

Issues in US-India Nuclear Cooperation

Issue	What U.S. law – the Atomic Energy Act and the Hyde Act – requires	What the Nuclear Cooperation Agreement the White House negotiated with India allows	What US officials have said	What Indian officials have said	So What?
<p>I. Nuclear Tests</p> <p>If India resumed nuclear testing, would the U.S. halt nuclear exports?</p>	<p>The U.S. must halt all U.S. nuclear exports if India resumes nuclear testing (Sec. 129 of AEA, Sec 104 of Hyde Act).*</p> <p>*The President does have waiver authority under AEA.</p>	<p>The agreement allows termination for any reason, after one year's notice. There is no mention of nuclear testing, but the parties agreed to consider whether the triggers for cessation stem from a changed security environment or similar action by other states (i.e., a nuclear test by Pakistan).</p>	<p>State Department spokesperson McCormack: "The proposed 123 Agreement has provisions in it that in an event of a nuclear test by India, then all nuclear cooperation is terminated" (www.dnaindia.com 8/16/07).</p> <p>Undersecretary of State Burns: "India retains its sovereign rights, but the U.S. retains its legal rights as well." (<i>The Hindu</i>, 8/5/07).</p>	<p>PM Singh to Parliament on 8/13/07: "The agreement does not in any way affect India's right to undertake future nuclear tests, if it is necessary."</p> <p>Foreign Minister to Parliament on 8/16/07: "There is nothing in the bilateral agreement that would tie the hands of a future government or legally constrain its options"</p>	<p>Bush's 2005 offer to resume nuclear exports to India was meant to patch up hard feelings created by a cut-off in cooperation after India's 1974 nuclear test. The ambiguities of this agreement invite future disputes and recriminations.</p>
<p>II. Can India make weapons-usable plutonium from U.S.-origin reactor fuel without first securing Washington's consent?</p> <p>To combat proliferation, the U.S. grants advance consent to reprocess to only 3 states plus EURATOM.</p>	<p>The AEA prohibits any nation from reprocessing nuclear materials obtained from the US without the prior consent of the US (Sec.123a. (7)).</p> <p>The Hyde Act is silent on this issue.</p>	<p>Agreement grants consent in principle; India agreed to establish a new national reprocessing facility under IAEA safeguards and the parties will agree in the future on arrangements and procedures for reprocessing U.S. spent fuel there. (Article 6, iii).</p>	<p>Burns: "US law states that while we can promise reprocessing consent rights, we have to negotiate a subsequent agreement. We will do that and Congress will have the right to review that agreement" (Council on Foreign Relations, 8/2/07).</p>	<p>Singh: "A significant aspect of the Agreement is our right to reprocess US origin spent fuel. This has been secured upfront." (<i>Business Standard</i>, 8/20/07).</p>	<p>In 2004, President Bush stated that reprocessing is not necessary for harnessing peaceful nuclear energy. In other agreements, the U.S. has never surrendered its right to revoke consent. The U.S.-India deal needlessly contradicts these policies and will encourage other nations to demand the same treatment, proliferating the amount of separated plutonium globally.</p>
<p>III. Sensitive Nuclear Transfers</p> <p>To stem production of bomb-usable materials, the US does not transfer enrichment, reprocessing or heavy water production equipment to any country. Only the 123 agreement with Australia allows for enrichment technology transfer.</p>	<p>The Hyde Act bans such cooperation with India except to a multinational facility involved in an IAEA program, or a national facility involved in the development of new proliferation-resistant fuel cycle techniques. The Act also calls for the President to determine that the export will not aid India's nuclear weapons program. (Sec.104(d)(4)).</p>	<p>Agreement allows sensitive nuclear technology and facilities to be transferred pursuant to an amendment to the agreement. (Article 5.2).</p>	<p>State Department officials told Congress on 9 separate occasions that the agreement would not allow for this, that they did not intend to conduct sensitive nuclear transfers and that they told the NSG they did not intend such transfers.</p>	<p>PM Singh, 8/13/07: "The United States has a longstanding policy of not supplying to any country enrichment, reprocessing and heavy water production facilities. This Agreement provides for such transfers to India only through an amendment."</p>	<p>As long as India is producing fissile material for nuclear weapons, it will be impossible, even with IAEA safeguards, to prevent cooperation in this area from helping its weapon program. This could put the U.S. (and other potential suppliers to India) in violation of NPT obligations not to aid nuclear weapons programs.</p>

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<p>IV. Right of Return</p> <p>To prevent the misuse of peaceful nuclear transfers after cooperation is halted, the U.S. has the right to ask for its nuclear supplies back for certain reasons.</p>	<p>The Atomic Energy Act requires that an agreement must ensure that if a cooperating party tests a nuclear weapon, or terminates or violates an IAEA safeguards agreement, the U.S. shall have the right to require the return of any nuclear materials and equipment transferred. (Sec 123.a.(4)).</p>	<p>The agreement does not specify what circumstances allow the U.S. right of return.</p> <p>Moreover, it seems that the right can only be exercised during the one-year interval before termination would go into effect (Article 14.4). No other 123 agreement limits the right of return in this way.</p>	<p>Burns: "We have preserved [the right of return of nuclear materials] in our law. But it is a choice; it is not automatic" (<i>Udayanuni</i>, 8/21/07).</p>	<p>Atomic Energy Commission Chairman Anil Kakodkar: "There is also a provision for right to return [nuclear equipment]," but cooperation "cannot be stopped abruptly" (<i>Indiapost.com</i>, 8/19/07).</p>	<p>While the agreement theoretically allows termination and right of return, it aims to limit discretion to do so. The one-year timing mechanism gives India options to find substitutes for U.S. supplies. Before invoking the right of return parties must consider changed security environments and actions by other states that might have justified, say, an Indian nuclear test, and whether the IAEA Board has found the beneficiary (India) in noncompliance.</p>
<p>V. Safeguards</p> <p>India has called for India-specific safeguards, and for "corrective measures" should fuel supply be cut off to its 8 indigenous reactors. These conditions weaken distinctions between civilian and military nuclear programs and the value of IAEA safeguards</p>	<p>The Atomic Energy Act requires safeguards in perpetuity on all U.S. nuclear materials and equipment transferred under an agreement. (Sec 123 a. (1))</p> <p>The Hyde Act requires IAEA safeguards "in perpetuity" to all the facilities India declared as civilian in its separation plan. (Sec 104(b)(2)). These include the 8 indigenous reactors.</p>	<p>India and the IAEA will agree on "safeguards" to prevent the withdrawal of safeguarded nuclear material, as well as "corrective measures to ensure the uninterrupted operation of civilian nuclear reactors."</p> <p>Also, "India will place its civilian nuclear facilities under India-specific safeguards in perpetuity." (Article 5.6(c)).</p>	<p>None. Privately, State Department officials say they don't know what "corrective measures" or "India-specific safeguards" mean.</p>	<p>PM Singh stated that the India-specific IAEA agreement will include "assurances of uninterrupted supply of fuel to reactors that would be placed under IAEA safeguards together with India's right to take corrective measures in the event fuel supplies are interrupted" (<i>pmindia.nic.in</i>, 8/13/07)</p>	<p>Agreeing to "corrective measures" that aren't defined is a recipe for conflict. India implies that it may break safeguards if fuel-supply is interrupted. If the IAEA, encouraged by the U.S., accepts this permissive formulation, then the barriers to converting civilian to military nuclear programs will be lowered, and others may seek to follow suit.</p>
<p>VI. Guaranteed Fuel Supply</p> <p>Unlike all other 123 agreements, this one contains fuel guarantees – four of them. Should the U.S. help guarantee fuel for India even if it tests a nuclear weapon?</p>	<p>The AEA is silent on fuel supplies because 123 agreements are not commitments to supply but only a legal framework for cooperation.</p> <p>Under the Hyde Act, the U.S. should:</p> <p>a) not facilitate or encourage nuclear exports to India by any other state if such exports are halted by the U.S. (Sec.102(13));</p> <p>b) get the Nuclear Suppliers Group to stop exports if the U.S. terminates exports (Sec.103(a) (6)); and</p> <p>c) restrict India's strategic fuel reserve to enough for "reasonable reactor operating requirements." (Sec.103(b)(10)).</p>	<p>The four guarantees are to:</p> <ol style="list-style-type: none"> 1) include assurances on fuel supply in the cooperation agreement 2) help negotiate with the IAEA an India-specific fuel supply agreement; 3) support development of a strategic nuclear fuel reserve to guard against any disruption of supply over the lifetime of India's reactors; 4) in the event of a fuel disruption, convene with India a group of friendly supplier countries to restore fuel supply to India (Article 5.6) 	<p>Burns: "In the event of any kind of hypothetical disruption of supply...we know it's important for the Indians to have a continuous supply of fuel. And that's why a year and a half ago President George W Bush offered the four fuel assurances that have been written into this law" (<i>www.newkerala.com</i>, 7/28/07).</p>	<p>Singh: "An important assurance given is the commitment of support for India's right to build up strategic reserves of nuclear fuel to meet the lifetime requirements of India's reactors" (<i>The Hindu</i>, 8/13/07).</p> <p>"The bilateral cooperation agreement contains elaborate provisions... to ensure the continuous operation of India's reactors. These include fuel supply assurances, the right to take corrective measures, and a strategic fuel reserve for the lifetime of India's reactors in case of cessation of cooperation" (External Affairs Minister to Parliament, 8/16/07).</p>	<p>Administration is trying to convince other states to forego enrichment and reprocessing and instead rely on the commercial market for nuclear fuel with a few governmental guarantees. This agreement pushes in the opposite direction by facilitating Indian enrichment and reprocessing AND helping India escape the consequences if it breaks nonproliferation norms. The U.S. gives no such fuel assurances even to its closest allies.</p>