

Questions for the Record
Chairman Richard G. Lugar
United States-India Nuclear Energy Cooperation: Security and
Nonproliferation Implications
Wednesday, November 2, 2005

The Administration's Legislative Proposal and the July 18 Joint Statement

Secretaries Burns and Joseph:

1. When will the Administration present this Committee with legislation regarding nuclear energy cooperation with India?
2. When do you anticipate that India will have completed all of the steps it has committed to undertaking in the July 18, 2005 Joint Statement?
3. In your view, when should Congress act to change U.S. law?—Before or after completion by India of all its undertakings in the July 18 Joint Statement or after the completion of certain parts of the Joint Statement?
4. What are the interim forms of legislation being considered by the Department in this area?—Will there be a new nuclear cooperative agreement with India, one for which statutory amendments would be required, or does the Administration prefer to create a broad, new authority outside of the current Atomic Energy Act of 1954 (42 USC 2011, et seq.) for India?
5. Could you please provide me with your understanding of current U.S. law, i.e., which U.S. laws or regulations prohibit exports to India of nuclear and dual-use nuclear items and which U.S. laws or regulations provide a presumption (of approval or denial) of such exports to India, and which such laws and regulations would need to be modified to implement the Joint Statement?
6. The Joint Statement commits the United States to “full civil nuclear energy cooperation with India.” As the United States has different forms of nuclear energy cooperation with many nations, differing even among NPT Parties, what is the meaning of this phrase in relation to U.S. law and regulation regarding nuclear commerce with India?
7. What regulatory changes (beyond those already made under the Next Steps in Strategic Partnership or NSSP) would need to be made to implement full civil nuclear energy cooperation with India?

8. Presuming Congressional approval of statutory amendments and Nuclear Suppliers Group approval of an exception to its Guidelines for India, when would the United States Government begin to approve the export of nuclear items or technical data to India, and what are those items or technical data likely to be?

Secretary Joseph:

In your statement you note that Congress should not “make the perfect the enemy of the good” and that adding any conditions to the eventual changes to law that Congress might make for India would be a “deal breaker.”

1. Do you mean that the entire set of things contained in the Joint Statement, beyond civil nuclear cooperation, would also be sacrificed if Congress conditioned nuclear commerce with India on things not detailed in the Joint Statement?
2. Does the Administration oppose any additional nonproliferation measures for India beyond those stipulated in the Joint Statement?
3. Could you please provide me with your views with regard to each of the following items, items which have been proposed as those I might consider including in legislation:
 - (a) A requirement that India stop producing fissile materials for nuclear weapons;
 - (b) A requirement that India declare it will not conduct any more tests of its nuclear weapons;
 - (c) A distinction between India and NPT parties that would provide different treatment in terms of the nuclear exports for non-NPT parties, i.e. India would be eligible for most U.S. exports *except* equipment, materials, or technology related to enrichment, reprocessing, and heavy water production; and,
 - (d) Permitting U.S. nuclear exports only to those Indian facilities, sites and locations that are under IAEA safeguards in perpetuity – not to facilities, sites or locations under voluntary safeguards arrangements.

Secretary Burns:

1. During your testimony before the Committee, you seemed to indicate that the Administration would prefer India-specific legislative language rather than country-neutral criteria. What are the strengths, in your view, of an India-specific exception to current U.S. law as opposed to a country-neutral exception?
2. Is it your view that if Congress did not approve provisions for India related to nuclear energy that the U.S.-India relationship would be harmed?
3. Have Indian officials stated to you that if Congress does not approve a legislative exception for India from current law for nuclear commerce that India would either look differently on its new relationship with the United States or respond negatively to the lack of Congressional action?
4. What does India's current plan for its nuclear power sector call for in terms of the types of reactors (heavy- or light-water reactors) it will seek from foreign providers?

Place in the New Relationship

Secretary Burns:

In testimony before the Committee, several experts suggested that creating an exception from long-standing U.S. law and policy, and asking the Nuclear Suppliers Group (NSG) to do the same with respect to NSG Guidelines, damages U.S. nonproliferation leadership, and that the strategic rationale for the Joint Statement does not provide a basis for such changes.

1. Why does nuclear energy figure so prominently among the many ways the United States can forge a new, strategic partnership with India?

India's Violations of U.S. Law

Secretary Joseph:

1. In testimony before the House on October 26, 2005, Leonard S. Spector, Deputy Director of the Center for Nonproliferation Studies at the Monterey Institute of International Studies, stated that

India's misuse of plutonium produced in the Canadian-supplied CIRUS research reactor is not a matter of ancient history; it is an ongoing offense. The original transgression took place in the 1970s, when India misused the reactor, along with U.S.-supplied heavy water that was essential for the reactor's operation, in order to produce the plutonium for India's 1974 nuclear detonation.¹

(a) What is the status of India's violation of its peaceful use undertakings in the 1956 U.S. heavy-water contract, are they "ongoing" or are they, as a result of the termination of U.S.-Indian nuclear cooperation, no longer operative?

(b) Has any of the plutonium from CIRUS that was produced using U.S.-origin heavy water been incorporated into Indian nuclear explosive devices or used in any Indian tests of nuclear explosive devices?

(c) Will the Administration, as a part of the process under the Joint Statement, obtain from India a full, accurate and complete account of the disposition of any U.S.-origin heavy water in India?

(d) Does the Government of India acknowledge that its unauthorized end use of U.S.-origin heavy water supplied for the CIRUS reactor was a violation of U.S. law?

(e) Does the Government of India acknowledge that its 1974 nuclear-weapon test was not a "peaceful nuclear explosion"?

(f) If India declares that CIRUS is a peaceful reactor, would any plutonium produced there need to be removed from those plutonium stocks that India has set aside for weapons and placed under permanent IAEA safeguards?

¹ Available at http://wwwc.house.gov/international_relations/109/spe102605.pdf.

Nuclear Suppliers Group Issues

Secretary Burns and Secretary Joseph:

1. What are the positions of each of the 44 members of the Nuclear Suppliers Group on the comments and proposals made by A/S Rocca and A/S Rademaker during their consultations with NSG members in Vienna, Austria last October?
2. Could you please furnish the remarks made by A/S Rocca and A/S Rademaker in Vienna to the NSG members to the Committee?
3. Did the remarks made by the U.S. delegation present specific proposals regarding changes to specific parts of the NSG Guidelines for Nuclear Exports for India?
4. Has the United States shown proposed changes to NSG Guidelines to Indian Government officials?
5. Will India join the NSG?
6. Do you anticipate that the NSG will be able to make a consensus decision on the U.S. proposal(s) regarding India at its next plenary meeting?

Safeguards Verification and Compliance

Secretary Joseph:

1. Has the Government of India entered into discussions with International Atomic Energy Agency (IAEA) officials regarding a new declaration of civil nuclear sites, facilities or locations?
2. When will India submit a new declaration to the IAEA of its civil sites, facilities or locations that would be subject to safeguards?
3. What kinds of safeguards will be applied to India's declared civil sites, facilities or locations (please specify IAEA Information Circular (INFCIRC) number)?
4. Will India allow the safeguards applied to its declared civil sites, facilities or locations to be permanent, i.e., that no declared site, facility or location may be removed from India's declaration to the IAEA and that the safeguards in place on those declared sites, facilities or locations are to be in place in perpetuity?

5. Has the Administration briefed the IAEA on its discussions of a civil-military split in Indian sites, facilities or locations, and if so, when?
6. What are the general “phases” (not dates) that will unfold under the Joint Statement’s terms with respect to India’s separation of its civil and military nuclear facilities, sites or locations?
7. The IAEA, because of budgetary pressures, discontinued inspections in the United States in 1993, largely because the value of such inspections is of limited utility in states with declared and lawful nuclear weapons programs. At the request of the U.S. Government, the IAEA resumed inspections in 1994 by applying safeguards to several tons of weapons-usable nuclear material, which had been declared excess to U.S. national security stockpiles. The IAEA undertook this effort on the condition that the United States reimburse the IAEA.

The Joint Statement notes that India will “assume the same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States”.

(a) Will India declare a portion of its weapons-useable materials excess to its defense needs and place them under permanent IAEA safeguards?

(b) Will India reimburse the IAEA for any inspections conducted in India on safeguarded facilities, sites, locations and materials?

8. Do you assess that the IAEA currently has the staff, funding and necessary information to support safeguards monitoring for India without taking away from inspection and verification efforts in other countries?
9. Would India permit the IAEA, as a confidence-building measure, to conduct inspections of its declared facilities, sites or locations, and if so, how many such inspections and how many facilities, locations or sites would be inspected?
10. Will the Additional Protocol (AP) that India signs be identical to the Model Additional Protocol (INFCIRC/540)?
11. In the Joint Statement the Indian Prime Minister states that India commits to “signing and adhering to an Additional Protocol with respect to civilian nuclear facilities”. Does this mean that India would not ratify and implement its Additional Protocol?

12. Is it permissible for any Non-Nuclear Weapon State (NNWS) under the NPT to sign and adhere to, but not to ratify and implement, the Additional Protocol?
13. Is it permissible for any Nuclear Weapon State (NWS) under the NPT to sign and adhere to, but not to ratify and implement, the Additional Protocol?
14. Will the Additional Protocol that India signs permit it to exclude the application of safeguards to any facilities, sites or locations in India?
15. When will India sign an AP?
16. What would be the relationship between India's list of declared civil sites subject to safeguards and its AP?—Are the provisions of its AP binding on its declared civil sites?

INPA Sanctions

Secretaries Burns and Joseph:

On September 23, 2004, the Administration sanctioned two Indian scientists for their activities in Iran under the authority of the Iran Nonproliferation Act of 2000 (P.L. 106-178, or "INPA").

1. Has the Administration considered other sanctions against Indian entities or persons under INPA or any other relevant U.S. law or Executive Order since last September?
2. What was the reaction of the Indian Government to the INPA sanctions last year?
3. What steps has India taken to prevent Indian interactions with Iranian entities or persons closely involved with Iran's atomic energy activities?

India's Export Control Laws, Regulations and Policies

Secretary Joseph:

1. Has the Administration undertaken an expert-level legal analysis of India's export control laws and regulations?
2. If so, could you please furnish that analysis to this Committee?

3. I understand that the State Department sent a number of questions concerning India's export control law(s) (what is termed its "WMD law") to New Delhi some time ago. Has the Government of India answered all of those questions, and could you please furnish (a) those questions and (b) answers to this Committee?
4. Does Indian law specify anything with regard to the re-export or re-sale of foreign-origin dual-use equipment?
5. What does Indian law specify about the access of either foreign nationals or dual-nationals to sensitive items exported from other nations to India?
6. Do any foreign nationals or dual-nationals work at or have access to sites currently subject to IAEA safeguards in India (Rajasthan 1 & 2 and Tarapur 1 & 2)?
7. Do any foreign nationals or dual-nationals work at or have access to the Indian nuclear facilities Kundankulam 1 and 2?
8. Do any foreign nationals or dual-nationals work at or have access to the Indian Space Research Organization (ISRO) Headquarters in Bangalore, India; ISRO Telemetry, Tracking and Command Network (ISTRAC); ISRO Inertial Systems Unit (IISU), Thiruvananthapuram; Liquid Propulsion Systems Center; Solid Propellant Space Booster Plant (SPROB); Space Applications Center (SAC), Ahmadabad; Sriharikota Space Center (SHAR); Vikram Sarabhai Space Center (VSSC), Thiruvananthapuram?
9. Do any foreign nationals or dual-nationals work at or have access to The following Indian Department of Atomic Energy entities: Bhabha Atomic Research Center (BARC); Indira Gandhi Atomic Research Center (IGCAR); Indian Rare Earths; Nuclear reactors (including power plants) not under International Atomic Energy Agency (IAEA) safeguards, fuel reprocessing and enrichment facilities, heavy water production facilities and their collocated ammonia plants?
10. Does Indian law contain "catch-all" controls on items not otherwise stipulated in national controls?
11. Have there been successful prosecutions of entities or persons brought by the Government of India for violations of its export control laws?
12. Did India pursue any action (civil or criminal) against Dr. Y.S.R. Prasad and Dr. C. Surendar after the United States sanctioned them under the authority of the Iran Nonproliferation Act of 2000 (P.L. 106-178)?

13. Does the United States have any information that Indian entities or persons in the United States have engaged in attempts to falsify necessary *bona fides* in transactions with U.S. entities or persons?
14. In oral remarks made at the Department of Commerce's annual Bureau of Industry Security (BIS) "Update" Conference recently held in Washington, DC, Steven Goldman, director of the BIS Office of Nonproliferation and Treaty Compliance, stated that "India has modified its approach, has made major commitments, in many respects commitments that exceed those of our closest allies".²

Do you concur with this assessment, and if so, how does India exceed the nonproliferation commitments made by our closest allies, in particular, those who are nuclear weapon states (such as the United Kingdom) under Article I of the NPT?

RMP Facility

Secretary Joseph:

1. Do you concur with the assessment of alleged Indian attempts to illicitly acquire certain dual-use nuclear technology provided by David Albright during testimony before the House on October 26, 2005?— Which states in relevant part:

Indian nuclear organizations use a system that hires domestic or foreign non-nuclear companies to acquire items for these nuclear organizations. Such procurement appears to continue for its secret gas centrifuge enrichment plant near Mysore. In an attempt to hide its true purpose from suppliers and others when it started this project in the 1980s, India called the facility the Rare Materials Plant (RMP) and placed it under Indian Rare Earths (IRE) Ltd, an Indian Department of Atomic Energy company focused on mining and refining of minerals. Since the mid-1980s, IRE has served as a management company for RMP and appears to be the declared end-user of its procurements of centrifuge-related equipment and materials.³

2. What is the purpose of the RMP facility?

² Available at http://www.exportcontrolblog.com/blog/2005/10/update_day_one_4.html.

³ Available at http://wwwc.house.gov/international_relations/109/alb102605.pdf.

3. The Commerce Department issued revised U.S. regulations for balance of plant exports to certain Indian entities last September.⁴ The Indian Department of Atomic Energy entity called “Indian Rare Earths” is named in those FR notices, but could you please explain for the record the current regulatory treatment provided to the entity Indian Rare Earths under current law and regulation?

India and Iran

Secretaries Burns and Joseph:

1. India’s vote in favor of IAEA Board of Governors’ (BOG) Resolution GOV/2005/77 was seen by some as a departure from its traditional siding with developing countries in multilateral fora.

Prior to the vote, it had been my understanding that the goal of the United States and the EU Three at that BOG meeting was to report Iran’s noncompliance to the UN Security Council.

Indian officials have taken credit for preventing such a report by supporting language that found Iran’s noncompliance “within the competence of the Security Council.” An earlier Indian Ministry of External Affairs press release regarding a telephone conversation between Indian Prime Minister Singh and Iranian President Ahmadinejad stated that “India supports the resolution of all issues through discussion and consensus *in the IAEA*.”⁵

(a) What were the reasons India did not support reporting Iranian noncompliance to the Security Council at the last meeting of the BOG?

(b) Under what circumstances would India support reporting Iranian noncompliance to the Security Council?’

(c) Is it the Administration’s position that Iran’s noncompliance should be reported to the Security Council?

(d) Does the Administration consider Iran’s July-August 2005 resumption of uranium conversion activities at UCF-Isfahan to be a breach of its suspension of fuel-cycle activities agreed to with the EU Three?

⁴ 69 FR 56,693 (2004), revised in 69 FR 58,049 (2004).

⁵ “Press Statement on telephonic conversation between Prime minister Dr. Manmohan Singh and President Ahmadinejad of Iran,” September 23, 2005, at <http://meaindia.nic.in/prhome.htm>.

(e) Does the Indian Government consider Iran's July-August 2005 resumption of uranium conversion activities at UCF-Isfahan to be a breach of its suspension of fuel-cycle activities agreed to with the EU Three?

Secretaries Burns and Joseph:

1. I understand that India has a formal defense cooperation agreement with Iran. Has the Department been provided with a copy of that Agreement, and if so, could you please furnish it to this Committee?
2. Public reports in late 2004 suggested that India was considering the sale to Iran of an advanced radar system known as "Super Fledermaus," a system capable of detecting low-flying objects such as the unmanned aerial vehicles (UAVs) the United States frequently uses to conduct surveillance operations. The radar system is produced by Bharat Electronics Limited (BEL) under license from Ericsson Radar Electronics, a U.S. firm.

(a) Has India decided not to proceed with this sale?

(b) Do you know of other significant defense equipment sales to Iran being considered by India?

Interaction with Other Nonproliferation Policies and Countries

Secretaries Burns and Joseph:

1. Could you please explain how the policy the Administration adopted in the Joint Statement is consistent with other Administration policies and statements regarding the ongoing crises of noncompliance in North Korea and Iran?

Proliferation Security Initiative

Secretary Joseph:

1. Why has India not joined the Proliferation Security Initiative (PSI)?
2. What are the views of the Government of India on the Statement of Interdiction Principles?