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# **Nuclear Cooperation with Other Countries: A Primer**

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## **Summary**

In order for the United States to engage in civilian nuclear cooperation with other states, it must conclude a framework agreement that meets specific requirements under Section 123 of the Atomic Energy Act (AEA). The AEA also provides for exemptions to these requirements, export control licensing procedures, and criteria for terminating cooperation. Congressional review is required for Section 123 agreements; the AEA establishes special parliamentary procedures by which Congress may act on a proposed agreement.

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## What Is a “Section 123” Agreement?

Under existing law (Atomic Energy Act [AEA] of 1954, as amended; P.L. 95-242; 42 U.S.C. §2153 et seq.)<sup>1</sup> all significant U.S. nuclear cooperation with other countries requires a peaceful nuclear cooperation agreement.<sup>2</sup> Significant nuclear cooperation includes the transfer of U.S.-origin special nuclear material<sup>3</sup> subject to licensing for commercial, medical, and industrial purposes. Such agreements, which are “congressional-executive agreements” requiring congressional approval, do not guarantee that cooperation will take place or that nuclear material will be transferred, but rather set the terms of reference and authorize cooperation. The AEA includes requirements for an agreement’s content, conditions for the President to exempt an agreement from those requirements, presidential determinations and other supporting information to be submitted to Congress, conditions affecting the implementation of an agreement once it takes effect, and procedures for Congress to consider and approve the agreement.

Section 123 of the AEA requires that any agreement for nuclear cooperation meet nine nonproliferation criteria and that the President submit any such agreement to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations. The Department of State is required to provide the President with an unclassified Nuclear Proliferation Assessment Statement (NPAS), which the President is to submit, along with the agreement, to those two committees. The State Department is also required to provide a classified annex to the NPAS, prepared in consultation with the Director of National Intelligence. The NPAS is meant to explain how the agreement meets the AEA nonproliferation requirements. The President must also make a written determination “that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to, the common defense and security.”

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<sup>1</sup> The Atomic Energy Act (AEA) was amended by the Nuclear Nonproliferation Act of 1978 (NNPA) (P.L. 95-242) to include stringent nonproliferation requirements for significant U.S. nuclear exports. For example, the act required non-nuclear-weapon states to have full-scope International Atomic Energy Agency safeguards as a condition for entering into nuclear cooperation agreements with the United States. For existing and future agreements, the NNPA added a provision for Congress to review export licenses. The act also included a provision for halting exports if a country tested a nuclear device, violated safeguards agreements, or continued nuclear weapons-related activities.

<sup>2</sup> Section 57b. (2) of the AEA allows for limited forms of nuclear cooperation related to the “development or production of any special nuclear material outside of the United States” without a nuclear cooperation agreement if that activity has been authorized by the Secretary of Energy following a determination that it “will not be inimical to the interest of the United States.” Agreements governing such cooperation are also known as “Section 810” agreements, after 10 Code of Federal Regulations Part 810.

A nuclear cooperation agreement is not required for transmission of nuclear-related information, except for restricted data. The term “restricted data,” as well as other terms used in the statute, is defined in 42 U.S.C. §2014. “Restricted data” means “all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy.” Restricted data, however, does not “include data declassified or removed from the Restricted Data [sic] category” pursuant to the AEA. A nuclear cooperation agreement is necessary, though not necessarily sufficient, to permit the transfer of restricted data.

<sup>3</sup> “Special nuclear material” means (1) plutonium, uranium enriched in the isotopes 233 or 235, and any other material that is determined to be special nuclear material, but does not include source material, or (2) any material artificially enriched by any of the foregoing, but does not include source material.

## Requirements Under the Atomic Energy Act

Section 123 of the AEA specifies the necessary steps for engaging in nuclear cooperation with another country.

- **Section 123a.** states that the proposed agreement is to include the terms, conditions, duration, nature, and scope of cooperation and lists nine criteria that the agreement must meet. It also contains provisions for the President to exempt an agreement from any of several criteria described in that section and includes details on the kinds of information the executive branch must provide to Congress.
- **Section 123b.** specifies the process for submitting the text of the agreement to Congress.
- **Section 123c.** specifies the procedure for congressional approval of cooperation agreements that are limited in scope (e.g., do not transfer nuclear material or cover reactors larger than 5 MWe). This report does not discuss such agreements.
- **Section 123d.** specifies the procedure for congressional approval of agreements that do cover significant nuclear cooperation (transfer of nuclear material or reactors larger than 5 MWe), including exempted agreements.

Section 123a., paragraphs (1) through (9), lists nine criteria that an agreement with a non-nuclear weapon state must meet unless the President determines an exemption is necessary. These include guarantees that

- safeguards on transferred nuclear material and equipment continue in perpetuity;
- International Atomic Energy Agency (IAEA) comprehensive safeguards are applied in non-nuclear weapon states;
- nothing transferred is used for any nuclear explosive device or for any other military purpose; the United States has the right to demand the return of transferred nuclear materials and equipment, as well as any special nuclear material produced through their use, if the cooperating state detonates a nuclear explosive device or terminates or abrogates an IAEA safeguards agreement;
- there is no retransfer of material or classified data without U.S. consent;
- physical security on nuclear material is maintained;
- there is no enrichment or reprocessing by the recipient state of transferred nuclear material or nuclear material produced with materials or facilities transferred pursuant to the agreement without prior approval;
- storage for transferred plutonium and highly enriched uranium is approved in advance by the United States; and
- any material or facility produced or constructed through use of special nuclear technology transferred under the cooperation agreement is subject to all of the above requirements.

## Exempted vs. Non-exempted Agreements

The President may exempt an agreement for cooperation from any of the requirements in Section 123a. if he determines that the requirement would be “seriously prejudicial to the achievement of U.S. non-proliferation objectives or otherwise jeopardize the common defense and security.” The AEA provides different requirements, conditions, and procedures for exempt and non-exempt agreements.<sup>4</sup> To date, all of the Section 123 agreements in force are non-exempt agreements.<sup>5</sup> Prior to the adoption of P.L. 109-401, the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, the President would have needed to exempt the nuclear cooperation agreement with India from some requirements of Section 123a. However, P.L. 109-401 exempted nuclear cooperation with India from some of the AEA’s requirements.<sup>6</sup>

## Congressional Review

Under the AEA, Congress has the opportunity to review a nuclear cooperation agreement for two time periods totaling 90 days of continuous session.<sup>7</sup> The President must submit the text of the proposed agreement, along with required supporting documents (including the unclassified NPAS) to the House Foreign Affairs Committee and the Senate Foreign Relations Committee. The President is to consult with the committees “for a period of not less than 30 days of continuous session.” After this period of consultation, the President is to submit the agreement to Congress, along with the classified annex to the NPAS and a statement of his approval of the agreement and determination that it will not damage U.S. national security interests. This action begins the second period, which consists of 60 days of continuous session. In practice, the President has sent the agreement to Congress at the beginning of the full 90-day period, which begins on the date of transmittal. Typically, the 60-day period has immediately followed the expiration of the 30-day period. The President transmits the text of the proposed agreement along with a letter of support with a national security determination, the unclassified NPAS, its classified annex, and letters of support for the agreement from the Secretary of State and the Nuclear Regulatory Commission.

If the President has not exempted the agreement from any requirements of Section 123a., it becomes effective at the end of the 60-day period unless, during that time, Congress adopts a joint resolution disapproving the agreement and the resolution becomes law. If the agreement is an exempted agreement, Congress must adopt a joint resolution of approval and it must become law

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<sup>4</sup> Nuclear cooperation agreements with nuclear weapon states recognized by the NPT are provided for in the AEA, and are therefore non-exempt agreements. The NPT defines nuclear weapon states as those that exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967: China, France, Russia, the United Kingdom, and the United States.

<sup>5</sup> The United States has concluded more than 20 bilateral nuclear cooperation agreements, as well as similar agreements with the European Atomic Energy Community and the IAEA. See *Nuclear Commerce: Governmentwide Strategy Could Help Increase Commercial Benefits from U.S. Nuclear Cooperation Agreements with Other Countries*, Government Accountability Office, GAO-11-36, November 2010.

<sup>6</sup> See CRS Report RL33016, *U.S. Nuclear Cooperation with India: Issues for Congress*, by Paul K. Kerr. The agreement entered into force in December 2008.

<sup>7</sup> When calculating periods of “continuous session” under the AEA, every calendar day is counted, including Saturdays and Sundays. Only days on which either chamber has adjourned for more than three days pursuant to the adoption a concurrent resolution authorizing the adjournment do not count toward the total. If Congress adjourns its final session *sine die*, continuity of session is broken, and the count must start anew when it reconvenes.

by the end of the 60-day period or the agreement will not enter into force. At the beginning of this 60-day period, joint resolutions of approval or disapproval, as appropriate, are to be automatically introduced in each house. During this period, the committees are to hold hearings on the proposed agreement and “submit a report to their respective bodies recommending whether it should be approved or disapproved.” If either committee has not reported the requisite joint resolution of approval or disapproval by the end of 45 days, it is automatically discharged from further consideration of the measure. After the joint resolution is reported or discharged, Congress is to consider it under expedited procedures, as established by Section 130.i. of the AEA.

Section 202 of P.L. 110-369, the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, which President Bush signed into law October 8, 2008, amended Section 123 of the AEA to require the President to keep the Senate Foreign Relations Committee and the House Foreign Affairs Committee “fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation.”

## Export Licensing

The AEA sets out procedures for licensing exports to states with which the United States has nuclear cooperation agreements. (Sections 126, 127, and 128 codified as amended at 42 U.S.C. 2155, 2156, 2157.) Each export of nuclear material, equipment, or technology requires a specific export license or other authorization. The Nuclear Regulatory Commission (NRC) is required to meet criteria in Sections 127 and 128 in authorizing export licenses. These criteria are as follows:

- Application of IAEA safeguards to any material or facilities proposed to be exported, material or facilities previously exported, and to any special nuclear material used in or produced through the use thereof (these are not full-scope safeguards, but safeguards required under Article III.2 of the nuclear Nonproliferation Treaty [NPT]).
- Nothing exported can be used for any nuclear explosive device or for research on or development of any nuclear explosive device.
- Recipient states must have adequate physical security on “such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof.”
- Recipient states are not to retransfer exported nuclear materials, facilities, sensitive nuclear technology, or “special nuclear material produced through the use of such material” without prior U.S. approval.
- Recipient states may not reprocess or alter in form or content exported nuclear material or special nuclear material produced through the use of exported nuclear material without prior U.S. approval.
- The foregoing conditions must be applied to any nuclear material or equipment that is produced or constructed under the jurisdiction of the recipient by or through the use of any exported sensitive nuclear technology.
- Section 128 requires that recipient non-nuclear-weapon states must have full-scope IAEA safeguards.

The President must judge that the proposed export or exemption will “not be inimical to the common defense and security” or that any export of that type “would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes.” The executive branch may also consider other factors, such as “whether the license or exemption will materially advance the nonproliferation policy of the United States by encouraging the recipient nation to adhere” to the NPT; whether “failure to issue the license or grant the exemption would otherwise be seriously prejudicial” to U.S. nonproliferation objectives; and whether the recipient nation has agreed to conditions identical to those laid out in Section 127.

Section 126b.(2) contains a provision for the President to authorize an export in the event that the NRC deems that the export would not meet Section 127 and 128 criteria. The President must determine “that failure to approve an export would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security.” In that case, the President would submit his executive order, along with a detailed assessment and other documentation, to Congress for 60 days of continuous session. After 60 days of continuous session, the export would go through unless Congress were to adopt a concurrent resolution of disapproval.<sup>8</sup>

Section 128b.(2) contains a provision for the President to waive termination of exports by notifying Congress that the state has adopted full-scope safeguards or that the state has made significant progress toward adopting such safeguards, or that U.S. foreign policy interests dictate reconsideration. Such a determination would become effective unless Congress were to adopt a concurrent resolution of disapproval within 60 days of continuous session.

Additionally, Section 129b.(1) forbids the export of “nuclear materials and equipment or sensitive nuclear technology” to any country designated as a state sponsor of terrorism.<sup>9</sup> Section 129b.(3) allows the President to waive this provision.

## Iran-Related Restrictions

The Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010 (P.L. 111-195), which became law July 1, 2010, contains additional restrictions on licensing nuclear exports to countries with entities that have been sanctioned for conducting certain types of energy-related transactions with Iran. Section 102a.(2)(A) of the law states that “no license may be issued for the export, and no approval may be given for the transfer or retransfer” of “any nuclear material, facilities, components, or other goods, services, or technology that are or would be subject to an agreement for cooperation between the United States” and such countries. Section 102 a.(2)(B), however, allows the President to waive these restrictions. Section 102a.(2)(C) allows the President to authorize licenses for nuclear exports “on a case-by-case

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<sup>8</sup> In light of the Supreme Court’s 1983 decision in *INS v. Chadha*, passing a concurrent resolution could invite a legal challenge because it is arguably unconstitutional. Although not provided for in the AEA, Congress could choose to pass a joint resolution of disapproval or a bill stating in substance it did not approve.

<sup>9</sup> Section 129b. (2) states that the prohibitions described in the previous section “shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials ... except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.”



basis” to entities (which have not been sanctioned) in countries subject to the restrictions described above.<sup>10</sup>

## Subsequent Arrangements

Section 131 of the AEA details procedures for subsequent arrangements to nuclear cooperation agreements concluded pursuant to Section 123. Such arrangements are required for forms of nuclear cooperation requiring additional congressional approval, such as transfers of nuclear material or technology and recipient states’ enrichment or reprocessing of nuclear materials transferred pursuant to the agreement. Subsequent arrangements may also include arrangements for physical security, storage, or disposition of spent nuclear fuel; the application of safeguards on nuclear materials or equipment; or “any other arrangement which the President finds to be important from the standpoint of preventing proliferation.”

Before entering into a subsequent arrangement, the Secretary of Energy must publish in the *Federal Register* a determination that the arrangement “will not be inimical to the common defense and security.” A proposed subsequent arrangement shall not take effect before 15 days after publication of both this determination and notice of the proposed arrangement. The Secretary of State is required to prepare an unclassified Nuclear Proliferation Assessment Statement (NPAS) if, “in the view of” the Secretary of State, Secretary of Energy, Secretary of Defense, or the Nuclear Regulatory Commission, a proposed subsequent arrangement “might significantly contribute to proliferation.” The Secretary of State is to submit the NPAS to the Secretary of Energy within 60 days of receiving a copy of the proposed subsequent arrangement. The President may waive the 60-day requirement if the Secretary of State so requests, but must notify both the House Foreign Affairs Committee and Senate Foreign Relations Committee of any such waiver and the justification for it. The Secretary of Energy may not enter into the subsequent arrangement before receiving the NPAS.

Section 131 specifies requirements for certain types of subsequent arrangements. Section 131b describes procedures for the executive branch to follow before entering into a subsequent arrangement involving the reprocessing of U.S.-origin nuclear material or nuclear material produced with U.S.-supplied nuclear technology. These procedures also cover subsequent arrangements allowing the retransfer of such material to a “third country for reprocessing” or “the subsequent retransfer” of more than 500 grams of any plutonium produced by reprocessing such material. The Secretary of Energy must provide both the House Foreign Affairs Committee and Senate Foreign Relations Committee with a report describing the reasons for entering into the arrangement. Additionally, 15 days of continuous session must elapse before the Secretary may enter into the arrangement, unless the President judges that “an emergency exists due to unforeseen circumstances requiring immediate entry” into the arrangement. In such a case, the waiting period would be 15 calendar days.

If a subsequent arrangement described in the above paragraph involves a facility that has not processed spent nuclear reactor fuel prior to March 10, 1978 (when the Nuclear Nonproliferation Act of 1978 was enacted), the Secretaries of State and Energy must judge that the arrangement “will not result in a significant increase of the risk of proliferation.” In making this judgment, the Secretaries are to give “foremost consideration ... to whether or not the reprocessing or retransfer

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<sup>10</sup> For details on these sanctions, see CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman.

will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device.”<sup>11</sup> For a subsequent arrangement involving reprocessing in a facility that has processed spent nuclear reactor fuel prior to March 10, 1978, the Secretary of Energy will “attempt to ensure” that reprocessing “shall take place under conditions” that would satisfy the timely-warning conditions described above. Section 131f. specifies procedures for congressional approval of subsequent arrangements involving the storage or disposition of foreign spent nuclear fuel in the United States.

Section 133 states that, before approving a subsequent arrangement involving certain transfers of special nuclear material, the Secretary of Energy must consult with the Secretary of Defense “on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material.”<sup>12</sup> If the Secretary of Defense determines that “the export or transfer might be subject to a genuine terrorist threat,” that Secretary is required to provide a written risk assessment of the risk and a “description of the actions” that he or she “considers necessary to upgrade physical protection measures.”

## **Examples of Subsequent Arrangements**

### **U.S.-Japan Agreement**

The first test of the subsequent arrangement provisions came in August 1978, when the Department of Energy informed the House and Senate foreign relations committees of a Japanese request for approval of the transfer of spent fuel assemblies from Japan to the United Kingdom for reprocessing. This was the first “subsequent arrangement” approved. The United States and Japan entered into similar arrangements until 1988, when the two governments revised their nuclear cooperation agreement. That agreement included an “implementing agreement,” which provided 30-year advance consent for the transfer of spent fuel from Japan to Europe for reprocessing. While controversial, Congress did not block the nuclear cooperation agreement.

A subsequent arrangement was also necessary for the sea transport from Europe to Japan of plutonium that had been separated from the Japanese spent fuel. The Department of Energy approved a Japanese request for 30-year advance consent for the sea transport of plutonium. It was submitted to Congress as a subsequent arrangement, and took effect in October 1988.

### **U.S.-India Agreement**

The U.S. nuclear cooperation agreement with India grants New Delhi consent to reprocess nuclear material transferred pursuant to the agreement, as well as “nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment so transferred.” However, the agreement also includes a requirement that India first build a new national reprocessing facility to be operated under IAEA safeguards. The two

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<sup>11</sup> These provisions also apply to facilities that, prior to March 18, 1978, did not have a subsequent arrangement for reprocessing.

<sup>12</sup> This section applies to “the export or transfer of more than 2 kilograms of plutonium or more than 5 kilograms of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.”

countries signed a subsequent arrangement July 30, 2010, which governs the procedures for operating two new reprocessing facilities in India. The agreement also describes procedures for U.S. officials to inspect and receive information about physical protection measures at the new facilities. The arrangement would not have taken effect if Congress had adopted a joint resolution of disapproval within 30 days of continuous session; Congress did not adopt such a resolution.<sup>13</sup> If India were to construct any additional facilities to reprocess fuel from U.S.-supplied reactors, a new subsequent arrangement would need to be submitted to Congress.

## **Termination of Cooperation**

Section 129a. of the AEA requires that the United States end exports of nuclear materials and equipment or sensitive nuclear technology to any non-nuclear-weapon state that, after March 10, 1978, the President determines to have detonated a nuclear explosive device; terminated or abrogated IAEA safeguards; materially violated an IAEA safeguards agreement; or engaged in activities involving source or special nuclear material and having “direct significance” for the manufacture or acquisition of nuclear explosive devices, and “has failed to take steps which, in the President’s judgment, represent sufficient progress toward terminating such activities.”

Section 129a. also requires that the United States halt exports to any nation the President determines to have materially violated the terms of an agreement for cooperation with the United States; assisted, encouraged, or induced any non-nuclear weapon state to obtain nuclear explosives or the materials and technologies needed to manufacture them; or re-transferred or entered into an agreement for exporting reprocessing equipment, materials, or technology to a non-nuclear weapon state, unless in connection with an international agreement to which the United States subscribes.

The President can waive termination of exports if he determines that “cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.” The President must submit his determination to Congress, which is then referred to the House Committee on Foreign Affairs and the Senate Foreign Relations Committee for 60 days of continuous session. The determination becomes effective unless Congress adopts a joint resolution opposing the determination.

## **Legislation in the 113<sup>th</sup> Congress**

Congress has intensely debated the requirements of the Atomic Energy Act for nuclear cooperation agreements, most notably following the approval of the 2008 U.S.-India nuclear cooperation agreement. Congress has held several hearings over the past several years to discuss whether Congress should legislate stronger nonproliferation standards and congressional oversight for nuclear cooperation agreements. This issue continues to be a subject of attention in the 113<sup>th</sup> Congress.

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<sup>13</sup> Section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (P.L. 110-369), which approved the U.S.-India cooperation agreement, specifies procedures (different from those described in the Atomic Energy Act) for Congress to consider subsequent arrangements to that agreement.

## **P.L. 113-81**

The current U.S.-Korea 123 agreement was signed in 1973 and expired on March 19, 2014. Negotiators from the two countries are working to overcome substantial disagreements about the provisions of a new agreement so that it can take effect before the expiration date. With time running out to address the fundamental U.S. and Korean differences over fuel cycle issues, the two countries announced on April 24, 2013, that they would extend the existing agreement by two years to allow for additional negotiations. This required legislative action that overruled the requirements of the Atomic Energy Act (as amended). Legislation to authorize the two-year extension has been passed unanimously by both the House and Senate.

Representative Royce introduced H.R. 2449 (H.Rept. 113-209), which was passed by the House unanimously on September 17. Senate Foreign Relations Committee Chairman Menendez and Ranking Member Corker introduced S. 1901, which was passed by the Senate on January 27, 2014. The House report explains:

Given the lengthy period mandated by the AEA for Congressional consideration of civil nuclear cooperation agreements subsequent to their having been formally submitted by the President, insufficient time remains for the finalization of a replacement for the existing agreement prior to its expiration. A lapse would prevent U.S. businesses from exporting any nuclear-related goods or services to South Korea and might also result in significant problems arising in U.S. relations with South Korea, a key economic and security ally. To avoid this negative scenario, the two countries have agreed to extend the existing agreement for two years to enable the ongoing negotiations to continue.

Both bills include language authorizing the President to extend the agreement notwithstanding Section 123 of the AEA, to a date not later than March 19, 2016. On January 28, the House passed S. 1901, and the President signed it into law on February 12, 2014.

## **H.R. 3766**

In December 2013, Representatives Ileana Ros-Lehtinen and Brad Sherman introduced H.R. 3766. This bill would require a positive vote by Congress if a nuclear cooperation agreement were to omit the nonproliferation criteria described in the bill. The sponsors of the bill argue that this would not preclude an agreement with a state not willing to make such a commitment, but would increase congressional oversight over the agreement, and “protect against the threat of nuclear proliferation.” The Nuclear Energy Institute, a lobbying organization for the nuclear energy industry, has said that these changes would be a “risk to national security” and that adding conditions to nuclear cooperation agreements would result in the loss of business for U.S. companies.<sup>14</sup> The bill would also require a joint resolution of approval for subsequent arrangements under nuclear cooperation agreements. New criteria would include a pledge not to build enrichment or reprocessing on a country’s territory, similar to the provisions in the nuclear cooperation agreement with the UAE.

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<sup>14</sup> Nuclear Energy Institute Press Release, December 13, 2013, <http://www.nei.org>.

Like H.R. 1280, which was introduced in the 112<sup>th</sup> Congress,<sup>15</sup> H.R. 3766 would add new nonproliferation criteria to Section 123a.<sup>16</sup> Section 1 of the bill would require governments wishing to conclude nuclear cooperation agreements with the United States to

- guarantee that third-country nationals will not be permitted, without prior U.S. consent, access to facilities, material, or technology transferred under the agreement;
- commit to maintain or enact within one year a legal regime providing for adequate protection from civil liability that will allow for the participation of U.S. suppliers;
- accede to and fully implement the Chemical Weapons Convention, the Biological Weapons Convention, and “all other international agreements to which the United States is a party related to export controls on nuclear, chemical, biological, and advanced conventional weapons”;
- have an effective export control system and implement U.N. Security Council Resolution 1540;<sup>17</sup>
- be fully compliant with United Nations conventions and Security Council resolutions related to nonproliferation, including the Convention on the Physical Protection of Nuclear Material and the Nuclear Terrorism Convention;
- not be a Destination of Diversion Concern as defined by CISADA (P.L. 111-195);<sup>18</sup>
- closely cooperate with the United States to prevent state sponsors of terrorism from acquiring nuclear, biological, chemical, or advanced conventional weapons; and
- have an Additional Protocol<sup>19</sup> to its safeguards agreement with the IAEA fully in force.

An agreement lacking a legally binding requirement for the cooperating country to refrain from enrichment or reprocessing activities (or constructing facilities for such activities) could not enter into effect, according to the amended bill, unless Congress were to adopt a joint resolution of approval within 60 days of continuous session. An agreement including such a provision would become effective after 60 days of continuous session for a new agreement and 30 days for a renewal agreement, unless Congress were to adopt a joint resolution of disapproval (the 60 days

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<sup>15</sup> The amended H.R. 1280 and H.Rept. 112-507 were reported out of committee on May 30, 2012. H.R. 1280 was referred to the House Rules Committee and the House Committee on Energy and Commerce on May 30, 2012.

<sup>16</sup> This summary is not meant to be exhaustive, and the full bill text should be consulted.

<sup>17</sup> That resolution requires states to “take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials.”

<sup>18</sup> CISADA states that the President “shall designate a country as a Destination of Diversion Concern if the President determines that the government of the country allows substantial diversion of goods, services, or technologies” described in the law “through the country to Iranian end-users or Iranian intermediaries.”

<sup>19</sup> The Additional Protocol gives the IAEA additional inspection authority to detect undeclared nuclear activities, such as environmental monitoring and inspector access to all nuclear facilities in a country.

referred to in this and the previous sentence would be part of the 90-day period of continuous session described above).<sup>20</sup>

The bill contains several other significant provisions. Section 2 would prohibit any U.S. assistance, other than humanitarian aid, to a cooperating country that has withdrawn from the NPT. Moreover, the country would be asked to return any material, equipment, or components transferred under a nuclear cooperation agreement (on or after the bill's enactment date), and any special fissionable material produced using material or equipment previously transferred. Section 3 of the bill would require the executive branch to produce a report detailing the nonproliferation conditions of other nuclear suppliers. Section 5 would require termination of nuclear exports to a cooperating country that had been "determined to be a 'country of proliferation concern'" pursuant to the 2010 National Defense Authorization Act.<sup>21</sup> Section 7 of the bill would prohibit the President from issuing an export license pursuant to a nuclear cooperation agreement unless the cooperating country had liability protection for United States nuclear suppliers "equivalent to the liability protection specified under the Convention on Supplementary Compensation for Nuclear Damage."

The Obama Administration has not yet responded to H.R. 3766. The Administration opposed the passage of H.R. 1280, which contained similar provisions, arguing at the time that the AEA's requirements already include sufficient nonproliferation protections, and that adding conditions would reduce the United States' ability to conclude nuclear cooperation agreements, "thereby limiting our influence over others' nuclear programs."<sup>22</sup>

## Agreements Under Congressional Review

The United States renewed its agreements with Taiwan and the IAEA and transmitted them to Congress for review. A new Section 123 agreement with Vietnam was transmitted to Congress for review on May 8, 2014.

### Vietnam<sup>23</sup>

President Obama transmitted to the Senate Foreign Relations Committee and the House Foreign Affairs Committee the U.S.-Vietnam Section 123 agreement on May 8, 2014.<sup>24</sup> The agreement complies with all the requirements of the AEA and therefore is non-exempt. The Administration

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<sup>20</sup> The 60-day period would apply to new agreements. For a renewal agreement, Congress would need to adopt a joint resolution of disapproval within 30 days of continuous session. The amended text defines a "renewal agreement" as a nuclear cooperation agreement with a country that has previously entered into such an agreement with the United States. A "new" nuclear cooperation agreement, according to the draft legislation, is one with a country that has not previously entered into such an agreement with the United States.

<sup>21</sup> That law defines a country of proliferation concern as "any country identified by the Director of Central Intelligence as having engaged in the acquisition of dual-use and other technology useful for the development or production of weapons of mass destruction (including nuclear weapons, chemical weapons, and biological weapons) or advanced conventional munitions."

<sup>22</sup> U.S. Department of State, "Administration Views on H.R. 1280," July 15, 2011.

<sup>23</sup> For details, see CRS Report R43433, *U.S.-Vietnam Nuclear Cooperation Agreement: Issues for Congress*, by Mary Beth D. Nikitin, Mark Holt, and Mark E. Manyin.

<sup>24</sup> "Message to the Congress: Transmitting the Agreement for Cooperation Between the US and Vietnam on the Peaceful Uses of Nuclear Energy," The White House, May 8, 2014. <http://www.whitehouse.gov/the-press-office/2014/05/08/message-congress-transmitting-agreement-cooperation-between-us-and-vietn>.

submitted an unclassified NPAS and a classified addendum to the NPAS by the Director of National Intelligence. The agreement will enter into force upon the 90<sup>th</sup> day of continuous session after its submittal to Congress (a period of 30 plus 60 days of review) unless a Joint Resolution disapproving the agreement is enacted. The agreement would have a 30-year duration with automatic renewal every five years thereafter if neither party objects. The agreement can be terminated within six months after the 30 years have passed, at the five-year marks or at any time with a one-year written notice. As with other agreements, should the agreement be terminated, the nonproliferation controls would continue on any material, equipment, and components transferred under the agreement.

The proposed agreement meets all nine nonproliferation criteria. The preamble of the agreement includes a political commitment that says Vietnam intends to rely on international markets for its nuclear fuel supply, rather than acquiring sensitive nuclear technologies. At the same time, the United States pledges to support international markets to ensure a reliable nuclear fuel supply for Vietnam. Article 6 of the agreement specifically prohibits Vietnam from enriching or reprocessing U.S.-obligated nuclear materials—for instance, materials that are transferred from the United States—without specific future U.S. consent.

## **Taiwan**

On January 7, 2014, President Obama transmitted to the Senate Foreign Relations Committee and the House Foreign Affairs Committee the renewed U.S.-Taiwan Section 123 agreement.<sup>25</sup> S.J.Res. 31 and H.J.Res. 109 would both approve the renewal agreement. The agreement complies with all the requirements of the AEA and therefore is non-exempt. The Administration submitted an unclassified NPAS and a classified NPAS, as well as an addendum to the NPAS by the Director of National Intelligence containing “a comprehensive analysis of the export control system of Taiwan with respect to nuclear-related matters, including interactions with other countries of proliferation concern and the actual or suspected nuclear, dual-use, or missile-related transfers to such countries.”

The existing agreement with Taiwan expires on June 22, 2014. The proposed agreement would have indefinite duration and would be canceled only if one of the parties were to terminate the agreement; one year’s written notice is required for such an action. The proposed agreement includes all nine nonproliferation criteria. An Agreed Minute prohibits Taiwanese sensitive nuclear facilities and any activities involving sensitive nuclear technologies.<sup>26</sup> The proposed agreement would make comprehensive IAEA safeguards a legal obligation, although all Taiwanese nuclear facilities are currently under IAEA safeguards, including the Additional Protocol, as if Taiwan were a non-nuclear weapon state party to the NPT. Should the agreement be terminated, the nonproliferation controls would continue on any material, equipment, and components transferred under the agreement.

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<sup>25</sup> The agreement is between the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO). Under the Taiwan Relations Act (P.L. 96-8; 22 U.S.C. 3301 et seq.), the United States concludes executive agreements such as the Section 123 with TECRO.

<sup>26</sup> Under the agreement, sensitive nuclear technology is defined as any information or facility “designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium.”

The agreement, for the first time with Taiwan, would provide for advance, long-term (also called programmatic) consent for the retransfer of irradiated material to France or other countries or destinations (agreed upon by the United States) for storage and reprocessing, under Section 131.a.(3). A similar provision was recently included in the Section 123 agreement with the United Arab Emirates.<sup>27</sup> The NPAS to the proposed U.S.-Taiwan agreement notes that Congress has not blocked the use of advance long-term consents in cooperation agreements in the past with Norway, UAE, Sweden, or Finland. The Taipei Economic and Cultural Representative Office (TECRO) would be required to notify the United States of such transfers. The United States reserves the right to terminate its approval at any time.

## **IAEA**

The United States has had a nuclear cooperation agreement with the IAEA since 1959. The existing agreement expires on August 7, 2014. The United States and the IAEA have agreed to extend the existing agreement for an additional 40 years. This extension was approved unanimously by the IAEA Board of Governors in November 2013. According to U.S. Ambassador to the IAEA Joseph McManus, this agreement's purpose is to "allow the United States to provide nuclear material to the IAEA and IAEA Member States through trilateral project and supply agreements."<sup>28</sup> One example of such a project is the supply of research reactor fuel to Mexico under a trilateral agreement. This renewed agreement was transmitted to Congress for review on January 29, 2014.

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<sup>27</sup> See CRS Report R40344, *The United Arab Emirates Nuclear Program and Proposed U.S. Nuclear Cooperation*, by Christopher M. Blanchard and Paul K. Kerr

<sup>28</sup> <http://vienna.usmission.gov/131129123.html>.



## Appendix. Key Dates for Bilateral Civilian Nuclear Cooperation (“Section 123”) Agreements

Country	Most Recent Agreement Signed	Entered into Force	Duration	Expiration	Renewal Terms <sup>a</sup>	Original Agreement <sup>b</sup>
Argentina	February 29, 1996	October 16, 1997	30 years	October 16, 2027	Extension by agreement of the parties	
Australia	May 4, 2010	December 22, 2010	30 years	December 22, 2040	Automatic 5-yr renewals after 30 years	1956
Bangladesh	September 17, 1981	June 24, 1982	10 years	June 2012	Extension by agreement of the parties; renewed in 1992, 2002, not renewed in 2012—now expired, no plans to renew	
Brazil	October 14, 1997	September 15, 1999	30 years	September 15, 2029	Extension by agreement of the parties	1972
Canada	June 23, 1999	December 13, 1999	30 years	January 1, 2030	Automatic 5-yr renewals after 30 years	1955
China <sup>b</sup>	July 23, 1985	December 30, 1985	30 years	December 30, 2015	None specified	
Colombia	January 8, 1981	September 1983	30 years	September 17, 2013	None specified; now expired and no plans to renew; future cooperation will be under the IAEA agreement	1962
Egypt	June 29, 1981	December 29, 1981	40 years	December 29, 2021	None specified	
European Atomic Energy Community (Euratom) <sup>d</sup>	November 7, 1995	March 29, 1996	30 years	March 29, 2026	Automatic 5-yr renewals after 30 years	1958
India <sup>e</sup>	October 10, 2008	December 6, 2008	40 years	December 6, 2048	Automatic 10-yr renewals after 40 years	

<b>Country</b>	<b>Most Recent Agreement Signed</b>	<b>Entered into Force</b>	<b>Duration</b>	<b>Expiration</b>	<b>Renewal Terms<sup>a</sup></b>	<b>Original Agreement<sup>b</sup></b>
Indonesia	June 30, 1980	December 30, 1981	50 years	December 30, 2031	None specified	1960
International Atomic Energy Agency (IAEA)	May 11, 1959	August 7, 1959	55 years (Amended in 1974, 1980)	August 7, 2014	None specified; renewal agreement approved by IAEA Board of Governors in November 2013; to be submitted to Congress January 2014	1959
Japan	November 4, 1987	July 30, 1988	30 years	July 30, 2018	Remains in force until terminated by a party	1968
Kazakhstan	November 18, 1997	November 5, 1999	30 years	November 5, 2029	None specified	
Republic of Korea	November 24, 1972	March 19, 1973	30 years, amended 5/15/74 to 41 years; extended 2/14/14 for 2 more years	March 19, 2016	None specified; renewal agreement negotiations under way	1956
Morocco	May 30, 1980	May 16, 1981	30 years	May 16, 2021	Automatic 5-yr renewals after 30 years	
Norway	January 12, 1984	July 2, 1984	30 years	July 2, 2014	None specified	1967
Peru	June 26, 1980	April 1982	20 years	April 2012	one 10-yr extension after 20 years; now expired, no plans to renew	
Russian Federation	May 6, 2008	January 11, 2011	30 years	January 11, 2041	None specified	
South Africa	August 25, 1995	December 4, 1997	25 years	December 4, 2022	None specified	1957
Switzerland	October 31, 1997	June 23, 1998	30 years	June 23, 2028	Automatic 5-yr renewals after 30 years	1965
Taiwan	April 4, 1972	June 22, 1972	amended in 1974, 30 years	June 22, 2014	Renewal agreement submitted to Congress January 7, 2014	1955
Thailand	May 14, 1974	June 27, 1974	40 years	June 27, 2014	None specified; would need new negotiated agreement	1956

Country	Most Recent Agreement Signed	Entered into Force	Duration	Expiration	Renewal Terms <sup>a</sup>	Original Agreement <sup>b</sup>
Turkey	July 26, 2000	June 2, 2008	15 years	June 2, 2023	Automatic 5-yr renewals after 15 years	
Ukraine	May 6, 1998	May 28, 1999	30 years	May 28, 2029	None specified	
United Arab Emirates	May 21, 2009	December 17, 2009	30 years	December 17, 2039	None specified	

**Sources:** CRS; Text of Agreements; U.S. Department of State Fact Sheet, “U.S. Bilateral Agreements for Peaceful Nuclear Cooperation Pursuant to Section 123 of the U.S. Atomic Energy Act of 1954, as amended,” December 5, 2013.

- a. If renewal terms are not specified, then a new Section 123 agreement would need to be negotiated and submitted to Congress for the required review.
- b. The “Original Agreement” field refers to the year that the first civilian nuclear cooperation agreement was concluded with that country. If it is blank, the current agreement is the first such agreement.
- c. P.L. 99-183 approved the agreement but prohibited licenses from being issued until the President certified that transferred items would be used for solely peaceful purposes and reported to Congress on China’s nonproliferation policies. Following the Tianamen Square crackdown, P.L. 101-246 (FY90 Foreign Relations Authorization Act) also suspended nuclear cooperation with China. President Clinton issued the required waiver, report and certification in January 1998. The required congressional review period ended on March 18, 1998, and implementation of the agreement was then allowed. See also CRS Report RL33192, *U.S.-China Nuclear Cooperation Agreement*, coordinated by Shirley A. Kan.
- d. Euratom member states include Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.
- e. P.L. 109-401 and P.L. 110-369 approved the agreement with conditions. See CRS Report RL33016, *U.S. Nuclear Cooperation with India: Issues for Congress*, by Paul K. Kerr.

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