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NATURAL RESOURCES

EDWARD J. MARKEY  
7TH DISTRICT, MASSACHUSETTS

Congress of the United States  
House of Representatives  
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2107  
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101  
MEDFORD, MA 02155  
(781) 396-2900

188 CONCORD STREET, SUITE 102  
FRAMINGHAM, MA 01702  
(508) 875-2900

<http://markey.house.gov>

October 3, 2007

The Honorable Condoleezza Rice  
Secretary of State  
U.S. Department of State  
Washington, D.C. 20520

Dear Madam Secretary:

I write today with concern over news reports that the United States and North Korea have negotiated, as part of the Six-Party Talks on North Korea's nuclear program, a "side deal" regarding the removal of North Korea from the State Department's list of State Sponsors of Terrorism. While some press reports suggest that removing North Korea from the State Sponsor of Terrorism list would be purely "symbolic," nothing could be further from the truth. In fact, such an action would pave the way for the resumption of the construction of new light water nuclear reactors in North Korea, a dangerous policy which should absolutely not be revived. It would be utter folly to shut down North Korea's current nuclear bomb factory while promising to build them another.

As you know, Section 632 of Public Law 109-58, the Energy Policy Act of 2005, prohibits the export, reexport, transfer, or retransfer of U.S. nuclear materials and technologies to any country identified by the Secretary of State as a sponsor of terrorism. I authored Section 632 with then-Congressman Christopher Cox to specifically foreclose the possibility of civilian nuclear cooperation between the United States and North Korea, which was designated a State Sponsor of Terrorism by the Secretary of State on January 20, 1988. We did so because of North Korea's dangerous record of developing nuclear weapons, exporting advanced missile technology, engaging in international criminal activity, and engaging in international terrorism.

In addition, Congressman Cox and I also authored Section 635 of the same law, which prohibits the United States government from indemnifying, either directly or indirectly, the design, construction, or operation of nuclear facilities in any country which was listed as a State Sponsor of Terrorism as of September 11, 2001. As you know, North Korea was listed as such at that time. Importantly, the prohibition contained in Section 635 of PL 109-58 would remain in effect whether or not a country was later removed from the list.

For decades the despotic regimes of Kim Il-Sung and Kim Jong-Il pursued nuclear weapons in secret while North Korea was a signatory of the Nuclear Nonproliferation Treaty. In 1994, President Clinton reached an agreement with the North Koreans which froze their nuclear weapons program, but which unwisely allowed the international Korean Peninsula Energy Development Organization (KEDO) to construct two Light Water

Reactors (LWRs) in North Korea. While reprocessing plutonium from the spent fuel of LWRs is more challenging than from some other reactor designs, LWRs are anything but “proliferation-resistant,” as they have been misleadingly called. In fact, every LWR is a potential nuclear bomb factory, especially when in the hands of a regime with proven nuclear weapons ambitions.

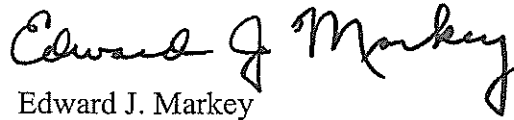
Please provide answers to the following questions concerning possible nuclear cooperation with North Korea and the possible removal of North Korea from the list of State Sponsors of Terrorism:

1. What is the procedure for removing a country from the list of State Sponsors of Terrorism? Please detail the steps which must be taken by: the foreign government, the President of the United States, the Secretary of State, the Congress, and other entities, if any.
2. Which countries have been previously removed from the list and on what dates?
3. What specific actions has North Korea taken – in addition to any assurances it may have made – to make itself eligible for removal from the list? Are there specific eligibility criteria employed to evaluate whether removal is appropriate? If yes, what are they? If not, why not?
4. What further actions will North Korea need to take before it is eligible for removal from the list?
5. Will the reported “side deal” on removing North Korea from the list of state sponsors of terrorism open the door to nuclear cooperation of any kind between the U.S. and North Korea? If yes, please fully describe the nature of the nuclear cooperation.
6. In light of Section 632 of PL 109-58, which prohibits the export, reexport, transfer, and retransfer of nuclear materials and technologies to any country which sponsors terrorism, does the United States intend to allow American-origin nuclear materials or technologies to be reexported or retransferred to North Korea?
7. Does the United States support the resumption of construction of Light Water Reactors in North Korea by the Korean Peninsula Energy Development Organization?
8. In light of Section 635 of PL 109-58, which prohibits U.S. government indemnification of nuclear facilities in any country listed as a State Sponsor of Terrorism as of September 11, 2001, do you agree that even if North Korea were to be removed from the terrorism list, that the United States would remain legally barred from indemnifying the design, construction, or operation of a nuclear facility in North Korea?
9. What are the terms of the side agreement which the United States and North Korea have negotiated concerning North Korea’s status as a State Sponsor of Terrorism? Please provide a copy of the side agreement.
10. What is the timeline for implementation of this side agreement? According to news reports, lead North Korean negotiator Kim Gye Gwan said that “the timing is specified” for North Korea’s removal from the State Department list. Has the United States communicated to North Korea a timeline for their removal from the list?

11. What are the views of American allies on the issue of removing North Korea from the State Sponsors of Terrorism list, especially South Korea and Japan? Has any country communicated its views on this subject to the United States? If so, have any objections been raised?

Please provide your responses to these questions by October 17, 2007. If you have any questions, please contact Will Huntington of my staff at (202) 225-2836. Thank you very much for your prompt attention to this matter.

Sincerely,



Edward J. Markey