



United States Department of State

Washington, D.C. 20520

JAN 17 2006

Dear Mr. Markey:

Thank you for your letter dated November 30, 2005 to the President regarding the July 18 United States-India civil nuclear cooperation initiative. The White House has asked that we reply on its behalf. We appreciate the opportunity to engage with you on this Presidential priority.

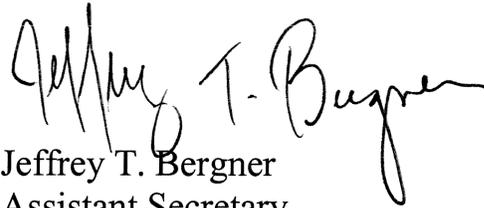
Under Secretaries Burns and Joseph have stressed in their testimony to the House International Relations and Senate Foreign Relations Committees our assessment that the civil nuclear cooperation initiative with India will, on balance, enhance international nuclear nonproliferation efforts. The initiative will not require – nor do we intend to seek – changes to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Once India has implemented its enhanced nonproliferation commitments, it should be possible for the Nuclear Suppliers Group (NSG) to accommodate nuclear exports to India for its civil nuclear program without changes to the NSG Guidelines, per se, with a policy decision to recognize India as a special case. We are reviewing the specific legislative and regulatory changes that may be required to implement civil nuclear cooperation with India.

While many of the questions raised by nongovernmental specialists have been addressed previously in Congressional testimony by senior State Department officials, our responses are enclosed.

The Honorable
Edward J. Markey,
House of Representatives.

We hope this information is helpful in addressing your concerns. We look forward to discussing this important issue with you further, and to working with you toward its timely and effective completion. Please feel free to contact us further on this or any matter of concern to you.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey T. Bergner". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

Jeffrey T. Bergner
Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

Responses to the Key Issues Raised by Nongovernmental Specialists on Nuclear Cooperation with India

The responses below are keyed to the questions in the November 18, 2005 letter you received from a consortium of nongovernmental nonproliferation specialists.

Question 1: How reliable is India as a nuclear partner based on its past record and how might the proposed deal affect efforts to stop trade to and from states of concern?

1a. Is there any prospect that there could be a negative impact on attempts to stop Iran and North Korea from obtaining assistance for their nuclear programs?

Answer: Our positions on Iran's and North Korea's nuclear programs are well-known and entirely unrelated to the proposed civil nuclear cooperation with India. India's real and growing energy needs, its solid nuclear nonproliferation export record, and its enhanced nonproliferation commitments put it in a unique situation. In our view, India is a special case; civil nuclear cooperation with India does not establish a precedent for others.

1b. How will assistance to Pakistan's nuclear program by China and others be affected by this proposal if implemented?

Answer: China is an NSG Participating Government. Should the NSG decide to allow civil nuclear cooperation with India, it will be on the basis of factors unique to India's particular situation. At this time, there is no proposal to extend civil nuclear cooperation to Pakistan within the NSG context. As such, Chinese civil assistance would take place outside that context. Any support to Pakistan's nuclear weapons program would violate Article I of the NPT. We fully expect China to uphold its NSG and NPT commitments.

1c. Is there any evidence of Indian violations since 1998 of U.S. and other export control laws involving nuclear weapons related technology and/or delivery systems, including missiles?

Answer: We are not aware of any such violations by the Government of India or by government-controlled entities.

1d. To what extent might the current proposal stimulate China's and Pakistan's production of nuclear weapons or nuclear weapons material?

Answer: This initiative relates to civil nuclear energy cooperation with India in an effort to meet its real and growing energy needs. Such cooperation would not be extended to India's military facilities or to its weapons programs. The identifiable separation of its civil facilities, coupled with the safeguards that India must negotiate with the IAEA, should ensure that civil nuclear energy cooperation does not contribute to India's nuclear weapons program. Neither Pakistan nor China should be able to credibly justify fissile material production on the basis of the proposed civil nuclear cooperation. We would call on both to also agree, as India has, to work toward a Fissile Material Cutoff Treaty; and we stand ready to explore interim options that serve similar objectives.

1e. How effective are India's nuclear and missile export laws and enforcement capabilities vis-à-vis those of the NPT nuclear-weapon states and the requirements of Resolution 1540?

Answer: India's May 2005 Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibitions of Unlawful Activities) Act and subsequent implementing regulations provided major improvements to India's export control measures. On the whole, the Act and implementing regulations bring Indian export controls further in line with widely accepted export standards for preventing WMD proliferation and are consistent with the kinds of export control measures that UNSC Resolution 1540 requires states to implement. We continue to discuss export controls with the Indians, especially means to enhance the effectiveness of India's enforcement mechanisms.

Question 2: Will the delivery of U.S. technology or nuclear fuel for the reactors in India free-up indigenous Indian nuclear fuel for weapons programs?

Answer: The July 18 Joint Statement is intended to bring India closer to the global nonproliferation mainstream while advancing energy security and the U.S.-India strategic partnership. India has used indigenous uranium in support of its nuclear weapons program, and has already amassed a stockpile of weapons-usable nuclear materials. While the growth of India's strategic program is evidently not constrained by access to natural uranium, its commercial and developmental goals are constrained by a lack of access to the international market.

2a. Could such an action damage the NPT and our ability to help enforce compliance with it?

Answer: As Under Secretary Joseph has testified to the House International Relations Committee and to the Senate Foreign Relations Committee, the Administration assesses that, once implemented, the civil nuclear cooperation initiative detailed in the broadly constituted Joint Statement will prove to be a net gain for nonproliferation. While we will continue to work with India and to encourage it to do more on the nonproliferation front in the context of our strategic partnership, India's implementation of its commitments will, on balance, enhance global nonproliferation efforts. The international nuclear nonproliferation regime, of which the NPT is a key component, will emerge stronger as a result.

2b. What verifiable restrictions on India's use of its own fuel will the United States insist upon?

Answer: The United States is not seeking to impose restrictions on India's use of India-origin fuel. This is not part of the Joint Statement, and is not consistent with international practices. India has agreed to identify and separate its civil nuclear programs, place these under safeguards, and negotiate an Additional Protocol in this context.

2c. Will the U.S. insist on case-by-case consent rights or rights of disapproval on reprocessing and enrichment and retransfers of U.S. origin items?

Answer: We intend to negotiate and conclude with India an agreement for peaceful nuclear cooperation that meets the requirements of Section 123(a) of the Atomic Energy Act, as amended, with the exception of full-scope safeguards. That agreement will provide appropriate controls to ensure that nuclear goods and services that are provided for civilian purposes remain in the civilian sector. All pertinent U.S. export control laws, including those related to retransfers, will remain in effect.

2d. Is the administration considering the transfer of uranium enrichment or reprocessing technology to India as part of the U.S.-India accord?

Answer: The Joint Statement calls for “full” civil nuclear cooperation. We do not currently provide enrichment or reprocessing equipment to any other state, and do not intend to transfer such technology to India. As the President said in February 2004, “enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes.”

Question 3: What kind of IAEA safeguards will be applied to Indian civilian nuclear facilities?

3a. Will they be INFCIRC 66 rev 2 safeguards which are applied in perpetuity?

Answer: NPT-defined nuclear weapon states have so-called “voluntary” safeguards agreements that draw on INFCIRC/153 language. But they do not obligate the IAEA to actually apply safeguards and also allow for the removal of facilities or material from safeguards. We do not view a safeguards agreement that would allow India to withdraw facilities or material from safeguards as defensible from a nonproliferation standpoint. We believe that the most appropriate approach to formulating a safeguards agreement in this context is the use of INFCIRC/66, which is the basis for the safeguards agreements applicable to India’s four currently safeguarded reactors and the additional two that India is required to safeguard at Kundankulam when completed.

3b. If other safeguards are contemplated that are not permanent, how would they prevent the diversion of civilian materials or technologies to

weapons use once the putative U.S.-India agreement expires or is otherwise terminated?

Answer: Among other considerations, we must be assured that safeguards will be applied in perpetuity, that “civil” material remains in the civil sector, and that any assistance provided in no way contributes to India’s nuclear weapons program. The safeguards must effectively cover India’s civil nuclear fuel cycle and provide strong assurances to supplier states and the IAEA that material and technology provided or created through civil cooperation will not be diverted to the military sphere.

3c. Will India be allowed to withdraw a civilian facility from safeguards and declare it a military facility?

Answer: India is currently engaged in devising a plan to separate its civilian nuclear and nuclear-related facilities and programs. We have indicated that we would view a “voluntary offer” safeguards arrangement – one that allowed facilities and material to be removed from safeguards at will – as inconsistent with the Joint Statement and not defensible from a nonproliferation standpoint.

3d. What criteria would be used by the U.S. government to determine which nuclear facilities and material should be subject to safeguards?

Answer: As Under Secretaries Joseph and Burns have testified, we seek a civil-military separation in India that is credible, transparent, and defensible from a nonproliferation standpoint.

3e. How much additional funding will the IAEA need in order to meet the additional safeguards requirements?

Answer: We recognize that implementing safeguards in India will entail significant costs that are not included in the IAEA's current budget. The exact amount of that additional funding has yet to be determined, and will clearly depend upon the final parameters of the safeguards agreement and Additional Protocol. We look forward to working with the IAEA and the Government of India to estimate those costs and to identify how best to meet them without undercutting inspections/verification efforts in other countries.

Question 4: How will the United States verify Indian nonproliferation commitments beyond safeguards under the proposed agreement?

4a. Will the U.S. be able to determine independently which Indian facilities are civilian and which are military? If not, how will we know whether India's declaration is appropriate?

Answer: The United States and India have on successive occasions discussed issues relating to the separation of civilian and military nuclear facilities and programs in India. We expect the final plan to be credible, transparent and defensible from a nonproliferation standpoint. Since no unsafeguarded facilities will be eligible for NSG Trigger-List supply, it is in India's own interests to declare the maximum number of programs and facilities as civilian.

4b. What mechanisms are in place to monitor Indian implementation of its export laws, and how long would it take to ensure that the appropriate Indian laws are in place and working effectively?

Answer: 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 part of the Next Steps in Strategic Partnership initiative, India provided assurances regarding observance of U.S. export control laws and the U.S. and India reached agreement that allows the U.S. Department of Commerce to conduct end-use visits.

There are no specific mechanisms, per se, established in the July 18 Joint Statement for monitoring India's implementation of its own export control laws. The United States has an embassy in New Delhi and Consulates General in Mumbai, Calcutta and Chennai, as well as ongoing nonproliferation and law-enforcement cooperation programs and dialogues. Through routine and, as warranted, specifically tasked reporting, these assets help provide a comprehensive picture of Indian implementation and enforcement of its export control laws. We continue to discuss export control-related issues with India, especially with respect to enforcement activities.

Question 5. Does the administration consider India's 1974 nuclear explosion in which U.S. heavy water was used in the production of the bomb's plutonium a violation of the sales agreement between India and the United States? If so, does India agree with our interpretation of that agreement? If they don't, how can we assure (sic) that similar disagreements won't happen with the current proposal? Should the proposal be amended to provide for return of all delivered materials in the event of such a disagreement?

Answer: India used heavy water that the U.S. provided under a 1956 Nuclear Regulatory Commission (NRC) contract – along with Indian and third-country supplied heavy water – as a moderator for the Canadian-provided CIRUS research reactor, the reactor India reportedly used to generate plutonium for its weapons program. After India detonated a nuclear device in 1974, the U.S. Government examined whether India's actions were inconsistent with a clause under the 1956 contract stating that the heavy water would be used for “research into and the use of atomic energy ‘for peaceful purposes.’” 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. The agreement for peaceful nuclear cooperation negotiated with India will specify this directly.

Question 6: Both U.S. and Indian spokesmen have referred to a “phased” approach to implementation of the proposal if approved. If so, what are the steps and what is the sequence? Is the U.S. government working on a plan with a timetable that would phase in our cooperation with India in accordance with India’s meeting its obligations?

Answer: The United States and Indian Governments committed to undertake their respective Joint Statement actions on a reciprocal basis. Some commitments are ongoing, such as India’s nuclear test moratorium and its export restraint with respect to enrichment and reprocessing technologies. Others, such as NSG and MTCR adherence, can arguably be met relatively quickly. The complexity of particular undertakings, most notably the separation and safeguarding of India’s civil facilities, suggests that not all commitments can be completed simultaneously or immediately. Implementation of such commitments thus requires a gradual or “phased” approach. India and the United States are in close consultation on all aspects of Joint Statement implementation, meeting three times by December 2005.

Question 7: Has the administration obtained any evidence of Pakistani, Israeli, or North Korean interest in civilian nuclear cooperation on terms similar to those proposed for India. What is the argument for doing this favor for India and not for these other states? How will the administration respond if other states, like China or Russia seek exemptions for their preferred political or commercial partners?

Answer: We fully intend to uphold both our NPT and NSG obligations, and expect that Russia, China, and other potential suppliers will also. We view India as a special case: it faces real and growing energy needs, has a solid nuclear nonproliferation export record, and has made enhanced nonproliferation commitments that, when implemented, will closely align it with the global nonproliferation mainstream. While news reports have cited Pakistani officials seeking similar treatment, 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.

Question 8: What specific proposals, if any, has the U.S. discussed with NSG partners to alter its guidelines so that civilian nuclear trade with India might proceed and what are the specific reactions of other NSG members? Will the administration proceed with “full” civil nuclear cooperation with India if the NSG does not unanimously support such an exception to NSG rules for India? How will the proposed rule changes relating to India affect President Bush’s proposal to the NSG to make the Additional Protocol a condition of supply?

Answer: The United States has not yet made a specific proposal to the NSG to accommodate civil nuclear cooperation with India. At the October NSG Consultative Group meeting, Assistant Secretary of State for South Asian Affairs Christina Rocca and Acting Assistant Secretary for International Security and Nonproliferation Stephen Rademaker briefed NSG members on the Joint Statement and on some key considerations relating to the proposed civil nuclear cooperation with India.

In the context of usual NSG confidentiality practices, it would be inappropriate to relate in a public document the individual views expressed by delegates; we would be glad to brief you further. However, some governments supported the U.S. effort; some expressed reservations; and most adopted a “wait-and-see” approach, making it clear that their ultimate support will depend on the scope and pace of India’s actions.

The United States remains committed to the NSG and has spent considerable effort over the past several years seeking to strengthen this important organization. Our commitment to seek NSG accommodation for civil nuclear cooperation with India is in harmony with the President’s proposal to make the Additional Protocol a condition of supply; indeed, India committed under the Joint Statement to negotiate an Additional Protocol for its civil facilities and programs. We will work closely with our international partners to find a shared way forward. We have no intention of undercutting the NSG, and continue to view it as an important policy tool.