

India-US Civil Nuclear Agreement

PM Dr. Manmohan Singh's August 17, 2006 & August 13, 2007 speeches; Henry Hyde Act, December 18, 2006; Agreed Text on India-US nuclear cooperation, August 1, 2007

In this note, we have presented a table that compares four developments with regard to the India-US civil nuclear agreement. The **first** column contains extracts of the Prime Minister's statement in Parliament in August last year. The **second** column contains extracts of the relevant points from the Henry Hyde Act as passed by the US Congress. The **third** column contains extracts of the relevant text from the 123 Agreement, and the **last** column contains extracts from the PM's statement in Parliament on August 13, 2007.

On July 27, 2007 Indian and US policymakers came to an agreement on civil nuclear cooperation. The text was agreed on August 1, 2007. It is titled, "Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy (123 Agreement)". On August 13, 2007, the Indian Prime Minister gave a statement in the Lok Sabha on the specific provisions of the Agreement.

Prior to this the *Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006*, was passed by the US House of Representatives and Senate as an enabling legislation for a bilateral cooperation agreement between the US and India. It was approved by the

US House of Representatives by a vote of 330-59 and unanimously by the US Senate. The US President, George W. Bush, signed it into law on December 18, 2006.

India and the US have produced two joint statements regarding an India-US nuclear agreement on July 18, 2005 and 2 March, 2006. In a speech delivered on August 17th, 2006 Prime Minister Manmohan Singh addressed Indian concerns regarding the agreement. Referring to the Prime Minister's August 17th, 2006 speech, External Affairs Minister, Pranab Mukherjee said, in Parliament on December 12, 2006, "These principles and concerns continue to remain the basis for our engagement with the United States and the international community on the tasks ahead. I would also like to share with the House that the Government has taken note of certain extraneous and prescriptive provisions in the legislation."

The table below is based on the PM's speeches of August 2006 & August 2007 (<http://pmindia.nic.in>), the Henry Hyde Act (<http://thomas.loc.gov>), and the Agreed Text on India-US nuclear cooperation is from the Ministry of External Affairs (<http://meaindia.nic.in>).

Prepared by Omair Ahmad & Priya Parker, Updated August 16, 2007

Topic	PM's statement in Parliament, August 17, 2006	Henry J. Hyde Act, 2006	Agreed Text of 123 Agreement August 1, 2007	PM's statement in Parliament, August 13, 2007
Impact of Agreement on India's Foreign Policy	Our foreign policy is determined solely by our national interests. No legislation enacted in a foreign country can take away from us that sovereign right. Thus there is no question of India being bound by a law passed by a foreign legislature. Our sole guiding principle in regard to our foreign policy, whether it is on Iran or any other country, will be dictated entirely by our national interest.	Section 103(b)(4): [The following shall be the policies of the United States:] secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction.	Article 2.1: Each Party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations, and license requirements concerning the use of nuclear energy for peaceful purposes.	There is no question that we will ever compromise, in any manner, our independent foreign policy. We shall retain our strategic autonomy.
Full Civil Nuclear Cooperation	The central imperative in our discussions with the United States on Civil Nuclear Cooperation is to ensure the complete and irreversible removal of existing restrictions imposed on India through iniquitous restrictive trading regimes over the years. We seek the removal of restrictions on all aspects of cooperation and technology transfers pertaining to civil nuclear energy - ranging from nuclear fuel, nuclear reactors, to re-processing spent fuel, i.e. all aspects of a complete nuclear fuel cycle.	Section 103 (a)(5): [The following shall be the policies of the United States:] given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India.	Article 2.1: <i>See Above</i> Article 2.2. The purpose of the Agreement being to enable full civil nuclear energy cooperation between the Parties. Article 5.2: Transfers of dual-use items that could be used in enrichment, reprocessing or heavy water production facilities will be subject to the Parties' respective applicable laws, regulations and license policies.	The concept of full civil nuclear cooperation has been clearly enshrined in this Agreement. The Agreement stipulates that such cooperation will include nuclear reactors and aspects of the associated nuclear fuel cycle, including technology transfer on industrial or commercial scale.
Principle of Reciprocity	We will accept only IAEA safeguards on the nuclear facilities, in a phased manner, and as identified for that purpose in the Separation Plan only when all nuclear restrictions on India have been lifted.	Section 104 (a) and (b)(2): The President may exempt [various requirements of the Atomic Energy Act of 1954 if he makes a determination] that India and the IAEA have concluded all legal steps required prior to signature by the parties of an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials, and programs as declared in the	Article 10.2: Taking into account Article 5.6 of this Agreement, India agrees that nuclear material and equipment transferred to India by the United States of America pursuant to this Agreement and any nuclear material used in or produced through the use of nuclear material, non-nuclear material, equipment or components so transferred shall be subject to safeguards in perpetuity in accordance with the India-specific Safeguards Agreement between India and the IAEA [identifying data] and	The principle of reciprocity, which was integral to the July 2005 Statement, has been fully safeguarded in this Agreement. There is no change in our position that we would accept only IAEA safeguards on our civilian nuclear facilities. This would also be in a phased manner and as identified for that purpose in the Separation Plan, and only when all international restrictions on nuclear trade with India have been lifted. India will not take any irreversible steps with the IAEA

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		plan described in paragraph (1), including materials used in or produced through the use of India's civil nuclear facilities.	an Additional Protocol, when in force.	prior to this.
Certification	The draft Senate Bill requires the US President to make an annual report to the Congress that includes certification that India is in full compliance of its non-proliferation and other commitments. We have made it clear to the United States our opposition to these provisions.	Section 104(g)(1): The President shall keep the appropriate congressional committees fully and currently informed of the facts and implications of any significant nuclear activities of India.	Article 10.7: Upon the request of either Party, the other Party shall report or permit the IAEA to report to the requesting Party on the status of all inventories of material subject to this Agreement.	This Agreement emphasizes the desire of both countries to cooperate extensively in the use of nuclear energy for peaceful purposes as a means of achieving energy security on a stable, reliable and predictable basis. This Agreement further confirms that US cooperation with India is a permanent one. There is no provision that states that US cooperation with India will be subject to an annual certification process.
India as a State possessing Advanced Nuclear Technology	Hon'ble Members may recall that the July Statement, had acknowledged that India should be regarded as a State with advanced nuclear technology enjoying the same advantages and benefits as other states with advanced nuclear technology, such as the US.	[The Hyde Act does not address this but the Joint Explanatory Statement of the Committee that clarified the Hyde Act to US legislators states on pg 11]: "In the July 18, 2005, Joint Statement, India committed to accept the "same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States. India's welcome steps regarding nuclear and missile-related export controls are important progress in this regard, but the other leading countries with advanced nuclear technology will expect India to join them also in stemming the flow of items that can contribute to chemical and biological weapons programs and of destabilizing types or amounts of certain conventional weapons."	Preamble: Affirming that cooperation under this Agreement is between two States possessing advanced nuclear technology, both Parties having the same benefits and advantages, both committed to preventing WMD proliferation	This Agreement makes specific references to India and the United States as States possessing advanced nuclear technology, both parties having the same benefits and advantages, both committed to preventing WMD proliferation.

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<p>Safeguards Agreement and Fuel Assurances</p>	<p>In this respect too, it is worth emphasizing that the March 2006 Separation Plan provides for an India-Specific Safeguards Agreement with the IAEA, with 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. We, of course, have the sovereign right to take all appropriate measures to fully safeguard our interests. An important assurance is the commitment of support for India's right to build up strategic reserves of nuclear fuel over the lifetime of India's reactors.</p> <p>There is no question of India signing either a Safeguards Agreement with the IAEA or an Additional Protocol of a type concluded by Non-Nuclear Weapons States who have signed the NPT. We will not accept any verification measures regarding our safeguarded nuclear facilities beyond those contained in an India-Specific Safeguards Agreement with the IAEA. Therefore there is no question of allowing American inspectors to roam around our nuclear facilities.</p>	<p>Section 104(d)(5)(B)(ii): {Establishes a Nuclear Export Accountability Program, which is} A detailed system of reporting and accounting for technology transfers, including any retransfers in India, authorized by the Department of Energy pursuant to section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)). Such system shall be capable of providing assurances that—</p> <p>(I) the identified recipients of the nuclear technology are authorized to receive the nuclear technology;</p> <p>(II) the nuclear technology identified for transfer will be used only for peaceful safeguarded nuclear activities and will not be used for any military or nuclear explosive purpose; and</p> <p>(III) the nuclear technology identified for transfer will not be retransferred without the prior consent of the United States, and facilities, equipment, or materials derived through the use of transferred technology will not be transferred without the prior consent of the United States.</p> <p>[To this the <i>Joint Explanatory Statement of the Committee of Conference on the Hyde Act</i> states on Pg. 10 clarifies] "On March 6, 2006, the Indian Prime Minister told the Indian Parliament that the U.S. Government had said that if a disruption of fuel supplies to India occurs, the U.S. would, with India, jointly convene a group of friendly supplier countries, such as Russia, France and the United Kingdom, to pursue such measures as would restore</p>	<p>Article 5 (6): (a) As part of its implementation of the July 18, 2005, Joint Statement the United States is committed to seeking agreement from the U.S. Congress to amend its domestic laws and to work with friends and allies to adjust the practices of the Nuclear Suppliers Group to create the necessary conditions for India to obtain full access to the international fuel market, including reliable, uninterrupted and continual access to fuel supplies from firms in several nations.</p> <p>(b)... i) The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.</p> <p>ii) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement.</p> <p>iii) The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.</p> <p>iv) If despite these arrangements, a disruption of fuel supplies to India occurs, the United States and India would jointly convene a group of friendly supplier countries to include countries such as Russia, France and the United Kingdom to pursue such measures as</p>	<p>As agreed in the March Separation Plan, India has accepted only IAEA safeguards that will be reflected in an India-specific Safeguards Agreement with the IAEA.</p> <p>We have not consented to any provision that mandates scrutiny of our nuclear weapons programme or any unsafeguarded nuclear facilities.</p> <p>I would like to reiterate that the March 2006 Separation Plan provided for an India-specific Safeguards Agreement with the IAEA, with 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. 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.</p> <p>This Agreement envisages, in consonance with the Separation Plan, US support for an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply for the lifetime of India's reactors.</p> <p>It has endorsed the right of India to take corrective measures to ensure uninterrupted operation of its civilian</p>

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		<p>fuel supply to India. The conferees understand and expect that such assurance of supply arrangements that the U.S. is party to will be concerned only with disruption of supply of fuel due to market failures or similar reasons, and not due to Indian actions that are inconsistent with the July 18, 2005 commitments, such as a nuclear explosive test."</p>	<p>would restore fuel supply to India.</p> <p>(c) In light of the above understandings with the United States, an India-specific safeguards agreement will be negotiated between India and the IAEA providing for safeguards to guard against withdrawal of safeguarded nuclear material from civilian use at any time as well as providing for corrective measures that India may take to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel supplies. Taking this into account, India will place its civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate safeguards agreement to this end with the IAEA.</p>	<p>nuclear reactors in the event of disruption of foreign fuel supply.</p> <p>Among the significant and innovative features of this Agreement are specific mention of the right to run foreign supplied reactors 'without interruption' and to take 'corrective measures' in the event of fuel supply disruption.</p> <p>The Agreement specifically states in regard to fuel supply assurances and India's right to take "corrective measures" that there will be no derogation of India's rights in this regard, including the right to take "corrective measures" to ensure the uninterrupted operation of its reactors.</p>
<p>Integrity and reliability of our strategic programme -- autonomy of decision-making and future scientific research and development</p>	<p>The integrity of our 3-Stage nuclear programme will not be affected. The autonomy of our Research and Development activity, including development of our fast breeder reactors and the thorium programme, in the nuclear field will remain unaffected. We will not accept interference by other countries vis-à-vis the development of our strategic programme. We will not allow external scrutiny of our strategic programme in any manner, much less allow it to be a condition for future nuclear cooperation between India and the international community.</p>	<p>Section 109 (a): The Secretary of Energy, acting through the Administrator of the National Nuclear Security Administration, is authorized to establish a cooperative nuclear nonproliferation program to pursue jointly with scientists from the United States and India a program to further common nuclear nonproliferation goals, including scientific research and development efforts, with an emphasis on nuclear safeguards.</p>	<p>Article 2.4: This Agreement shall be implemented in a manner so as not to hinder or otherwise interfere with any other activities involving the use of nuclear material, non-nuclear material, equipment, components, information or technology and military nuclear facilities produced, acquired or developed by them independent of this Agreement for their own purposes.</p>	<p>There are explicit provisions in the Agreement that make it clear that this Agreement does not affect our unsafeguarded nuclear facilities and that it will not affect our right to use materials, equipment, information or technology acquired or developed independently. India and the United States have agreed that the implementation of the Agreement will not hinder or otherwise interfere with India's nuclear activities including our military nuclear facilities. Nothing in the Agreement would impinge on our strategic programme, our three-stage nuclear power programme or our ability to conduct advanced R&D.</p>

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				<p>Our right to use for our own purposes our independent and indigenously developed nuclear facilities has been fully preserved.</p> <p>The Agreement also provides for non-hindrance and non-interference in our activities involving use of nuclear material, non-nuclear material, equipment, components, information or technology and military nuclear facilities produced, acquired or developed independently for our own purposes.</p>
Moratorium on production of fissile material	<p>We are not willing to accept a moratorium on the production of fissile material. We are only committed to negotiate a Fissile Material Cut-off Treaty in the Conference on Disarmament in Geneva, a commitment which was given by the previous government. India is willing to join only a non-discriminatory, multilaterally negotiated and internationally verifiable FMCT, as and when it is concluded in the Conference on Disarmament, again provided our security interests are fully addressed.</p>	<p>Section 104(c)(2)(D): [The President must submit to Congress] a description of the steps that India is taking to work with the United States for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the United States has taken and will take to encourage India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty.</p> <p>Section 104(b)(4): [The President must make the determination that] India is working actively with the United States for the early conclusion of a multilateral treaty on the cessation of the production of fissile materials for use in nuclear weapons or other nuclear explosive devices.</p>	<p>Article 6 (iii): India will establish a new national reprocessing facility dedicated to reprocessing safeguarded nuclear material under IAEA safeguards and the Parties will agree on arrangements and procedures under which such reprocessing or other alteration in form or content will take place in this new facility... Any special fissionable material that may be separated may only be utilized in national facilities under IAEA safeguards.</p> <p>Article 2.4: <i>See Above</i></p>	<p>Any special fissionable material that may be separated may be utilized in national facilities under IAEA safeguards. Thus the interests of our three stage nuclear programme have been protected.</p>

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Non-discriminatory Global Nuclear Disarmament	We do not accept proposals put forward from time to time for regional non-proliferation or regional disarmament. Pending global nuclear disarmament, there is no question of India joining the NPT as a non-nuclear weapon state, or accepting full-scope safeguards as a requirement for nuclear supplies to India, now or in the future.	Section 103(b)(5): [The following shall be the policies of the United States]... Seek to halt the increase of nuclear weapon arsenals in South Asia and to promote their reduction and eventual elimination.	--No mention--	Our commitment to universal, non-discriminatory and total elimination of nuclear weapons remains undiminished. It was this vision of a world free of nuclear weapons which Shri Rajiv Gandhi put before the UN in 1988 and this still has universal resonance. We remain committed to a voluntary, unilateral moratorium on nuclear testing. We are also committed to negotiate a Fissile Material Cut-off Treaty or FMCT in the Conference on Disarmament. India is willing to join only a non-discriminatory, multilaterally negotiated, and internationally verifiable FMCT, as and when it is concluded in the Conference on Disarmament, subject to it meeting our national security interests.
Cessation of Future Cooperation	There is provision in the proposed US law that were India to detonate a nuclear explosive device, the US will have the right to cease further cooperation. Our position on this is unambiguous. The US has been intimated that reference to nuclear detonation in the India-US Bilateral Nuclear Cooperation Agreement as a condition for future cooperation is not acceptable to us. We are not prepared to go beyond a unilateral voluntary moratorium on nuclear testing as indicated in the July Statement. The same is true of other intrusive non-proliferation benchmarks that are	Section 104(d)(3)(A): Notwithstanding the entry into force of an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and pursuant to this title, and except as provided under subparagraph (B), exports of materials nuclear and nuclear-related material, equipment, or technology to India shall be terminated if there is any materially significant transfer by an Indian person of - (i) nuclear or nuclear-related material, equipment, or technology that is not consistent with NSG guidelines or	Article 14.1: Either Party shall have the right to terminate this Agreement prior to its expiration on one year's written notice to the other Party. 2. Before this Agreement is terminated pursuant to paragraph 1 of this Article, the Parties shall consider the relevant circumstances and promptly hold consultations, as provided in Article 13, to address the reasons cited by the Party seeking termination... They further agree to take into account whether the circumstances that may lead to termination or cessation resulted from a	Cessation of cooperation can be sought by the US only if it is prepared to take the extreme step of termination of the Agreement. India's right to take "corrective measures" will be maintained even after the termination of the Agreement. In the case of termination of this Agreement and cessation of cooperation by either Party, each has the right to seek return of nuclear material and equipment supplied by it to the other. However, before the right of return is exercised, the Agreement

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	<p>mentioned in the proposed US legislation. India's possession and development of nuclear weapons is an integral part of our national security. This will remain so.</p>	<p>decisions, or (ii) ballistic missiles or missile-related equipment or technology that is not consistent with MTCR guidelines, unless the President 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.</p> <p>Section 106: A determination and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this title.</p>	<p>Party's serious concern about a changed security environment or as a response to similar actions by other States which could impact national security.</p> <p>Article 2.1: Each Party shall implement this Agreement in accordance with its respective applicable treaties, national laws, regulations, and license requirements concerning the use of nuclear energy for peaceful purposes.</p>	<p>commits the parties to consult and to take into account specific factors such as national security, ongoing contracts and projects, compensation at market value, physical protection and environmental issues. India and the United States have agreed to consider carefully the circumstances that may lead to termination, including a party's concerns about a change in the security environment or a response to similar actions by other states that could impact on national security.</p> <p>The Agreement does not in any way affect India's right to undertake future nuclear tests, if it is necessary in India's national interest. Let me hence reiterate once again that a decision to undertake a future nuclear test would be our sovereign decision, one that rests solely with the Government. There is nothing in the Agreement that would tie the hands of a future Government or legally constrain its options to protect India's security and defence needs.</p>

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