

9 February 2015

Australia-India Nuclear Cooperation Agreement

Treaty tabled on 28 October 2014

Response to Question on Notice

United States-India Nuclear Cooperation Agreement 2007:

Provisions on Enforcement

At JSCOT's hearing on the Australia-India nuclear cooperation agreement on 9 February 2015, Ms Melissa Parke MP requested information on the provisions of the US-India nuclear cooperation agreement with regard to enforcement.

Response – John Carlson

The US-India agreement has no provisions on *enforcement* as such, but does contain a number of provisions dealing with right of termination, violations, right of return of supplied items and materials, and dispute settlement. An outline and relevant extracts follow (I have added underlining).

1. There is a general right of consultation, including for non-compliance with the agreement.

Article 13 – Consultations

13.2. Each Party shall endeavor to avoid taking any action that adversely affects cooperation envisaged under Article 2 of this Agreement. If either Party at any time following the entry into force of this Agreement does not comply with the provisions of this Agreement, the Parties shall promptly hold consultations with a view to resolving the matter in a way that protects the legitimate interests of both Parties

2. Each Party has the right to terminate the agreement on one year's notice, and to cease further cooperation if it determines that a mutually acceptable resolution is not possible:

- If a violation of the agreement is cited as the reason for termination, the Parties shall consider whether the violation was *inadvertent* and whether it is *material*.
- If an IAEA safeguards violation is involved, a "crucial factor" is whether the IAEA Board of Governors makes a finding of *non-compliance* (there can be less serious safeguards breaches – the implication here is that the US-India agreement should not be terminated for a less-serious breach).

Article 14 – Termination and cessation of cooperation

14.1. Either Party shall have the right to terminate this Agreement prior to its expiration on one year's written notice to the other Party. A Party giving notice of termination shall provide the reasons for seeking such termination.

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14.2. Before this Agreement is terminated pursuant to paragraph 1 of this Article, the Parties shall consider the relevant circumstances and promptly hold consultations ... to address the reasons cited by the Party seeking termination. The Party seeking termination has the right to cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations.

14.3. If a Party seeking termination cites a violation of this Agreement as the reason for notice for seeking termination, the Parties shall consider whether the action was caused inadvertently or otherwise and whether the violation could be considered as material. No violation may be considered as being material unless corresponding to the definition of material violation or breach in the Vienna Convention on the Law of Treaties. If a Party seeking termination cites a violation of an IAEA safeguards agreement as the reason for notice for seeking termination, a crucial factor will be whether the IAEA Board of Governors has made a finding of non-compliance.

3. Following cessation of cooperation either Party has the right of return for items/materials supplied and *special fissionable material* (i.e. enriched uranium or plutonium) produced through their use.

14.4. Following the cessation of cooperation under this Agreement, either Party shall have the right to require the return by the other Party of any nuclear material, equipment, non-nuclear material or components transferred under this Agreement and any special fissionable material produced through their use.

14.6. If either Party exercises its right of return ... it shall ... compensate promptly that Party for the fair market value thereof and for the costs incurred as a consequence of such removal.

4. Disputes are to be settled by negotiation.

Article 15 – Settlement of Disputes

Any dispute concerning the interpretation or implementation of the provisions of this Agreement shall be promptly negotiated by the Parties with a view to resolving that dispute.

Comparison with proposed Australia-India agreement

1. Consultation – there is a general consultation provision, not tied to any breaches or violations.

Article XI - Consultations

The Parties shall consult regularly, or at any time at the request of either Party, in order to ensure the effective implementation of this Agreement, or to review any matters relating to cooperation in the peaceful uses of nuclear energy.

2. Termination and cessation of cooperation – similar to the US agreement, but omitting details such as the definition of a *material breach* and the issue of IAEA non-compliance.

Article XIV - Entry into Force, Duration and Termination

2. Either Party may terminate this Agreement by giving one year's written notice to the other Party. A Party giving notice of termination under this paragraph shall provide the reasons for seeking such termination. If a Party seeking termination cites a violation of the Agreement as the reason for notice for seeking termination, Parties shall consider whether the action was caused

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inadvertently or otherwise and whether the violation could be considered as material. The Party seeking termination may cease further cooperation under this Agreement if it determines that a mutually acceptable resolution of outstanding issues has not been possible or cannot be achieved through consultations.

3. Right of return – no such provision.
4. Disputes are to be settled by negotiation – similar to the US agreement.

Article XII – Dispute resolution

If any dispute between the Parties arises relating to the interpretation or application of this Agreement, the Parties shall settle the dispute by negotiation.