

Summary Notes

United States

Legislation approving the U.S.-India 123 Agreement (2008)

On 8 October 2008, the U.S. Congress passed legislation approving the “Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy”, which the President signed into law.¹

The agreement, negotiated in accordance with Section 123 of the Atomic Energy Act (AEA) of 1954, as amended (see *Nuclear Law Bulletin* Nos. 7 and 14),² and the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006,³ provides a comprehensive framework for United States peaceful nuclear co-operation with India. The agreement permits the transfer of information, non-nuclear material, nuclear material, equipment (including reactors) and components for nuclear research and nuclear power production. It does not compel any particular co-operation.

The agreement will remain in effect for 40 years and will continue thereafter for additional periods of 10 years each unless either the United States or India gives notice of termination 6 months before the end of a period. Furthermore, either party can terminate the agreement prior to its expiration on one year’s written notice to the other party. Should either party seek early termination, it has the right to immediately cease co-operation under the agreement if a mutually acceptable resolution of outstanding issues cannot be achieved through consultations. Should the agreement be terminated, key non-proliferation conditions and controls would remain in effect with respect to material and equipment subject to the agreement.

Apart from the U.S. Congress approval, key conditions of the U.S.-India nuclear co-operation agreement to come into effect were that India enters into an India-specific safeguards agreement with the IAEA [Article 10(2) of the 123 agreement] and that the Nuclear Suppliers Group approves an exemption for India from the NSG’s export guidelines [Article 5(6)(a) of the 123 agreement]. Both conditions have been met (see next two notes).

International Atomic Energy Agency

Approval of India safeguards agreement by IAEA Board of Governors (2008)

The IAEA Board of Governors approved by consensus the nuclear safeguards agreement with India on 1 August 2008.

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1. Pub. L. No. 110-369 (8 October 2008).
 2. 42 U.S.C. § 2153.
 3. Pub. L. No. 109-401 (18 December 2006).

The so called *Agreement between the Government of India and the IAEA for the Application of Safeguards to Civilian Nuclear Facilities* requests the IAEA to verify that certain declared Indian nuclear material and facilities are used only for peaceful purposes. The agreement is set to enter into force once the IAEA receives notification that India's statutory and/or constitutional requirements have been met. It will allow India to add facilities to be placed under IAEA safeguards over time.

In his address to the Board, IAEA Director General Dr. ElBaradei stated that the IAEA would begin to implement the new safeguards agreement in 2009, with the aim of bringing a total of 14 Indian reactors under agency safeguards by 2014. The IAEA currently applies safeguards to six Indian nuclear reactors under safeguards agreements concluded between 1971 and 1994.

More information is available at www.iaea.org/NewsCenter/News/2008/board010808.html.

Nuclear Suppliers Group

Statement on Civil Nuclear Co-operation with India (2008)

Forty-five participating governments of the Nuclear Suppliers Group (NSG) and the European Commission as an observer met on 4 to 6 September 2008 in Vienna to discuss a U.S. draft proposal on a statement on civil nuclear co-operation with India. On 6 September 2008, the NSG adopted such a statement by consensus.⁴

Provided that the provisions of the Guidelines for Nuclear Transfers and the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology (INFCIRC/254/Part 1 and Part 2 as revised) are met, participating governments may

- transfer trigger list items and/or related technology;⁵
- transfer nuclear-related dual-use equipment, materials, software and related technology⁶

to India for peaceful purposes and for use in IAEA safeguarded civil nuclear facilities. They shall notify each other of approved transfers of A and B items (listed in INFCIRC/254/Part 2 as revised) and they are invited to exchange information, including their bilateral agreements with India. The statement further requests the chairman to confer and consult with India in order to facilitate India's adherence to NSG guidelines and to remain current in its implementation of them.

The full statement is reproduced on page 83 of this Bulletin and available at www.iaea.org/Publications/Documents/Infcircs/2008/infcirc734c.pdf.

4. IAEA, *Information Circular*, INFCIRC/734 (Corrected): Communication dated 10 September 2008 received from the Permanent Mission of Germany to the Agency regarding a "Statement on Civil Nuclear Cooperation with India".

5. Notwithstanding paragraphs 4(a), 4(b) and 4(c) of INFCIRC/254/Rev.9/Part 1.

6. Notwithstanding paragraphs 4(a) and 4(b) of INFCIRC/254/Rev.7/Part 2.