



CONVERTING MAXIMUM PRESSURE TO MAXIMUM LEVERAGE: THE ROLE OF SANCTIONS RELIEF IN NEGOTIATIONS WITH NORTH KOREA

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Abstract

The Trump administration's maximum pressure campaign has led to the imposition of a nearly comprehensive international sanctions regime targeting North Korea and its nuclear weapons program. With negotiations underway, the question of whether to provide North Korea with partial sanctions relief in exchange for limited concessions on its nuclear program has been a major point of dispute between Washington and Pyongyang. This paper looks at sanctions as a form of coercive bargaining, and examines the logic and challenges behind a strategy of incrementally exchanging relief from pressure for compliance with the sanctioner's demands. It argues that taking an "all-or-nothing" approach to sanctions relief risks missing an opportunity to reduce the threat of North Korea's nuclear program and squandering hard-won negotiating leverage, and outlines a framework for how a step-by-step approach might proceed.

Key Words: *sanctions, sanctions relief, maximum pressure, negotiations, North Korean economy*

Introduction

When the second U.S.-DPRK summit ended with a fizzle in Hanoi, it became apparent that the scope, timing, and trade-offs involving sanctions relief would be one of the most contentious and difficult issues if negotiations between Washington and Pyongyang are to move forward. The Trump administration has insisted that North Korea fully dismantle its weapons of mass destruction (WMD) programs before sanctions are lifted, although in the weeks prior to the second summit it hinted at some flexibility on the timing of sanctions relief.¹ Pyongyang has

vociferously denounced this denuclearization-first approach, and has stressed the need for "corresponding measures" by the U.S. in return for step-by-step concessions on its nuclear program.² In Hanoi, North Korean leader Kim Jong-un reportedly offered to dismantle the major facilities at the Yongbyon nuclear complex in return for lifting the most biting UN sanctions—a deal that President Trump turned down.³

Pressure from sanctions was clearly not the only factor behind Kim Jong-un's pivot to diplomacy at the start of 2018. Two years after the Trump administration declared a policy of "maximum pressure and engagement," expansive new U.S. and UN sanctions have not yet led to an acute economic crisis in North Korea. Pyongyang has retained its veneer of relative prosperity—exchange rates and food prices are stable, and construction of showpiece projects has continued apace.⁴ According to Chinese trade data, North Korea's exports dropped to nearly nothing by the start of 2018 (consistent with UN bans on all of the country's major exports), but imports have not taken a concomitant plunge.⁵

Nonetheless, the sanctions regime remains a major source of potential leverage for U.S.-led efforts to roll back North Korea's nuclear program. As the Hanoi summit demonstrated, sanctions relief is a priority for Pyongyang. To sustain its economy, North Korea is relying on some combination of sanctions evasion, illicit activities such as cybercrime, and possible covert financial support from China.⁶ It is likely drawing down its hard currency reserves, as well. In the short term, this is far from conducive to advancing the economy-first policy line Kim Jong-un articulated in April 2018.⁷ Over time, a combination of effective sanctions

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enforcement, a loss of foreign patronage, and drawn-down reserves could potentially wreak havoc on the North Korean economy, sending prices spiraling upward as foreign currency becomes scarce and the won becomes worthless.⁸

However, maximum pressure against North Korea will not mean maximum leverage in negotiations unless it is yielded effectively, and is applied and potentially released in ways that force Pyongyang into making difficult choices about rolling back its nuclear program and engaging economically on terms it can't fully dictate. U.S. insistence on "final, fully verified denuclearization" as a prerequisite for sanctions relief is clearly a nonstarter for North Korea. Even if the prolonged application of sanctions begins to translate into significant economic pain, it is difficult to imagine Kim Jong-un capitulating so completely to Washington's demands. As the famine of the 1990s demonstrated, the regime is willing to endure—or rather, have its population endure—severe pain to ensure its survival.

In contrast, the offer of graduated sanctions relief, combined with a broader diplomatic approach and the prospect of renewed economic pressure if talks fail, might help to elicit important concessions that reduce the immediate threat posed by North Korea's nuclear program. Over the long term, such an approach could perhaps reshape Pyongyang's strategic calculus in a way that makes additional progress toward denuclearization possible. At a minimum, putting the possibility of sanctions relief on the negotiating table would weaken North Korean attempts to put the blame on U.S. obstinacy if talks fail, and help to keep the international coalition imposing sanctions intact.

Sanctions as Coercive Bargaining

The international sanctions regime on North Korea has three broad objectives. First, the imposition and enforcement of sanctions sends a punitive signal to Pyongyang and other would-be proliferators that North Korea's nuclear and ballistic missile programs are illegitimate in the eyes of the international community. Second, sanctions are meant to constrain North Korea's WMD development and military capabilities. Third, and most importantly, sanctions are imposed as a form of coercive bargaining intended to compel Pyongyang to abandon its WMD programs in exchange for relief from economic pressure.⁹

Most analyses of sanctions policy have honed in on the coercive half of this equation: how to design effective sanctions, how to enforce them, and whom to target.¹⁰ The bargaining part—the question of how the party implementing sanctions can

most effectively exchange the promise of relief in return for compliance from the sanctions target—has received significantly less attention, but is no less important.¹¹

Sanctions have at best a mixed record of success as a tool of coercion. The threat of sanctions can be effective in deterring unwanted behavior, but applying sufficient economic pressure to compel an adversary to change course after such threats have failed poses a far greater challenge.¹² If the sending state's demands are to be met, sanctions must impose a cost on their target that outweighs the value of the policies that prompted them; the target, while under duress, must also become convinced that compliance with these demands is their best subsequent course of action. To be successful, sanctions must therefore be integrated into a comprehensive strategy that clearly communicates the sender's intentions and terms for relief, incorporates a realistic set of goals, and works in other ways to reshape the target's political calculus and interests.¹³

Both the state sending sanctions and the state targeted by them face issues of credibility and enforcement in negotiating the removal of sanctions. The sending state worries about the target's potential for cheating, for recidivism after sanctions are lifted, and about the difficulties of re-asserting economic pressure after it has been released. The target, in turn, runs the risk that compliance with the demands of the sending state will not result in promised sanctions relief or that sanctions will be re-imposed at a later date.

Simply negotiating over the terms of sanctions relief can be difficult for both target and sender. For the party implementing sanctions, articulating anything less than maximalist demands or expressing a willingness to compromise, risks sending the target a signal of weak resolve, and may also entail domestic political costs. However, if the target of sanctions believes that trying to meet the objectives of the sending state—in part or in full—won't provide any benefit, it has little incentive to change its behavior in any way other than to resist, adapt to, and evade those sanctions.¹⁴

The provision of partial sanctions relief therefore can have value in allowing both parties to build confidence, realize intermediate objectives, and facilitate further action. However, getting the timing and scope of such relief right is akin to walking a tightrope. Aggressive implementation of sanctions or an unwillingness to provide meaningful relief during a negotiation process can signal a lack of good faith and prematurely close doors that are starting to crack open; lax enforcement or premature relief can



encourage the target to stonewall while the sanctioning state's negotiating position erodes. Relaxing sanctions for the purpose of bargaining can also undermine the secondary purposes of coercive sanctions, such as constraining an adversary's military capabilities.

In many circumstances, sanctions cannot be easily fine-tuned to fit the changing needs of the moment. Market actors will engage in business according to their own sense of risk and profitability; even as the outer layers of a sanctions regime are removed, many businesses will not necessarily be eager to rush into an environment rife with political risk and legal uncertainty. Financial sanctions, which are a uniquely powerful tool for the United States, are particularly difficult to calibrate given the tendency of sanctions evaders and money launderers to obscure their identities, and the risk-based approach financial institutions take to sanctions and anti-money laundering compliance.

At the same time, sanctions once removed can sometimes be difficult to re-impose. Sanctions targeting commercial trade can be re-applied relatively easily if there is sufficient political will to do so, but those on long-term investment in a country are costlier to turn on or off. Limited sanctions relief might also unintentionally send a signal to risk-tolerant actors that the enforcement of remaining sanctions will no longer be a priority, allowing the target to rebuild illicit overseas trade and financial networks that sanctions enforcers had previously worked to dismantle.

A further challenge to calibrating sanctions with negotiations lies in the fact that they are typically imposed by coalitions that have different interests and aims. Members of such a coalition might agree on the need to implement sanctions at the outset of a crisis, but fail to agree on the conditions under which those sanctions should be lifted. This applies both on an international basis, with multiple countries implementing or enforcing sanctions, and within the realm of domestic politics where partisan conflict or executive-legislative tensions may influence the implementation of policy or impede the lifting of sanctions.

Finally, the potential humanitarian consequences of sanctions on a target country's population raises ethical considerations. Comprehensive sanctions are intended to cause the target pain, and this pain almost inevitably is felt most acutely among the most vulnerable members of society. Although sanctions typically include humanitarian exemptions in order to alleviate this impact, in practice those exemptions have often proven insufficient due to their limited scope or because of private-

sector risk aversion. Ensuring humanitarian access to a country under comprehensive sanctions requires active support from the imposing party, which policymakers haven't always been eager to grant for fear of opening up loopholes or showing a lack of resolve. However, there are good strategic reasons for a sanctioner to facilitate humanitarian trade and access by aid organizations: if sanctions are seen as causing undue harm to a population, international support for them—and in some cases, support within the targeted country—will weaken, ultimately eroding the strength of the sanctions regime.

The Evolution of International Sanctions on North Korea

Targeted Sanctions and Sanctions Relief, 2006-2016

For the first decade after North Korea's first nuclear test in 2006, the international sanctions regime targeting Pyongyang was relatively narrow in scope and did not directly target most of North Korea's economy or trade in non-military goods. Initial UN sanctions were largely aimed against North Korea's WMD programs, its military, and the "court economy" responsible for providing luxury goods to the regime's inner circle. U.S. efforts after the 2002 collapse of the Agreed Framework focused on pressuring Pyongyang by targeting its global arms sales, its illicit activities, and the financial networks that facilitated them.¹⁵ The South Korean sanctions imposed after the 2010 sinking of the *Cheonan* closed off most avenues of inter-Korean cooperation, but kept in place the most economically significant project: the Kaesong Industrial Complex, where South Korean firms employed about 54,000 North Korean workers, netting the North Korean government about \$100 million annually.

These efforts proved insufficient at constraining North Korea's ability to advance its nuclear and ballistic missile programs. In the years after the first UN sanctions were adopted in 2006, North Korea made dramatic advances in its nuclear and ballistic missile programs, with some analysts arguing that Pyongyang's adaptations to these sanctions had actually made its illicit overseas procurement network more effective.¹⁶ A sharp increase in North Korean commercial trade with China during this period more than compensated for apparent declines in revenue from illicit activities, facilitating several years of modest economic growth.¹⁷ The steady flow of luxury goods into North Korea—not to mention the appearance of foreign-made dual-use goods such as CNC machines and heavy trucks capable of transporting ICBMs—also made it apparent that enforcement of sanctions along the China-DPRK border left much to be desired.¹⁸



U.S. efforts to trade limited unilateral sanctions relief for North Korean nuclear concessions as part of the Six Party Talks process in 2007-2008 similarly did not change the long-term trajectory of Pyongyang's nuclear program. In 2007, the U.S. facilitated the return of about \$25 million in frozen North Korean assets from Banco Delta Asia (BDA)—a Macanese bank blacklisted by Washington in 2005 for enabling North Korean money laundering—in exchange for a North Korean agreement to freeze its nuclear facilities at Yongbyon.¹⁹ The next year, the U.S. also ended sanctions imposed on North Korea under the Trading with the Enemy Act and removed the DPRK from its list of State Sponsors of Terrorism.

Yet relief of these sanctions functioned primarily as confidence-building measures rather than economic inducements, providing little immediate tangible economic benefit to Pyongyang. At most, the return of North Korea's laundered funds from BDA blunted the momentum of a U.S.-led campaign to convince financial institutions around the world to reject any dealings with Pyongyang. When the Six Party Talks collapsed in early 2009, rebuilding this momentum proved challenging, particularly in light of China's then-deepening support for economic engagement with North Korea. Ultimately, the impact from U.S. and UN sanctions imposed on North Korea prior to 2016 was not commensurate with the aims those sanctions sought to achieve, and the sanctions that did the most to constrain or pressure Pyongyang were poorly suited to be used as bargaining chips in negotiations.

From Targeted to Comprehensive Sanctions, 2016-Present

North Korea's fourth nuclear test in January 2016 marked a turning point for the sanctions regime. Shortly after the test, Seoul abruptly ended operations at the Kaesong Industrial Complex. The shutdown was followed closely by passage of the North Korea Sanctions and Policy Enhancement Act (NKSPEA), a new U.S. law which dramatically expanded the scope of sanctions against North Korea. The UN Security Council followed suit with the adoption of Resolution 2270, which marked a conceptual turning point in the UN sanctions regime by targeting North Korea's non-military exports in a bid to deny hard currency to Pyongyang.

The resolution's ban on North Korea's lucrative coal and iron exports initially meant little in practice, with Chinese purchasers exploiting a provision permitting transactions conducted "exclusively for livelihood purposes."²⁰ However, the five subsequent resolutions adopted from November 2016 through

December 2017 incrementally transformed the threat of broad sectoral sanctions into a reality, prohibiting roughly 90% of North Korean commercial exports by value and requiring the repatriation of all North Korean overseas workers by the end of 2019.²¹ These resolutions also severely curtailed financial and shipping activities related to North Korea; capped or restricted crude oil and fuel exports to North Korea; and banned exports of all industrial machinery, transportation vehicles, and metals to North Korea.

Although China is clearly at the front line of enforcing these sanctions, the U.S. secondary sanctions regime adopted after the passage of NKSPEA has also put some teeth behind them. As amended by Title III of the 2017 Countering America's Adversaries Through Sanctions Act (CAATSA) and implemented through related Executive Orders and regulations, NKSPEA mandates the executive branch to sanction North Korean entities involved in WMD-related activities, as well as their enablers in third countries.²² The law also provides discretionary authority to sanction third-country entities for violating UN sectoral sanctions on North Korean trade in goods such as coal or fuel, and includes provisions targeting violators of North Korean human rights and banning the entry of goods made with overseas North Korean labor from entering the United States.

After the passage of NKSPEA, Washington began regularly enforcing secondary sanctions against third-country entities illicitly doing business with North Korea, taking action against some of Pyongyang's major Chinese trading partners; small banks based in China, Russia, and Latvia; and a variety of other individuals and entities linked to North Korea's overseas trade and proliferation networks. The U.S. has also designated the DPRK as a jurisdiction of primary money laundering concern, requiring banks to undertake due diligence to prevent direct or indirect North Korean access to the U.S. financial system and thus to dollar-based payments. However, the U.S. has not applied secondary sanctions to major Chinese banks as some sanctions advocates have called for, perhaps judging that the risk of setting off a financial crisis and the costs of reduced cooperation from Beijing would outweigh the benefits of added financial pressure on Pyongyang.²³

The Political Dynamics of North Korea Sanctions Relief

The multilateral nature of the current UN sanctions regime helps to address the coordination problems that have plagued past attempts to pressure or engage North Korea.²⁴ The U.S., which is



effectively in a position to set the pace of de jure UN sanctions relief, has largely stuck to the public stance that sanctions will not be lifted until North Korea completes the process of denuclearization. However, China, South Korea, and Russia have all expressed their support for phased sanctions relief and a step-by-step denuclearization process.²⁵ These policy preferences—as well as Tokyo’s interest in maintaining a tough line on North Korea—need to be factored into how the U.S. approaches negotiations with North Korea.

China is North Korea’s largest trading partner by an overwhelming margin, and U.S. negotiating leverage with North Korea is to a large extent a function of Beijing’s enforcement of the sanctions it has agreed to in the UN. (Russia plays a similar, though smaller, potential spoiler role.) The threat or imposition of U.S. secondary sanctions might persuade major Chinese firms against doing business with North Korea, but their reach has its limits. The strength of Chinese sanctions enforcement has already appeared to wane, and if North Korea continues to refrain from major provocations, or if its economy starts to implode, this trend will likely only accelerate. Nonetheless, Beijing’s interest in a step-by-step approach to sanctions relief and Washington’s interest in strong sanctions enforcement are not necessarily misaligned: if sanctions are fully enforced, then each discrete piece of relief has greater value as a bargaining chip to be traded for North Korean nuclear concessions. The U.S. should therefore signal to China, at a high level, that sanctions enforcement remains a top priority, and explore whether such a common approach to sanctions strategy would be possible.

Additionally, for the U.S. to ignore its South Korean ally’s interests and priorities on policy toward the North risks damaging the broader alliance relationship, particularly if the South Korean government and public comes to believe that U.S. intransigence is the main obstacle blocking rapprochement on the Peninsula. The U.S.-ROK Working Group formed last fall represents a good start to finding and holding common ground, as it has appeared to help address U.S. concerns about South Korean compliance with UN sanctions while acknowledging ROK interests in inter-Korean cooperation and humanitarian access to North Korea.²⁶

The Trump administration would also face domestic political considerations in implementing sanctions relief. Although the executive branch has some flexibility in waiving or suspending sanctions against North Korea, it must nonetheless meet certain statutory requirements to do so.²⁷ If Congress finds a deal with North Korea to be unsatisfactory, becomes concerned that the

administration is poised to offer premature relief, or is unhappy about a lack of transparency in the administration’s North Korea policy, it might further constrain the executive branch’s discretion in lifting sanctions.

Initial Steps for Leveraging Sanctions in Negotiations with North Korea

A graduated approach to sanctions relief should structure each step in a way that concretely advances U.S. and allied interests by requiring tangible concessions on North Korea’s WMD programs. Although the details of how sanctions relief is structured would necessarily be subject to the back-and-forth of negotiations, a general framework should emphasize confidence-building measures up front, delay sanctions relief on commercial activities until North Korea has begun to roll back its program, and keep the broader sanctions framework in place until denuclearization is complete.²⁸ To disincentivize backsliding, this framework should also incorporate credible threats of sanctions snapback if Pyongyang fails to live up to its commitments. In general, UN sanctions could be rolled back first, with enforcement of U.S. secondary sanctions adjusted to mirror the UN regime. Such a framework could be realized either through a series of piecemeal agreements or through the implementation of a comprehensive agreement designed to proceed in a phased manner.

The first, and easiest, steps would involve easing restrictions to humanitarian access in North Korea and facilitating various types of people-to-people exchanges. The Security Council could enact a system giving humanitarian agencies blanket authorization to export certain sanctioned but non-sensitive goods such as agricultural and medical equipment to North Korea and could take steps to facilitate banking services for humanitarian agencies residing in North Korea. Washington could also roll back some of the red tape hindering U.S. humanitarian organizations from operating in North Korea, and pare back its travel restrictions to allow Americans to travel to North Korea (and vice versa) for professional exchanges or family reunions.²⁹ Some of these confidence-building measures would be worthwhile on their own merit, while others could be tied to modest North Korean actions such as letting inspectors visit the shuttered Punggye-ri nuclear testing site.

A more ambitious humanitarian program might involve modifying UN sanctions to allow North Korea to export limited quantities of sanctioned goods in exchange for imports of food, medicine, or other purely humanitarian goods. Under such a



system, revenue from North Korean exports could be put into an escrow account controlled by the UN, with transactions limited to approved trading partners and vetted by the Security Council's 1718 Sanctions Committee. Alternatively, income from North Korean exports could be directed to UN agencies operating in the country, perhaps with a donor such as South Korea offering a dollar-for-dollar match. Reports of a poor harvest last fall, and the possibility of food shortages occurring later this year, might add an extra impetus to establishing this kind of program.³⁰

As the denuclearization process moves forward, unwinding the sectoral sanctions on non-sensitive North Korean imports of fuel, metals, machinery, and vehicles could be a first major step, and come prior to easing restrictions on the country's commercial exports (any limited exports-for-food scheme excepted). Relief of these import sanctions might be an appropriate trade-off for the dismantlement of key nuclear facilities at Yongbyon and a freeze on North Korean ballistic missile production.³¹ These restrictions are a major part of the UN sanctions regime and help deny key inputs for the North Korean economy, but facilitating imports would not help Pyongyang solve the fundamental problem of a hard currency shortage induced by sanctions.

The facilitation of inter-Korean economic cooperation projects could also take place relatively early in a phased denuclearization process, given the parallel peninsular reconciliation process underway and the political logic of orienting North Korea's economic ties away from Beijing. The relinking and reconstruction of the inter-Korean rail and road systems, a project prioritized in the April 2018 Panmunjom Declaration, would be a good starting point. Additionally, while many in South Korea are eager to restart operations at the Kaesong Industrial Complex, it would make more sense to prioritize the resumption of tourism at Mt. Kumgang—the latter option would require fewer waivers from the UN Security Council and would be more easily reversible if talks falter.³²

The suspension of sectoral sanctions on North Korean exports would allow hard currency to flow more freely into Pyongyang's coffers and would thus remove an important constraint to North Korea's production of fissile material and ICBMs. As a senior U.S. State Department official put it after talks broke down in Hanoi, providing Pyongyang with major sanctions relief in the absence of a complete freeze of their WMD programs would "put us in a position of subsidizing the ongoing development of weapons of mass destruction in North Korea."³³ Relief of UN sectoral sanctions on North Korean exports should therefore be tied to

Pyongyang's willingness to put its covert uranium enrichment facilities on the table, and to take verifiable action constraining its ability to produce ballistic missiles. This basic trade-off—sectoral sanction relief for an end to fissile material and ballistic missile production—could form the basis of an interim agreement and provide the foundation for a more comprehensive settlement.

If a such a deal falls apart, sectoral sanctions could be readily re-imposed. While a freeze and dismantlement process is underway, the Security Council could issue renewable 90-day suspensions of these sectoral sanctions, or it could simply put in place a snapback mechanism similar to that created by the Joint Comprehensive Plan of Action with Iran.³⁴ Elements of the sanctions regime that are less amenable to snapback mechanisms than trade sanctions—such as restrictions on commercial investment in North Korea or on Pyongyang's access to the international financial system—would be more appropriate elements for removal toward the final stages of a negotiation process.³⁵

If sectoral sanctions are unwound while financial sanctions remain in place, establishing or expanding upon a UN-supervised escrow account system would help to ensure that the funds North Korea derives from sanctions relief are used for legitimate purposes.³⁶ The oil-for-food program created under the Iraq sanctions regime, with its endemic corruption, doesn't set a great precedent for such a mechanism; nonetheless, taking such an approach would be far preferable to prematurely easing financial sanctions on North Korea, and rigorous oversight could help alleviate concerns about misuse. North Korea would likely be wary of participating in such a mechanism, but if the only alternatives were relying on barter trade or using illicit bank accounts at risk of being frozen, Pyongyang might feel pressure to comply.

Both before and after an interim agreement ending North Korean fissile material production is reached, it would be of continuing importance for the U.S. and other countries to keep enforcing the sanctions that remain in place, and to generally put the cat-and-mouse game of sanctions evasion and enforcement on a separate track from the negotiating process. Quiet forms of U.S. action—such as privately putting diplomatic pressure on third countries to improve their implementation of UN sanctions, or building up the technical or regulatory capacity of those countries to enforce sanctions—would be the most appropriate complement to negotiations. Periodic secondary sanctions designations or corporate prosecutions may also be necessary



to hold bad actors accountable, even as the public messaging around these enforcement actions should be restrained. To demonstrate good faith, though, the U.S. and other actors should pursue enforcement activities from within the existing sanctions framework, rather than expanding that framework while talks are underway.

Getting toward dismantlement

An interim agreement which freezes or rolls back North Korea's capability to produce new fissile material and ICBMs would be a stabilizing force on the Korean Peninsula, reducing the prospects of conflict, horizontal proliferation, or rapid changes to the regional balance of power. Reaching such an agreement would be a challenge, but getting beyond that step would be far harder. The U.S. intelligence community, echoing the view of many Pyongyang watchers, recently published an assessment concluding that "North Korea is unlikely to give up all of its nuclear weapons and production capabilities," and that the country's leaders "view nuclear arms as critical to regime survival."³⁷ In the near- to medium-term, an uneasy detente with a nuclear-armed North Korea that emphasizes arms control and deterrence while also maintaining the long-term goal of denuclearization might be the best realistic option.³⁸

Whatever the prospects of eventual denuclearization, it is unlikely to happen without a major strategic shift in how North Korea engages with the world as well as within the country's domestic socio-political order. For its people to enjoy an "affluent and highly civilized life" and to "live as well as others," as Kim Jong-un put it last year, North Korea would need to see not just an end to sanctions but also integration into the international economy.³⁹ For this to happen, Pyongyang would need to permit a degree of economic transparency in order to join international financial institutions and to get off the Financial Action Task Force money-laundering blacklist; a bit of openness to facilitate commerce domestically and across borders; and a measure

of respect for private property rights to attract investment. Regardless of any sanctions imposed on human rights grounds, North Korea's dismal record on this front would also present a major reputational risk for international corporations considering investing or doing business there.

Dialogue on a broad range of issues—human rights, regional economic integration, biological and chemical weapons, cybersecurity, and a peace regime—could therefore proceed in tandem with negotiations on denuclearization and the removal of remaining sanctions. Modest improvements in North Korean human rights, in particular, could facilitate further sanctions relief even prior to complete denuclearization.⁴⁰ For example, credible North Korean adherence to the minimum standards articulated by the International Labour Organization could enable the resumption of activities at the Kaesong Industrial Complex or the practice of sending workers overseas. The UN's 1718 Sanctions Committee could also approve new investments in North Korea, on a case-by-case basis, if they hold the potential to contribute to public welfare and are in non-sensitive areas.⁴¹ Furthermore, progress on the human rights issues enumerated in Section 401 of NKSPEA could trigger the suspension of certain U.S. sanctions and perhaps facilitate additional bilateral confidence-building measures.

Ultimately, fully lifting sanctions would have to require full North Korean compliance with the terms of the relevant UN Security Council resolutions—and full sanctions relief would be necessary (though not sufficient) to unlock the kind of prosperity that Kim Jong-un says he wants to achieve. It would almost certainly be a long-term process for North Korea to decide that such a course of action is in its best interest. But offering step-by-step sanctions relief in return for concrete North Korean actions on denuclearization might be the best way to create a framework where such a decision eventually becomes viable. Table 1 offers a summary of the steps of potential sanctions relief relative to potential North Korean action as argued in this paper.



Table 1. Stages of Potential Sanctions Relief and North Korean Actions

	Potential Sanctions Relief	Potential North Korean Actions
Confidence-Building Measures	<ul style="list-style-type: none"> • Facilitation of people-to-people exchanges and travel • Facilitation of humanitarian exports to North Korea • Pilot-scale program allowing North Korea to export sanctioned goods for food or medicine 	<ul style="list-style-type: none"> • Written commitment to no nuclear or missile tests and no proliferation abroad • Comprehensive Test Ban Treaty signed • International inspections at Punggye-ri test site • Verifiable dismantlement of Sohae launch facility
Initial Trade-Offs	<ul style="list-style-type: none"> • Facilitation of inter-Korean infrastructure projects • Suspension of UN sanctions on North Korean imports, other than military, dual-use, and luxury goods • Resumption of South Korean tourism at Mt. Kumgang 	<ul style="list-style-type: none"> • Verifiable freeze/dismantlement of Yongbyon nuclear facility • Freeze on ballistic missile production, engine tests • General agreement on road map and sequencing for denuclearization
Interim Agreement	<ul style="list-style-type: none"> • Suspension of UN sectoral sanctions on most North Korean exports • Expansion of UN-supervised financial channel for licit trade 	<ul style="list-style-type: none"> • Declaration and verifiable freeze/dismantlement of all fissile material production facilities • Inspection and conversion of facilities for critical ballistic missile components
Transformative Engagement	<ul style="list-style-type: none"> • Resumption of Kaesong Industrial Complex • Resumption of overseas workers • UN approval of new investment on a case-by-case basis • Suspension of some U.S. sanctions 	<ul style="list-style-type: none"> • Improvements on human rights/labor rights issues • Greater economic openness and transparency • Significant reductions in illicit activities, cyberattacks
Denuclearization and Normalization	<ul style="list-style-type: none"> • Remaining UN sanctions lifted • Most or all U.S. sanctions lifted or suspended on indefinite basis • Normalization of U.S. trade relations • Facilitation of North Korean membership in international financial institutions, incorporation into global economy 	<ul style="list-style-type: none"> • Full declaration of all remaining aspects of WMD programs, leading to full compliance with UN resolutions

Conclusion

The international sanctions regime targeting North Korea provides a major source of potential leverage for negotiations over its nuclear program, but sanctions alone are not a substitute for a diplomatic strategy. Policymakers should not let themselves fall into the mindset that if they simply ratchet up the economic pressure enough, it will resolve the decades-long conflict over the North Korean nuclear program. Even if pressure becomes so great that North Korea’s leaders fear their survival is at stake, there is little reason to think that they would risk choosing surrender over defiance and brinkmanship. It is also highly doubtful that China, among other stakeholders, would allow sanctions pressure to exert such force that such a choice would become necessary.

The scope of the North Korea sanctions regime makes unwinding it a complex task for both technical and political reasons, but it also means that there is considerable room to maneuver in doing so. If Pyongyang is negotiating in bad faith, then a U.S. demonstration of willingness to offer partial sanctions relief under the right circumstances would be an effective form of “hawk engagement,” undercutting North Korea’s ability to put the blame for failed talks on Washington.⁴² If, however, there is a real possibility to make progress in negotiations, policymakers would do well to creatively apply the leverage that the maximum pressure campaign has enabled, gradually advancing the interests of the U.S. and its allies rather than vainly pushing for an immediate resolution.



Endnotes

- ¹ Michael R. Pompeo, "Interview With Craig Melvin of NBC Today Show," U.S. Department of State, February 21, 2019, <https://www.state.gov/secretary/remarks/2019/02/289568.htm>
- ² "Institute for American Studies of DPRK Foreign Ministry Urges U.S. to Abandon Foolish Daydream," *Korean Central News Agency*, November 2, 2018. "Corresponding measures" are referenced in the "Pyongyang Joint Declaration of 2018," September 19, 2018.
- ³ "Senior State Department Official Remarks to Travelling Press," U.S. Department of State, February 28, 2019, <https://www.state.gov/r/pa/prs/ps/2019/02/289798.htm>
- ⁴ Eun-Young Jeong and Dasl Yoon, "The New Look of North Korea's Economy: 'It's All Capitalism There Now,'" *The Wall Street Journal*, February 25, 2019.
- ⁵ For data, see <https://www.northkoreaintheworld.org/china-dprk/total-trade>. Trade with China comprises over 90 percent of North Korea's total reported trade and thus is a good indicator of its overall trade position.
- ⁶ "Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)," UN Document S/2019/171, March 5, 2019; Leo Byrne, Marcus Noland, and Stephan Haggard, "How North Korea Might be Financing its Trade Deficit with China," *NK Pro*, March 22, 2019, <https://www.nknews.org/pro/how-north-korea-might-be-financing-its-trade-deficit-with-china/>
- ⁷ "Third Plenary Meeting of Seventh C.C., WPK Held in Presence of Kim Jong Un," *Korean Central News Agency*, April 21, 2018.
- ⁸ William B. Brown, "North Korea's Pegged Won Wiggles, But Doesn't Break, Yet," *The Peninsula*, Korea Economic Institute blog, January 9, 2019, <http://blog.keia.org/2019/01/north-koreas-pegged-won-wiggles-doesnt-break-yet/>
- ⁹ For a general discussion of the "coerce/constrain/signal" framework underlying many sanctions regimes, see Francesco Giumelli, "The Purposes of Targeted Sanctions," in *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action*, Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, eds. (Cambridge University Press, 2016), 38-59.
- ¹⁰ See for example Richard Nephew, *The Art of Sanctions: A View from the Field* (Columbia University Press, 2017); Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* (PublicAffairs, 2013); Sue Eckert, Enrico Carisch, and Loraine Rickard-Martin, *Compendium: High-Level Review of United Nations Sanctions*, Based on UN document A/69/941-S/2015/432, November 2015; and Andrea Berger, "A House Without Foundations: The North Korea Sanctions Regime and its Implementation," RUSI Whitehall Report 3-17, June 2017.
- ¹¹ An exception is Richard Nephew, "The Hard Part: The Art of Sanctions Relief," *The Washington Quarterly* 41, no. 2 (Summer 2018): 63-77.
- ¹² Daniel W. Drezner, "The Hidden Hand of Economic Coercion," *International Organization* 57, no. 3 (Summer 2003): 643-659.
- ¹³ The economic impact of sanctions may also play an important role in helping to reshape the target's perceived interests by weakening or ending the political power of its ruling coalition. The academic literature therefore suggests that sanctions are likely to be most effective when imposed on democracies—where economic pain readily translates to political pressure—and least effective when imposed on highly authoritarian countries like North Korea. See Dursun Peksen, "Authoritarian Regimes and Economic Sanction Effectiveness: The Case of North Korea," Korea Economic Institute Academic Paper Series, June 23, 2016.
- ¹⁴ Nephew, "The Hard Part."
- ¹⁵ David L. Asher, "Pressuring Kim Jong Il: The North Korean Illicit Activities Initiative, 2001-2006," in "Pressure: Coercive Economic Statecraft and U.S. National Security," David L. Asher, Victor D. Comras and Patrick M. Cronin, eds., Center for a New American Security (January 2011); Daniel Wertz, "The Evolution of Financial Sanctions on North Korea," *North Korean Review* 9, no. 2 (Fall 2013): 69-82.
- ¹⁶ John Park and Jim Walsh, "Stopping North Korea, Inc.: Sanctions Effectiveness and Unintended Consequences," MIT Security Studies Program (August 2016). <https://www.belfercenter.org/sites/default/files/legacy/files/Stopping%20North%20Korea%20Inc%20Park%20and%20Walsh%20.pdf>
- ¹⁷ Sheena Chestnut Greitens, "Illicit: North Korea's Evolving Operations to Earn Hard Currency," Committee for Human Rights in North Korea (2014).
- ¹⁸ Jeffrey Lewis, "That Ain't My Truck: Where North Korea Assembled Its Chinese Transporter-Erector-Launchers," *38 North*, February 3, 2014, <https://www.38north.org/2014/02/jlewis020314/>; and James Pearson and Hyonhee Shin, "How a Homemade Tool helped North Korea's Missile Program," Reuters, October 12, 2017, <https://www.reuters.com/article/us-northkorea-missiles-technology/how-a-homemade-tool-helped-north-koreas-missile-program-idUSKBN1CH114>
- ¹⁹ See Zarate, *Treasury's War*, 239-247; and Christopher R. Hill, *Outpost: Life on the Frontlines of American Diplomacy* (Simon & Schuster, 2014), 241-258.
- ²⁰ Susan V. Lawrence, Mark E. Manyin, and Keigh E. Hammond, "Why Did March 2016 U.N. Sanctions Not Curb China's Imports of Coal from North Korea?" Congressional Research Service, CRS Insight, February 3, 2017, <https://fas.org/sgp/crs/row/IN10647.pdf>
- ²¹ According to the U.S. Mission to the UN, in 2017 there were nearly 100,000 North Korean workers overseas, earning roughly \$500 million annually for the regime. "Fact Sheet: UN Security Council Resolution 2397 on North Korea," United States Mission to the United Nations, December 22, 2017, <https://usun.state.gov/remarks/8238>
- ²² NKSPEA, Title III of CAATSA, and other applicable laws and Executive Orders are incorporated into the Treasury Department's North Korea Sanctions Regulations, issued in March 2018.
- ²³ Christian Berthelsen, "U.S. Considered Blacklisting Two Chinese Banks Over North Korea Ties," *Bloomberg*, April 13, 2018, <https://www.bloomberg.com/news/articles/2018-04-13/china-banks-aiding-north-korea-are-said-too-big-to-punish>
- ²⁴ Stephan Haggard and Marcus Noland, *Hard Target: Sanctions, Inducements, and the Case of North Korea* (Stanford University Press, 2017), 179-187.
- ²⁵ Colin Zwirko, "China, N. Korea, Russia Call for 'Review' of UNSC Sanctions in Joint Communique," *NK News*, October 10, 2018, <https://www.nknews.org/2018/10/china-n-korea-russia-call-for-review-of-uns-c-sanctions-in-joint-communique/>; Ankit Panda, "South Korean President Moots UN Security Council Sanctions Relief for North Korea," *The Diplomat*, October 16, 2018, <https://thediplomat.com/2018/10/south-korean-president-moots-un-security-council-sanctions-relief-for-north-korea/>
- ²⁶ Daryum Ji, "Biegun to hold meeting of the ROK-U.S. working group during 4-day trip to Seoul," *NK News*, December 18, 2018, <https://www.nknews.org/2018/12/biegun-to-hold-meeting-of-the-rok-u-s-working-group-during-4-day-trip-to-seoul/>; Stephen Biegun, "Remarks on Humanitarian Assistance to the DPRK," U.S. Department of State, December 19, 2018, <https://www.state.gov/p/eap/rls/rm/2018/12/288192.htm>

- ²⁷ To suspend U.S. sanctions, NKSPEA requires the executive branch to certify that North Korea has “made progress” on a host of issues including compliance with UN Security Council resolutions, improvement of its human rights record, and cessation of illicit activities. The Asia Reassurance Initiative Act of 2018 also requires the Secretary of State to justify the termination of any individual sanctions against North Korea by “explaining the relationship between such termination and the cessation of any illicit activity” which violates UN sanctions.
- ²⁸ Various stages of sanctions relief could correspond roughly with the denuclearization framework outlined in Siegfried S. Hecker, Robert L. Carlin, and Elliot A. Serbin, “North Korea’s Denuclearization: Status and Prospects,” Stanford University Center for International Security and Cooperation, February 11, 2019, https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/hecker_carlin-serbin_denuc2019fin.pdf
- ²⁹ The provision of U.S. humanitarian assistance to North Korea effectively requires a license from the Treasury Department under the North Korea Sanctions Regulations (NKSRL) published in March 2018. Travel to North Korea on regular U.S. passports is prohibited, and “special validation passports” allowing such travel are issued only for journalists, humanitarians, and government officials.
- ³⁰ Phil McCausland and Dan De Luce, “Top North Korean official says his country faces major food shortages, blaming weather and sanctions,” *NBC News*, February 19, 2019, <https://www.nbcnews.com/news/north-korea/top-north-korean-official-says-his-country-faces-major-food-n973361>
- ³¹ A number of sensitive items such as machine tools and heavy-duty trucks fall under the metals, machinery, and vehicles categories proscribed by UNSCR 2397; if these sectoral sanctions are lifted, it would be important to keep in place a robust set of controls for such dual-use goods.
- ³² Troy Stangarone, “Should Mount Kumgang Re-open Before the Kaesong Industrial Complex?” *The Peninsula*, Korea Economic Institute blog, January 15, 2019, <http://blog.keia.org/2019/01/mount-kumgang-kaesong-industrial-complex/>; “Kumgang will be first to restart: Moon,” *Korea JoongAng Daily*, February 19, 2019, <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3059558>
- ³³ “Senior State Department Official Remarks to Travelling Press,” U.S. Department of State, February 28, 2019, <https://www.state.gov/r/pa/prs/ps/2019/02/289798.htm>
- ³⁴ See UN Security Council Resolution 2231, “Dispute Resolution Mechanism.”
- ³⁵ An agreement touching only on UN sectoral sanctions would not require the suspension of most U.S. secondary sanctions, but instead only a change in how they are enforced. In general, trade in non-sensitive commercial goods is subject to discretionary sanctions under NKSPEA, while trade related to WMD, human rights violations, luxury goods, or illicit activity—as well as the provision of financial services—is subject to mandatory sanctions.
- ³⁶ Peter Harrell, “This Is What North Korea Sanctions Relief Should Look Like,” *Foreign Policy*, June 10, 2018, <https://foreignpolicy.com/2018/06/10/this-is-what-north-korea-sanctions-relief-should-look-like-singapore-summit/>; and Troy Stangarone, “Sanctions Relief for Pyongyang Should Start Small,” *Foreign Policy*, February 27, 2019, <https://foreignpolicy.com/2019/02/27/sanctions-relief-for-pyongyang-should-start-small/>
- ³⁷ Daniel R. Coats, “Worldwide Threat Assessment of the US Intelligence Community,” Statement for the Record before the Senate Select Committee on Intelligence, January 29, 2019, <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>
- ³⁸ Adam Mount and Andrea Berger, Study Directors, “Report of the FAS International Study Group on North Korea Policy,” Federation of American Scientists, 2019, <https://fas.org/wp-content/uploads/media/FAS-DPRK-SG.pdf>
- ³⁹ “Third Plenary Meeting of Seventh C.C., WPK.”
- ⁴⁰ UN sanctions against North Korea are imposed only on the grounds of countering the country’s WMD programs, and not for human rights-related reasons. However, given the concern for “livelihoods” found in several resolutions, waiving certain sanctions for the purpose of improving human rights would be consistent with their general scope.
- ⁴¹ For a model of this kind of approach, see Mount and Berger, “Report of the FAS International Study Group,” 46-61.
- ⁴² See Victor D. Cha, “Hawk Engagement and Preventive Defense on the Korean Peninsula,” *International Security* 27, No. 1 (Summer 2002): 40-78.

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