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Russia 123 Agreement: Not Ready for Primetime

Jack Spencer

The United States and Russia recently signed the Agreement for Cooperation in the Field of Peaceful Uses of Nuclear Energy. This deal would provide a framework to govern peaceful nuclear commerce between Russia and the United States. The U.S. has entered into similar deals with most of the world's major commercial nuclear countries and organizations, including China, Brazil, Euratom,¹ and Japan.² Known as 123 Agreements, they are required by Section 123 of the 1954 Atomic Energy Act before the U.S. can engage foreign nations in commercial nuclear activities. The agreements help open markets to U.S. industry, provide access to peaceful nuclear technology, and influence nonproliferation policy. If implemented under the right conditions, such an agreement with Russia would advance U.S. commercial and energy interests. While this is an important agreement, Congress should object unless the Bush Administration addresses the following outstanding issues:

1. Russia is not cooperating with the U.S. on disclosure of nuclear cooperation with Tehran and cessation of arms sales to protect the Iranian nuclear program.
2. Russia lacks a comprehensive liability regime for commercial nuclear activities, thus creating a major obstacle to U.S. companies conducting commercial nuclear business in Russia.
3. Russia has made no commitment to open its nuclear market to foreign competition.

Resolution of these issues, however, does not solve the long list of outstanding grievances that the

U.S. still has with Russia, and implementation of the 123 Agreement must not be viewed as a concession on any of them. The fact is that Russia's aggressive rhetoric and behavior toward some of America's friends and allies such as Georgia and Ukraine, its attempts to dictate NATO policy, its lackluster support for Iranian sanctions, and its ongoing sales of conventional arms to Iran pose significant risks to larger U.S. foreign policy interests.

123 Agreement for the United States: The Balance Sheet. Under the right conditions, the U.S.–Russia nuclear deal should advance U.S. commercial and energy interests.

First, it should advance U.S. energy interests. As the nation seeks to decrease carbon dioxide (CO₂) emissions without causing undue economic harm, it is becoming clear that the U.S. must expand its access to nuclear power. A recent analysis by the Energy Information Agency on the economic impact of the Lieberman–Warner climate change bill (S. 2191) considered seven scenarios for meeting the bill's strict CO₂ reduction mandates. While every scenario led to negative economic consequences, the economic impact could be best controlled by building hundreds of new nuclear reactors.³ Other countries are reaching similar conclusions.

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214 Massachusetts Avenue, NE
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(202) 546-4400 • heritage.org

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If the current trend of enacting policies to limit CO₂ emissions continues, there will need to be a substantial buildup of nuclear power in the coming decades. Unfortunately, the U.S. does not have the industrial base to support such a buildup. It must look abroad to meet its demand until domestic capacity is developed. Russia is one of only a handful of countries that have both the industrial capacity and the technical know-how to help the U.S. meet that demand.

Second, it should advance U.S. industrial interests. The U.S. is no longer a leader in commercial nuclear technology. Its three decades-long hiatus has caused it to drop behind industry leaders like France, Russia and Japan. Worse, there is no guarantee that U.S. industry will ever revive—even as the world embarks on a nuclear renaissance.

One reason for this is the structure of the global commercial nuclear marketplace. Most markets are closed or tightly controlled by national governments. And many of the international suppliers of nuclear goods are either state-owned or subsidized. The one exception to this is the U.S., which is very open to foreign competition. That is not to say that the U.S. market is as free as it should be, especially for uranium enrichment services, but it is much freer than most markets.

This creates a situation in which privately owned U.S. firms are forced to compete with state-subsidized firms in the U.S. and often denied access to markets abroad. The best way to rectify this situation is not to close the U.S. market to foreign competition but to open foreign markets to U.S. suppliers. The inefficiencies of state ownership will eventually allow privately owned U.S. companies to emerge as industry leaders once again if they are allowed to compete. The U.S.–Russian 123 agreement could help to open the potentially vast Russian market to U.S. suppliers.

Necessary Next Steps for the U.S. Despite its potential advantages, the Russian 123 Agreement

would not advance U.S. interests unless certain conditions are met and outstanding issues resolved. The 1954 Atomic Energy Act allows Congress to halt the agreement as well as provide oversight of the pact. It will be imperative that Congress exercise that authority moving forward. To that end, Congress must assure that the agreement includes provisions that:

- **Compel Russia to discontinue support of Iran's military nuclear energy program and provide its full disclosure.** Russia's interactions with Iran could prove positive if they were managed properly. Indeed, it is Russia's provision of nuclear fuel that undermines Iran's justification for the necessity of uranium enrichment capability. However, Russia must discontinue any efforts that advance Iran's heavy water reactor program, enrichment activities, or spent fuel reprocessing programs. Russia must disclose its past activities in support of the Iranian program, as well as what it knows about third parties' assistance to it. Russia should work with the United States and other nations to compel Iran to discontinue any fuel enrichment or spent fuel reprocessing activities, which will give Iran access to bomb-grade material. The problem with the current path is that the U.S. has very little leverage to compel either Russia or Iran to do anything differently. The U.S. should use the prospect of the 123 Agreement as an incentive to halt Russia's interactions with Iran on nuclear issues.
- **Provide adequate liability protection for U.S. companies doing business in Russia.** Even with a 123 Agreement in place, U.S. companies would likely forgo engaging in commercial activities in Russia due to a lack of liability protection. This has been one of the primary obstacles preventing U.S. companies from engaging in international nuclear commerce. Indeed, many countries use the lack of liability protection for U.S. companies as a means to protect their domestic nuclear

1. Euratom consists of 27 European nations.
2. U.S. Department of Energy, *123 Agreements for Peaceful Cooperation* at http://nnsa.energy.gov/nuclear_nonproliferation/123_agreements_peaceful_cooperation.htm (May 14, 2008).
3. U.S. Department of Energy, Energy Information Administration, *Energy Market and Economic Impacts of S. 2191, the Lieberman-Warner Climate Security Act of 2007*, April 2008.

industry from U.S. competition. There is a solution, however. The United States is part of the Convention for Supplementary Compensation for Nuclear Damages, which creates a liability framework to manage international liability issues. Parties to the convention operate under common liability rules for nuclear activities. This allows U.S. companies to compete abroad. Russia should join the convention as a condition of moving forward with the 123 Agreement.

- **Provide two-way market access.** This agreement should not be simply an avenue to bring Russian goods and services to the U.S. market. While that is critical, it is also important that U.S. companies are allowed to compete for business in Russia. Like the U.S., Russia is planning a significant expansion of nuclear power. And while Russian nuclear technology is second to none, foreign competition will assure that the highest quality standards are maintained throughout the country.

Conclusion. The 1954 Atomic Energy Act gives Congress oversight over 123 Agreements and it should oppose signature of the agreement in this case unless the above conditions are met. While this agreement may have the potential to help open markets to U.S. industry, provide access to some peaceful nuclear technology, and influence nonproliferation policy, currently it is not ready for implementation. In fact, it could set these interests back significantly. However, a good agreement could help the U.S. reach its objectives in Iran, meet its growing energy and environmental requirements and set America's commercial nuclear industry back on a path to leadership. For these reasons, Congress should ensure that the U.S. accepts the U.S.–Russia 123 Agreement only if and when the outstanding issues are resolved.

—*Jack Spencer is Research Fellow in Nuclear Energy in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*