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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Warren Stern to Steve Aoki et al re Scope Paper (1 page)	01/10/1995	P1/b(1)
001b. paper	re scope paper (5 pages)	01/10/1995	P1/b(1)
002a. fax	cover Tom Marten to Steve Aoki (1 page)	01/17/1995	P1/b(1)
002b. talking points	re sanctions (3 pages)	01/17/1995	P1/b(1)
003a. memo	action, Steven Aoki to Anthony Lake re Next Steps (2 pages)	01/18/1995	P1/b(1)
003b. memo	action, Anthony Lake to POTUS re Next Steps (4 pages)	01/18/1995	P1/b(1)
004a. paper	re concept paper (5 pages)	11/27/1994	P1/b(1)
004b. paper	re timeline (2 pages)	11/27/1994	P1/b(1)

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RESTRICTION CODES

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DRAFT

TESTIMONY FOR DR. ASHTON B. CARTER:
THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
NORTH KOREA
19 JANUARY 1995

DRAFT

Background

Mr. Chairman, thank you for the opportunity to testify before your committe on the North Korea nuclear issue and the recently signed Agreed Framework. Secretary Perry will be appearing before the Senate Foreign Relations Committee next week to discuss all of the implications of the agreement and the negotiations that led up to it. In my statement today, I plan to review briefly the history of the agreement but I will focus primarily on the implementation role of the Department of Defense.

Resolving the nuclear issue with the Democratic People's Republic of Korea (DPRK) has been a major focus of our foreign policy towards Northeast Asia over the past two years because of the grave consequences it holds for our broader security, economic and political interests in the region as well as its implications for a robust nonproliferation regime.

I'd like to review briefly with the Committee the threat posed by the North Korean nuclear program and the background of the dispute. Since the early 1980s, North Korea had been building and operating a nuclear complex at Yongbyon which we are confident had as its purpose the production of plutonium for use in nuclear weapons. The program consisted of a small 5MWe, graphite-moderated, gas cooled reactor, and substantially larger 50 MWe and 200 MWe reactors under construction, a reprocessing facility which it was doubling in size and other related facilities. Prior to the signing of the Agreed Framework and the initial steps to implement the agreement, the DPRK nuclear program was poised to leap forward in terms of weapons grade plutonium production.

The burgeoning North Korean nuclear program clearly threatened US objectives in the region and globally:

- The development of nuclear weapons, along with other weapons of mass destruction, challenged the security of the Peninsula, to which the US has long been committed. While we were certainly worried about the status of the North Korean's nuclear capability as it stood over the summer, the magnitude of the problem likely would have increased exponentially in the future had it been left unchecked.
- The nuclear threat was not limited to the Peninsula, but rather risked unsettling the region's security as well. It could have threatened the peaceful development of relations among neighboring states and the economic prosperity of the region, a key source of trade for the United States.
- The DPRK's nuclear program also threatened to accelerate the flow of fissile material and other nuclear weapons aid to unstable regions where nonproliferation norms are not observed.
- Finally, the stand-off in Korea is being watched by the rest of the world as we collectively strive to develop a robust nonproliferation regime.

Faced with this threat, the United States became directly involved diplomatically in 1992 when the DPRK refused to comply with the International the UN Security Council requested that individual governments seek to resolve the nuclear issue, encouraging the US bilateral dialogue with the DPRK. (If you will recall, the DPRK signed the Nonproliferation Treaty (NPT) in 1985, entered into a safeguards agreement with the IAEA in January, 1992 and also agreed with the ROK in 1992 to denuclearize the Korean Peninsula).

The controversy over North Korean non-compliance with its NPT and the IAEA safeguards obligations continued from 1992 to mid-1994. In the Spring of 1994, the North defueled its reactor and refused to allow the IAEA to take steps which could have helped to shed light on the disposition of the plutonium removed earlier. In light of this action , and the lack of progress in our bilateral talks, the US, in cooperation with ROK and other allies, took steps to obtain UN Security Council sanctions. Because the North had said that it would regard sanctions as an act of war, we also began a series of measures to increase the readiness and combat power of US and ROK forces in Korea. We had already been modernizing our forces in Korea; in June 1994 we considered major plus-ups.

As you know, negotiations resumed in the middle of 1994 after the US had taken a series of measures to increase the readiness and combat power of US and ROK forces in Korea and former President Carter traveled to North Korea. These steps resulted in the DPRK's agreement not to refuel the reactor or reprocess the spent fuel rods into plutonium and to allow IAEA inspectors to remain on the grounds of the Yongbyon Nuclear Complex.

<u>Outline of the Agreement</u>

On October 21, 1994, negotiators for the US and the DPRK signed an Agreed Framework in Geneva. Under this agreement, the North must halt and eventually dismantle its nuclear weapons related program to ensure, in the long run, a nuclear free Korean Peninsula. In exchange for freezing and later dismantling its program and resolving past discrepancies, the DPRK will receive alternative energy sources, initially in the form of bunker oil for electric generators and later in the form of more proliferation-resistant light water reactor technology. The Agreed Framework will be implemented in a step-by-step fashion, with both the US and the DPRK taking required actions throughout the 10-to-14 year duration of the framework.

The following are the key elements of the agreement, most of which I am sure you are familiar with:

•• First, it calls for halting North Korea's graphite-moderated reactor program including three nuclear reactors, facilities for separating weapons-grade plutonium, and all other nuclear fuel related facilities;

•• Second, it requires the DPRK to return to full compliance with its obligations under the NPT and IAEA safeguards agreement;

•• Third, it provides alternate energy in the form of annual shipments of heavy fuel oil which directly conpensates for the 255 MW(e) of electrical power and thermal heat lost through shutdown of the three reactors;

•• Fourth, it calls for the formation of an international consortium to provide two proliferation-resistant Light Water Reactors to replace the dangerous graphite-moderated facilities;

•• Fifth, it neutralizes the threat posed by the spent nuclear fuel already in North Korea

- •Sixth, it requires dismantlement of the DPRK's graphite-moderated reactors and related facilities
- • Seventh, it begins the process of normalizing diplomatic and trade relations between the DPRK and the rest of the world through small steps, taken as the Agreed Framework is implemented, to exchange diplomatic offices and relax trade and investment restrictions; and,
- • Eighth, restoring dialogue between North and South Korea, together with the United States, with the objective of denuclearizing the Korean Peninsula and, eventually, reaching a peaceful conclusion of the Korean War.

The Importance of the Agreed Framework

Having reviewed the key elements of the Agreed Framework, I'd like to discuss the importance of the agreement to US national security and to touch on the Department of Defense's role in its implementation.

As I noted earlier in my remarks, the US was faced with a very serious threat to our national security in the region and globally. We had concerns not only with past discrepancies in the North's program and its present actions but also, and perhaps most importantly from a security perspective, about the nuclear program's future potential. **We wanted to prevent the DPRK from increasing its plutonium production and from gaining a strategic nuclear capability.**

The Agreed Framework provides the international community, and particularly the US, a means to address these problems. **The Administration firmly believes that the benefits to the United States and to our allies of peacefully ending the North Korean nuclear weapons program far outweigh the costs of the benefits to be derived by Pyongyang -- particularly when compared to the alternative, which would be a return to sanctions and the risk of war, or acquiescing to an unbridled nuclear program.**

Regarding the present, the DPRK has agreed to halt its nuclear program and has already done so. Specifically, the DPRK has (1) shutdown and agreed not to refuel the 5MW(e) reactor at the Yongbyon Nuclear Complex, (2) stopped all construction on the 50 MW(e) and 200 MW(e) reactors, (3) is cooperating in the program to place all spent fuel (which contains 5-6 nuclear weapons worth of plutonium) in long-term storage for eventual shipment out of the country, (4) agreed to seal the radio-chemical laboratory used to reprocess plutonium from the spent fuel, (5) and sealed the fuel storage, fuel fabrication and other facilities associated with its gas-graphite nuclear program. These actions are being verified by IAEA inspectors and comply with the Agreed Framework timetable. The critical initial stage of compliance has been accomplished -- a verified freeze on the North Korean nuclear program.

With regard to past problems with discrepancies in the amount of plutonium declared by the DPRK to the IAEA under its safeguards agreement, the Agreed Framework requires that all questions must be resolved to the satisfaction of the IAEA before any significant nuclear components for the new LWRs are delivered.

But perhaps most importantly from a security perspective, the Agreed Framework requires the DPRK to go well beyond its NPT obligations by eliminating, not just freezing or placing under international surveillance, the source of the concern --its graphite-moderated nuclear reactor program. The DPRK has agreed to dismantle its existing facilities and expatriate the spent fuel from the 5MWe reactor by the time the two LWRs are complete. The DPRK will also take steps to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula. We have long believed that it would take more than enforcing what was required by the IAEA to solve the North Korean nuclear challenge. Indeed, it will require the elimination of its existing program.

I'd like to underscore the point that the Administration is not relying on trust to implement the agreement. Quite the contrary, we are relying upon the on-site presence of the IAEA inspectors as well as US national sources to monitor the DPRK's actions and to ensure that they are holding up their part of the bargain. We will be vigilant in monitoring compliance. If at any point North Korea is not complying, we and our allies will stop implementing the agreement. We could then return to the path of sanctions and military preparations, if necessary.

And finally, the agreement provides an opening to address other outstanding security problems that trouble the Peninsula, for example, conventional force imbalances and missile proliferation. There will certainly not be a quick resolution to any of the issues which divide us. The agreement may, however, open a dialogue and serve to draw the DPRK out of its isolation, thereby increasing the likelihood that problems between our countries can be resolved.

<u>The Department of Defense's Role: US provision of Bunker Fuel</u>

I will now review the Department of Defense's role in implementing the agreement. The next milestone in the Agreed Framework is the initial delivery of bunker fuel, or what has been refered to as heavy fuel oil, by 21 January. The US performance on this obligation is a condition both of maintaining the freeze and continuing implementation of the agreement. It enables the next phase of the framework to proceed. The Department of Defense believes strongly that the success of the agreement is in the interest of our overall non-proliferation policy and very much in our national security interest.

North Korea, under the agreement, has been required to take, and has taken important steps, before getting any benefit from the US or other countries. To review the actions already taken by the North in more detail:

-- It has kept the 8000 fuel rods in storage, instead of reprocessing them to extract the plutonium for some 3-to-5 bombs they contain. In the three months since the Agreement was signed, roughly 78% of these rods could have been run through the reprocessing facility.

-- It has sealed the reprocessing facility and stopped construction on an additional reprocessing line that would double the reprocessing rate.

-- It has refrained from refueling and restarting the 5MW(e) reactor from which the spent fuel was unloaded this spring. This reactor, run at the rate at which it was running last year, would produce enough plutonium for one bomb each year it operates. This reactor is being sealed by the IAEA.

-- It has stopped construction of two big new reactors with capacities of 50 and 200 MW(e) respectively. These reactors, when completed in 1995 and 1996 respectively, would have a capability to produce plutonium for [a significant number} dozens of bombs annually.

-- It has permitted IAEA inspectors to remain permanently at Yongbyon to implement the freeze, and verify and monitor, on a daily basis, that the freeze remains in effect. The Director General of the IAEA reports good cooperation and compliance with the freeze by the DPRK. IAEA inspectors will remain in North Korea for the duration of the framework implementation.

- - It has permitted a US technical team to visit Yongbyon to do a survey of measures necessary to stabilize the spent fuel so it can be stored until removed from North Korea, as required by the agreement. Removal will start when the first significant nuclear components for the LWRs begin to be delivered.

- Thus, the critical initial stage of compliance has been accomplished -- a verified freeze on the North Korean nuclear program. Accordingly, the US is in the process of doing its first delivery of fuel oil -- tankers are off loading now.

  Specifically, as alternate energy for the loss of electrical power and thermal heat from the DPRK's reactors, the US agreed to arrange for shipments of heavy residual fuel oil in amounts equal to the thermal output of the three nuclear reactors, a total of 255MW(e) or 3.5% of North Korea's present electrical generation capacity.

  The Department of Defense agreed to arrange and pay for delivery of the first tranche under license to meet the ninety-day deadline and provide incentive for DPRK compliance with the nuclear non-proliferation incentives of the framework. The total cost to DoD will be approximately $5M including delivery. The fuel will be paid for under long-established statutory authority in the annual DoD Appropriations Act for DoD use funds, up to a specific limit for emergency and extraordinary expenses.

  Fuel is in some sense fungible, but there is little potential for this fuel to be diverted from its intended use in power and heat generation. Very little high-fraction fuel, such as gasoline, diesel, and kerosene, can be extracted from heavy residual fuel oil (HFO), compared to crude and other refined petroleum products. Commonly called 'Bunker C', heavy residual fuel oil can be used to fire boilers, but it cannot be used as motor fuel for vehicles or military hardware. It is like tar.

  The first tranche of 50Kmt of HFO is being delivered to the currently idle, oil-fired power plant in Sonbong, North Korea, where it will be used to produce electricity for North Hamgyong Province and thermal heat (steam) for the surrounding villages.

  The total cost to DoD will be approximately $5M including delivery. The fuel will be paid for under long-established statutory authority in the annual DoD Appropriations Act for DoD use funds, up to a specific limit for emergency and extraordinary expenses.

Congress has been informed of the overall terms of the deal and of the specific obligations to provide fuel, and of the other details of delivery and payment as outlined here, by a letter from the Deputy Secretary of Defense.

The second tranche agreed to in the framework is 100Kmt of HFO as alternate energy for both the 5 and 50MW(e) reactors. It is scheduled for delivery in October 1995 and will be paid for by the multinational consortium under the leadership of the US, Japan, and the Republic of Korea.

The third tranche is 500Kmt of HFO provided under the framework to compensate for the total 255MW(e) electrical capacity of all three nuclear reactors under the freeze. Delivery will commence in October 1996 and be paid for by the international consortium. Deliveries will continue annually until the first LWR is on-line providing electricity in the DPRK.

Summary

In summary, the Department of Defense fully supports the Agreed Framework and the importance of implementing it in a timely fashion. The agreement takes a major step towards securing our goal of finding a peaceful way to halt and eventually dismantle the DPRK's nuclear program to ensure for the long run a nuclear free Korean Peninsula. It also will help to ease tensions on the Peninsula by encouraging dialogue with our ally South Korea and by drawing the DPRK out of its international isolation. I'd be happy to answer any questions you may have, particularly on the Department's contribution to implementing the agreement.

WORKING PAPER

Questions and Answers: Proliferation & NPT

Question: Do you believe the Agreed Framework sets a bad precedent for dealing with countries like Iran?

Answer: Absolutely not. The only precedent that should be drawn from the U.S.-DPRK Agreed Framework is one of continued U.S. resolve in preserving and upholding a robust Nuclear Nonproliferation Treaty regime.

- It is important to recognize that the nonproliferation obligations assumed by the DPRK over the next several years exceed anything required by the NPT. The North must freeze its entire existing nuclear program and forego reprocessing permanently. Under the NPT, the DPRK would be able to operate its current facilities and conduct reprocessing of spent nuclear fuel. No other country has assumed such an onerous set of restrictions on its nuclear activity.

- The goal of the NPT, to stop the spread of nuclear weapons and technologies, is complemented and reinforced by the results of our negotiations with North Korea, which seek to achieve full transparency of the DPRK's nuclear program past, present, and future.

- If any country doubts our commitment to the NPT regime, it should be remembered that were prepared to move to sanctions in June when it appeared that the DPRK was unwilling to take measures to halt its nuclear weapons program; we would be willing to pursue firm measures with other countries if they were to disregard their NPT obligations.

- It is significant that the IAEA, which is responsible for monitoring compliance with fullscope safeguards, has accepted our agreement and will have a strong inspection presence at nuclear sites in the DPRK to monitor compliance with the agreement. The IAEA will also be permitted to resume ad hoc and routine inspections in the near future and will ultimately be permitted access to all information, including that contained in undeclared nuclear waste sites, that it deems necessary to resolve any questions about past DPRK nuclear activity.

Question: The Agreed Framework does not address missiles. Are we going to raise this issue with the North Koreans?

Answer: Missile proliferation is a critical challenge that we confront worldwide and one that we are particularly concerned about within the context of North Korea.

- The dialogue which has been established with the North Koreans through the Agreed Framework provides us with a forum to raise issues of concern, including the export of ballistic missiles.

- We have done so by raising our concerns during the negotiations and again at meetings held since the signing of the agreement. We will continue to do so.

- While we have expressed a willingness to move toward normalized relations with the DPRK, the depth and pace of that movement will be conditioned on the North's cooperation in addressing regional security concerns in areas like missile proliferation.

- Current North Korean missile programs underscore the importance of talking to the DPRK about ways to curtail potentially destabilizing activity in this area.

Question: Can you make nuclear weapons with material from LWRs? Won't we run into the same problems with the LWRs as we are with the DPRK's existing facilities?

Answer: Light water reactors are more proliferation resistant than the graphite moderated reactors owned by the DPRK today for the following reasons: 1) LWRs require enriched, rather than natural, uranium which is supplied by only a handful of countries -- the US, Russia, a European consortium and China. All of these countries, with the exception of China require full-scope safeguards as a condition of sale; 2) the plutonium in spent LWR fuel is less desirable for use in nuclear weapons because it contains a higher concentration of PU-240 and PU-241 -- isotopes that make it more difficult to handle and incorporate the plutonium into a deliverable device; 3) LWRs must be shutdown for reloading operations which makes them easier to safeguard than reactors whicvh require natural uranium fuel; 4) LWR fuel is clad with a zirconium alloy that is far more resistent to corrosion than "magnox fuel." As a result, LWR spent fuel can be stored indefinitely rather than needing to be reprocessed.

- In evaluating the wisdom of providing light water reactors to North Korea, we need to consider the alternative. Without the Agreed Framework, the US and its allies would have been faced with the DPRK's existing nuclear program which would have been capable of producing dozens of bombs a year.

Question: Why are we allowing the DPRK to defer special inspections for years? Doesn't this weaken the NPT?

Answer: When implemented, the Agreed Framework brings the DPRK back into compliance with the NPT, albeit after several years, and requires full transparency of the DPRK nuclear program.

- It is important to put the issue of special inspections into the broader context of the negotiations and the Agreed Framework. Ideally, we would have liked to have resolved any questions and remaining doubts about the DPRK's nuclear program immediately, but the long history of hostility and mistrust made it impossible to arrive at such an arrangement. We remained firm on the principle of requiring the DPRK to reconcile its past nuclear activity with the IAEA but flexible on its implementation. We did not walk away from the IAEA's concerns. If the DPRK does not cooperate with the IAEA, the nuclear deal does not go through. The DPRK will not receive significant nuclear components until the IAEA is satisfied and has declared the DPRK to be in full compliance with the NPT.

- Further, and perhaps most importantly, the US objectives were broader than bringing the DPRK back into the NPT fold. We wanted to ensure that the DPRK did not increase its production of plutonium, to include reprocessing the spent fuel in the pond, nor gained a strategic nuclear capability. From a security perspective, these were the more pressing objectives, and I believe we achieved them with the Agreed Framework. In the near term, the DPRK's program is frozen and over time they will dismantle their nuclear weapons related program.

Questions and Answers: Conventional Forces Issues

Question: Does the warming of relations between the U.S. and North Korea lay the groundwork for the eventual withdrawal of U.S. forces from the ROK?

Answer: The U.S. remains fully committed to its alliance with the ROK. Despite the signing of the Agreed Framework, the conventional array of forces on the peninsula has not changed and the DPRK still represents a significant military challenge. The sizable U.S. presence is a symbol of our unshakable commitment to the security of the ROK but also underscores our broader mutual concern for peace and stability in Asia. This latter bond will extend beyond the relaxation of tensions on the peninsula, resting as it does on shared values and not simply on shared threats.

Question: How does the U.S. propose to maintain readiness on the peninsula? What are the prospects for the Team Spirit exercise?

Answer: The ROK and U.S. will maintain the full complement of exercises necessary to ensure readiness on the peninsula. We are determined not to be lulled into a false sense of security and are fully aware that peace on the peninsula has been maintained over forty years by our vigilance and military preparedness.

- Team Spirit is on the training schedule for this year and preparations are being made for its execution; beyond that, I will have to defer comment at this time.

Question: How does the U.S. assess the current risk or probability of armed confrontation on the peninsula?

Answer: There is no immediate or near-term risk of a flare-up of hostilities on the peninsula. But the concentration and posture of DPRK forces is cause for concern and creates an environment in which the potential costs of miscalculation can be tragic, as we have recently seen with the helicopter shoot-down over North Korea. For this reason we have and will continue to urge the DPRK to engage in substantive dialogue with the ROK as a first step toward reducing tensions on the peninsula.

Question: The recent crossing of the DMZ by an American helicopter points out the potential for mistakes or misunderstandings to generate conflict and possibly even war on the Korean peninsula. What are we doing to defuse this potential?

Answer: The U.S. looks forward to the day when tensions and the potential for conflict on the Korean peninsula have been completely eliminated. The U.S. position is that peace on the peninsula will not be possible until South and North Korea have addressed the sources of tensions on the peninsula through substantive dialogue based on mutual respect and recognition. The impetus for lasting peace on the peninsula can only come from reconciliation of the two primary parties, the ROK and the DPRK.

- In the meantime, the Military Armistice Commission, established at the end of the Korean War, serves as the appropriate forum for discussion of any military issues that arise between the UN Command in Korea and the DPRK.

Q:uestion How does the U.S. reconcile the threatening military posture maintained by the North Koreans with recent success in concluding an Agreed Framework on the nuclear issue?

Answer: We take as our starting point that the situation on the Korean peninsula is very complicated and that resolution of all outstanding problems will not occur simultaneously. We also recognize that the nuclear activity of the DPRK represented the most serious threat to our security interests in the region and we therefore sought to remedy it at the outset of any process of engagement with the North. While the agreement signed with North Korea will not necessarily lead to a quick resolution of other points of contention, the opening provided by the agreement will increase the likelihood that these problems can be addressed in the near future.

Question: What enhancements have we made to the capabilities of U.S. forces in Korea?

Answer: We have enhanced the capabilities of US forces in Korea both through temporary deployments of specific assets and units and through planned modernization initiatives. The Republic of Korea has also improved the capabilities of its forces, and is accelerating modernization efforts in several key areas.

- Perhaps the most significant steps thus far have been in the areas of intelligence and command and control communications. We have deployed additional collection and assessment assets to Korea. We have also sent over communications gear to improve connections among command and force element. We have also enhanced fire support assets available to US forces with the modernization of attack helicopters with Apaches, additional Bradley Fighting Vehicles with TOW missiles and additional grenade launchers. Finally, we have improved the security of critical assets in rear areas by deploying a Patriot battalion to Korea.

WORKING PAPER

Questions and Answers: Criticism of the Agreement

Question: Does the U.S. fear being duped by the North Koreans? Is there a risk that the DPRK will simply pocket any material assistance provided by the U.S. and its allies without holding up its end of the bargain?

Answer: The current U.S. Administration harbors no illusions about the nature of the North Korean government and we are not leaving implementation of the agreement to trust. To monitor compliance, the US will be relying on the on-site presence of the IAEA inspectors and US national sources. In fact, the IAEA has been in intensive discussions with the North to agree on means to verify the nuclear freeze in the DPRK. These discussions have gone very well and the IAEA is confident in its ability to do its job. The U.S. also has technical experts in the DPRK at this moment to arrange for long-term storage of spent fuel rods. We are very confident that we can monitor the North's adherence to the agreement.

It is important to note that it is the DPRK who will be taking the first steps throughtout the duration of the framework agreement. The DPRK has now frozen its nuclear program so we are moving ahead with the shipment of the fuel oil. The DPRK will not receive any significant nuclear items on the trigger list for the LWRs until they have come into full compliance with their safeguards obligations. The spent fuel will have to be shipped before the first LWR is complete and they will have to have dismantled the existing nuclear facilities before the second LWR is complete.

Question: Aren't you propping up the North Korean economy with the economic aid and heavy fuel oil? Aren't you delaying the fall of the regime by giving it aid and comfort?

Answer: Our interaction with the DPRK is not premised on any calculation of the longevity of the North's government. Many pundits have argued for years that the DPRK is on its last legs; other analysts assert that the North has significant staying power. In any case, the U.S. did not have the luxury of simply sitting back and waiting for the DPRK to implode or otherwise metamorphose because the nature of the security challenge we faced was immediate and unmistakable. We addressed that problem head-on with the present settlement and, in so doing, have potentially opened the door to a greater relaxation of tensions on the peninsula.

- The economic measures you mentioned, alternative energy (a substitute for energy foregone by the North's shutting down its current nuclear program), sanctions-lifting, and liaison offices, are all measures incorporated in the Agreed Framework and constitute part of the broader engagement process with the DPRK. The Administration does not believe that the small amount of oil being provided to the DPRK will alter the course of the North Korean economy or the fate of the regime. As you likely know, the shipments of heavy residual fuel oil will only be in amounts equal to the thermal output of the three nuclear reactors, a total of 255 MWe or 3.5% of North Korea's present electrical generation capacity.

Question: I understand that the allies are balking at paying for the obligations under the Agreed Framework. Is this true? How much is this agreement going to cost the United States' taxpayer?

Answer: The Republic of Korea has agreed to play a central role in financing the light water reator project. We are looking to the Japanese and other governments to make up the balance along with financing the alternative energy. The US has already agreed to pay for the treatment of the spent fuel pond and the canning of the fuel as well as the first shipment of the heavy fuel oil. The Administration is in the process of working out with our allies the arrangements for establishing KEDO and the best way to meet KEDO's obligations under the Agreed Framework.

If pressed: We expect that the US will pay tens of millions of dollars each year. It is important to keep in perspective that this cost is a very small part of the overall nuclear deal which we expect to cost over $4B. Most of the cost of this agreement will be paid for by our allies.

Question: Is the Agreed Framework legally binding? Why is the document not a treaty?

Answer:

Question: I understand that the Department of Defense had serious reservations about the agreement. Is this true? And do you think it is in the best interest of the US?

Answer: The Department of Defense fully supports the Agreed Framework and the importance of implementing it in a timely fashion. The agreement takes a major step towards securing our goal of finding a peaceful way to halt and eventually dismantle the DPRK's nuclear program to ensure for the long run a nuclear free Korean Peninsula. It also will help to ease tensions on the Peninsula by encouraging dialogue with our ally South Korea and by drawing the DPRK out of its international isolation.

- We, of course, will be vigilant in ensuring that the DPRK lives up to its side of the bargain and will be actively engaged in facilitating the implementation of the agreement.

WORKING PAPER

Question and Answers: The Department of Defense's Role

Question: What funding mechanism is the Department using to pay for the heavy fuel oil?

Answer: The fuel will be paid for under long-established statutory authority in the annual DoD Appropriations Act for DoD use of funds, up to a specific limit, for emergency and extraordinary expenses. The report of this expenditure will be included in our quarterly report to the Committee on Armed Services and Appropriations of the Senate and House of Representatives. I would like to take any further questions you may have on the funding arrangements for the record. Thank you.

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*** ACTIVITY REPORT ***
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NATIONAL SECURITY COUNCIL OEOB, Room 380 17th & Penn, N.W. Washington, D.C. 20506 Did you get a complete, clear transmission? If not, please call: (202) 456-9181	**From:** Steve Aoki **To:** Jim Neif **Company:** OMB **Fax Number:** 55157 **Date/Time:** **No. of pages to follow:** 14 **Message:**

North Korea Sanctions and Foreign Subsidiaries State /EB

The exclusion of the foreign-incorporated subsidiaries of U.S. firms from the scope of North Korea sanctions would not open the door to all U.S. companies to circumvent sanctions through their foreign subsidiaries. U.S. companies and individuals would still be prohibited from engaging in any transactions with North Korea. Any U.S. companies or individuals who do business with North Korea through a foreign subsidiary without a Treasury or Commerce license would face enforcement action, including possible criminal prosecution under U.S. sanctions regulations. It would be unlawful for any U.S. companies or individuals to circumvent U.S. sanctions by acting through a foreign subsidiary or joint venture partner in order to do business with North Korea. Any export or reexport of U.S. origin goods, services or technology by foreign subsidiaries without the required Commerce license would also be prohibited.

The foreign subsidiaries of U.S. companies would be able to conduct business with North Korea provided they did so in a manner independent of the U.S. parent. The foreign subsidiary could not act under instruction from the U.S. parent, and could not refer any elements of the transaction (including legal aspects) to the parent company. Americans could not participate on the board of directors, company management or otherwise participate in any way in transactions with North Korea, unless specifically authorized by Treasury. Any sensitive U.S.-origin goods, services and technology would remain subject to U.S. export controls, and hence embargoed. The net effect of this measure is that the USG will no longer hold U.S. companies or individuals liable for the independent actions of foreign companies with which they are affiliated.

South Korea recently relaxed its trade sanctions against North Korea to permit small scale investments. In the near term, South Korean firms seeking to take advantage of geographic proximity, abundant cheap labor, and common language and cultural affinities are likely to pursue these opportunities. The American business community in South Korea is very concerned about the "extraterritorial application" of U.S. sanctions to South Korean firms where the work or invest. They specifically raised this issue with Secretary Christopher and Undersecretary Spero during their recent visit to Seoul. Excluding the foreign subsidiaries of U.S. firms from the scope of North Korea sanctions is aimed at meeting their concerns and promoting North-South economic relations.

Older embargo programs under the Trading With the Enemy Act (North Korea and Cuba) assert United States jurisdiction over transactions by companies established under foreign laws which are owned or controlled by United States persons or companies. In contrast, more recent embargo programs under the International Emergency Economic Powers Act (Libya, Iraq, and Serbia) assert jurisdiction only over United States persons, which is limited to juridical persons organized under the laws of the United States (including overseas branches). Thus we control the role of US persons in transactions by the foreign subsidiaries, but do not control the foreign subsidiaries directly.

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The United States assertion of extraterritorial jurisdiction over foreign juridical entities has, on occasion, been challenged by foreign states and been the subject of blocking orders by such states prohibiting compliance with US prohibitions by companies subject to their jurisdiction. As a practical matter, our ability to enforce such restrictions against foreign entities is limited, and directed primarily at the United States persons controlling those entities.

It is worth noting that in the 1970's, the United States relaxed its licensing policies over trade with Cuba by such foreign incorporated subsidiaries. The Cuban Democracy Act of 1992 prohibited the Treasury Department from granting such licenses to foreign subsidiaries, thus removing any flexibility in granting such licenses case-by-case under the Cuban Assets Control Regulations. Congressional action has invited further challenges and blocking measures by foreign states and United Nation resolutions expressing displeasure with the US Cuba embargo.

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Treasury
(Newcomb)

DRAFT

NORTH KOREA SANCTIONS MODIFICATIONS AND THE AGREED FRAMEWORK

The text of the Agreed Framework itself explicitly calls for measures to modify North Korea's nuclear program, including replacing graphite-moderated reactors and related facilities with light-water reactor power plants and provision of interim energy alternatives in the form of heavy oil for heating and electricity production. The Agreed Framework also explicitly calls for reducing "barriers to trade and investment," specifically including removing restrictions on telecommunications services and financial transactions, and opening a liaison office in each other's capital. We believe that the measures proposed by the State Department to implement the commitments in the Agreed Framework related to energy sector projects, telecommunications and financial transactions are minimally required to meet these commitments. The additional measures proposed to implement the somewhat general terms of the Agreed Framework are reasonable if we are to take further concrete steps, but are not explicitly required under the agreement.

Certain measures relating to telecommunications services are mandated by the Free Trade in Ideas Act of 1994. Exports to establish an international gateway -- upgrading the existing telecommunications capacity -- and the opening of news-gathering offices in each country, are beyond what the statute requires, but are relatively limited in scope.

Measures not explicitly required by the terms of the Agreed Framework include the following, which generally fall within the commitment to lift "barriers to trade and investment." First, the draft regulations exempt foreign-incorporated U.S.-controlled companies from the sanctions, which has little impact in a unilateral program. Second, they authorize case-by-case importation of North Korean magnesite/magnesia, which is not now produced in the United States, and is critical to steel production. (China, the other commercial exporter of high-grade magnesia, has charged U.S. buyers premiums, knowing of their inability to buy from its sole competitor.) Finally, the draft authorizes all travel-related transactions with North Korea, a minor change since all individuals are now permitted to travel there. The State Department has also proposed ceasing U.S. opposition to UN funding of North Korean development projects.

Lifting restrictions on financial transactions will extend to permitting dollar clearing and unblocking assets for return to remitters, provided the funds are not directly returned to North Korea or the Government of North Korea. As currently proposed, the removal of these restrictions will not result in an immediate benefit to North Korea, but will remove an impediment to future U.S. dollar transactions by North Korea. These restrictions could be reimposed quickly.

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The proposal to remove the prohibition on trade by foreign subsidiaries -- while continuing to prohibit involvement by U.S. persons -- will bring this aspect of the program in line with most other programs, including Libya. Since foreign subsidiaries are ultimately subject to the jurisdiction of the host country, the current prohibitions can be difficult to enforce in a unilateral sanctions program, and permitting such activity may well be the minimum concrete step that can be taken to ease restrictions on trade. On a practical basis, the removal will likely result in the independent subsidiaries of some high-profile U.S. companies exploiting the new opportunities.

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Dan - this is latest draft.
Don keeps promising me comments.....

The U.S.-DPRK Agreed Framework

On October 21, 1994, representatives of the United States and the DPRK signed an Agreed Framework that addresses all of our concerns about North Korea's nuclear weapons program: past, present and future. It upholds the integrity of the international nonproliferation regime and, if implemented, will lead ultimately to complete dismantlement of North Korea's nuclear capability. In short, it stops the North Korean nuclear weapons program in its tracks. The Agreed Framework also sets the stage for reduced tension in the region and dialogue between the DPRK and ROK to resolve their differences. As progress is made in resolving other issues of concern to the U.S., the Framework will lead to more normal relations between the U.S. and the DPRK.

North Korea in Perspective

The Agreed Framework between the United States and the DPRK marks an important departure from the state of unremitting hostility that has existed between our two countries and on the Korean peninsula generally for over forty years. While the Republic of Korea made impressive progress toward democracy and prosperity during that time, the DPRK has remained locked behind a wall of paranoia and secrecy. North Korea became associated with acts of aggression and terrorism. In the 1960s, it seized and detained the USS Pueblo and staged an attack on the South Korean president's residence. In the 1970s, North Korea perpetrated intermittent acts of violence along the DMZ, including the infamous ax murder incident in 1977. In the 1980s, Pyongyang orchestrated a bombing attack on the South Korean cabinet during a state visit to Burma and the blowing up of a South Korean airliner in 1987. Clearly, this was a regime that existed outside the bounds of normal international relations.

Tensions with North Korea have been compounded by a very unstable military situation on the peninsula. North Korea has a 1.1 million man army, much of it aggressively deployed in forward positions along the DMZ. Seoul, the political and economic nerve center of South Korea, lies within artillery range of North Korea and would be vulnerable in the event of a North Korean attack. The 37,000 American troops serving in South Korea play a vital role in deterring North Korean aggression and would fight side by side with Republic of Korea troops in the event of a conflict. The recent helicopter shootdown provides a reminder of just how tense the military situation on the peninsula remains.

It was against this backdrop that successive administrations watched with growing concern as North Korea began to develop a nuclear weapons capability and the means to deliver those weapons.

The Threat to American Interests

While any development of nuclear facilities in North Korea would have caused us concern, we were especially troubled by the particular nuclear technology that the North was pursuing. It was clear that their program was designed to produce plutonium for nuclear weapons, not simply to serve as a source of energy for an electricity-starved developing country. The North initially built a 5 megawatt electric research reactor and a facility to separate plutonium from spent fuel for use in nuclear weapons. The DPRK also began to construct two larger reactors (50 MWe and 200 MWe) to increase even further their ability to produce plutonium. These reactors are obsolete as electricity producers but their gas graphite technology is excellent for producing weapons grade plutonium. We also concluded that they have the other technical capabilities needed to design and fabricate a nuclear explosive device.

Successive administrations well understood the threat these developments posed to U.S. security interests and those of our allies. A North Korean nuclear arsenal would make an already dangerous military situation in NE Asia even more unstable. Nuclear weapons in the hands of the DPRK would directly threaten U.S. troops and civilians in the Republic of Korea. We also saw a North Korean program in place to develop extended range ballistic missiles. With potential ranges as high as thousands of kilometers, that program posed a clear offensive threat. We understood that the missiles under development were not particularly accurate, indicating that they were intended to deliver weapons of mass destruction, rather than conventional explosives. If the nuclear weapons program and extended range ballistic missile were successfully combined, the DPRK nuclear program could threaten most of East Asia. It could lead to a regional arms race and prompt other nations in the region to develop nuclear weapons.

Nuclear Exports? Our concern was heightened even further by the prospect of plutonium or nuclear weapons exports to other regions of concern, particularly the Middle East. North Korea has shown that it is willing to transfer ballistic missiles to states of concern in the Middle East. We could only assume that they would do the same if they ever developed a significant number of nuclear weapons. In short, the prospect of a North Korea producing large numbers of nuclear weapons (and the means to deliver them) posed a grave threat to vital U.S. interests and those of our friends and allies, both in Asia and in the rest of the world.

The U.S. Response to the Threat

The Clinton Administration's direct involvement with North Korea over the nuclear issue began in 1993 after North Korea refused to comply with its safeguards obligations under the Nuclear Nonproliferation Treaty and announced its intention to withdraw from the Treaty. This situation came about in 1992 -- the first year of IAEA inspections under the NPT agreement, when the IAEA found an "anomaly" in its analysis of inspection results. The IAEA then wanted to conduct special inspections at two nuclear waste storage sites in order to resolve the anomaly and shed more light on the question of how much plutonium the North had produced in its reactor and separated during the period from 1989-1992. The IAEA had reason to believe that the North's claims that it had separated only small amounts of plutonium (gram quantities) were not accurate. The IAEA's technical analysis suggested that it was more likely that the DPRK had separated larger quantities of plutonium. It was the DPRK's rejection of these special inspections (the question of the "past") and the IAEA's finding of DPRK non-compliance with its safeguards agreement that brought the issue to the United Nations Security Council.

After the IAEA reported the impasse to the Security Council, the Council invited member states to take up the matter bilaterally with the DPRK. When the United States first began to talk with North Korea, we had two straightforward negotiating objectives. First, we wanted to bring North Korea back into the NPT and to get them to accept full scope IAEA safeguards, including special inspections. This would ensure that we had a strong global non-proliferation regime. Second, we wanted to convince the North to implement the North-South Declaration on Denuclearization, which they had negotiated bilaterally with South Korea in 1992. That declaration would ensure a non-nuclear Korean peninsula by requiring that they give up any reprocessing capability and accept a bilateral inspection regime. We also made it clear to the North Koreans that we could only engage in dialogue so long as they accepted safeguards to assure non-diversion of nuclear material, refrained from separating any more plutonium and remained in the NPT. If they violated any of the conditions, we would turn to the Security Council for sanctions. We were determined not to lose any ground while talks were underway.

After meeting with DPRK representatives twice in the summer of 1993, talks broke off for almost an entire year because of the North's refusal to allow the IAEA to conduct the kinds of inspections necessary to ensure the continuity of IAEA safeguards. When it finally appeared that talks were going to get back on track in June of this year, the North again took a step (unloading the fuel from the 5 MW reactor in a way that prevented the IAEA from determining the reactor's operating history) to undermine the basis for a negotiated solution to the problem.

Preparations for Sanctions. When the North took this step, we began the process of consulting with our allies and UNSC partners about a sanctions resolution. We had told the DPRK that we would turn to the UN for sanctions if our attempts at dialogue proved fruitless and in June we began to do just that.

Because of our concern over the nuclear issue, we had advanced our plans for modernization of our forces during the early months of 1994. We did not take at face value North Korean statements about sanctions being an act of war, but we were determined to take steps to improve our deterrent posture and to ensure that we were ready for anything that might follow from a sanctions vote. Accordingly, we implemented a number of equipment upgrades for U.S. forces in Korea. Bradley fighting vehicles, Apache helicopters, Patriot air defense batteries and counterbattery radar systems were all deployed to the peninsula in the first half of 1994. At the time a sanctions resolution was about to be presented to the UNSC, we were in as strong a military position as we had been at any time since the Korean War. We were also prepared at that time to take additional military steps to bolster our forces on the peninsula.

President Carter's Trip to Pyongyang. It was during this period that former President Carter visited Pyongyang. President Carter convinced the DPRK to commit to the idea of a freeze in their nuclear program while talks were underway. But it was President Clinton who defined precisely what would be meant by a freeze, that is, what the North would have to agree to if talks were to resume. The President set a new, higher standard for maintaining dialogue with the DPRK by insisting that a freeze include a commitment not to reload and operate the 5 MW reactor. This went beyond their previous commitment not to undertake any reprocessing or separation of plutonium. The North quickly accepted these terms -- our terms -- and we moved to a new round of talks in Geneva.

Our willingness to resume talks was linked directly to North Korean agreement to our definition of a freeze on their program. We believe that Pyongyang was willing to make this concession because the North Korean leadership understood that we were prepared in both political and military terms to pursue sanctions. They had seen the work we had done at the UN to ready a sanctions resolution and the military steps that we had taken to prepare ourselves for that possibility. They understood that the United States was fully prepared to go another route if negotiations failed. The North Koreans siezed the opportunity offered by the Carter visit to accept a path to a solution that was favorable to the U.S. In short, when we went back to the negotiating table in mid-summer, it was on our terms.

New and Expanded Objectives. In the year that passed between the second round of talks and the beginning of the third round, we had expanded our objectives considerably. While we were still focused on bringing the DPRK back into compliance with its safeguards obligations, the DPRK's interest in acquiring LWRs suggested that they might be willing to give up their entire system of gas graphite fuel cycle nuclear reactors, their plutonium separation plant and their fuel fabrication facilities, as well as the existing spent fuel from their 5 MW reactor. This went well beyond their safeguards and NPT treaty obligations. It was our view that even under IAEA safeguards, these facilities posed a potential threat to U.S. security and we therefore made it a priority objective to reach an agreement that provided for their dismantlement.

Thus, as we went back to the table in Geneva we were clear in our own minds that any resolution of the nuclear issue must contain two elements. First, it must demonstrate the the U.S.

see next page

Dan - I know you don't like this ¶ but we don't think - it reflects a policy shift. It's a case of us being more demanding, more tough, -s- Bob really likes it.

will not walk away from a material violation of the NPT and international safeguards. There would be no settlement that did not include a return to North Korea's full compliance with its NPT obligations. Second, and even more important, the United States would not allow North Korea to accumulate significant amounts of plutonium, potentially usable in nuclear weapons, even under IAEA safeguards. There would be no settlement of the issue that left intact the North Korean capability to produce and possibly export large quantities of weapons grade material. We succeeded in securing both objectives.

Elements of the Agreed Framework

The Agreed Framework addresses all of our concerns about the North Korean nuclear program -- past, present and future. It more that meets the objectives that we had set for ourselves 18 months ago when we first met with DPRK representatives. Indeed, it achieves more than we thought possible when the talks began in the summer of 1993.

The Present. With respect to the present, the Agreed Framework prohibits any additional reprocessing or separation of plutonium. The spent fuel rods that were unloaded in June from the 5 MW reactor will remain safely stored in the cooling pond for now and will eventually be shipped out of North Korea. The plutonium in those spent fuel rods would have been enough to produce 5 nuclear weapons. The Agreed Framework also prohibits the restart of the 5 MW reactor, which, if operating, could have produced approximately one bomb's worth of plutonium each year. The Framework also requires that the DPRK cease operations at the so-called radiochemistry laboratory, seal the facility and subject it to IAEA inspections to verify its status. This is the facility that the North used to separate plutonium.

The Future. With respect to the future, the Agreed Framework requires that the North freeze construction on the two larger reactors that were underway. If operating, these two new reactors (50 MWe and 200 MWe) could have produced more than 150 kilograms of plutonium each year. That is enough for a substantial stockpile of nuclear weapons, perhaps as much as 30 weapons a year. Most importantly, the Agreed Framework provides for the eventual dismantlement of all facilities related to North Korea's current gas-graphite nuclear program.

The Past. With respect to the past, under the Agreed Framework the DPRK is committed to accept full-scope IAEA safeguards, including all measures that the IAEA may deem necessary to resolve questions about its initial plutonium inventory. Implementation of that commitment is not required immediately under the Agreed Framework, but it is required before any significant benefits are provided to North Korea.

In return for taking the steps outlined above, North Korea will receive some significant benefits. The United States has agreed to lead an international effort to provide North Korea with more proliferation-resistant light water reactors (LWRs) over the next ten years. North Korea will also receive shipments of heavy fuel oil as an interim energy source until the LWRs come on line early in the next century. Funding for these projects will come almost entirely from non-USG sources. Under the terms of the Agreed Framework, work on the LWR project will begin, but there will be absolutely no delivery of controlled nuclear components until the DPRK is in full compliance with all of its safeguards obligations. Put another way, the North Koreans will not receive any of the critical equipment or technology for LWRs unless and until the IAEA is completely satisfied that questions about past North Korean behavior in the nuclear area are resolved. Lastly, under the terms of the Agreed Framework, the U.S. will over time move toward more normal political and economic relations with North Korea, beginning with the establishment of liaison offices in Washington and Pyongyang.

The KEDO Consortium. The U.S. role in this project will be to organize the creation of an international consortium, the Korea Energy Development Organization (KEDO), to deliver the LWRs and supplies of alternate energy to North Korea if it lives up to its obligations under the Agreed Framework. The U.S., South Korea and Japan are taking the lead in creating the KEDO consortium and in encouraging wide international participation in the effort. South Korea has stated that it will play a central role in both the financing and construction of the LWRs while Japan has indicated that it is prepared to play a leading role.

Perhaps the most important point to be made about the Agreed Framework is that it requires the North Koreans to go well beyond their NPT obligations. If the DPRK had simply chosen to return to the NPT and accept full scope IAEA safeguards, they could have continued building new production reactors and separating plutonium, albeit under IAEA safeguards. They could have produced and separated many thousands of kilograms of plutonium and still been in complete compliance with their NPT obligations. That outcome might have been appealing to some since it would have appeared to maintain the formal integrity of international nonproliferation regimes. However, it would have left intact an enormous nuclear weapons infrastructure that threatened U.S., South Korean and Japanese interests. We were determined to prevent that from happening.

The Structure of the Deal

As we negotiated with North Korea, we made a determined effort to structure the Agreed Framework such that:

- The burden of up-front performance falls on North Korea, not on the U.S.

-- We can monitor effectively North Korean compliance or non-compliance.

-- We are not disadvantaged in any significant way if the DPRK reneges on its commitments -- at any time.

-- We place highest priority on the elements of the DPRK program that most acutely threaten U.S. security.

<u>Who Goes First?</u> On the first point, implementation of the Agreed Framework provides for immediate and verifiable North Korean performance on the things that matter most to us. They are required to freeze immediately all construction of the 50 and 200 MW reactors. They are required to refrain from starting up the 5 MW reactor or from taking any steps to reprocess spent fuel and separate plutonium.

The steps that we are taking in the early stages of implementation are modest by comparison. We are moving to provide in January 50,000 tons of heavy oil to North Korea, worth less than $5 million at current market prices. We will assist them in safely storing the spent fuel pending its ultimate shipment out of the DPRK. We are also moving very selectively to ease some sanctions on North Korea in the commercial area. We are also talking with the North Koreans about the technical issues associated with opening liaison offices in the two capitals. The most significant benefits that North Korea will receive will come several years down the line, when we have had a great deal of time to judge North Korean intentions and performance. Indeed, the most important benefit that the DPRK will receive under the Agreed Framework, the sensitive nuclear components for LWRs, cannot and will not be provided unless and until the DPRK is in full compliance with its safeguards obligations. Even then, the DPRK will remain dependent on foreign fuel supply since it does not have the capability to produce enriched uranium (the fuel for LWRs) itself.

<u>Verifying North Korea's Compliance.</u> We are looking to the IAEA to monitor and verify that a freeze is in place on the nuclear program. This is not an agreement that relies on trust. We hold no illusions about past North Korean behavior and we do not take their promises at face value. The IAEA is now on the ground in North Korea monitoring the freeze and has thus far received an unprecedented level of cooperation from the North Koreans. IAEA representatives have also held very productive discussions with the DPRK about how the agency can expand its presence so that the international community can have full confidence that the DPRK is living up to its commitments. Beyond this, we have our own national technical means to provide us with additional information about North Korean compliance. In short, we have a very high degree of confidence in our ability to determine if the DPRK is cheating. Given the DPRK's history, we would be foolish to enter into any agreement that could not be continuously monitored and verified.

__What if North Korea Reneges?__ Thirdly, the agreement is structured so that we are not disadvantaged (relative to our position before the Agreed Framework was concluded) if at any point the DPRK fails to comply. If at any point in the next several years, the North backs out of the deal, it will have gained very little except for some relatively insignificant amounts of heavy fuel oil and some technical help in ensuring the safe storage of spent fuel. Even if the North reneges at the point when it is required to submit to special inspections if the IAEA deems it necessary, they will not have gained much of significance. A great deal of civil engineering work will have been done, but the DPRK will not have acquired anything of real value. Quite literally, they will own the empty shells of two LWRs. Even if that happens, we will still have benefitted substantially because the DPRK's nuclear program will have been frozen in place for that entire time. If at that point we have to return to the United Nations to seek sanctions against North Korea, we will be able to make a powerful argument that we have gone the extra mile to seek a peaceful outcome. Blame for failure will rest entirely with North Korea.

__Prioritizing Our Objectives and the Question of Special Inspections.__ Lastly, on the question of prioritizing our objectives, we made a conscious effort to be firm on the elements of the program that posed the greatest threat to our security interests. For example, we insisted that the Agreed Framework provide for the removal of spent fuel from North Korea without being reprocessed. That fuel (about 5 bomb's worth of plutonium) was a direct threat to us if it was ever reprocessed. We also insisted that the North absolutely commit itself to no additional reprocessing or construction of gas graphite fuel cycle reactors. This would ensure that no additional plutonium is either produced or separated.

The one area in which we showed some flexbility was on the question of special inspections. In our view, it was vital to secure in the Agreed Framework an unambiguous DPRK commitment to special inspections. From a national security perspective, conducting those inspections promptly was less critical. The information to be obtained from those inspections is not perishable. We certainly would have liked to have gained North Korean commitment to immediate special inspections, but from our perspective, there were other more pressing security issues (involving current and future plutonium production) that we wanted to go after first.

__The Road Ahead__

The road to an agreement with North Korea on the nuclear issue is a success story of U.S. constancy, strength and resolve. We identified the North Korean nuclear program as a serious threat to our interests and set out to negotiate a solution to the problem. At the same time, we prepared ourselves to take stronger steps to deal with the problem if negotiations failed to produce an acceptable outcome. When talks broke down because of North Korean intransigence, we took the steps needed to prepare for UN sanctions and for anything that might result. Both friend and foe alike understood that we were ready and willing to go down that path. When we did return to the negotiating table, it was on our terms. After the Carter mission to Pyongyang, we were able to negotiate from a position of strength. As a result, we were able to secure an agreement that achieved our priority objectives.

Looking to the future, the Agreed Framework with North Korea offers the possibility that relations between North Korea and the rest of the world might improve. While early indications are that the DPRK is living up to its commitments, we are extremely cautious about predicting their behavior in the future. The difficulty we had in securing the prompt return of our helicopter pilot during the recent shootdown incident suggests that we are still dealing with a very tense situation on the peninsula. However, it is clear the implementation of the Agreed Framework offers the DPRK a path out of its self-imposed international isolation. For us, it offers a chance to oversee the rollback of a significant threat to our security.

The Agreed Framework also offers us the opportunity to engage with the DPRK on other important issues. We have made it very clear to the North Koreans that improved relations with the U.S. can only result if they address our concerns on a range of issues. Performance in the nuclear area will not be enough. At the very top of our agenda in this regard are the questions of North Korean ballistic missile development and sales, their threatening deployments of conventional forces along the DMZ, and their efforts to resolve the question of POW/MIAs from the Korean War. While some have criticized us for not addressing these issues in the Agreed Framework, we take the opposite view. The Agreed Framework provides a vehicle for bringing these issues onto the agenda with North Korea. No such vehicle existed before. We also believe that the Framework gives us some degree of leverage over North Korea, which can be used to our advantage as we take up these other important issues.

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001a. memo	Warren Stern to Steve Aoki et al re Scope Paper (1 page)	01/10/1995	P1/b(1)

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National Security Council
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001b. paper	re scope paper (5 pages)	01/10/1995	P1/b(1)

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EXECUTIVE OFFICE OF THE P
OFFICE OF MANAGEMENT AND B
WASHINGTON, D.C. 20503

January 5, 1995

Dan P —
Is this all nailed down now? Any more decisions we need?

MEMORANDUM FOR ALICE RIVLIN
ANTHONY LAKE
SANDY BERGER

FROM: Gordon Adams
Dan Poneman

SUBJECT: Funding for the U.S.-North Korean Nuclear Agreement

Pursuant to the NSC Deputies Committee meeting on Friday, December 23, 1994, the following arrangements have been made about FY 1995 and FY 1996 funding for implementing the U.S.-North Korean Agreed Framework for Nuclear Cooperation.

<u>For FY 1995:</u>

<u>Spent Nuclear Fuel Activities</u>: DOE will allocate $10 million from existing funds, some of which may require reprogramming, to cover the costs of these activities.

<u>Korean Energy Development Organization (KEDO) operations</u>: State was asked to identify $5.4 million in FY 1995 resources to cover start-up costs and FY 1995 KEDO operations. We have requested State to identify this reprogramming as soon as possible.

<u>Heavy Oil</u>: Defense is covering $4.7 million in funding for the first heavy oil delivery. State will solicit contributions from other countries to cover the approximately $11 million in oil due for delivery to the North Koreans in October 1995.

NOTE: There are no funding requirements for Light Water Reactor activities in FY 1995.

<u>For FY 1996:</u>

<u>Spent Nuclear Fuel Activities</u>: Contingent on final DOE budget decisions, DOE will seek $25 million in its FY 1996 Budget request for DPRK-related and other high-priority non-proliferation activities. Some of this amount would be used to cover FY 1996 costs for ongoing spent fuel activities.

<u>KEDO Operations, Heavy Oil, Light Water Reactor (LWR)</u>: OMB has added $22 million in State's FY 1996 Budget request to cover all U.S. contributions to KEDO for FY 1996. This amount should cover $2-3 million for KEDO operations, $10 million for a

contribution toward the $50-60 million heavy oil requirement, and about $10 million for LWR activities.

Finally, as the Deputies agreed, agency responsibility for funding U.S. contributions for heavy oil and LWR in FY 1997 and beyond will be decided in the context of the 1997 Budget process next fall. OMB Director Alice M. Rivlin is communicating this intention to Under Secretary Tarnoff.

Withdrawal/Redaction Marker
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002a. fax	cover Tom Marten to Steve Aoki (1 page)	01/17/1995	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 711

FOLDER TITLE:
North Korea, January 1995 [2]

2009-0528-F
kc1574

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]
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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]

Draft Statement
on Relaxing Sanctions against North Korea

The President directed the Secretaries of Treasury and Commerce today to take the steps listed below, in consultation with the Secretary of State, to relax economic sanctions against North Korea. These initial steps are in response to North Korea's decision to freeze its nuclear program and facilities and cooperate with the U.S. and IAEA to verify the freeze and ensure safe storage of spent nuclear fuel, in the context of the October 21, 1994 U.S.-DPRK Agreed Framework. Further relaxation of economic sanctions against North Korea will depend on further verified progress on the nuclear issue as well as progress in other areas of concern in our bilateral relationship.

1. Telecommunications and Information: Permit most financial transactions related to telecommunications transmissions, travel, and news-gathering activities. Consider, on a case-by-case basis, exports of items to support international telecommunications gateways to North Korea (but not for improving domestic services).

2. Financial Transactions: Authorize the DPRK to clear dollar transactions with third countries through the U.S. banking system. Transactions originating or terminating in the U.S. will not be generally authorized. Frozen assets will be unblocked and returned if the remitter is outside the DPRK and is not controlled by the Government of the DPRK.

3. Foreign Subsidiaries: Allow foreign companies with U.S. ownership (e.g., foreign-incorporated subsidiaries of U.S. companies) to do business with the DPRK. No involvement by U.S. persons is permitted. U.S. export laws and regulations, including export and reexport controls under the Export Administration Regulations, still apply.

4. Diplomatic Activities: Authorize all financial transactions related to the operation of the DPRK mission in New York and the new U.S. and DPRK liaison offices to be established in Washington and Pyongyang.

5. Energy Sector: Consider, on a case-by-case basis, requests from U.S. industry to conduct activities in North Korea's energy sector directly related to the implementation of the Agreed Framework and the activities contemplated in that agreement. Approve such projects and related financial transactions that support our policy objectives in the Agreed Framework, to the extent they are fully consistent with applicable law, including specifically the requirements of the Nuclear Nonproliferation Act and the Atomic Energy Act.

6. Rare Commodities: Authorize U.S. importers to purchase magnesite and magnesia, refractory materials used in steel production.

7. UN Development Projects: Cease active opposition to UN funding of DPRK development projects, except as required by law.

14

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002b. talking points	re sanctions (3 pages)	01/17/1995	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 711

FOLDER TITLE:
North Korea, January 1995 [2]

2009-0528-F
kc1574

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003a. memo	action, Steven Aoki to Anthony Lake re Next Steps (2 pages)	01/18/1995	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 711

FOLDER TITLE:

North Korea, January 1995 [2]

2009-0528-F
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003b. memo	action, Anthony Lake to POTUS re Next Steps (4 pages)	01/18/1995	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 711

FOLDER TITLE:
North Korea, January 1995 [2]

2009-0528-F
kc1574

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WASHFAX RECEIPT
DEPARTMENT OF STATE

'94 NOV 27 P8:39

B

S/S #

C

MESSAGE NO. 9413303 CLASSIFICATION ~~Confidential~~ No. Pages 7

FROM: Tom Marten (Officer name) EB/ESP (Office symbol) x7-7699 (Extension) 3329 (Room numbe

MESSAGE DESCRIPTION DPRK Sanctions Lift Concept Paper (Revised)

TO: (Agency)	DELIVER TO:	Extension	Room No.
Treasury/OFAC	Rick Newcomb & Bill Hoffman	622-2500	Annex II
Treasury/OASIA	Susan Hart & Meg Lundeslager	622-1258	
NSC	Steve Aoki call when rec'd →	456-9181	382 OEOB
DOD	Todd Harvey & Capt. Steve Loeffler	697-7757 695-6565	4C840 4E830
DOE	Beth Lisanne	586-2145	NN 43
Commerce/BXA	Gene Peterson-Baird	482-4479	4054

FOR: CLEARANCE ☐ INFORMATION ☑ PER REQUEST ☐ COMMENT ☑

REMARKS: As promised.

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ATTACHMENTS
Initials: [initials] Date: 08/05/15
2009-0528-F

S/S Officer: AJT

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004a. paper	re concept paper (5 pages)	11/27/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Steven Aoki (Nonproliferation and Export Controls)
OA/Box Number: 711

FOLDER TITLE:

North Korea, January 1995 [2]

2009-0528-F
kc1574

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004b. paper	re timeline (2 pages)	11/27/1994	P1/b(1)

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United States Department of State

Washington, D.C. 20520

Office of Economic Sanctions Policy
Tel: 202-647-7699
Fax: 202-647-4064

January 11, 1995

UNCLASSIFIED
FAX MESSAGE

No. of Pages: 18

TO: Steve Aoki
NSC

VIA FAX: 456-9180

FROM: Thomas A. Marten

SUBJECT: Liberalization of North Korea Sanctions

Steve,

Herewith Treasury's draft revised regs implementing the North Korea sanctions policy changes we agreed on interagency at the working level before Thanksgiving. These are the same policy changes reviewed by the Deputies.

Our lawyers are still going over the text, but we hope to reply by Friday. There are a couple of policy issues related to implementation flagged by Treasury in their cover memo that we will have to address in our reply, such as whether or not to unblock and return frozen assets to DPRK-controlled firms outside the DPRK.

I will send to you a draft White House statement on relaxing sanctions together with more detailed press guidance and q's and a's discussing the nitty-gritty of implementation. Hope to have that to you no later than Friday.

We would like to consult with and brief Hill staff before the decision on sanctions is made public. Can a lag be built-in between the time the decision is made and when it is made public?

Regards,

Tom

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 1995 RSD
1/6 Th

FAC No. 143237

MEMORANDUM FOR ROBERT S. DEUTSCH
DIRECTOR
OFFICE OF ECONOMIC SANCTIONS POLICY
BUREAU OF ECONOMIC AND BUSINESS AFFAIRS
DEPARTMENT OF STATE

SUBJECT: Liberalization of North Korea Sanctions

Attached for your review and comment are draft regulations amending the Foreign Assets Control Regulations, 31 C.F.R. Part 500 (the "FACR"), to implement measures called for in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea (the "DPRK"), and to bring the FACR into conformity with amendments to the Trading with the Enemy Act included in the Free Trade in Ideas Act of 1994. We would appreciate your review in particular on the following issues:

(1) New § 500.581. A limited lifting of the ban on financial transactions to permit clearing dollars through the United States places an untenable burden on banks to police transactions on behalf of the USG. Transfers through U.S. banks involving payments for unauthorized trade in goods or services, or remittances between the DPRK and the United States, should generally be policed some other way. We are therefore proposing a prospective authorization of all financial transfers with no culpability to the banks unless a bank is the originator or the beneficiary of the transfer, i.e., where it is on notice from its dealings or those of its customer (or explicitly from FAC) that a transfer relates to a prohibited transaction. For example, the bank could not process the transfer if documents were presented under a letter of credit involving an unlicensed trade transaction by a U.S. person, or if a U.S. bank received a request for a prohibited remittance to a relative in the DPRK.

(2) Amended § 500.563. If U.S. persons are allowed to use credit cards in the DPRK issued by U.S. banks for travel-related purposes, U.S. banks will also have no way of verifying the legitimacy of the transfer when funds are reimbursed.

(3) Amended § 500.579. We have added the DPRK to the section authorizing the post-lifting return of certain funds blocked because of a Vietnamese interest. This section will effectively unblock all assets that did not directly originate from the DPRK or the Government of the DPRK, and parallels the

post-lifting measure we took with Vietnamese assets. Between this section and the new § 500.581, as a practical matter, there will be few blocked funds transfers subject to U.S. jurisdiction that will remain blocked because of an interest of the DPRK or a person in the DPRK, nor is it likely that additional funds be blocked. Please note that we need State input on the issue of whether Specially Designated Nationals of the DPRK not located in the DPRK should be eligible to have funds returned to them as remitters, or whether they should be treated as the Government of the DPRK wherever located. As you discussed with Loren Dohm, Alan Drimmer and Bill Hoffman, the FACR (§ 500.306) do not explicitly equate SDNs with the government. Because property of both the government and nationals of the DPRK is blocked, the distinction has not made a difference heretofore.

(4) New § 500.585. According to the Agreed Framework, U.S. firms can't provide any "key nuclear components" until after a bilateral agreement is signed, and that won't happen until a "significant portion of the LWR project is completed." It would therefore seem premature to allow for licensing these activities in the regulation at this time. The storage and disposal of spent fuel from the 5 MW(e) experimental reactor will take place even later, beginning with the delivery of the key nuclear components for the first LWR unit. We have therefore limited the scope of this provision to what can take place at this time or in the near future.

We are available to meet with you to discuss these issues further. Please refer any questions on the package to me (622-2510) or David Mills of the Chief Counsel's Office (622-2410).

Richard Newcomb

R. Richard Newcomb
Director
Office of Foreign Assets Control

Attachments

cc with attachments: Lynn Turk - EAP/K
Jim Hergen - L/EAP
JoAnn Dolan - L/EBC

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations; North Korean Travel and Financial Transactions; Information and Informational Materials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Foreign Assets Control Regulations (the "Regulations") pursuant to talks held with the Government of the Democratic Peoples Republic of Korea ("North Korea") on October 21, 1994, regarding relations between the two countries. In addition, the Regulations are also being amended to bring them into conformity with amendments to the Trading with the Enemy Act included in the Free Trade in Ideas Act of 1994.

EFFECTIVE DATE: [insert date of publication]

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the Federal Register. By modem dial 202/512-1387 or call 202/512-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background

On October 21, 1994, the United States and North Korea agreed, in the context of broader negotiations, to begin reducing barriers to trade and investment. Based on these mutual commitments, the Regulations are being amended by (1) adding a new § 500.580 to authorize transactions with North Korea by foreign subsidiaries of U.S. firms (i.e., not foreign branches of U.S. firms nor U.S. citizens or permanent residents); **[(2) adding a new § 500.581 to authorize the clearing through the U.S. banking system of U.S. dollar transactions in which North Korea or a national thereof has an interest;]** (3) adding a new § 500.582 to authorize transactions related to the operation of U.S. and North Korean diplomatic missions in the United States and North Korea; (4) amending § 500.563 to authorize all U.S. persons' transactions with respect to travel to, from, and within North Korea, including removal of restrictions on group travel and travel service providers (including travel agents, carriers, ticket agents and commercial and noncommercial organizations that promote or arrange travel) and removal of the prior $200 per diem ceiling on expenditures; (5) amending § 500.566, regarding the authorization of travel-related transactions by North Korean nationals in the United States; **[(6) amending § 500.579 to authorize the unblocking of certain funds which came into the possession or control of U.S. banking institutions through wire transfer instructions or check remittances in which North Korea or a national thereof has or has had an interest, provided no funds are transferred directly to the Government of North Korea or to persons in North Korea;]** and (7) removing §§ 500.564, regarding reimbursment of travel costs by foreign subsidiaries, and 500.569, regarding group travel to North Korea, as no longer necessary.

Section 500.583 is added to the Regulations to provide a statement of licensing policy noting that specific licenses may be issued for the importation into the United States of North Korean-origin magnesite or magnesia, because the absence of North Korea as a supplier subjects U.S. importers to unreasonably high prices due to otherwise limited foreign sources. Section 500.584 is added to the Regulations to provide that specific licenses may be issued to authorize transactions necessary to establish offices in North Korea of U.S. news organizations and for offices in the United States of North Korean news organizations. Finally, § 500.585 is added to the Regulations to provide that specific licenses may be issued to authorize U.S. persons to participate in certain types of energy sector projects in North Korea with respect to the replacement of existing nuclear reactors with light-water reactor power plants.

The Free Trade in Ideas Act of 1994, section 525(b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236, 108 Stat. 474 (the "FTIA"), amended section 5(b)(4) of the Trading with the Enemy Act, 50 U.S.C. App. 5(b)(4) ("TWEA"), to expand the list of items defined as categories of informational materials to include compact discs, CD ROMs, artworks, and news wire feed. In addition, section 5(b)(4) of TWEA, as amended, exempts from the authority granted to the President the authority pursuant to TWEA to regulate or prohibit, directly or indirectly, the exportation or importation, whether commercial or otherwise, of information or informational materials regardless of format or medium of transmission, except exportations that would be controlled pursuant to national security, nonproliferation, or antiterrorism provisions of the Export Administration Act of 1979, 50 U.S.C. App. 2401-2420, or espionage provisions of 18 U.S.C. chapter 37. Section 500.571 of the Regulations is being amended to reflect the exemption from regulation of all transmissions of noncontrolled information over existing telecommunications circuits, including current settlement of telecommunications fees between the United States and North Korea.

Note: The FTIA exemption applies to transmissions of information, not telecommunications facilities and equipment necessary to transmit information. Exportation from the United States of equipment to enhance gateway-to-gateway telecommunications service with North Korea is subject to licensing requirements of the Department of Commerce, in conjunction with the general license in § 500.533 of the Regulations. Exportation or reexportation of such equipment to North Korea from a third country by a U.S. person requires a specific license from FAC and may also be subject to Commerce Department licensing provisions set forth in the Export Administration Regulations, 15 CFR Parts 768-799.

Section 500.206 is amended to reflect the FTIA exemption that applies to transactions concerning exportation and importation of information and informational materials. The definition of the term "informational materials" contained in § 500.332 is amended to conform the section to amended section 5(b)(4) of TWEA. Conforming amendments are also made to § 500.550, which authorizes transactions related to the importation and exportation of information and informational materials.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Cambodia, Exports, Fines and penalties, Finance, Foreign investment in the United States, Foreign trade, Imports, Information and informational materials, International organizations, North Korea, Reporting and recordkeeping requirements, Securities, Services, Travel restrictions, Trusts and estates, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500 -- FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1-44; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

Subpart B -- Prohibitions

2. The section heading and paragraphs (a) and (b) of § 500.206 are revised to read as follows, and the word

"synchronization" and the comma following it are removed from Example #4 of § 500.206:

§ 500.206 Exemption of information and informational materials.

(a) The importation from any country and the exportation to any country of information or informational materials as defined in § 500.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of information or informational materials, including mail, between the United States and any foreign country designated under § 500.201, are exempt from the prohibitions and regulations of this part.

* * * * *

Subpart C -- General Definitions

3. The section heading and text of § 500.332 are revised to read as follows:

§ 500.332 Information and informational materials.

(a) For purposes of this part, the term *informational materials* includes, without limitation:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items that would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401-2420 (1979)(the "EAA"), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, including "software" that is not "publicly available" as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or with respect to which acts are prohibited by 18 U.S.C. chapter 37.

Subpart E -- Licenses, Authorizations, and Statements of Licensing Policy

3. The section heading and paragraph (a) of § 500.550 are revised to read as follows, and the words "information and" are added before the words "informational materials" in each place they appear in the first sentence of paragraph (b) of § 500.550:

§ 500.550 Transactions related to information and informational materials.

(a) All financial and other transactions directly incident to the importation or exportation of information or informational materials as defined in § 500.332 of this part are authorized.

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4. The section heading and text of § 500.563 are revised to read as follows:

§ 500.563 Transactions incident to travel to and within North Korea.

(a) All transactions of persons subject to U.S. jurisdiction, including travel service providers, ordinarily incident to travel to, from, and within North Korea and to maintenance within North Korea are authorized. This authorization extends to transactions with North Korean carriers, involving group tours, payment of living expenses, the acquisition of goods in North Korea for personal use, **[and normal banking transactions involving currency drafts, charge, debit or credit cards, traveler's checks, or other financial instruments negotiated incident to personal travel]**.

(b) The purchase of merchandise in North Korea by persons subject to U.S. jurisdiction for importation into the United

States or a third country as accompanied baggage is limited to goods with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 500.206 of this part, information and informational materials are exempt from this restriction.

(c) This section does not authorize any debit to a blocked account.

5. Section 500.564 is removed and reserved.

6. Paragraph (b) of § 500.566 is removed, paragraph (c) is redesignated as paragraph (b), and paragraphs (a) and (a)(1) are revised to read as follows **[now permits transactions outside U.S. with North Korean carriers]**:

§ 500.566 Certain transactions authorized on behalf of North Korean nationals incident to their travel and maintenance expenses.

(a) Except as provided in paragraph (b) of this section, the following transactions are authorized by or on behalf of a national of North Korea who enters the United States on a visa issued by the Department of State:

(1) All transactions ordinarily incident to travel to, from, and within the United States are authorized, including the importation into the United States of accompanied baggage for personal use;

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7. Section 500.569 is removed and reserved.

8. Section 500.571 is revised by substituting the words "North Korea" for the word "Vietnam" wherever it appears.

9. Section 500.579 is revised to read as follows:

§ 500.579 Authorization for release of certain blocked transfers by banking institutions subject to U.S. jurisdiction.

Banking institutions subject to the jurisdiction of the United States are authorized to unblock and return to the remitting party funds that were blocked pursuant to this part because of an interest of North Korea or Vietnam, or a national thereof, that came into their possession or control by wire transfer or check remittance, provided that no funds are released to the Governments of North Korea or Vietnam or to any person in North Korea or Vietnam. In the case of Vietnam, however, this

authorization is restricted to wire transfers or check remittances received after December 31, 1989.

10. Section 500.580 is added to read as follows:

§ 500.580 Transactions involving North Korea by foreign entities subject to U.S. jurisdiction.

All transactions of any corporation, partnership, association or other organization organized outside the United States, that is owned or controlled by persons specified in paragraph (a) or (c) of § 500.329 or paragraph (a)(2) of § 500.330 of this part, which transactions would otherwise be prohibited by subpart B of this part, are authorized. Except as otherwise specifically provided in this part, this section does not authorize the involvement in such transactions of any person specified in paragraph (a) or (c) of § 500.329 or paragraph (a)(2) of § 500.330 of this part.

11. Section 500.581 is added to read as follows:

§ 500.581 Authorization of U.S. dollar clearing transactions involving North Korea.

Banking institutions organized under the laws of or located in the United States are authorized to process the transfer of

funds in which North Korea or a national thereof has an interest. Originators and ultimate beneficiaries of funds transfers, however, including U.S. banking institutions that are themselves originators or beneficiaries, may not initiate or receive such transfers if the underlying transactions to which they relate are prohibited pursuant to this part.

12. Section 500.582 is added to read as follows:

§ 500.582 Financial transactions related to diplomatic missions authorized.

All financial transactions related to activities of North Korean diplomatic missions in the United States and U.S. diplomatic missions in North Korea are authorized.

13. Section 500.583 is added to read as follows:

§500.583 Importation of North Korean-origin magnesite and magnesia.

Specific licenses may be issued authorizing the importation into the United States of North Korean-origin magnesite or magnesia.

14. Section 500.584 is added to read as follows:

§ 500.584 News organization offices.

(a) Specific licenses may be issued authorizing all transactions necessary for the establishment and operation of news bureaus in North Korea by U.S. organizations whose primary purpose is the gathering and dissemination of news to the general public.

(b) Transactions that will be authorized include but are not limited to those incident to the following:

(1) leasing office space and securing related goods and services;

(2) hiring North Korean nationals to serve as support staff;

(3) purchasing North Korean-origin goods for use in the operation of the office; and

(4) paying fees related to the operation of the office in North Korea.

(c) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in the United States by North Korean organizations whose primary purpose is the gathering and dissemination of news to the general public.

(d) The number assigned to a specific license issued pursuant to this section should be referenced in all import documents, and in all funds transfers and other banking transactions through banks organized or located in the United States, in connection with the licensed transactions to avoid the blocking of goods imported from North Korea and the interruption of the financial transactions with North Korea.

15. Section 500.585 is added to read as follows:

§500.585 Energy sector projects in North Korea.

Specific licenses may be issued to permit persons subject to U.S. jurisdiction to participate in certain types of energy sector projects in North Korea in connection with that country's transition to light-water reactor ("LWR") power plants. Such transactions include those related to LWR power plant site preparation, excavation, plant design, delivery of essential nonnuclear components including turbines and generators, building construction, and the provision of heavy oil to North Korea for heating and electricity generation pending completion of the first LWR unit.

Dated: January __ , 1995.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: January __ , 1995.

John Berry
Deputy Assistant Secretary (Enforcement).

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