

Congress of the United States
Washington, DC 20515

December 4, 2006

Representative Henry J. Hyde
Chairman
House International Relations Committee
2170 Rayburn Building

Representative Tom Lantos
Ranking Member
House International Relations Committee
B360 Rayburn Building

Dear Chairman Hyde and Ranking Member Lantos:

On November 16, 2006, the Senate passed the United States-India Peaceful Atomic Energy Cooperation Act, and requested a conference with the House to reconcile their bill with the United States and India Nuclear Cooperation Promotion Act which the House passed July 26, 2006.

Some of us supported the House bill, and some of us voted against it. However, all of us consider halting the proliferation of nuclear materials and technologies to be a paramount national security and foreign policy interest of United States. We therefore wish to strongly urge you to ensure that several critical nonproliferation provisions contained in the Senate and House bills are included in any final conference report.

We understand that Secretary of State Condoleezza Rice has sent a letter to you which requests that almost all of the provisions listed below be modified or removed completely during the conference. We are disturbed that Secretary Rice would consider it advisable to revise or remove any of these important nonproliferation provisions, and we urge Conferees to retain them.

House bill provisions upon which House Conferees should insist:

We urge House Conferees to insist upon the inclusion of the following provisions of the House bill in the final conference report.

Section 4(d) Restrictions on Nuclear Transfers to India-

This Section provides four restrictions on nuclear transfers to India which we believe are crucial to the goal of nonproliferation.

Section 4(d)(1) reiterates that the Act shall not "assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices." This provision must be preserved in order to ensure United States compliance with its obligations under Article 1 of the Nuclear Nonproliferation Treaty.

Section 4(d)(2) requires that no transfer to India will be allowed if it violates the transfer guidelines of the Nuclear Suppliers Group (NSG).

Section 4(d)(3) stipulates that nuclear-related exports to India shall be terminated if India makes nuclear-related transfers that do not conform to NSG guidelines or missile-related transfers that do not conform to Missile Technology Control Regime guidelines. In the July 18th, 2005 Joint Statement, Indian Prime Minister Manmohan Singh committed India to “adherence to Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines.” As such, Section 4(d)(3) reiterates that India must abide by its commitments under the July 18th, 2005, Joint Statement.

Section 4(d)(4) states that if transfers to India are restricted, “the President should seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source.” If the United States terminates nuclear-related transfers to India, for example as a result of an Indian nuclear test, India should not have recourse to other nuclear suppliers.

Section 4(o)(2)(C) Report on Unsafeguarded Nuclear Facilities-

This Section establishes that the President must report to Congress on “whether United States civil nuclear assistance to India is directly, or in any other way, assisting India’s nuclear weapons program.”

Senate bill provisions that the House Conferees should accept:

We urge House Conferees to accept the Senate text of the following provisions:

Section 103(7)

This Section states that it is United States policy to work with Nuclear Suppliers Group members to further restrict transfers of enrichment, reprocessing, and heavy water production equipment and technologies.

Section 105 Determination Regarding United States-India Peaceful Atomic Energy Cooperation-

While much of Section 105 is similar to the House version, subsections 3, 8, and 9 are not contained in the House bill. We urge House Conferees to accept these subsections.

Section 105(3) requires that India and the International Atomic Energy Agency (IAEA) conclude an agreement on the application of safeguards, in perpetuity and in accordance with IAEA standards, principles, and practices, and that this agreement has entered into force prior to the initiation of U.S.-India civilian nuclear cooperation. We further urge House Conferees to reiterate that IAEA safeguards over India’s civilian nuclear sector must be permanent, be in accordance with IAEA standards, principles, and practices, and be based upon the IAEA document INFCIRC/66.rev.2.

Section 105(8) requires that India fully participate in international efforts to “dissuade, sanction, and contain Iran for its nuclear program consistent with United Nations Security Council Resolutions.” This mild requirement for India’s

participation in preventing Iran's acquisition of nuclear weapons was accepted without objection by the Senate. In the House, Ranking Member Lantos spoke in favor of and voted for a similar but more sweeping requirement.

Section 105(9) requires that the decision taken by the NSG to permit civil nuclear commerce with India be made by consensus and does not permit nuclear commerce with any non-nuclear weapon state other than India that does not have full-scope IAEA safeguards.

Section 107 End-Use Monitoring Program-

This Section creates an end-use monitoring program which will help to provide the United States assurances that nuclear-related exports to India will be used only for peaceful purposes and that such exports will not be transferred to a third party without the prior consent of the United States, among other assurances.

Section 114 United States Policy Regarding the Provision of Nuclear Power Reactor Fuel Reserve to India-

This Section states that it is U.S. policy "that any nuclear reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements." The provision of a fuel reserve larger than necessary for safe reactor operation could encourage India to conduct further nuclear tests, as the resultant termination of nuclear cooperation would be dampened by the existence of large fuel reserves.

Title II-United States Additional Protocol Implementation-

This section will implement United States commitments under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America with Annexes, signed at Vienna June 12, 1998. The United States encourages all countries to negotiate, sign, and implement an Additional Protocol to their IAEA safeguards agreements. By implementing our own Additional Protocol the United States will contribute to the goal of enhancing IAEA safeguards internationally and will encourage the entrance into force of other Additional Protocols.

Senate bill provisions which House Conferees should modify:

Section 106 Prohibition on Certain Exports and Reexports-

We support a prohibition on the transfer of enrichment, reprocessing and heavy water equipment, materials, and technologies but are concerned about two unnecessary loopholes in Section 106. First, Section 106 creates an exception for Indian facilities that are either under multinational control or are participating in a bilateral or multinational program to develop a proliferation-resistant fuel. India will continue to have unsafeguarded enrichment and reprocessing plants as long as it has a weapons program. Even a facility participating in the Global Nuclear Energy Partnership (GNEP) program could become a conduit for leaking such sensitive technology to India's weapons program. Second, Section 106 authorizes

the NRC and the Secretary of Energy to approve such exports under the two exceptions specified.

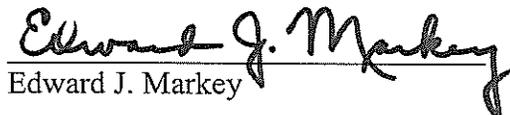
As President Bush said in February 2004, "enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes." Virtually all other U.S. agreements for nuclear cooperation, including those with EURATOM, Japan, and China, do not allow enrichment and reprocessing cooperation. Should such future cooperation be envisioned, those agreements would have to be amended and approved by Congress. Any agreement with India should be no exception. House conferees should insist that Section 106 maintain the existing barriers to enrichment and reprocessing cooperation through requiring a future amendment to the Indian cooperation agreement for those activities, subject to Congressional approval.

Provisions in both House and Senate bills which must be retained:

Finally, we are particularly interested in a provision which is already common between the House and Senate bills, and urge House Conferees to specifically reiterate and retain this provision in the final reconciled text. Conferees should retain language in both bills that stipulate that Section 129 of the Atomic Energy Act remains in force in the event that India conducts a nuclear test explosion in the future or otherwise violates its nonproliferation commitments.

We believe that the inclusion of each of the provisions listed above in the final conference report on the India nuclear cooperation legislation is essential to further the goal of enhancing U.S. and international nonproliferation efforts. We strongly urge the conferees to include all of these critical provisions, and we look forward to working with you towards this goal.

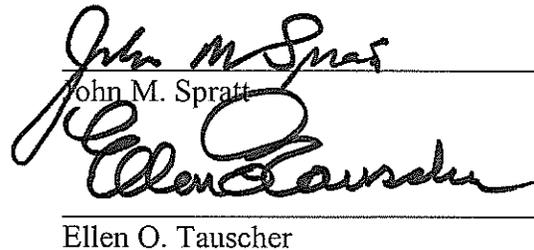
Sincerely,


Edward J. Markey


Jane Harman


Adam B. Schiff


Rick Larsen


John M. Spratt


Ellen O. Tauscher


Robert E. Andrews