

Additional US Sanctions on North Korea: Significance and Outlook

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The current North Korea sanctions mode triggered by the March 26nd sinking of the Cheonan has entered a new phase with the announcement in August of additional sanctions against North Korea by the US. This move is an extension of previous measures such as the cessation of inter-Korean economic cooperation, condemnations issued by international bodies such as the UN Security Council and the ARF, and the joint US-ROK military exercises. These additional US sanctions, which chiefly focus on financial controls, will be made to extend and strengthen the existing sanctions specified by UN Security Council resolutions 1718 and 1874 and administrative order 13382, which prohibits trade in WMDs.

The sanctions, which were revealed by Robert Einhorn, the US State Department official in charge of sanctions against Iran and North Korea, during a visit to South Korea in early August, will have the following characteristics in terms of their targets, methods, and degree of severity. First, these sanctions will target businesses, institutions and individuals connected with North Korea's illegal activities such as trade in weapons, luxury items, drugs, and tobacco, as well as counterfeiting and money laundering, and will cut off funds from these sources. The sanction targets will include a variety of illegal activities and financial accounts not previously specified by the UN Sanctions Committee, with the particular aim of cutting off sources of funds to North Korea's ruling class. This can be seen as a more comprehensive sanctions package when compared to the UNSC resolutions 1718 and 1874, which targeted arms and luxury items, and the 2005 BDA action, which only targeted specific accounts.

Second, these have been enacted by a presidential executive order rather than by a congressional resolution, like the Iran sanctions, or an application of the Patriot Act, as was done with the 2005 BDA sanctions. It is particularly unusual that these sanctions are being enacted not as a law enforcement measure but as an executive order, despite the targeting of money laundering and counterfeiting operations. As opposed to arms, luxuries, tobacco, and drugs, these two activities fall

under the rubric of law enforcement, as they represent serious infractions against the US currency system. When the “sanctions” were announced against the BDA in 2005, they were emphasized as a means of “law enforcement” in response to a legal violation, with no relation to the nuclear issue. The formal logic was that the US Treasury, suspecting BDA of circulating counterfeit US currency and laundering money from drug sales, blacklisted the bank and merely discouraged US financial institutions from doing business with it, applying Article 311 of the Patriot Act. However this alone dealt such a fatal blow to confidence in BDA and resulted in such a flood of cash withdrawals that the BDA froze North Korea’s accounts and allowed information to be disclosed. US Treasury Undersecretary for Terrorism and Financial Intelligence Stuart Levey has stated that the US will not exclude the possibility of applying the Patriot Act, which not only points to the effectiveness of the Patriot Act but also exposes the difficulty the US has in dealing with suspected incidents of counterfeiting and money laundering.

Third, because financial sanctions by executive order are non-binding, in order to be effective they must be accompanied by assertive political and diplomatic efforts. Thus they must implicate those individuals, businesses, and institutions complicit in illegal activities, and either freeze their assets or report them to the relevant nation’s authorities with the request that they be frozen. Because there are no North Korean assets within the US, the asset freezing is a symbolic measure and will require cooperation from the authorities in China, where the majority of North Korean accounts are located. However the cooperation of relevant countries such as China is not dependant on the will of the US alone. As this measure is non-binding, regardless of the US’ strong intentions China and its financial institutions may choose to ignore the requests for sanctions against illegal activities. The US hopes to set off another round of large-scale withdrawals from the implicated banks similar to what happened with BDA. China can be expected to be more cooperative on sanctions against weapons and the clearly illegal funding sources such as drugs, tobacco, counterfeiting, and money laundering targeted by the UNSC than it has been on the somewhat vaguely defined “luxury items.”

Fourth, the executive order for financial sanctions against North Korea is a measure taken out of consideration for tactical flexibility with regard to US North Korea policy. Because with an executive order there is no need for congressional deliberation or voting, unlike the Iran sanctions resolution, these North Korean sanctions can be put into effect immediately, and can later be repealed just as easily. In the BDA affair, even after the US State Department unfroze the North Korean accounts, banks refused to accept the transfer of North Korean funds from BDA for fear that they would lose credibility, and thus North Korea had difficulty re-entering the global financial markets. This is because the US Treasury refused to yield to the BDA’s claims that it had been used all along by



North Korea for money laundering. Ultimately the BDA funds had to be transferred via the US Federal Reserve Bank, to which Article 311 of the Patriot Act does not apply, and then through the Russian Central Bank, before North Korea could re-acquire them.

In short, these US financial sanctions are a strong tactical measure which, by also targeting North Korea's financial backers, demonstrates the effectiveness of the sanctions regime while maintaining flexibility. If applied properly, they can strike a severe blow to North Korea's foreign currency earnings and send a message that the US is prepared to engage in sincere dialogue if North Korea changes its ways. As the US has repeatedly stressed, its intention is not to pressure or isolate North Korea, but to lead it to a sincere dialogue in order to rid it of nuclear weapons. However, it will not engage in dialogue for the sake of dialogue if North Korea is not prepared to enter into fruitful discussion. This is the US position, based on a foundation of common understanding and strategic cooperation with South Korea.

North Korea has responded defiantly to the new US sanctions, stating “The DPRK will bolster its nuclear deterrent in a more diversified manner and take strong physical measures” in response. For the time being a state of high tension will be unavoidable. However following the UNSC Presidential Statement (July 8th), North Korea has clearly expressed its desire to move past the current Cheonan issue, mentioning the restarting of the 6-Party Talks and discussions on building a peace regime. This indicates it wants to overcome the sanctions as soon as possible and acquire food and other economic aid in exchange for returning to the 6-Party Talks. However the situation is not developing according to North Korea's expectations. Due to South Korea's cessation of economic cooperation and the additional sanctions by the US, North Korea's economic situation is worsening and its isolation is growing deeper. North Korea finds itself in an untenable situation, suffering from chronic food shortages and social instability. As usual, the ball is in their court.

