

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

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Congress of the United States
House of Representatives
Washington, DC 20515-2107

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2838

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 398-2800

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900
www.house.gov/markey

February 14, 2006

The Honorable Condoleezza Rice
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madame Secretary:

I am writing in response to a January 17, 2006 letter I received from the State Department in response to a number of questions about the Administration's proposals for nuclear cooperation between the United States and India. As you may recall, these questions were raised by 16 experts with experience in security, energy, and nonproliferation matters.

As you know, pursuit of better economic relations with India, particularly around the issue of energy, is something I support. We have a major opportunity to share clean-coal technology with a nation that is the third largest coal producer in the world and relies on coal-powered electricity. Instead, the Administration has launched a nuclear initiative with India which carries with it grave security implications for South Asia and the entire world. Supplying nuclear fuel to countries that are not party to the Nuclear Nonproliferation Treaty (NPT) de-rails the delicate balance that has been established between nuclear nations and limits our capacity to insist that other nations continue to follow this important nonproliferation policy. We cannot break the nuclear rules established in the Nuclear Nonproliferation Treaty and demand that everyone else play by them. Instead, we should be pursuing non-nuclear alternatives more appropriate to India's existing resource base and in doing so, preserve the world's only bulwark against the spread of nuclear weapons.

I therefore respectfully request that you provide responses to the following additional questions based on the information provided in the Department's response letter.

1. In the cover letter to the response, the Department stated that "... the civil nuclear cooperation initiative with India will, on balance, enhance international nuclear nonproliferation efforts." Later in the response to the questions (page 3, answer to question 2a) the Department states that "the civil nuclear cooperation initiative detailed in the broadly constituted Joint Statement will prove to be a net gain for nonproliferation." Please provide me with a list of the specific ways in which this deal will "enhance international nuclear nonproliferation efforts" and be a "net gain for nonproliferation." In addition, please describe which of the measures

outlined in the July 18 communique India had not already committed to or was in the process of advancing towards.

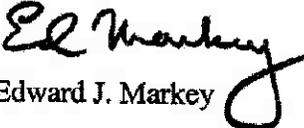
2. In the Department's response to Question 1a, it states that "India is a special case; civil nuclear cooperation with India does not establish a precedent for others." If we make an exception for India, treating them as a "special case", how can you guarantee that other countries won't want to make exceptions for countries which they believe are "special cases"? How will the United States be able to block exceptions for other countries when the United States has already made an exception for India?
3. The Department's response to Question 1b states that "Any support to Pakistan's nuclear weapons program would violate Article I of the NPT." Please explain how the Administration will certify to the Congress that "full" nuclear cooperation with India does not allow India to utilize its existing nuclear fuel, equipment or facilities that would otherwise have been directed for civil energy production for its weapons program and therefore not undermine our ability to comply with Article I of the NPT.
4. With respect to the Department's response to Question 1d, what "interim options" are being explored with respect to the cessation of fissile material production? Do the United States and India agree on the terms for the negotiation of a global fissile material production cut off treaty for weapons purposes? And, if India is willing to work toward a verifiable Fissile Material Cutoff Treaty (FMCT), why isn't the U.S. waiting to proceed with nuclear cooperation with India until the FMCT is agreed upon and ratified?
5. The Department's response to Question 2 states that: "While the growth of India's strategic program is evidently not constrained by access to natural uranium, commercial and developmental goals are constrained by a lack of access to the international market." When would India's supply of uranium for its current level of nuclear energy production run out? Does India propose and will the United States allow India to retain unsafeguarded spent fuel in some or all of its current energy production reactors to extract plutonium for weapons purposes?
6. In the Department's response to Question 2c, it states that the U.S. will only be asking for an exception to the full-scope safeguards requirements of section 123(a) of the Atomic Energy Act (AEA). Another provision for civil nuclear cooperation under section 123(a) of the AEA is that there will be no enrichment or reprocessing without prior approval. Will you insist on case-by-case consent rights or rights of disapproval on reprocessing and enrichment and retransfers of U.S. origin items?
7. With respect to your response to Question 3a, if reactors that are not currently under the INFCIRC/66 safeguards are added to the list of safeguarded reactors, will spent fuel that is currently in those facilities be put under safeguards? If not, why not?
8. With respect to the Department's response to Question 3c, what will happen if India tries to withdraw a civilian facility from safeguards? Will this be cause for immediate termination of the nuclear cooperation agreement? Will this be discussed when the details of the safeguarded facilities are determined?

9. The Department's response to Question 4b states that: "India's May 2005 Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibitions of Unlawful Activities) Act and its implementing regulations significantly improved India's export controls." As you know, on December 30, 2005, the Department of State announced sanctions against two Indian companies for allegedly assisting Iran's chemical and ballistic missile program. If the United States is forced to impose sanctions on Indian companies for their trade with Iran, how can the Department plausibly claim that India's export controls have "significantly improved" to the level needed to prevent the proliferation of nuclear material and technology? Has the U.S. government evaluated and/or found any evidence of illicit procurement activities related to India's military nuclear program?
10. With respect to the Department's response to Question 4b, are there any plans to monitor Indian implementation of its export laws by having U.S. government agencies or the IAEA perform checks on safeguarded material and facilities?
11. The Department's response to Question 5 states: "A conclusive answer was not possible owing to both the factual uncertainty as to whether U.S.-supplied heavy water contributed to the production of the plutonium used for the explosive device, and the lack of a mutual understanding between the U.S. and India on the scope of the 1956 contract language. We have since made it clear that we exclude so-called "peaceful nuclear explosions" – and any nuclear explosive activity – from the scope of peaceful nuclear cooperation." Am I correct in interpreting from your response that you believe that India thought it was not violating the 1956 contract for the CIRUS research reactor when it tested a nuclear device in 1974? I would note that a declassified June 1972 INR assessment delivered to then CIA Director Richard Helms makes clear that prior to the 1974 India test the United States government interpreted these agreements as "procluding all nuclear explosions on the grounds that any such explosion is tantamount to the a nuclear weapons test" and that this interpretation was known to the India government. Are you denying that this was the U.S. interpretation prior to 1974? Through what process was the aforementioned U.S. interpretation changed, and upon what basis? Please explain what reasoning could justify that detonation of a nuclear device did not violate the 1956 "peaceful purposes" agreement. Also, how did you arrive at the conclusion that U.S. heavy water wasn't necessarily in the reactor in 1973, the year before the test? A letter dated July 20, 1976 from Myron B. Kratzer of the U.S. Department of State to Benjamin Humberman of the U.S. Nuclear Regulatory Commission states that "heavy water of US origin clearly was a part of the commingled inventory used in CIRUS reactor operation prior to the 1974 Indian nuclear test." Has there been a new investigation that negates the statements in this letter?
12. The Department's response to Question 6 regarding the time table for implementation of the Administration's proposal states that "Implementation of such commitments thus requires a gradual or "phased" approach." What actions and/or commitments will India be required to make before reaching the stage of this "phased approach" when the United States will allow exports of nuclear fuel to India?

13. The Department's response to Question 7 states that "the factors that make the Joint Statement commitments appropriate for India are not currently present in either Pakistan or Israel – and certainly not in North Korea." Will you be making a statement to the Congress and the NSG as to what exactly the factors are that make such cooperation appropriate, so as to make sure that exceptions are not made for countries that you do not believe have met these factors, such as Pakistan, Israel, or North Korea?
14. The Department's response to Question 8 states: "The United States remains committed to the NSG and has spent considerable effort over the past several years seeking to strengthen this important organization." Nuclear cooperation with India will require an exception to the rules of the NSG because India will not have full-scope safeguards. Can you explain how weakening the rules of the NSG will not result in a weakening of the NSG? And, will the United States seek to pursue "full" civil nuclear cooperation with India even if a the NSG cannot reach consensus on changes to its existing rules that would allow such trade?

I look forward to your responses.

Sincerely,


Edward J. Markey