

MINDING THE GAPS: U.S. & INDIA VIEWS ON NUCLEAR COOPERATION

IF INDIA TESTS NUCLEAR WEAPONS AGAIN...	What U.S. law requires	What the draft U.S.-India nuclear cooperation agreement says	What U.S. officials told Congress in responses released this week (9/2/08)	What Indian officials have been saying	So what?
Would the U.S. halt nuclear exports?	<p>The U.S. must halt all U.S. nuclear exports if India resumes nuclear testing (Sec. 129 of Atomic Energy Act, Sec. 104 of Hyde Act).*</p> <p>*The President does have waiver authority under Atomic Energy Act.</p>	<p>Termination can occur for any reason, after one year's notice. Nuclear tests aren't mentioned.</p>	<p>"Should India detonate a nuclear explosive device, the U.S. has the right to cease all nuclear cooperation with India immediately, including the supply of fuel, as well as to request the return of any items transferred from the United States, including fresh fuel" (Q. 16).</p>	<p>PM Singh to Parliament on 8/13/07: "The agreement does not in any way affect India's right to undertake future nuclear tests, if it is necessary."</p> <p>FM Mukherjee to Parliament on 8/16/07: "There is nothing in the bilateral agreement that would tie the hands of a future government or legally constrain its options."</p>	<p>Clearly both sides have their "rights." For India it is the right to conduct a nuclear test if necessary and for the U.S., it is the right to halt exports if India tests. <i>The question is, at what cost?</i></p> <p>India hoped to soften the blow of a future potential cutoff with fuel supply agreements, a lifetime supply of fuel, and the ability to take reactors out of safeguards (so-called "corrective measures") if fuel supply is interrupted.</p> <p>Now, the U.S. is saying that those promises don't refer to all disruptions – just the ones that aren't India's fault. In other words, there's no insurance for cutoffs if India tests again.</p>
<p>Does the U.S. have the right to ask for its nuclear supplies back?</p> <p>And, can that happen immediately?</p>	<p>The Atomic Energy Act mandates that the U.S. shall have the right to require the return of any nuclear materials and equipment transferred if a cooperating party tests a nuclear weapon, or terminates or violates an IAEA safeguards agreement (Sec. 123 (a)(4)).</p>	<p>The agreement does not specify what circumstances allow the U.S. right of return.</p> <p>Moreover, it appears that the right can only be exercised during the one-year interval before termination would go into effect (Article 14.4).</p>	<p>"Article 14 of the...agreement... provides a clear right for the U.S. to terminate nuclear cooperation and a right to require the return of equipment and materials subject to the agreement in all of the circumstances required under the Atomic Energy Act, including if India detonated a nuclear explosive device" (Q. 35).</p> <p>"Both of the actions that must be taken to exercise the right of return [giving written notice of termination and ceasing cooperation] would be within the discretion of the U.S. government and both actions could be taken at once" (Q. 36).</p>	<p>Atomic Energy Commission Chairman Kakodkar: "There is also a provision for right to return [nuclear equipment]," but cooperation "cannot be stopped abruptly" (Indiapost.com, 8/19/07).</p>	<p>India is worried about how to continue operating its reactors if suppliers suspend cooperation. Although Indian officials appear to believe that they have bought a year's "cooling off" period, official U.S. responses don't appear to agree.</p>
Would U.S. still honor fuel assurances?	<p>Under the Hyde Act, the U.S. should restrict India's strategic fuel reserve to enough for "reasonable reactor operating requirements" (Sec. 103 (b)(10)).</p>	<p>Article 5.6 states U.S. will support development of a strategic nuclear fuel reserve to guard against any disruption of supply over the lifetime of India's reactors.</p>	<p>"The parameters of the proposed 'strategic reserve' and India's capacity to acquire nuclear fuel for its reactors will be developed over time" (Q. 19).</p> <p>"The U.S.-India Agreement does not define 'reasonable operating requirements' and the two governments have not discussed a definition... We would expect that the actual amount of fuel put in the reserve would depend... on such factors as the availability of fuel in the market, price, Indian storage capacity, costs of storage, and similar practical considerations" (Q. 20).</p>	<p>"The bilateral cooperation agreement contains elaborate provisions... to ensure the continuous operation of India's reactors. These include fuel supply assurances, the right to take corrective measures, and a strategic fuel reserve for the lifetime of India's reactors in case of cessation of cooperation" (FM Mukherjee to Parliament, 8/16/07).</p> <p>"We have included fuel guarantees, corrective action and building of a strategic fuel reserve in the preamble and general considerations in the text of the agreement" (R.B. Grover, July 12, 2008 <i>Economic Times</i>, referring to India's safeguards agreement).</p>	<p>Lifetime reserves of fuel would render the impact of supply cutoff negligible.</p> <p>U.S. responses suggest that such reserves are a moving target, subject to "practical considerations."</p>

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<p>Would the U.S. ask other states to step in and supply India if it halted supply?</p>	<p>Under the Hyde Act, the U.S. should:</p> <p>a) not facilitate or encourage nuclear exports to India by any other state if such exports are halted by the U.S. (Sec. 102 (13));</p> <p>b) get the Nuclear Suppliers Group to stop exports if the U.S. terminates exports (Sec. 103 (a)(6)).</p>	<p>Article 5.6 states that, in the event of a fuel disruption, the U.S. will convene with India a group of friendly supplier countries to restore fuel supply to India.</p>	<p>“The use of the phrase ‘disruption of fuel supplies’... is meant to refer to disruptions in supply to India that may result through no fault of its own” (Q. 15).</p> <p>In the case of disruptions that occur through no fault of India’s own, “the United States would be prepared to encourage transfers of nuclear fuel to India by other NSG members” (Q. 18).</p> <p>“The fuel supply assurances are not, however, meant to insulate India against the consequences of a nuclear explosive test” (Q. 18).</p>	<p>PM Singh: “An important assurance given is the commitment of support for India’s right to build up strategic reserves of nuclear fuel to meet the lifetime requirements of India’s reactors” (<i>The Hindu</i>, 8/13/07).</p> <p>“If a foreign supplier supplies us a reactor, we have the right to go for stockpiling of fuel to ensure uninterrupted supply for the lifetime of the reactor” (National Security Advisor M.K. Narayanan, July 12, 2008 <i>Economic Times</i>).</p>	<p>U.S. official answers this week suggest that the fuel supply assurances wouldn’t operate if India tested a nuclear weapon, and that it wouldn’t feel obligated to go to other NSG members to ask them continue to supply.</p>
<p>Could India take its 8 reactors out of safeguards so that it could use its own nuclear fuel if supplies are cut off?</p> <p>[Note: The so-called “corrective measures” that India has insisted upon have never been defined, but likely refer to India’s ability to revert to using domestic, unsafeguarded fuel in its reactors, effectively shutting down inspections of those reactors.]</p>	<p>The Hyde Act requires IAEA safeguards “in perpetuity” to all the facilities India declared as civilian in its separation plan (Sec. 104 (b)(2)). These include the 8 indigenous reactors.</p>	<p>The draft cooperation agreement mentions “corrective measures to ensure the uninterrupted operation of civilian nuclear reactors” as does the India-IAEA safeguards agreement.</p> <p>Article 5.6 (c) of the draft 123 agreement states that “India will place its civilian nuclear facilities under India-specific safeguards in perpetuity.”</p>	<p>“Until a safeguards agreement is completed between India and the IAEA and the issue of ‘corrective measures’ is clarified, we cannot comment on the appropriateness of the agreement” (Q. 25).</p>	<p>PM Singh stated that the India-specific IAEA agreement will include “assurances of uninterrupted supply of fuel to reactors that would be placed under IAEA safeguards together with India’s right to take corrective measures in the event fuel supplies are interrupted” (pmindia.nic.in, 8/13/07).</p>	<p>Unfortunately, the approved safeguards agreement doesn’t define “corrective measures” either, even though it mentions them. India implies that it may break safeguards if fuel supply is interrupted.</p>