

Comparing the Glenn Amendment Waivers

This incredibly wonky document compares the Glenn Amendment waiver as it was passed by Congress in June 2008 in the Supplemental Appropriations Act with the initial Senate waiver, as seen in the Senate version of the Supplemental Appropriations Act which passed the Senate on May 22, 2008 (passed in S. AMDT 4082) and HR 5916, The Security Assistance and Arms Export Control Reform Act of 2008, which passed the House on May 15, 2008.

WAIVER OF CERTAIN SANCTIONS AGAINST NORTH KOREA

SEC. 1405. (a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in subsection (b), the President may waive in whole or in part, with respect to North Korea, the application of any sanction contained in subparagraph (A), (B), (D) or (G) under section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)), for the purpose of providing assistance related to—

(A) the implementation and verification of the compliance by North Korea with its commitment, undertaken in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula; and

(B) the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction and their delivery systems.

(2) LIMITATION.—The authority under paragraph (1) shall expire 5 years after the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) LIMITED EXCEPTION RELATED TO CERTAIN SANCTIONS AND PROHIBITIONS.—The authority under subsection (a) shall not apply with respect to a sanction or prohibition under subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act, unless the President determines and certifies to the appropriate congressional committees that—

(A) all reasonable steps will be taken to as sure that the articles or services exported or otherwise provided will not be used to improve the military capabilities of the armed forces of North Korea; and

(B) such waiver is in the national security interests of the United States.

Comment [k11]: The Senate Appropriations bill had the following language: 2) **DURATION OF WAIVER.**--Any waiver issued under this subsection shall expire at the end of the calendar year in which it is issued.

(2) LIMITED EXCEPTION RELATED TO CERTAIN ACTIVITIES.—
Unless the President determines and certifies to the appropriate congressional committees that using the authority under subsection (a) is vital to the national security interests of the United States, such authority shall not apply with respect to—

(A) an activity described in subparagraph (A) of section 102(b)(1) of the Arms Export Control Act that occurs after September 19, 2005, and before the date of the enactment of this Act;

(B) an activity described in subparagraph (C) of such section that occurs after September 19, 2005; or

(C) an activity described in subparagraph (D) of such section that occurs after the date of enactment of this Act.

(3) EXCEPTION RELATED TO CERTAIN ACTIVITIES OCCURRING AFTER DATE OF ENACTMENT.—

The authority under subsection (a) shall not apply with respect to an activity described in subparagraph (A) or (B) of section 102(b)(1) of the Arms Export Control Act that occurs after the date of the enactment of this Act.

(4) LIMITED EXCEPTION RELATED TO LETHAL WEAPONS.—The authority under subsection (a) shall not apply with respect to any export of lethal defense articles that would be prevented by the application of section 102(b)(2) of the Arms Export Control Act.

(c) NOTIFICATIONS AND REPORTS.—

(1) CONGRESSIONAL NOTIFICATION.—The President shall notify the appropriate congressional committees in writing not later than 15 days before exercising the waiver authority under subsection (a).

(2) ANNUAL REPORT.—Not later than January 31, 2009, and annually thereafter, the President shall submit to the appropriate congressional committees a report that—

(A) lists all waivers issued under subsection (a) during the preceding year;

(B) describes in detail the progress that is being made in the implementation of the commitment undertaken by North Korea, in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula;

(C) discusses specifically any shortcomings in the implementation by North Korea of that commitment; and

(D) lists and describes the progress and shortcomings, in the preceding year, of all other programs promoting the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction or their delivery systems.

(3) REPORT ON VERIFICATION MEASURES RELATING TO NORTH KOREA'S NUCLEAR PROGRAMS.—

(A) IN GENERAL.—Not later than 15 days after the date of enactment of this Act, the Secretary of State shall submit to the

Comment [k12]: This was not in the Senate Bill; HR5916 included similar language. HR 5916 also stated that the waiver authority would not apply to "(2) Any sanction relating to credit or credit guarantees contained in section 102(b)(2)(D) of the Arms Export Control Act.

Comment [k13]: This is the same as the Senate bill; HR 5916 said that the report required sixty days after enactment

Comment [k14]: This was in the Senate Appropriations Bill; it was not in HR 5916

Comment [k15]: Compare with HR 5916, which says that the report should describe "in detail any failures, shortcomings, or obstruction by North Korea with respect to the implementation of the commitment of North Korea described in section 301"

Comment [k16]: HR 5916 included two more items for the report: "(4) describes in detail all United States assistance, regardless of the source, provided to North Korea by reason of the exercise of the waiver authority under section 301 and any assistance provided under any other authority if such assistance is provided for the same or similar purposes; and (5) beginning with the second report required by this subsection, a justification for the continuation of the waiver exercised under section 301 and, if applicable, section 302, for the fiscal year in which the report is submitted."

Comment [k17]: HR 5916 included two sections that do not appear in the final House appropriations bill, one that would prevent the waiver from being used if it were not used within three years of the enactment of the act, and another that would have conditioned removal from the terrorism list: "SEC. 305. EXPIRATION OF WAIVER AUTHORITY. Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate on the date that is 4 years after the date of the enactment of this Act. The waiver authority under section 301 may not be exercised beginning on the date that is 3 years after the date of the enactment of this Act. SEC. 306. CONTINUATION OF RESTRICTIONS AGAINST THE GOVERNMENT OF NORTH KOREA: (a) In General- Except as provided in section 301(a), restrictions against the Government of North Korea that were imposed by reason of a determination of the Secretary of State that North Korea is a state sponsor of terrorism shall remain in effect, and shall not be lifted pursuant to the provisions of law under which the determination ... [1]

appropriate congressional committees a report on verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement of February 13, 2007, with specific focus on how such verification measures are defined under the Six-Party Talks Agreement and understood by the United States Government.

(B) MATTERS TO BE INCLUDED.—The report required under subsection (A) shall include, among other elements, a description of—

(i) how the United States will confirm that North Korea has “provided a complete and correct declaration of all of its nuclear programs”;

(ii) how the United States will maintain a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs;

(iii) any diplomatic agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement (other than implementing arrangements made during on-site operations); and

(iv) any significant and continuing disagreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

(C) FORM.—The report required under subsection (A) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

(2) the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives.

Comment [k18]: This was not in the Senate Appropriations Bill, it is a slightly modified version of the HR 5916. HR 5916 requires the following “matters to be included in the report:” (1) the methods to be utilized to confirm that North Korea has provided a complete and correct declaration of all of its nuclear programs; (2) the specific actions to be taken in North Korea and elsewhere to ensure a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs; (3) any formal or informal agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement; and (4) any disagreement expressed by North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

Comment [k19]: HR 5916's entire “SEC. 304. TERMINATION OF WAIVER AUTHORITY” does not appear in the final House appropriations bill: “Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate if the President determines that North Korea-- (1)(A) on or after September 19, 2005, transferred to a non-nuclear-weapon state, or received, a nuclear explosive device; or (B) on or after October 10, 2006, detonated a nuclear explosive device; or (2) on or after September 19, 2005-- (A) transferred to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by North Korea to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or (B) sought and received any design information or component which is determined by the President to be important to, and intended by North Korea for use in, the development or manufacture of any nuclear explosive device, unless the President determines and certifies to the appropriate congressional committees that such waiver is vital to the national security interests of the United States.

HR 5916 included two sections that do not appear in the final House appropriations bill, one that would prevent the waiver from being used if it were not used within three years of the enactment of the act, and another that would have conditioned removal from the terrorism list: "SEC. 305. EXPIRATION OF WAIVER AUTHORITY. Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate on the date that is 4 years after the date of the enactment of this Act. The waiver authority under section 301 may not be exercised beginning on the date that is 3 years after the date of the enactment of this Act. SEC. 306. CONTINUATION OF RESTRICTIONS AGAINST THE GOVERNMENT OF NORTH KOREA: (a) In General- Except as provided in section 301(a), restrictions against the Government of North Korea that were imposed by reason of a determination of the Secretary of State that North Korea is a state sponsor of terrorism shall remain in effect, and shall not be lifted pursuant to the provisions of law under which the determination was made, unless the President certifies to the appropriate congressional committees that--(1) the Government of North Korea is no longer engaged in the transfer of technology related to the acquisition or development of nuclear weapons, particularly to the Governments of Iran, Syria, or any other country that is a state sponsor of terrorism; (2) in accordance with the Six-Party Talks Agreement of February 13, 2007, the Government of North Korea has `provided a complete and correct declaration of all its nuclear programs,' and there are measures to effectively verify this declaration by the United States which, `[a]t the request of the other Parties,' is leading `disablement activities' and `provid[ing] the funding for those activities'; and (3) the Government of North Korea has agreed to the participation of the International Atomic Energy Agency in the monitoring and verification of the shutdown and sealing of the Yongbyon nuclear facility. (b) State Sponsor of Terrorism Defined- In this section, the term `state sponsor of terrorism' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.