

# WebMemo



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## U.S.–India Civil Nuclear Deal: A Sprint to the Finish

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The U.S.–India civil nuclear deal cleared its toughest international hurdle this past weekend when the 45-nation Nuclear Supplier's Group (NSG) developed a consensus on approving civilian nuclear transfers to India for the first time in over three decades. The NSG decision marks a significant victory for those who welcome India's rising global economic and political influence and the contribution New Delhi will make toward improving stability and security in Asia in coming years.

Following three years of painstaking U.S.–Indian negotiations and political opposition in India that almost toppled Prime Minister Manmohan Singh's Congress-led government, the deal faces its last hurdle: U.S. congressional approval of a resolution to operationalize the agreement. Though time is tight—with only three weeks left until the 110th Congress recesses for elections—lawmakers should do everything possible to finalize the deal before the end of the year, since it will solidify ties with a key Asian nation that shares our democratic values and geopolitical concerns.

**Hard-Won Approval.** The NSG vote in favor of India was hard-won as the grouping makes its decisions on a consensus basis, which allowed some of the less powerful non-supplier nations (such as Austria, New Zealand, and Ireland) to raise roadblocks to the deal, even though major NSG countries such as the U.S., Russia, France, and the U.K. favored its passage.

The Chinese—buoyed by the unexpected opposition from the smaller NSG nations—threatened the agreement with last-minute concerns first sig-

naled last Monday through an article in the Chinese Communist Party's English language daily. Chinese Foreign Minister Yang Jiechi is in India this week, where he is facing tough questions from his Indian interlocutors on its role in Vienna and the unexpected public rebuke of the nuclear deal, despite several earlier assurances from Chinese leaders that Beijing would not block consensus. Indian strategic affairs analyst Uday Bhaskar attributed the maneuvering to longstanding competition between the two Asian rivals. Bhaskar said, "Clearly, until now China has been the major power in Asia... With India entering the NSG, a new strategic equation has been introduced into Asia and this clearly has caused disquiet to China."

### **Overcoming a Tight Congressional Schedule.**

As part of the process to make the deal operational through a final congressional vote, the Bush Administration must now submit a Presidential Determination to the U.S. Congress that includes details on the following:

- The bilateral 123 agreement reached last year;
- The India-specific safeguards agreement reached with the International Atomic Energy Agency in August; and
- This past weekend's waiver from the NSG.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/AsiaandthePacific/wm2054.cfm](http://www.heritage.org/Research/AsiaandthePacific/wm2054.cfm)

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Current law requires Congress to consider the nuclear deal package for 30 continuous legislative days before voting on it. If no lame duck session is held after the November 4 U.S. elections, Congress would need to waive the 30-day requirement in order to be able to vote on the deal before the last day of the congressional session, now set for September 26. Congressional leaders in both the House and the Senate would have to push hard for this, since lawmakers will be busy seeking to wrap up various legislative matters (mostly domestic) before the end of the two-year session.

Some Members of Congress, particularly House Foreign Affairs Committee Chairman Howard Berman (D-CA), will likely want to hold additional hearings and/or consultations on the civil nuclear deal before allowing it to move to a vote. Last year, Berman and ranking member of the committee Illean Ros-Lehtinen introduced a resolution calling for the U.S. President to withhold support for any proposed exemption for India from the NSG guidelines that was not fully consistent with the Hyde Act and did not incorporate a number of provisions, including the immediate termination of all nuclear commerce by the NSG member-states if India detonates a nuclear device.

Several hearings were held in both the House and Senate in 2005–2006 relating to this question, as well as other aspects of the deal, and Congress issued hundreds of detailed “questions for the record” to the Bush Administration to help form the basis of the Hyde Act, which was passed almost two years ago. Moreover, senior Administration officials have assured congressional leaders on several occasions that any civil nuclear trade with India would be fully consistent with the terms of the Hyde Act.

Undue delay in moving the civil nuclear deal to a final vote in Congress would likely raise suspicions

in India about overall U.S. intentions toward the deal. The release of a confidential letter of assurances from the Bush Administration to Berman on the eve of the NSG deliberations last week provoked a firestorm of Indian allegations that Washington was seeking to constrain India’s strategic options. The political opposition used the opportunity to criticize the government for kowtowing to U.S. interests. Additionally, if the deal lapses into the next U.S. Administration, it could take several months before it is considered in the new Congress, which is about the time India heads into its own national elections, casting more uncertainty over the final fate of the deal.

**Strengthening Global Nonproliferation.** The letter that was released to the public last week by Berman should give confidence to U.S. lawmakers that India understands the importance of the nuclear testing issue and that any potential future nuclear detonations would certainly have negative repercussions on the civil nuclear deal. New Delhi cannot, however, legally bind itself on this sensitive matter, since it does not have control over the actions of other nuclear-armed states in its strategic environment, namely Pakistan and China.

The U.S. has the tools it requires to both remain faithful to its Nuclear Nonproliferation Treaty obligations and to bring India into the nonproliferation mainstream. If this historic nuclear deal is finalized, it will contribute to strengthening global nonproliferation by making New Delhi a stakeholder in a system seeking to adapt itself to the most serious proliferation threats of the 21st century. There is no good reason to delay this landmark initiative any longer.

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