

# FOIA MARKER

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Folder Title:

North Korea, August 1994 [7]

Staff Office-Individual:

Nonproliferation and Export Controls-Aoki, Steven

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283

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# Withdrawal/Redaction Sheet

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                         | DATE       | RESTRICTION |
|--------------------------|-----------------------------------------------------------------------|------------|-------------|
| 001. paper               | re technology transfer (3 pages)                                      | 08/00/1994 | P1/b(1)     |
| 002. paper               | re assurances (2 pages)                                               | 08/00/1994 | P1/b(1)     |
| 003a. draft              | declaration (1 page)                                                  | 08/00/1994 | P1/b(1)     |
| 003b. draft              | protocol (1 page)                                                     | 08/00/1994 | P1/b(1)     |
| 004. paper               | re phase 1 and 2 (3 pages)                                            | 08/00/1994 | P1/b(1)     |
| 005. paper               | re OSD proposal (2 pages)                                             | 08/00/1994 | P1/b(1)     |
| 006a. memo               | information, Daniel Poneman to Samuel Berger re North Korea (3 pages) | 06/01/1994 | P1/b(1)     |
| 006b. paper              | re UN Sanctions (5 pages)                                             | 06/01/1994 | P1/b(1)     |
| 006c. cable              | re third round of talks (4 pages)                                     | 05/27/1994 | P1/b(1)     |
| 006d. paper              | re UN Sanctions [duplicate of page 4 and 5 of 006b] (2 pages)         | 06/01/1994 | P1/b(1)     |
| 006e. cable              | re thrid round of talks [duplicate of 006c] (4 pages)                 | 05/27/1994 | P1/b(1)     |
| 007. notes               | handwritten re meeting on North Korea (16 pages)                      | 08/00/1994 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### FOLDER TITLE:

North Korea, August 1994 [7]

2009-0528-F

kc1569

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).  
RR. Document will be reviewed upon request.

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| 008a. paper              | re assurances (7 pages)                                      | 07/27/1994 | P1/b(1)     |
| 008b. memo               | DCI Korea Task Force to Steve Aoki re North Korea (15 pages) | 07/20/1994 | P1/b(1)     |

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United States Department of State

Washington, D. C. 20520

INFORMATION MEMORANDUM <sup>ETM</sup><sub>10/85</sub>

UNCLASSIFIED

S/S

9324848

193 OCT-27 3:15 PM

OCT 27 1993

TO: P - Mr. Tarnoff

FROM: L - Conrad K. Harper *OK*

SUBJECT: Restrictions on Relations with North Korea

Your office has asked that we provide a summary of current restrictions on political and economic relations with the Democratic People's Republic of North Korea (DPRK). A list is at Tab 1.

U.S. restrictions on relations with the DPRK span a broad continuum, from refusal to engage in diplomatic relations to a sweeping trade embargo under the Trading With the Enemy Act ("TWEA"). Significantly, in addition to restrictions applicable to the DPRK by name, it is also subject to other, more general sanctions on account of its weapons proliferation and terrorist-related activities (e.g., it has been designated a "terrorist country" by the U.S. since 1988). Moreover, it is also potentially subject to a wide range of additional restrictions on security and other assistance (including International Financial Institution lending) for human rights reasons and because it remains a communist dictatorship.

While many of the current U.S. restrictions on the DPRK may, as a legal matter, be terminated or relaxed by the executive branch in the exercise of its own discretion without legislation or the need to consult Congress (e.g., the establishment of diplomatic relations, lifting of the 25-mile limit on travel by DPRK representatives to the UN, the trade embargo), the administration's freedom of movement is circumscribed by a complex web of potentially applicable legislation. Moreover, any such effort would receive the closest scrutiny--and possible resistance--from Congress. Congress' strong anti-DPRK bias is illustrated in section 710 of the pending State authorization legislation (proposed by Senator Robb out of concern about the DPRK's nuclear activities), which would, if enacted, diminish the President's authority to lift/relax the TWEA trade embargo (at Tab 2).

## Attachments:

- Tab 1 - Compilation of Political and Economic Restrictions on the DPRK
- Tab 2 - Robb Proposal

## NORTH KOREA SANCTIONS

| <u>Category</u><br>[Legal Citation]                                                                                                                                                                                                                 | <u>Description</u>                                                                                                                                                                                                 | <u>Repeal/Revise</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Diplomatic Relations.</p> <p>[U.S. Constitution;<br/> <u>Note</u>: For a good, general overview of the law regarding state/government recognition, see sections 202-205 of the Restatement 3d, Foreign Relations Law of the U.S. (1986.)]</p> | <p>The U.S. does not currently maintain diplomatic relations with the DPRK.</p>                                                                                                                                    | <p>The establishment of diplomatic relations is a constitutional prerogative of the Executive; no formal congressional approval is required.</p>                                                                                                                                                                                                                                                                                                                       |
| <p>2. U.N. 25-mile Travel Limit.</p> <p>[Section 162 of the Foreign Missions Act, 22 U.S.C. 4316; U.N. Headquarters Agreement; Immigration and Nationality Act]</p>                                                                                 | <p>Although the DPRK is a member of the United Nations, the U.S. lawfully restricts the travel of DPRK UN representatives to the HQ District, i.e., a 25-mile radius from Columbus Circle.</p>                     | <p>The 25-mile limit may be removed or relaxed by the Secretary (in consultation with the FBI and CIA) without the need for congressional approval or consultation.</p>                                                                                                                                                                                                                                                                                                |
| <p>3. Trade Embargo.</p> <p>[Trading With The Enemy Act ("TWEA"), Pub. L. 65-91, <u>as amended</u>, 50 U.S.C. App. 5(b); 31 C.F.R. 500.201 et seq.]</p>                                                                                             | <p>--Empowers President to prohibit/regulate a broad range of financial/property transactions.</p> <p>--Since 12/17/50, President has banned trade absent Treasury (Office of Foreign Asset Controls) license.</p> | <p>Executive may relax or terminate the ban at any time w/o congressional consent or consultation. [But note section 710 of the pending State authorization bill, which, if enacted in its current form, would prohibit any license for trade with the DPRK except pursuant to a presidential determination that the DPRK maintains its status as a member of the 1968 Nuclear Nonproliferation Treaty and is in full compliance with its obligations thereunder.]</p> |

- |                                                                                                                                                                                                                               |                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>4. Exports.</p> <p>[Export Administration Act of 1979 (Pub. L. 96-72, as amended, 50 U.S.C. App. 2404)("EAA"); 15 C.F.R. Part 700]</p>                                                                                     | <p>Authorizes the President to "prohibit or curtail the export of any goods or technology subject to the jurisdiction of the [U.S.]" absent a license from Commerce.</p>                                                              | <p>Executive branch may relax or terminate the ban without congressional consent or consultation.</p>                                                                                                                                                   |
| <p>5. Shipping.</p> <p>[Section 704 of the Defense Production Act of 1950 (Pub. L. 81-774, 50 U.S.C. App. 2154); 44 C.F.R. Part 403]</p>                                                                                      | <p>Prohibits owners, owners' agents, and officers from (i) taking to the DPRK any ship or aircraft documented or registered under the laws of the U.S.; and, (ii) from transporting in any such ship goods destined for the DPRK.</p> | <p>Executive may relax or terminate these restrictions without congressional consent or consultation.</p>                                                                                                                                               |
| <p>6. Most Favored Nation ("MFN").</p> <p>[Title IV of the Trade Act of 1974 (Pub. L. 93-618, 19 U.S.C. 1431)]</p>                                                                                                            | <p>As a country the products of which were not eligible for MFN treatment on or before 1/3/75, the DPRK is ineligible for MFN extension, absent...</p>                                                                                | <p>(i) Presidential determination that the DPRK (as a "non-market country") allows its nationals to emigrate freely (the so-called "Jackson-Vanik" amendment); and, (ii) conclusion of a bilateral trade agreement containing specified provisions.</p> |
| <p>7. Proliferation</p> <p>[Sections 1701-1704 of the FY '91 National Defense Authorization Act (Pub. L. 101-510, 50 U.S.C. App. 2402 note); 15 C.F.R. Part 700; 22 C.F.R. 120.29 (ITAR), see 58 F. Reg. 39286 (7/22/93)]</p> | <p>-- Amended the Arms Export Control Act (22 U.S.C. 2778) and the Export Administration Act to require sanctions if the President</p>                                                                                                | <p>-- Sanctions are for a two-year period.</p> <p>-- President may waive upon a determination that such action is</p>                                                                                                                                   |

determines that a foreign person knowingly exports, transfers or otherwise engages in trade "of items that contribute to missile proliferation."

"essential to the national security of the [U.S.]" and so certifies to Congress 20 days prior to issuing the waiver.

-- U.S. imposed such sanctions on two DPRK entities in 1992.

#### 8. Terrorism.

[Section 6(j) of the Export Administration Act of 1979, as amended by the Anti-Terrorism and Arms Export Amendments Act of 1989, Pub. L. 101-222, 103 Stat. 1892]

[Note: Section 901 of the Internal Revenue Code, 26 U.S.C. 901(j) would also deny in the case of the DPRK certain tax credits for income and other taxes paid to that country.]

-- DPRK designated a "terrorist country" since 1/20/88 per State determination that it had repeatedly provided support for acts of international terrorism.

-- Prohibits certain transactions with DPRK, including direct or indirect export of any munitions list items by USG or any US person (as well as to re-exports by non-U.S. persons).

-- Exports of non-munitions list items must be licensed.

-- President may waive the prohibition for a particular transaction if he determines that it is "essential to the national security interests of the [U.S.]," and both consults with and submits a report to Congress 15 days prior to the transaction.

-- There are two ways by which a country may get off the "terrorist list," i.e., (i) President certifies to Congress that "there has been a fundamental change in the leadership or policies of the terrorist country, that the government ...is not supporting acts of international terrorism, and that the government has provided assurances that it will not support acts of international terrorism in the future,"; or, -(ii) President submits to Congress for review, 45 days prior to the

effective date of the  
recision, a  
determination that  
the government has  
not supported  
international  
terrorism during the  
preceding 6-month  
period and has  
provided assurances  
that it will not  
support acts of  
international  
terrorism in the  
future.

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THE FOLLOWING ARE POTENTIALLY APPLICABLE ALTHOUGH NO FORMAL  
DETERMINATION HAS YET BEEN MADE

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9. Foreign  
Assistance.

A. Human Rights.

[Section 116 of the  
Foreign Assistance  
Act of 1961, as  
amended, 22 U.S.C.  
2151n; also covers  
OPIC insurance,  
guarantees, or  
loans, 22 U.S.C.  
2199 (i)]

Prohibits  
assistance to the  
government of "any  
country which  
engages in a  
consistent pattern  
of gross violations  
of internationally  
recognized human  
rights, including  
torture or cruel,  
inhuman, or  
degrading treatment  
or punishment..."  
etc.

"Gross violator"  
determination is made  
by the AID  
Administrator and the  
Assistant Secretary  
for HA, who must take  
into account the  
extent to which the  
government has  
permitted unimpeded  
investigations of  
alleged human rights  
violations by  
appropriate  
international  
organizations, and  
the extent to which  
multilateral and  
security assistance  
is already restricted  
to that country by  
the President or  
Congress for human  
rights reasons.

B. Communist  
States.

[Section 620(f) of  
the FAA (22 U.S.C.  
2370 (f))]

Prohibits  
assistance to "any  
communist country,"  
including the DPRK,  
except for

--President may waive  
upon finding that  
such assistance is  
vital to U.S.  
national security,

[Note: There are also several other restrictions on assistance that might potentially become applicable to the DPRK that it is not necessary to address now, e.g., sec. 620A of the FAA, 22 U.S.C. 2371 (prohibits assistance to governments supporting int'l terrorism); sec. 620(t) of the FAA (break in diplomatic relations); secs. 523 and 529 of the FY 94 Foreign Ops. Appropriation bill; sec. 543 of the FY '93 FAA (Pub. L. 102-391).]

assistance to schools, libraries, and hospital centers for educational research which are outside the U.S. and are founded/operated by U.S. citizens.

that the country is not controlled by the international communist conspiracy, and that the assistance will promote the country's independence from international communism.

-- President may also remove a country for a designated period if he determines that it is in the national interest to do so; one factor to be considered is whether the country is "fostering the establishment of a generally democratic system, with respect for internationally recognized human rights."

#### 10. Security Assistance.

[Section 502B of the FAA (22 U.S.C. 2304)]

-- Prohibits security assistance to any country "the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."

Assistance may be provided only if the President finds such a "significant improvement in [the] human rights record" that it is in the national interest to lift the prohibition.

-- Also prohibits security assistance for the police, domestic intelligence, or similar law enforcement forces of such a country. Moreover, export licenses are prohibited even for crime control and detection instruments and equipment, subject to a presidential waiver in

"exceptional  
circumstances."  
Id., for IMET.

11. IFI Lending.

[Section 7001 of  
the International  
Financial  
Institutions Act  
(22 U.S.C. 262d);  
see also sec. 528  
of the FY '94  
Foreign Ops  
Appropriation Act,  
which contains a  
similar provision.]

Requires the U.S.  
Executive Directors  
of IFI's (e.g.,  
World Bank) to  
oppose any loan,  
extension of  
financial  
assistance, or  
technical  
assistance to any  
country the  
government of which  
engages in "a  
pattern of gross  
violations of  
internationally  
recognized human  
rights," or  
"provides refuge to  
individuals  
committing acts of  
international  
terrorism by  
hijacking aircraft."

-- U.S. Executive  
Directors are only  
authorized to  
support assistance  
"directed  
specifically to  
programs which  
serve the basic  
human needs of the  
citizens of such  
country."

Note: 22 U.S.C.  
262d(f) requires  
Treasury to consult  
"in a timely manner"  
with relevant  
congressional  
committees to inform  
them of "prospective  
changes in policy  
direction toward  
countries [sic] which  
have or recently  
have had poor human  
rights records."

22 U.S.C. 262d(c)  
requires Treasury to  
report quarterly on  
all loans considered  
by the IFI Boards,  
addressing inter alia  
whether the U.S.  
opposed, in each  
instance, assistance  
on human rights  
grounds, or changed  
its voting position  
for such reasons.

"Gramm Amendment,"  
section 43 of the  
Bretton Woods  
Agreement Act, as  
amended, 22 U.S.C.  
286aa.

Requires the  
Secretary of  
Treasury to direct  
the U.S. Executive  
Director of the IMF

The congressional  
committees may  
request that the  
Secretary of Treasury  
appear before them to

|                                                                                                                                                                                                         |                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "to actively oppose any facility involving use of Fund credit by any Communist dictatorship" unless Treasury certifies to the relevant congressional committees that certain economic criteria are met. | certify and document (or to document in writing) that the requisite conditions have been met. If the Secretary does not appear in response to Congress' invitation, the Executive Director "shall vote against such program." |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Gonzalez Amendment,  
22 U.S.C. 283r,  
284j, 285o.

Requires Secretary of Treasury to instruct Executive Directors to the IBRD and ADB to vote against assistance to any country that has expropriated the property of U.S. nationals.

Unless President determines that (i) an arrangement for proper compensation has been made; (ii) the matter has been submitted to arbitration; or, (iii) good faith settlement negotiations are in progress.

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

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# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE              | DATE       | RESTRICTION |
|--------------------------|----------------------------|------------|-------------|
| 004. paper               | re phase 1 and 2 (3 pages) | 08/00/1994 | P1/b(1)     |

### **COLLECTION:**

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### **FOLDER TITLE:**

North Korea, August 1994 [7]

2009-0528-F  
kc1569

### **RESTRICTION CODES**

#### **Presidential Records Act - [44 U.S.C. 2204(a)]**

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## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE             | DATE       | RESTRICTION |
|--------------------------|---------------------------|------------|-------------|
| 005. paper               | re OSD proposal (2 pages) | 08/00/1994 | P1/b(1)     |

### **COLLECTION:**

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### **FOLDER TITLE:**

North Korea, August 1994 [7]

2009-0528-F  
kc1569

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                         | DATE       | RESTRICTION |
|--------------------------|-----------------------------------------------------------------------|------------|-------------|
| 006a. memo               | information, Daniel Poneman to Samuel Berger re North Korea (3 pages) | 06/01/1994 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### FOLDER TITLE:

North Korea, August 1994 [7]

2009-0528-1:  
kc1569

### RESTRICTION CODES

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# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE             | DATE       | RESTRICTION |
|--------------------------|---------------------------|------------|-------------|
| 006b. paper              | re UN Sanctions (5 pages) | 06/01/1994 | P1/b(1)     |

### **COLLECTION:**

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### **FOLDER TITLE:**

North Korea, August 1994 [7]

2009-0528-F  
kc1569

### **RESTRICTION CODES**

#### **Presidential Records Act - [44 U.S.C. 2204(a)]**

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# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                     | DATE       | RESTRICTION |
|--------------------------|-----------------------------------|------------|-------------|
| 006c. cable              | re third round of talks (4 pages) | 05/27/1994 | P1/b(1)     |

### **COLLECTION:**

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### **FOLDER TITLE:**

North Korea, August 1994 [7]

2009-0528-F  
kc1569

### **RESTRICTION CODES**

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## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                 | DATE       | RESTRICTION |
|--------------------------|---------------------------------------------------------------|------------|-------------|
| 006d. paper              | re UN Sanctions [duplicate of page 4 and 5 of 006b] (2 pages) | 06/01/1994 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### FOLDER TITLE:

North Korea, August 1994 [7]

2009-0528-F  
kc1569

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

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## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                         | DATE       | RESTRICTION |
|--------------------------|-------------------------------------------------------|------------|-------------|
| 006e. cable              | re thrid round of talks [duplicate of 006c] (4 pages) | 05/27/1994 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### FOLDER TITLE:

North Korea, August 1994 [7]

2009-0528-F  
kc1569

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## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                    | DATE       | RESTRICTION |
|--------------------------|--------------------------------------------------|------------|-------------|
| 007. notes               | handwritten re meeting on North Korea (16 pages) | 08/00/1994 | P1/b(1)     |

### COLLECTION:

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### FOLDER TITLE:

North Korea, August 1994 [7]

2009-0528-F  
kc1569

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~~SECRET~~

~~SECRET~~  
NATIONAL SECURITY COUNCIL  
WASHINGTON, D.C. 20506

20885

July 27, 1994

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: DANIEL PONEMAN *DP*

FROM: STEVEN AOKI

SUBJECT: Deputies' Meeting on Light Water Reactors in Korea  
-- July 29, 1994, 9:00 - 10:30 a.m.

Attached at Tab I is a proposed meeting notice, with an agenda attached at Tab A and a discussion paper at Tab B. Please note expanded list of proposed attendees. The NEC and Office of Environmental Quality have expressed interest in this subject.

Concurrence by: *NA* Stanley Roth

RECOMMENDATION

That you authorize William Itoh to sign the memorandum at Tab I and approve the Agenda at Tab A.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Attachments

Tab I Memorandum for Signature  
Tab A Agenda  
Tab B Discussion Paper

DECLASSIFIED E.O. 13526  
White House Guidelines,  
September 11, 2006  
By *WA* NARA, Date *07/27/15*  
*2009-0528-F*

~~SECRET~~  
Declassify on: OADR

~~SECRET~~

~~SECRET~~

~~SECRET~~  
NATIONAL SECURITY COUNCIL  
WASHINGTON D.C. 20506

20885

MEMORANDUM FOR

MR. LEON FUERTH  
Assistant to the Vice  
President for National  
Security Affairs  
Office of the Vice President

MR. MARC GROSSMAN  
Executive Secretary  
Department of State

MR. EDWARD KNIGHT  
Executive Secretary  
Department of Treasury

COLONEL ROBERT P. MCALEER  
Executive Secretary  
Department of Defense

MS. ANN LAVIN  
Director, Executive  
Secretariat  
Department of Energy

MR. GORDON ADAMS  
Associate Director for  
National Security and  
International Affairs  
Office of Management and  
Budget

AMB. RICK INDERFURTH  
Office of the Representative  
of the U.S. to the UN  
U.S. Department of State

MR. DOUGLAS F. GARTHOFF  
Executive Secretary  
Central Intelligence Agency

MR. W. BOWMAN CUTTER  
Deputy Assistant to the  
President for Economic Policy  
National Economic Council

COLONEL T. R. PATRICK  
Secretary  
Joint Chiefs of Staff

MS. BARBARA STARR  
Executive Secretary  
Arms Control and Disarmament  
Agency

MS. KATHLEEN MCGINTY  
Deputy Assistant to the  
President for Environmental  
Policy and Director on  
Environmental Policy

SUBJECT: Meeting of the Deputies on Light Water Reactors in  
Korea (S)

A Deputies' meeting will be held on Friday, July 29, 1994, from  
9:00 - 10:30 a.m. in the White House Situation Room. Attendance  
will be limited to principals only. (S)

A discussion paper and agenda are attached. (S)

William H. Itoh  
Executive Secretary

Attachment  
Tab A Agenda  
Tab B Discussion Paper

DECLASSIFIED E.O. 13526  
White House Guidelines,  
September 11, 2006

~~SECRET~~  
Declassify on: OADR

By (10) NARA, Date 07/27/15  
2009-0528-7

~~SECRET~~

NATIONAL SECURITY COUNCIL DEPUTIES' COMMITTEE MEETING

DATE: JULY 29, 1994  
LOCATION: SITUATION ROOM  
TIME: 9:00 - 10:30 a.m.

LIGHT WATER REACTORS IN KOREA

Agenda

- I. Introduction . . . . . NSC
- II. Light Water Reactors . . . . . State
- III. Interim Energy Replacement . . . . . State
- IV. Spent Fuel Removal . . . . . Energy
- V. Discussion . . . . . All Participants
- VI. Conclusion . . . . . NSC

DECLASSIFIED E.O. 13526  
White House Guidelines,  
September 11, 2006

By (u) NARA, Date 07/27/15  
2009-0528-F

# Withdrawal/Redaction Marker

## Clinton Library

| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE           | DATE       | RESTRICTION |
|--------------------------|-------------------------|------------|-------------|
| 008a. paper              | re assurances (7 pages) | 07/27/1994 | P1/b(1)     |

### **COLLECTION:**

Clinton Presidential Records  
National Security Council  
Steven Aoki (Nonproliferation and Export Controls)  
OA/Box Number: 283

### **FOLDER TITLE:**

North Korea, August 1994 [7]

2009-0528-F  
kc1569

### **RESTRICTION CODES**

#### **Presidential Records Act - [44 U.S.C. 2204(a)]**

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LWR SCENARIOS: U.S. LEGAL REQUIREMENTS

NOTE: Set forth below are the basic legal requirements for U.S. participation under several possible scenarios for supply of a light-water reactor to the DPRK. The details of these legal requirements are described in Tab 2.

I. U.S.-ROK Joint Venture

Project Description: The ROK would provide the reactor, the construction services, and most of the financing. The U.S. would provide certain project management services and would deal with the DPRK. It would actively promote the project by seeking to arrange subcontract suppliers and additional financing. The U.S. would also guarantee that, in the event the reactor project is terminated, the President would use the full powers of his office to facilitate the provision of a replacement reactor to the DPRK. This "guarantee" would not legally commit the U.S. to provide a replacement reactor (see Tab 3).

- o Congressional Approval: No Congressional approval would be required since the U.S. would not be obligated to expend funds to provide a replacement reactor.
- o Agreement for Cooperation: An agreement for nuclear cooperation would not be required.
  - The Atomic Energy Act provides that the kind of activities that would be undertaken by the U.S. joint venture partner may take place pursuant to an agreement for cooperation. Congress might prefer negotiation of an agreement for cooperation due to the sensitivity of this case, but such an agreement would not be required.
  - An agreement for cooperation would be needed only if major component exports from the U.S. were to be made as part of our effort to facilitate provision of a replacement reactor.
- o Minor Components: If the U.S. joint venture partner were to provide minor components as part of the primary project, the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent. The same would be true if such exports were made from the U.S. as part of our effort to facilitate provision of a replacement reactor.

- o Technology: In order to engage in the North Korea project, the U.S. joint venture partner would have to obtain a **specific authorization** from the Department of Energy based on a finding that its activities "will not be inimical to the interest of the United States." Congress would have no statutory role in this process.
  - The nonproliferation steps agreed to by the DPRK as a condition of U.S. involvement could provide a basis for the findings needed to authorize such participation.
  - The U.S. firm's participation could be approved incrementally, with approval of broader activities being linked to DPRK nonproliferation actions.
  - In addition, we would have to determine whether the ROK would be using U.S. technology, in which case U.S. reexport restrictions might apply. Approval of such reexports should not be a problem if the DPRK is meeting its nonproliferation commitments.
- o Nuclear Trade Sanctions: A waiver of sanctions under section 129 of the Atomic Energy Act would not be needed as long as no U.S. components were to be transferred (though the appropriate evaluations could begin in case the U.S., as part of its commitment to facilitate construction of a replacement reactor, were to arrange for the export of major components by a U.S. firm).
- o Trading With the Enemy Act: The U.S. joint venture partner would have to obtain a **license** from the Treasury Department's Office of Foreign Assets Control (OFAC) for all of its transactions with the DPRK. Congress would have no statutory role in this licensing process. Consultations with OFAC would be advisable at the earliest opportunity.
- o Terrorism Controls: It would be prudent to consult with the Commerce Department to make sure that any exports anticipated by the U.S. joint venture partner pursuant to Commerce license could in fact be approved without delay.
- o Liability: Liability would pose a significant obstacle to U.S. contractors' involvement as joint venture partners.
  - Since the purpose of U.S. participation in the joint venture is primarily to make the proposal more palatable to the DPRK, **the ROK should be asked to hold the U.S. joint venture partner harmless for liability incurred in connection with the project.**
- o Environment: Environmental evaluations likely would not be required for U.S. participation in the joint venture since the U.S. would not be exporting major reactor components.

## II. Russian Construction

Project Description: Russia would be responsible for providing the reactor and all necessary construction services. Japan (and possibly other countries in a consortium) would be responsible for providing financing. The U.S. would actively promote the project by seeking to arrange suppliers and financing. The U.S. would also guarantee that, in the event the reactor project is terminated, the President would use the full powers of his office to facilitate the provision of a replacement reactor to the DPRK. This "guarantee" would not legally commit the U.S. to provide a replacement reactor (see Tab 3).

- o Congressional Approval: No Congressional approval would be required since the U.S. would not be obligated to expend funds to provide a replacement reactor.
- o Agreement for Cooperation: Since the U.S. would not be obliged to provide the reactor or any major components, even under the "guarantee," an agreement for nuclear cooperation would not be required.
  - An agreement for cooperation would be needed only if major component exports from the U.S. were to be made as part of our effort to facilitate provision of a replacement reactor.
- o Minor Components: If the U.S. were to provide minor components either for use in the Russia project or in order to facilitate a replacement reactor, the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent.
- o Technology: We would have to determine whether Russia would be using U.S. technology, in which case U.S. reexport restrictions might apply.
- o Nuclear Trade Sanctions: A waiver of sanctions under section 129 of the Atomic Energy Act would not be required (though the appropriate evaluations could begin in case the U.S., as part of its commitment to facilitate construction of a replacement reactor, were to arrange for the export of major components by a U.S. firm).
- o Trading With the Enemy Act: No prior steps would be necessary, but it would be prudent to consult with OFAC and Commerce.
- o Terrorism Controls: No prior steps would be necessary, but it would be prudent to consult with the Commerce Department.

- o Liability: Liability would not pose a problem in the sense that the firms most concerned about such issues (U.S. and European firms) would not be involved. On the other hand, concern for the safety of Russian reactors operated by North Koreans could dry up financing. A Russian indemnification pledge might not be sufficient to relieve these concerns.
- o Environment: Environmental evaluations would not be required since the U.S. likely would not be exporting major reactor components.

### III. European/Japanese Construction

Essentially the same factors apply as in Option II above. Western firms will be more likely to seek U.S. technology transfer or commodities than in the Russian case. Liability concerns on the part of European or Japanese firms.

#### IV. U.S. Performance Guarantee

Project Description: Under either the first or second scenario, in addition to the political assurances provided in connection with the U.S.-ROK joint venture or the Russian project, the U.S. Government could provide a **legally binding guarantee** that, in the event the reactor project is not completed on grounds for which the DPRK is not responsible, the U.S. would ensure availability of a replacement reactor. The **notional guarantee letter at Tab 4 will be modified based on the level and type of risk that the USG decides to undertake.**

- o Congressional Approval: Because the U.S. would be providing a performance guarantee involving future commitment of funds for which appropriations have not been made, Congressional approval would be required in order to satisfy the Anti-Deficiency Act.
  - The Congressional approval should read along the following lines: "The Congress hereby approves the entry into force of the agreement between the United States and the Democratic People's Republic of Korea, signed in Geneva on \_\_\_\_\_, and authorizes its implementation. There are authorized to be appropriated such funds as may be necessary for such implementation."
  - Under this approach, no budgetary impact would occur until funds were actually appropriated at a later time.
  - Because this approach could require subsequent appropriations, the U.S. could be placed in violation of its obligation to the DPRK if the guarantee were triggered and Congress did not appropriate the necessary funds.
  - In selling this package to Congress, we would stress that the contractors bear the risk of sub-standard performance and the lenders bear the risk of DPRK failure to repay the loan.
  - We would bear the risk of financing a replacement reactor, but we could seek to lower that risk by requiring that the primary supplier indemnify the U.S. in the event of its nonperformance (though such an assurance from Russia might not be worth much).
  - If we believed that Congress would not affirmatively approve the agreement with the DPRK, we might consult members informally concerning the possibility of using existing statutory exceptions that allow contracting notwithstanding the laws of contract.
  - These authorities have been interpreted to allow exemptions from the Anti-Deficiency Act.

- Congress might prefer that the Executive Branch stretch existing authorities rather than seek Congressional approval of the agreement.
- If the guarantee were ever triggered, we would have to identify the statutory or Constitutional authority to procure a reactor on behalf of the DPRK. Such authority might have to be granted by Congress for execution of this guarantee.
- o Agreement for Cooperation: Because the U.S. might have to supply the reactor or major reactor components in order to make good on its guarantee, the DPRK would have to accept as a **condition** of the guarantee that it would **"enter into an agreement for nuclear cooperation in the event that the U.S. had to supply the reactor or major components thereof."**
  - A sample agreement for cooperation, tailored to the DPRK, would be attached to the guarantee letter in order to set the bounds of this condition. We would have to persuade the DPRK to accept some of the more demanding requirements of such an agreement.
  - We could negotiate this agreement before the guarantee is triggered so that the Congressional review period of 90 continuous session days would not delay carrying out work under the guarantee. However, this approach could lead to contentious negotiations with the DPRK and contentious Congressional review of an agreement that ultimately may not be needed. Moreover, work would probably not be delayed anyway since the U.S. would take some time to get the project going.
  - Congressional review might be avoided if the reactor were provided under an IAEA project agreement (which, pursuant to the U.S.-IAEA agreement for cooperation, would incorporate the same requirements as would be required of a U.S.-DPRK agreement for cooperation). The DPRK would have to rejoin the IAEA under this option.
- o Minor Components: If the U.S. had to provide minor components in order to make good on its guarantee, the DPRK would have to agree to safeguards, peaceful use, and no retransfer without U.S. consent. Safeguards and peaceful use will already be a condition of the guarantee, and the DPRK will have already consented to the concept of no retransfer in connection with the draft agreement for cooperation. Therefore, no additional action would be needed prior to the need to export the components.

- o Technology: If the U.S. had to provide additional technology or other assistance requiring Energy Department authorization in order to make good on its guarantee, the steps already agreed to by the DPRK as a condition of the guarantee would probably provide a sufficient basis for the findings needed to authorize such assistance.
- o Nuclear Trade Sanctions: The relevant departments and agencies could begin the preliminary evaluations needed to support a waiver of nuclear trade sanctions under section 129 of the Atomic Energy Act. Actual processing of the waiver would not be necessary until the guarantee was triggered (assuming such a waiver had not already been required in connection with U.S. participation in the primary supply project). In the meantime, we presumably would be developing a record of DPRK compliance with the conditions of the guarantee. The waiver would be subject to Congressional review for 60 days of continuous session.
- o Trading With the Enemy Act: Similarly, no specific steps would have to be taken under the Trading With the Enemy Act (TWEA) until actual transactions by U.S. persons with the DPRK were contemplated pursuant to the guarantee. (Under the U.S.-ROK joint venture option, some activities likely would have been licensed already, but the range of activities required under the guarantee might be broader.) In any case, it would be prudent to consult fully with OFAC and Commerce so that any eventual transactions could be approved efficiently.
- o Terrorism Controls: As with TWEA, no specific steps would have to be taken before the guarantee was triggered, but consultations with the Commerce Department would be prudent.
- o Liability: Liability could pose a significant obstacle to U.S. contractors' involvement in connection with the performance guarantee, particularly if the primary suppliers were no longer providing liability indemnification. The U.S. could begin to evaluate the steps that would be necessary to meet contractors' concerns with a project in North Korea.
- o Environment: Preliminary environmental evaluations should begin, to the extent possible, before the guarantee is triggered.

Drafted by: L/PM - Newell Highsmith

DISCUSSION OF U.S. LEGAL REQUIREMENTS

Congressional Approval of DPRK Agreement

- o Congress's role in approving an agreement with the DPRK would depend on whether or not the U.S. gave the DPRK a binding commitment to provide a replacement reactor in the event that the primary supply project were not completed.
- o A commitment to use the full powers of the President under the Constitution to facilitate the provision of a replacement reactor (Tab 3) would be wholly within the powers of the President and therefore would not require Congressional approval.
- o On the other hand, a legally binding performance guarantee (Tab 4) could require the U.S. to provide resources to ensure performance by the primary supplier, by a third country, or by a U.S. contractor.
  - The binding guarantee at Tab 4 entails considerable risks: the primary supplier may not perform adequately (particularly a Russian supplier); the U.S. may not be able to find a contractor willing to provide substitute performance in the DPRK; the price of substitute performance might be exorbitant; etc.
  - **The text at Tab 4 can be modified based on the precise level and type of risk the USG decides to undertake.**
- o A binding guarantee would raise serious issues under the Anti-Deficiency Act, which prohibits any government official from (1) making an "obligation exceeding an amount available in an appropriation or fund," or (2) involving the USG in "a contract or obligation for the payment of money before an appropriation is made unless authorized by law."
- o We do not currently have appropriated funds to cover such a performance guarantee, and Congress would not likely appropriate such funds at this time.
- o Therefore, any binding guarantee will have to be (1) approved by Congress in advance, or (2) expressly subject to the availability of appropriated funds (with an acknowledgement that the agreement does not indicate that Congress will provide such appropriations).
  - Since conditioning the U.S. guarantee on the availability of funds likely would not be acceptable to North Korea, we would want instead to seek Congressional approval of a signed agreement **before the agreement entered into force.**

- o The Congressional approval should read substantially as follows:

"The Congress hereby approves the entry into force of the agreement between the United States and the Democratic People's Republic of Korea, signed in Geneva on \_\_\_\_\_, and authorizes its implementation. There are authorized to be appropriated such funds as may be necessary for such implementation."

- By making clear that actual performance under the guarantee would require the appropriation of funds by Congress, **this approach would eliminate the need for budgetary scoring at this time.**
- If the U.S. had to perform under the guarantee and Congress failed to appropriate the funds, the U.S. would be in breach of its obligation to the DPRK (but Congress is often in a position to place the U.S. in breach of its international commitments).
- o In selling this package to Congress, we would want to stress that the contractors (Russian or U.S./ROK) would be at risk under their contracts if the reactor somehow failed to meet specifications.
  - The guarantee letter refers to reactors "designed" to provide 1000 MWe. This formulation is intended to protect the U.S. from guaranteeing that the reactors will fully meet specifications.
- o We would also want to stress that the lender (the ROK or Japan) would be at risk for nonpayment of the loan by North Korea.
- o Most important, we should seek to lower the risk even further through a government-to-government agreement or a contractual arrangement requiring that the U.S. be indemnified in the event of nonperformance by the primary supplier. (The ROK apparently has suggested the possibility of such an arrangement if it is the primary supplier.)
- o Loan Guarantee: One alternative to the performance guarantee would be to guarantee the availability of funding (i.e., stand behind the South Korean or Japanese pledge to loan sufficient funds to North Korea). Under this approach, the potential liability for the U.S. would be capped by the value of the loan.
  - However, a loan guarantee might not satisfy North Korea in that it protects them only against financial impediments to project completion, not political impediments.

- In addition, this approach would require a current appropriation to meet the risk pursuant to the Credit Reform Act.
- o Several existing statutory exceptions permit USG contracting actions notwithstanding the Anti-Deficiency Act.
  - Public Law 85-804 (50 USC 1431) provides that the President may authorize any agency engaged in national defense functions to enter into contracts and to make advance payments "without regard to the provisions of law relating to" government contracting whenever the President deems that such action would facilitate the national defense.
  - Section 162 of the Atomic Energy Act (42 USC 2202) provides that "the President may, in advance, exempt any specific action of the [Department of Energy] in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security."
  - Section 633(a) of the Foreign Assistance Act (22 USC 2393(a)) provides that, "whenever the President determines it to be in furtherance of the purposes of [the FAA], the functions authorized under this Act may be performed without regard to such provisions of law regulating . . . contracts and the expenditure of funds of the United States Government as the President may specify."
- o The first two of these authorities were intended primarily to facilitate defense-related procurement (though they are not, by their terms, so limited). Guaranteeing the DPRK reactor project would not readily fit into this mold because it would not facilitate a U.S. procurement.
- o The third statutory exception was intended to facilitate overseas procurement in connection with foreign assistance activities. It has typically been exercised to exempt all FAA actions from specified laws, not to facilitate particular transactions. It could not easily be stretched to cover a performance guarantee for a DPRK reactor project.

- o Congress might view the unorthodox use of these exceptions as an effort to undermine Congress's Constitutional role with respect to both the approval of treaties and the appropriation of funds. It might retaliate by prohibiting the use of funds for the DPRK project.
- o On the other hand, given the likely difficulties in obtaining affirmative Congressional approval of an agreement with the DPRK, we might conclude that these authorities would provide a solution to an Executive-Congress stalemate.
  - Such an approach should be accompanied by informal consultations with Congress to ensure that there is general agreement that this approach is preferable to submitting the agreement with the DPRK for approval.

Atomic Energy Act: Agreement for Cooperation

- o The U.S. cannot transfer an LWR, major reactor components, or nuclear fuel to the DPRK until it has entered into an agreement for nuclear cooperation pursuant to section 123 of the Atomic Energy Act. (Major components are pressure vessels, primary coolant pumps, fuel charging or discharging machines, and control rods.)
  - In addition, a waiver of nuclear trade sanctions under section 129 of the Atomic Energy Act would be required, as well as issuance of the necessary licenses from the Nuclear Regulatory Commission, the Treasury Department (under the Trading With the Enemy Act), and the Commerce Department (terrorism controls). These requirements are discussed in subsequent sections.
- o In order to enter into an agreement under section 123, the DPRK will have to agree to the following:
  - A guarantee that it will maintain **IAEA safeguards** in perpetuity on items subject to the agreement.
  - A requirement, as a condition of continued U.S. nuclear supply, that it will maintain **full-scope IAEA safeguards**.
  - A provision permitting the United States to apply **fall-back safeguards** (i.e., U.S. inspections) in the DPRK in the event IAEA safeguards cannot be effectively applied.
  - A **peaceful use guarantee** (i.e., the DPRK will not use items subject to the agreement for any nuclear explosive device, for research on or development of any such device, or for any other military purpose).

- A U.S. right to cease cooperation and **require the return** of items subject to the agreement if the DPRK detonates a nuclear explosive device or terminates or abrogates a safeguards agreement with the IAEA.
  - A guarantee that it will maintain adequate **physical security** with respect to items subject to the agreement.
  - A U.S. right of prior **consent** before the DPRK may **retransfer** to a third country items subject to the agreement.
  - A guarantee that it will not **reprocess, enrich, or alter in form or content** nuclear material subject to the agreement (section 123 requires only U.S. consent, but we presumably would want a prohibition in this case).
  - A U.S. right to approve in advance **storage facilities** for separated plutonium, uranium 233, and highly enriched uranium subject to the agreement (though it is not anticipated that the DPRK would possess such materials).
  - A prohibition on the transfer of **sensitive nuclear technology and restricted data** under the agreement.
  - A guarantee that all key conditions and controls will remain in force in **perpetuity** with respect to items subject to the agreement, even if the agreement expires or is terminated.
- o This agreement would have to be submitted to Congress for a review period of 90 continuous session days. Congress could disapprove the agreement during that time by joint resolution (which the President could veto, requiring a 2/3 majority for override).
  - Congress has never disapproved a nuclear cooperation agreement, but in the case of the U.S.-China agreement, it imposed stringent conditions on the commencement of exports pursuant to the agreement (which have never been met).
  - In this case, the LWR agreement will already impose stringent nonproliferation conditions on the DPRK, which might satisfy Congress's concerns. **However, Congress likely would reject the agreement if the DPRK had not yet allowed special inspections to take place.**
- o An agreement for cooperation does not commit the United States to any specific exports or other activities, but rather establishes a framework of conditions and controls to govern subsequent transactions, if any.

- We might mollify Congressional concerns by proposing an agreement for cooperation with the DPRK that would permit only this one reactor project (i.e., any additional cooperation would require amendment of the agreement, which Congress would again review for 90 continuous session days).
- o Even with an agreement in force, significant exports made pursuant to it require a license from the U.S. Nuclear Regulatory Commission.
- o IAEA Project and Supply Agreement: The U.S. could supply a reactor to the DPRK through the IAEA, subject to the U.S.-IAEA agreement for cooperation.
  - This approach would not require an agreement for cooperation between the U.S. and the DPRK (though the DPRK would have to agree to the same kind of requirements in its project agreement with the IAEA and the U.S.).
  - Congress would not have a role in approving a project agreement (as would be the case with an agreement for cooperation).
  - The DPRK would have to rejoin the IAEA to become eligible for such a project.

#### Atomic Energy Act: Export of Minor Components

- o An agreement for nuclear cooperation is not needed for exports of minor reactor components (basically, all nuclear reactor components other than pressure vessels, primary coolant pumps, fuel charging or discharging machines, and control rods).
  - For export of a minor component, section 109(b) of the Atomic Energy Act requires guarantees from the recipient government that (1) safeguards will be applied to the item, (2) the item will be used exclusively for peaceful purposes, and (3) the item will not be retransferred without U.S. consent.

#### Atomic Energy Act: Technology Transfers

- o An agreement for nuclear cooperation is not needed for a transfer of nuclear technology to the DPRK. (Technology would include everything from a reactor design to reactor safety knowhow. It would include any transfer of information or knowhow, including during consultations, seminars, exchanges, studies, evaluations, etc. It does not include "public information" -- i.e., information available

to the public in books, periodicals, electronic media, public libraries, open meetings, etc.)

- o The basic requirement for a transfer of nuclear technology to the DPRK would be issuance of a specific authorization by the Department of Energy based on a finding that the transfer "will not be inimical to the interest of the United States." This finding would require the concurrence of State and consultation with Defense, ACDA, Commerce, and the Nuclear Regulatory Commission.
  - Neither an agreement for cooperation nor full-scope safeguards is strictly required, though effective full-scope safeguards is typically an important factor in the finding of noninimicality.
- o If another country were supplying the reactor, we would have to determine whether the reactor incorporated U.S. technology, in which case reexport controls might apply. The U.S. does not typically obtain reexport consent rights in connection with nuclear technology transfers, but it has done so in a few cases.
  - Moreover, if a U.S. firm had a licensing arrangement with the ROK requiring its consent for the retransfer, it could not provide that consent without obtaining authorization from the Energy Department.

#### Atomic Energy Act: Nuclear Trade Sanctions

- o The U.S. could not transfer an LWR, major reactor components, nuclear fuel, or minor reactor components unless the President waived the prohibition in section 129 on such trade.
- o Section 129 prohibits such nuclear trade on two grounds that are applicable to the DPRK: (1) where a nonnuclear-weapon state has materially violated an IAEA safeguards agreement; and (2) where a nonnuclear-weapon state has "engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities."
  - The stringent nonproliferation commitments in the LWR agreement could form the basis for a determination by the President that the DPRK had taken sufficient steps to terminate its proliferant activities, thereby avoiding sanctions under the second provision cited above.

- o Either provision could be waived if the President determined that cessation of nuclear trade "would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security."
- This waiver determination would have to be submitted to Congress for 60 days of continuous session before it took effect.
- Congress could disapprove the waiver during that time by joint resolution or other enactment (which the President could veto, requiring a 2/3 majority for override).

#### Trading With the Enemy Act

- o The President has exercised his authority under TWEA to ban all trade and financial transactions with North Korea absent a license from the Treasury Department's Office of Foreign Asset Controls (OFAC). (For exports of Commerce-controlled items, OFAC defers to Commerce's decision on issuing an export license.)
- o OFAC could issue the required license, or the President could relax the ban. Neither action would require Congressional consent or consultation.

#### EAA Terrorism Controls

- o The DPRK was designated a "terrorist country" in 1988 for purposes of the terrorism controls in the Export Administration Act. It therefore is subject to an outright ban on exports of munitions list items, as well as a requirement of an individual validated licenses for many other items.
- o If the Secretary of State determined that a controlled item "could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism," a 30-day prior notification to Congress would be required before the issuance of a license.
- o The criteria for removing a country from the terrorist list are demanding and would be difficult to meet in the case of the DPRK (e.g., a Presidential certification that there has been a fundamental change in the leadership and policies of the country, that the country is no longer supporting acts of terrorism, and that the government has provided assurances that it will not support terrorist acts in the future).

### Liability for Accidents

- o U.S. firms will be concerned about potential liability for third party claims arising from discharges of radioactive materials resulting from an accident. (They have been somewhat reluctant to participate in efforts to improve the safety of Russian reactors for that reason.)
- o In particular, these firms are concerned that their participation in a project might provide the basis for a suit in U.S. courts by foreign plaintiffs (the "Bhopal scenario").
- o Accordingly, if U.S. firms were to participate, there would probably have to be arrangements to ensure that such firms were not exposed to unlimited liability.
- o The most practical approach would be to create an ad hoc liability structure for this one transaction.
- o One option might be for a U.S. firm in a joint venture with South Korean firms to seek an **indemnification agreement** from those firms.
- o Alternatively, we could follow the model used last year with Russia and Ukraine in connection with the provision of safety assistance to their civil reactors. A bilateral agreement would require the recipient State or some other state (1) to provide for the defense of third party claims for nuclear damage in any court, (2) to indemnify the provider of assistance for any judgments that might be assessed, and (3) to bring no such claims on its own behalf or on behalf of others.
  - In the case of the DPRK project, such undertakings might have to come from the ROK, as the DPRK would not be regarded as a credible guarantor for the large sums potentially involved.
- o There are two international instruments governing nuclear liability -- the OECD's Paris Convention of 1960 and the IAEA's Vienna Convention of 1963. The DPRK, the ROK, Japan, Russia, China and the U.S. are not party to either major convention. Accordingly, under present circumstances, a claim for damage resulting from a reactor accident in the DPRK might be brought against any participant in the DPRK reactor project in any court or forum that would hear the case.
- o One solution would be for all States participating in the project to join the international system.

### Environmental Requirements

- o The National Environmental Policy Act (NEPA) would not apply to this **overseas** project.
- o Instead, E.O. 12114 covers major Federal actions with environmental effects abroad.
- o The "Federal action" in this case would be the government approvals necessary for U.S. participation in the reactor project.
  - However, the procedures adopted to implement E.O. 12114 in the nuclear field **exempt** the kinds of government approvals that would be needed in this case other than approvals for export of a reactor or major reactor components.
- o If the USG were approving the **export of a reactor or major reactor components**, the appropriate environmental documentation likely would be required.
  - However, this requirement would not apply if the approval action were taken either (1) by the President, or (2) at the direction of the President or a Cabinet officer when the national security is involved.
- o If the Department of Energy were approving the **participation of U.S. firms** in the North Korean reactor project, environmental documentation likely would not be required.
  - The procedures adopted to implement E.O. 12114 focus on the provision of a "physical project" and exempt actions taken under section 57 of the Atomic Energy Act, which includes DOE approval of nuclear-related activities overseas.

Drafted by: L/PM - Newell Highsmith

POLITICAL COMMITMENT

**This letter would offer only a political commitment from President Clinton. It would not require Congressional approval and would not violate the Anti-Deficiency Act.**

I wish to confirm to you that I will use the full powers of my office in accordance with the U.S. Constitution to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. In addition, in the event that this reactor project is not completed for reasons beyond the control of North Korea, I will use the full powers of my office in accordance with the U.S. Constitution to facilitate the supply to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe, including if necessary the provision of such a facility from the United States.

I provide these assurances on the understanding that: (1) the DPRK will remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and will comply fully with that Treaty; (2) the DPRK will comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK will comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK will transfer all spent fuel from its 5MW nuclear reactor to \_\_\_\_\_ within \_\_\_\_ months of the entry into force of this agreement; (5) the DPRK will not refuel its 5MW reactor at any time; (6) the DPRK will cease all further construction on the reactor(s) at \_\_\_\_\_ and the radiochemical laboratory at \_\_\_\_\_ and will not construct any reactors or laboratories of these types in the future.

**BINDING GUARANTEE**

**This letter would legally bind the U.S. to provide a replacement reactor, if necessary. We would need to seek Congressional approval in order to satisfy the Anti-Deficiency Act. An entry-into-force provision would allow for referral to Congress. U.S. supply of the reactor pursuant to the guarantee would be conditioned on conclusion of an agreement for nuclear cooperation.**

I wish to confirm to you that the United States will exert its utmost efforts to facilitate arrangements for the construction within North Korea by [Russia/South Korea/United States] of a light-water nuclear power reactor facility designed to provide approximately 1000 MWe. This effort will include arranging for financing by [Japan][South Korea][a consortium consisting of Japan, South Korea, etc.]. **The United States guarantees** that, in the event that this reactor project is not completed for reasons beyond the control of North Korea, **the United States will take those steps necessary to ensure the availability to North Korea of a light-water reactor facility designed to provide approximately 1000 MWe on terms similar to those of the original reactor project.**

This offer and guarantee is subject to the following conditions: (1) the DPRK shall remain a party to the Treaty on the Non-Proliferation of Nuclear Weapons and shall comply fully with that Treaty; (2) the DPRK shall comply fully with its obligations under the DPRK-IAEA safeguards agreement; (3) the DPRK shall comply fully with the terms of the Joint Declaration on the Denuclearization of the Korean Peninsula; (4) the DPRK shall transfer all spent fuel from its 5MW nuclear reactor to \_\_\_\_\_ within \_\_\_\_\_ months of the entry into force of this agreement; (5) the DPRK shall not refuel its 5MW reactor at any time; (6) the DPRK shall cease all further construction on the reactor(s) at \_\_\_\_\_ and the radiochemical laboratory at \_\_\_\_\_ and shall not construct any reactors or laboratories of these types in the future. In addition, in the event that the U.S. must supply a light-water reactor or major components thereof pursuant to this letter, such supply shall be conditioned on the DPRK agreeing to enter into an agreement for nuclear cooperation in substantially the form attached hereto.

If you agree to these terms, I propose that this letter and your favorable response shall constitute an agreement between our countries, which shall enter into force upon further notification between us that we have completed our respective domestic approval processes.

# Withdrawal/Redaction Marker

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                | DATE       | RESTRICTION |
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North Korea, August 1994 [7]

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### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]  
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]  
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]