

Fixing a Flawed Nuclear Deal

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By [Daryl G. Kimball](#)

After months of contentious negotiations, U.S. and Indian officials recently concluded a formal agreement for nuclear cooperation that contradicts long-standing U.S. nuclear export policies and threatens the global nonproliferation order.

The proposed agreement endorses undefined “India-specific” safeguards and fails to explicitly state that renewed Indian testing would lead to a termination of U.S. nuclear trade. The pact promises India assurances of nuclear fuel supply and advance consent to carry out sensitive nuclear activities that are unprecedented and inconsistent with legislation approved by Congress last year.

The sum of these and other U.S. concessions could give India—a country that has violated past agreements on peaceful nuclear cooperation by testing a nuclear weapon—terms of nuclear trade more favorable than those for states that have assumed all the obligations and responsibilities of the nuclear Nonproliferation Treaty (NPT), which India has never signed.

Much is at stake. In the coming months, Congress and the 45-nation Nuclear Suppliers Group (NSG) can prevent further damage by using their authority to close the loopholes in the deeply flawed U.S.-Indian agreement.

The pact is based on Prime Minister Manmohan Singh’s July 2005 pledge to “separate” India’s military and civilian nuclear facilities and put eight additional reactors under international safeguards by 2014. In exchange, President George W. Bush pledged to seek an India-specific exemption from U.S. laws and NSG rules that restrict trade with states that do not allow “full scope” safeguards. Congress approved changes to U.S. nuclear export laws with conditions, but it must still approve the U.S.-Indian nuclear cooperation agreement. It may do so only if the NSG agrees by consensus to waive its comprehensive safeguards requirement for India.

While many NSG member states support India’s legitimate nuclear energy goals, they are also deeply uncomfortable with the agreement and for good reason. Partial safeguards in India are hardly worth their estimated \$10 million annual cost. Yet, the U.S.-Indian agreement cheapens their value by endorsing the concept of India-specific safeguards and allowing India to take unspecified “corrective measures” if fuel supplies are disrupted. Congress and the NSG should reject any proposal for nonstandard safeguards for Indian reactors.

Unlike other nuclear cooperation agreements, the U.S.-Indian deal fails to clearly state that a resumption of nuclear testing would lead to a termination of nuclear transfers and the return of U.S.-supplied equipment and material. To protect its testing options, India sought and got an unprecedented U.S. commitment to help India amass a strategic reserve of nuclear fuel to guard against any supply disruption. Incredibly, the agreement also commits Washington to help New Delhi secure fuel supplies from other countries even if India resumes testing.

Officials at the Department of State may argue that the fuel supply assurances are political and not legal commitments and are there only to assuage Indian domestic audiences. This is not how the Indian government interprets the agreement. Such ambiguity has no place in international nonproliferation rules. Congress and the NSG should clearly establish that any India-specific exemption from existing nuclear trade rules shall be terminated if India resumes testing.

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Published on Arms Control Association (<https://www.armscontrol.org>)

U.S. negotiators also agreed to allow for possible future trade involving sensitive nuclear technology, including uranium-enrichment and plutonium-reprocessing-related goods. Even if such transfers are destined for safeguarded facilities, they could be replicated and used to support India's weapons program. The NSG should specifically bar such transfers to India.

Even though India has refused to put existing reprocessing plants under safeguards, India also won long-term consent to reprocess U.S.-origin nuclear fuel. To exercise the right, an additional U.S.-Indian agreement governing a new, safeguarded reprocessing facility is required. Still, the reprocessing concession could allow India to negotiate more favorable terms from less scrupulous suppliers, such as Russia.

Unless the NSG also requires that India halts fissile material production for weapons as a condition for nuclear trade, supplying nuclear fuel to India for power production would free up its limited domestic supplies for bomb production. This would not only contradict NPT restrictions barring assistance to other's nuclear weapons programs, but it would prompt neighboring Pakistan to increase its fissile material production capacity.

The U.S.-Indian agreement may lead usually sensible states to ignore their legal commitments too. Australia has announced it is ready to sell uranium to India even though its current foreign minister said in 1996 that the South Pacific Nuclear-Weapon-Free Zone Treaty "imposes a legal obligation not to provide nuclear material unless subject to the safeguards required by Article III.1 of the NPT, that is, full scope safeguards."

Rather than sidestep their own nonproliferation policies and laws, leaders in Congress and other capitals should maintain common sense conditions on nuclear trade that help ensure India meets the same standards expected of other responsible countries. Now is the time to stand up to the White House and the nuclear profiteers and prevent further erosion of the already beleaguered nonproliferation system.

Source URL: https://www.armscontrol.org/act/2007_09/focus