



# US/India Civil Nuclear Cooperation Initiative : the Question of Safeguards

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## Contribution will focus on safeguards as conditions of supply required by the Supplier

- **IAEA safeguards** required by international export control regimes (mostly NPT, NSG)
- Tailored made **bilateral safeguards agreement** between supplier and end user similar to the one offered by the US Authorities in the early fifties
- Possibility for **IAEA to assume safeguards implementation of an bilateral Agreement** as offered by article 12 of its Statutes
- Potential bilateral **fall back agreement** in case of breach of IAEA safeguards agreement

Present contribution will strictly focus on IAEA safeguards required by **international export control regimes** as they could be concerned by the implementation of US/India civil cooperation agreement

Two International export control regime will be analysis :

- o NPT safeguards requirements
- o NSG safeguards requirements

## NPT conditions of supply for nuclear items (trigger list)

Article III.2 : Each State Party to the Treaty undertakes not to provide: (a) source or special fissionable material, or (b) equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any non-nuclear-weapon State for peaceful purposes, **unless the source or special fissionable material shall be subject to the safeguards required by this article.**

# IAEA Safeguards ?

**Up to 1995: INFCIRC 66** was considered as sufficient to face article III commitment.

**NPT Review Conference 1995** modified article III commitment interpretation and adopted **INFCIRC 153 (CSA)** as a condition of supply

- ✓ Not strictly applicable to Nuclear Weapons States as defined by NPT article IX
- ✓ Confirmed by Zangger Committee Guidelines

Formally recognized by NPT participating states as Article III interpretation body

# NPT Safeguards requirements and India

## India :

- **Not a NPT legally recognized nuclear weapons state as defined by article IX**

No possibilities to establish an tailored made safeguards agreement similar to 5 Nuclear Weapons States

USA (INFCIRC 288), United Kingdom (INFCIRC 263) France (INFCIRC 290) China (INFCIRC 369) Russia (INFCIRC327)

- **CSA requirement for any transfers from any NPT Participating States**

CSA is based on the principle that all facilities and not on a dedicated list provided by the end user should be submitted to safeguards

Before 95 transfers to India were authorized if covered by dedicated safeguard agreement (INFCIRC 66)

**NSG** conditions of supply for nuclear items  
(trigger list (INFCIRC254 Part.2))

## **Conditions of supply regarding safeguards requirements**

Article 4 (a) required

1. CSA agreement with IAEA into force
2. Completed recently by specific provisions in case of “withdraw from the NPT”

## If article 4.a not applicable

### **Grand Father clause (4c)**

Not applicable to (new) transfer to India

### **Safety clause (4b)**

Requiring application of INFCIRC 66

Use twice by Russia to transfer nuclear fuel to Tarrapur plant

Has in the past face **strong opposition** from NSG

Participating States considering that such transfer should not fall within such provision

If politically accepted by some NSG PS, does not resist to a legal analysis.



# Article 4 not applicable to transfer to NWS

Are NSG NWS definition broader than the  
NPT one?

- NSG established in 78 in reaction to the first Indian test and to convince the different supplier in particular France not member at that time of NPT to adopt a common export control regime.
- No reference in the NSG Guidelines to NPT  
NWS Definition

If the answer is “yes” what could be the consequences on safeguards requirements?

Safeguards requirements are not established by NSG Guidelines and will determine on case by case by Supplier State

Nevertheless the current practise of the NSG demonstrate that the answer should be “No”

Most of present NSG denials concern transfer to India, Pakistan, Iran and Israel