

KOREA CHAIR PLATFORM

A Stronger Partnership: Recommendations for U.S.-ROK Civil Nuclear Cooperation and the 123 Negotiations

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For the past four years, the CSIS Korea Chair has organized a small project on U.S.-ROK alliance issues, including the 123 negotiations. Stakeholder meetings took place at CSIS offices in DC, involving experts, U.S. officials, and former officials that aimed at understanding the negotiating positions of both sides and the potential “win-sets” that were available. On occasion, the project also hosted conferences with South Korean institutions in order to hear the viewpoints and opinions of their experts and officials. One of the research foci of the project was also to look at the factors outside of the bilateral negotiations that might “reverberate” onto the positions of both sides, potentially even impacting the outcome. A full report of the project will be due out this summer. However, with the current agreement set to expire one year from March 19, 2015 we offer these interim findings and recommendations of the project.

This report takes neither the side of the United States government nor the side of the Republic of Korea government, but operates from the core assumption that there is an undeniable interdependence in the U.S. and ROK nuclear industries that is time-honored and an organic product of years of interaction under the previous 123 agreement. Whether it is ROK-made pressure vessels in U.S. reactors or U.S.-origin fuel in ROK reactors, the cooperation is deep and mutually beneficial. Moreover, ROK participation in the global civil nuclear energy industry benefits not just Korea, but also the United States as a result of this interdependence. The UAE deal, for example, benefits Korea, but it also brings some \$2 billion to U.S. suppliers. On the one hand, the negotiation has many complexities. The overlap in win-sets is fairly small and there is a lot of room for misunderstanding and failure. On the other, the negotiation provides an opportunity for the two allies in their 62nd year of partnership to scale up their nuclear cooperation and set 21st century standards for the non-proliferation regime and for the nuclear energy industry.

The findings and recommendations regarding the 123 negotiations are framed in four contexts: 1) the global context of the negotiation; 2) the context of the U.S.-ROK alliance; 3) the negotiation strategies; and 4) the reverberation context.

We do not intend to offer specific formulae for an agreement as we are not privy to the details of a confidential discussion between governments. Our suggestions are aimed at broader principles and negotiation mindsets that would be helpful to a successful conclusion of these very important talks.

The global context of the U.S.-ROK 123 negotiations

- A new agreement must advance a vision of a world in which civilian nuclear energy suppliers and demanders are responsible and compliant with existing international norms

and rules in terms of nuclear safety and non-proliferation.

- A new agreement should set the highest standards in terms of transparency and verifiability to be emulated by others.
- The United States and Korea must set ambitions with this agreement to shape the rules, rather than have them set by others in the emerging civil nuclear energy regime. Decisions taken on proliferation-sensitive activities by the U.S. and ROK will likely affect the policies in other countries.

The alliance context of the U.S.-ROK 123 negotiations

- The approach to the negotiations needs to be results-oriented, pragmatic, apolitical, and non-ideological. Notions of “nuclear sovereignty” on one side or uniform “gold standards” on the other are not realistic.
- Failure to achieve an agreement benefits neither side and will do significant damage to nuclear industries in both countries.
- Failure to reach an agreement could have broader negative implications for the reservoir of goodwill in the alliance relationship.
- Comparisons to Japan are neither helpful nor useful. Japan’s agreement was sui generis, and most likely would not be possible if negotiated today.
- The negotiation and its results must be framed on both sides in a strategic, long-term context that manifests a deepening and multi-faceted alliance relationship, rather than framed narrowly as a technical issue. U.S.-ROK nuclear cooperation cannot be disconnected from the broader history of cooperation in the 62-year alliance. At the same time, the terms of an agreement cannot be negotiated outside of existing non-proliferation norms.

The mindset of the negotiation

- **Create high-level oversight.** This agreement is too important to leave to the technocrats. The public and private sector stakes are large, as are the implications of failure for the broader alliance. Higher-level policy oversight responsible for U.S.-ROK nuclear cooperation is essential. The negotiations and the implementation of an agreement should include decisionmakers responsible for the overall relationship, and not just specialists. For example, in 2006 the United States and China created a Strategic Economic Dialogue at the minister level with Secretary of the Treasury Hank Paulson and Vice Premier Wu Yi to ensure high-level management of the relationship. Something similar is necessary for U.S.-ROK nuclear cooperation.
- **Utilize the negotiation space afforded by the Koreans.** The ROK has stated three priorities in a new 123 agreement: 1) spent fuel management; 2) assured supply of nuclear fuel; and 3) competitiveness of export industries. It is worth noting that Seoul has not explicitly called for uranium enrichment or plutonium reprocessing capabilities in these priorities. President Park has not mentioned the pursuit of these capabilities as part

of the ROK position. This is a space in which negotiators should work.

- **Find the sweet spot.** Specifically, devise a mechanism that meets the stated priorities of the Koreans, but that also does not cross redlines for the United States.
- **Stick to the bottom line.** Any agreement must meet the U.S. standards in place since the 1978 Nuclear Nonproliferation Act (NNPA) amended the Atomic Energy Act.
- **Refer/defer advance consent.** The U.S. and ROK should create a high-level bilateral consultation body to deal with implementation issues, including issues related to advance consent. Granting blanket advance consent is not likely to win support from the U.S. Congress, and would not stand up to scrutiny in terms of U.S. 123 obligations. When advance consent makes sense, it should be determined by both parties through a high-level consultation.
- **Stress practical solutions on storage.** Spent fuel storage is an important issue for the Koreans. President Park has mentioned the issue specifically when she has engaged on the topic. This project's discussions with experts finds that storage issues are best addressed by dry cask. This requires the ROK government to engage with the public about storage. It also might present opportunities for the ROK, alone or in cooperation with the U.S. or others, to become a domestic and global supplier.
- **Defer discussion on fuel supply.** A "sovereign" source of fuel supply has been another negotiating point of the Koreans. Our judgment is that this is not something that can be addressed adequately in this agreement. In the current market, it is not practical to discuss alternative "sovereign" enriched fuel supply. Securing an adequate supply is not a near-term issue. Global supply is readily available and prices are low. The U.S. and ROK could engage in discussions on a future multilateral arrangement involving fuel banks or other cooperative arrangements that give the Koreans a stake in U.S.-based facilities.
- **Spent fuel management.** The U.S. and ROK should complete the joint study on spent fuel management (until 2021). The way forward beyond this should be discussed by the high-level commission.

Reverberation issues

This project looked at issues outside of the bilateral negotiation that might potentially reverberate on the negotiation, either in terms of political timing or substance. Here are a few to consider:

- **Iran.** Both governments must be cautious of the degree to which ongoing negotiations over Iran could impact South Korean attitudes on its deal with the U.S. While the two negotiations are not really comparable, there will be voices in Korea that might try to paint disadvantages based on simplistic comparisons.
- **Japan.** Inevitable comparisons with Japan are likely to arise. These are unhelpful and simplistic. The ROK government must work hard to educate its public and the conservative media about the benefits of a future agreement, as well as the difficulties

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Japan has encountered with the plant at Rokkasho.

- **Domestic Politics.** The opposition party and NGO community in Korea could be an ally. These groups, unlike the conservatives in South Korea, are not likely to take up the “nuclear sovereignty” banner. Educating these constituencies on the responsible safety precautions, transparency metrics, and climate benefits of a new agreement might be useful.
- **Legislative politics.** Timing in terms of the legislatures of both countries is good. In the Korean case, the ruling party majority is helpful, though the process of approval will be rocky. In the U.S. case, potentially controversial attention on the Iran deal and the expiring 123 agreement with China, among other issues, might smooth the path on the U.S.-ROK deal since Korea is a trusted, long-term alliance partner.
- **Leadership popularity.** The Park government’s low popularity could impact the politics of the agreement, affording her less political capital to sell the deal. It will be important to portray the agreement as special and as one that celebrates the unique partnership between the U.S. and ROK.
- **North Korea.** Though North Korea has long since violated the 1992 North-South Joint Denuclearization Declaration, it is still in the ROK's interests to comply with the Declaration to put continued denuclearization pressure on the North, and to trumpet its leading role in supporting the non-proliferation regime with this new agreement with the United States.

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