

WebMemo



Published by The Heritage Foundation

No. 1587
August 14, 2007

U.S. Nuclear Agreement with India: An Acceptable Deal for Major Strategic Gain

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Following protracted negotiations over the past six months, Washington and New Delhi have finally reached agreement on the text of the so-called 123 Agreement enabling civil nuclear cooperation between the two countries for the first time in 30 years. Two years in the making, this deal has tested the strength of the bond between India and the United States as well as the institutional flexibility on both sides necessary to usher in a new era of cooperation on nuclear issues.

The 123 Agreement will greatly strengthen the U.S. strategic position in Asia by solidifying a partnership with a 1 billion–strong, economically booming democracy bordering another—and less predictable—rising power: China. The Administration has indicated that it will submit the agreement to Congress after India and the International Atomic Energy Agency negotiate a safeguards agreement and the 45 nations of the Nuclear Suppliers Group come to a consensus decision that allows civil nuclear transfers to India. Congress should support this historic effort.

Moving to Resolve the Reprocessing Dilemma.

The text of the agreement carefully ensures that the U.S. stays in line with its Nuclear Nonproliferation Treaty (NPT) obligations and with the requirements of the Hyde Act, while addressing key Indian concerns that threatened to derail the landmark initiative altogether. Last December President George W. Bush signed into law the Henry J. Hyde United States–India Peaceful Atomic Energy Cooperation Act exempting India

from certain requirements of the U.S. Atomic Energy Act of 1954 and allowing for U.S. civil nuclear cooperation with India. Throughout the negotiations, India consistently defended its right to reprocess nuclear fuel under this agreement. The Administration ultimately accepted Indian demands regarding this right but distinguished between the right and an entitlement to U.S. assistance in the pursuit of reprocessing activities. In fact, any action on reprocessing will depend on the conclusion of a subsequent agreement, as required by Section 131 of the U.S. Atomic Energy Act of 1954.

India, for its part, committed to stand up a dedicated, safeguarded reprocessing facility to ensure that U.S.-origin nuclear fuel is not diverted to its weapons program. The last-minute proposal by India to address U.S. concerns regarding diversion of civil nuclear technology to its weapons program was key to clinching the agreement.

Members of Congress who were adamant about denying India reprocessing rights may be reluctant to accept the compromise, but they should consider the fact that India's construction of a new reprocessing facility under international safeguards will actually bring India's nuclear program into

This paper, in its entirety, can be found at:
www.heritage.org/Research/AsiaandthePacific/wm1587.cfm

Produced by the Asian Studies Center

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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greater conformity with the international nonproliferation regime.

Congress should also bear in mind that, after the 123 Agreement is passed, it can guide the subsequent negotiations on the arrangements for reprocessing. No doubt U.S. congressional monitoring of the construction and implementation of the new dedicated reprocessing facility will be necessary to ensure that no corners are cut. Beyond merely ensuring that the fuel is not used for weapons development, Congress will have to take care that less obvious violations of the spirit of the agreement do not occur, including application of U.S. technology to any other facility, whether it is civilian or military.

If India goes against the spirit of the 123 Agreement, Washington will have the right to demand back the plutonium that is stripped out through reprocessing. This is a critical element of the agreement to ensure that the U.S. cannot be accused of violating its NPT obligations. This right is embedded in Article 14 of the agreement, which allows either party to terminate the agreement on the basis of a one-year written notice.

Fuel Assurances for India Consistent with NPT and Hyde Act. Ensuring that the U.S. maintained the “right of recapture” (the ability to demand back any U.S.-origin nuclear fuel or technology) in the event of a future Indian nuclear test was an important part of the agreement from the U.S. perspective. The U.S. Congress remains concerned, however, about related clauses in the agreement that say the U.S. will help India develop a “strategic reserve” of nuclear fuel for the entire lifetime of the reactors. The U.S. also agrees to “create conditions” for India’s “assured and full access” to the international fuel market.

On the surface, this language may appear at odds with the nonbinding provisions of the Hyde Act that urge Washington to limit India’s access to fuel supplies from other countries in the event of a termination of the bilateral agreement. However, the 123 Agreement language does not violate the Hyde Act since the fuel access provisions are a part of the agreement itself and would terminate along with the agreement if, for example, an Indian nuclear deto-

nation triggered Section 106 of the Hyde Act terminating U.S.–India civil nuclear cooperation.

Conclusion. India will play an increasingly significant role in shaping the economic and political environment in Asia and beyond in the years to come. Given that India has strong standing in the international community and has been a responsible steward of its nuclear assets, placing India’s nuclear program on par with that of North Korea or Iran is not only disingenuous; it is bad foreign policy. In fact, India’s behavior is consistent with a policy to establish objective criteria for civil nuclear cooperation with *de facto* nuclear weapons states.

This 123 agreement, however, does not resolve a fundamental disagreement between the United States and India. The U.S. continues to support the objectives of the NPT and to adhere to its requirements. India does not support the NPT and seeks to be recognized as a *de jure* nuclear weapons state. The purpose of this agreement is to limit the negative impact of this enduring disagreement on the broader U.S.–Indian relationship.

If, however, India chooses to behave in a way that can raise legitimate questions regarding whether U.S. civil nuclear cooperation with India is inconsistent with U.S. NPT obligations, India will risk jeopardizing its broader relationship with the U.S. The ultimate goal for U.S. nonproliferation policy, despite the enduring disagreement between Washington and New Delhi regarding the NPT and the fact that it may be only a distant prospect, is to bring India into the NPT fold.

For its part, the U.S. needs to use the political space for closer bilateral ties permitted by this agreement to address the security concerns that have whetted the Indian appetite for nuclear weapons. This includes the U.S. stepping up its diplomacy to encourage India–Pakistan peace efforts, particularly nuclear confidence building, to avoid a nuclear arms race in the region and reduce the risk of nuclear exchange.

The view of the international community will become clearer once the Nuclear Suppliers Group takes up the issue this fall. So far, key countries like

Russia, France, and the United Kingdom appear to support this deal. These countries understand India's increasingly important role on the world stage. It would be a shame if Washington let this deal slip away and missed an opportunity to put itself in a strong, strategic position to meet the challenges of the 21st century.

This deal will help to solidify a partnership with a country that is both the world's largest democracy and one of the world's fastest growing economies. It

represents strategic, forward-looking policy and will benefit America's national security interests in Asia and beyond for many years to come.

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