

Text, Analysis, and Response to NSG "Statement on Civil Nuclear Cooperation with India"

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September 6, 2008

In an unprecedented move that will undermine the value of the Nuclear Suppliers Group (NSG) and the already beleaguered nuclear Nonproliferation Treaty (NPT), the NSG reluctantly agreed today in Vienna to exempt NPT hold-out India from its guidelines that require comprehensive international safeguards as a condition of nuclear trade.

[Click here for a PDF file of the NSG statement on India.](#)

The decision is a nonproliferation disaster of historic proportions that will produce harm for decades to come. Contrary to the Orwellian claims of the George W. Bush administration, the India-specific exemption from NSG rules and safeguards standards does not "bring India into the nuclear nonproliferation mainstream."

Unlike 179 other countries, India has not signed the Comprehensive Test Ban Treaty. It continues to produce fissile material and expand its nuclear arsenal. As one of only three states never to have signed the NPT, India has not made a legally binding commitment to pursue nuclear disarmament.

India's political promises on nonproliferation and a voluntary test moratorium are not in any way equivalent to the legal obligations and commitments made by the member states of the NPT. Given India's history of violating its peaceful nuclear use agreements to build nuclear weapons, India's promises provide little confidence, especially if the consequences of noncompliance are not made clear by India's future potential nuclear supplier states.

As a result, the India-specific exemption from NSG guidelines severely erodes the credibility of global efforts to ensure that access to peaceful nuclear trade and technology is available only to those states that meet global nuclear nonproliferation and disarmament standards.

Also, nuclear fuel sales to India for Indian power reactors may marginally help increase India's energy output, but at the same time it will free up India's limited domestic uranium supplies to be used exclusively for bomb-making. This will lead Pakistan to follow suit and help fuel the South Asian arms race.

Making matters worse, the Bush administration resisted efforts by a group of responsible NSG states to incorporate in the NSG waiver language that would unambiguously establish the same restrictions and conditions on nuclear trade that are mandated through U.S. law (the 2006 Henry Hyde Act) and U.S. national policy.

The Arms Control Association and our allies and supporters will work to ensure that the current Congressional requirements and expectations regarding U.S. nuclear trade are fully addressed and that additional measures are taken to ensure that other nuclear suppliers do not undercut the minimal but vital restrictions, requirements, and conditions on nuclear trade mandated by Congress.

The NSG Waiver

The NSG statement on India does not meet ACA's standards or that of a large number of NSG states, nor should it satisfy key U.S. congressional leaders, but it is not the "clean" and "unconditional" waiver India was demanding either.

There were language changes made to the revised U.S. NSG proposal during the Sept. 4-6 discussions.

Because of the negotiations were tough and the real differences not fully resolved, there will likely be serious differences between India and most of the NSG about the interpretation of what the guidelines allow and don't allow and what the consequences of any violation of India's nonproliferation and disarmament commitments would be. This outcome is a failure of the NSG as a whole, the U.S. delegation, and the NSG chair Germany.

The text of the NSG's Sept. 6 statement on India -- along with the national statements issued today by Austria, China, Germany, Ireland, Japan, the Netherlands, New Zealand, Norway, Switzerland, and others -- indicates that even if the NSG guidelines are not as clear as they should be or fail to include key provisions to reduce the adverse nonproliferation consequences, for all practical purposes:

- NSG states should not and will not likely engage in "full" nuclear trade with India;
- NSG states should and very likely would terminate nuclear trade with India if it resumes testing; and
- India's compliance with its pre-2005 nonproliferation commitments and the implementation of bilateral trade with India will be reviewed on a regular (probably annual) basis by the NSG.

Why? Most states will try to remain consistent with U.S. law, policy, and the U.S. interpretations of its bilateral trade agreement with India. Collectively, these bar the transfer of enrichment, reprocessing, and heavy water technology to Indian national facilities, the Hyde Act also mandates a cutoff of U.S. trade if India resumes testing, and according to the State Dept's January 16 responses to the House Committee on Foreign Affairs, U.S. fuel supply assurances will be invalid if India tests for any reason. See <<http://www.armscontrol.org/node/3338>>.

Linkage Between India's Commitments and the Waiver

The connection between India's nonproliferation statements and the NSG decision to allow nuclear trade and its possible termination of nuclear trade should have been clear and unambiguous. Yet, Paragraph 3 of the NSG statement undeniably says the "basis" of the India specific waiver includes its July 2005 pledges and the Sept. 5 statement by India's External Affairs Minister Pranab Mukherjee, which include a pledge to maintain India's nuclear test moratorium.

Following the NSG's reluctant approval of the statement on India, several states delivered national statements that clarify their views on how the NSG's policy on India shall be implemented. Among the states that delivered statements were: Austria, China, Germany, Ireland, Japan, the Netherlands, New Zealand, Norway and Switzerland.

Japan noted that the exemption for India was decided on the condition that India continues to observe its commitments, especially its nuclear test moratorium pledge. Japan noted that if India resumed testing, "the logical consequence is to terminate trade." Most of the other statements also made this point.

Germany, and perhaps others, added that it expects India to take further nonproliferation and disarmament measures, including "entry into force of the CTBT and a termination of fissile material production for weapons."

Therefore, if India tests, the NSG would immediately meet in an emergency session (as already allowed for in the NSG guidelines) and the widespread expectation would be for all NSG states to terminate nuclear trade immediately. And despite the Indian government's false representations to

its public and parliament, neither the United States nor other responsible nuclear suppliers are going to feel obliged to respect earlier fuel supply guarantees or help find some other country to supply India with nuclear fuel if India tests for any reason or violates its safeguards commitments.

Permanent Safeguards: Paragraph 2.a refers to India's March 2006 "separation plan" which says India will put at least 8 additional nuclear power reactors under safeguards by 2014. The inclusion of this language was resisted by India, which has still not formally filed the list of facilities it will actually put under safeguards with the IAEA.

Paragraph 2.b of the NSG statement on India also refers to the maintenance of facility-specific safeguards in accordance with IAEA standards and practices including Gov. 1621, which means that the safeguards agreement puts India's materials and facilities under indefinite safeguards that India cannot legally terminate unilaterally. The Government of India has suggested to its parliament that this is not the case.

Enrichment and Reprocessing Transfers: International safeguards cannot prevent the replication or possible use of sensitive fuel cycle technologies transferred to India for "civilian" purposes for use in its military sector. The NSG should have explicitly banned such technology transfers. India Paragraph 3.a in the NSG statement on India maintains that Paragraphs 6 & 7 of the current NSG guidelines will continue to apply. This means that NSG states must continue to "exercise restraint" with respect to transfers of sensitive dual use technologies and enrichment and reprocessing technologies to India or any other state.

In addition, in the course of the NSG meeting, the United States confirmed that participating NSG governments expressed assurances that they did not intend to transfer enrichment or reprocessing technology to India.

Review of the Implementation of the Statement: Paragraph 3.c and 3.e require NSG suppliers to report on their nuclear transfers to India and consult regularly on India's implementation and compliance with India's nonproliferation commitments and bilateral nuclear cooperation with India.

India and the NSG: In Paragraph 2.f, the NSG statement notes that India has pledged to harmonize its export policies with that of the NSG and that India commits to adhere to all NSG guidelines. But contrary to India's demands, India may not "participate" in future NSG decisions or the development of future guidelines. Instead, India may be consulted by the NSG chair regarding future policies. One of those policy discussions will soon be aimed at establishing clearer limitations on the transfer of enrichment and reprocessing technology, including a ban on any transfers to non-members of the NPT.

Attachment



[Final NSG Statement](#)

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