

Fix the Nuclear Cooperation Deal with India

July 24, 2006

United States House of Representatives
Washington, D.C.

Dear Member of Congress,

We are writing to urge you and your colleagues to address serious flaws that remain in the U.S.-India nuclear trade legislation (H.R. 5682) by supporting amendments that would help to further offset the adverse effects of the arrangement on U.S. nonproliferation and security objectives. Despite some important adjustments made to the administration's original proposal, we believe the legislation must include improvements in several key areas, among them:

- A determination that India has stopped the production of fissile material (plutonium and highly enriched uranium) for weapons;
- A determination and annual certification that U.S. civil nuclear trade will not in any way assist or encourage India's nuclear weapons program;
- Measures to ensure that the United States does not provide nuclear assistance directly or through other suppliers in the event that India breaks its nonproliferation commitments;
- A determination that the Government of India or GOI-controlled entities do not engage in illicit procurement of WMD-related goods.

We believe these are necessary because India has neither joined the nuclear Nonproliferation Treaty (NPT), accepted safeguards on all of its nuclear facilities, nor is India's nonproliferation policy consistent with the nonproliferation practices and responsibilities expected of the five original nuclear-weapon states.

Under the proposed nuclear cooperation deal, India has pledged to accept safeguards at only eight additional "civilian" nuclear facilities by 2014. Partial International Atomic Energy Agency (IAEA) safeguards would be largely symbolic and would do nothing to prevent the continued production of fissile material for weapons in unsafeguarded facilities. Consequently, foreign supplies of nuclear fuel to India could assist India's bomb program by freeing-up its existing limited capacity to produce highly enriched uranium and plutonium for weapons.

To help ensure that U.S. civilian nuclear cooperation is not in any way advancing India's weapons program and is not contributing to nuclear arms competition with Pakistan and China, ***Congress should require that the President determine that India has stopped fissile material production for weapons or joins a multilateral production ban before the United States resumes "full" civil nuclear assistance to India.*** Four of the original five nuclear-weapon states—France, Russia, the United Kingdom, and the United

States—have publicly declared that they have stopped fissile material production for weapons. China is also believed to have stopped such production.

India's commitment to support U.S. efforts to negotiate a global fissile material cutoff treaty (FMCT) is a laudable but somewhat hollow promise. Differences between the United States and most other states, including India, on whether such a treaty should be verifiable and competing priorities at the 65-nation Conference on Disarmament make the prospects for the conclusion of an FMCT very difficult. If India is committed to a "minimal credible deterrent," India should be able to declare as a matter of national policy that it has stopped fissile production, or else join the United States, China, France, Pakistan, Russia, and the United Kingdom in a multilateral fissile cutoff arrangement, pending the completion of a global verifiable FMCT. ***Congress should also require annual reports on progress toward achieving this goal.***

The bill requires the President to make a determination that U.S. civil nuclear assistance shall not, in any way, assist India's nuclear weapons program as required by Article I of the NPT. ***Such a determination should address the possible replication and subsequent use of any U.S.-origin technology in an unsafeguarded nuclear facility, or the provision of nuclear fuel in such a manner as to facilitate the increased production of highly enriched uranium or plutonium in unsafeguarded nuclear facilities for weapons purposes.*** Such a determination would help maintain confidence that the United States is complying with its NPT Article I commitment not to assist other states' nuclear weapons programs. While the bill includes a useful requirement for annual executive branch reports on whether any such assistance has occurred, ***it should also require annual reports on whether India has increased its fissile material production for weapons.***

The legislation makes clear that if India conducts a nuclear test explosion or commits some other transgression contrary to its commitments in the July 18, 2005 Bush-Singh Joint Statement, U.S. nuclear assistance would be jeopardized. However, India is insisting that the United States help provide an assured nuclear fuel supply even in the event that it conducts a nuclear test explosion or otherwise violates its nonproliferation commitments. Such a guarantee would be unprecedented and unwise. ***Congress should clarify that it is the policy of the United States that any contracts with India to provide a supply of nuclear fuel delivered on an as needed basis and will continue only if India continues to meet the commitments it made in the July 2005 Joint Statement and other provisions in U.S. law.***

Congress should also address the fact that Indian government-controlled enterprises have a history of attempting to bypass export laws designed to keep U.S. and other foreign technology from contributing to its weapons effort. Before Congress considers any agreement for civil nuclear cooperation with India, ***Congress should require that the President determine that the Indian government or entities under its control are not engaged in the illicit procurement of commodities controlled under the guidelines of the Nuclear Suppliers Group (NSG) or the Missile Technology Control Regime (MTCR).***

We also urge Congress to be sure to retain several important elements already included in the committee's bill that would help reduce the adverse impacts of the initiative. Among these is the language stipulating that a new safeguards agreement between the IAEA and India must be concluded and that such safeguards are consistent with IAEA standards, principles, and practices and are to be permanent.

The legislation should in no way compromise current U.S. efforts to constrain the further spread of reprocessing and enrichment technology around the world. As President Bush said in February 2004, "enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes." India has not agreed to place its reprocessing and enrichment facilities under permanent safeguards.

To ensure that India is meeting other key obligations outlined in the July 2005 Joint Statement, the House bill includes an important requirement that a U.S.-Indian agreement for nuclear cooperation shall be terminated if India makes any transfer that does not conform with the guidelines of the NSG or MTCR.

Finally, the legislation wisely codifies statements by senior administration officials that U.S. nuclear trade to India requires that the 45-nation NSG agrees by consensus to changes in its guidelines that currently restrict trade with states that do not accept full-scope safeguards on all of their facilities. If the United States or other states seek to sidestep the NSG's consensus decision-making process, the NSG may cease to function as an important barrier against the transfer of nuclear material, equipment, and technologies for weapons purposes.

Without the inclusion of the provisions we have described, the legislation for renewed nuclear cooperation with India will have far-reaching and adverse implications for U.S. nuclear nonproliferation and international objectives.

Building upon the already strong U.S.-Indian partnership is an important goal. We remain convinced that it can and should be pursued without undermining the U.S. leadership efforts to prevent the proliferation of the world's most dangerous weapons.

Sincerely,

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