

WebMemo



Published by The Heritage Foundation

No. 2002
July 24, 2008

India Wins Big Bet on U.S.–India Civil Nuclear Deal

Lisa Curtis

Despite risking both his career and the survival of his government, Indian Prime Minister Manmohan Singh's bold initiative to move forward with the U.S.–India civil nuclear deal has saved the nuclear pact from entering a period of dormancy that would have likely meant its eventual demise.

In a vote Tuesday, the Singh government maintained the confidence of the Indian parliament by a surprisingly comfortable margin (275 in favor of government, 256 against), clearing the way for it to move ahead with the landmark nuclear deal that has been in the works for almost three years. The U.S. must now act as quickly possible with the final steps necessary to consummate this historic agreement.

Few in the U.S. expected PM Singh to gamble his government on the deal, especially after he conceded last October that “it is not the end of life” if the deal did not go through. U.S. lawmakers had begun to turn their attention away from the nuclear negotiations, resigned to the idea that the pact would go into hibernation until new governments were established in both Washington and New Delhi next year. It is likely, however, that New Delhi recognized delaying the deal until next year risked changing the carefully negotiated terms of the agreement.

U.S. Must Now Pull Its Weight. The Bush Administration now faces an uphill battle in completing the deal before the end of the year, given that the U.S. presidential election is less than four months away and several complicated steps remain in the process, including:

- The Board of Governors of the International Atomic Energy Agency (IAEA) must approve a

safeguards agreement submitted by India earlier this month;

- The 45-nation Nuclear Suppliers Group (NSG) must come to a consensus on changing its existing guidelines to allow civilian nuclear trade with India; and
- The U.S. Congress must approve the bilateral agreement governing the terms of trade on U.S.–India civil nuclear cooperation (the so-called “123 Agreement”) reached last summer.

Perhaps the greatest obstacle to completing the process is the congressional schedule. There are only 20 days left on this year's legislative calendar before Congress recesses for the U.S. presidential election. Although holding a lame duck congressional session after a change in administration has become more common in recent years, it is by no means standard procedure, and the Democratic leadership has already signaled its lack of interest in holding such a session. The U.S. ambassador to India, David Mulford, has expressed hope that both the IAEA and NSG steps will be completed in August, thus allowing Congress to consider the agreement in September. Such a scenario, however, may be overly optimistic, given that this is the first time in history that the NSG has considered allowing the transfer of civilian nuclear technology to

This paper, in its entirety, can be found at:
www.heritage.org/Research/AsiaandthePacific/wm2002.cfm

Produced by the Asian Studies Center

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

a non-signatory of the Nuclear Nonproliferation Treaty (NPT).

As the NSG makes decisions on a consensus basis, the U.S. will have to maintain strong diplomatic pressure if it is to convince all 45 nations of the organization to support the deal. Most major members of the NSG have already signaled their support for the agreement, including the UK, Russia, France, and Australia. Pakistan issued a letter on July 18 to over 60 nations warning that the deal would accelerate the nuclear arms race between India and Pakistan. In contrast, India has noted the importance of the deal in helping it develop its power generation capability at a time when rapid economic growth is stretching its energy capacity. By bringing India into the nonproliferation mainstream, the U.S. hopes to address nuclear threats of the 21st century, including denying terrorists access to nuclear technology. Exposure of Pakistani scientist A. Q Khan's international nuclear proliferation ring four years ago has likely hurt Pakistan's ability to demand similar access to civilian nuclear technology.

Allaying U.S. Congressional Concerns Regarding the 123 Agreement. Some congressmen who are adamant about denying India nuclear fuel reprocessing rights may be reluctant to accept the language of the 123 Agreement, which seeks to bridge the divide between Washington and New Delhi on this issue. India has consistently defended its right to reprocess nuclear fuel. The Administration ultimately accepted Indian demands regarding this right but distinguished between the right and an entitlement to U.S. assistance in the pursuit of reprocessing activities. India, for its part, committed to create a dedicated, safeguarded reprocessing facility to ensure that U.S.-origin nuclear fuel is not diverted to its weapons program.

Congress should also bear in mind that, after the 123 Agreement is passed, it can guide the subsequent negotiations on the arrangements for reprocessing. Without a doubt, U.S. monitoring of the construction and implementation of the new dedicated reprocessing facility will be necessary to ensure that no corners are cut. In addition to mandating that the Administration ensure that the fuel is not used for weapons development, Congress also must take care that less obvious violations of the

spirit of the agreement do not occur, including application of U.S. technology to any other facility, whether civilian or military.

If India breaches the spirit of the 123 Agreement, Washington will have the right to demand back the plutonium that is stripped out through reprocessing. This caveat is a critical element of the agreement as it ensures that the U.S. cannot be accused of violating its NPT obligations.

Congressmen have also raised concerns about clauses in the 123 agreement committing the U.S. to helping India develop a "strategic reserve" of nuclear fuel for the entire lifetime of the reactors. The U.S. also agrees to "create conditions" for India's "assured and full access" to the international fuel market. U.S. lawmakers argue that this language is at odds with the nonbinding provisions of the Hyde Act that urge Washington to limit India's access to fuel supplies from other countries in the event of a termination of the bilateral agreement—for example, if India conducted another round of nuclear tests. This issue is unlikely to be resolved to the perfect satisfaction of both countries. Subsequently, the real question may be whether the U.S. allows a hypothetical scenario to block progress on an agreement that brings India into the international nonproliferation mainstream and increases the prospect for closer U.S.–India coordination on nuclear nonproliferation matters.

Time to Close the Deal. Both New Delhi and Washington have painstakingly negotiated this deal, which will put U.S.–India relations on new footing by overcoming decades of mistrust over the nuclear issue. The U.S. must match the boldness and courage of the Singh government by moving as quickly as possible to close the nuclear deal before the end of the year. U.S. lawmakers worked hard to pass the historic Hyde Act almost two years ago and now must cross the final hurdle of the process by voting on the 123 agreement. A vote in favor of the agreement would equal a vote in favor of strong U.S.–India ties and demonstrate faith in democratic India's prospects for contributing to a more secure and prosperous future for Asia and beyond.

—Lisa Curtis is Senior Research Fellow for South Asia in the Asian Studies Center at The Heritage Foundation.