

Ensure Nuclear Cooperation with India Is Consistent with the Law

May 14, 2007

United States House of Representatives
Washington, D.C.
Attn: Foreign Affairs/Energy Staff

Dear Member of Congress,

We are writing to encourage you to hold the administration to the set of core conditions and limitations on the renewal of civil nuclear cooperation with India approved last December in the Henry Hyde U.S.-India Peaceful Atomic Energy Cooperation Act. Before trade with India may commence, the United States and India must conclude a formal agreement for nuclear cooperation, which is subject to Congressional approval or disapproval. In addition, the Henry Hyde Act requires that the 45-member Nuclear Suppliers Group (NSG) must agree by consensus to changes to its guidelines, which currently restrict trade with states, including India, that do not accept comprehensive International Atomic Energy Agency (IAEA) safeguards.

In recent weeks, U.S. and Indian officials have acknowledged significant differences over the terms of the draft agreement for nuclear cooperation. The U.S. negotiating position is shaped by requirements set forth in the Henry Hyde Act and relevant portions of the Atomic Energy Act, including Section 123 on agreements for nuclear cooperation and Section 129 on termination of U.S. nuclear cooperation.

Under pressure from its nuclear establishment and opposition parties, the Indian government is lobbying for further concessions from the Bush administration in several critical areas. Earlier this month, U.S. and Indian officials reported “progress” in their talks and announced that Undersecretary of State for Political Affairs Nicholas Burns will travel May 21 to New Delhi to “conclude” the talks.

If the administration concludes the negotiation by conceding to the Indian position in certain areas, the result could be reduced accountability, increased Indian nuclear weapons production capacity, further damage to the credibility of U.S. nonproliferation efforts, and a proposed agreement for nuclear cooperation that is inconsistent with minimal conditions for trade established in law by Congress.

We respectfully urge you to communicate to the White House that you will oppose any proposed agreement for nuclear cooperation with India that does not explicitly meet all the requirements outlined in U.S. law and other well-established U.S. policies for civil nuclear cooperation. These requirements include the following:

Nuclear Testing and Termination of U.S. Assistance

Current U.S. law stipulates that nuclear trade would end and the United States also has the right to require the return of nuclear material and equipment subject to the agreement if India resumes testing or terminates or violates an IAEA safeguards agreement. (See

Section 123(a)(4) of the Atomic Energy Act.) NSG guidelines also provide for supplier suspension or termination of nuclear cooperation with states that have violated their nonproliferation obligations. These requirements should pose no problem, given Prime Minister Manmohan Singh's July 18, 2005 pledge to continue India's unilateral moratorium on nuclear testing. Nevertheless, New Delhi wants assurances that commercial nuclear contracts will continue even if it resumes nuclear testing and the underlying agreement is breached.

Unlike 177 other states, India has so far refused to sign the Comprehensive Test Ban Treaty and is, unfortunately, under no legal obligation not to test. At the same time, New Delhi must recognize that if it chooses to do so, other states are under no legal or political obligation to assist India if it defies the world with another nuclear blast. To avoid any misunderstanding, the agreement for nuclear cooperation must explicitly state that that renewed nuclear testing by India would lead to the termination of U.S. nuclear assistance.

Permanent, Unconditional Safeguards on Civil Facilities and Material

Congress also specified that before the President can waive current restrictions on trade with India, India and the IAEA must conclude and the IAEA Board of Governors must approve a plan that applies "safeguards in perpetuity in accordance with IAEA standards, principles, and practices." (See: Section 104(b)(2) of the Henry Hyde Act; Section 123(a)(1) of the Atomic Energy Act.) India has rejected comprehensive safeguards but allows permanent, facility-specific safeguards for six older reactors. For the additional eight reactors it will place under safeguards by 2014, New Delhi is seeking "India-specific" safeguards that would be suspended if foreign fuel supplies are interrupted.

There is no precedent or IAEA safeguards agreement that would allow for such an option, and it would be highly irresponsible for the U.S. Government to ever go along with such a hollow arrangement. Other U.S. agreements for nuclear cooperation also contain a U.S. right to enter into bilateral safeguards arrangements with our cooperating partners in the event that the IAEA is not applying or will not apply its safeguards to material subject to those agreements.

Reprocessing and Enrichment Prohibitions

Congress also prohibited the transfer of sensitive nuclear technology to India, including uranium-enrichment, plutonium-separation, and heavy water production-related equipment, except under certain narrow circumstances. (See: Section 104(d)(4) of the Henry Hyde Act.) India is seeking relief from this prohibition. For over three decades, U.S. nonproliferation policy has sought to discourage the spread of sensitive nuclear technology, which can be used to make nuclear bomb material. U.S. nuclear cooperation agreements, with such cooperating partners as EURATOM, Japan, South Africa, and China, expressly prohibit transfers of such technologies. India should not in any way be an exception to this important policy.

Congress also preserved a requirement for U.S. consent for the reprocessing or alteration in form or content of nuclear material subject to U.S. agreements. (See: Section 123(a)(7) of the Atomic Energy Act.) Indian officials are strenuously objecting and are demanding that the United States give prior long-term consent to reprocess nuclear material subject to the U.S.-Indian agreement. The United States has given long-term

consent to reprocessing in only a few instances, namely in the case of our close allies and friends in Japan and EURATOM. Making this additional exception for India would be unwise because India (unlike Japan and member states of EURATOM) has not assumed the obligations of the nuclear Nonproliferation Treaty (NPT), and has not agreed to permanent safeguards for any of its reprocessing and enrichment facilities, nor even its plutonium-producing fast breeder reactors—which can be used to make nuclear bomb material.

In the Hyde Act, Congress waived the requirement for India to have comprehensive, or full-scope safeguards, as well as potential penalties for earlier nuclear tests. Making more exceptions by failing to include basic nonproliferation conditions that we have in agreements with our other nuclear partners would be unwise. To do so would give India, a non-NPT party, preferential treatment that we have not given to NPT parties. Most importantly, India is seeking relief in the most sensitive nonproliferation areas: on nuclear testing, separation of plutonium, and enrichment and reprocessing cooperation. If the United States is serious about restricting sensitive fuel cycle activities, now is not the time to make an exception for India.

It is essential that any U.S.-Indian agreement for nuclear cooperation submitted to Congress fully respect the letter and the spirit of the requirements set forth in law. We urge you to reject any agreement that falls short.

Sincerely,

Hal Bengelsdorf,
Consultant, and former Director for the Office for Nonproliferation Policy at the Energy Department, and former Office Director for Nuclear Affairs at the State Department

Amb. George Bunn,
Consulting Professor, Stanford University Center for International Security and Cooperation,* and first General Counsel for the Arms Control and Disarmament Agency and negotiator of the NPT

Joseph Cirincione,
Senior Vice President for National Security and International Policy,
Center for American Progress

Jean du Preez, Director of the International Organizations and Nonproliferation Program at the Center for Nonproliferation Studies

Amb. Ralph Earle II,
Former Director of the U.S. Arms Control and Disarmament Agency

Frank von Hippel,
Professor of Public and International Affairs,
Program on Science and Global Security,
Princeton University

John D. Isaacs,
President, Council for a Livable World

Daryl G. Kimball,
Executive Director, Arms Control Association

Lawrence Korb,
Senior Fellow, Center for American Progress, and former Assistant Secretary of Defense
for Manpower, Reserve Affairs, Installations and Logistics

Fred McGoldrick,
Consultant, and
Former Director of Nonproliferation and Export Policy at the State Department

Terri Lodge, Coordinator,
Arms Control Advocacy Collaborative

Kelly Motz,
Associate Director,
Wisconsin Project on Nuclear Arms Control

William C. Potter,
Institute Professor,
Monterey Institute of International Studies*

Lawrence Scheinman,
Distinguished Professor at the Center for Nonproliferation Studies,
and former Assistant Director of the U.S. Arms Control and Disarmament Agency

Len Weiss,
Senior Science Fellow,
Center for International Security and Cooperation,
Stanford University*

*Affiliation for identification purposes only.

*Please address replies to: Arms Control Association,
1150 Connecticut Avenue, NW, Suite 620, Washington, DC 20036*