

Conditions and Procedures to Ease or Lift Sanctions against North Korea

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A new resolution should be adopted to ease or lift the United Nations Security Council (UNSC) resolutions on North Korea. A possible approach is to introduce the “snap-back” clause, which enables the effective enforcement of agreements. North Korea Sanctions and Policy Enhancement Act of 2016 stipulated specific conditions to be met to suspend or terminate sanctions against North Korea — conditions of which include issues of weapons of mass destruction (WMD) and human rights. Should Washington decide to lift or ease sanctions in a situation where Pyongyang cannot immediately meet conditions stipulated by the Act, one option would be to have a special act passed by the U.S. Congress.

Recent projections suggest the possibility of sanctions against the Democratic People’s Republic Korea (DPRK) being eased or lifted if Pyongyang and Washington reached a denuclearization agreement. Currently, there are two types of sanctions enforced against North Korea: collective sanctions under the UN Security Council (UNSC) resolutions; and unilateral sanctions imposed by an individual country. This paper aims to briefly review how the UNSC sanctions and the U.S. unilateral sanctions,

the most effective among country-based sanctions, can be eased or removed on which conditions and process.

Conditions and Procedures to Ease or Lift the UNSC Sanctions

In principle, sanctions shall be eased or lifted at the earliest possible time once they served their desired goals. While the UN Charters do not lay out a provision on removal or relaxation of sanctions, the UNSC is bound to the basic principles set out in the UN Charters. Therefore, the principle of proportionality and the principle of necessity should be abided by. Under those principles, there have been requests and discussions on the need to clarify and specify conditions and criteria regarding the easing or lifting of the UNSC sanctions. Such attempts, however, are yet to produce an agreement on objective criteria. Meanwhile, the previous UNSC resolutions on North Korea only specify that the UNSC will keep monitoring the DPRK's actions and review the appropriateness of measures, including the strengthening, modification, suspension, and lifting of such measures (S/RES/1718 (2006), S/RES/1874 (2009), S/RES/2094 (2013), S/RES/2270 and S/RES/2321 (2016), and S/RES/2371, S/RES/2375, and S/RES/2397 (2017)).

For now, it is in the realm of politics to determine when and how to withdraw or ease the UNSC sanctions. It might take a new resolution to ease or lift the existing sanctions against North Korea. A possible approach is to introduce the “snap-back” system, which was included in the UNSC's Resolution 2231 (2015) adopted after the conclusion of Joint Comprehensive Plan of Action (JCPOA) on Iran. Despite some controversy around the snap-back system, it is widely evaluated as a useful measure to facilitate the implementation of such agreement. In the meantime, the 10-year sunset clause, also part of Resolution 2231, is unlikely to be included in a resolution that enables terminating sanctions against Pyongyang. The fact that Resolution 2231 will be expired within 10 years indicates that the snap-back clause, too, will be expired after a certain period. In that regard, President Trump has argued for the sunset clause's removal so that Iran's violation of the 2015 agreement can be subject to sanctions for an indefinite period. The 10-year sunset clause was cited as one

of the grounds for America's recent decision to withdraw from the JCPOA.

Innovative solutions should be adopted in the sanctions regime, which addresses issues that pose a serious threat to international peace and security such as WMDs, so as to ensure the effective enforcement of agreements. The UNSC resolutions on Iran's nuclear development revealed both possibilities and limits of a new approach on the removal and re-enforcement of sanctions. In-depth discussions and review on their usefulness and challenges will pave the way to find an advanced model for lifting and relaxing sanctions against the DPRK.

Conditions and Procedures to Ease or Lift the U.S. Sanctions against the DPRK

The U.S. has imposed sanctions against Pyongyang in the form of various statutes and executive orders. Among them, North Korea Sanctions and Policy Enhancement Act of 2016 (hereinafter referred to as "Act"), entered into force on Feb 18, 2016, is the first sanctions law that solely targets the DPRK. The Act prohibits any offer of goods, technology, and services as well as financial transactions with Pyongyang, and grants the executive branch a discretion to trigger a 'secondary boycott.' The secondary boycott refers to sanctioning third-party individuals or enterprises that transact with a sanctioned country. Subsequently, Executive Orders 13722 (Mar 15, 2016) and 13810 (Sep 20, 2017) were signed to ensure that the Act's provisions and UNSC resolutions adopted since 2016 are duly implemented. Executive Order 13810, in particular, is deemed one of the most powerful U.S. sanctions against North Korea with some aspects of secondary boycott. However, the 2016 Act spelled out specific conditions to be met to ease or lift sanctions. Therefore, any sanctions imposed under Executive Orders that took into effect after the Act's entry into force can be lifted only after certain conditions are satisfied.

Section 401 of the 2016 Act laid down six conditions on which sanctions "may be suspended for up to 1 year upon certification by the President to the appropriate congressional committees that the Government of North Korea has made progress toward": (1) verifiably ceasing its counterfeiting of United States currency;

(2) taking steps toward financial transparency to comply with generally accepted protocols to cease and prevent the laundering of monetary instruments; (3) taking steps toward verification of its compliance with applicable United Nations Security Council resolutions; (4) taking steps toward accounting for and repatriating the citizens of other countries that were abducted or unlawfully held captive by the Government of North Korea; (5) accepting and beginning to abide by internationally recognized standards for the distribution and monitoring of humanitarian aid; and (6) taking verified steps to improve living conditions in its political prison camps.

Section 402 of the same Act stipulates that if North Korea met the requirements set forth in Section 401 and, additionally, made significant progress toward the following five conditions, sanctions shall be terminated upon the President's decision and certification to the appropriate congressional committees. The five conditions refer to: (1) completely, verifiably, and irreversibly dismantling all of its nuclear, chemical, biological, and radiological weapons programs, including all programs for the development of systems designed in whole or in part for the delivery of such weapons; (2) releasing all political prisoners, including the citizens of North Korea detained in North Korea's political prison camps; (3) ceasing its censorship of peaceful political activity; (4) establishing an open, transparent, and representative society; and (5) fully accounting for and repatriating United States citizens that were abducted or unlawfully held captive by the Government of North Korea.

Considering the aforementioned provisions, temporary suspension or termination of sanctions is unlikely to be an easy path. Taking WMDs as an example, WMD-related sanctions may be suspended only after the President certifies to the Congress measures to verify North Korea's compliance with the UNSC resolutions. For termination, the President must be confident of significant progress in the complete, verifiable, and irreversible dismantling of all of Pyongyang's nuclear, chemical, biological, and radiological weapons programs, before certifying it to the Congress. Even on the assumption that the WMD issue is resolved, however, human right issues still remain in place. The North Korean government has officially denied the existence of political prisoner camps, and thus recognized none of the concerns

raised by the international community on the issue. Also, under the current North Korean regime, it appears difficult to see significant progress in the short-term concerning the suspension of censorship of peaceful political activity or establishment of an open and transparent society in North Korea.

Should Washington decide to lift or ease sanctions in a situation where Pyongyang cannot immediately meet conditions stipulated by the Act, one option would be to have a special act passed by the U.S. Congress. The current U.S. legal framework makes it difficult to ease or withdraw sanctions via step-by-step approach. An alternative seems to be a trade of sanctions-lifting with compressed denuclearization. ©KINU 2018

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