

**Testimony of Assistant Secretary Thomas M. Countryman on
Administration Policy Related to Agreements for Peaceful Nuclear
Cooperation (123 Agreements)**

Senate Foreign Relations Committee

January 30, 2014

Mr. Chairman and Ranking Member:

Thank you for the opportunity to testify today before the Committee. The question of the appropriate role of our civil nuclear cooperation agreements in U.S. non-proliferation policy is an important one, and it is my privilege to be here to address it.

Limiting the Spread of Enrichment and Reprocessing

Since taking office, this Administration has made minimizing the further proliferation of nuclear weapons material a top priority. In order to do so, the Administration has undertaken a large number of different activities designed to reinforce our longstanding policy of minimizing the further proliferation of enrichment and reprocessing, or ENR, technologies and initiated new efforts to this end. We have many tools to achieve this end,

and for many years we've focused our efforts on raising global standards in this regard.

For example, in the Nuclear Suppliers Group (NSG), six years of effort culminated in the 2011 revised Guidelines establishing criteria for ENR transfers. These new criteria include full compliance by the recipient with the Nuclear Nonproliferation Treaty (NPT) and International Atomic Energy Agency (IAEA), safeguards; reporting on export controls to the United Nations Security Council's 1540 Committee; commitment to IAEA safety standards and adherence to accepted international safety conventions; and conclusion of an inter-governmental agreement with the supplier nation including assurances regarding non-explosive use, effective safeguards in perpetuity, and retransfer. Suppliers also undertook to avoid, as far as practicable, the transfer of enabling design and manufacturing technology associated with nuclear transfers. The NSG has committed to facilitate access to nuclear material for the peaceful uses of nuclear energy, and to encourage states, within the scope of Article IV of the NPT, to rely on the international commercial market and other available international mechanisms for nuclear fuel services that do not undermine the global fuel market.

We've also worked with our global partners to create incentives for states to rely on international markets for low enriched uranium fuel, including separate fuel banks established by the U.S. Department of Energy, Russia, the IAEA, and a fuel assurance initiative from the United Kingdom.

123 Agreements Policy

The implementation of agreements for peaceful nuclear cooperation, or 123 agreements, is another tool we have to limit the further proliferation of ENR. As you know, 123 agreements contain many stringent nonproliferation conditions, making them the strongest civil nuclear cooperation agreements in the world in terms of nonproliferation requirements. Our 123 agreements require partner countries to apply full scope IAEA safeguards to non-nuclear-weapon states; require that all material and equipment transferred under the agreement and special nuclear material used in or produced therefrom, will be for peaceful purposes; require adequate physical protection of material transferred under the agreement; and grant U.S. consent rights over storage of the most sensitive materials, and over the enrichment, reprocessing, alteration in form or content, storage, and retransfer of U.S.-obligated nuclear material. With such high standards, it

follows that the more 123 agreements we conclude, the stronger the nonproliferation controls that will apply to global nuclear commerce. Consequently, it is in the national security interests of the United States to maximize the number of countries with which we conclude 123 agreements. Put simply, global security is enhanced through our 123 agreements.

Some have advocated an approach that would require all future U.S. 123 agreement partners to agree to legal obligations not to pursue ENR technologies from any source. We do not believe such a “one size fits all” approach is in our national security interests. This type of blanket requirement would reduce our ability to extend our strong nonproliferation norms to new parts of the world – norms that have a real impact in preventing proliferation. Instead this blanket approach would likely drive states with emerging nuclear power programs into the arms of suppliers with lower nonproliferation standards.

Moving forward on future 123 agreement negotiations, we will maintain flexibility in the structure of our agreements in order to meet the requirements of U.S. law and advance our primary objective of combating the proliferation of ENR technologies. The commitments we seek may take

a range of forms depending on the approach that best suits our primary policy objective of minimizing the further proliferation of ENR technologies.

Our Policy Applied to Vietnam

The text of the agreement we initialed with Vietnam in October is a good example of how our 123 agreement policy advances our objective of minimizing the proliferation of ENR technologies. In the text, Vietnam states its political commitment to rely on international fuel services and comply with the supplier controls adopted by the NSG rather than pursuing its own ENR facilities. This was an important step taken by the Government of Vietnam, because it is a public affirmation that domestic ENR facilities are not necessary. The scale of Vietnam's intended program does not warrant the investment, and international fuel cycle services are adequate to provide for its needs. I would note that this is also the case for the vast majority of states with emerging civil nuclear programs. The text of the 123 agreement with Vietnam is also fully compliant with all Atomic Energy Act of 1954 (AEA) requirements, including the requirement that Vietnam secure

our consent before it can enrich or reprocess U.S.-origin materials. The agreement does not provide any advance consent in this regard.

Our 123 agreement negotiations with Vietnam also demonstrate the additional follow-on nonproliferation benefits that can accrue when we enter into 123 agreements with new partners. Since we began negotiating, Vietnam has brought into force an Additional Protocol with the IAEA, begun participating in the Global Initiative to Combat Nuclear Terrorism, and ratified the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material. We are also seeing greater interest from Vietnam in endorsing the Proliferation Security Initiative.

Congressional Role/Taiwan

In addition to outlining our 123 policy, you asked us to address three issues. First, you asked about the nonproliferation criteria each 123 agreement is required to meet. In 1978, Congress amended the AEA, thereby strengthening the legal requirements for 123 agreements. These changes addressed major issues associated with civil nuclear cooperation, including nuclear security and nuclear safeguards, ensuring that U.S. civil

nuclear cooperation agreements have the strongest non-proliferation requirements in the world. We feel that these requirements in our 123 agreements, in combination with the other tools I have discussed, are sufficient. With regard to the role of Congress in 123 agreements, we believe Congressional oversight has worked well over the years. As mentioned previously, the changes that Congress made in 1978 to the AEA have addressed the primary non-proliferation concerns about U.S. civil nuclear cooperation. To the fullest extent consistent with presidential prerogatives in the area of foreign diplomacy and the negotiation of international agreements, we will continue to keep Congress informed of our progress in negotiating specific 123 agreements, and address concerns that Congress may raise in the course of our 123 agreement negotiations with potential partners.

Finally, you asked us to address the proposed Taiwan 123 Agreement, recently submitted for congressional review. Under the Taiwan Relations Act of 1979, any programs, transactions or other relations conducted or carried out by the President or any agency of the United States Government relative to Taiwan are entered into by the American Institute in Taiwan, or AIT, and such agreements are concluded with the Taipei Economic and

Cultural Representative Office in the United States, or TECRO, as the representative of the authorities on Taiwan. As a consequence, this proposed agreement is between AIT and TECRO. Upon entry into force, this agreement would replace a similar 1972 agreement for peaceful nuclear cooperation.

The authorities on Taiwan have been long-standing partners of the United States in the peaceful uses of nuclear energy, and we have cooperated closely in developing their civil nuclear program. All their power reactors and their existing research reactor were supplied by U.S. companies. All fuel for these reactors is supplied by the United States. As the President noted in his message transmitting the AIT-TECRO 123 agreement to Congress the authorities on Taiwan, over the last two decades, have established a reliable record on nonproliferation and on commitments to nonproliferation. For example, theirs was the first nuclear power program to accept application of the measures of the Additional Protocol to IAEA safeguards agreements. These commitments were reiterated in the letter from TECRO to AIT provided at the time the proposed agreement was signed.

The AIT-TECRO agreement contains all the provisions required by section 123 of the AEA, as amended, but it also contains additional provisions. One important provision that the authorities on Taiwan reiterated as a legal element in the agreement is their long-standing policy not to seek enrichment and reprocessing technologies.

Also under the terms of the agreement, all nuclear supply to the authorities on Taiwan from any source is treated as though it is supplied by the United States and is brought under the terms and conditions of the agreement. This provision ensures, *inter alia*, that all nuclear activities on Taiwan are subject to the safeguards requirements of the existing IAEA safeguards agreement, which normally applies only to material, equipment, components, or information supplied under the 1972 agreement and any superseding agreement. It has been U.S. practice for over thirty years to allow foreign suppliers to use the 1972 agreement, under appropriate conditions, and to bring nuclear activities on Taiwan under that agreement, in order to maintain full scope safeguards on Taiwan. The new AIT-TECRO agreement ensures that this continues to be the case, establishing a full scope safeguards requirement for the authorities on Taiwan and bringing the full scope of

nuclear activities on Taiwan under the various consent requirements of the new agreement.

A third important feature is the indefinite term of the new agreement, unless the agreement is terminated by either of the parties on one-year's notice. A thirty-year term with rolling renewal for five-year terms has been the usual practice in recent U.S. nuclear cooperation agreements. In this case, however, the agreement provides more than just a vehicle for U.S. supply. According to its terms, the safeguards agreement among the authorities on Taiwan, the United States, and the IAEA remains in force only as long as the peaceful nuclear cooperation agreement between the authorities in the United States and the authorities in Taiwan, including any superseding agreement, remains in force. The new AIT-TECRO agreement will be such a superseding agreement. If the safeguards agreement is terminated the IAEA would have the right to apply safeguards to existing nuclear material and to produced special fissionable material; however, no new material or equipment could be safeguarded. Without a new safeguards agreement, all nuclear trade with the authorities on Taiwan that required safeguards would cease.

In short, the AIT-TECRO agreement is unique, one of the strongest 123 agreements that the United States has ever negotiated, and one that will ensure the continued ability of U.S. industry to work with its partners on Taiwan.

Next Steps

Going forward, we will use our 123 agreement negotiations to achieve a broad range of nonproliferation commitments with our partners. Beyond these commitments, the conclusion of 123 agreements with new partners yields even more nonproliferation benefits: the ability to influence the partner's nuclear programs in such a way that it comports with the highest global standards of safety, security, and nonproliferation. When we establish new nuclear partnerships, our government and private sector experts build new relationships and open up new venues for cooperation across the spectrum of nuclear activities. This gives us the opportunity to guide and shape the policies and practices of emerging nuclear states, and these opportunities are only available to us if we forge new nuclear cooperation relationships.

Conclusion

With these nonproliferation benefits in mind, we have crafted nuclear cooperation policies that are practical and pragmatic. Make no mistake, our policy is to pursue 123 agreements that minimize the further proliferation of ENR technologies worldwide. The United States wants all nations interested in developing civil nuclear power to rely on the international market for fuel services rather than seek indigenous ENR capabilities. These capabilities are expensive and unnecessary, and reliable supply alternatives are available in the global fuel cycle market.

We will continue to advance the highest possible nonproliferation standards worldwide, and at the center of these efforts is limiting the spread of ENR. Our 123 agreements are important tools in that regard, and the principles that we have established for their negotiation will maintain U.S. leadership in preventing the spread of nuclear weapons.

Mr. Chairman and Ranking Member, thank you.