



H.R. 5916 – SECURITY ASSISTANCE AND ARMS EXPORT CONTROL REFORM ACT OF 2008

FLOOR SITUATION

H.R. 5916 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Howard Berman (D-CA) on April 29, 2008. The House Committee on Foreign Affairs approved the bill, as amended, by voice vote on April 30, 2008.

H.R. 5916 is expected to be considered on the floor of the House on May 13, 2008.

SUMMARY

H.R. 5916, the Security Assistance and Arms Export Control Reform Act of 2008 makes various reforms to streamline and increase Congressional oversight over the U.S. arms export licensing process and adds South Korea and Israel to countries receiving expedited Congressional review for arms exports. It also makes a number of reforms to U.S. security assistance programs, including requiring objective analysis of Israel's military capability regarding conventional and unconventional threats, increasing oversight over the U.S.-Israeli security relationship and authorizing the first year of the U.S.-Israel Memorandum of Understanding regarding security assistance. The bill grants a limited waiver to the Arms Export Control Act (AECA) to facilitate U.S. denuclearization activities in North Korea; requires the President to certify that North Korea has met certain conditions for the President to exercise this waiver, provides for the continuation of restrictions against North Korea imposed as a condition of its being a state sponsor of terrorism, and requires a report on verification of North Korea's nuclear declaration.

Reform of Arms Export Control Procedures

Strategic Review and Assessment of the U.S. Export Controls System: The bill requires the President to assess the effectiveness and efficiency of U.S. export controls system, including a detailed summary of unauthorized attempts to acquire U.S. arms and technology. The review must be completed by March 31, 2009, and the report must be submitted to Congress within 18 months of enactment.

Processing License Applications to Export U.S. Munitions: The bill requires that applications to export U.S. munitions be processed within 60 days. If it is not processed in that amount of time, then specific officials from the Directorate of Defense Trade Controls and the Department of State must review the status of the application. If it is not processed within 90 days, the State Department Assistant Secretary for Political-Military Affairs must review the status of the application and report to Congress explaining the reason for the delay.

The bill places an emphasis on the processing of applications for weapons sales to allies in direct support of U.S. combat, peacekeeping, or humanitarian operations. The applications are to be processed within 7 days. Additionally, applications for munitions exports to Israel and South Korea are given the same preference as NATO allies, Australia, New Zealand, and Japan. These must be processed within 30 days. The bill also expedites the Congressional Defense Export review for South Korea and Israel, making it the same as preferences given to NATO allies, Australia, New Zealand and Japan.

If more than 7 percent of applications in a calendar year are not processed on time, then the State Department shall brief Congress on how the process will be brought into compliance.

Department of State Staffing Requirements for Arms Control: The bill requires the Department of State to employ at least 1 licensing officer for every 1,250 license applications and arms export authorizations.



Authorization of Appropriations: The bill authorizes such sums as are necessary to carry out the provisions to enhance the performance of defense trade controls (Title I, Subtitle A).

Availability of Presidential Directives Regarding Arms Exports: The bill requires the President to submit all Presidential directives relating to arms export policies, practices, and regulations to Congress within 15 days of it being signed or authorized.

Implementation of the U.S. Memorandum of Understanding with Israel

The bill authorizes the amounts listed in the Foreign Military Financing Program, in addition to \$150 million, to be made available to Israel as a grant. Additionally, the bill authorizes other financing for Israel's advanced weapons systems through 2009.

Reports Regarding Israel's Military Capabilities: The bill requires the President to report on Israel's military edge over its military threats within 180 days of enactment and every four years thereafter. It also requires a report detailing commitments made by U.S. officials to Israeli officials regarding Israel's security and military capability. This report is due within 30 days of enactment and additional reports every 5 years following enactment.

Additional Reporting Requirements: The bill requires the Administration to submit numerous reports relating to its arms exports policies, including:

- **Processing Arms Export License Applications:** Report based on the State Department Inspector General's audit of the compliance with the time limits for processing license applications as well as the staffing requirements for arms control licensing officers. It also requires a report with a detailed description of the average processing times for licensing applications.
- **European Union Arms Embargo Against China:** Report within 180 days of enactment and every 6 months thereafter until the end of 2010 regarding the Administration's efforts to convince members of the European Union to maintain and observe an arms embargo on China.
- **Satellite Export Controls:** Report within 180 days of enactment on the effectiveness of U.S. export controls on satellites and related materials in preventing the transfer of the materials to China and the availability of these materials from foreign sources.
- **Value of Major Defense Equipment Exports:** Include a report annually in the President's budget request on the total dollar value of major defense equipment and articles exported by country and international organization.

Provisions Relating to Waiving Sanctions to Facilitate Denuclearization Efforts in N. Korea

Waiver Authority and Notification: The legislation grants the President the ability to waive certain sanctions currently in place against North Korea, in order to provide "material, direct, and necessary" assistance to facilitate disablement and eventual dismantlement of North Korea's nuclear weapons infrastructure.

The President may grant a waiver only upon determining that doing so is in the best national security interests of the U.S. Additionally, the President must certify to Congress that all necessary steps will be taken to ensure that any denuclearization assistance given will not lead to an improvement of the military abilities of North Korea.

The bill requires the President to notify Congress no later than 15 days prior to exercising a waiver.

Termination of Waiver Authority: Unless the President certifies that the waiver is vital to national security, any waiver granted under this bill will be terminated if the President determines that:



- After September 19, 2005, North Korea knowingly transferred a nuclear weapon, the components, or design of a nuclear weapon to a non-nuclear weapon state for the purpose of the development or manufacture of such a weapon;
- After September 19, 2005, North Korea knowingly received a nuclear device or sought and received design information or component intended for the development and manufacture of a nuclear weapon; and/or
- North Korea detonated a nuclear device on or after October 10, 2006.

NOTE: The U.S. Director of National Intelligence confirmed that on October 9, 2006, North Korea conducted an underground nuclear test explosion. U.S. scientists conclude that evidence suggests that North Korea used approximately 6kg of plutonium in the test, yielding less than 1 kiloton.

Any waiver in effect after the enactment of H.R. 5916 will terminate four years after the enactment of this bill. Additionally, no waiver may be granted three years after enactment.

Restrictions against North Korea: All current restrictions against the Government of North Korea due to its designation as a state sponsor of terror by the Secretary of State will remain in effect unless the President certifies to Congress that:

- The Government of North Korea is no longer engaged in the transfer of technology related to the development of nuclear weapons, in particular to governments designated as state sponsors of terror;
- North Korea has provided a complete and correct declaration of all of its nuclear programs in accordance with the Six Party Talks Agreement of February 13, 2007, and there are measures for the U.S. to verify the accuracy of this declaration; and
- The Government of North Korea has agreed to the participation of the International Atomic Energy Agency in the monitoring and complete shut down of the Yongbyon nuclear facility.

Reporting: H.R. 5916 requires that the President report to Congress no later than 60 days after the enactment of this bill and annually after the initial report, on North Korea's progress towards its September 19, 2005, commitment to abandon all nuclear weapons and existing programs, any U.S. assistance given to North Korea through the use of waivers, and a justification of the continuance of the practice of waiving sanctions.

Additionally, the Secretary of State is to submit an unclassified report to Congress no later than 15 days after this bill's enactment, detailing verification measures relating to the elimination of North Korea's nuclear programs, focusing on how these verification measures are defined by the Six Party Talks Agreement as understood by the U.S.

The Secretary must report on any formal or informal agreements made with North Korea relating to the Six Party Talks Agreement. Also, the Secretary must report on any disagreement expressed by North Korea regarding verification measures related to the Six Party Talks Agreement.

BACKGROUND

North Korea

The Democratic People's Republic of Korea is the governing body of North Korea, and is a dictatorship that has been under the control of Kim Jong Il since October of 1997. According to a 2003 Report on



Human Rights Practices released by the Department of State, North Korea's 2003 August elections for the 687-member Supreme People's Assembly (the deliberative body of North Korea's government) were not conducted democratically and only members of Kim Jong II's Korean Workers' Party (KWP) participated in casting votes. The Korean People's Army continues to displace the KWP as Kim Jong II's policy making and implementing device, making North Korea one of the world's most heavily militarized states.

The government of North Korea has a long list of documented human rights abuses. Among these are the killing, disappearance, and arbitrary imprisonment of political activists opposing the current North Korean government. Also, the government has implemented capital punishment and confiscation of assets for actions considered to be "crimes against the revolution." These "crimes" include slandering the policies of the North Korean government.

[Department of State profile on North Korea](#)

The Arms Export Control Act

The Arms Export Control Act (AECA) provides the legal framework for the sale of U.S. arms, munitions, and defense technology through a government-to-government process or through licensed commercial sales. It also sets the standards that foreign countries must meet in order to be eligible to purchase defense items. Under current law, the Administration is required to notify Congress within 30 calendar days of military sales for items over certain monetary values. The law allows a shorter notification period, 15 days, for sales to NATO allies, Australia, Japan, and New Zealand. The Administration can complete arms sales unless Congress passes legislation prohibiting the sale. The volume of arms exports has risen steadily over the last several years, and concerns have been raised by the Government Accountability Office regarding the effectiveness and efficiency of arms export process by the State Department.

Six Party Talks

The Six Party Talks are a series of meetings between China, Japan, South Korea, North Korea, Russia, and the U.S. aimed at finding a peaceful solution the nuclear disarmament of North Korea. At the conclusion of the fourth round of the Six Party Talks taking place in Beijing, China, a joint statement was released by the Ministry of Foreign Affairs of the People's Republic of China. The joint statement, dated September 19, 2005, the Government of North Korea committed to stopping all nuclear weapons and existing nuclear programs and resuming with a plan towards nuclear disarmament and complying with the nuclear safeguards recommended by the International Atomic Energy Agency (IAEA).

On May 8, 2008, the government of North Korea provided about 18,000 pages of documentation related to its nuclear programs to the Department of State. North Korea's proffering of these documents was pursuant to the Six Party Talks goal towards the peaceful and cooperative nuclear disarmament of North Korea. Dating back to 1986, these documents consist of the operating records for the 5-megawatt nuclear reactor and fuel reprocessing plant at the Yongbyon nuclear complex. The Yongbyon site is where the North Korean Government produced its stocks of weapon-grade plutonium.

[Department of State – September 19, 2005 Joint Statement](#)

[Department of State – May 8, 2008 North Korean document fact sheet](#)

COST

The Congressional Budget Office estimates that enacting H.R. 5916 would increase discretionary spending by \$3.2 billion over the 2009-2013 period, assuming appropriation of the estimated amounts. Implementing the bill would increase direct spending by \$500 million over the 2009-2018 period, primarily by allowing a Department of Defense (DOD) revolving fund to spend balances without appropriations action.



[Full CBO cost estimate for H.R. 5916](#)

STAFF CONTACT

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