
Presidential Documents

Presidential Determination No. 96-21 of April 4, 1996

Determination Under the Heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996: U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (Public Law 104-107), I determine and certify that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework;

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North-South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

You are authorized and directed to report these determinations and certifications to the Congress and to publish them in the Federal Register.



THE WHITE HOUSE,
Washington, April 4, 1996.

MEMORANDUM OF JUSTIFICATION FOR DETERMINATIONS AND CERTIFICATIONS UNDER THE HEADING "INTERNATIONAL ORGANIZATIONS AND PROGRAMS" IN TITLE IV OF THE FOREIGN OPERATIONS APPROPRIATIONS ACT, 1996 IN CONNECTION WITH THE U.S. CONTRIBUTION TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104-107), I have determined that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

The justification for these determinations is set forth below.

(a)—Designation of ROK Company

In section I of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994, the two parties stated that they would cooperate in replacing the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants. The U.S. further stated that it would undertake to make arrangements for the provision of the LWR project to the DPRK, including organizing under its leadership an international consortium to finance and supply the project. This organization, the Korean Peninsula Energy Development Organization (KEDO), was created on March 9, 1995, by agreement of the U.S., Japan, and the ROK. These parties have agreed that the ROK will assume the central role in financing and building the LWR project.

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR supply agreement between KEDO and the DPRK, signed December 15, 1995 in New York City.) On the same date as the Kuala Lumpur statement (June 13, 1995), the KEDO Executive Board decided by Board resolution that an ROK reactor model (Ulchin 3/4) would be built in the DPRK by an ROK firm. The Executive Board resolution designated the Korean Electric Power Corporation (KEPCO) as the firm with which KEDO would begin negotiating a prime contract for the light-water reactor project. These negotiations are under way.

(b)—DPRK Maintenance of the Freeze

Section I(3) of the U.S.-DPRK Agreed Framework provides for the immediate freeze and eventual dismantlement of all graphite-moderated reactors and related facilities in the DPRK. Within this context, the DPRK agreed to implement the freeze on its nuclear facilities within one month after the signing of the Agreed Framework and to allow the International Atomic Energy Agency (IAEA) to monitor the freeze on its facilities, with the full cooperation of the DPRK. In addition, the U.S. and DPRK agreed to cooperate in finding a method to store safely the spent fuel from the DPRK's 5 MW(e) experimental reactor during the construction of the LWR project, and to

dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

Since November 1994, all of North Korea's graphite-moderated nuclear facilities have been frozen. Specifically, this means no refueling or operation of the 5MW research reactor; no construction on the 50 and 200 MW reactors; no reprocessing and sealing of the reprocessing facility; no operation of the fuel fabrication plant; and no construction of new graphite-moderated reactors or related facilities. The IAEA has maintained a continuous presence at the Nyongbyon nuclear facility and has continued with inspection activities related to verifying and monitoring the freeze in the DPRK according to the terms of the Agreed Framework. In addition to IAEA monitoring activities, the United States continues to monitor the freeze through National Technical Means.

With the successful conclusion of the December 15, 1995 agreement on the supply of light-water reactors (LWRs) to the DPRK, signed between the DPRK and KEDO in New York City, the IAEA will resume ad hoc and routine inspections under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. The IAEA and DPRK meet periodically to discuss any outstanding safeguards issues that arise, most recently on January 22, 1996. During this meeting, both sides agreed to measures for safely storing the DPRK's spent nuclear fuel from its 5 MW(e) research reactor. When the first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

In January 1995, the U.S. and DPRK agreed on the method for safely storing the DPRK's spent nuclear fuel as an interim step before it is shipped out of the DPRK, as defined in the Agreed Framework. U.S. technical experts have been in the DPRK since July 1995 preparing the fuel for canning in a cooperative joint effort with the DPRK. Actual canning is expected to commence soon and will last approximately three months.

(c)—North-South Dialogue and the Joint Declaration

The U.S.-DPRK Agreed Framework provides that "the DPRK will engage in North-South dialogue." Since then, the U.S. has taken steps to support South Korean initiatives toward the North and to encourage the DPRK to fulfill its commitment to engage in dialogue as soon as possible. In all of our bilateral contacts with the DPRK, the U.S. has made clear that improvement in North-South relations is the key to peace and security on the Korean peninsula, and a requirement if U.S.-DPRK bilateral relations are to continue to move forward. Ambassador Robert L. Gallucci, during his tenure as Chairman of the Senior Steering Committee on Korea, had frequent occasion to raise the issue of North-South relations in his correspondence with his North Korean counterpart, First Vice Minister of Foreign Affairs Kang Sok Ju. Deputy Assistant Secretary of State Thomas Hubbard raised the North-South issue repeatedly during the May-June 1995 negotiations with the North Koreans in Kuala Lumpur on the LWR supply agreement. Most recently, Mr. Hubbard raised this issue when he met with North Korean Ambassador-at-Large Ho Jung in December 1995. Finally, working level officials have repeatedly stressed to their North Korean counterparts the importance of the DPRK improving relations with the South. Over the last year, these points have been made at all three rounds of U.S.-DPRK negotiations on the opening of liaison offices, and repeatedly in contacts with officials of the DPRK Mission to the UN.

In support of ROK initiatives, we have conveyed South Korean positions—and U.S. support for those positions—to the DPRK and others. At South Korea's request we have raised several particular issues with the DPRK, sometimes with positive effect. The South Korean government has expressed its appreciation for these U.S. efforts. During this period North and South Korea held a series of bilateral meetings in Beijing that produced an agreement whereby the South provided 150,000 tons of rice to the North as a grant. In December 1995, the DPRK released the crew of a South Korean

fishing vessel which strayed into North Korean waters earlier in the year, a step which the ROK had been urging the DPRK to take.

On January 1, 1992, the Republic of Korea and the Democratic People's Republic of Korea issued the Joint Declaration of the Denuclearization of the Korean Peninsula. The provisions of the Joint Declaration state that the North and South:

- shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;

- shall use nuclear energy solely for peaceful purposes;

- shall not possess nuclear reprocessing and uranium enrichment facilities, and;

- in order to verify the denuclearization of the Korean Peninsula, shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by the South-North Nuclear Control Commission which shall be established within one month of the effectuation of this joint declaration.

The DPRK and the ROK held a series of South-North Joint Nuclear Control Commission meetings in early 1992 as specified in the Joint Declaration, but these were discontinued as relations between the two Korean states worsened and the DPRK threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and refused to cooperate with the IAEA. As a result, the absence of sustained governmental talks between the ROK and DPRK has delayed further implementation of the Denuclearization Declaration.

The United States has, however, taken steps to encourage DPRK compliance with the Joint Declaration by encouraging North-South dialogue and ensuring DPRK implementation of the Agreed Framework. The Agreed Framework, as a step towards full implementation of the Denuclearization Declaration, has succeeded in illiciting positive DPRK movement on key provisions of the Declaration. Specifically, North Korea's willingness to freeze immediately and eventually dismantle its graphite-moderated nuclear reactors and related facilities has halted activities which would, had they not been stopped, given the DPRK a nuclear weapons capability. Such a capability would have been a threat to peace and security on the Korean Peninsula as well as to Northeast Asia. The DPRK agreement to forego reprocessing under the Agreed Framework and to replace its existing nuclear reactors with proliferation-resistant LWRs represents a major step toward assuring the DPRK will not test, manufacture, produce, store, deploy or possess nuclear weapons. In addition, by agreeing to allow a continuous IAEA inspector presence on the ground and to come into full compliance with its IAEA safeguards obligations, including taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

MEMORANDUM OF JUSTIFICATION UNDER SECTION 614 OF THE FOREIGN ASSISTANCE ACT TO PROVIDE U.S. CONTRIBUTIONS TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

The Administration proposes that up to \$22.0 million in FY 1996 International Organizations and Programs (IO&P) funds be used for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), an international consortium established to implement the Agreed Framework signed between the United States and the Democratic People's Republic of Korea (DPRK) on October 21, 1994. This funding level for U.S. contribu-

tions to KEDO was specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104-107). KEDO would be permitted to use the U.S. contribution to help cover the FY 1996 administrative and heavy fuel oil shipment expenses.

In order to make available the funds appropriated for this contribution, the President intends to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, to authorize the voluntary contribution to KEDO without regard to applicable statutory restrictions within the scope of this section, including any restrictions in sections 307, 620A, 620(f), or 530 of the Foreign Assistance Act or sections 507, 516, 523, or 527A of the Foreign Operations Appropriations Act.

The Agreed Framework addresses U.S. and international concerns about the DPRK's nuclear weapons program and, if fully implemented, will lead ultimately to the complete dismantlement of North Korea's current nuclear program. Under the U.S.—DPRK Agreed Framework, the U.S. represented that it would “organize under its leadership an international consortium to finance and supply the light-water reactor (LWR) project to be provided to the DPRK.” In order to meet this pledge, the U.S., South Korea (ROK) and Japan agreed on the creation of an international organization, KEDO, to implement the reactor project, the annual delivery of 500,000 metric tons of heavy fuel oil delivery to North Korea and other possible projects called for in the Agreed Framework (e.g., the transfer of spent fuel out of the DPRK for ultimate disposition). The U.S., ROK and Japan have played and will continue to play leading roles in KEDO.

KEDO's purpose is to coordinate cooperation among interested parties in the international community and to facilitate the financing and execution of projects needed to implement the Agreed Framework. KEDO members have agreed to cooperate in taking the steps necessary to implement the Agreed Framework consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, the North-South Declaration on the Denuclearization of the Korean Peninsula, and the Statute of the International Atomic Energy Agency. Moreover, KEDO will obtain assurances that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by KEDO will be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy. The continued funding of KEDO is critical to the success of the specific objectives of the Agreed Framework, the general goals of international nuclear nonproliferation, and the aim of maintaining peace and security on the Korean Peninsula.

KEDO is located in New York and is directed by an Executive Board consisting of representatives of the original member countries—the U.S., Japan, and the ROK. Other members may participate in its activities by serving on advisory committees covering the organization's projects, attending the KEDO General Conference, participating in ad hoc technical meetings relating to KEDO projects and, in some cases, sending technical experts to serve in the KEDO secretariat. The day-to-day operations of KEDO are directed by Executive Director Stephen Bosworth, former U.S. Ambassador to the Philippines, assisted by two Deputy Executive Directors (one from Japan and one from the ROK). KEDO is seeking to contract with private firms for the bulk of the legal, technical, and financial expertise required to oversee the LWR project and other projects. It will have a secretariat consisting of approximately 30 people to carry out its functions.

The U.S. contribution to KEDO will help fund: 1) KEDO's FY 1996 costs for office space, office supplies, communications, consulting costs and legal services, and employee remuneration for a staff of thirty people, including the Executive Director, the two Deputy Directors, and support personnel; and 2) a portion of the estimated \$50 million worth of heavy fuel oil due to be shipped in 1996. These funds are essential to KEDO's ability to meet the terms of the U.S.-DPRK Agreed Framework regarding the provision of heavy fuel oil. Should KEDO fail to meet these deliveries, the

DPRK might renege on its Agreed Framework obligations, including possibly breaking the freeze on its nuclear program. Hence, early transfer of these funds is essential to meeting our nonproliferation objectives in the DPRK.

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