

Client Alert

Reopening of Korean Neutral Zone Poses North Korea Sanctions Risk

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Reports indicate that operations have resumed at North Korea's Kaesong Industrial Complex, the neutral zone of economic cooperation between North and South Korea. Products of Kaesong are treated as originating in North Korea for purposes of U.S. sanctions law: they cannot be imported into the U.S. without prior authorization from the Office of Foreign Assets Control (OFAC). Other reports indicate that goods from Kaesong are often sold into international supply chains through neighboring countries, including Korea and China. Therefore, companies sourcing goods from Korea or China should screen suppliers to ensure that they are not receiving North Korean-origin goods.

The North abruptly suspended operations at Kaesong in April 2013 during rising tensions with South Korea and the U.S. that culminated with a nuclear test by North Korea in February. In August, the North and South reached an agreement to reopen the complex. Almost half of the Korean factories in Kaesong are now active, and many are fully operational and have completely resumed production.

On April 18, 2011, President Obama signed Executive Order 13570 Prohibiting Certain Transactions with Respect to North Korea. The Executive Order (E.O.) prohibits the importation into the U.S., directly or indirectly, of any goods, services, or technology from North Korea. The E.O. also prohibits U.S. persons from evading or avoiding the prohibitions in the E.O.

OFAC takes an expansive view of the E.O.'s prohibition. It applies not only to finished goods imported directly to the U.S., but also to "goods, services, and technology from North Korea that are used as components of finished products of, or substantially transformed in, a third country."¹ In some of OFAC's sanctions programs, OFAC relies on the Customs and Border Protection law principles of substantial transformation, but this concept is specifically set aside in the case of the North Korea program. Furthermore, there is no *de minimis* exception for the import ban, so the inclusion of even very minor components of North Korean origin in goods entering the U.S. is a violation.

Because production in Kaesong is promoted by the Government of Korea some Korea-origin items may have more than *de minimis* North Korean content. This is also the case with China. Because this content can be difficult to detect, companies sourcing goods from countries neighboring North Korea—especially Korea and China—should screen their suppliers to ensure that they are not receiving goods that are North Korean-origin or incorporate North Korean-origin content.

¹ See <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf>.

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