

Indo-US Nuclear Deal Done; Pleases Few

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NEW DELHI - One and a half years after it was signed, the nuclear cooperation agreement between the United States and India has received highly qualified approval from U.S. Congress.

As passed by Congress Friday, the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (PAEC Act) is likely to sharply polarize opinion in India and meet with serious opposition because it contains many restrictive clauses and erodes Indian sovereignty.

The PAEC Act went through Congress after a conference committee of its two chambers reconciled the separate bills they had earlier legislated to waive U.S. laws that prohibit civilian nuclear commerce with a country that is a nuclear weapons-state but has not signed the Nuclear Nonproliferation Treaty (NPT).

In the last lap of its journey, the legislation underwent further changes to dilute its restrictive provisions under the pressure of the Bush administration even as the original four-page bill mutated into a 41-page legal text. Secretary of State Condoleezza Rice personally intervened by writing a letter to Congress members urging them to accommodate India's concerns about the conditions sought to be imposed on it.

The Bush administration's pressure was strongly backed by lobbying on the part of the rich Indo-American community and by U.S. business groups, which are keen to exploit the new opportunities opening up in India's fast-growing economy.

"The conference committee members caved in to the pressure and disingenuously diluted the restrictions although that went against the spirit of the original Congress resolutions," says M.V. Ramana, a physicist and nuclear affairs analyst formerly with Princeton University, and now attached to the Center for Interdisciplinary Studies in Environment and Development, Bangalore. "The dilution was an undemocratic maneuver, but even so, it failed to take what many Indians regard as the 'sting' out of the U.S. nonproliferation agenda," adds Ramana. "The Act in its present form will face opposition in India, both from political parties and the nuclear establishment."

Former senior officials of India's Department of Atomic Energy are scheduled to meet next week to discuss the new Act and its implications.

The Indian government is trying to put a brave face on the PAEC Act's passage. It has welcomed its "outcome," but "noted" that it "contains certain extraneous and prescriptive provisions." It has cited the Bush administration's repeated assurances that "once passed, this legislation would enable it to fulfill all its commitments and obligations" made under agreements signed with India in July last year and March this year.

New Delhi hopes that the Bush administration will further weaken the Act's restrictive clauses when it later signs a bilateral agreement to amend a Section (number 123) of the U.S. Atomic Energy Act, and also help New Delhi get the deal approved by the International Atomic Energy Agency (IAEA) and the 45-member Nuclear Suppliers' Group (NSG).

The deal makes a unique exception for India, an NPT non-signatory, which conducted five nuclear

weapons test in 1998. The exception will change the global nonproliferation-based nuclear order, and there have been protests from others who seek entry into the world's exclusive "nuclear club."

Ahead of the Act's passage criticism was heard in Congress that the deal could harm efforts to halt Iran's nuclear weapons program and be perceived as maintaining double standards – one for countries like Iran and another for India.

"The India-U.S. nuclear understanding is based on its own merits with a view to addressing India's growing energy requirements. It cannot be linked either with North Korea's nuclear test or Iran's nuclear policy," India's foreign minister Pranab Mukherjee was compelled to explain in Parliament on Thursday.

Pakistan, India's arch-rival on the subcontinent, after being snubbed by the U.S. for a similar civilian nuclear cooperation deal, has turned to China for help.

In return for the special treatment it has just received, India will put 14 of its 22 nuclear power reactors (operating and under construction) under IAEA safeguards (inspections). Yet, India can continue to produce fuel for nuclear weapons in its non-safeguarded facilities.

On the other hand, the Act passed by Congress adds a number of riders both on the extent of civilian nuclear cooperation, and the conditions under which it can take place. It also seeks to influence India's foreign policy conduct in areas unrelated to nuclear matters, for instance, in India's relations with Iran. This will be seen as undue "interference" in India's sovereignty.

Although the PAEC Act is an internal matter of the U.S. and India is not called to accept or reject it, its content will influence the final shape of the nuclear deal.

The Indian media's reception to the Act's passage reveals deep rifts and potentially unbridgeable divides.

Supporters of the deal, who typically favor a close strategic U.S.-India alliance, have greeted it as marking an end to India's three decades-long nuclear "isolation." One newspaper editorial carried the caption, "Welcome back India," and wrote euphorically about overcoming "the principal hurdle to the realization of the full potential of [the] Indo-U.S. relationship."

Critics of the deal, who believes it will cap India's nuclear weapons capability, have attacked the bill as constituting undue interference with India's sovereign policymaking.

"Both sides are overstating their case," argues Ramana. "A reading of the Act shows it cannot cap or roll back India's nuclear arsenal. It is equally doubtful if the resumption of civilian nuclear commerce with the U.S. is such a high priority given the low contribution of nuclear technology to India's energy generation and its hazards."

Adds Ramana: "Both sides of the mainstream divide also miss the principal truth about the deal: it will impede, not promote, nuclear disarmament and effectively betray India's pledge to fight for global nuclear weapons elimination. But the Act, a major step in the deal's implementation, is vulnerable to criticism on the ground that its text differs significantly from the commitments made by Prime Minister Manmohan Singh to Parliament."

Singh has repeatedly assured Indian lawmakers that he won't accept conditions that obstruct "full civil nuclear energy cooperation" between the U.S. and India. In August, he drew a number of red lines which India would not cross. The Act does not conform to his assurances on many counts.

The Act excludes India's from access to technologies for uranium enrichment, reprocessing of spent fuel, and heavy-water production. It at best permits this on a case-by-case basis.

Singh had also opposed the condition that the U.S. president should make an annual "certification" to Congress that India is in full compliance with its nonproliferation and other commitments. He said this would "diminish a permanent waiver authority," "introduce an element of uncertainty regarding future cooperation," and hence "is not acceptable to us."

The Act merely changes the word "certification" to "assessment" without altering its content.

India opposed any change in the sequencing of steps it would take to implement the deal. These, Singh insisted, would be strictly "reciprocal" to the moves the U.S. makes. But the congressional bills altered the sequence and demanded that India get IAEA and NSG approval for the deal before signing the 123 agreement.

Under the Act, India would still have to take the IAEA safeguards agreement to the penultimate stage, just short of signing it.

Equally significant is the restriction on India's ability to buy and stockpile enough nuclear fuel so that it can create "strategic reserves" of nuclear fuel over the lifetime of its reactors. The Act does not permit this. And the "background note" prepared by its authors (six congressmen and senators) explicitly prohibits it.

India, Singh had said, would "oppose any ... scrutiny of either our nuclear weapons program or our unsafeguarded nuclear facilities." But the Act mandates the U.S. president to scrutinize India's nuclear activities, including the use of imported materials. It is ambivalent on the extent and intrusiveness of such scrutiny.

There are other problems too, for instance, in the Act's demand for India's support for a fissile-material cutoff treaty (FMCT). Washington wants an unverifiable agreement, but India wants an "internationally verifiable" FMCT.

"Some of these restrictions will be hotly debated," says Prof. Kamal Mitra at the School of International Studies at the Jawaharlal Nehru University here. "But what needs to be even more sharply focused on is the fact that the legislative process in the U.S. is itself part of a new U.S.-India strategic alliance. It isn't in India's interests to build an asymmetrical relationship with Washington."

India's left-wing parties are likely to stress this erosion of foreign policy independence. The Right's attack on the deal will be focused more narrowly, on issues of so-called national sovereignty and India's "right" to an indefinitely large, ambitious nuclear arsenal.

"How the Singh government handles the nuclear debate remains to be seen," says Ramana. "Whatever happens, the decision on whether to go in for more nuclear power or not is India's own. India should not choose that option. Nuclear power is expensive, hazardous, and decidedly inferior to renewable energy sources. Nuclear is not the way to go."

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