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### The Nuclear Suppliers Group Waiver

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#### **Introduction**

After hectic parleys in a highly divisive environment, the Indo-US civil nuclear deal received a shot in the arm, after the 45 member Nuclear Suppliers Group (NSG) eventually reached a consensus in favor of granting India a [waiver](#) on 6 September 2008. This paved the way for the deal to move towards its final hurdle at the American Congress. As expected, the NSG presented a much tougher task for the Indian and American interlocutors than the IAEA.

Indian Atomic Energy Chairman, Anil Kakodkar, [said](#) that India's nuclear export controls were harmonized to reflect the workings of the NSG, and that India demanded a "clean and unconditional waiver" and would oppose any changes to the IAEA safeguard agreements. Indian Foreign Secretary, Shiv Shankar Menon, [explaining](#) India's desire for clarity, explained that civilian nuclear trade by its very nature involves long-term investment of time and money, requiring solid confidence on the part of investors.

However, NSG members expressed strong reservations against the Indian position, believing an unconditional waiver would strongly undermine the non-proliferation regime. [Some members](#) feared India's nuclear arsenal would get a fillip, replenishing its scarce domestic stockpile of nuclear fuel, and others decried the hypocritical stance of the United States in pushing for the deal. To some members, the United States has done precious little to comply with its disarmament obligations, and pushing forward for an exemption for a non-NPT signatory was unacceptable.

India's unflinching stance on an 'unconditional waiver' was viewed even by its allies as stubbornness and an impediment to a consensus. Arguing for a softening of the Indian position, US Ambassador to India David Mulford [told](#) India, that the term 'unconditional waiver' was "provocative". He suggested instead "a clean exemption" to sit alongside many of the riders specified by the Separation plan, the 123 agreement and the IAEA safeguards agreement which were yet to be discussed. Daryl Kimball, Director of the Arms Control Association, even described the possibility of the NSG agreeing to India's demands as a "fantasy".

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*The views expressed in this paper do not necessarily reflect those of BASIC.*

## **NSG meeting**

At the NSG meeting, [those in favor](#) of the deal included the United States, United Kingdom, Brazil, Russia and South Africa; skeptical supporters included Australia, Spain and Norway; and those in opposition were led by Ireland and New Zealand.

Key states like **Japan** were actively wooed by India for the NSG vote. Japan's foreign minister Masshiko [Koumura](#), said Tokyo understood India's energy needs but wanted reassurance that the deal would not undermine non-proliferation. Japan initially insisted on automatically cutting off cooperation if India conducts another nuclear test. This would have been a "killer" amendment as far as India is concerned, and was not agreed, but Japan nevertheless did not oppose the deal. Both the [mayors](#) of Hiroshima and Nagasaki, with heavy symbolism, lobbied against government approval, but their concerns were outweighed by the increasingly close economic and political relationship with India.

Japan's chief cabinet secretary Nobutaka [Machimura](#) said, "It may be biased to view the deal as going against nuclear non-proliferation efforts. For example, the issue of global warming has been getting serious in recent years and CO2 emissions from emerging nations such as China and India are becoming a problem. It is important that India proceeds with nuclear power generation as clean energy."

A significant boost to the deal came from **Australia**, despite strong domestic opposition a [divided](#) leadership on the deal (Prime Minister Kevin Rudd himself was said to be strongly opposed). The recently elected government has prioritized nuclear non-proliferation in its foreign policy, and has refused to sell uranium to non-signatories of the NPT. However, both the Americans and Indians applied significant pressure. According to a political [commentator](#), who heralded Australia's decision to vote in favor of India wrote, "If Australia is to be an influential player in Asia, it needs a good relationship with India. To have opposed the US-India nuclear deal would have been to take the strongest strategic action available to us to thwart India's growth and development. The results for the Australia-India relationship would have been calamitous."

**Germany**, chair at the NSG, gave grudging approval to the nuclear deal, under strong pressure from the United States. Foreign ministry spokesman Jens Ploetner [said](#) Germany had tried to balance conflicting interests during tense negotiations that led to the agreement. "There were several countries that put critical questions to India, but also the US, about how this arrangement is compatible with the common goal of nuclear non-proliferation... It is not an ideal solution. The negotiations were very difficult and we cannot say that we could not have imagined something better."

The strongest opponents included Austria, Ireland, New Zealand, Netherlands, Switzerland and Norway. It was the combined efforts of these six countries with the tacit support of China, which forced a significant number of reviews and extended debate. The first three were reported as the last holdouts.

**New Zealand** has a **strong** anti-nuclear record, with significant domestic support for its non-proliferation and anti-nuclear activities. Despite being a close US ally, it does not allow American naval warships to pass through its waters as the Americans refuse to guarantee they do not carry nuclear warheads. Significantly, NZ Ambassador Jennifer MacMillan, warned at the IAEA in August that while New Zealand would not oppose the deal at that point, they would express opposition at the NSG.

However, as with the other countries, the Indian and American pressure on New Zealand had been **unrelenting**. In the days before the final NSG vote, Both US President Bush and Indian PM Manmohan Singh called Prime Minister Helen Clarke prior to the vote to communicate the consequences of explicit opposition. The relationship with India appeared to be at stake. After the vote NZ disarmament minister Phil Goff **claimed** the NSG discussions were “robust and constructive”. NZ high commissioner Rupert Holborow, **explained** that his country had acted in “good faith” at NSG, and that it was “in the nature of international affairs, that there is never only one relationship, or one issue at play. Countries are always seeking to balance several issues and relationships”.

**Austria** which along with New Zealand was about to go to the **polls** soon after the NSG vote, also had to cater to its domestic non-proliferation constituency, but the pressure from the United States, and the need to remain onside, killed any effective opposition.

Operating at a more strategically competitive position, **China** attempted more subtle tactics to delay consensus at the NSG behind an exceptional treatment for India. Analysts have referred to the desire to develop a critical US-Indian relationship with an eye to contain the Chinese influence in the region as a key motive for the deal, so Chinese opposition would be expected, but it pursued a more subtle agenda. China **demanding** the Nuclear Suppliers Group (NSG) give equal concessions in supply of nuclear technology to Pakistan. Though Beijing largely remained non-committal on the waiver, Chinese President Hu and Premier Wen Jiabao had told Prime Minister Singh that China would play a **supportive role**. However, this **support** was ambiguous; the government mouthpiece, *People’s Daily*, described the deal in advance of negotiations as a “blow to the international non-proliferation regime”.

Chinese officials expressed their concern over the speed of the process and threatened to walk out at a crucial juncture unhappy that opposition from other countries was being ignored. **Heavy diplomacy** by the US and India turned Chinese doubts, and they agreed to an extended meeting and finally rallied behind others in the NSG. One Chinese diplomat was reported to have **admitted** that Beijing had blocked the deal till the last moment, “because the Pakistanis were on our back”. He pointed out that India “must realize” that Beijing, ultimately, did not come in the way of the special waiver because China “wants to promote a partnership between Asia’s big powers”. Indian National Security Advisor M K Narayanan had made the government’s views public that New Delhi was “surprised” at Beijing’s behavior and would express “disappointment” with Yang.

## ***Economic considerations***

Canada, France and Russia played significant supporting roles for the deal. **Canada**, for instance, reversed decades of mistrust with India on non-proliferation issues to support the deal. Canadian foreign affairs parliamentary secretary Deepak Obhrai **blamed** the previous government for a frosty relationship: "Former Liberal Party Prime Minister Jean Chretien and his foreign minister Lloyd Axworthy froze relationship with India after the 1998 nuclear blasts by New Delhi." He articulated the economic importance of India when he spoke about the opportunities lost during the period India was under nuclear related sanctions. Canada's moves to establish a free trade agreement in the aftermath of the NSG waiver is a reflection of how economic considerations played a decisive role in the decision.

Four key companies: Westinghouse and General Electric (US), Areva (France) and Rosatom (Russia) have been jockeying for a slice of India's **lucrative** civilian nuclear technology market and more are poised to join the fray. India state-owned Nuclear Power Corporation, the monopoly nuclear power generator, is readying to place orders that will form the first phase of the country's plan to build 40,000 megawatts of nuclear capacity by 2020/ U.S. forecasts indicate India will import at least eight nuclear reactors by 2012.

David Bohigian, Assistant Secretary of State in the Department of Commerce **said** "We will ensure that U.S. companies play a big role in the Indian nuclear energy market estimated to be \$100 billion... When you look at the energy map of 2020 and beyond, certainly nuclear energy has a key role to play in India's growth, which we welcome."

Armed with a NSG waiver, India is under no obligation to restrict its nuclear trade to the United States, or to await approval from the US Congress before importing technology from elsewhere. However, Foreign Minister Mukherjee has indicated that India will await US ratification, and that negotiations on importing nuclear reactors will start only **after** the conclusion of the 123 agreement. In response to the NSG decision, global uranium prices **rose** along with the Indian stock exchange. Industry lobby group, the Confederation of Indian Industry said it expected about \$27 billion in investment in 18-20 new nuclear power plants over the next 15 years.

## ***The waiver***

The Indian government had risked its very existence on pushing the deal towards negotiations at the IAEA. Strong domestic opposition from left and right left little political space for negotiation or concession on the international scene, and the risk of major embarrassment for Prime Minister Singh and President Bush if the deal floundered. At such a late stage, the waiver was imperative for the political image of both the Indian and US governments.

The United States government **saw** a necessity in demonstrating consistency with the Hyde Act. Ambassador Mulford said "I still expect that the NSG countries are going to insist upon some commonsense restrictions on nuclear trade with India and conditions that are roughly similar to the major requirements set forth in the Hyde Act". India had strong **reservations** against portions in the earliest draft format. The NSG's export restrictions

require the recipient country to have a comprehensive safeguards agreement with the IAEA allowing for inspection of all its nuclear installations unless there are safety considerations or the supply agreement was drawn up prior to 1992. The waiver deal relaxes this requirement for India as long as NSG members are satisfied India is not exporting its technology and is honoring its safeguards obligations to the IAEA and the July 2005 agreement with the U.S. This requires India to:

- honor its testing moratorium;
- maintain an effective system of export control;
- work towards a fissile material cut-off treaty; and
- negotiate an additional protocol with the IAEA.

But the draft also reiterates language from paragraph 4(d) of the NSG guidelines requiring India to work towards comprehensive safeguards, something that is anathema to New Delhi.

There are different interpretations of the Deal over the right of withdrawal, testing and transfer of technology. [According](#) to Henry Sokolski, executive director of the Non-proliferation Policy Education Center, “The Bush administration has tried to convince congress that the enabling US legislation for the nuclear deal, the Hyde Act, has mechanisms to check India’s nuclear weapons ambitions. However, the Indian Government is indicating the opposite.”

Striking a more diplomatic overture, Mulford [said](#) that India had a sovereign right to test and the United States had a right to respond. That the Hyde Act has affected India’s strategic policy can be shadow traced to the Indian decision against Iran in the IAEA, first, in March 2006 and later in September 2006.

This has riled Indian critics of the deal, including Professor Bharat Karnad of the Center of Policy Research. [According](#) to Karnad, owing to India signing the 1963 Partial Test Ban Treaty (PTBT) prohibiting atmospheric tests, underground testing is the only medium left to India for validating existing and future advanced weapons designs. He argues that India should not have surrendered its right to test a nuclear weapon, especially considering that scientists believe that the May 1998 tests conducted by India had fizzled. According to him, dissenting scientists are convinced that most of the yield came from the boosted fission trigger (the ‘primary’) and that there was virtually no thermonuclear burn from the ‘secondary’. If true, India’s ability to have any confidence at all in its arsenal would be extremely doubtful.

[For](#) Professor Brahma Chellany, the leaked [letter](#) from Congressman Howard Berman elucidates the restrictions which would be imposed on the Indian nuclear program. The letter indicates that there would be no US transfer of civil reprocessing and enrichment equipment or technologies to India even under safeguards, and block Indian reprocessing of spent fuel even with indigenous technology. On one issue, the 123 Agreement had held out hope for India in the future by stating in its Article 5(2) that, 'Sensitive nuclear technology, heavy water production technology, sensitive nuclear facilities, heavy water production facilities and major critical components of such facilities may be transferred under this Agreement pursuant to an amendment to this Agreement.' But the Bush

administration's letter to Congress states that the US government had no plan to seek to amend the deal to allow any sensitive transfers in the near future.

In contrast, Prime Minister Singh told the Indian parliament August 3, 2005, when he told the Indian Parliament that he had received 'an explicit commitment from the United States that India would get the same benefits of civilian cooperation as (an) advanced country like the United States enjoys.'

National Security Advisor M K Narayanan [said](#) that India rejected the inclusion of any clause on testing, periodic review or denial of enrichment and reprocessing technology in the text of the NSG waiver. "On red lines we cannot, that's what we told our Parliament - these are sacrosanct and if these are not met we cannot endorse the agreement." The provision to terminate the deal if India tested was also [opposed](#) by France and Russia, looking for flexibility. It was only after intense diplomatic negotiations that an acceptable wording was achieved, allowing for independent national decisions and termination by consensus.

### ***Proliferation concerns***

Foreign Minister Mukherjee's statement [outlined](#) India's strong stance against proliferation, and his reiteration of India's self moratorium on nuclear testing, and its commitment to no-first-use of nuclear weapons and concluding the Fissile Material Cut off Treaty (FMCT) was a major factor in clinching the waiver for India. Speaking at the end of the NSG session German Foreign Minister Jens Ploetner [said](#) the NSG's decision underscored the goal of non-proliferation. However, skeptics see significant damage to the NPT. [For](#) the Japanese Asahi Shimbun daily, the waiver is "a historic mistake". "After North Korea, there are now strong proliferation concerns about Iran".

For former Indian ambassador Arundhati Ghosh, who championed India's dissent against the CTBT, the nuclear deal is an acceptable entry into the non-proliferation mainstream for India. Describing it as a "[front door entry](#)", she said "We are not going to sign the NPT under any circumstances, but we are willing to follow the objectives of the NPT, which in fact forms the non-proliferation regime".

The deal did not include a periodic review of India's adherence to the grouping's guidelines opposed by New Delhi. The revised draft provides for the NSG chair "to confer and consult" with India and keep the plenary informed of these consultations with a view to intensifying dialogue and partnership with New Delhi. If India were to be made a NSG partner as [envisaged](#) by the United States, it would certainly complicate matters at the NSG meetings to censure India, as the Group operates on the basis of consensus.

US Under-Secretary of State William Burns [believes](#) that the steps taken would strengthen the global non-proliferation regime, by bringing India into the mainstream. Disagreeing with the notion that the non-proliferation regime is being strengthened, Professor P.R. Chari of the Institute of Peace and Conflict Studies said, "It does set a precedent for similar deals, and a China-Pakistan nuclear deal could be in the offing. So could a North Korea-China nuclear deal. China could argue that, since an exception has been made for India, there is no reason why Pakistan or North Korea or, for that matter, Iran, should be discriminated against."

## **Conclusion**

The Indo-US nuclear deal is an economic windfall to western companies, witnessed in the immediate [increase](#) in value of stocks of private nuclear companies and companies dealing with dual use technologies. For India, the main hopes lie in the increase in its energy production from its nuclear reactors. Owing to fuel shortages, many reactors in the country are not operating at their peak and are therefore loss making entities. However, as Prof. Karnad of CPR [points out](#), this increased production will come at a high price – from liability and risk insurance, construction and operating delays, and reactor efficiency and performance penalties.

The United States has made clear their belief that there will be no benefit to the Indian strategic military program under the deal. While the waiver does not exclude enrichment and reprocessing equipment, the United States is [highly unlikely](#) to supply this technology, and it has [not](#) been included in others' nuclear agreements with India. The end-use for any such transfers would be subject to intense international scrutiny. And while India continues to have the right to test further nuclear weapons, it would in all probability attract sanctions and widespread opprobrium. With immense economic and diplomatic weight behind the deal, there are few who believe India would risk another nuclear test unless China initiates one itself.

The United States and India are using differing interpretations of the deal in selling it to their constituencies. The US state department has attempted to reassure domestic critics by [saying](#) that fuel supply assurances do not insulate India against the consequences of a nuclear explosive test or a violation of non-proliferation commitments. Furthermore, the US has rejected any possibility of a similar deal with other nations. [According](#) to Kakodkar, talking of the Berman letter that contained US assurances on the limits to technology transfer, "India had no idea about the contents of the letter". Mulford [countered](#) by calling such allegations "misplaced".

The deal clearly opens a backdoor for India into the broader non-proliferation regime, while allowing India to publicly distance itself from treaties it deems discriminatory. Only time will tell whether it also weakens the non-proliferation regime as a result. The waiver also includes a commitment from India to work towards the conclusion of a FMCT, though Karnad is of the [opinion](#) that India is likely to face a tough choice between this commitment and its desire to augment its nuclear fissile material holdings.

The deal has been criticized by parties of the left for [subordinating](#) India to American geo-strategic interests, in containing China. Some point to India's vote against Iran at the IAEA as an indication of this. Nevertheless, Dr. Harsh Pant [speaks for many](#) when he points out that India, unlike Iran, is not a signatory to the NPT, and that having signed the treaty, Iran must fully comply with its international commitments.

The United States, in its rush to ratify the deal in a lame duck session of Congress, used all its diplomatic might in [bullying](#) opposing countries. "No other country could have pulled this off", a key Indian official involved in the deliberations [acknowledged](#). One European diplomat complained, "for the first time in my experience of international diplomatic negotiations, a consensus decision was followed by complete silence in the room. No clapping, nothing. It showed how a lot of us felt pressured to some extent into a decision by the Americans and few were totally satisfied." The US Congress is now in the process of voting on the deal, and it appears just a matter of time before it is finally inked.