

Prospects for the U.S.-DPRK Normalization and Economic Transition Effects

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Abstract

This article examines various legal restrictions imposed upon the DPRK by the United States, which precludes the DPRK from actively participating in the international community. The article also examines the potential outcomes of an improved U.S.-North Korea relationship following the denuclearization of the North, such as the country's removal from the U.S. State Department's list of state sponsors of terrorism and this action's subsequent contribution to the marketization of the DPRK. At the same time, the article envisions the approach the United States will take toward the DPRK—as it will no doubt be different from the approach taken with Vietnam. Based on these assessments, the article seeks to understand the interactive relationship between the normalization of the U.S.-North Korea relationship and North Korea's structural transformation toward a market economy. In terms of legal aspects, the DPRK's relationship with the United States is expected to make procedural progress. Therefore, a rapid, pragmatic economic change is unlikely to occur in the near future. The DPRK's normalization with the United States signifies that the United States recognizes the DPRK as a legitimate member of the international community. The international community will perceive the DPRK as a legitimate trade and investment partner in the long term if normalization with the United States can be achieved.

Key Words: the United States-DPRK normalization, transformation, legal restrictions, the United States-Vietnam normalization, state sponsor of terrorism

Introduction

This article examines various legal restrictions imposed upon the Democratic People's Republic of Korea (DPRK or North Korea) by the United States, which precludes North Korea from actively participating in the international community. The article also examines the potential outcomes of an improved U.S.-North Korea relationship following the denuclearization of the North, such as the country's removal from the U.S. State Department's list of state sponsors of terrorism and this action's subsequent contribution to the marketization of the DPRK. The article first discusses North Korea's status in relation to U.S. legal sanctions, with particular focus on the legal conflicts that have arisen as a result of North Korea's presence on the list. The label of "state sponsor of terrorism" (SST) has functioned effectively as a means to impose economic sanctions and restrictions on North Korea. As a consequence, the country has been unable to effectively engage in foreign aid, trade, investment or financial exchanges. Therefore, even though its immediate impact on North Korea's economy is expected to be limited, the removal of North Korea from the list has the symbolic importance of ushering the country into the international community and normalizing North Korea with the rest of the world.

The article assesses the U.S.-North Korea relationship from a perspective of legal structures in order to discover the road to making improvements in the relationship and possible obstacles that might emerge along the way. The legal restrictions and related documents created by the State Department were primarily examined. Also, in order to analyze North Korea's potential economic advancements as a result of the improved U.S.-DPRK relationship, a future scenario was created based on a case study of the U.S.-Vietnam relationship. At the same time, the article envisions the approach the United States will take toward North Korea – as it will no doubt be different from the approach taken with Vietnam. Based on these assessments, the article seeks to understand the interactive relationship

between the normalization of the U.S.-North Korea relationship and North Korea's structural transformation toward a market economy.

North Korea's Legal Status and Obstacles in the U.S. Laws

North Korea's legal status with regards to U.S. laws is defined by the Trading with the Enemy Act, Export Administration Act, Foreign Assistance Act, International Financial Institutions Act, North Korean Human Rights Act, and others. Also, North Korea's legal status in relation to the United States may be assessed using the State Department's annual publications of the Country Reports on Human Rights Practices and Report on International Religious Freedom. There are four economic sanctions placed upon North Korea by the United States. The United States classifies the North Korean government as an authoritative, communist, and repressive regime that undermines the U.S. values including liberty, human rights, democracy, and economic freedom. Specific examples of the DPRK's legal status will be provided in following paragraphs.

First, the U.S. government implemented both the Trading with the Enemy Act and National Emergency Act against the DPRK as the country was considered a threat to U.S. national security. Both laws were legal sanctions central to the U.S. national defense. Since their implementation in 1950, these laws have frozen North Korean assets in the United States and have banned U.S. entities from trading or doing financial exchanges with North Korea. Second, North Korea has been placed on the list of "state sponsors of terrorism" for the bombing of a Korean Airline on January 20, 1987. Moreover, North Korea was also designated as a "non-cooperative country" in the U.S. effort of terrorism prevention in 1996, which was renewed in May 2002. The 1979 Export Administration Act (EAA) is the central legal obstacle. Third, North Korea is subject to sanctions as outlined in the Export-Import Bank Act of 1945, because it has been designated as

a communist country. Fourth, North Korea is classified as a proliferator of weapons of mass destruction (WMD) and missiles according to the Arms Export Control Act, Export Administration Act of 1979, and Iran Proliferation Act of 2000. Also, the George W. Bush administration labeled North Korea as one of the three countries that engage in biological weapons development. Finally, the North Korean regime is recognized as a regime that violates the human rights of its people. In the 2007 Human Rights Report published by the U.S. State Department, the DPRK is designated as one of the most notorious violators of human rights. In the report, the U.S. State Department criticizes the fact that power is concentrated in the hands of an irresponsible leadership, putting it into the same category as Myanmar and Iran. The report also accuses the DPRK of structuralizing human rights abuse, making the country one of the worst in the world.¹ Also in the annual report on international religious freedom published by the State Department, the DPRK is designated as a “country of particular concern” for its complete lack of religious freedom.

The U.S. legal sanctions on the DPRK hamper improvement in the U.S.-DPRK relationship. To be specific, North Korea’s status as a state sponsor of terrorism is the greatest obstacle to ameliorating the relationship. Generally, when a country is listed as a SST, the United States applies its main economic sanctions—including the Export Administration Act, Foreign Assistance Act, and Arms Export Control Act—on the country. Overall, the State Department exerts on the DPRK a wide scope of economic restrictions encompassing controlling imports and exports of technology and other material goods, preventing economic assistance, and withholding private properties.

Once labeled by the United States as a state sponsor of terrorism, a

¹-U.S. Department of State, “Korea, Democratic People’s Republic of, Country Reports on Human Rights Practices,” 2007. Released by the Bureau of Democracy, Human Rights, and Labor, March 11, 2008.

country becomes a target of the rigorous export controls, especially regarding dual-use materials and technologies. All sales of military supplies are strictly banned.² The Export Administration Act requires a certain license when exporting restricted materials and technologies to those countries. To obtain the license, the Secretaries of the U.S. Department of Treasury and State Department must report to the House Committee on Foreign Affairs, Senate Committee on Banking, Housing, and Urban Affairs, and Senate Committee on Foreign Relations.

Another set of sanctions is imposed under the authority of several United Nations resolutions.³ Around the time of the DPRK's nuclear experiment in 2006, in order to exert pressure on North Korea to give up its nuclear activities, the United States enacted UN resolutions that impose specific sanctions on certain materials. Financial restraints attacked the DPRK's most vulnerable spot, while the export ban on luxury goods effectively weakened North Korean elites' ability to rule. Designating Banco Delta Asia (BDA) as North Korea's partner in crime (i.e., of doing illegal transactions with the North, including money laundering and forgery), pursuant to section 311 of the Patriotic Act, effectively suspended all international financial transactions of the DPRK.

At the international level, the UN Security Council enacted Resolutions 1540, 1695, and 1718, authorized under chapter 17 of the UN Charter (action with respect to threats to the peace, breaches of the peace, and acts of aggression), and pursuant to Article 25 of the UN Charter, all member countries are legally bound to adhere to the resolutions. In particular, Resolution 1540 — unlike previous multilateral trade agreements — expands the World Trade Organization (WTO) non-proliferation obligations to all UN member countries. As an international standard, the management and

²- Timothy Clinton, Export Policy Analyst, "Catch-All Controls," U.S. Department of Commerce, June 18, 2003.

³- KOTRA, "Basis, Restrictions, and Procedure of the designation as a State Sponsor of Terrorism by the U.S.," *KOTRA North Korea Economic Report*, June 11, 2007.

administration of the implementation of the resolutions is run directly by the UN. Resolution 1540 also deviates from other established multilateral exports regulations by mandating the responsibility to all member countries to prohibit financial assistance or funding for development of WMD. Resolutions 1695 and 1718 impose the responsibility to all member nations to prohibit exporting outdated weapons, nuclear weapons, short-range ballistic missiles, WMD, and other related materials to the DPRK.⁴

Additionally, North Korea's attempt to acquire membership in international financial institutions (IFIs) and financial assistance is also prohibited. Section 1621 of the International Financial Institutions Act regulates the Secretary of Treasury to order all U.S. representatives in international financial institutions to oppose any financial assistance or use of funds for state sponsors of terrorism, pursuant to the Export Administration Act of 1979 and Foreign Assistance Act.

Another related legal sanction is the Anti-Terrorism and Effective Death Penalty Act of 1996, which dictates that the Secretary of Treasury must order U.S. representatives at IFIs to oppose providing loans or other forms of assistance to SSTs designated by the Secretary of State. Even though the law does not directly prevent SSTs from earning membership into international financial institutions, the opposition of U.S. representatives is interpreted as an opposition of the country's membership itself. Thus U.S. policy is understood preferably as such.⁵

Moreover, the DPRK could no longer get external assistance. Enacted in 1962, the Foreign Assistance Act of 1961 prohibits providing aid to communist countries, including North Korea.⁶ Removal of the sanctions

4- Ex-Con Research Center, The Institute of Legal Studies, Kyung Hee University, "Recent Trends in Export Control," *Security Commerce Studies* (Korean Association of Security and Trade, in Korean), Vol. 1, No. 1 (March 2007).

5- An Gwang Myung, "International Cooperation Assignment for North Korean Economic Development," p. 177.

6- The U.S. laws regarding food assistance include 1) PL 480 (Agricultural Trade Development and Assistance Act of 1954), 2) Section 416(b) of the Agricultural Act of

requires amendment by the Congress. The law also prohibits direct economic assistance, loan, insurance, and credits by the Export-Import Bank. North Korea is also disqualified to participate in the debt relief program designated for the poorest of countries. As a result, U.S. NGOs that supported the DPRK were put under severe restrictions compared to those in Europe and South Korea. U.S. NGOs that assist the DPRK are restricted in terms of government funding distribution, amount, and uses. Due to these restrictions, a vast majority of North Korean food assistance was channeled through the World Food Program.⁷

Being a communist country also restricted the DPRK from gaining most favored nation (MFN) or normal trade relations (NTR) status. Pursuant to section 402, Title IV of the 1974 Trade Law, all communist and non-market economy nations are denied MFN/NTR status.⁸ Known as the Jackson- Vanik Amendment, the law denies the two following trade benefits from all “non-market economy nations that violate the citizens’ right to the freedom of emigration”: export credit of the Export-Import Bank of Washington and investment of Overseas Private Investment Corporation (OPIC).⁹

The Import-Export Bank Act, enacted on October 15, 1986, prohibits guaranteeing insurance and loans from the Import-Export Bank to any Marxist-Leninist nation.¹⁰ Currently, the DPRK and Cuba are the only

1949, 3) Food for Progress Act of 1985, and 4) Farm Security and Rural Investment Act of 2002, PL 107-171.

⁷- Scott Snyder, “American Religious NGOs in North Korea: A Paradoxical Relationship,” *Ethics & International Affairs*, Vol. 21, No. 4 (Winter 2007).

⁸- Normal Trade Relations (NTR) replaced Most Favored Nation (MFN) in 1998 by a U.S. law. However the word MFN is still used in WTO and international trade agreements. William H. Cooper, “The Jackson-Vanik Amendment and Candidate Countries for WTO Accession: Issues for Congress,” *CRS Report for Congress*, March 14, 2006, p. 2.

⁹- Vladimir N. Pregelj, “The Jackson-Vanik Amendment: A Survey,” *CRS Report for Congress*, updated August 1, 2005.

¹⁰- Socialist countries refer to nations with centralized authoritarian rule following the Marxist-Leninist ideology. Determination whether or not a country is socialistic comes under Presidential authority, pursuant to the Export-Import Bank law (12 USC 635(b) (2)).

nations that are not given MFN/NTR status. The DPRK is also automatically excluded from the Generalized System of Preferences (GSP) benefits which apply only to MFN or NTR nations.¹¹ Due to North Korea's status as a SST and a potential proliferator of WMD, the U.S. imposes a very high rate of tariff on North Korea, equivalent to the "column 2" tariff rate. The tariff is also imposed on the DPRK pursuant to the Trading with the Enemy Act. North Korea's competitiveness as an export country is greatly impaired due to the "column 2" tariff rate, which is as high as 110 times more expensive at its worst.¹²

The United States also enacted a law related to North Korean human rights. The North Korean Human Rights Law, HR 4011 (PL 108-333), was passed in the fall 2004 by the 108th Congress and signed by President George W. Bush.¹³ Based on the law, a UN special envoy on human rights in North Korea was appointed and legal immigration of North Korean refugees to the United States began. Also, the legislation declared that U.S. assistance for North Korea depends largely on the North's achievement of autonomous and substantial progress, especially on transparency, external monitoring,

¹¹- Importing goods produced in the DPRK into the United States was banned under the TWEA and FACR. DPRK's moratorium of missile launch contributed to the relaxation of economic sanctions against the North, after September 17, 1999. However, the missile launch and nuclear experiment in July and October of 2006, respectively, led to fortification of the restraints.

¹²- North Korea is at a disadvantage compared with other developing countries because the EU and Japan do not extend GSP benefits to North Korea and exert higher rate of tariff. On the other hand, former communist countries such as China and Russia, as well as Southwestern Asian and Middle Eastern countries are not imposing any particular sanctions on the DPRK. See Shim Seung Geun, "Control over Import and Export of Strategic Materials by Corporations in the Gaesung Industrial Complex," *National Economy* (Seoul: KDI, December 2003), p. 72 and Kim Sam Shik, "Securing Markets for Good Produced at the Gaesung Industrial Complex Produced Goods," *21st Century Northeast Asian Countries' Cooperation with the Two Koreas* (Seoul, KOTRA, 2003), pp. 69-88, for export environments of DPRK goods to the EU, Japan, and the U.S. and comparisons of tariff rates in each country.

¹³- The U.S. Congress adopted the legislation that extends North Korean Human Rights Reauthorization Act of 2008 which extends the former North Korean Human Rights Law of 2004 until 2012.

and approachability. The law also demands that USAID report all its humanitarian assistance activities in the North, including support for North Korean refugees in China, to the Congress. The DPRK publicly denounces the law as anti-North Korea legislation.¹⁴

There were also several sanctions imposed on the North following the State Department's designation of the DPRK as a "state of concern" in its annual report on religious freedom and human rights. The International Law of Religious Freedom is a part of U.S. foreign policy. It was enacted on October, 27, 1998 to protect religious freedom of people all around the world. The U.S. supports religious freedom of all individuals pursuant to its own Constitution and international law. These laws mandate imposing specific legal sanctions on countries in violation of religious freedom.

However, amendments to the law remarkably reduced its practical influence by allowing the U.S. president to give waivers to noncompliant countries should the President determine that doing so better serves the national interest of the United States.

North Korea is currently designated as a "country of particular concern" by the U.S. Committee of Religious Freedom. Religious freedom practically does not exist in North Korea and its government severely oppresses the religious. North Korean Christians are the most prominent target of oppression, including torture, imprisonment, and other forms of violence. Christians are also targets of structural violence, because they are socially marginalized in terms of education, opportunities, and food distribution.

Pursuant to the Law of International Religious Freedom, the U.S. government is responsible for conducting annual research on the state of religious oppression to determine which of the 15 sanctions stated in section 405 should be imposed on the violator country. These laws regarding

¹⁴ Mark E. Manyin, "U.S. Assistance to North Korea: Fact Sheet," *CRS Report for Congress*, January 19, 2006.

DPRK's religious freedom and human rights will be imposed throughout the changing course of the U.S.-DPRK relationship. Thus, making substantial progress in these issues remains as an important assignment for the government of DPRK.¹⁵

Future Prospects for the Normalization of U.S.-DPRK Relations

This chapter proposes a road map for the normalization of relations between the United States and the DPRK. Recently, North Korea was removed from the list of a state sponsor of terrorism, which is the central legal obstacle to improving the U.S.-DPRK relationship.¹⁶ The next chapter will explore the normalization's impact and significance on the North's economic transition.

Case Study: Normalization of Relations between the U.S. and Vietnam

U.S. economic sanctions on Vietnam were first imposed in 1964, and were expanded in May 1975 with the defeat of the U.S. military in the Vietnam War and consequent collapse and communization of South Vietnam. These sanctions on Vietnam were mostly based on the Trading with the Enemy Act, as Vietnam was not designated as a SST. The United States had begun export controls against North Vietnam in 1954, then banned trade or financial exchanges in 1964. The United States then

¹⁵-U.S. Department of State, "Remarks on the State Department's 2007 Country Reports on Human Rights Practices by Jonathan Farrar, Acting Assistance Secretary of the Bureau of Democracy, Human Rights, and Labor," Washington, DC, March 11, 2008.

¹⁶-According to the joint document II-1 produced at the 6th session of the second phase of the six-party talks which were held in Beijing (October 3, 2007), the U.S. and the DPRK commit themselves to improve their relationship and diplomatically normalize. Also, both countries are to increase exchanges and deepen mutual trust while implementing a process to remove the DPRK from the list of SSTs and cease application of TWEA to the DPRK. The U.S. will remain committed to all these agreements while using the consensus from the U.S.-DPRK normalization conference as a basis for future guidance.

extended application of these sanctions to the entire country in 1975.

U.S. opposition in international financial institutions' assistance to Vietnam at the time was evaluated as the most severe obstacle to growth of the Vietnamese economy, because it prevented flow of capital from other capitalist countries into Vietnam.¹⁷

The U.S. imposed Foreign Assets Control Regulation through the Trading with the Enemy Act, while imposing other sanctions through section 40 of the Arms Export Control Act and section 6 of the Export Administration Act. When Vietnam invaded Cambodia in 1978, Western countries began to participate in economic sanctions against Vietnam, which practically suspended all forms of assistance to Vietnam. Assistance from the World Bank, International Monetary Fund (IMF), and Asian Development Bank (ADB) were halted as well, leading to great difficulty in the rebuilding of Vietnam and Vietnamese economic reconstruction after the unification.

The U.S.-Vietnam relationship began to improve in the 1980s after the opening up of Vietnam. The Vietnamese reform that built the foundation for the U.S.-Vietnam normalization had already begun since the Doi-Moi Reform of 1986, which imitated China's reform. The withdrawal of Vietnamese troops from Cambodia in 1989 also provided a turning point for the U.S.-Vietnamese relationship. The Paris Peace Treaty of October 27, 1991 officially normalized the relationship and contributed to a rapid reform via progresses made in diplomatic relationship with China and ASEAN countries.¹⁸

The United States reinitiated dialogues with Vietnam in 1990 and announced its intention to resolve the conflict in Cambodia. The plan dealt with resolving the Cambodian situation and U.S. prisoners of war (POW)

¹⁷ - Do Duc Dinh, *Vietnam-United States Economic Relations* (Hanoi: Gioi Publishers, 2000), pp. 103-107.

¹⁸ - Douglas Pike, "Vietnam in 1991: The Turning Point," *Asian Survey*, Vol. 32, No. 1 (January 1992), pp. 74-82.

from the Vietnam War. In 1993, the Bill Clinton administration began to provide development assistance to Vietnam via the IMF and World Bank. Vietnam made a continuous effort to repatriate the ashes of U.S. prisoners of war, which by 1995 led it to better diplomatic relations with the United States.

In response, President Clinton rescinded the Trading with the Enemy Act against Vietnam on February 3, 1994 and established liaisons office a year later in Hanoi and Washington, DC. Clinton explained that these actions were taken to facilitate cooperation with Vietnam to bring home the U.S. POWs and those missing in action (MIA). The United States had a great interest in gathering information regarding the MIAs, demanding continuous cooperative field observation, third-party investigation in Laos Border Cases, repatriation of war remains, and literature studies to locate American MIAs and war remains. Simultaneously, the U.S. recognized the need to negotiate with the oppressive Vietnamese government to improve conditions regarding human rights, freedom of the press, and drug issues.¹⁹

Table 1. Road Map of the U.S.–Vietnam Normalization²⁰

U.S. Action	Vietnam Action	Outcome
Extinction of diplomatic relationship and imposition of economic sanctions (April 1975)		
	<ul style="list-style-type: none"> • Invasion to Cambodia (December 1978) • Withdrawal from Cambodia (September 1989) 	

¹⁹- The U.S. Department of Defense, “United States Security Strategy for the East Asia-Pacific Region,” (Washington, DC: USGPO, 1995).

²⁰- Mark E. Manyin, “The Vietnam-U.S. Bilateral Trade Agreement,” *CRS Report*, RL30416 (2001), IB98033 (2005), RS21834 (2007); Mark E. Manyin, William H. Cooper, and Bernard A. Gelb, “Vietnam PNTR Status and WTO Accession: Issues and Implications for the United States,” *CRS Report*, RL33490 (2006).

U.S. Action	Vietnam Action	Outcome
Proposed a road map for improvement in the U.S.-Vietnam relationship (April 1991)		<ul style="list-style-type: none"> • Signed Cambodia Peace Treaty (October 1991) • Joint investigation committee formed to locate missing American soldiers (February 1992)
Authorized re-initiation of assistance to Vietnam by IMF and World Bank (July 1993)		
Terminated trade ban on Vietnam (July 1993)	Submitted application for WTO membership (December 1994)	<ul style="list-style-type: none"> • Installed a liaison office in Vietnam (January 1995) • Declaration of normalization of diplomatic relationship and installation of embassies (July 1995)
Proposed a blueprint bilateral trade agreement with Vietnam (June 1996)		The first U.S. ambassador to Vietnam was appointed (April 1997)
<ul style="list-style-type: none"> • Waiver of application of the Jackson-Vanik Amendment to Vietnam • Permitted Import-Export Bank to trade with and invest in Vietnam (March 1998) 		
		Signed a bilateral trade agreement with the U.S. (July 2000)
President Clinton visited Vietnam (November 2001)		
		The U.S. upper house declared trade negotiation with Vietnam and gave conditional NTR
		Agreement on textile and clothing (July 2003)
	<ul style="list-style-type: none"> • Initiated negotiation over Vietnam's membership into WTO (October 2004) • Completed the negotiation (March 2006) 	WTO accepted Vietnam (November 2006)

U.S. Action	Vietnam Action	Outcome
Congress passed the legislation giving PNTR to Vietnam (December 2006)		Vietnam became a member of the WTO (December 2006)
	Signed the U.S.-Vietnam trade and investment agreement framework (June 2007)	

As shown in the chart above, political normalization of the U.S.-Vietnam relationship corresponds with the normalization of finance and investment interactions between the two countries. The softening of U.S. economic sanctions (step 1), waiver of the Jackson-Vanik Amendment of the U.S. Trade Act (step 2), establishment of a bilateral trade relationship (step 3), establishment of Permanent Normal Trade Relations (PNTR) and membership into the WTO (step 4), and granting of GSP (step 5) led to the complete normalization of U.S.-Vietnam relations. Steps two to five are the necessary process which all post-communist or transitional countries must go through. As observed in the case of Vietnam, the process requires establishing separate negotiations aside from the establishment of formal relations.²¹

Prospects for Normalization of the U.S.-DPRK Relationship

According to the September 19, 2005 Joint Statement, February 13, 2007 Agreement, and October 4, 2007 Agreement of the Six-Party Talks, the first steps that need to be taken toward normalization of the U.S.-DPRK relationship are removing North Korea from the list of SSTs, terminating application of Trading with the Enemy Act with respect to

²¹ Kim Seok Jin, "Prospects for Trade Normalization of DPRK Using the Vietnam Case Study," p. 26.

the DPRK, and ultimately achieving a complete normalization once the corresponding denuclearization process has taken place (simultaneously) in North Korea.

The prospects for the U.S.-DPRK normalization may follow a similar scenario as the case of the U.S. and Vietnam, consecutively carrying out denuclearization (step 1), removal from the list of SSTs (step 2), and providing development assistance and normalization of trade and investment (step 3). The U.S. Congress regards such procedures positively. In fact, the Congress suggested a potential of initiating dialogues to establish a U.S.-DPRK trade agreement that incorporates North Korean goods and services as well as investments, using the U.S.-Vietnam bilateral trade agreement of 2001 as a model.²² Congressman Mark Kirk (Rep. IL) emphasized that the DPRK may improve its economy and the living standards of its people without destabilizing the government authority, if the DPRK embraces the Vietnam case as a model.²³

To normalize the U.S.-DPRK trade and investment relationship, the following requirements must be fulfilled:

- Reinstatement of the Non-proliferation Treaty (NPT) for the denuclearization of the Korean peninsula;
- Adherence to the International Atomic Energy Agency (IAEA) safeguard standards;
- Beginning of DPRK policy reform that corresponds to international norms and practice.

The above requirements must be fulfilled for the DPRK to be freed from economic sanctions imposed under UNSC Resolutions 1540 (enacted

²² - Dick K. Nanto, "The North Korean Economy: Overview and Policy Analysis," updated April 18, 2007.

²³ - Interview with RFA, July 28, 2007.

on April 28, 2004) and 1718 (enacted on October 4, 2006).²⁴ UNSC Resolution 1718 states that its sanctions will remain effective until the DPRK accepts international supervision against the DPRK's possession of nuclear weapons and faithfully completes the denuclearization process.²⁵ The statement is interpreted as the commitment of the United Nations and its member nations to completely denuclearize the DPRK and cease all its nuclear activities. The following is a predication of the future for North Korea, with the precondition that the above process is carried out.

Development Assistance

Once the legal sanctions imposed by the Foreign Assistance Act and the DPRK's status as a SST are removed, government- or NGO-sponsored humanitarian as well as development aid to North Korea is expected to increase. Assistances with humanitarian purposes have been comparably free from legal or practical restrictions. To alleviate the chronic food shortage of the DPRK, the U.S. provided about \$0.7 billion between 1996 and 2005, via the World Food Program. Also, the United States agreed to sponsor 500,000 tons of grains to the DPRK as a part of the denuclearization procedure agreed in the six-party talks. Since 2002, over 90 percent of all U.S. food assistance to the DPRK came under the supervision of the USAID, pursuant to chapter 2 of the 1954 Food for Peace Program.

The Bush administration as well as other members of the bureaucracy stated that progress in the denuclearization process will lead to

²⁴-UNSC Resolution 1718 prohibits all member nations from exporting conventional weapons, nuclear weapons, ballistic missiles, WMD, and other strategic materials to North Korea, as a part of economic sanctions against the North following its nuclear experiment.

²⁵-Speech of Patricia McNerney, Senior Advisor to the Under Secretary of State for Arms Control and International Security Affairs, *Daily NK*, July 4, 2008.

development assistance.²⁶ Therefore, development assistance is expected to intensify especially in the agriculture, health, medical, and energy sectors. However, in the North Korean Human Rights Law (HR4011, PL 108-333) that was passed by the 108th Congress in 2004 demands rigorously that the DPRK show substantial progress in issues regarding human rights, such as enhancing the level of transparency, monitoring, and approachability.²⁷

The U.S. food assistance to North Korea has various purposes, including humanitarian aid, development, advancement of democracy, and expansion of market for American agricultural exports. The following table compares humanitarian and development purposes of aid programs in the DPRK.

Table 2. The Purposes of U.S. Humanitarian and Development Assistance

Institution and Assistance Program		Humanitarian Purpose	Development Purpose
Public Law 480	Title I (USDA)	Terminate hunger, malnutrition, and their causes	A wide range of sustainable development including agricultural development
	Title II (USAID)	Provide emergency aid to pregnant women and children	<ul style="list-style-type: none"> • Develop economic society • Promote transparent environment projects
	Title III (USAID)	Terminate hunger, malnutrition, and their causes	Use profit from sale of food assistance as a resource for economic development
Food for Progress (USDA)			Expand liberal role of corporations in agricultural development

²⁶ President Bush mentioned that he will examine assisting the North with energy and food including agricultural development assistance in a “bold initiative” if the North gives up all its nuclear programs in a verifiable way while terminates the U.S. security concerns regarding North Korean conventional weapons and ballistic missiles issues as well (January 2003).

²⁷ Mark E. Manyin, “U.S. Assistance to North Korea: Fact Sheet,” *CRS Report for Congress*, updated January 31, 2006, pp. 4-6.

Institution and Assistance Program	Humanitarian Purpose	Development Purpose
Food for Education & Children Nutrition, Farm Bill of 2002 (Presidential appointment)	Secure food supply and reduce hunger for pregnant women, infants, and children enrolled in schools.	Terminate illiteracy among female children, improve primary education by implementing kindergarten and other schooling programs
Section 416(b) (USDA)	PL 480 II, III, Food for Progress	PL 480 II, III, Food for Progress

Source: USGAO (2002).

Though all these programs aim to enhance both the humanitarian situation and development in the DPRK, the “Food for Progress” has a particular emphasis on the latter.

Table 3. U.S. Food Assistance Programs

Assistance Program	Contents	Institution
Public Law 480	Title I (USDA) Sales of agricultural products	Government, civilian organizations
	Title II (USAID) • Assistance for countries at an emergency crisis without charge • Recipient countries may resell the supplied materials domestically.	Government, public organizations, PVOs (public voluntary organizations), unions, international organizations
	Title III (USAID) • Material assistance for the poorest nations without charge • Assistance based on inter-governmental agreements	Government
Food for Progress (USDA)	Material or loan assistance for democratizing or transitory countries	Government, agricultural trade corporations, international organizations, PVOs, unions
Food for Education & Children Nutrition, Farm Bill of 2002 (Presidential appointment)	Material, financial, and technical assistance for foreign nations	Government, civilian organizations, international organizations
Section 416(b) (USDA)	Providing CCC (surplus articles) without charge pursuant to PL 480 II, PL 480 III, and Food for Progress programs	Government, agricultural trade corporations, public organizations, civilian organizations, international organizations, PVOs, unions

Source: USGAO (2002).

Normalization of Trade

Once removed from the list of SSTs, the DPRK will be classified as a “group D” nation, which is subject to less severe restrictions in comparison with the export-controlled nations of group E (Cuba, Iran, DPRK, Sudan, Syria). However, EAR restrictions will continue as long as the DPRK remains on the list of D-1, D-2, D-3, or D-4 countries.²⁸ According to the policy toward North Korea published by the State Department, sanctions imposed due to human rights abuses and nuclear proliferation activities will continue despite the removal from the list of state sponsors of terrorism. Export license fee will also remain in place regarding all materials controlled by the authority of EAR, technology, software, and hardware, with the exception of food and medicine.²⁹

Therefore, the DPRK must become a member of multilateral international financial institutions such as WA, MTCR, AF, and NSH in order to finally engage in trade of dual items, and thus be able to freely engage in trade with dual-purposes materials, technology, and high-technology materials. The de minimis provisions regard strategic materials and technology development exports will be mitigated from 10 to 25 percent. The measure will allow foreign-produced goods that have “entry ratio” below 25 percent to be re-exported without permission from the U.S. government to the DPRK.

Following the removal, whether the DPRK receives NTR status (MFN and GSP) will become an important policy issue. NTR status and acquisition of NTR necessitate bilateral negotiation with the United States. A U.S. *CRS Report*³⁰ had suggested a free trade agreement between the U.S. and the

²⁸- U.S. Department of Commerce, Q & A on the Rescission of North Korea from the State Sponsor of Terrorism List (Date of Access: July 17, 2008).

²⁹- U.S. government declared that there are still many legal sanctions imposed on the North besides removal of the North from the list of SSTs and termination of TWEA application to the North, in an interview with *Weekly Standard, Chosun Ilbo* (Seoul), May 30, 2008.

³⁰- Dick K. Nanto, “The North Korean Economy: Overview and Policy Analysis,” *CRS Report for Congress*, updated April 18, 2007.

DPRK, revealing a potential for constructive dialogues for bilateral trade partnership regarding North Korean service industry, goods, and investment. Once the United States gives NTR status to the DPRK, other countries are likely to follow the action.³¹

However, such a bilateral agreement requires a separate process of negotiation and consequently a longer time frame and cooperation. Such a trade agreement further requires an approval by the U.S. Congress, not to mention a highly complex bureaucratic process and preconditions. The U.S.-Vietnam bilateral trade agreement produced broad trade and investment regulations on import duties and import allocation, transparency, conflict resolution, protection of copyrights, development of service industry, economic revival, and so forth. Generally for a communist, non-market economy, acquisition of NTR status, and trade agreement with the U.S. indicates that the country has a highly advanced level of market and structural reformation. Vietnam is currently assessed as a successful case of incorporation into the international market structure for acquiring PNTR and WTO membership.³²

Normalization of Financial Transaction

Once the DPRK is removed from the list of SSTs, the international financial institutions such as IMF and ADB will be able to provide loans and/or other forms of assistance without facing the opposition of the U.S. representatives within those institutions.³³ On the other hand, gaining

³¹ - Lim Eul-Chul, "Goals and Assignment for International Cooperation for North Korean Economic Development," *Recipient Economy of DPRK*, Winter 2007 (Seoul: Import-Export Bank of Korea, 2007), pp. 51-52.

³² - Vietnam was given the PNTR status in December 2006, which was within 5 year after receiving NTR status from the U.S., via bilateral trade negotiations. Vietnam gained WTO membership around the time as well (gained admission by the WTO in November 2006; membership valid since January 2007). Kim Seok Jin, "Prospects for Trade Normalization of DPRK Using the Vietnam Case Study," p. 47.

³³ - The DPRK applied for ADB membership in 2000 and 2001, and tried to participate as an

membership in these institutions will take into consideration political progress, namely denuclearization, and the degree of North Korea's "opening up" to the international community.

Dialogues for possible DPRK membership into international financial institutions will be initiated only after substantial progress in the denuclearization process and political support is received from the international community, especially from the United States. Through these dialogues, the DPRK will be able to receive financial and technological assistances, ultimately incorporating the DPRK into the international political and market structure. These dialogues will also contribute to resolving issues such as North Korea's foreign debt, exchange rates, currency, enhancement of financial system, and assistance for stabilizing macroeconomy.

At the Bilateral Financial Working Group, which took place for two days in New York on November 19, 2007, the participants discussed basic regulations and actions that need to be understood and agreed upon before incorporating the DPRK into international financial practice. The U.S. representatives declared that the DPRK's issues regarding incorporation into the international community are fundamental problems that require a long-term process for resolution.³⁴ The DPRK will be smoothly incorporated into the international financial structure if the DPRK abandons illegal activities such as money laundry and forgery, increases transparency especially for financial exchanges and published government survey data, allows supervision of by economic evaluation team, releases a concrete plan in case of economic failure, demonstrates a faithful commitment to reformation, and vows to carry out its responsibilities as a member nation of the international community.

observer but failed due to U.S. opposition that the North is a state sponsor of terrorism and not eligible as an observer.

³⁴ - *Yonhap News* (Seoul), November 12, 2007.

Economic Transition and Effects

In the cases of China and Vietnam, the enhancement of their relationship with the United States played a vital role in the process of transition from communism to market economy.³⁵ In particular, Vietnam revised its legal system to adhere to international norms and standards regarding economic transition, so that Vietnam may gain WTO membership. The legal revision was a determining factor that accelerated the country's structural transformation to a market economy. Therefore, vitalizing trade, investment, and assistance with the United States preconditions fundamental reform and "opening up" of DPRK. To fully enjoy the assets of removal from the list of state sponsors of terrorism, the DPRK will have to carry out wide-ranging and pragmatic reformation.³⁶

Vietnam is a successful example of a transition economy that transformed itself into a market economy through legal reforms in order to fully incorporate market economy with support of the United States. From a long-term perspective, negotiation with the United States is inevitable in order to acquire membership to international financial institutions, make trade deals, and gain access to the World Trade Organization, as seen in the cases of China and Vietnam. Such bilateral negotiations built structural foundations for technical support regarding legal reformation.³⁷ For a transition economy to transform itself into a market economy, not partial but whole legal reform is essential, encompassing legal system, legislative

³⁵-Improving the relationship with the U.S. led Korean and Taiwanese textile, general merchandise, and shoes production companies that formerly invested in Indonesia to redirect its capital to Vietnam. Because Vietnam received GSP benefits from Europe and the U.S., Vietnam became popular for its low wage and high-quality labor, and ultimately as a detour export location. According to the UNDP report, it gave permission to 6,813 foreign direct investment projects to Vietnam, which is worth 60 billion, between 1991-2006, of which 48 percent were carried out.

³⁶-Interviews with Marcus Noland at the Peterson Institute for International Economics, RFA, November 14, 2007.

³⁷-Jung Soon Won, "Studies on Legal Construction Following the Structural Adjustment of North Korea," PhD dissertation, Korea University, July 2007, pp. 105-107.

procedures, legal education, and database.

The United States is characterized by its cooperation between the government and civilian organizations to promote legal reformation in transition economies.³⁸ USAID is especially expected to play a major role once the environment is prepared for transforming the DPRK.³⁹ USAID played one of the leading roles in helping Vietnam transform by cooperating with the UN and international financial institutions. The United States provided technical assistance to Vietnam with the emphasis on overall Vietnamese trading policy, investment policy, and incorporation to the structure of the WTO. The U.S.-Vietnam Trade Council Education Forum was created specifically to facilitate Vietnam's access into the WTO by providing professional and technical support via workshops on international trade, legal conflicts in trade, and judiciary mediation of foreign investment.⁴⁰ The United States put particular emphasis on ensuring that Vietnam understands the perspective of U.S. trade policy, legal system, good governance, and so forth. To do so, the United States provided opportunities to Vietnamese bureaucrats to participate in workshops and seminars regarding legal structures of market economy system.⁴¹

However, the U.S. policy of foreign assistance for the past several years suggests that the direction of the DPRK's structural transition may differ from that of Vietnam. The United States is putting a particular emphasis on the importance of the recipient country's regime and public governance. The U.S. government is currently running the Millennium Challenge

³⁸ - Refer to "Assistance for Legal Reform in Transitory Countries," by Kwon Oh Seung *et. al.*, for the various U.S. assistance for legal reformation in transitory countries.

³⁹ - USAID is making long-term contributions to transitory countries that are undertaking legal reformations through its Office of Transition Initiatives (OTI), managed under the Humanitarian Bureau since 1994.

⁴⁰ - U.S. Trade Council, WTO Accession Technical Assistance Program, 2005.

⁴¹ - Jung Soon Won, "North Korean Economic Structural Transition and Methods for Legal Reformation," The 124th North Korean Legal Studies Monthly Presentation, January 31, 2008, p. 6.

Account (MCA) that states that progress in market economy, maturity of democracy, respect for human rights, and participation by civil society are the preconditions for U.S. foreign assistance to target countries.⁴² Such change of U.S. policy reflects that the international community now requires inclusive legal reform based on the construction of good governance, rather than implementation of a few legislations.

As shown in the table below, the MCA selects countries eligible for funding based on 16 indicators of three sections, in which corruption control, legal governance, and effective government bureaucracy are the most important factors. The MCA has received positive feedbacks domestically and internationally. The 16 indicators are assessed dominantly as an effective tool to select countries that are able to carry out effective and transparent long-term assistance.⁴³ These standards are the assignments

⁴²-MCA was concretized by President Bush's speech in 2002 at the Inter-American Development Bank, Monterey, Mexico, in which the President declared the change in U.S. foreign assistance policy. Five billion USD will be invested every year to form transparent policy directions in poor countries and to invest in their economic development. The three main assistance principles are governing justly, investing in people, and encouraging economic freedom. Establishment and management of MCA symbolically show the U.S. deviation from its policy formed in the 1960s. Steve Radelet, "Will the Millennium Challenge Account Be Different?" *The Washington Quarterly*, Vol. 26, No. 2 (2003), p. 171; For effective management, bureaucratic and civilian experts compose Millennium Challenge Corporation (MCC), while committee members of the State Department, Department of Commerce, and Office of the U.S. Trade Representatives will be in charge of making key decisions. The committee chair is the Secretary of the State, and MCC chief director will be appointed directly by the President and will be held for hearings by the Senate. Countries eligible for MCA assistance are poor countries below the GNI standard of \$1,575. Countries between \$1,575 and \$3,255 are classified as middle-low income countries. In case of the FY 2006, the U.S. Congress sized \$21 billion for foreign assistance, of which \$1.8 billion is distributed as MCA budget (while the Bush administration asked for \$3 billion). In November 2005, the MCA board of directors selected Armenia, Mongol, Ghana, and 23 other countries as eligible for the MCA assistance, and then finally qualified 13 more countries as well. The 23 countries include Armenia, Benin, Bolivia, Burkina Faso, Cape Verde, East Timor, El Salvador, The Gambia, Georgia, Ghana, Honduras, Lesotho, Madagascar, Mali, Mongolia, Morocco, Mozambique, Namibia, Nicaragua, Senegal, Sri Lanka, Tanzania, Vanuata, etc.

⁴³-The World Policy Council assessed the MCA as the most effective institution for development assistance and recommended to the Bush administration expand the budget. See <http://www.mcc.gov/about/index.php>. Accessed on July 15, 2008.

that the DPRK must fulfill in a long-term process in order to fully normalize with the United States and, if possible, acquire short-term MCA assistance.

Table 4. MCA's 16 Indicators and Evaluator Institutions⁴⁴

MCA Qualification Standards	
Indicators	Institution
<i>I. Governing Justly</i>	
Civil Liberties	Freedom House
Political Rights	Freedom House
Voice and Accountability	World Bank Institute
Government Effectiveness	World Bank Institute
Rule of Law	World Bank Institute
Control of Corruption	World Bank Institute
<i>II. Investing in People</i>	
Public Primary Education Spending as Percent of GDP	World Bank Institute/National Sources
Primary Education Completion Rate	World Bank Institute/National Sources
Public Expenditures on Health as Percent of GDP	World Bank Institute/National Sources
Immunization Rates: DPT and Measles	World Bank Institute/UN/National Sources
<i>III. Promoting Economic Freedom</i>	
Country Credit Rating	Institutional Investor Magazine
Inflation	IMF
3-Year Budget Deficit	IMF/National Sources
Trade Policy	Heritage Foundation
Regulatory Quality	World Bank Institute
Days to Start a Business	World Bank

Sources: <http://www.whitehouse.gov/infocus/developingnations/millennium.html> (Date of Access: July 16, 2008); <http://www.cgdev.org> (Date of Access: December 16, 2007).

⁴⁴- Shin Jong Dae and Choi Chang Yong, "Current Status and Future Assignments for U.S.-DPRK Scientific Exchanges," *North Korean Studies Review* (University of North Korean Studies, in Korean), Vol. 9, No. 3 (2006), p. 91.

Conclusion

Currently, the hostile relationship between the United States and the DPRK and the designation of SST status on the latter is the most severe factor that restricts North Korea's entry into the international community. Considering the situation, this paper thus far examined obstacles in the DPRK's legal structure as well as conditions and prospects for the DPRK's successful transition to a prosperous market economy in the future.

According to the September 19, 2005 Joint Statement, the February 13, 2007 Agreement, and the October 4, 2007 Agreement (all of which were produced at the six-party talks), the first step that needs to be taken for the normalization of U.S.-DPRK relations is completion of the denuclearization process and subsequent removal of the DPRK from the list of state sponsors of terrorism, and a halt to the application of the Trading with the Enemy Act with respect to the DPRK.

The normalization of U.S.-Vietnam relations offers a pattern in which the United States and the DPRK may follow, such as progress in denuclearization (step 1), removal from the list of state sponsors of terrorism (step 2), and finally development assistance and normalization of trade and investment (step 3). Vietnam carried out various legal reformation regarding economic structure that adheres to international standards and norms so that it might acquire acceptance into international financial institutions, a bilateral trade partnership with the United States, and access into the WTO. Likewise, the legal reformation accelerated Vietnam's transition into a market economy. The case of Vietnam's transition demonstrates (to North Korea) that vitalizing trade, investment, and assistance from the United States necessitates fundamental reformation and opening up. A wide-ranging as well as pragmatic reform is inevitable for the DPRK to fully enjoy the assets that will follow its removal from the list of state sponsors of terrorism.

Once a substantial improvement takes place in the environments for assistance, trade, and investment in the DPRK, the country will inevitably be put under enormous internal and external pressure to transform into a market economy, which will maximize the effect of all the external assistance and other inputs. A majority of assistance to transitory countries focuses on creating suitable environment for market economy. Democratization, stability of macroeconomy, structural adjustment, privatization, and legal reformation will follow such assistances.⁴⁵ Therefore, normalization of relations with the United States may bring opportunities or threats to the DPRK in the context of maintaining its government's legitimacy.

From the internal perspective of the DPRK, the U.S. preconditions such as social, political, and economic reforms will be perceived as unfavorable political interventions. Especially since the U.S. policy of foreign assistance embedded in the MCA system necessitates DPRK's structural reformation, it is highly unlikely that the DPRK would embrace MCA requirements. Though the possibility that the DPRK would satisfy the short-term MCA assistance requirements is quite minimal, any progress made concerning the MCA will be worth observing because the MCA clearly states the assignments the DPRK must fulfill in order to normalize with the United States.

In terms of legal aspects, the DPRK's relationship with the United States is expected to make procedural progress. Therefore, a rapid, pragmatic economic change is unlikely to occur in the near future. The DPRK's normalization with the United States signifies that the United States recognizes the DPRK as a legitimate member of the international community. Thus, normalization with the United States will create a favorable environment for foreign investment to North Korea. Though the softening economic restrictions on the DPRK is unlikely to bring dramatic

⁴⁵ - Stanley Fischer and Alan Gelb, "Issues in Socialist Economy Reform," *Journal of Economic Perspectives*, Vol. 5 (Fall 1991), pp. 91-105.

changes in the short term, the international community will perceive the DPRK as a legitimate trade and investment partner in the long term if normalization with the United States can be achieved.

The United States is a leader of international financial institutions as well as the overall international economic structure. The success and failure of North Korea's reform depends on its relationship with the United States because the reform relies on external assistance of capital and technology. Access to the international community and normalization of trade as well as investment will have a positive and pragmatic impact on the DPRK's economic revival only if the country achieves internal reformation along with an "opening up" to the outside world.

Normalizing relations with the United States signals the fundamental transition of the DPRK's economic structure. Therefore, the process of normalization with the United States must accompany internal reformation of the DPRK. Assistance by the MCA, including loans or development funds from international financial institutions, is provided only when the target country confirms its commitment to development and progress. Therefore, North Korea must recognize the need for technical assistance and voluntarily advertise its demand for reformation to the international community.

Simultaneously, North Korea must actually pursue structural adjustment that adheres to international standards and norms. The DPRK will be able to create a favorable environment for reformation through incorporation into the international system by restoring support and trust from the international community, and by simultaneously carrying out economic reformation and political normalization with the United States and the world.

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