International obligations

The provisions of subsections (b), (c), (d), (e), (g), and (h) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(j) Countries supporting international terrorism

(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 Foreign Affairs 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).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989 [Dec. 12, 1989], shall be published in the Federal Register.

(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.

(5) The Secretary and the Secretary of State shall include in the notification required by paragraph (2)

(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

(C) the reasons why the proposed export or transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

(k) Negotiations with other countries

(1) Countries participating in certain agreements

The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with those countries participating in the groups known as the Coordinating Committee, the Missile Technology Control Regime, the Australia Group, and the Nuclear Suppliers' Group, regarding their cooperation in restricting the export of goods and technology in order to carry out

(A) the policy set forth in section 3(2)(B) of this Act [section 2402 (2)(B) of this Appendix], and

(B) United States policy opposing the proliferation of chemical, biological, nuclear, and other weapons and their delivery systems, and effectively restricting the export of dual use components of such weapons and their delivery systems, in accordance with this subsection and subsections (a) and (l).

Such negotiations shall cover, among other issues, which goods and technology should be subject to multilaterally agreed export restrictions, and the implementation of the restrictions consistent with the principles identified in section 5(b)(2)(C) of this Act [section 2404 (b)(2)(C) of this Appendix].

(2) Other countries

The Secretary of State, in consultation with the Secretary, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with countries and groups of countries not referred to in paragraph (1) regarding their cooperation in restricting the export of goods and technology consistent with purposes set forth in paragraph (1). In cases where such negotiations produce agreements on export restrictions that the Secretary, in consultation with the Secretary of State and the Secretary of Defense, determines to be consistent with the principles identified in section 5(b)(2)(C) of this Act [section 2404 (b)(2)(C) of this Appendix], the Secretary may treat exports, whether by individual or multiple licenses, to countries party to such agreements in the same manner as exports are treated to countries that are MTCR adherents.

(3) Review of determinations

The Secretary shall annually review any determination under paragraph (2) with respect to a country. For each such country which the Secretary determines is not meeting the requirements of an effective export control system in accordance with section 5 (b)(2)(C) [section 2404 (b)(2)(C) of this Appendix], the Secretary shall restrict or eliminate any preferential licensing treatment for exports to that country provided under this subsection.

(l) Missile technology

(1) Determination of controlled items

The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies

(A) shall establish and maintain, as part of the control list established under this section, a list of all dual use goods and technology on the MTCR Annex; and

(B) may include, as part of the control list established under this section, goods and technology that would provide a direct and immediate impact on the development of missile

delivery systems and are not included in the MTCR Annex but which the United States is proposing to the other MTCR adherents to have included in the MTCR Annex.

(2) Requirement of individual validated licenses

The Secretary shall require an individual validated license for

(A) any export of goods or technology on the list established under paragraph (1) to any country; and

(B) any export of goods or technology that the exporter knows is destined for a project or facility for the design, development, or manufacture of a missile in a country that is not an MTCR adherent.

(3) Policy of denial of licenses

(A) Licenses under paragraph (2) should in general be denied if the ultimate consignee of the goods or technology is a facility in a country that is not an adherent to the Missile Technology Control Regime and the facility is designed to develop or build missiles.

(B) Licenses under paragraph (2) shall be denied if the ultimate consignee of the goods or technology is a facility in a country the government of which has been determined under subsection (j) to have repeatedly provided support for acts of international terrorism.

(4) Consultation with other departments

(A) A determination of the Secretary to approve an export license under paragraph (2) for the export of goods or technology to a country of concern regarding missile proliferation may be made only after consultation with the Secretary of Defense and the Secretary of State for a period of 20 days. The countries of concern referred to in the preceding sentence shall be maintained on a classified list by the Secretary of State, in consultation with the Secretary and the Secretary of Defense.

(B) Should the Secretary of Defense disagree with the determination of the Secretary to approve an export license to which subparagraph (A) applies, the Secretary of Defense shall so notify the Secretary within the 20 days provided for consultation on the determination. The Secretary of Defense shall at the same time submit the matter to the President for resolution of the dispute. The Secretary shall also submit the Secretary's recommendation to the President on the license application.

(C) The President shall approve or disapprove the export license application within 20 days after receiving the submission of the Secretary of Defense under subparagraph (B).

(D) Should the Secretary of Defense fail to notify the Secretary within the time period prescribed in subparagraph (B), the Secretary may approve the license application without awaiting the notification by the Secretary of Defense. Should the President fail to notify the Secretary of his decision on the export license application within the time period prescribed in subparagraph (C), the Secretary may approve the license application without awaiting the President's decision on the license application.

(E) Within 10 days after an export license is issued under this subsection, the Secretary shall provide to the Secretary of Defense and the Secretary of State the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary indicates the need to receive such application and documents.

(5) Information sharing

The Secretary shall establish a procedure for information sharing with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, and other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(m) Chemical and biological weapons

(1) Establishment of list

The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

(2) Requirement for validated licenses

The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

(3) Countries of concern

For purposes of paragraph (2), the term “country of concern” means any country other than

(A) a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of goods or technology on the list established under paragraph (1); and

(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 [22 U.S.C. 5601 et seq.].

(n) Crime control instruments

(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix]

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (l) of this section as a result of the export restrictions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act [section 2409 (e) of this Appendix], except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the

purposes of this subsection and section 502B of the Foreign Assistance Act of 1961 [22 U.S.C. 2304].

(o) Control list

The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(p) Effect on existing contracts and licenses

The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act [sections 2401 to 2420 of this Appendix], unless and until the President determines and certifies to the Congress that

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

(q) Extension of certain controls

Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection [July 12, 1985], and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

(r) Expanded authority to impose controls

(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m)

of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term “joint resolution” means a joint resolution the matter after the resolving clause of which is as follows: “That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.”, with the date of the receipt of the determination and report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(s) Spare parts

(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection [Aug. 23, 1988], an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States, unless the President determines that such a license should be required for such parts.

Arms Export Control Act

The key provision of the Arms Export Control Act that applies to North Korea (or any other country on the terrorism list) is Section 40 (22 U.S.C. 2780). The provision prohibits U.S. export, by sale, lease, loan, grant, or other means, of any item on the U.S. Munitions List, to countries on the U.S. terrorism list. U.S. credits, guarantees, or financial assistance for any terrorism list country arms purchase, as well as U.S. licensing or co-production agreements for or with that country, also are prohibited. The Act provides for a presidential waiver if the president deems that to be in the national interest.

The Antiterrorism and Effective Death Penalty Act of 1996 added another relevant section, Section 40A, to the Arms Export Control Act. Under that section, sales of U.S. military equipment and services are prohibited to any country deemed failing to cooperate with U.S. antiterrorism actions. A waiver of this prohibition is available should such a sale be deemed in the national interest. Thus, North Korea would be barred from purchasing U.S. arms by law, even if it is removed from the terrorism list, if it is not also removed from the “non-cooperative” list, which North Korea has been on every year since the inception of that list in 1997.

Even if North Korea were removed from the terrorism list, and even if it were deemed as cooperating with U.S. counterterrorism policy and not subject to the Section 40A restriction, U.S. arms exports could (and likely still would) be prohibited as a matter of Administration policy.

Section 40 of the Act also delineates the criteria for removing countries from the terrorism list. There are different requirements for the removal depending on whether or not there is a change of regime in the terrorism list country. The provision allows for Congress to block a country’s removal from the terrorism list if it passes a joint resolution to that effect. However, like any piece of legislation, such a joint resolution is subject to presidential veto and veto override procedures before it could become law.

Begin text:

Arms Export Control Act

P.L. 90-629

October 22, 1968

Section 40

22 U.S.C. 2780. Transactions with countries supporting acts of international terrorism

(a) Prohibited transactions by 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) of this section under the authority of this chapter, the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), or any other law (except as provided in subsection (h) of this section). In implementing this paragraph, the United States Government

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d) of this section, and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this chapter, the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), or any other law (except as provided in subsection (h) of this section), with respect to the acquisition of any munitions item by a country described in subsection (d) of this section. 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) of this section. 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.

(3) Consenting under section 2753(a) of this title, under section 505(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)), under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h) of this section), to any transfer of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 2778 of this title for any export or other transfer (including by means of a technical agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country. -

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d) of this section. 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.

(b) Prohibited transactions by United States persons

(1) In general

A United States person may not take any of the following actions:

- (A) Exporting any munitions item to any country described in subsection (d) of this section.
- (B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d) of this section.
- (C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) of this section if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d) of this section.
- (D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d) of this section, or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) Liability for actions of foreign subsidiaries, etc.

A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

(3) Applicability to actions outside the United States

Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3)(A) or (B) of this section. To the extent provided in regulations issued under subsection (1)(3)(D) of this section, paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) Transfers to governments and persons covered

This section applies with respect to

- (1) the acquisition of munitions items by the government of a country described in subsection (d) of this section; and
- (2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d) of this section, except to the extent that subparagraph (D) of subsection (b)(1) of this section provides otherwise.

(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.

(e) Publication of determinations

Each determination of the Secretary of State under subsection (d) of this section shall be published in the Federal Register.

(f) Rescission

(1) A determination made by the Secretary of State under subsection (d) of this section 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) of this section 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, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(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.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) Exemption for transactions subject to National Security Act reporting requirements

The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) Relation to other laws

(1) In general

With regard to munitions items controlled pursuant to this chapter, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) Section 614(a) waiver authority

If the authority of section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C.2364(a)) is used to permit a transaction under that Act (22 U.S.C. 2151 et seq.) or this chapter which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) Criminal penalty

Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 10 years, or both.

(k) Civil penalties; enforcement

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (50 App. U.S.C. 2410(c), (e), (g), 2411(a)) (subject to the same terms and conditions as are applicable to such powers under that Act (50 App. U.S.C. 2401 et seq.)), except that

section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this chapter and regulations prescribed there under and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) Definitions

As used in this section

(1) the term “munitions item” means any item enumerated on the United States Munitions list [1] (without regard to whether the item is imported into or exported from the United States);

(2) the term “United States”, when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

(3) the term “United States person” means

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person’s actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States, with respect to that person’s actions while outside the United States;

(4) the term “nuclear explosive device” has the meaning given that term in section 6305(4) of this title; and

(5) the term “unsafeguarded special nuclear material” has the meaning given that term in section 6305(8) of this title.

Anti-Terrorism and Effective Death Penalty Act of 1996

Targeted at no specific country, this Act (P.L. 104-132) contains a number of provisions that apply to countries on the terrorism list, including North Korea. While some sections are largely symbolic, many set forth substantial penalties, including a number of “secondary sanctions” aimed at persons and countries that assist or arm North Korea and other terrorism list countries.

Section 221 of the Act allows victims of terrorism to sue a country alleged to have provided material support for a terrorist act or to the group that conducted the Act. However, the Act provides no mechanism for collection of these judgments.

Section 321 of the Act provides for penalties against U.S. persons that engage in financial transactions with terrorism list states, except as provided for in regulations. (This clause applies to only those terrorism list countries for which trade is permissible.) As written, U.S. regulations that implement this section of law impose penalties only if the U.S. person knows that the transaction would further an act of terrorism.

Section 325 and 326 represent “secondary sanctions,” imposing sanctions on third countries – not the terrorism list country itself – that provide assistance or lethal military equipment to a terrorism list states. Penalties under both sections can be waived on national interest grounds. Providing goods to a terrorism list country at subsidized prices, for example, is considered sanctionable activity for purposes of the Act. Countries such as China could conceivably be sanctioned under this section because it does provide substantial assistance and subsidized goods, such as oil, to North Korea. It is also North Korea’s main arms supplier. However, no determinations against China have been issued under this section. Even if China was determined to have violated the provision, the penalty would be a withholding of U.S. assistance. In the case of China, such a sanction would be moot because China does not receive any U.S. foreign assistance.

Section 327 of the Act amends the International Financial Institutions Act (22 U.S.C. 262c) by requiring the administration to vote against loans to terrorism list countries by international financial institutions. The institutions named in the provision include the World Bank, the IMF, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the African Development Fund. No waiver is provided for.

As noted in the section on the Arms Export Control Act, Section 330 of the Antiterrorism and Effective Death Penalty Act added a section to the Arms Export Control Act to prevent U.S. arms sales to countries determined to be “not cooperating with U.S. anti-terrorism efforts.” As shown in the determination below for 2006, those countries are: North Korea, Cuba, Iran, Syria, and Venezuela. In past years, the countries on this “not cooperating list” matched those countries on the terrorism list, although Taliban-era Afghanistan was on the list even though it was not a terrorism list state. The 2006 determination omits Sudan from the “not cooperating” list even though Sudan is still on the terrorism list, and adds Venezuela even though Venezuela is not on the terrorism list.

Begin text:

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

Public Law 104-132

104th Congress

To deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Antiterrorism and Effective Death Penalty Act of 1996”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I--HABEAS CORPUS REFORM

Sec. 101. Filing deadlines.

Sec. 102. Appeal.

Sec. 103. Amendment of Federal Rules of Appellate Procedure.

Sec. 104. Section 2254 amendments.

Sec. 105. Section 2255 amendments.

Sec. 106. Limits on second or successive applications.

Sec. 107. Death penalty litigation procedures.

Sec. 108. Technical amendment.

TITLE II--JUSTICE FOR VICTIMS

Subtitle A--Mandatory Victim Restitution

Sec. 201. Short title.

Sec. 202. Order of restitution.

Sec. 203. Conditions of probation.

Sec. 204. Mandatory restitution.

Sec. 205. Order of restitution to victims of other crimes.

Sec. 206. Procedure for issuance of restitution order.

Sec. 207. Procedure for enforcement of fine or restitution order.

Sec. 208. Instruction to Sentencing Commission.

Sec. 209. Justice Department regulations.

Sec. 210. Special assessments on convicted persons.

Sec. 211. Effective date.

Subtitle B--Jurisdiction for Lawsuits Against Terrorist States

Sec. 221. Jurisdiction for lawsuits against terrorist states.

Subtitle C--Assistance to Victims of Terrorism

Sec. 231. Short title.

Sec. 232. Victims of Terrorism Act.

Sec. 233. Compensation of victims of terrorism.

Sec. 234. Crime victims fund.

Sec. 235. Closed circuit televised court proceedings for victims of crime.

Sec. 236. Technical correction.

TITLE III--INTERNATIONAL TERRORISM PROHIBITIONS

Subtitle A--Prohibition on International Terrorist Fundraising

Sec. 301. Findings and purpose.

Sec. 302. Designation of foreign terrorist organizations.

Sec. 303. Prohibition on terrorist fundraising.

Subtitle B--Prohibition on Assistance to Terrorist States

Sec. 321. Financial transactions with terrorists.

Sec. 322. Foreign air travel safety.

Sec. 323. Modification of material support provision.

Sec. 324. Findings.

Sec. 325. Prohibition on assistance to countries that aid terrorist states.

Sec. 326. Prohibition on assistance to countries that provide military equipment to terrorist states.

Sec. 327. Opposition to assistance by international financial institutions to terrorist states.

Sec. 328. Antiterrorism assistance.

Sec. 329. Definition of assistance.

Sec. 330. Prohibition on assistance under Arms Export Control Act for countries not cooperating fully with United States antiterrorism efforts.

TITLE IV--TERRORIST AND CRIMINAL ALIEN REMOVAL AND EXCLUSION

Subtitle A--Removal of Alien Terrorists

Sec. 401. Alien terrorist removal.

Subtitle B--Exclusion of Members and Representatives of Terrorist Organizations

Sec. 411. Exclusion of alien terrorists.

Sec. 412. Waiver authority concerning notice of denial of application for visas.

Sec. 413. Denial of other relief for alien terrorists.

Sec. 414. Exclusion of aliens who have not been inspected and admitted.

Subtitle C--Modification to Asylum Procedures

Sec. 421. Denial of asylum to alien terrorists.

Sec. 422. Inspection and exclusion by immigration officers.

Sec. 423. Judicial review.

Subtitle D--Criminal Alien Procedural Improvements

Sec. 431. Access to certain confidential immigration and naturalization files through court order.

Sec. 432. Criminal alien identification system.

Sec. 433. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.

Sec. 434. Authority for alien smuggling investigations.

Sec. 435. Expansion of criteria for deportation for crimes of moral turpitude.

Sec. 436. Miscellaneous provisions.

Sec. 437. Interior repatriation program.

Sec. 438. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.

Sec. 439. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens.

Sec. 440. Criminal alien removal.

Sec. 441. Limitation on collateral attacks on underlying deportation order.

Sec. 442. Deportation procedures for certain criminal aliens who are not permanent residents.

Sec. 443. Extradition of aliens.

TITLE V--NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS RESTRICTIONS

Subtitle A--Nuclear Materials

Sec. 501. Findings and purpose.

Sec. 502. Expansion of scope and jurisdictional bases of nuclear materials prohibitions.

Sec. 503. Report to Congress on thefts of explosive materials from armories.

Subtitle B--Biological Weapons Restrictions

Sec. 511. Enhanced penalties and control of biological agents.

Subtitle C--Chemical Weapons Restrictions

Sec. 521. Chemical weapons of mass destruction; study of facility for training and evaluation of personnel who respond to use of chemical or biological weapons in urban and suburban areas.

TITLE VI--IMPLEMENTATION OF PLASTIC EXPLOSIVES CONVENTION

Sec. 601. Findings and purposes.

Sec. 602. Definitions.

Sec. 603. Requirement of detection agents for plastic explosives.

Sec. 604. Criminal sanctions.

Sec. 605. Exceptions.

Sec. 606. Seizure and forfeiture of plastic explosives.

Sec. 607. Effective date.

TITLE VII--CRIMINAL LAW MODIFICATIONS TO COUNTER TERRORISM

Subtitle A--Crimes and Penalties

Sec. 701. Increased penalty for conspiracies involving explosives.

Sec. 702. Acts of terrorism transcending national boundaries.

Sec. 703. Expansion of provision relating to destruction or injury of property within special maritime and territorial jurisdiction.

Sec. 704. Conspiracy to harm people and property overseas.

Sec. 705. Increased penalties for certain terrorism crimes.

Sec. 706. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.

Sec. 707. Possession of stolen explosives prohibited.

Sec. 708. Enhanced penalties for use of explosives or arson crimes.

Sec. 709. Determination of constitutionality of restricting the dissemination of bomb-making instructional materials.

Subtitle B--Criminal Procedures

Sec. 721. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.

Sec. 722. Clarification of maritime violence jurisdiction.

Sec. 723. Increased and alternate conspiracy penalties for terrorism offenses.

Sec. 724. Clarification of Federal jurisdiction over bomb threats.

Sec. 725. Expansion and modification of weapons of mass destruction statute.

Sec. 726. Addition of terrorism offenses to the money laundering statute.

Sec. 727. Protection of Federal employees; protection of current or former officials, officers, or employees of the United States.

Sec. 728. Death penalty aggravating factor.

Sec. 729. Detention hearing.

Sec. 730. Directions to Sentencing Commission.

Sec. 731. Exclusion of certain types of information from definitions.

Sec. 732. Marking, rendering inert, and licensing of explosive materials.

TITLE VIII--ASSISTANCE TO LAW ENFORCEMENT

Subtitle A--Resources and Security

Sec. 801. Overseas law enforcement training activities.

Sec. 802. Sense of Congress.

Sec. 803. Protection of Federal Government buildings in the District of Columbia.

Sec. 804. Requirement to preserve record evidence.

Sec. 805. Deterrent against terrorist activity damaging a Federal interest computer.

Sec. 806. Commission on the Advancement of Federal Law Enforcement.

Sec. 807. Combatting international counterfeiting of United States currency.

Sec. 808. Compilation of statistics relating to intimidation of Government employees.

Sec. 809. Assessing and reducing the threat to law enforcement officers from the criminal use of firearms and ammunition.

Sec. 810. Study and report on electronic surveillance.

Subtitle B--Funding Authorizations for Law Enforcement

Sec. 811. Federal Bureau of Investigation.

Sec. 812. United States Customs Service.

Sec. 813. Immigration and Naturalization Service.

Sec. 814. Drug Enforcement Administration.

Sec. 815. Department of Justice.

Sec. 816. Department of the Treasury.

Sec. 817. United States Park Police.

Sec. 818. The Judiciary.

Sec. 819. Local firefighter and emergency services training.

Sec. 820. Assistance to foreign countries to procure explosive detection devices and other counterterrorism technology.

Sec. 821. Research and development to support counterterrorism technologies.

Sec. 822. Grants to State and local law enforcement for training and equipment.

Sec. 823. Funding source.

TITLE IX--MISCELLANEOUS

Sec. 901. Expansion of territorial sea.

Sec. 902. Proof of citizenship.

Sec. 903. Representation fees in criminal cases.

Sec. 904. Severability.

SEC. 221. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) Exception to Foreign Sovereign Immunity for Certain Cases.

Section 1605 of title 28, United States Code, is amended

(1) in subsection (a)

(A) by striking “or” at the end of paragraph (5);

(B) by striking the period at the end of paragraph

(6) and inserting “; or”; and

(C) by adding at the end the following new paragraph:

“(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph

“(A) if the foreign state was not designated as a state sponsor of terrorism 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) at the time the act occurred, unless later so designated as a result of such act; and

“(B) even if the foreign state is or was so designated, if

“(i) the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration; or

“(ii) the claimant or victim was not a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.”; and

(2) by adding at the end the following:

“(e) For purposes of paragraph (7) of subsection (a)

“(1) the terms ‘torture’ and ‘extrajudicial killing’ have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

“(2) the term ‘hostage taking’ has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

“(3) the term ‘aircraft sabotage’ has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

“(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.

“(g) Limitation on Discovery.

“(1) In general. (A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for subsection (a)(7), the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

“(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

“(2) Sunset. (A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

“(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would

“(i) create a serious threat of death or serious bodily injury to any person;

“(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

“(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

“(3) Evaluation of evidence. The court’s evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted *ex parte* and *in camera*.

“(4) Bar on motions to dismiss. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

“(5) Construction. Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.”

(b) Exception to Immunity From Attachment.

(1) Foreign state. Section 1610(a) of title 28, United States Code, is amended

(A) by striking the period at the end of paragraph (6) and inserting “, or”; and

(B) by adding at the end the following new paragraph:

“(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.”

(2) Agency or instrumentality.

Section 1610(b)(2) of title 28, United States Code, is amended

(A) by striking “or (5)” and inserting “(5), or (7)”; and

(B) by striking “used for the activity” and inserting involved in the act.

(c) Applicability. The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

Subtitle C. Assistance to Victims of Terrorism

SEC. 231. SHORT TITLE.

This subtitle may be cited as the “Justice for Victims of Terrorism Act of 1996”.

SEC. 232. VICTIMS OF TERRORISM ACT.

(a) Authority To Provide Assistance and Compensation to Victims of Terrorism. The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

“(a) Victims of Acts of Terrorism Outside the United States.

The Director may make supplemental grants as provided in section 1404(a) to States to provide compensation and assistance to the residents of such States who, while outside of the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

“(b) Victims of Terrorism Within the United States. The Director may make supplemental grants as provided in section 1404(d)(4)(B) to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney’s Offices for use in coordination with State victim compensation and assistance efforts in providing emergency relief.”

(b) Funding of Compensation and Assistance to Victims of Terrorism, Mass Violence, and Crime.

Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$50,000,000.

“(B) The emergency reserve referred to in subparagraph (A) may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.”

(c) Crime Victims Fund Amendments.

(1) Unobligated funds. Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended

(A) in subsection (c), by striking “subsection” and inserting “chapter”; and

(B) by amending subsection (e) to read as follows:

“(e) Amounts Awarded and Unspent. Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums in excess of \$500,000 shall be returned to the Treasury. Any remaining unobligated sums in an amount less than \$500,000 shall be returned to the Fund.”

(2) Base amount. Section 1404(a)(5) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(5)) is amended to read as follows:

“(5) As used in this subsection, the term ‘base amount’ means

“(A) except as provided in subparagraph (B), \$500,000; and

“(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and the Republic of Palau, \$200,000, with the Republic of Palau’s share governed by the Compact of Free Association between the United States and the Republic of Palau.”

SEC. 233. COMPENSATION OF VICTIMS OF TERRORISM.

(a) Requiring Compensation for Terrorist Crimes.

Section 1403(d)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(d)(3)) is amended

(1) by inserting “crimes involving terrorism,” before “driving while intoxicated”; and

(2) by inserting a comma after “driving while intoxicated”.

(b) Foreign Terrorism. Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)(6)(B)) is amended by inserting “are outside of the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18, United States Code), or” before “are States not having”.

SEC. 321. FINANCIAL TRANSACTIONS WITH TERRORISTS.

(a) In General.

Chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the section 2332c added by section 521 of this Act the following new section:

“Sec. 2332d. Financial transactions

“(a) Offense. Except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405) as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under this title, imprisoned for not more than 10 years, or both.

“(b) Definitions. As used in this section

“(1) the term ‘financial transaction’ has the same meaning as in section 1956(c)(4); and

“(2) the term ‘United States person’ means any

“(A) United States citizen or national;

“(B) permanent resident alien;

“(C) juridical person organized under the laws of the United States; or

“(D) any person in the United States.”

(b) Clerical Amendment. The table of sections at the beginning of chapter 113B of title 18, United States Code, relating to terrorism, is amended by inserting after the item added by section 521 of this Act the following new item: “2332d. Financial transactions.”

(c) Effective Date.

The amendments made by this section shall become effective 120 days after the date of enactment of this Act.

SEC. 324. FINDINGS.

The Congress finds that

(1) international terrorism is among the most serious transnational threats faced by the United States and its allies, far eclipsing the dangers posed by population growth or pollution;

(2) the President should continue to make efforts to counter international terrorism a national security priority;

(3) because the United Nations has been an inadequate forum for the discussion of cooperative, multilateral responses to the threat of international terrorism, the President should undertake immediate efforts to develop effective multilateral responses to international terrorism as a complement to national counter terrorist efforts;

(4) the President should use all necessary means, including covert action and military force, to disrupt, dismantle, and destroy international infrastructure used by international terrorists, including overseas terrorist training facilities and safe havens;

(5) the Congress deplores decisions to ease, evade, or end international sanctions on state sponsors of terrorism, including the recent decision by the United Nations Sanctions Committee to allow airline flights to and from Libya despite Libya’s noncompliance with United Nations resolutions; and

(6) the President should continue to undertake efforts to increase the international isolation of state sponsors of international terrorism, including efforts to strengthen international sanctions, and should oppose any future initiatives to ease sanctions on Libya or other state sponsors of terrorism.

SEC. 325. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620F the following new section:

“SEC. 620G. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT AID TERRORIST STATES.

“(a) Withholding of Assistance. The President shall withhold assistance under this Act to the government of any country that provides assistance to the government of any other country for which the Secretary of State has made a determination under section 620A.

“(b) Waiver. Assistance prohibited by this section may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including

“(1) a statement of the determination;

“(2) a detailed explanation of the assistance to be provided;

“(3) the estimated dollar amount of the assistance; and

“(4) an explanation of how the assistance furthers United States national interests.”

SEC. 326. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

The Foreign Assistance Act of 1961 (22 U.S.C. 151 et seq.) is amended by adding immediately after section 620G the following new section:

“SEC. 620H. PROHIBITION ON ASSISTANCE TO COUNTRIES THAT PROVIDE MILITARY EQUIPMENT TO TERRORIST STATES.

“(a) Prohibition.

“(1) In general. The President shall withhold assistance under this Act to the government of any country that provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for the purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

“(2) Applicability. The prohibition under this section with respect to a foreign government shall terminate 1 year after that government ceases to provide lethal military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after the date of enactment of this Act.

“(b) Waiver. Notwithstanding any other provision of law, assistance may be furnished to a foreign government described in subsection (a) if the President determines that furnishing such assistance is important to the national interests of the United States and, not later than 15 days before obligating such assistance, furnishes a report to the appropriate committees of Congress including

“(1) a statement of the determination;

“(2) a detailed explanation of the assistance to be provided;

“(3) the estimated dollar amount of the assistance; and

“(4) an explanation of how the assistance furthers United States national interests.”

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. 621. OPPOSITION TO ASSISTANCE BY INTERNATIONAL FINANCIAL INSTITUTIONS 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. ANTTERRORISM 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.

SEC. 329. DEFINITION OF ASSISTANCE.

For purposes of this title

(1) the term “assistance” means assistance to or for the benefit of a government of any country that is provided by grant, concessional sale, guaranty, insurance, or by any other means on terms more favorable than generally available in the applicable market, whether in the form of a loan, lease, credit, debt relief, or otherwise, including subsidies for exports to such country and favorable tariff treatment of articles that are the growth, product, or manufacture of such country; and

(2) the term “assistance” does not include assistance of the type authorized under chapter 9 of part 1 of the Foreign Assistance Act of 1961 (relating to international disaster assistance).

SEC. 330. PROHIBITION ON ASSISTANCE UNDER ARMS EXPORT CONTROL ACT FOR COUNTRIES NOT COOPERATING FULLY WITH UNITED STATES ANTITERRORISM EFFORTS.

Chapter 3 of the Arms Export Control Act (22 U.S.C. 2771 et seq.) is amended by adding at the end the following:

“Sec. 40A. Transactions With Countries Not Fully Cooperating With 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.”

Determination of States on the “Not Cooperating” (With U.S. Anti-Terrorism Efforts) List

Begin text:

[Federal Register: May 18, 2006 (Volume 71, Number 96)]

[Notices]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

[DOCID:fr18my06-94]

DEPARTMENT OF STATE

[Public Notice 5411]

Determination and Certification Under Section 40A of the 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.

Dated: May 8, 2006.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 06-4656 Filed 5-17-06; 8:45 am]

BILLING CODE 4710-10-P

Atomic Energy Act of 1954 and Energy Policy Act of 2005

Significant nuclear exports by the United States require a nuclear cooperation agreement, pursuant to the Atomic Energy Act of 1954. The following section of the Atomic Energy Act of 1954, as amended, would govern U.S. nuclear exports to North Korea, where there to be full resolution of the North Korean nuclear issue and compliance by North Korea with all provisions of its obligations under the NPT. The Agreed Framework, had it been fully implemented, could have led to a bilateral U.S.-North Korea nuclear agreement that might have included exports to North Korea of some U.S. nuclear technology. Any U.S. nuclear exports to North Korea would also have required exercising of the waiver provision of the section of the Energy Policy Act of 2005 (text below) that prohibits transfers of nuclear equipment, material, and technology to a terrorism list country.

North Korea's October 9, 2006 nuclear test appeared to put further distance between North Korea and any return to the compliance and cooperation that was envisioned under the 1994 Agreed Framework. However, the February 13, 2007 nuclear agreement has restored the hope of some that North Korea can ultimately be diplomatically coaxed into giving up its existing nuclear arsenal and forgoing nuclear weapons entirely.

Atomic Energy Act of 1954

Begin text:

42 USC Sec. 2158

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 23 - DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

Division A - Atomic Energy

SUBCHAPTER X - INTERNATIONAL ACTIVITIES

Sec. 2158. Conduct resulting in termination of nuclear exports

No nuclear materials and equipment or sensitive nuclear technology shall be exported to

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after March 10, 1978,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 2153a(a) of this title; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after March 10, 1978, for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes; unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: Provided, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in section 2159(g) of this title), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

SOURCE

(Aug. 1, 1946, ch. 724, title I, Sec. 129, as added Pub. L. 95-242, title III, Sec. 307, Mar. 10, 1978, 92 Stat. 138; renumbered title I, Pub. L. 102-486, title IX, Sec. 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; amended Pub. L. 103-437, Sec. 15(f)(5), Nov. 2, 1994, 108 Stat. 4592.)

AMENDMENTS

1994 - Pub. L. 103-437 substituted "Foreign Affairs" for "International Relations" in closing provisions.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State responsible for preparation of timely information and recommendations related to functions vested in President by this section, see section 2(d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Energy Policy Act of 2005

The following section of the Energy Policy Act of 2005 (P.L. 109-58) amends section 129 of the Atomic Energy Act of 1954 (the above law) to include a prohibition on transfers of nuclear material, equipment, and technology to terrorism list states. A presidential waiver is provided for. Such a presidential waiver must certify that the export to the recipient country would not result in an increased risk that the recipient country will acquire nuclear weapons or any components of nuclear weapons.

Begin text of relevant sections:

SEC. 632. PROHIBITION ON NUCLEAR EXPORTS TO COUNTRIES THAT SPONSOR TERRORISM.

(a) In General. Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended

(1) by inserting “a.” before “No nuclear materials and equipment”; and (2) by adding at the end the following new subsection:

“b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

“(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication

devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

“(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and

“(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

“(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

“(C) the waiver of that paragraph is in the vital national security interest of the United States; or

“(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.”

(b) Applicability to Exports Approved for Transfer but Not Transferred. Subsection b. of section 129 of Atomic Energy Act of 1954, as added by subsection (a) of this section, shall apply with respect to exports that have been approved for transfer as of the date of the enactment of this Act but have not yet been transferred as of that date.

Iran-Syria Non-Proliferation Act (PL. 106-178)

Now Applicable to North Korea

A U.S. law (P.L. 109-353, text provided later), enacted after North Korea's October 9, 2006 nuclear test, applies the provisions of the Iran Non-Proliferation Act, P.L. 106-178, to North Korea. A previous law had also applied the provisions to Syria. The law applies certain U.S. sanctions to entities deemed by the Administration to have provided WMD-related technology to Iran (or Syria) or, now, also North Korea.

For those entities (companies, state-run institutes, individuals, etc.) the sanctions that would be imposed for violations are: (1) prohibitions on U.S. government procurement from that entity (Section 4(b) of Executive Order 12938, November 14, 1994); (2) prohibitions on any exports of U.S. arms ("Munitions List" items) to that entity; and (3) denial of licenses for U.S. exports of dual use items to that entity.

Begin text of P.L. 109-178:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iran Nonproliferation Act of 2000".

SEC. 2. REPORTS ON PROLIFERATION TO IRAN.

(a) Reports.

The President shall, at the times specified in subsection (b), submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report identifying every foreign person with respect to whom there is credible information indicating that that person, on or after January 1, 1999, transferred to Iran

(1) goods, services, or technology listed on

(A) the Nuclear Suppliers Group Guidelines for the Export of Nuclear Material, Equipment and Technology and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology;

(B) the Missile Technology Control Regime Equipment and Technology Annex of June 11, 1996, and subsequent revisions;

(C) the lists of items and substances relating to biological and chemical weapons the export of which is controlled by the Australia Group;

(D) the Schedule One or Schedule Two list of toxic chemicals and precursors the export of which is controlled pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; or

(E) the Wassenaar Arrangement list of Dual Use Goods and Technologies and Munitions list of July 12, 1996, and subsequent revisions; or (2) goods, services, or technology not listed on any list identified in paragraph (1) but which nevertheless would be, if they were United States goods, services, or technology, prohibited for export to Iran because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems.

(b) Timing of Reports.

The reports under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act, not later than 6 months after such date of enactment, and not later than the end of each 6-month period thereafter..

(c) Exceptions.

Any foreign person who

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer; or

(2) has engaged in a transfer on behalf of, or in concert with, the Government of the United States, is not required to be identified on account of that same transfer in any report submitted thereafter under this section, except to the degree that new information has emerged indicating that the particular transfer may have continued, or been larger, more significant, or different in nature than previously reported under this section.

(d) Submission in Classified Form.

When the President considers it appropriate, reports submitted under subsection (a), or appropriate parts thereof, may be submitted in classified form.

SEC. 3. APPLICATION OF MEASURES TO CERTAIN FOREIGN PERSONS.

(a) Application of Measures.

Subject to sections 4 and 5, the President is authorized to apply with respect to each foreign person identified in a report submitted pursuant to section 2(a), for such period of time as he may determine, any or all of the measures described in subsection (b).

(b) Description of Measures.

The measures referred to in subsection (a) are the following:

(1) Executive order no. 12938 prohibitions.

The measures set forth in subsections (b) and (c) of section 4 of Executive Order No. 12938.

(2) Arms export prohibition. Prohibition on United States Government sales to that foreign person of any item on the United States Munitions List as in effect on August 8, 1995, and termination of sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(3) Dual use export prohibition.

Denial of licenses and suspension of existing licenses for the transfer to that person of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations.

(c) Effective Date of Measures.

Measures applied pursuant to subsection (a) shall be effective with respect to a foreign person no later than

(1) 90 days after the report identifying the foreign person is submitted, if the report is submitted on or before the date required by section 2(b);

(2) 90 days after the date required by section 2(b) for submitting the report, if the report identifying the foreign person is submitted within 60 days after that date; or

(3) on the date that the report identifying the foreign person is submitted, if that report is submitted more than 60 days after the date required by section 2(b).

(d) Publication in Federal Register. The application of measures to a foreign person pursuant to subsection (a) shall be announced by notice published in the Federal Register.

SEC. 4. PROCEDURES IF MEASURES ARE NOT APPLIED.

(a) Requirement To Notify Congress.

Should the President not exercise the authority of section 3(a) to apply any or all of the measures described in section 3(b) with respect to a foreign person identified in a report submitted pursuant to section 2(a), he shall so notify the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate no later than the effective date under section 3(c) for measures with respect to that person.

(b) Written Justification.

Any notification submitted by the President under subsection (a) shall include a written justification describing in detail the facts and circumstances relating specifically to the foreign person identified in a report submitted pursuant to section 2(a) that support the President's decision not to exercise the authority of section 3(a) with respect to that person.

(c) Submission in Classified Form.

When the President considers it appropriate, the notification of the President under subsection (a), and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

SEC. 5. DETERMINATION EXEMPTING FOREIGN PERSON FROM SECTIONS 3 AND 4.

(a) In General.

Sections 3 and 4 shall not apply to a foreign person 15 days after the President reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the President has determined, on the basis of information provided by that person, or otherwise obtained by the President, that

(1) the person did not, on or after January 1, 1999, knowingly transfer to Iran the goods, services, or technology the apparent transfer of which caused that person to be identified in a report submitted pursuant to section 2(a);

(2) the goods, services, or technology the transfer of which caused that person to be identified in a report submitted pursuant to section 2(a) did not materially contribute to Iran's efforts to develop nuclear, biological, or chemical weapons, or ballistic or cruise missile systems;

(3) the person is subject to the primary jurisdiction of a government that is an adherent to one or more relevant nonproliferation regimes, the person was identified in a report submitted pursuant to section 2(a) with respect to a transfer of goods, services, or technology described in section 2(a)(1), and such transfer was made consistent with the guidelines and parameters of all such relevant regimes of which such government is an adherent; or

(4) the government with primary jurisdiction over the person has imposed meaningful penalties on that person on account of the transfer of the goods, services, or technology which caused that person to be identified in a report submitted pursuant to section 2(a).

(b) Opportunity To Provide Information.

Congress urges the President

(1) in every appropriate case, to contact in a timely fashion each foreign person identified in each report submitted pursuant to section 2(a), or the government with primary jurisdiction over such person, in order to afford such person, or governments, the opportunity to provide explanatory, exculpatory, or other additional information with respect to the transfer that caused such person to be identified in a report submitted pursuant to section 2(a); and

(2) to exercise the authority in subsection (a) in all cases where information obtained from a foreign person identified in a report submitted pursuant to section 2(a), or from the government with primary jurisdiction over such person, establishes that the exercise of such authority is warranted.

(c) Submission in Classified Form.

When the President considers it appropriate, the determination and report of the President under subsection (a), or appropriate parts thereof, may be submitted in classified form.

SEC. 6. RESTRICTION ON EXTRAORDINARY PAYMENTS IN CONNECTION WITH THE INTERNATIONAL SPACE STATION.

(a) Restriction on Extraordinary Payments in Connection With the International Space Station.

Notwithstanding any other provision of law, no agency of the United States Government may make extraordinary payments in connection with the International Space Station to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any other organization, entity, or element of the Government of the Russian Federation, unless, during the fiscal year in which the extraordinary payments in connection with the International Space Station are to be made, the President has made the determination described in subsection (b), and reported such determination to the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Determination Regarding Russian Cooperation in Preventing Proliferation to Iran.

The determination referred to in subsection (a) is a determination by the President that

(1) it is the policy of the Government of the Russian Federation to oppose the proliferation to Iran of weapons of mass destruction and missile systems capable of delivering such weapons;

(2) the Government of the Russian Federation has demonstrated and continues to demonstrate a sustained commitment to seek out and prevent the transfer to Iran of goods, services, and technology that could make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems; and

(3) neither the Russian Aviation and Space Agency, nor any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, has, during the 1-year period prior to the date of the determination pursuant to this subsection, made transfers to Iran reportable under section 2(a) of this Act.

(c) Prior Notification.

Not less than 5 days before making a determination under subsection (b), the President shall notify the Committee on International Relations and the Committee on Science of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate of his intention to make such determination.

(d) Written Justification.

A determination of the President under subsection (b) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(e) Submission in Classified Form.

When the President considers it appropriate, a determination of the President under subsection (b), a prior notification under subsection (c), and a written justification under subsection (d), or appropriate parts thereof, may be submitted in classified form.

(f) Exception for Crew Safety.

(1) Exception.

The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency or any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency if the President has notified the Congress in writing that such payments are necessary to prevent the imminent loss of life by or grievous injury to individuals aboard the International Space Station.

(2) Report.

Not later than 30 days after notifying Congress that the National Aeronautics and Space Administration will make extraordinary payments under paragraph (1), the President shall submit to Congress a report describing

(A) the extent to which the provisions of subsection (b) had been met as of the date of notification; and

(B) the measures that the National Aeronautics and Space Administration is taking to ensure that

(i) the conditions posing a threat of imminent loss of life by or grievous injury to individuals aboard the International Space Station necessitating the extraordinary payments are not repeated; and

(ii) it is no longer necessary to make extraordinary payments in order to prevent imminent loss of life by or grievous injury to individuals aboard the International Space Station. (g) Service Module Exception.

(1) The National Aeronautics and Space Administration may make extraordinary payments that would otherwise be prohibited under this section to the Russian Aviation and Space Agency, any organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency, or any subcontractor thereof for the construction, testing, preparation, delivery, launch, or maintenance of the Service Module, and for the purchase (at a total cost not to exceed \$14,000,000) of the pressure dome for the Interim Control Module and the Androgynous Peripheral Docking Adapter and related hardware for the United States propulsion module, if

(A) the President has notified Congress at least 5 days before making such payments;

(B) no report has been made under section 2 with respect to an activity of the entity to receive such payment, and the President has no credible information of any activity that would require such a report; and

(C) the United States will receive goods or services of value to the United States commensurate with the value of the extraordinary payments made.

(2) For purposes of this subsection, the term “maintenance” means activities which cannot be performed by the National Aeronautics and Space Administration and which must be performed in order for the Service Module to provide environmental control, life support, and orbital maintenance functions which cannot be performed by an alternative means at the time of payment.

(3) This subsection shall cease to be effective 60 days after a United States propulsion module is in place at the International Space Station.

(h) Exception.

Notwithstanding subsections (a) and (b), no agency of the United States Government may make extraordinary payments in connection with the International Space Station to any foreign person subject to measures applied pursuant to

(1) section 3 of this Act; or

(2) section 4 of Executive Order No. 12938 (November 14, 1994), as amended by Executive Order No. 13094 (July 28, 1998). Such payments shall also not be made to any other entity if the agency of the United States Government anticipates that such payments will be passed on to such a foreign person.

SEC. 7. DEFINITIONS.

For purposes of this Act, the following terms have the following meanings:

(1) Extraordinary payments in connection with the international space station.

The term “extraordinary payments in connection with the International Space Station” means payments in cash or in kind made or to be made by the United States Government

(A) for work on the International Space Station which the Russian Government pledged at any time to provide at its expense; or

(B) for work on the International Space Station, or for the purchase of goods or services relating to human space flight, that are not required to be made under the terms of a contract or other agreement that was in effect on January 1, 1999, as those terms were in effect on such date.

(2) Foreign person; person.

The terms “foreign person” and “person” mean

- (A) a natural person that is an alien;
 - (B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;
 - (C) any foreign governmental entity operating as a business enterprise; and
 - (D) any successor, subunit, or subsidiary of any entity described in subparagraph (B) or (C).
- (3) Executive order no. 12938. The term “Executive Order No. 12938” means Executive Order No. 12938 as in effect on January 1, 1999.
- (4) Adherent to relevant nonproliferation regime.

A government is an “adherent” to a “relevant nonproliferation regime” if that government

- (A) is a member of the Nuclear Suppliers Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(A);
 - (B) is a member of the Missile Technology Control Regime with respect to a transfer of goods, services, or technology described in section 2(a)(1)(B), or is a party to a binding international agreement with the United States that was in effect on January 1, 1999, to control the transfer of such goods, services, or technology in accordance with the criteria and standards set forth in the Missile Technology Control Regime;
 - (C) is a member of the Australia Group with respect to a transfer of goods, services, or technology described in section 2(a)(1)(C);
 - (D) is a party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction with respect to a transfer of goods, services, or technology described in section 2(a)(1)(D); or
 - (E) is a member of the Wassenaar Arrangement with respect to a transfer of goods, services, or technology described in section 2(a)(1)(E).
- (5) Organization or entity under the jurisdiction or control of the Russian aviation and space agency.

(A) The term “organization or entity under the jurisdiction or control of the Russian Aviation and Space Agency” means an organization or entity that

- (i) was made part of the Russian Space Agency upon its establishment on February 25, 1992;
- (ii) was transferred to the Russian Space Agency by decree of the Russian Government on July 25, 1994, or May 12, 1998;
- (iii) was or is transferred to the Russian Aviation and Space Agency or Russian Space Agency by decree of the Russian Government at any other time before, on, or after the date of the enactment of this Act; or
- (iv) is a joint stock company in which the Russian Aviation and Space Agency or Russian Space Agency has at any time held controlling interest.

P.L. 109-353 North Korea Nonproliferation Act of 2006

(Enrolled as Agreed to or Passed by Both House and Senate)

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘North Korea Nonproliferation Act of 2006’.

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 (2) in subsection (a), (A) in the matter preceding paragraph (1), (i) by striking ‘Iran, or’ and inserting ‘Iran,’; and (ii) by inserting after ‘Syria’ the following: ‘, or on or after January 1, 2006, transferred to or acquired from North Korea’ after ‘Iran’; and (B) in paragraph (2), by inserting ‘, North Korea,’ after ‘Iran’.

(b) Conforming Amendments

Such Act is further amended (1) in section 1, by inserting ‘, North Korea,’ after ‘Iran’; (2) in section 5(a), by inserting ‘, North Korea,’ after ‘Iran’ both places it appears; and (3) in section 6(b)(A) in the heading, by inserting ‘, North Korea,’ after ‘Iran’; and (B) by inserting ‘, North Korea,’ after ‘Iran’ each place it appears.

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.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Section 4: Other Foreign Assistance Sanctions

The sanctions discussed in this section limit U.S. foreign assistance to North Korea. Some of the sanctions derive from North Korea's continued place on the U.S. terrorism list, but they are presented in this section because they apply under the Foreign Assistance Act of 1961.

Foreign Assistance Act of 1961

The following are relevant sections of the Foreign Assistance Act, as amended Title 22 of the U.S. Code that would restrict U.S. foreign assistance to North Korea. The Foreign Assistance Act is the overarching law that regulates how U.S. assistance is provided to other countries. Many of the sections of the Foreign Assistance Act have been added, over time, by other laws. As spelled out in the relevant sections of the Act, foreign assistance include not only common forms of development aid, but also, under other statutes, any agricultural assistance or credits, and Export-Import Bank credits. These forms of assistance are barred under the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, and the Export-Import Bank Act of 1945.

Prohibitions Against Furnishing Assistance to Communist Countries

The section below of the Foreign Assistance Act bars U.S. assistance to Communist countries. North Korea is specifically named in this section as a Communist country. As noted, the section allows for a waiver on national interest grounds, although there is a “sense of Congress” provision that waivers should only be granted to those countries that are reforming and democratizing.

US Code Title 22, Section 2370 begins:

(f) Prohibition against assistance to Communist countries; conditions for waiver of restriction by President; enumeration of Communist countries; removal from application of provisions; preconditions

(1) No assistance shall be furnished under this chapter, (except section 2174 (b) of this title) to any Communist country. This restriction may not be waived pursuant to any authority contained in this chapter unless the President finds and promptly reports to Congress that:

(A) such assistance is vital to the security of the United States;

(B) the recipient country is not controlled by the international Communist conspiracy; and

(C) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase “Communist country” includes specifically, but is not limited to, the following countries:

Democratic People’s Republic of Korea,

People’s Republic of China,

Republic of Cuba,

Socialist Republic of Vietnam,

Tibet

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the President may remove a country, for such period as the President determines, from the application of this subsection, and other provisions which reference this subsection, if the President determines and reports to the Congress that such action is important to the national interest of the United States. It is the sense of the Congress that when consideration is given to authorizing assistance to a country removed from the application of this subsection, one of the factors to be weighed, among others, is whether the country in question is giving evidence of fostering the establishment of a genuinely democratic system, with respect for internationally recognized human rights.

(g) Use of assistance funds to compensate owners for expropriated or nationalized property; waiver for land reform programs notwithstanding any other provision of law, no monetary assistance shall be made available under this chapter to any government or political subdivision or agency of such government which will be used to compensate owners for expropriated or nationalized property and, upon finding by the President that such assistance has been used by any government for such purpose, no further assistance under this chapter shall be furnished to such government until appropriate reimbursement is made to the United States for sums so diverted. This prohibition shall not apply to monetary assistance made available for use by a government (or a political subdivision or agency of a

government) to compensate nationals of that country in accordance with a land reform program, if the President determines that monetary assistance for such land reform program will further the national interests of the United States.

(h) Regulations and procedures to insure aid is not used contrary to the best interests of the United States the President shall adopt regulations and establish procedures to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of subsection (f) of this section.

Prohibition on Assistance to Governments Supporting International Terrorism

The section of the Foreign Assistance Act below (Title 22 US Code, Section 2371) bars U.S. assistance to countries on the terrorism list. As noted in the text, a waiver that would allow for assistance to a terrorism list country is provided for. However, as discussed below, no waiver is provided for in foreign assistance appropriations acts that name North Korea as ineligible for direct U.S. aid. This section of the Act also spells out procedures for a President to essentially remove a country from the “terrorism list.” If a change of regime has occurred – or a dramatic shift in a country’s policies – the President can remove a country from the list virtually immediately. If a country’s regime has not changed, Congress must be notified of a decision to remove a country 45 days before that decision would take effect (giving Congress 45 days to try to block such a decision if it were so inclined to do so).

Section 2371 begins:

(a) Prohibition

The United States shall not provide any assistance under this chapter, the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.], the Peace Corps Act [22 U.S.C. 2501 et seq.], or the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.] 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) of this section, including each determination in effect on December 12, 1989, shall be published in the Federal Register.

(c) Rescission

A determination made by the Secretary of State under subsection (a) of this section 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

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

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

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

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

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

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

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

(d) Waiver

Assistance prohibited by subsection (a) of this section may be provided to a country described in that subsection if

(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a) of this section, except that humanitarian reasons may not be used to justify assistance under subchapter II of this chapter (including part IV, part VI, and part VIII), or the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.]; and

(2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing

(A) the name of the recipient country;

(B) a description of the national security interests or humanitarian reasons which require the waiver;

(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

(D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under this chapter which is also prohibited by section 2780 of this title.

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

The section below of the Foreign Assistance Act (22 US Code Section 2227) names North Korea among other nations (and entities, including the Palestine Liberation Organization) as unable to benefit from U.S. contributions to international organizations, such as U.N. development programs. The U.S. government interpretation of the provision is that the United States is required to reduce its contribution to an international program in proportion to the size of the program in the named country. The international organization may, of course (and almost always does) proceed with its program in the target country, but doing so means that organization will face a reduced contribution from the United States. Under this section, U.S. contributions to UNICEF and the International Atomic Energy

Agency (IAEA) are exempt from U.S. cuts for their work in the named countries (although this IAEA exemption does not apply to Cuba or Iran, as stated).

Begin text of Section:

(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.

(ii) Clause (i) shall not apply with respect to the Juragua Nuclear Power Plant near Cienfuegos, Cuba, or the Pedro Pi Nuclear Research Center unless Cuba

(I) ratifies the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483) or the Treaty for the Prohibition of Nuclear Weapons in Latin America (commonly known as the Treaty of Tlatelolco);

(II) negotiates full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such Treaty; and

(III) incorporates internationally accepted nuclear safety standards.

(d) Programs and projects of the International Atomic Energy Agency in Iran

(1) Notwithstanding subsection (c) of this section, if the Secretary of State determines that programs and projects of the International Atomic Energy Agency in Iran are inconsistent with United States nuclear nonproliferation and safety goals, will provide Iran with training or expertise relevant to the development of nuclear weapons, or are being used as a cover for the acquisition of sensitive nuclear technology, the limitations of subsection (a) of this section shall apply to such programs and projects, and the Secretary of State shall so notify the appropriate congressional committees (as defined in section 3 of the Foreign Relations Authorization Act, Fiscal Year 2003).

(2) A determination made by the Secretary of State under paragraph (1) shall be effective for the 1-year period beginning on the date of the determination.

Ban on Direct Assistance – Foreign Aid Appropriation for FY2006 (P.L. 109-102)

This is a provision, repeated in successive foreign aid appropriations but most recently in the regular foreign aid appropriation for FY2006, that bans direct U.S. foreign assistance to North Korea. The ban applies to North Korea under this law because North Korea is specifically named in this law, and not because it is designated under this or any other law, such as its designation as a state sponsor of terrorism. However, the countries named in this section are the same countries that, as of the passage of this Act, were still on the terrorism list. (Libya has been removed from the terrorism list subsequent to the passage of the Act.)

Text of Provision:

SEC. 507. None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Libya, North Korea, Iran, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents: *Provided further*, That for purposes of this section, the prohibition shall not include activities of the Overseas Private Investment Corporation in Libya: *Provided further*, That the prohibition shall not include direct loans, credits, insurance and guarantees made available by the Export-Import Bank or its agents for or in Libya.

Section 5: Laws on Human Rights Practices and Illicit Activity

Some legislation suggests that it be the policy of the United States to promote change in North Korea's regime and to highlight its human rights abuses. It is the view of a number of experts that changing North Korea's regime into a more pluralistic political system, if not an outright pro-Western democracy, might be the only means of ensuring that North Korea does not pose a threat to its neighbors or to the United States itself. However, it is not formally Bush Administration policy to change North Korea's regime. President Bush has also repeatedly stated that the United States did not intend to conduct any military attack on North Korea.

Other legislation allows the Executive branch to act to prevent North Korea's purported counterfeiting of U.S. currency and conduct other illicit activity to circumvent U.S. sanctions. These provisions have been used by the Bush Administration to pressure some foreign banks to freeze North Korean assets – a major bilateral issue that had stalled progress on the Six Party Talks throughout 2006.

Restrictions on Money Laundering/Section 311 of USA Patriot Act/Banco Delta Asia

Section 311 of the USA Patriot Act (P.L. 107-56) – the text of which is below – gives the Treasury Department the authority to determine foreign banking institutions are of “primary money laundering concern” and, pursuant to that finding, to conduct investigations of that institution’s activities. As noted below in a 2005 finding against the Macau-based Banco Delta Asia (BDA), the Treasury Department has used the authority to try to limit North Korea’s dealings with this and other banks and thereby try to prevent North Korea from earning hard currency illicitly, such as through Macau’s casino sector. The Administration also believes that Kim Jong Il and other North Korean leaders might be maintaining accounts in banks such as BDA allowing them to finance luxury imports and lifestyles.

The move against BDA has, according to Treasury Department officials, deterred other banks from dealing with North Korea. For example, in mid-2006 the Bank of China froze North Korean accounts in its Macau branch.

North Korea has demanded that the restrictions on dealings with the BDA be lifted as a condition for progress in the Six Party talks on North Korea’s nuclear program. The United States and North Korea held two days of talks on the BDA sanctions issue at the margins of a round of Six Party talks in December 2006, but no progress was reported on either the BDA issue or North Korea’s nuclear program.

However, the possible breakthrough represented by the February 13, 2007 nuclear agreement could pave the way for resolution of the BDA issue. The agreement sets up a separate U.S.-North Korea negotiating track that is supposed to resolve the BDA dispute within 30 days. The United States is expected, according to press reports, to unfreeze about \$8 million of the \$24 million in frozen North Korean accounts held in BDA by deeming that portion of the accounts as legitimately earned.

SEC. 311. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) In General.

Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following new section:

“Sec. 5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern

“(a) International Counter-Money Laundering Requirements.

“(1) In general. The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

“(2) Form of requirement. The special measures described in

“(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

“(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

“(C) subsection (b)(5) may be imposed only by regulation.

“(3) Duration of orders; rulemaking. Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)

“(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

“(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

“(4) Process for selecting special measures. In selecting which special measure or measures to take under this subsection, the Secretary of the Treasury

“(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and

“(B) shall consider

“(i) whether similar action has been or is being taken by other nations or multilateral groups;

“(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

“(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions; and

“(iv) the effect of the action on United States national security and foreign policy.

“(5) No limitation on other authority. This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

“(b) Special Measures. The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

“(1) Recordkeeping and reporting of certain financial transactions.

“(A) In general. The Secretary of the Treasury may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

“(B) Form of records and reports. Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including

“(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

“(ii) the legal capacity in which a participant in any transaction is acting;

“(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

“(iv) a description of any transaction.

“(2) Information relating to beneficial ownership. In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

“(3) Information relating to certain payable-through accounts. If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account

(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

“(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

“(4) Information relating to certain correspondent accounts. If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account

“(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

“(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

“(5) Prohibitions or conditions on opening or maintaining certain correspondent or payable-through accounts. If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

“(c) Consultations and Information To Be Considered in Finding Jurisdictions, Institutions, Types of Accounts, or Transactions To Be of Primary Money Laundering Concern.

“(1) In general. In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.

“(2) Additional considerations. In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

“(A) Jurisdictional factors. In the case of a particular jurisdiction

“(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

“(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

“(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

“(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

“(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

“(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

“(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

“(B) Institutional factors. In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction

“(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction;

“(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

“(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

“(d) Notification of Special Measures Invoked by the Secretary. Not later than 10 days after the date of any action taken by the Secretary of the Treasury under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

“(e) Definitions. Notwithstanding any other provision of this subchapter, for purposes of this section and subsections (i) and (j) of section 5318, the following definitions shall apply:

“(1) Bank definitions. The following definitions shall apply with respect to a bank:

“(A) Account. The term ‘account’

“(i) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

“(ii) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

“(B) Correspondent account. The term ‘correspondent account’ means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

“(C) Payable-through account. The term ‘payable-through account’ means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

“(2) Definitions applicable to institutions other than banks. With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term ‘account’, and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

“(3) Regulatory definition of beneficial ownership. The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual’s authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual’s material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

“(4) Other terms. The Secretary may, by regulation, further define the terms in paragraphs (1), (2), and (3), and define other terms for the purposes of this section, as the Secretary deems appropriate.”

(b) Clerical Amendment. The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5318 the following new item:

“5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.”

Finding on Macau-Based Banco Delta Asia

The text of the finding against this bank lays out the rationale for listing it as an institution of primary money laundering concern with respect to its dealings with North Korea.

Begin text:

[Federal Register: September 20, 2005 (Volume 70, Number 181)]

[Notices]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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Part II

DEPARTMENT OF THE TREASURY

Finding That Banco Delta Asia SARL Is a Financial Institution of Primary Money Laundering Concern

AGENCY: The Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of finding.

SUMMARY: Pursuant to the authority contained in 31 U.S.C. 5318A, the Secretary of the Treasury, through his delegate, the Director of the Financial Crimes Enforcement Network, finds that reasonable grounds exist for concluding that Banco Delta Asia SARL (Banco Delta Asia) is a financial institution of primary money laundering concern.

DATES: The finding made in this notice is effective as of September 20, 2005.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, the Financial Crimes Enforcement Network, (800) 949-2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103.

Section 311 of the USA PATRIOT Act (“section 311”) added section 5318A to the BSA, granting the Secretary of the Treasury (the “Secretary”) the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before the Secretary may conclude that

a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, i.e., factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern. For purposes of the finding contained in this notice, the Secretary has delegated his authority under section 311 to the Director of the Financial Crimes Enforcement Network.

Therefore, references to the authority and findings of the Secretary in this document apply equally to the Director of the Financial Crimes Enforcement Network.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give the Secretary the authority to bring additional pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with the both the Secretary of State and the Attorney General. The Secretary is also required by section 311 to consider “such information as the Secretary determines to be relevant, including the following potentially relevant factors”:

The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;

The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and

The extent to which the finding that the institution is of primary money laundering concern is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, in any combination, and in any sequence. The Secretary’s imposition of special measures requires additional consultations to be made and factors to be considered. The statute requires the Secretary to consult with appropriate federal agencies and other interested parties and to consider the following specific factors:

Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C.

5318A(b)(1)-(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing special measures against Nauru).

Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, “such other agencies and interested parties as the Secretary may find to be appropriate.” The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the designated entity.

Whether similar action has been or is being taken by other nations or multilateral groups;

Whether the imposition of any particular special measures would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and

The effect of the action on the United States national security and foreign policy.

Classified information used in support of a section 311 finding and measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for fiscal year 2004, Pub. L. 108-177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

B. Banco Delta Asia

Banco Delta Asia, located and licensed in the Macau Special Administrative Region, China, is the commercial banking arm of its parent company, Delta Asia Group (Holdings) Ltd. (Delta Asia Group). In addition to commercial banking, Delta Asia Group engages in investment banking and insurance activities. Banco Delta Asia was originally established in 1935 as Banco Hang Sang, and its name changed to Banco Delta Asia in December 1993. With approximately 340 employees and a total equity of approximately \$35 million at the close of 2003, Banco Delta Asia is the fourth smallest commercial bank in Macau. Banco Delta Asia operates eight branches in Macau (including a branch at a casino) and is served by a representative office in Japan. In addition, Banco Delta Asia maintains correspondent accounts in Europe, Asia, Australia, Canada, and the United States, and has two wholly owned subsidiaries: Delta Asia Credit Ltd., and Delta Asia Insurance Limited.

The Bankers Almanac (2004). This finding of primary money laundering concern shall apply exclusively to Banco Delta Asia and its branches, offices, and subsidiaries, and not to Delta Asia Group (Holdings) Ltd., or any of its other subsidiaries. Banco Delta Asia’s historical name, Banco Hang Sang, is not to be confused with Hang Seng Bank, a Hong Kong bank, nor the Hang Seng Index, an index of certain shares traded on the Hong Kong Stock Exchange.

C. Macau

Money laundering has been identified as a significant problem in the Macau Special Administrative Region, China. According to the International Narcotics Strategy Control Report (INSCR) published in March 2005 by the U.S. Department of State, Macau's lack of adequate controls and regulatory oversight of the banking and gaming industries (many of which are associated with organized criminal activity) has led to an environment that can be exploited by money launderers. Moreover, the March 2005 INCSR designates Macau as a "jurisdiction of primary concern." The International Monetary Fund (IMF) conducted a study in 2002 concluding that, despite its anti-money laundering legal framework, Macau was "materially non-compliant" in terms of monitoring and reporting of suspicious financial transactions. Of special concern is Macau's lack of cross-border currency reporting requirements. In 2003, Macau prepared money laundering legislation that sought to incorporate the Financial Action Task Force's revised Forty Recommendations on Money Laundering, and to establish a Financial Intelligence Unit. Such legislation has not been adopted and the Financial Intelligence Unit has not been established. As noted in a 2004 IMF study, significant vulnerabilities remain in Macau, although it has made progress in its anti-money laundering regime in the past several years, including the establishment of a Fraud Investigation Section to examine suspicious transactions reports filed by financial institutions.

References in this rule to the money laundering risks in Macau are limited to that jurisdiction, and not applicable to the entire jurisdiction of China.

"Jurisdictions of primary concern" are jurisdictions that are identified as "major money laundering countries," that is, countries "whose financial institutions engage in currency transactions involving significant amounts of proceeds from international narcotics-trafficking." See, <http://www.state.gov/g/inl/rls/nrcrpt/2005/vol2/html/42388.htm>

See International Monetary Fund, Monetary and Exchange Affairs Department, Macau SAR 2002 http://www.amcm.gov.mo/Press_Release/IMF/IMF_Macao_Review.pdf

Government agencies and front companies of the Democratic People's Republic of Korea (DPRK or North Korea) that are engaged in illicit activities use Macau as a base of operations for money laundering and other illegal activities. For example, banks in Macau have allowed these organizations to launder counterfeit currency and the proceeds from government-sponsored illegal drug transactions.

D. North Korea

The involvement of North Korean government agencies and front companies in a wide variety of illegal activities, including drug trafficking and counterfeiting of goods and currency, has been widely reported. Earnings from criminal activity, by their clandestine nature, are difficult to quantify, but studies estimate that proceeds from these activities amount to roughly \$500 million annually.

Emergency Response and Research Institute: "North Korea Government Deeply Involved With Organized Crime?" June 30, 1998; BBC News: "What is a Superdollar?," June 20, 2004; Washington Post: "North Korea's Conduit for Crime", April 25, 1999; Pacific Forum CSIS: "End North Korea's Drug Trade", June 16, 2003.

Congressional Research Service Report for Congress: "Drug Trafficking and North Korea: Issues for U.S. Policy", Updated March 4, 2005.

Customs and police officials of many countries have regularly apprehended North Korean diplomats or quasi-official representatives of state trading companies trying to smuggle narcotics. For example, in December 2004, Turkish officials arrested two North Korean diplomats in Turkey in possession of illegal drugs valued at \$7 million. Earlier that year, Egyptian authorities expelled two other North Korean diplomats who attempted to deliver a shipment of controlled substances valued at \$150,000 in Egypt. In fact, since 1990, North Korea has been positively linked to nearly 50 drug seizures in 20 different countries, a significant number of which involved the arrest or detention of North Korean diplomats or officials. Proceeds from narcotics trafficking may amount to between \$100 million and \$200 million annually.

During the past three decades, there also have been many incidents and arrests involving North Korean officials for distributing supernotes. Since first detected, the United States has taken possession of more than \$45 million of these highly deceptive counterfeit notes.

Substantial evidence exists that North Korean governmental entities and officials launder the proceeds of narcotics trafficking, counterfeit activities, and other illegal activities through a network of front companies that use financial institutions in Macau for their operations.

II. Analysis of Factors

Based upon a review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary has determined that reasonable grounds exist for concluding that Banco Delta Asia is a financial institution of primary money laundering concern. A discussion of the section 311 factors relevant to this finding follows:

1. The Extent to Which Banco Delta Asia Has Been Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction

The Secretary has determined, based upon a variety of sources, that Banco Delta Asia is used to facilitate or promote money laundering and other financial crimes. Banco Delta Asia has provided financial services for over 20 years to multiple North Korean government agencies and front companies that are engaged in illicit activities, and continues to develop these relationships. In fact, such account holders comprise a significant amount of Banco Delta Asia's business. Banco Delta Asia has tailored its services to the DPRK's demands. For example, sources show that the DPRK pays a fee to Banco Delta Asia for financial access to the banking system with little oversight or control. The bank also handles the bulk of the DPRK's precious metal sales, and helps North Korean agents conduct surreptitious, multi-million dollar cash deposits and withdrawals. Banco Delta Asia's questionable relationship with the DPRK is further demonstrated by its maintenance of an uninterrupted banking relationship with one North Korean front company despite the fact that the head of the company was charged with attempting to deposit large sums of counterfeit currency into Banco Delta Asia and was expelled from Macau. Although this same person later returned to his previous leadership position at the front company, services provided by Banco Delta Asia were not discontinued.

Banco Delta Asia's special relationship with the DPRK has specifically facilitated the criminal activities of North Korean government agencies and front companies. For example, sources show that senior officials in Banco Delta Asia are working with DPRK officials to accept large deposits of cash, including counterfeit U.S. currency, and agreeing to place that

currency into circulation. Additionally, it has been widely reported that one well-known North Korean front company that has been a client of Banco Delta Asia for over a decade has conducted numerous illegal activities, including distributing counterfeit currency and smuggling counterfeit tobacco products. In addition, the front company has also long been suspected of being involved in international drug trafficking.

Moreover, Banco Delta Asia facilitated several multi-million dollar wire transfers connected with alleged criminal activity on behalf of another North Korean front company. In addition to facilitating illicit activities of the DPRK, investigations have revealed that Banco Delta Asia serviced a multi-million dollar account on behalf of a known international drug trafficker.

2. The Extent to Which Banco Delta Asia Is Used for Legitimate Business Purposes in the Jurisdiction

It is difficult to determine the extent to which Banco Delta Asia is used for legitimate purposes. Most banking transactions within Macau are conducted by the jurisdiction's largest banks, while Banco Delta Asia ranks as one of the smallest in Macau. Although Banco Delta Asia likely engages in some legitimate activity, the Secretary believes that any legitimate use of Banco Delta Asia is significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.

3. The Extent to Which Such Action Is Sufficient To Ensure, With Respect to Transactions Involving Banco Delta Asia, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, the Secretary has reasonable grounds to conclude that Banco Delta Asia is being used to promote or facilitate international money laundering, and is therefore an institution of primary money laundering concern. Currently, there are no protective measures that specifically target Banco Delta Asia. Thus, finding Banco Delta Asia to be a financial institution of primary money laundering concern, which would allow consideration by the Secretary of special measures to be imposed on the institution under section 311, is a necessary first step to prevent Banco Delta Asia from facilitating money laundering or other financial crime through the U.S. financial system. The finding of primary money laundering concern will bring criminal conduct occurring at or through Banco Delta Asia to the attention of the international financial community and, it is hoped, further limit the bank's ability to be used for money laundering or for other criminal purposes.

III. Finding

Based on the foregoing factors, the Secretary, acting through the Director of the Financial Crimes Enforcement Network, hereby finds that Banco Delta Asia is a financial institution of primary money laundering concern.

Dated: September 12, 2005.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 05-18660 Filed 9-19-05; 8:45 am]

BILLING CODE 4810-02-P

North Korea Human Rights Act of 2004 (P.L. 108-333)

This law, enacted by Congress in 2004, is not so much a “sanction” as it is a statement of congressional condemnation of North Korea’s human rights record, and an expression of congressional preference for a “regime change” policy toward North Korea. Among its major provisions are:

- authorization for \$2 million per year for each of FY2005-2008 for programs or organizations to support democratization, human rights, rule of law, and development of a market economy for North Korea.
- Authorization for \$2 million per year for each of FY2005-2008 to increase U.S. broadcasting to North Korea under the direction of the Broadcasting Board of Governors.
- The appointment of a State Department special envoy for the issue of human rights in North Korea
- Authorization of \$20 million for each of FY2005-2008 for organizations that assist North Korean defectors
- The facilitation of North Korean refugees and defectors to apply for asylum or refugee status in the United States. In May 2006, six North Korean refugees, including four women who say they were victims of sexual slavery or forced marriages, were the first group to be given refugee status under the Act.

Begin text:

Public Law 108-333

108th Congress

To promote human rights and freedom in the Democratic People’s Republic of Korea, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “North Korean Human Rights Act of 2004”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. Findings.

Sec. 4. Purposes.

Sec. 5. Definitions.

TITLE I--PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

Sec. 101. Sense of Congress regarding negotiations with North Korea.

Sec. 102. Support for human rights and democracy programs.

Sec. 103. Radio broadcasting to North Korea.

Sec. 104. Actions to promote freedom of information.

Sec. 105. United Nations Commission on Human Rights.

Sec. 106. Establishment of regional framework.

Sec. 107. Special Envoy on Human Rights in North Korea.

TITLE II--ASSISTING NORTH KOREANS IN NEED

Sec. 201. Report on United States humanitarian assistance.

Sec. 202. Assistance provided inside North Korea.

Sec. 203. Assistance provided outside of North Korea.

TITLE III--PROTECTING NORTH KOREAN REFUGEES

Sec. 301. United States policy toward refugees and defectors.

Sec. 302. Eligibility for refugee or asylum consideration.

Sec. 303. Facilitating submission of applications for admission as a refugee.

Sec. 304. United Nations High Commissioner for Refugees.

Sec. 305. Annual reports.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) According to the Department of State, the Government of North Korea is “a dictatorship under the absolute rule of Kim Jong Il” that continues to commit numerous, serious human rights abuses.

(2) The Government of North Korea attempts to control all information, artistic expression, academic works, and media activity inside North Korea and strictly curtails freedom of speech and access to foreign broadcasts.

(3) The Government of North Korea subjects all its citizens to systematic, intensive political and ideological indoctrination in support of the cult of personality glorifying Kim Jong Il and the late Kim Il Sung that approaches the level of a state religion.

(4) The Government of North Korea divides its population into categories, based on perceived loyalty to the leadership, which determines access to food, employment, higher education, place of residence, medical facilities, and other resources

(5) According to the Department of State, “[t]he [North Korean] Penal Code is [d]raconian, stipulating capital punishment and confiscation of assets for a wide variety of ‘crimes against the revolution,’ including defection, attempted defection, slander of the policies of the Party or State, listening to foreign broadcasts, writing ‘reactionary’ letters, and possessing reactionary printed matter”.

(6) The Government of North Korea executes political prisoners, opponents of the regime, some repatriated defectors, some members of underground churches, and others, sometimes at public meetings attended by workers, students, and schoolchildren.

(7) The Government of North Korea holds an estimated 200,000 political prisoners in camps that its State Security Agency manages through the use of forced labor, beatings, torture, and executions, and in which many prisoners also die from disease, starvation, and exposure.

(8) According to eyewitness testimony provided to the United States Congress by North Korean camp survivors, camp inmates have been used as sources of slave labor for the production of export goods, as targets for martial arts practice, and as experimental victims in the testing of chemical and biological poisons.

(9) According to credible reports, including eyewitness testimony provided to the United States Congress, North Korean Government officials prohibit live births in prison camps, and forced abortion and the killing of newborn babies are standard prison practices.

(10) According to the Department of State, “[g]enuine religious freedom does not exist in North Korea” and, according to the United States Commission on International Religious Freedom, “[t]he North Korean state severely represses public and private religious activities” with penalties that reportedly include arrest, imprisonment, torture, and sometimes execution.

(11) More than 2,000,000 North Koreans are estimated to have died of starvation since the early 1990s because of the failure of the centralized agricultural and public distribution systems operated by the Government of North Korea.

(12) According to a 2002 United Nations-European Union survey, nearly one out of every ten children in North Korea suffers from acute malnutrition and four out of every ten children in North Korea are chronically malnourished.

(13) Since 1995, the United States has provided more than 2,000,000 tons of humanitarian food assistance to the people of North Korea, primarily through the World Food Program.

(14) Although United States food assistance has undoubtedly saved many North Korean lives and there have been minor improvements in transparency relating to the distribution of such assistance in North Korea, the Government of North Korea continues to deny the World Food Program forms of access necessary to properly monitor the delivery of food aid, including the ability to conduct random site visits, the use of native Korean-speaking employees, and travel access throughout North Korea.

(15) The risk of starvation, the threat of persecution, and the lack of freedom and opportunity in North Korea have caused large numbers, perhaps even hundreds of thousands, of North Koreans to flee their homeland, primarily into China.

(16) North Korean women and girls, particularly those who have fled into China, are at risk of being kidnapped, trafficked, and sexually exploited inside China, where many are sold as brides or concubines, or forced to work as prostitutes.

(17) The Governments of China and North Korea have been conducting aggressive campaigns to locate North Koreans who are in China without permission and to forcibly return them to North Korea, where they routinely face torture and imprisonment, and sometimes execution.

(18) Despite China's obligations as a party to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, China routinely classifies North Koreans seeking asylum in China as mere "economic migrants" and returns them to North Korea without regard to the serious threat of persecution they face upon their return.

(19) The Government of China does not provide North Koreans whose asylum requests are rejected a right to have the rejection reviewed prior to deportation despite its obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

(20) North Koreans who seek asylum while in China are routinely imprisoned and tortured, and in some cases killed, after they are returned to North Korea.

(21) The Government of China has detained, convicted, and imprisoned foreign aid workers attempting to assist North Korean refugees in proceedings that did not comply with Chinese law or international standards.

(22) In January 2000, North Korean agents inside China allegedly abducted the Reverend Kim Dong-shik, a United States permanent resident and advocate for North Korean refugees, whose condition and whereabouts remain unknown.

(23) Between 1994 and 2003, South Korea has admitted approximately 3,800 North Korean refugees for domestic resettlement, a number that is small in comparison with the total number of North Korean escapees but far greater than the number legally admitted in any other country.

(24) Although the principal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea, the United States should play a leadership role in focusing international attention on the plight of these refugees, and formulating international solutions to that profound humanitarian dilemma.

(25) In addition to infringing the rights of its own citizens, the Government of North Korea has been responsible in years past for the abduction of numerous citizens of South Korea and Japan, whose condition and whereabouts remain unknown.

SEC. 4. PURPOSES.

The purposes of this Act are

- (1) to promote respect for and protection of fundamental human rights in North Korea;
- (2) to promote a more durable humanitarian solution to the plight of North Korean refugees;
- (3) to promote increased monitoring, access, and transparency in the provision of humanitarian assistance inside North Korea;
- (4) to promote the free flow of information into and out of North Korea; and
- (5) to promote progress toward the peaceful reunification of the Korean peninsula under a democratic system of government.

SEC. 5. DEFINITIONS.

In this Act:

(1) Appropriate congressional committees.

The term “appropriate congressional committees” means

(A) the Committee on International Relations of the House of Representatives; and

(B) the Committee on Foreign Relations of the Senate.

(2) China.

The term “China” means the People’s Republic of China.

(3) Humanitarian assistance.

The term humanitarian assistance means assistance to meet humanitarian needs, including needs for food, medicine, medical supplies, clothing, and shelter.

(4) North Korea.

The term “North Korea” means the Democratic People’s Republic of Korea.

(5) North Koreans.

The term “North Koreans” means persons who are citizens or nationals of North Korea.

(6) South Korea.

The term “South Korea” means the Republic of Korea.

TITLE I--PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

SEC. 101. SENSE OF CONGRESS REGARDING NEGOTIATIONS WITH NORTH KOREA.

It is the sense of Congress that the human rights of North Koreans should remain a key element in future negotiations between the United States, North Korea, and other concerned parties in Northeast Asia.

SEC. 102. SUPPORT FOR HUMAN RIGHTS AND DEMOCRACY PROGRAMS.

(a) Support.

The President is authorized to provide grants to private, nonprofit organizations to support programs that promote human rights, democracy, rule of law, and the development of a market economy in North Korea. Such programs may include appropriate educational and cultural exchange programs with North Korean participants, to the extent not otherwise prohibited by law.

(b) Authorization of Appropriations.

(1) In general.

There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) Availability.

Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

SEC. 103. RADIO BROADCASTING TO NORTH KOREA.

(a) Sense of Congress.

It is the sense of Congress that the United States should facilitate the unhindered dissemination of information in North Korea by increasing its support for radio broadcasting to North Korea, and that the Broadcasting Board of Governors should increase broadcasts to North Korea from current levels, with a goal of providing 12-hour-per-day broadcasting to North Korea, including broadcasts by Radio Free Asia and Voice of America.

(b) Report.

Not later than 120 days after the date of the enactment of this Act, the Broadcasting Board of Governors shall submit to the appropriate congressional committees a report that

- (1) describes the status of current United States broadcasting to North Korea; and
- (2) outlines a plan for increasing such broadcasts to 12 hours per day, including a detailed description of the technical and fiscal requirements necessary to implement the plan.

SEC. 104. ACTIONS TO PROMOTE FREEDOM OF INFORMATION.

(a) Actions.

The President is authorized to take such actions as may be necessary to increase the availability of information inside North Korea by increasing the availability of sources of information not controlled by the Government of North Korea, including sources such as radios capable of receiving broadcasting from outside North Korea.

(b) Authorization of Appropriations.

(1) In general.

There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out subsection (a).

(2) Availability.

Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(c) Report.

Not later than 1 year after the date of the enactment of this Act, and in each of the 3 years thereafter, the Secretary of State, after consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees a report, in classified form, on actions taken pursuant to this section.

SEC. 105. UNITED NATIONS COMMISSION ON HUMAN RIGHTS.

It is the sense of Congress that the United Nations has a significant role to play in promoting and improving human rights in North Korea, and that

- (1) the United Nations Commission on Human Rights (UNCHR) has taken positive steps by adopting Resolution 2003/10 and Resolution 2004/13 on the situation of human rights in North Korea, and particularly by requesting the appointment of a Special Rapporteur on the situation of human rights in North Korea; and

(2) the severe human rights violations within North Korea warrant country-specific attention and reporting by the United Nations Working Group on Arbitrary Detention, the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on Freedom of Religion or Belief, and the Special Rapporteur on Violence Against Women.

SEC. 106. ESTABLISHMENT OF REGIONAL FRAMEWORK.

(a) Findings.

The Congress finds that human rights initiatives can be undertaken on a multilateral basis, such as the Organization for Security and Cooperation in Europe (OSCE), which established a regional framework for discussing human rights, scientific and educational cooperation, and economic and trade issues.

(b) Sense of Congress. It is the sense of Congress that the United States should explore the possibility of a regional human rights dialogue with North Korea that is modeled on the Helsinki process, engaging all countries in the region in a common commitment to respect human rights and fundamental freedoms.

SEC. 107. SPECIAL ENVOY ON HUMAN RIGHTS IN NORTH KOREA.

(a) Special Envoy.

The President shall appoint a special envoy for human rights in North Korea within the Department of State (hereafter in this section referred to as the “Special Envoy”). The Special Envoy should be a person of recognized distinction in the field of human rights.

(b) Central Objective. The central objective of the Special Envoy is to coordinate and promote efforts to improve respect for the fundamental human rights of the people of North Korea.

(c) Duties and Responsibilities.

The Special Envoy shall

- (1) engage in discussions with North Korean officials regarding human rights;
 - (2) support international efforts to promote human rights and political freedoms in North Korea, including coordination and dialogue between the United States and the United Nations, the European Union, North Korea, and the other countries in Northeast Asia; (3) consult with non-governmental organizations who have attempted to address human rights in North Korea; (4) make recommendations regarding the funding of activities authorized in section 102; (5) review strategies for improving protection of human rights in North Korea, including technical training and exchange programs; and
 - (6) develop an action plan for supporting implementation of the United Nations Commission on Human Rights Resolution 2004/13.
- (d) Report on Activities.

Not later than 180 days after the date of the enactment of this Act, and annually for the subsequent 5 year-period, the Special Envoy shall submit to the appropriate congressional committees a report on the activities undertaken in the preceding 12 months under subsection (c).

TITLE II--ASSISTING NORTH KOREANS IN NEED

SEC. 201. REPORT ON UNITED STATES HUMANITARIAN ASSISTANCE.

(a) Report.

Not later than 180 days after the date of the enactment of this Act, and in each of the 2 years thereafter, the Administrator of the United States Agency for International Development, in conjunction with the Secretary of State, shall submit to the appropriate congressional committees a report that describes

(1) all activities to provide humanitarian assistance inside North Korea, and to North Koreans outside of North Korea, that receive United States funding;

(2) any improvements in humanitarian transparency, monitoring, and access inside North Korea during the previous 1-year period, including progress toward meeting the conditions identified in paragraphs (1) through (4) of section 202(b); and (3) specific efforts to secure improved humanitarian transparency, monitoring, and access inside North Korea made by the United States and United States grantees, including the World Food Program, during the previous 1-year period.

(b) Form.

The information required by subsection (a)(1) may be provided in classified form if necessary.

SEC. 202. ASSISTANCE PROVIDED INSIDE NORTH KOREA.

(a) Humanitarian Assistance Through Nongovernmental and International Organizations.

It is the sense of the Congress that

(1) at the same time that Congress supports the provision of humanitarian assistance to the people of North Korea on humanitarian grounds, such assistance also should be provided and monitored so as to minimize the possibility that such assistance could be diverted to political or military use, and to maximize the likelihood that it will reach the most vulnerable North Koreans;

(2) significant increases above current levels of United States support for humanitarian assistance provided inside North Korea should be conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout North Korea; and

(3) the United States should encourage other countries that provide food and other humanitarian assistance to North Korea to do so through monitored, transparent channels, rather than through direct, bilateral transfers to the Government of North Korea.

(b) United States Assistance to the Government of North Korea.

It is the sense of Congress that

(1) United States humanitarian assistance to any department, agency, or entity of the Government of North Korea shall

(A) be delivered, distributed, and monitored according to internationally recognized humanitarian standards;

(B) be provided on a needs basis, and not used as a political reward or tool of coercion;

(C) reach the intended beneficiaries, who should be informed of the source of the assistance; and

(D) be made available to all vulnerable groups in North Korea, no matter where in the country they may be located; and

(2) United States nonhumanitarian assistance to North Korea shall be contingent on North Korea's substantial progress toward

(A) respect for the basic human rights of the people of North Korea, including freedom of religion;

(B) providing for family reunification between North Koreans and their descendants and relatives in the United States;

(C) fully disclosing all information regarding citizens of Japan and the Republic of Korea abducted by the Government of North Korea;

(D) allowing such abductees, along with their families, complete and genuine freedom to leave North Korea and return to the abductees' original home countries;

(E) reforming the North Korean prison and labor camp system, and subjecting such reforms to independent international monitoring; and

(F) decriminalizing political expression and activity.

(c) Report.

Not later than 180 days after the date of the enactment of this Act, the Administrator of the Agency for International Development shall submit to the appropriate congressional committees a report describing compliance with this section.

SEC. 203. ASSISTANCE PROVIDED OUTSIDE OF NORTH KOREA.

(a) Assistance.

The President is authorized to provide assistance to support organizations or persons that provide humanitarian assistance to North Koreans who are outside of North Korea without the permission of the Government of North Korea.

(b) Types of Assistance.

Assistance provided under subsection (a) should be used to provide

(1) humanitarian assistance to North Korean refugees, defectors, migrants, and orphans outside of North Korea, which may include support for refugee camps or temporary settlements; and

(2) humanitarian assistance to North Korean women outside of North Korea who are victims of trafficking, as defined in section 103(14) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(14)), or are in danger of being trafficked.

(c) Authorization of Appropriations.

(1) In general.

In addition to funds otherwise available for such purposes, there are authorized to be appropriated to the President \$20,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) Availability.

Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

TITLE III--PROTECTING NORTH KOREAN REFUGEES

SEC. 301. UNITED STATES POLICY TOWARD REFUGEES AND DEFECTORS.

(a) Report. Not later than 120 days after the date of the enactment of this Act, the Secretary of State, in consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees and the Committees on the Judiciary of the House of Representatives and the Senate a report that describes the situation of North Korean refugees and explains United States Government policy toward North Korean nationals outside of North Korea.

(b) Contents.

The report shall include

(1) an assessment of the circumstances facing North Korean refugees and migrants in hiding, particularly in China, and of the circumstances they face if forcibly returned to North Korea;

(2) an assessment of whether North Koreans in China have effective access to personnel of the United Nations High Commissioner for Refugees, and of whether the Government of China is fulfilling its obligations under the 1951 Convention Relating to the Status of Refugees, particularly Articles 31, 32, and 33 of such Convention;

(3) an assessment of whether North Koreans presently have unobstructed access to United States refugee and asylum processing, and of United States policy toward North Koreans who may present themselves at United States embassies or consulates and request protection as refugees or asylum seekers and resettlement in the United States;

(4) the total number of North Koreans who have been admitted into the United States as refugees or asylees in each of the past 5 years;

(5) an estimate of the number of North Koreans with family connections to United States citizens; and

(6) a description of the measures that the Secretary of State is taking to carry out section 303.

(c) Form.

The information required by paragraphs (1) through (5) of subsection (b) shall be provided in unclassified form. All or part of the information required by subsection (b)(6) may be provided in classified form, if necessary.

SEC. 302. ELIGIBILITY FOR REFUGEE OR ASYLUM CONSIDERATION.

(a) Purpose. The purpose of this section is to clarify that North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea. It is not intended in any way to prejudice whatever rights to citizenship North Koreans may enjoy under the Constitution of the Republic of Korea, or to apply to former North Korean nationals who have availed themselves of those rights.

(b) Treatment of Nationals of North Korea. For purposes of eligibility for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or for asylum under section 208 of such Act (8 U.S.C. 1158), a national of the Democratic People's Republic of Korea shall not be considered a national of the Republic of Korea.

SEC. 303. FACILITATING SUBMISSION OF APPLICATIONS FOR ADMISSION AS A REFUGEE.

The Secretary of State shall undertake to facilitate the submission of applications under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) by citizens of North Korea seeking protection as refugees (as defined in section 101(a)(42) of such Act (8 U.S.C. 1101(a)(42))).

SEC. 304. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES.

(a) Actions in China.

It is the sense of Congress that

(1) the Government of China has obligated itself to provide the United Nations High Commissioner for Refugees (UNHCR) with unimpeded access to North Koreans inside its borders to enable the UNHCR to determine whether they are refugees and whether they require assistance, pursuant to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and Article III, paragraph 5 of the 1995 Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China (referred to in this section as the "UNHCR Mission Agreement");

(2) the United States, other UNHCR donor governments, and UNHCR should persistently and at the highest levels continue to urge the Government of China to abide by its previous commitments to allow UNHCR unimpeded access to North Korean refugees inside China;

(3) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally employ as professionals or Experts on Mission persons with significant experience in humanitarian assistance work among displaced North Koreans in China;

(4) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally contract with appropriate nongovernmental organizations that have a proven record of providing humanitarian assistance to displaced North Koreans in China;

(5) the UNHCR should pursue a multilateral agreement to adopt an effective "first asylum" policy that guarantees safe haven and assistance to North Korean refugees; and

(6) should the Government of China begin actively fulfilling its obligations toward North Korean refugees, all countries, including the United States, and relevant international organizations should increase levels of humanitarian assistance provided inside China to help defray costs associated with the North Korean refugee presence.

(b) Arbitration Proceedings.

It is further the sense of Congress that

(1) if the Government of China continues to refuse to provide the UNHCR with access to North Koreans within its borders, the UNHCR should initiate arbitration proceedings pursuant to Article XVI of the UNHCR Mission Agreement and appoint an arbitrator for the UNHCR; and

(2) because access to refugees is essential to the UNHCR mandate and to the purpose of a UNHCR branch office, a failure to assert those arbitration rights in present circumstances would constitute a significant abdication by the UNHCR of one of its core responsibilities.

SEC. 305. ANNUAL REPORTS.

(a) Immigration Information. Not later than 1 year after the date of the enactment of this Act, and every 12 months thereafter for each of the following 5 years, the Secretary of State and the Secretary of Homeland Security shall submit a joint report to the appropriate congressional committees and the Committees on the Judiciary of the House of Representatives and the Senate on the operation of this title during the previous year, which shall include

(1) the number of aliens who are nationals or citizens of North Korea who applied for political asylum and the number who were granted political asylum; and

(2) the number of aliens who are nationals or citizens of North Korea who applied for refugee status and the number who were granted refugee status.

(b) Countries of Particular Concern. The President shall include in each annual report on proposed refugee admission pursuant to section 207(d) of the Immigration and Nationality Act (8 U.S.C. 1157(d)), information about specific measures taken to facilitate access to the United States refugee program for individuals who have fled countries of particular concern for violations of religious freedom, identified pursuant to section 402(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6442(b)). The report shall include, for each country of particular concern, a description of access of the nationals or former habitual residents of that country to a refugee determination on the basis of

(1) referrals by external agencies to a refugee adjudication;

(2) groups deemed to be of special humanitarian concern to the United States for purposes of refugee resettlement; and

(3) family links to the United States.

Approved October 18, 2004.

LEGISLATIVE HISTORY--H.R. 4011:

HOUSE REPORTS: No. 108-478, Pt. 1 (Comm. on International Relations).

CONGRESSIONAL RECORD, Vol. 150 (2004):

July 21, considered and passed House.

Sept. 28, considered and passed Senate, amended.

Oct. 4, House concurred in Senate amendment.

Sanctions Mandated by the International Religious Freedom Act of 1998 (IRFA, P.L. 105-292)

The following law authorizes certain sanctions and measures (as spelled out in Section 405 of the Act) against countries deemed gross violators of religious freedom, labeled by the Act as “countries of particular concern.” North Korea has been designated as a country of particular concern every year since 2001. However, the law contains substantial flexibility in implementation. The Act gives the President, as an alternative to imposing sanctions, the negotiation and implementation of a binding agreement with any “country of particular concern” which, if fully implemented, would improve that country’s practices to the point where the country no longer would meet the threshold to be determined a country of particular concern. Sanctions authorized under the Act are also subject to a presidential waiver on national interest grounds.

Sanctions authorized under the Act are redundant with those already in effect with North Korea on other grounds, such as its sponsorship of terrorism. For practical purposes, therefore, the Act has not led to the imposition of any additional sanctions on North Korea for its designation as a country of particular concern.

Text of relevant titles of IRFA:

TITLE IV--PRESIDENTIAL ACTIONS

Subtitle I--Targeted Responses to Violations of Religious Freedom Abroad

SEC. 401. PRESIDENTIAL ACTIONS IN RESPONSE TO VIOLATIONS OF RELIGIOUS FREEDOM.

(a) Response to violations of religious freedom.

(1) In general.

(A) United states policy.

It shall be the policy of the United States

(i) to oppose violations of religious freedom that are or have been engaged in or tolerated by the governments of foreign countries; and

(ii) to promote the right to freedom of religion in those countries through the actions described in subsection (b).

(B) Requirement of presidential action. For each foreign country the government of which engages in or tolerates violations of religious freedom, the President shall oppose such violations and promote the right to freedom of religion in that country through the actions described in subsection (b).

(2) Basis of actions.

Each action taken under paragraph (1)(B) shall be based upon information regarding violations of religious freedom, as described in the latest Country Reports on Human Rights Practices, the Annual Report and Executive Summary, and on any other evidence available, and shall take into account any findings or recommendations by the Commission with respect to the foreign country.

(b) Presidential Actions.

(1) In general.

Subject to paragraphs (2) and (3), the President, in consultation with the Secretary of State, the Ambassador at Large, the Special Adviser, and the Commission, shall, as expeditiously as practicable in response to the violations described in subsection (a) by the government of a foreign country

(A) take one or more of the actions described in paragraphs (1) through (15) of section 405(a) (or commensurate action in substitution thereto) with respect to such country; or

(B) negotiate and enter into a binding agreement with the government of such country, as described in section 405(c).

(2) Deadline for actions.

Not later than September 1 of each year, the President shall take action under any of paragraphs (1) through (15) of section 405(a) (or commensurate action in substitution thereto) with respect to each foreign country the government of which has engaged in or tolerated violations of religious freedom at any time since September 1 of the preceding year, except that in the case of action under any of paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto)

(A) the action may only be taken after the requirements of sections 403 and 404 have been satisfied; and

(B) the September 1 limitation shall not apply.

(3) Authority for delay of presidential actions.

The President may delay action under paragraph (2) described in any of paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) if he determines and certifies to Congress that a single, additional period of time, not to exceed 90 days, is necessary pursuant to the same provisions applying to countries of particular concern for religious freedom under section 402(c)(3).

(c) Implementation.

(1) In general.

In carrying out subsection (b), the President shall

(A) take the action or actions that most appropriately respond to the nature and severity of the violations of religious freedom;

(B) seek to the fullest extent possible to target action as narrowly as practicable with respect to the agency or instrumentality of the foreign government, or specific officials thereof, that are responsible for such violations; and

(C) when appropriate, make every reasonable effort to conclude a binding agreement concerning the cessation of such violations in countries with which the United States has diplomatic relations.

(2) Guidelines for presidential actions.

In addition to the guidelines under paragraph (1), the President, in determining whether to take a Presidential action under paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto), shall seek to minimize any adverse impact on

(A) the population of the country whose government is targeted by the Presidential action or actions; and

(B) the humanitarian activities of United States and foreign nongovernmental organizations in such country.

SEC. 402. PRESIDENTIAL ACTIONS IN RESPONSE TO PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

(a) Response to Particularly Severe Violations of Religious Freedom.

(1) United states policy.

It shall be the policy of the United States

(A) to oppose particularly severe violations of religious freedom that are or have been engaged in or tolerated by the governments of foreign countries; and

(B) to promote the right to freedom of religion in those countries through the actions described in subsection (c).

(2) Requirement of presidential action. Whenever the President determines that the government of a foreign country has engaged in or tolerated particularly severe violations of religious freedom, the President shall oppose such violations and promote the right to religious freedom through one or more of the actions described in subsection (c).

(b) Designations of Countries of Particular Concern for Religious

Freedom.

(1) Annual review.

(A) In general.

Not later than September 1 of each year, the President shall review the status of religious freedom in each foreign country to determine whether the government of that country has engaged in or tolerated particularly severe violations of religious freedom in that country during the preceding 12 months or since the date of the last review of that country under this subparagraph, whichever period is longer. The President shall designate each country the government of which has engaged in or tolerated violations described in this subparagraph as a country of particular concern for religious freedom.

(B) Basis of review.

Each review conducted under subparagraph (A) shall be based upon information contained in the latest Country Reports on Human Rights Practices, the Annual Report, and on any other evidence available and shall take into account any findings or recommendations by the Commission with respect to the foreign country.

(C) Implementation.

Any review under subparagraph (A) of a foreign country may take place singly or jointly with the review of one or more countries and may take place at any time prior to September 1 of the respective year.

(2) Determinations of responsible parties.

For the government of each country designated as a country of particular concern for religious freedom under paragraph (1)(A), the President shall seek to determine the agency or instrumentality thereof and the specific officials thereof that are responsible for the particularly severe violations of religious freedom engaged in or tolerated by that government in order to appropriately target Presidential actions under this section in response.

(3) Congressional notification.

Whenever the President designates a country as a country of particular concern for religious freedom under paragraph (1)(A), the President shall, as soon as practicable after the designation is made, transmit to the appropriate congressional committees

(A) the designation of the country, signed by the President; and

(B) the identification, if any, of responsible parties determined under paragraph (2).

(c) Presidential Actions With Respect to Countries of Particular Concern for Religious Freedom.

(1) In general.

Subject to paragraphs (2), (3), and (4) with respect to each country of particular concern for religious freedom designated under subsection (b)(1)(A), the President shall, after the requirements of sections 403 and 404 have been satisfied, but not later than 90 days (or 180 days in case of a delay under paragraph (3)) after the date of designation of the country under that subsection, carry out one or more of the following actions under subparagraph (A) or subparagraph (B):

(A) or subparagraph (B):

(A) Presidential actions.

One or more of the Presidential actions described in paragraphs (9) through (15) of section 405(a), as determined by the President.

(B) Commensurate actions.

Commensurate action in substitution to any action described in subparagraph (A).

(2) Substitution of binding agreements.

(A) In general.

In lieu of carrying out action under paragraph (1), the President may conclude a binding agreement with the respective foreign government as described in section 405(c). The existence of a binding agreement under this paragraph with a foreign government may be considered by the President prior to making any determination or taking any action under this title.

(B) Statutory construction.

Nothing in this paragraph may be construed to authorize the entry of the United States into an agreement covering matters outside the scope of violations of religious freedom.

(3) Authority for delay of presidential actions.

If, on or before the date that the President is required (but for this paragraph) to take action under paragraph (1), the President determines and certifies to Congress that a single, additional period of time not to exceed 90 days is necessary

(A) for a continuation of negotiations that have been commenced with the government of that country to bring about a cessation of the violations by the foreign country;

(B) for a continuation of multilateral negotiations into which the United States has entered to bring about a cessation of the violations by the foreign country;

(C)(i) for a review of corrective action taken by the foreign country after designation of such country as a country of particular concern; or

(ii) in anticipation that corrective action will be taken by the foreign country during the 90-day period, then the President shall not be required to take action until the expiration of that period of time.

(4) Exception for ongoing presidential action.

The President shall not be required to take action pursuant to this subsection in the case of a country of particular concern for religious freedom, if with respect to such country

(A) the President has taken action pursuant to this Act in a preceding year;

(B) such action is in effect at the time the country is designated as a country of particular concern for religious freedom under this section;

(C) the President reports to Congress the information described in section 404(a)(1), (2), (3), and (4) regarding the actions in effect with respect to the country; and

(D) at the time the President determines a country to be a country of particular concern, if that country is already subject to multiple, broad-based sanctions imposed in significant part in response to human rights abuses, and such sanctions are ongoing, the President may determine that one or more of these sanctions also satisfies the requirements of this subsection. In a report to Congress pursuant to section 404(a)(1), (2), (3), and (4), and, as applicable, to section 408, the President must designate the specific sanction or sanctions which he determines satisfy the requirements of this subsection. The sanctions so designated shall remain in effect subject to section 409 of this Act.

(d) Statutory Construction.

A determination under this Act, or any amendment made by this Act, that a foreign country has engaged in or tolerated particularly severe violations of religious freedom shall not be construed to require the termination of assistance or other activities with respect to that country under any other provision of law, including section 116 or 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n, 2304).

SEC. 403. CONSULTATIONS.

(a) In General.

As soon as practicable after the President decides to take action under section 401 in response to violations of religious freedom and the President decides to take action under paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) with respect to that country, or not later than 90 days after the President designates

a country as a country of particular concern for religious freedom under section 402, as the case may be, the President shall carry out the consultations required in this section.

(b) Duty To Consult With Foreign Governments Prior To Taking Presidential Actions.

(1) In general.

The President shall

(A) request consultation with the government of such country regarding the violations giving rise to designation of that country as a country of particular concern for religious freedom or to Presidential action under section 401; and

(B) if agreed to, enter into such consultations, privately or publicly.

(2) Use of multilateral fora.

If the President determines it to be appropriate, such consultations may be sought and may occur in a multilateral forum, but, in any event, the President shall consult with appropriate foreign governments for the purposes of achieving a coordinated international policy on actions that may be taken with respect to a country described in subsection (a), prior to implementing any such action.

(3) Election of nondisclosure of negotiations to public.

If negotiations are undertaken or an agreement is concluded with a foreign government regarding steps to cease the pattern of violations by that government, and if public disclosure of such negotiations or agreement would jeopardize the negotiations or the implementation of such agreement, as the case may be, the President may refrain from disclosing such negotiations and such agreement to the public, except that the President shall inform the appropriate congressional committees of the nature and extent of such negotiations and any agreement reached.

(c) Duty To Consult With Humanitarian Organizations.

The President should consult with appropriate humanitarian and religious organizations concerning the potential impact of United States policies to promote freedom of religion in countries described in subsection (a).

(d) Duty To Consult With United States Interested Parties. The President shall, as appropriate, consult with United States interested parties as to the potential impact of intended Presidential action or actions in countries described in subsection (a) on economic or other interests of the United States.

SEC. 404. REPORT TO CONGRESS.

(a) In General.

Subject to subsection (b), not later than 90 days after the President decides to take action under section 401 in response to violations of religious freedom and the President decides to take action under paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) with respect to that country, or not later than 90 days after the President designates a country as a country of particular concern for religious freedom under section 402, as the case may be, the President shall submit a report to Congress containing the following:

(1) Identification of presidential actions.

An identification of the Presidential action or actions described in paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) to be taken with respect to the foreign country.

(2) Description of violations.

A description of the violations giving rise to the Presidential action or actions to be taken.

(3) Purpose of presidential actions.

A description of the purpose of the Presidential action or actions.

(4) Evaluation.

(A) Description. An evaluation, in consultation with the Secretary of State, the Ambassador at Large, the Commission, the Special Adviser, the parties described in section 403(c) and (d), and whoever else the President deems appropriate, of

(i) the impact upon the foreign government;

(ii) the impact upon the population of the country; and

(iii) the impact upon the United States economy and other interested parties.

(B) Authority to withhold disclosure. The President may withhold part or all of such evaluation from the public but shall provide the entire evaluation to Congress.

(5) Statement of policy options. A statement that noneconomic policy options designed to bring about cessation of the particularly severe violations of religious freedom have reasonably been exhausted, including the consultations required in section 403.

(6) Description of multilateral negotiations. A description of multilateral negotiations sought or carried out, if appropriate and applicable.

(b) Delay in Transmittal of Report. If, on or before the date that the President is required (but for this subsection) to submit a report under subsection (a) to Congress, the President determines and certifies to Congress that a single, additional period of time not to exceed 90 days is necessary pursuant to section 401(b)(3) or 402(c)(3), then the President shall not be required to submit the report to Congress until the expiration of that period of time.

SEC. 405. DESCRIPTION OF PRESIDENTIAL ACTIONS.

(a) Description of Presidential Actions. Except as provided in subsection (d), the Presidential actions referred to in this subsection are the following:

(1) A private demarche.

(2) An official public demarche.

(3) A public condemnation.

(4) A public condemnation within one or more multilateral fora.

(5) The delay or cancellation of one or more scientific exchanges.

(6) The delay or cancellation of one or more cultural exchanges.

(7) The denial of one or more working, official, or state visits.

- (8) The delay or cancellation of one or more working, official, or state visits.
- (9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961.
- (10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (11) The withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act of 1961.
- (12) Consistent with section 701 of the International Financial Institutions Act of 1977, directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402, under
- (A) the Export Administration Act of 1979; (B) the Arms Export Control Act; (C) the Atomic Energy Act of 1954; or (D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- (14) Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (15) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the foreign government, entities, or officials found or determined by the President to be responsible for violations under section 401 or 402.
- (b) Commensurate Action. Except as provided in subsection (d), the President may substitute any other action authorized by law for any action described in paragraphs (1) through (15) of subsection (a) if such action is commensurate in effect to the action substituted and if the action would further the policy of the United States set forth in section 2(b) of this Act. The President shall seek to take all appropriate and feasible actions authorized by law to obtain the cessation of the violations. If commensurate action is taken, the President shall report such action, together with an explanation for taking such action, to the appropriate congressional committees.
- (c) Binding Agreements. The President may negotiate and enter into a binding agreement with a foreign government that obligates such government to cease, or take substantial steps

to address and phase out, the act, policy, or practice constituting the violation of religious freedom. The entry into force of a binding agreement for the cessation of the violations shall be a primary objective for the President in responding to a foreign government that has engaged in or tolerated particularly severe violations of religious freedom.

(d) Exceptions. Any action taken pursuant to subsection (a) or (b) may not prohibit or restrict the provision of medicine, medical equipment or supplies, food, or other humanitarian assistance.

SEC. 406. EFFECTS ON EXISTING CONTRACTS.

The President shall not be required to apply or maintain any Presidential action under this subtitle

(1) in the case of procurement of defense articles or defense services

(A) under existing contracts or subcontracts, including the exercise of options for production quantities, to satisfy requirements essential to the national security of the United States; (B) if the President determines in writing and so reports to Congress that the person or other entity to which the Presidential action would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or (C) if the President determines in writing and so reports to Congress that such articles or services are essential to the national security under defense coproduction agreements; or

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to take the Presidential action.

SEC. 407. PRESIDENTIAL WAIVER.

(a) In General. Subject to subsection (b), the President may waive the application of any of the actions described in paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) with respect to a country, if the President determines and so reports to the appropriate congressional committees that

(1) the respective foreign government has ceased the violations giving rise to the Presidential action; (2) the exercise of such waiver authority would further the purposes of this Act; or (3) the important national interest of the United States requires the exercise of such waiver authority.

(b) Congressional Notification.

Not later than the date of the exercise of a waiver under subsection (a), the President shall notify the appropriate congressional committees of the waiver or the intention to exercise the waiver, together with a detailed justification thereof.

SEC. 408. PUBLICATION IN FEDERAL REGISTER.

(a) In General. Subject to subsection (b), the President shall cause to be published in the Federal Register the following:

(1) Determinations of governments, officials, and entities of particular concern. Any designation of a country of particular concern for religious freedom under section 402(b)(1), together with, when applicable and to the extent practicable, the identities of the officials or entities determined to be responsible for the violations under section 402(b)(2).

(2) Presidential actions. A description of any Presidential action under paragraphs (9) through (15) of section 405(a) (or commensurate action in substitution thereto) and the effective date of the Presidential action.

(3) Delays in transmittal of presidential action reports. Any delay in transmittal of a Presidential action report, as described in section 404(b).

(4) Waivers. Any waiver under section 407.

(b) Limited Disclosure of Information. The President may limit publication of information under this section in the same manner and to the same extent as the President may limit the publication of findings and determinations described in section 654(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2414(c)), if the President determines that the publication of information under this section

(1) would be harmful to the national security of the United States; or (2) would not further the purposes of this Act.

SEC. 409. TERMINATION OF PRESIDENTIAL ACTIONS.

Any Presidential action taken under this Act with respect to a foreign country shall terminate on the earlier of the following dates:

(1) Termination date. Within 2 years of the effective date of the Presidential action unless expressly reauthorized by law.

(2) Foreign government actions. Upon the determination by the President, in consultation with the Commission, and certification to Congress that the foreign government has ceased or taken substantial and verifiable steps to cease the particularly severe violations of religious freedom.

SEC. 410. PRECLUSION OF JUDICIAL REVIEW.

No court shall have jurisdiction to review any Presidential determination or agency action under this Act or any amendment made by this Act.

Subtitle II Strengthening Existing Law

SEC. 421. UNITED STATES ASSISTANCE.

(a) Implementation of Prohibition on Economic Assistance. Section 116(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(c)) is amended

(1) in the text above paragraph (1), by inserting “and in consultation with the Ambassador at Large for International Religious Freedom” after “Labor”; (2) by striking “and” at the end of paragraph (1); (3) by striking the period at the end of paragraph (2) and inserting “; and”; and (4) by adding at the end the following new paragraph:

“(3) whether the government

“(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

“(B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom (as defined in section 3 of the International Religious Freedom Act of 1998), when such efforts could have been reasonably undertaken.”

(b) Implementation of Prohibition on Military Assistance.

Section 502B(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)) is amended by adding at the end the following new paragraph:

“(4) In determining whether the government of a country engages in a consistent pattern of gross violations of internationally recognized human rights, the President shall give particular consideration to whether the government

“(A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or

“(B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.”

SEC. 422. MULTILATERAL ASSISTANCE.

Section 701 of the International Financial Institutions Act (22 U.S.C. 262d) is amended by adding at the end the following new subsection”

(g) In determining whether the government of a country engages in a pattern of gross violations of internationally recognized human rights, as described in subsection (a), the President shall give particular consideration to whether a foreign government

“(1) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998; or “(2) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.”

SEC. 423. EXPORTS OF CERTAIN ITEMS USED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

(a) Mandatory Licensing.

Notwithstanding any other provision of law, the Secretary of Commerce, with the concurrence of the Secretary of State, shall include on the list of crime control and detection instruments or equipment controlled for export and reexport under section 6(n) of the Export Administration Act of 1979 (22 U.S.C. App. 2405(n)), or under any other provision of law, items being exported or reexported to countries of particular concern for religious freedom that the Secretary of Commerce, with the concurrence of the Secretary of State, and in consultation with appropriate officials including the Assistant Secretary of State for Democracy, Human Rights and Labor and the Ambassador at Large, determines are being used or are intended for use directly and in significant measure to carry out particularly severe violations of religious freedom.

(b) Licensing Ban.

The prohibition on the issuance of a license for export of crime control and detection instruments or equipment under section 502B(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2304(a)(2)) shall apply to the export and reexport of any item included pursuant to subsection (a) on the list of crime control instruments.

Sanctions Mandated by the Trafficking Victims Protection Act of 2000

Division A of P.L. 106-386

The following sections of the Trafficking Victims Protection Act of 2000 require sanctions against countries that are classified as not attempting to make even minimal efforts to stop trafficking in persons in that country. Such countries are labeled as “Tier 3” – or worst level of compliance. North Korea has been classified in Tier 3 by each annual State Department report on trafficking in persons since 2003. Many of the sanctions and waiver provisions are similar to those in IRFA, above.

However, as is the case with respect to IRFA, above, the sanctions authorized under the Trafficking Act are mostly redundant with those already imposed on North Korea on other grounds. North Korea’s Tier 3 classification, therefore, has not added any actual sanctions to those in place under other laws and Executive orders.

Note: sections of this law that are not related to foreign policy/North Korea policy have been omitted.

Begin text:

DIVISION A. TRAFFICKING VICTIMS PROTECTION ACT OF 2000

SEC. 101. SHORT TITLE.

This division may be cited as the “Trafficking Victims Protection Act of 2000”.

SEC. 102. PURPOSES AND FINDINGS.

(a) Purposes. The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

(b) Findings. Congress finds that:

(1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin. Traffickers lure women and girls into their

networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

(7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.

(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

(9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

(10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.

(12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.

(13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of title 18, United States Code, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

(14) Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the

range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.

(18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

(22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.

(23) The United States and the international community agree that trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights; the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General

Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

(24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral fora to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

SEC. 103. DEFINITIONS.

In this division:

(1) Appropriate congressional committees. The term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on International Relations and the Committee on the Judiciary of the House of Representatives.

(2) Coercion. The term “coercion” means

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.

(3) Commercial sex act. The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(4) Debt bondage. The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(5) Involuntary servitude. The term “involuntary servitude” includes a condition of servitude induced by means of

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

(6) Minimum standards for the elimination of trafficking. The term “minimum standards for the elimination of trafficking” means the standards set forth in section 108.

(7) Nonhumanitarian, nontrade-related foreign assistance. The term “nonhumanitarian, nontrade-related foreign assistance” means

(A) any assistance under the Foreign Assistance Act of 1961, other than

(i) assistance under chapter 4 of part II of that Act that is made available for any program, project, or activity eligible for assistance under chapter 1 of part I of that Act;

(ii) assistance under chapter 8 of part I of that Act;

(iii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;

(iv) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;

(v) antiterrorism assistance under chapter 8 of part II of that Act;

(vi) assistance for refugees;

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(viii) programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation; and

(ix) other programs involving trade-related or humanitarian assistance; and

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961.

(8) Severe forms of trafficking in persons. The term “severe forms of trafficking in persons” means

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) Sex trafficking. The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(10) State. The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and territories and possessions of the United States.

(11) Task force. The term “Task Force” means the Interagency Task Force to Monitor and Combat Trafficking established under section 105.

(12) United states. The term “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American

Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(13) Victim of a severe form of trafficking. The term “victim of a severe form of trafficking” means a person subject to an act or practice described in paragraph (8).

(14) Victim of trafficking. The term “victim of trafficking” means a person subjected to an act or practice described in paragraph (8) or (9).

SEC. 104. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

(a) Countries Receiving Economic Assistance. Section 116(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151(f)) is amended to read as follows:

“(f)(1) The report required by subsection (d) shall include the following:

“(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

“(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

“(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

“(ii) Which government authorities in that country are involved in activities to combat such trafficking.

“(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

“(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

“(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

“(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

“(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

“(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

“(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

“(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

“(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.”

(b) Countries Receiving Security Assistance. Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304) is amended by adding at the end the following new subsection:

“(h)(1) The report required by subsection (b) shall include the following:

“(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

“(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

“(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

“(ii) Which government authorities in that country are involved in activities to combat such trafficking.

“(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

“(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

“(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

“(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation

would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

“(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

“(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

“(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

“(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

“(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.”

SEC. 105. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.

(a) Establishment. The President shall establish an Interagency Task Force to Monitor and Combat Trafficking.

(b) Appointment. The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, and such other officials as may be designated by the President

(c) Chairman. The Task Force shall be chaired by the Secretary of State.

(d) Activities of the Task Force. The Task Force shall carry out the following activities:

(1) Coordinate the implementation of this division.

(2) Measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking. The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.

(3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.

(4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and shall include initiatives to

enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.

(5) Examine the role of the international “sex tourism” industry in the trafficking of persons and in the sexual exploitation of women and children around the world.

(6) Engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division.

(e) Support for the Task Force. The Secretary of State is authorized to establish within the Department of State an Office to Monitor and Combat Trafficking, which shall provide assistance to the Task Force. Any such Office shall be headed by a Director. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this division and may have additional responsibilities as determined by the Secretary. The Director shall consult with nongovernmental organizations and multilateral organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.

SEC. 106. PREVENTION OF TRAFFICKING.

(a) Economic Alternatives To Prevent and Deter Trafficking. The President shall establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include

(1) microcredit lending programs, training in business development, skills training, and job counseling;

(2) programs to promote women’s participation in economic decision-making;

(3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;

(4) development of educational curricula regarding the dangers of trafficking; and

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

(b) Public Awareness and Information. The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

(c) Consultation Requirement. The President shall consult with appropriate nongovernmental organizations with respect to the establishment and conduct of initiatives described in subsections (a) and (b).

(Section 107 was omitted because it relates to how victims of trafficking are to be handled/treated in the United States.)

SEC. 108. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

(a) Minimum Standards. For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or

destination for a significant number of victims of severe forms of trafficking are the following:

- (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.
- (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.
- (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.
- (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.
 - (b) Criteria. In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:
 - (1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons that take place wholly or partly within the territory of the country.
 - (2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.
 - (3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.
 - (4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.
 - (5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).
 - (6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of

human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

SEC. 109. ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following new section:

“SEC. 134. ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

“(a) Authorization. The President is authorized to provide assistance to foreign countries directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for the elimination of trafficking (as defined in section 103 of the Trafficking Victims Protection Act of 2000), including

“(1) the drafting of laws to prohibit and punish acts of trafficking;

“(2) the investigation and prosecution of traffickers;

“(3) the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and

“(4) the expansion of exchange programs and international visitor programs for governmental and nongovernmental personnel to combat trafficking.

“(b) Funding. Amounts made available to carry out the other provisions of this part (including chapter 4 of part II of this Act) and the Support for East European Democracy (SEED) Act of 1989 shall be made available to carry out this section.”

SEC. 110. ACTIONS AGAINST GOVERNMENTS FAILING TO MEET MINIMUM STANDARDS.

(a) Statement of Policy. It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that

(1) does not comply with minimum standards for the elimination of trafficking; and

(2) is not making significant efforts to bring itself into compliance with such standards.

(b) Reports to Congress.

(1) Annual report. Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons that shall include

(A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and

(C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

(2) Interim reports. In addition to the annual report under paragraph (1), the Secretary of State may submit to the appropriate congressional committees at any time one or more interim reports with respect to the status of severe forms of trafficking in persons, including information about countries whose governments

(A) have come into or out of compliance with the minimum standards for the elimination of trafficking; or

(B) have begun or ceased to make significant efforts to bring themselves into compliance, since the transmission of the last annual report.

(3) Significant efforts. In determinations under paragraph (1) or (2) as to whether the government of a country is making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking, the Secretary of State shall consider

(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

(c) Notification. Not less than 45 days or more than 90 days after the submission, on or after January 1, 2003, of an annual report under subsection (b)(1), or an interim report under subsection (b)(2), the President shall submit to the appropriate congressional committees a notification of one of the determinations listed in subsection (d) with respect to each foreign country whose government, according to such report

(A) does not comply with the minimum standards for the elimination of trafficking; and

(B) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C).

(d) Presidential Determinations. The determinations referred to in subsection (c) are the following:

(1) Withholding of nonhumanitarian, nontrade-related assistance. The President has determined that

(A)(i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year

until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) Ongoing, multiple, broad-based restrictions on assistance in response to human rights violations. The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). Such determination shall be accompanied by a description of the specific restriction or restrictions that were the basis for making such determination.

(3) Subsequent compliance. The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) Continuation of assistance in the national interest. Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of nonhumanitarian, nontrade-related foreign assistance, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this division or is otherwise in the national interest of the United States.

(5) Exercise of waiver authority.

(A) In general. The President may exercise the authority under paragraph (4) with respect to

- (i) all nonhumanitarian, nontrade-related foreign assistance to a country;
- (ii) all multilateral assistance described in paragraph (1)(B) to a country; or
- (iii) one or more programs, projects, or activities of such assistance.

(B) Avoidance of significant adverse effects. The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

(6) Definition of multilateral development bank. In this subsection, the term "multilateral development bank" refers to any of the following institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guaranty Agency.

(e) Certification. Together with any notification under subsection (c), the President shall provide a certification by the Secretary of State that, with respect to any assistance described in clause (ii), (iii), or (v) of section 103(7)(A), or with respect to any assistance described in section 103(7)(B), no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

SEC. 111. ACTIONS AGAINST SIGNIFICANT TRAFFICKERS IN PERSONS.

(a) Authority To Sanction Significant Traffickers in Persons.

(1) In general. The President may exercise the authorities set forth in section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701) without regard to section 202 of that Act (50 U.S.C. 1701) in the case of any of the following persons:

(A) Any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States.

(B) Foreign persons that materially assist in, or provide financial or technological support for or to, or provide goods or services in support of, activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A).

(C) Foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker identified pursuant to subparagraph (A).

(2) Penalties. The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under this section.

(b) Report to Congress on Identification and Sanctioning of Significant Traffickers in Persons.

(1) In general. Upon exercising the authority of subsection (a), the President shall report to the appropriate congressional committees

(A) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section and the basis for such determination; and

(B) detailing publicly the sanctions imposed pursuant to this section.

(2) Removal of sanctions. Upon suspending or terminating any action imposed under the authority of subsection (a), the President shall report to the committees described in paragraph (1) on such suspension or termination.

(3) Submission of classified information. Reports submitted under this subsection may include an annex with classified information regarding the basis for the determination made by the President under paragraph (1)(A).

(c) Law Enforcement and Intelligence Activities Not Affected. Nothing in this section prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(d) Exclusion of Persons Who Have Benefited From Illicit Activities of Traffickers in Persons. Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by inserting at the end the following new subparagraph:

“(H) Significant traffickers in persons.

“(i) In general. Any alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000, or who the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

“(ii) Beneficiaries of trafficking. Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

“(iii) Exception for certain sons and daughters. Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.”

(e) Implementation.

(1) Delegation of authority. The President may delegate any authority granted by this section, including the authority to designate foreign persons under paragraphs (1)(B) and (1)(C) of subsection (a).

(2) Promulgation of rules and regulations. The head of any agency, including the Secretary of Treasury, is authorized to take such actions as may be necessary to carry out any authority delegated by the President pursuant to paragraph (1), including promulgating rules and regulations.

(3) Opportunity for review. Such rules and regulations shall include procedures affording an opportunity for a person to be heard in an expeditious manner, either in person or through a representative, for the purpose of seeking changes to or termination of any determination, order, designation or other action associated with the exercise of the authority in subsection (a).

(f) Definition of Foreign Persons. In this section, the term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

(g) Construction. Nothing in this section shall be construed as precluding judicial review of the exercise of the authority described in subsection (a).

(Section 112 was omitted because it deals mostly with penalties for traffickers in persons.)

SEC. 113. AUTHORIZATIONS OF APPROPRIATIONS.

(a) Authorization of Appropriations in Support of the Task Force. To carry out the purposes of sections 104, 105, and 110, there are authorized to be appropriated to the Secretary of State \$1,500,000 for fiscal year 2001 and \$3,000,000 for fiscal year 2002.

(b) Authorization of Appropriations to the Secretary of Health and Human Services. To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Health and Human Services \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(c) Authorization of Appropriations to the Secretary of State.

(1) Assistance for victims in other countries. To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(2) Voluntary contributions to osce. To carry out the purposes of section 109, there are authorized to be appropriated to the Secretary of State \$300,000 for voluntary contributions to advance projects aimed at preventing trafficking, promoting respect for human rights of trafficking victims, and assisting the Organization for Security and Cooperation in Europe participating states in related legal reform for fiscal year 2001.

(3) Preparation of annual country reports on human rights. To carry out the purposes of section 104, there are authorized to be appropriated to the Secretary of State such sums as may be necessary to include the additional information required by that section in the annual Country Reports on Human Rights Practices, including the preparation and publication of the list described in subsection (a)(1) of that section.

(d) Authorization of Appropriations to Attorney General. To carry out the purposes of section 107(b), there are authorized to be appropriated to the Attorney General \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(e) Authorization of Appropriations to President.

(1) Foreign victim assistance. To carry out the purposes of section 106, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(2) Assistance to foreign countries to meet minimum standards. To carry out the purposes of section 109, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(f) Authorization of Appropriations to the Secretary of Labor. To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Labor \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

Prohibition on Use of North Korean Vessels

This sanction bars U.S. companies from flying North Korean flags on freighters, tankers, and fishing vessels. The measure was imposed after the Administration learned that the North Korea was selling the use of its flag to merchant shipping companies at inflated prices as a means of earning extra revenue. Some of the vessels reportedly were involved in illegal smuggling. According to press reports, as many as 80 foreign ships were flying a North Korean flag, and at least 11 of these were ships owned by U.S. companies or U.S.-based subsidiaries of foreign companies. The shipping companies might have been taking advantage of the fact that North Korea's enforcement of regulations for safety and seaworthiness is lax, and that many governments are reluctant to inspect North Korean-flagged vessels, making them easy to use for smuggling activities.

Begin text of ruling:

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Foreign Assets Control Regulations, 31 CFR part 500, effective May 8, 2006, to add a new provision limiting the authorization of post-June 19, 2000 transactions involving property in which the Democratic People's Republic of Korea ("North Korea") or a national thereof has an interest. The new provision prohibits United States persons from owning, leasing, operating or insuring any vessel flagged by North Korea. **DATES:** Effective date: May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director of Compliance Outreach/Implementation, tel.: (202) 622-2490, Assistant Director of Licensing, tel.: (202) 622-2480, Assistant Director of Policy, tel.: (202) 622-4855, or Chief Counsel, tel.: (202) 622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

Background: The Foreign Assets Control Regulations (the "FACR"), 31 CFR part 500, which are authorized under the Trading with the Enemy Act, 50 U.S.C. App. 1-44, imposed economic sanctions against the Democratic People's Republic of Korea ("North Korea") beginning in 1950. Since that time, those sanctions have been modified on a number of occasions, most recently to ease economic sanctions against North Korea in order to improve overall relations and to encourage North Korea to continue to refrain from testing long-range missiles. Consistent with U.S. foreign policy interests, the Office of Foreign Assets Control ("OFAC"), on June 19, 2000, amended the FACR, 31 CFR part 500, to add Sec. 500.586, authorizing transactions concerning certain North Korean property. Subject to the limitations in paragraph (b) of Sec. 500.586, paragraph (a) authorized new, i.e., post-June 19, 2000, transactions in which North Korea has a property interest. Paragraph (b) set forth four limitations on the new authorization.

Today OFAC is amending the FACR by adding a new provision, effective May 8, 2006, to further limit the authorization provided by Sec. 500.586. This new provision, Sec. 500.586(b)(5), prohibits United States persons from owning, leasing, operating or insuring any vessel flagged by North Korea. Because the term United States person is a new term not previously used or defined in the FACR, a definition of the term is provided for purposes of paragraph (b)(5). The effective date of this amendment has been delayed to provide time for United States persons to re-flag any vessels currently flagged by North Korea. Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed

rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601-602) does not apply. Paperwork Reduction Act As authorized in the APA, the Regulations are being issued without prior notice and public comment.

The collection of information related to 31 part 500 is contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505-0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. List of Subjects in 31 CFR Part 500 Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, North Korea.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows: PART 500--FOREIGN ASSETS CONTROL REGULATIONS 0 1. The authority citation for part 500 continues to read as follows: Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. App. 1- 44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748. Subpart E--Licenses, Authorizations and Statements of Licensing Policy 0 2. A new paragraph (b)(5) is added to Sec. 500.586 to read as follows: Sec. 500.586 Authorization of new transactions concerning certain North Korean property. * * * * (b) * * * (5) Effective May 8, 2006, United States persons are prohibited from owning, leasing, operating or insuring any vessel flagged by North Korea. For purposes of this paragraph, the term United States person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

* * * * Dated: March 23, 2006. Barbara C. Hammerle, Acting Director, Office of Foreign Assets Control. Approved: March 24, 2006. Stuart A. Levey, Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury. [FR Doc. 06-3286 Filed 4-5-06; 8:45 am] BILLING CODE 4810-25-P

Removing Restrictions on North Korea - U.S. Relations

As discussed in the previous sections, North Korea is subject to a highly strict U.S. sanctions regime. Should there be a U.S. decision to normalize relations with North Korea, for example in the course of implementing the February 13, 2007 nuclear agreement, these sanctions and other restrictions would need to be removed in order to promote normal U.S.-North Korea commerce, facilitate U.S. investment in North Korea, to permit increased U.S. foreign assistance to it, and to promote cultural linkages. Many of the sanctions in place are overlapping and mutually reinforcing, meaning that a sanction might still remain in place under one law, even if that same sanction is repealed under a different law.

In theory and often in practice, the Executive branch has considerable discretion in removing U.S. sanctions against any country. Most U.S. sanctions against North Korea are in force by Executive order, and, has been demonstrated with the modifications to U.S. sanctions against North Korea, can be undone through Executive branch action alone. However, any sweeping lifting of sanctions generally occurs within an overall political context of improving relations, and with a consensus in Congress that a sanctions regime should be unwound. This is likely to hold true in the case of North Korea, and the degree and the rate at which any sanctions are lifted are likely to depend on North Korea's implementation of the February 13, 2007 nuclear agreement.

Once there is a decision by an Administration to lift sanctions, the process can be accomplished fairly rapidly. Within less than one year after the fall of the Taliban regime in Afghanistan, the Bush Administration had lifted virtually all U.S. sanctions against Afghanistan — most imposed during the Taliban era but some held over from the Soviet occupation period (1979-1989). In the case of Libya, virtually all U.S. sanctions were removed within three years of Libya's decision to end its weapons of mass destruction programs. Libya has been removed from the terrorism list, thereby lifting those sanctions associated with that designation.

In the case of North Korea, even if it were removed from the terrorism list, other sanctions would remain in place as long as North Korea continues to be designated as a Communist country. Removing that designation would presumably require a change of regime, although provisions barring U.S. aid to Communist countries contain waiver provisions. That designation, as long as it remains, would also continue a ban on U.S. Export-Import Bank loans for exports to North Korea, as well as prevent most forms of U.S. foreign assistance to North Korea. That designation might also prevent North Korea from Permanent Normal Trade Relations (formerly Most Favored Nation) status for sales of its products to the United States. However, if Congress were inclined to do so, it could pass special legislation extending PNTR to North Korea even though it remains Communist-controlled; such legislation was passed in the case of Vietnam.

Some experts believe that a comprehensive settlement over North Korea's nuclear program could create a climate in which U.S. sanctions against North Korea could be lifted. Others believe that complete lifting of sanctions and full normalization would require moving from ceasefire to a true peace treaty between North and South Korea. However, some experts doubt that there could be a full normalization of relations as long as Kim Jong Il remains in power, while still a small minority of experts might advocate holding out for

reunification of the Korean Peninsula.

This section will focus first and foremost on outright repeal or removal of the various sanctions in place against North Korea, rather than on the potential for temporary waivers of sanctions. Of those sanctions that are in laws passed by Congress, virtually all have provisions for waiver of the specific sanction. For example, in most cases, a sanction can be waived if the President certifies that waiving the application of the sanction is in the national interest or necessary to protect U.S. national security.

Lifting Restrictions on Trade, Aid, and Investment

If there were an Administration decision to normalize U.S. relations with North Korea, there are a number of significant steps that would need to be taken to normalizing commercial interactions between the two countries. One of the most important steps would be an Executive order easing remaining trade restriction and licensing procedures for trade with North Korea. However, these sanctions are also among the easiest to unwind, should a U.S. administration decide to do so. These Executive orders can be modified piecemeal, to gradually broaden commerce between the United States and North Korea or, they can be revoked in their entirety. As noted in the earlier sections of the paper, trade restrictions were already eased in June 2000.

Removing Economic Sanctions Imposed by the “Terrorism List”

A more substantial broadening of U.S. economic relations with North Korea would result from its removal from the terrorism list, a step that has appeared imminent at times and now appears to again be under consideration in the context of the February 13, 2007 nuclear agreement. Several different economic sanctions against North Korea would end if it were removed from the list. As discussed in the body of this paper, this designation triggers sanctions under several different laws, including the Arms Export Control Act, the Export Administration Act, and the Anti-Terrorism and Effective Death Penalty Act of 1996. The latter law provides not only for sanctions against the terrorism list countries themselves but also imposes “secondary sanctions” against countries and foreign entities that assist or sell arms to countries on the terrorism list.

North Korea, by all accounts, including the State Department’s most recent annual report on international terrorism (released April 2006), has few ties to international terrorist groups. It is possible that, if the February 13, 2007 nuclear agreement is fully implemented, North Korea might be deemed by the Administration to have satisfied the requirements for removal from the U.S. terrorism list.

Congressional concurrence would be required to remove North Korea from the terrorism list. As discussed below, the requirements for removal refer largely to promises and assurances that a terrorism list country would not sponsor acts of terrorism in the future, rather than explain or compensate for acts of terrorism it might have sponsored in the past.

Congressional report language provides criteria for a state to remain on the terrorism list. As contained in a House Foreign Affairs Committee report in 1989 (H.Rept. 101-296) and a Senate report (S.Rept.101-173), the criteria are that the state in question:

- allows its territory to be used as a sanctuary for terrorists;
- furnishes lethal substances to individuals or groups with the likelihood they will be used for terrorism;
- provides logistical support to the group or individual terrorists;
- provides safe haven or headquarters to terrorists or their groups;
- plans, directs, trains, or assists in the execution of terrorist acts;
- provides direct or indirect financial support for terrorist activities;

— and provides diplomatic facilities such as support or documentation to aid or abet terrorist activities.

The Arms Export Control Act adds a criterion (Section d). A country can be placed on the terrorism list if it willfully aids or abets the international proliferation of nuclear explosive devices to individuals or groups or willfully aids or abets and individual or group in acquiring unsafeguarded “special nuclear material.”

As a measure of how difficult it is to reach a decision to remove a country from the list, it should be noted that, prior to the removal of Libya from the list in June 2006, Iraq (in 1982) was the only country ever to be removed from the terrorism list without a change of regime. South Yemen was deleted from the list in 1990 when the two Yemens merged, on the grounds that the country no longer existed. Iraq was restored to the terrorism list following its invasion of Kuwait on August 2, 1990, but removed again in 2004 after the U.S.-led overthrow of Saddam Hussein.

Should an Administration decide to remove North Korea from the terrorism list, the statutes governing removal from the terrorism list give Congress a formal role in reviewing that decision, and, in so doing, raise the threshold for an Administration to take that step. The requirements for removal from the terrorism list are spelled out in the Arms Export Control Act (see the previous sections of this paper for text of that law), as discussed below.

The Arms Export Control Act (Section f, “Rescission”) spells out two circumstances for removal - one in which the terrorism list country’s regime has changed, and one in which it has not. If a terrorism list country’s regime has changed, the President can remove a country from the list immediately, by providing a report to Congress that there has been a “fundamental change in the leadership and policies of the government of the country concerned; that the (new) government is not supporting acts of international terrorism; and that the (new) government has provided assurances it will not support acts of international terrorism in the future.

If there has not been a regime change, the President must submit a report to Congress *45 days before the removal would take effect*, certifying that the government concerned has not provided any support for international terrorism during the preceding six months; and the government concerned has provided assurances it will not support acts of terrorism in the future.

According to the Act, when there has not been a regime change, the 45 day delay to remove a country from the list gives Congress the opportunity to pass a joint resolution blocking the removal. A joint resolution must be passed in the exact same form in both chambers to be presented for presidential signature. The President has the option of vetoing the joint resolution. If the veto is sustained, then the country concerned is removed from the terrorism list. If the veto is overridden (two-thirds vote to override in both chambers), then Congress has blocked the country’s removal from the list.

Providing U.S. Foreign Aid

In order to allow the President to provide foreign aid to North Korea, Congress would need to delete North Korea from a list of countries barred from U.S. assistance under successive foreign aid appropriations laws, as noted in the body of the paper. Congress could do so when it acts on foreign aid appropriations for any subsequent fiscal year, by simply omitting North Korea from the list of countries named in that section. Naming North Korea among a list of countries sanctioned has been the mechanism by which Congress and successive Administrations have barred North Korea from indirect U.S. assistance and direct U.S. assistance, and for which the United States has withheld a proportion of its donations to international programs that operate in North Korea (Section 2227 of the Foreign Assistance Act of 1961).

In the case of recent foreign aid appropriations, those countries named as ineligible for U.S. direct assistance have been the same countries as those on the terrorism list. *However, these laws name the terrorism list countries specifically - they do not apply the sanctions to "countries on the terrorism list per se."* Therefore, North Korea's removal from the terrorism list would not automatically lift these sanctions, if North Korea continued to be named specifically in these pieces of legislation.

Revocation of the withholding of a portion of U.S. contributions of programs that work in North Korea (Section 2227 sanction) is somewhat more difficult, because that is a section of permanent law. This is unlike the foreign aid appropriation discussed above, which is rewritten each year. To remove this sanction in the Foreign Assistance Act, a piece of legislation, perhaps a section of a foreign aid or other bill, would have to amend the relevant section of the Foreign Assistance Act by deleting North Korea from the list of countries named in Section 2227. (It should be noted that this particular sanction does not affect North Korea directly - it affects the international programs, such as U.N. programs, that work in North Korea). Also, this sanction does not apply to contributions to the International Atomic Energy Agency or to UNICEF.

It should be noted that removal from the terrorism list – and the elimination of the other restrictions on aid to North Korea imposed by Congress, as noted above – would *open* North Korea to U.S. assistance (assuming other sanctions barring such aid were dropped as well), but would not *require* aid to be provided. Many observers believe that, if Kim Jong Il were still in power, only a dramatic improvement in U.S.-North Korea relations would cause an Administration to request that Congress appropriate U.S. foreign aid to North Korea.

Supporting International Lending

Removal of North Korea from the terrorism list would remove the legal requirement that the United States vote against international lending to North Korea. The current requirement to vote against international lending to terrorism list countries is imposed by Section 1621 of the International Financial Institutions Act (22 U.S.C. 262c et.seq.). That section was added by the Anti-Terrorism and Effective Death Penalty Act of 1996. It applies to loans from the International Bank for Reconstruction and Development (World Bank), the International Development Association, the International Monetary Fund (IMF), the Inter-American Bank, the Asian Development Bank, the African Development Bank, the African Development Fund, and the European Bank for Reconstruction and Development.

Removing the legal restriction requiring the United States to vote against international lending to North Korea does not necessarily mean that an Administration would be required to support lending to North Korea. An Administration could still vote against such lending without a legal requirement to do so. A decision to normalize relations with North Korea would probably lead to an Administration decision to signal its approval for international loans to North Korea for the purpose of fostering its economic development.

Arms and Technology Sales

North Korea is subject to a wide range of anti-proliferation sanctions, but removal from the terrorism list would lead to an easing of exports of dual use technology to North Korea.

However, even if North Korea were removed from the terrorism list, a ban on arms sales to North Korea would nonetheless remain in place under other laws, including the Anti-Terrorism and Effective Death Penalty Act. The sanctions provisions of that law would have to be rendered inapplicable if there were a decision to sell to North Korea U.S. arms by removing North Korea from a list of countries established by Section 330 of that Act. That section bars U.S. sales of defense articles or services to countries designated each May 15 as “*not cooperating fully with United States anti-terrorism efforts.*” It is commonly referred to as the “not cooperating list.”

It is fairly easy for an Administration to remove a country from that “not cooperating list,” by simply deleting a country from the list when the not cooperating list is submitted to Congress each May 15. For example, Afghanistan was opened to U.S. arms sales when it was left off the list submitted to Congress on May 15, 2002. North Korea remains on this “not cooperating” list as of the May 2006 renewal of the list.

The issue of possible U.S. arms sales to North Korea is highly sensitive. It is highly likely that, unless there were a full peace treaty between North and South Korea, no U.S. Administration would propose any arms sales to North Korea, even if all U.S. sanctions were removed and such sales were technically permitted.

Human Rights and Illicit Financial Activity Sanctions

If the Administration decided to normalize relations with North Korea, it is likely that it would have resolved major human rights issues, or chose to downplay outstanding differences over the treatment of North Korean citizens. As noted above, it would be difficult for any Administration to determine that North Korea is no longer a Communist country, were Kim Jong Il still in power. However, the Administration would have discretion how to apply some of the measures to promote human rights in North Korea stipulated in the North Korean Human Rights Act of 2004, measures which the Kim Jong Il regime would consider adversarial. Such measures include broadcasting to North Korea, funding groups promoting human rights and humanitarian aid there, and efforts to make more information available to the North Korean people. The Administration would have the discretion to downplay the position of envoy for North Korean human rights that was established in that act.

The Administration has substantial discretion to resolve the dispute with North Korea over the frozen assets in Banco Delta Asia. The February 13, 2007 nuclear agreement sets up separate talks for that express purpose, with resolution to be accomplished within 30 days, according to the agreement. As discussed above, the Administration has the authority, under the Patriot Act, to determine that the Banco Delta Asia is no longer of primary money laundering concern, which would have the effect of unfreezing blocked North Korean accounts held by that bank. The Administration could also cause an unblocking of a portion of those funds, deeming them legitimately earned.

Facilitating People-to-People Contacts

A key component of the process of normalizing relations is the facilitation of cultural exchanges, educational exchanges, tourism, and other forms of people-to-people contacts. Such exchanges could lead to Track II efforts to discuss outstanding issues and facilitate movement toward formal diplomatic ties. Currently, there is no U.S. prohibition on the use of U.S. passports for travel to North Korea. Bans like this had been in place for such countries as Lebanon and Libya, although those have now been removed for those countries. Under existing regulations, there are no restrictions on the amount of money U.S. citizens may spend in North Korea.

Diplomatic Relations

The steps discussed above, if taken, would lead to a return to normal commercial relations between the United States and North Korea, but additional steps would be needed to establish a state of normal relations. A major hallmark of normalization would be the establishment of diplomatic relations.

The President has near total discretion on how to proceed in restoring diplomatic relations, if there were a decision to do so. In many cases, a move to restore relations is gradual. As a step in the process of restoring relations, a U.S. Administration could appoint American officials to staff its interest section in Pyongyang, perhaps limited at first to consular officials who might process visas for North Korean travel to the United States. Later, as part of a broadening of relations, an Administration could begin staffing a separate Embassy in North Korea with political and economic officials, leading up to the eventual appointment of a full Ambassador to a restored U.S. Embassy. North Korea, whose diplomatic work in the United States is run out of its mission to the United Nations in New York, could take reciprocal steps as regards its diplomatic representation in Washington.

Congress' ability to block such steps appears to be limited. Attempts by Congress to legislatively prevent a President from establishing full diplomatic relations with any country, including North Korea, are likely to falter on constitutional grounds. Administrations have been successful in arguing that such moves constitute an encroachment on executive prerogative.

Resolution of Assets Issues.

In the case of North Korea, the issue of blocked assets is likely to come up for discussion if there were a move to normalize diplomatic relations. According to some experts, a President has substantial discretion to unblock and return blocked assets to a subject country, even if there are third party interests in those assets. A return of assets generally accompanies an overall political settlement between the United States and the subject country. For example, substantial frozen Iranian assets were returned to Iran in conjunction with the 1981 "Algiers Accords" that settled the U.S.-Iran hostage crisis.

Recent legislation could make the return of North Korean assets somewhat more difficult. The 1996 Anti-Terrorism and Effective Death Penalty Act allowed victims of terrorism to sue state sponsors of terrorism for punitive and compensatory damages. The 2002 "Terrorism Risk Insurance Act" (P.L. 107-297) makes the frozen assets of terrorism list countries available to satisfy judgments against those countries in terrorism related law suits. However, unresolved terrorism cases with respect to North Korea mostly involved citizens of Asian countries, not Americans, and there is not an identifiable pool of American citizens

with significant claims against North Korea. Therefore, this issue is more easily resolved than has been the case with Libya or would be the case in the event of normalization between the United States and Iran.¹

It is also possible that the United States and North Korea, in the process of normalization, could decide to form a tribunal similar to the U.S.-Iran Claims Tribunal. Depending on the terms of reference for the tribunal, that could make disputes over North Korean (and U.S.) assets subject to arbitration. One possibility is that any North Korean assets in the United States could be unblocked and placed into an escrow account, and any proceeds could be released to North Korea, net of deductions to pay off successful claimants, after all disputes were resolved by the claims tribunal.

¹ Much of the information in this section is taken from CRS Report RL31258. Suits Against Terrorist States By Victims of Terrorism. David M. Ackerman. Updated December 5, 2002.

Index of Topics

Communication

<i>Section 1: Agreed Framework Between North Korea and the United States; Sec.II (1)</i>	20
------------------------------------------------------------------------------------------	----

Economic Sanctions

<i>Section 1: North Korea's Moratorium on Missile Tests</i>	22
<i>Section 1: Resolution 1718</i>	27–31
<i>Section 2: Regulations to Implement the Ban on Luxury Goods Exports; Sec. 746.4.</i>	65–66
<i>Section 2: Relaxation of Trade Ban</i>	38–41
<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec. 324 (5), (6)</i>	98
<i>Section 3: North Korea Nonproliferation Act of 2006; Sec.2</i>	114
<i>Section 5: Prohibition on Use of North Korean Vessels</i>	175–76
Removing Restrictions on Providing U.S. Foreign Aid	181
Removing Economic Sanctions Imposed by the “Terrorism List”	179–80
Removing Human Rights and Illicit Financial Activity Sanctions	184
Removing Restrictions on Arms and Technology Sale	183

Energy

Energy in General

<i>Section 1: Agreed Framework Between North Korea and the United States; Sec.2</i>	20
<i>Section 1: Joint Statement on North Korea's Nuclear Program; Sec.3</i>	24
<i>Section 1: Nuclear Agreement; Sec.(II-5)(IV)</i>	33–34
<i>Section 3: Energy Policy Act of 2005; Sec. 632</i>	105–06

Nuclear Energy

<i>Section 1: Agreed Framework Between North Korea and the United States</i>	19–21
<i>Section 1: Joint Declaration on the Denuclearization of the Korean Peninsula; Sec.2</i>	18
<i>Section 1: Joint Statement on North Korea's Nuclear Program; Sec. 1</i>	23–24
<i>Section 1: Nuclear Agreement; Sec.(II)(III)(IV)</i>	32–34
<i>Section 3: Atomic Energy Act of 1954</i>	103–5
<i>Section 4: Withholding of United States Proportionate Share for Certain Programs of International Organizations; Sec.(c 2 B)</i>	120

Famine and Food Trade

<i>Section 1</i> : Resolution 1718; Sec. 9 (a).....	29
<i>Section 2</i> : Regulations to Implement the Ban on Luxury Goods Exports; Sec.746.4, 772.1	65–68
<i>Section 3</i> : Export Administration Act; Sec. (e 3) (g).....	73–74
<i>Section 4</i> : Prohibitions on Assistance to Governments Supporting International Terrorism; Sec.2371	117–19
<i>Section 5</i> : North Korea Human Rights Act of 2004; Sec. 3 (4, 13, 14), 105, 201, 202	137–44
<i>Section 5</i> : Sanctions Mandated by the International Religious Freedom Act of 1998; Sec.405 (d)	155

Foreign Assistance

<i>Section 1</i> : Nuclear Agreement; Sec. II (5), IV.....	33–34
<i>Section 1</i> : Joint Statement on North Korea’s Nuclear Program; Sec.3.....	24
<i>Section 1</i> : Resolution 1718; Sec. (c).....	29
<i>Section 2</i> : 30-Day Report on Efforts Toward Implementing UNSCR 1718; Para. 8 (c)....	55
<i>Section 3</i> : Arms Export Control Act; Sec. (a 1, 2, 3, 4).....	82–83
<i>Section 3</i> : Atomic Energy Act of 1954; Sec.2158 (2 B).....	104
<i>Section 3</i> : Anti-Terrorism and Effective Death Penalty Act of 1996; Subtitle B & Sec. 325, 326, 327, 328, 329, 620G, 620H, 621.....	90, 98–101
<i>Section 3</i> : Energy Policy Act of 2005; Sec.632 (b)	105
<i>Section 4</i> : Ban on Direct Assistance – Foreign Aid Appropriation for FY2006	121–23
<i>Section 4</i> : Foreign Assistance Act of 1961	116–20
<i>Section 4</i> : Prohibitions on Assistance to Governments Supporting International Terrorism.....	117–19
<i>Section 4</i> : Prohibitions Against Furnishing Assistance to Communist Countries ...	116–17
<i>Section 4</i> : Withholding of United States Proportionate Share for Certain Programs of International Organizations; Sec. (a)	119
<i>Section 5</i> : North Korea Human Rights Act of 2004; Title II.....	142–44
<i>Section 5</i> : Sanctions Mandated by the International Religious Freedom Act of 1998; Sec.402 (d), 405 (a 9, 11), 405 (d), Subtitle II (Sec. 421, 422, 423).....	152–55, 157–58
<i>Section 5</i> : Sanctions Mandated by the Trafficking Victims Protection Act of 2000; Sec. 103 (7), 104, 109, 110, 111, 113.....	162–74
Removing Restrictions on Providing U.S. Foreign Aid	180–81

Human Rights

<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec.221</i>	93–96
<i>Section 4: Prohibitions Against Furnishing Assistance to Communist Countries; Sec. 2</i>	117
<i>Section 5: North Korea Human Rights Act of 2004</i>	136–47
<i>Section 5: Sanctions Mandated by the International Religious Freedom Act of 1998</i>	147–58
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000</i>	159–74
Removing Human Rights and Illicit Financial Activity Sanctions	183–84

Intelligence

<i>Section 3: Arms Export Control Act; Sec. (h)</i>	86
<i>Section 3: Export Administration Act; Sec. I(5)</i>	79
<i>Section 3: Licensing of U.S. Exports of Dual Use Items to North Korea; Sec.742.19(a)</i> 42	
<i>Section 3: Iran-Syria Non-Proliferation Act; Sec. 6(b 2)</i>	110
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000; Sec.</i> 105 (b) 111(c)	166–72

International Crimes

Human Trafficking

<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec. 433, 434</i>	91
<i>Section 5: North Korea Human Rights Act of 2004; Sec. 203 (b 2)</i>	144
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000</i>	159–74

Narcotics

<i>Section 5: Finding on Macau-Based Banco Delta Asia; Sec. I (C, D)</i>	132–34
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000; Sec.</i> 103 (7 A iii, B)	163

Counterfeiting

<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec. 807</i>	93
<i>Section 5: Finding on Macau-Based Banco Delta Asia; Sec. I (C D), II</i>	133–34

Smuggling

<i>Section 5: Prohibition on Use of North Korean Vessels</i>	175–76
--------------------------------------------------------------------	--------

Money Laundering

<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec. 726</i>	92
<i>Section 5: Finding on Macau-Based Banco Delta Asia</i>	130–35
<i>Section 5: Restriction on Money Laundering</i>	124–29
Removing Human Rights and Illicit Financial Activity Sanctions.....	184

International Organizations

International Atomic Energy Agency

<i>Section 1: Agreed Framework Between North Korea and the United States</i>	19–21
<i>Section 1: Resolution 1695</i>	25–26
<i>Section 1: Resolution 1718</i>	27–31
<i>Section 4: Withholding of United States Proportionate Share for Certain Programs of International Organizations</i>	119–20
Removing Restrictions on Providing U.S. Foreign Aid.....	181

United Nations

<i>Section 1: Korean War Armistice Agreement</i>	2–17
<i>Section 1: Joint Statement on North Korea’s Nuclear Program; Sec. 2</i>	24
<i>Section 1: Resolution 1695</i>	25–26
<i>Section 1: Resolution 1718</i>	27–31
<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718</i>	53–59
<i>Section 2: Regulations to Implement the Ban on Luxury Goods Exports; Sec. 742.1</i>	65

Maritime Activity

<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718; Para. 8(f)</i> ...57	
<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec. 703, 722</i>	92

Nuclear Proliferation and Weapon Technology

Weapons of Mass Destruction

<i>Section 1: Agreed Framework Between North Korea and the United States</i>	19–21
<i>Section 1: Joint Declaration on the Denuclearization of the Korean Peninsula</i>	18
<i>Section 1: Joint Statement on North Korea’s Nuclear Program</i>	23–24
<i>Section 1: Resolution 1695</i>	25–26
<i>Section 1: Resolution 1718</i>	27–31
<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718</i>	53–57
<i>Section 3: Atomic Energy Act of 1954</i>	103–5
<i>Section 3: Energy Policy Act of 2005; Sec. 632 b</i>	106

<i>Section 3: Iran-Syria Non-Proliferation Act</i>	107-13
<i>Section 3: North Korea Nonproliferation Act of 2006</i>	114–15

Military Technology Export

<i>Section 2: Regulations to Implement the Ban on Luxury Goods Exports; Sec. 742.19</i> ...	65
<i>Section 2: Relaxation of Trade Ban; Sec (b)</i>	40
<i>Section 3: Arms Export Control Act</i>	82–87
<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996; Sec.324-326</i> ...	98–99
<i>Section 3: Export Administration Act; Sec. J</i>	75–76
<i>Section 3: Licensing of U.S. Exports of Dual Use Items to North Korea</i>	42–44

Missile Test

<i>Section 1: North Korea’s Moratorium on Missile Tests</i>	22
<i>Section 1: Resolution 1695</i>	25–26
<i>Section 1: Resolution 1718</i>	27–31

Space Technology

<i>Section 2: Relaxation of Trade Ban; Sec. (b 2 C)</i>	40
<i>Section 3: Iran-Syria Non-Proliferation Act; Sec.6, 7</i>	110–13

Terrorism

<i>Section 1: Nuclear Agreement; Sec. II (3)</i>	33
<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718; Para. 8 (f)</i>	57
<i>Section 2: Regulations to Implement the Ban on Luxury Goods Exports; Sec.742.19, 746.4 (d)</i>	64–66
<i>Section 2: Trading with the Enemy Act; Sec. 4</i>	37
<i>Section 3: Arms Export Control Act; Sec. 40</i>	82–87
<i>Section 3: Anti-Terrorism and Effective Death Penalty Act of 1996</i>	88–101
<i>Section 3: Energy Policy Act of 2005; Sec. 632</i>	105–6
<i>Section 3: Export Administration Act; Sec. (j), (1 3 B)</i>	75–78
<i>Section 3: Determination of States on the “Not Cooperating” List</i>	102
<i>Section 3: State Department Report on Terrorism for 2005: North Korea</i>	70
<i>Section 4: Prohibitions on Assistance to Governments Supporting International Terrorism</i>	117–19
<i>Section 5: Finding on Macau-Based Banco Delta Asia; Statutory provisions</i>	130–136
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000; Sec. 103 (7 A v)</i>	163
Removing Economic Sanctions Imposed by the “Terrorism List”	179–80

Removing Restrictions on Arms and Technology Sale	183
Removing Restrictions on Providing U.S. Foreign Aid	181
Removing Restrictions on Facilitating People-to-People Contacts; Resolution of Assets Issues	185–86
Removing Restrictions on Supporting International Lending	182

Trade

<i>Section 1: Agreed Framework Between North Korea and the United States; Sec. II (1).</i>	20
<i>Section 1: Joint Statement on North Korea’s Nuclear Program; Sec. 3.</i>	24
<i>Section 1: North Korea’s Moratorium on Missile Tests.</i>	22
<i>Section 2: Relaxation of Trade Ban</i>	38–41
<i>Section 2: Trading with the Enemy Act.</i>	36–37

US Export

<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718; Para. 8(a)</i>	53–55
<i>Section 2: Regulations to Implement the Ban on Luxury Goods Exports;</i>	59–68
<i>Section 3: Arms Export Control Act.</i>	82–87
<i>Section 3: Determination of States on the “Not Cooperating” List.</i>	102
<i>Section 3: Energy Policy Act of 2005; Sec. 632</i>	105–6
<i>Section 3: Export Administration Act.</i>	71–81
<i>Section 3: Iran-Syria Non-Proliferation Act.</i>	107–113
<i>Section 3: Licensing of U.S. Exports of Dual Use Items to North Korea</i>	41–44
<i>Section 5: Sanctions Mandated by the International Religious Freedom Act of 1998; Sec. 405</i>	153–55

Import from North Korea

<i>Section 1: Resolution 1718; Sec. 8 (b)</i>	28
<i>Section 2: 30-Day Report on Efforts Toward Implementing UNSCR 1718; Para. 8 (b, c)</i>	55
<i>Section 2: Financial Transactions With and Imports From North Korea.</i>	45–51
<i>Section 2: Relaxation of Trade Ban; Sec. (b 1, b 2)</i>	40–41

Transportation

<i>Section 2: Financial Transactions Related to Travel to North Korea Permitted</i>	52
<i>Section 2: Financial Transactions With and Imports From North Korea; Sec. 550.</i>	204
.....	46
<i>Section 2: Trading with the Enemy Act; Sec. (1 B)</i>	36
<i>Section 5: Sanctions Mandated by the Trafficking Victims Protection Act of 2000; Sec 103</i>	163

Note

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