

Fix the Nuclear Trade Deal with India

November 13, 2006

United States Senate
Washington, D.C.
Attn: Foreign Affairs Staff

Dear Senator,

We are writing again to urge you and your colleagues to support amendments that would address serious flaws that still plague the proposed U.S.-Indian nuclear trade legislation (S. 3709), which may be considered this month. Despite some important adjustments made to the administration's original proposal by the Foreign Relations Committee, the arrangement would have far-reaching and adverse effects on U.S. nonproliferation and security objectives. We believe the legislation must include further improvements in several key areas, among them:

- A determination, prior to resumption of full nuclear cooperation, that India has stopped the production of fissile material (plutonium and highly enriched uranium) for weapons or else joined a multilateral fissile production cutoff agreement;
- A determination and annual certification that U.S. civil nuclear trade does not in any way assist or encourage India's nuclear weapons program;
- Measures to ensure that the United States does not continue to provide nuclear assistance directly or through other suppliers in the event that India breaks the nonproliferation commitments outlined on July 18, 2005; and
- A determination that the Government of India (GOI) or GOI-affiliated entities are not engaged in illicit procurement of WMD-related items.

We believe these measures are necessary because India has neither joined the nuclear Nonproliferation Treaty (NPT), nor accepted safeguards on all of its nuclear facilities, and India's nonproliferation policy is not fully consistent with the nonproliferation practices and responsibilities expected of the 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. India has not yet agreed that safeguards on these facilities would be permanent. Current and future military-related nuclear reactors, enrichment and reprocessing facilities, and weapons fabrication facilities would remain unsafeguarded. Partial International Atomic Energy Agency (IAEA) safeguards 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 support the production of highly enriched uranium and plutonium for weapons.

Fissile Material Production

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 determines that India has stopped fissile material production for weapons or has joined a multilateral production ban before the United States resumes full civil nuclear assistance to India. Four of the five original 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 verified and competing priorities at the 65-nation Conference on Disarmament make the prospects for the conclusion of an FMCT difficult.

If India is truly committed to a "minimal credible deterrent," India should be able to declare as a matter of national policy that it has stopped fissile material production for weapons, or else join the United States, China, France, Pakistan, Russia, and the United Kingdom in a multilateral fissile cutoff agreement, pending the completion of a global, verifiable FMCT. The Congress should direct the President to actively pursue the early conclusion of such an interim cutoff agreement with India and other relevant parties, pending the entry into force of a global FMCT.

Nonassistance to India's Nuclear Weapons Program

The Senate bill should also require that prior to implementation of a U.S.-Indian nuclear cooperation agreement, the President make a determination that the proposed U.S. civil nuclear assistance will not, in any way, assist India's nuclear weapons program. Such a determination should take into account the possible replication and subsequent use of any U.S.-origin technology in an unsafeguarded nuclear facility and 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. The Senate should also agree to provisions in the House bill (H.R. 5682) requiring annual executive branch reports on whether any such assistance has occurred, and on India's uranium mining and fissile material production rates, and other related matters.

Termination of Trade and Fuel Supply Assurances

S. 3709 now makes clear that if India conducts another nuclear test explosion or otherwise violates the terms of an agreement for nuclear cooperation, U.S. nuclear assistance would be jeopardized. The bill also states that it is the policy of the United States not to facilitate nuclear trade by other nations with India if U.S. exports are interrupted.

However, India is insisting that the United States help provide an assured nuclear fuel

supply, even in the event that the New Delhi government conducts a nuclear test explosion or otherwise violates the terms of a future agreement for nuclear cooperation with the United States. Such a guarantee would be unprecedented and unwise. Congress should further clarify that the United States shall not provide or facilitate the supply of nuclear fuel to India if the Government of India resumes nuclear testing or fails to meet other provisions in U.S. law.

Guarding Against Illicit Procurement

The Senate should also address the fact that some Indian government-affiliated 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. Congress should require that before the implementation of any U.S.-Indian agreement for civil nuclear cooperation, the President must make a determination that the Indian government or entities under its jurisdiction 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).

Retain Useful Nonproliferation Provisions

We also urge Congress to retain several important elements already included in S. 3709 that would help reduce the adverse impacts of the initiative. Among these are the provisions requiring that a new safeguards agreement between the IAEA and India has entered into force and that such safeguards are consistent with IAEA standards, principles, and practices, and that such safeguards are permanent before any expanded nuclear cooperation can take place. To date, India has not begun formal talks with the IAEA on such safeguards and is reportedly seeking “India-specific” safeguards that would be contingent on continued fuel supplies. This is not consistent with the IAEA safeguards applicable in the Indian case, which are known as INFCIRC/66.Rev.2 safeguards.

With respect to the Section 106 provision restricting the transfer of enrichment and reprocessing technologies, for 30 years U.S. nonproliferation policy has sought to discourage the spread of sensitive nuclear technology. As President Bush said in February 2004, “enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes.” Current U.S. nuclear cooperation agreements, including those with EURATOM, Japan, and China, expressly prohibit transfers of such technologies, which can be used to make nuclear bomb material. India should not in any way be an exception to that important policy.

To ensure that India is meeting other key obligations outlined in the July 18, 2005 Joint Statement, the Senate should retain language in the House bill requiring that a U.S.-Indian agreement for nuclear cooperation shall be terminated if India makes a materially significant transfer that does not conform with the guidelines of the NSG or MTCR. Congress should recall that in the past 20 months, seven Indian entities have been sanctioned by the U.S. Government for transfers of weapons-related items to Iran, including sanctions announced in July for transfers of chemicals useful for missile propellant manufacture.

Finally, the legislation wisely codifies commitments made by senior Bush administration officials that before the United States may engage in wider nuclear trade with India, it must also secure the consensus approval of the 45-nation NSG. The group operates under guidelines established in 1992 that restrict trade with states (such as India) that do not accept full-scope safeguards on all of their nuclear 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.

While we agree that 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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