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North Korea Sanctions Relief—The First Step

On June 26, 2008, President Bush announced certain changes to U.S. sanctions against North Korea. For the short term, the change will have little practical impact on U.S. companies and individuals in their proposed dealings with North Korea.

This step by the Administration impacts only the underlying statutory authority for the current restrictions against North Korea. Specifically, the President terminated the application of the Trading With the Enemy Act (TWEA), 50 U.S.C. App. 1 et seq., to the restrictions against North Korea and continued the restrictions in effect by new Executive Order No. 13466 under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 et seq., as amended. IEEPA is the statutory authority for many of the other existing U.S. sanctions against various countries and entities, and is the basis for civil and criminal penalties for violations of those sanctions (as reported in our *GT Alert* [“Penalties Skyrocket for Export Violations”](#) (October 2007)).

The North Korea restrictions as implemented remain unchanged under IEEPA, with one exception. The restrictions as implemented under TWEA (including but not limited to prohibited dealings with certain designated North Korean nationals and prohibitions on registering, owning, leasing or operating North Korean flag vessels) applied to activities even of wholly foreign subsidiaries of U.S. companies. Under IEEPA and the new Executive Order, these same restrictions apply to U.S. companies and their foreign branches, but not to their foreign subsidiaries. That said, all proposed transactions involving North Korea (even those of wholly foreign subsidiaries of U.S. companies) should be carefully reviewed to determine whether any impermissible U.S. person involvement might occur.

On the U.S. import/export side, things remain unchanged. The restrictions on imports of North Korean origin items into the United States remain in effect. Additionally, export controls administered by the U.S. Department of Commerce, Bureau of Industry & Security (BIS) continue to apply. At present a license is required from BIS for all exports and reexports of U.S. origin items or foreign made items containing greater than 10% U.S. content. These restrictions apply to all persons wherever located.

Separately, President Bush issued a memorandum to the Secretary of State that will authorize the Department of State to remove North Korea from the list of countries determined to be state sponsors of terrorism in 45 days. This move also is largely symbolic, as removal from the list of state sponsors of terrorism does not in and of itself alter any existing U.S. statutory or regulatory restrictions against North Korea.

If you have questions about these restrictions or any other U.S. sanctions or export controls, please contact GT’s Export Controls practice group.

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