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August 5, 2008

The Honorable Condoleezza Rice  
Secretary of State  
U.S. Department of State  
2201 C St., N.W.  
Washington, D.C. 20520

Dear Madam Secretary,

I am a friend of India and a supporter of U.S.-India nuclear cooperation. Yet I find it incomprehensible that the Administration apparently intends to seek or accept an exemption from the Nuclear Suppliers Group (NSG) guidelines for India with few or none of the conditions contained in the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006. Such an exemption would be inconsistent with U.S. law, place American firms at a severe competitive disadvantage, and undermine critical U.S. nonproliferation objectives. It would also jeopardize congressional support for nuclear cooperation with India, this year and in the future.

Last year I introduced H. Res. 711, a resolution that expresses the sense of the House that the President should withhold support from any proposed exemption for India in the NSG guidelines that is not fully consistent with the Hyde Act and that does not incorporate a number of key provisions, including: the immediate termination of all nuclear commerce by NSG member states if India detonates a nuclear explosive device or if the IAEA determines that India has violated its safeguards commitments; a requirement that the safeguards agreement concluded between India and the IAEA provides for safeguards in perpetuity for all nuclear facilities, materials, equipment and technology designated as "civil", in accordance with IAEA standards, principles and practices; a prohibition on the transfer of enrichment, reprocessing and heavy water production technology by any NSG member state to India; and a stipulation that NSG supplier states may not grant India consent to reprocess nuclear fuel except in a facility that is under permanent and unconditional safeguards.

In your appearance before the Foreign Affairs Committee on February 13 of this year, you assured me that any NSG decision "will have to be completely consistent with the obligations of the Hyde Act." As such, I expect you to instruct the U.S. representative to the

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NSG not to seek or support any exemption for India that does not faithfully reflect all of the Hyde Act conditions.

It is my understanding that the current Chair of the NSG, the Federal Republic of Germany, intends to schedule a plenary session of the body in late August to consider an exemption for India, with a second plenary session possible in early September. However, even if the members of the NSG were able to achieve consensus on the many complex issues related to the India exemption during those sessions, and the Administration were able to submit the India agreement to Congress immediately after we reconvene on September 8, it is not likely that Congress will have sufficient time to fully consider all the issues and details surrounding the Agreement, the associated safeguards agreement, and the NSG decision -- and to ascertain their impact on U.S. and global nonproliferation standards -- prior to the target adjournment date of September 26. Any effort to consider the agreement outside of the requirements of current law will be impossible if the Administration accepts an NSG exemption that fails to include the Hyde Act conditions.

In this context, I am also deeply concerned about the potential for a significant time gap between an accelerated NSG decision and congressional action on the India Agreement. This would give other countries an unacceptable head-start in securing commercial nuclear contracts with the Indian Government, thus placing U.S. firms at a competitive disadvantage. If the Administration is unwilling to change its position and make clear to the other members of the NSG that it will only accept an exemption that fully conforms to the Hyde Act, then I would urge you in the strongest possible terms to suspend all U.S. efforts to seek an NSG decision on India for the remainder of this Administration. Given the lateness in the Congressional session, it would be better to review these complex matters in the next Congress when they can receive a full and serious examination.

Sincerely,



HOWARD L. BERMAN  
Chairman