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Complying with Restrictions on North Korean Content and Labor in Supply Chains – U.S. Government Publishes New Advisory

Last week, the U.S. State Department, with Treasury’s Office of Foreign Assets Control and Homeland Security’s Customs and Border Protection and Immigration and Customs Enforcement, issued a North Korea Sanctions & Enforcement Actions Advisory. The advisory highlights sanctions evasion tactics used by North Korea that could expose businesses – including manufacturers, buyers and service providers – to sanctions compliance risks under U.S. and/or United Nations sanctions. It also provides information on North Korean overseas labor to assist businesses in complying with the North Korean labor prohibitions of the Countering America’s Adversaries Through Sanctions Act. U.S. and other global companies should take the advisory into account in assessing their supply chain due diligence policies, procedures and internal controls.

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Various U.S. and UN sanctions impose restrictions on trade with North Korea and the use of North Korean labor. Violations can result in seizures of goods, monetary penalties and criminal prosecution. The two primary North Korea-related supply chain risks for companies are (1) inadvertent sourcing of goods, services or technology from North Korea; and (2) the presence of North Korean citizens or nationals in companies’ supply chains whose labor generates revenue for the North Korean government. Both of these risks are addressed in the advisory.

Heightened Risk for and Potential Indicators of Goods, Services and Technology with a North Korean Nexus

A discussion of North Korean sanctions programs is beyond the scope of this Alert. For additional information on these programs, see our earlier Alerts [here](#) and [here](#). But, as noted in the advisory, OFAC has authority to impose sanctions on any person determined to, among other things:

- have engaged in at least one significant importation from North Korea of any goods, services or technology;
- have engaged in, facilitated or been responsible for an abuse or violation of human rights by the government of North Korea or the Workers’ Party of Korea or any person acting for or on behalf of either such entity;
- have engaged in, facilitated or been responsible for the exportation of laborers from North Korea, including exportation to generate revenue for the government of North Korea or the Workers’ Party of Korea; or
- have purchased, directly or indirectly, from North Korea or any person acting for or on behalf of the government of North Korea or the Workers’ Party of Korea, metal, graphite, coal or software, where any revenue or goods received may benefit the government of North Korea or the Workers’ Party of Korea.

The advisory identifies five areas of heightened risk for and potential indicators of goods and services with a North Korean nexus. The examples cited in the identified areas below are from the advisory.

- **Subcontracting/consignment firms:** Third-country suppliers shifting manufacturing or sub-contracting work to a North Korean factory without informing the customer or other relevant parties. For example, a Chinese factory that subcontracts with a North Korean firm to provide embroidery detailing on an order of garments.
- **Mislabeled goods:** North Korean exporters disguising the origin of goods produced in North Korea by affixing country-of-origin labels that identify a third country. For example, North Korean seafood is smuggled into third countries where it is processed, packaged and sold without being identified as originating from North Korea. There are also cases in which garments manufactured in North Korea are affixed with “Made in China” labels.
- **Joint ventures:** North Korean firms have established hundreds of joint ventures with partners from China and other countries in various industries, such as apparel, construction, small electronics, hospitality, minerals, precious metals, seafood and textiles. An annex to the advisory contains a list of 241 North Korean joint ventures across 36 industries. The list, which is not exhaustive, consists of known joint ventures that have operated or are currently operating in North Korea established prior to 2016.
- **Raw materials or goods provided at artificially low prices:** North Korean exporters sell goods and raw materials well below market prices to intermediaries and other traders to provide a commercial incentive to purchase the goods. This practice has been documented in the export of minerals.
- **Information technology services and products:** North Korea sells a range of IT services and products abroad, including website and app development, security software and biometric identification software that have military and law enforcement applications. North Korean firms disguise their footprint through a variety of tactics, including the use of front companies, aliases and third country nationals who act as facilitators. For example, there are cases where North Korean companies exploit the anonymity provided by freelancing websites to sell their IT services to unwitting buyers.

North Korean Overseas Labor in the Supply Chain

The Countering America's Adversaries Through Sanctions Act, which was adopted last summer, restricts entry into the United States of goods made with North Korean labor, wherever located, and imposes sanctions on foreign persons that employ North Korean labor. For a further discussion of the CAATSA, see our earlier Alert [here](#).

Identified at-risk industries and countries. To assist companies in complying with the CAATSA, the advisory indicates industries and countries that may pose a heightened risk of North Korean overseas labor. The advisory identifies 10 industries and 41 countries in which North Korean overseas labor was present in 2017-2018, based on State Department information, NGO research and open source data. These industries and countries are listed on the Annex to this Alert. According to the advisory, China and Russia host more North Korean laborers than all of the other identified countries combined, which is not surprising since they both share a border with North Korea.

The industry/country list is not comprehensive. Conversely, as also noted in the advisory, countries may have taken actions to expel North Korean workers since the data was reported, in response to UN Security Council resolution 2397, which requires UN Member States to repatriate all North Koreans earning income by December 2019.

Potential indicators of North Korean overseas labor. The advisory also discusses five categories of potential indicators of North Korean overseas labor:

- **Wages:** The employer withholding wages, making unreasonable pay deductions, paying wages late and making in-kind payments.

- **Contracts:** Laborers producing revenue for the government typically are hired under two- to five-year contracts that require a large upfront payment to the North Korean government. Anecdotally, these payments are up to 30 percent of the total contract amount.
- **Housing:** Laborers often reside in unsafe and unsanitary conditions provided by the employer and sometimes face excessive costs for those accommodations. Laborers providing revenue for the government typically reside in collective housing and are isolated from laborers of other nationalities.
- **Control over laborers:** Laborers often have no access to or control over bank accounts. Employers retain passports and/or confiscate or destroy laborers' personal documents such as visas. Laborers producing revenue for the North Korean government generally will have official documentation, including government-issued passports, in contrast to refugees and asylum seekers, who will likely not have documentation. As with many victims of forced labor, these documents – as well as visas and work permits – may be retained by employers or recruiters. Laborers providing revenue for the government also get little to no time off and are required to attend mandatory self-criticism sessions.
- **Lack of transparency:** Contract details are often hidden and financial transactions are handled in such a way that it is difficult to determine the ultimate beneficiary. North Korea also often limits third parties from conducting worksite inspections. Laborers producing revenue for the North Korean government typically cannot be interviewed without a “minder” present.

Compliance Resources

The advisory lists compliance resources to assist with North Korea-related supply chain compliance.

The advisory lists the DHS's CAATSA guidance and CBP's reasonable care guidance, both of which are discussed in our earlier Alert, available [here](#).

The advisory also mentions the [Responsible Sourcing Tool](#) funded by the State Department. This tool is an online platform with resources to help federal contractors, acquisitions officers and businesses identify, prevent and address human trafficking risks in their global supply chains.

About Our Supply Chain Compliance and Corporate Social Responsibility Practice

Ropes & Gray has a leading Supply Chain Compliance and Corporate Social Responsibility (business and human rights) practice. With team members in the United States, Europe and Asia, we are able to take a holistic, global approach to supply chain compliance and CSR. Senior members of the practice have advised on these matters for almost 30 years, enabling us to provide a long-term perspective that few firms can match.

For further information on the practice, click [here](#).

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Annex

| Industries | High Risk Country |
|----------------------|--|
| Agriculture | Poland Russia |
| Construction | Algeria Angola Equatorial Guinea Ethiopia Kuwait Mali Malaysia Mongolia Namibia Nepal Oman Poland Qatar Russia Senegal The United Arab Emirates Zimbabwe |
| Defense & Munitions | Democratic Republic of the Congo Namibia Uganda |
| Energy | China |
| IT | Angola Bangladesh China Laos Nigeria Uganda Vietnam |
| Medical Clinics | Angola Cambodia China Mongolia Mozambique Nepal Nigeria Republic of Congo Tanzania Uganda |
| Home Repair Services | Russia |
| Seafood | China |

| | |
|----------------------|---------------------------------|
| | Mozambique Taiwan Uruguay |
| Textiles and Apparel | China |
| Timber | Russia |

Other Countries Identified in the Advisory (industries not specified):

- Belarus
- Ghana
- Guinea
- Indonesia
- Kyrgyzstan
- Libya
- Peru
- Rwanda
- Singapore
- Thailand
- Zambia