



## **NSG Waiver for India** by Anupam Srivastava

*Dr. Anupam Srivastava ([a.srivastava@cits.uga.edu](mailto:a.srivastava@cits.uga.edu)) is director of the Asia Program at the Center for International Trade and Security at the University of Georgia.*

On Sept. 6, 2008, the 45-nation Nuclear Suppliers Group (NSG) agreed to provide an exemption that permits its member states to engage in civil nuclear cooperation with India. This decision has been labeled as historic and forward-looking by the senior-most political leadership in Washington, Paris, London, Moscow, and New Delhi. But significant sections of opinion in these capitals and elsewhere remain convinced that this deal undermines global nonproliferation efforts and might set a dangerous precedent for other nuclear aspirants to seek similar waivers.

### **Marathon Deliberations at the NSG in Vienna**

Before assessing the arguments of the proponents and the critics, it is instructive to describe the deliberations at the NSG that eventually lasted 76 hours. The meetings were convened at the Japanese Embassy in Vienna where discussions began on a draft waiver agreement that the United States had prepared in consultation with India. Some of the major nuclear supplier states such as France, UK, Russia, and Japan reiterated their strong support for the waiver, so that by the end of Day 1, only seven countries held out against a consensus decision to permit member states to participate in the IAEA-safeguarded Indian civil nuclear complex.

Day 2 negotiations began at 9 AM, by which time Indian Minister of External Affairs Pranab Mukherjee had issued a strong statement reiterating India's continued commitment to a unilateral moratorium on nuclear testing, its strong record on nonproliferation, export controls aligned with the NSG, commitment to negotiating a Fissile Material Cutoff Treaty (FMCT), not providing enrichment and reprocessing technologies to states that do not possess these capabilities, and to negotiate an Additional Protocol with the IAEA. This would be in addition to the Safeguards Agreement that the IAEA Board of Governors unanimously approved Aug. 1, 2008, based upon the Indian list of March 2006 that identified the reactors and facilities designated as civilian, and a timeline by which they will be completely separated from the weapons complex (to be completed by 2014).

According to John Rood, undersecretary of State and chief U.S. negotiator in Vienna, Mukherjee's statement provided the "necessary reassurance and momentum" to the deliberations. Although Day 2 negotiations ended inconclusively at 2.30 AM, the principle obstacle remaining was whether the main text of the waiver should specifically spell out an automatic termination of all cooperation if India were to conduct a nuclear explosive test. With Switzerland and New Zealand accepting the revised text, the only hold-out states were

Austria and Ireland, reportedly egged on by the Chinese who also called for a third round of NSG talks (the first one of August 28-29 having proven inconclusive).

Before Day 3 negotiations began, President Bush reportedly spoke with President Hu Jintao of China. The Chinese delegation did not attend the last day's meeting, and after 3 hours of deliberations, the current NSG chair, Germany, announced that a waiver for India had been approved by consensus. Although the final document has not been made public, the negotiators who spoke to the press indicated that there is no direct reference to the word "testing" in the main text. Instead, it refers to "circumstances" that, if they arose, will be resolved in accordance with the existing regulations under Paragraph 16 of the NSG Guidelines, which in turn states that if a recipient country "violates its IAEA safeguards agreement ... or conducts a nuclear explosive test," member states will convene and take a "consensus decision" on whether to terminate cooperation.

### **Next Steps**

While India will now sign and formally complete the IAEA Safeguards Agreement, the White House will now complete Presidential Determinations about India's ability to implement its commitments, and then submit the 123 agreement before the Congress where it hopes to secure a favorable outcome in an up or down vote before Congress adjourns Sept. 26. If this proves difficult given the time constraint, Congressman Joseph Crowley and others have indicated that a lame duck session of the Congress might be convened following the November elections to schedule a vote that will decide if the United States can pursue nuclear cooperation with India.

Meanwhile, the French and Russian leadership are already seeking Indian permission to formalize agreements that each had reached with India in late 2007 so that France can build six reactors and Russia can build four more. The Indian side has reportedly informed both countries that they are firm on waiting until the U.S. Congressional decision has been taken before entering into negotiations with other parties.

### **Assessing the Deal**

Following the Indian separation plan, the deal brings 14 of India's 22 currently operating power reactors under permanent IAEA safeguards, along with designated research and other facilities, plus all indigenous and imported nuclear fuel. India will also build a dedicated reprocessing facility in this complex that will reprocess all spent fuel for re-use in the safeguarded reactors. All future Indian power reactors will be built within the civilian complex, so that over time, about 90 percent of all Indian facilities will become safeguarded. In addition, Indian export controls have been harmonized with those of the NSG (and MTCR), its WMD Act of 2005 meets

its UNSCR 1540 obligations, and the Indian definition of technology has been expanded to cover the entire spectrum of proliferation-relevant activities, i.e. import, export, re-export, catch-all controls, and end-use and end-user based controls.

The above steps are a net gain for nonproliferation, regardless of how one views the nuclear deal. Further, asking India to sign the Nuclear Nonproliferation Treaty (NPT) is a dead end, as the NPT cannot be amended to admit India as a nuclear weapon state nor can India be realistically expected to dismantle its weapons. That was the principal reason that this nuclear deal sought to “island” India’s weapons complex and put the rest of the civilian complex under permanent safeguards that meet IAEA’s current benchmarks (Type 66 and INFCIRC 254.Rev 2). That is also why an exemption from NSG’s Comprehensive Safeguards requirement was sought to permit member states to participate in the safeguarded Indian complex.

That leaves the matter of testing – whether to accept India’s voluntary moratorium or push it to sign the Comprehensive Test Ban Treaty or insert a punitive clause in the NSG exemption document. The U.S.-India 123 agreement preserves the U.S. right to terminate cooperation if India tests, but provides for a “joint” consultative body to decide within 12 months whether the Indian decision to test merits termination of U.S. cooperation. A similar consultation provision is now built into the NSG. The Indian position is designed to respond to a future situation, however unlikely, where resumption of testing by China or Pakistan (or the U.S. itself) might force it to conduct tests to further validate the design parameters of weapons that it has tested only once – in 1998. In such an eventuality, it is prepared to explain its case to the United States and the NSG and leave them to decide whether to terminate cooperation.

The Indian BJP and the communist parties are likely to continue accusing the Delhi government of having compromised national sovereignty and succumbed to U.S. “imperialism” while nonproliferation proponents in Washington and elsewhere will find other faults with this controversial, paradigm-shifting agreement. But in the final analysis, this deal will enable India to pursue technology-embedded economic and security partnerships with major powers in the international system, and the most objective judgment of this deal will come from the track record of Indian behavior now that it has been brought into the global economic and nonproliferation mainstream after 34 years in relative isolation.