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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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May 7, 2008

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The President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

We understand that the Administration has negotiated an Agreement for Cooperation Regarding the Peaceful Uses of Atomic Energy (123 Agreement) with the Russian Federation, which you may sign and subsequently submit to Congress. Section 123 of the Atomic Energy Act of 1954 (P.L. 83-703) delegates to the Executive the authority to negotiate such Agreements and provides for Congressional review.

The U.S.-Russia Strategic Framework Declaration that was announced by you with President Putin on April 6, 2008, states that the parties will sign and bring into force this Agreement "to create the necessary legal basis for our cooperation in the peaceful use of nuclear energy," and will permit "the transfer of nuclear materials, reactors and major reactor components between our two countries" that will "further cooperation under bilateral programs" such as "the Global Nuclear Energy Partnership."

While we strongly support the expansion of a strategic partnership with Russia, sending this Agreement to Congress before key questions are answered will most assuredly raise Congressional and public objections that could defeat the ultimate purpose of such an initiative, to improve and solidify our relations with Russia.

When the House of Representatives passed the Iran Counter-Proliferation Act of 2007 (H.R. 1400), it prohibited Agreements for Cooperation between the United States and any country which is assisting Iran's nuclear and missile programs. The bill, which was approved by the House by a vote of 397-16 on September 25, 2007, specifically states that no such Agreement shall "be submitted to the President or to Congress" and "enter into force with such country" unless the (1) President reports that Iran has ceased its efforts to design or acquire a nuclear explosive, or (2) nuclear and missile assistance to Iran has been terminated by such country.

Although the Senate has yet to act on this legislation, H.R. 1400 clearly reflects the bipartisan concern of the House regarding continued U.S. nuclear cooperation with countries that in any manner support the current Iranian regime's pursuit of technologies and materials for a nuclear program whose objectives remain uncertain. Moreover, unless a major change has occurred in Russian support for Iranian nuclear and missile programs since last September, it is highly questionable to send Congress the 123 agreement without first assuring the Congress and the American people that Russia is conforming to the letter, as well as the spirit, of H.R. 1400.

Outlined below are three areas of concern that your Administration should publicly address before this Agreement is sent to Congress.

I. Risk of Technology Diversion to Countries of Proliferation Concern

Congress needs detailed information regarding Russian ability to limit the flow of nuclear technologies from its industrial base and research institutes to countries of proliferation concern such as Iran. Investigations conducted by the Committee on Energy and Commerce uncovered Russian nuclear institutes, who while receiving nonproliferation funds from the Department of Energy (DOE) to help redirect former weapons scientists away from work in countries of proliferation concern, were also selling nuclear technology to Iran.

In some cases, DOE officials were unaware of the activities of the Russian institutes with and in Iran until after these projects were completed. We have learned that DOE's nonproliferation program appears to have been so loosely run that the Department only focused on this problem once this Committee brought it to their attention by providing publicly available advertisements from Russian nuclear institutes. Whether Russian nuclear institutes continue to assist other countries of proliferation concern is unclear, since DOE has not yet responded to this Committee's request for information on this matter. If DOE lacks adequate information about the activities of institutes receiving U.S. funds, how can Congress be assured that your new proposal will not lead to the diversion of nuclear technologies and materials to countries of proliferation concern?

II. Global Nuclear Energy Partnership (GNEP)

Pursuant to this Committee's jurisdiction over civilian nuclear energy, we have an ongoing investigation of GNEP, a program involving the recycling of plutonium, separated from spent-reactor fuel, for use in a new generation of nuclear reactors. Our inquiry revealed that there is still no consensus as to whether the United States should depart from a 30-year nonproliferation policy that prohibits the reprocessing of nuclear fuel. Commercial reprocessing in the United Kingdom, France, Japan, and Russia has resulted in the accumulation of more than 150 metric tons of separated plutonium that can be used to make nuclear weapons, exacerbating the risk of terrorists gaining access to this material. Similarly, DOE's plans for GNEP would also result in material that could be processed for use into nuclear weapons.

At a time when the United States is seeking to limit the spread of reprocessing technology and expertise to other countries, resuming reprocessing would reverse decades of U.S. leadership that contributed to countries such as Argentina, Brazil, South Korea, and Taiwan abandoning their reprocessing ambitions. If we commit to developing GNEP with Russia, as authorized by your proposed 123 Agreement, does this imply that the U.S. is abandoning deep geologic disposal, which is viewed by many experts as the most proliferation-resistant form of disposal?

We are particularly troubled that your proposed 123 Agreement with Russia encourages greater cooperation on the GNEP program, while DOE has yet to develop a proliferation risk assessment for GNEP. Is it premature to enter into an international agreement on nuclear cooperation, predicated upon the GNEP program, before the proliferation risks of GNEP have been assessed?

GNEP technology is in a research and development phase, and is decades away from maturity. Taxpayer costs have yet to be assessed. Given the consistently deep cuts to the Administration's budget requests for GNEP, is it premature to submit this Agreement with Russia to the Congress when there is little consensus that GNEP will be pursued, in its current form, beyond the end of this Administration? Will this 123 Agreement implicitly bind the U.S. to a long-term joint venture with Russia involving yet-to-be developed technologies?

III. Assessment of Russian Assistance to Iran

Prior to consideration of this Agreement, Congress needs a detailed assessment of Russian assistance to all aspects of Iran's nuclear and missile programs. Our concern reaches beyond the potential re-transfer of technology from Russia to Iran and other nations of proliferation concern. We want assurance that Russia's support for the Iranian nuclear and missile programs are not at odds with our nuclear nonproliferation policy with respect to Iran.

While it is encouraging that Russia has a fuel take-back arrangement for the Buhsher reactor, this is insufficient for a country that has had nuclear weapons ambitions. We believe that Russia should not transfer technology and materials to Iran until we can verify, through real-time video monitoring or unannounced International Atomic Energy Agency (IAEA) spot inspections, that such technology and materials will not be diverted by Iran for weapons-related purposes.

In addition, we have concerns about the training of Iranian scientists and engineers by Russia, regardless of the location of that training. To what degree does such training occur today, and how much has occurred over the last 36 months? In what ways might this training advance Iran's nuclear or missile programs?

Prior to transmitting this Agreement and setting off the 90-day clock for Congressional review, we urge you to address these questions regarding the need, justification, and timing of this Agreement. A failure to engage Congressional concerns on these issues would needlessly

The President of the United States
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imperil an opportunity to advance our shared goal of strengthening the U.S.-Russia partnership. We look forward to working with you to assure that all of these issues are properly addressed.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

The Honorable Condoleezza Rice, Secretary
U.S. Department of State

The Honorable Samuel W. Bodman, Secretary
U.S. Department of Energy

The Honorable Howard L. Berman, Chairman
Committee on Foreign Affairs

The Honorable Ileana Ros-Lehtinen, Ranking Member
Committee on Foreign Affairs