



17 November 2016

Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via email fadt.sen@aph.gov.au

Dear Committee Secretary,

The Minerals Council of Australia (MCA) welcomes the opportunity to provide comment to the Senate Foreign Affairs, Defence and Trade Committee on the Inquiry into the Civil Nuclear Transfers to India (CNTTI) Bill 2016.

Relevance to Australia's uranium industry

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally in their contribution to sustainable development and society. MCA member companies represent more than 85 per cent of Australia's annual minerals industry production and a higher share of minerals exports.

Uranium exploration, development and mining company members of the MCA meet regularly as the MCA Uranium Forum. Members of the MCA Uranium Forum are focused on safely and responsibly exploring for, developing and producing uranium exclusively for peaceful uses; that is for the production of low emissions electricity, nuclear research, nuclear medicine and industrial applications.

Background

The Australia-India Nuclear Cooperation Agreement (NCA) was entered into with bipartisan support. Negotiations were commenced by the Labor government in 2013 and completed by the Coalition government in 2014. Review by the Joint Standing Committee on Treaties (JSCOT) in 2015, and completion of the Administrative Arrangements between the respective government departments, saw the Treaty come into force in late 2015. Australian uranium producers and Indian customers were then able to enter into sales and purchase agreements.

However, the JSCOT identified a possible risk in their final report as follows:

'The Committee believes it would be prudent for the Government to anticipate a possible challenge to the proposed Agreement on the grounds that Australia has breached the provisions of the Treaty of Rarotonga'

'Serious questions about the legality of the proposed sales action were raised during the Committee's investigations and we are concerned that the proposed India NCA is in conflict with Australia's obligations under the (South Pacific Nuclear Free Zone) SPNWFZ Treaty'

This issue of a possible legal obstacle was alluded to in the Australian government's National Interest Analysis [2014] ATNIA 22 which stated:

'Implementation

34. The legislative framework already in place in relation to nuclear transfers is sufficient to provide for the terms of the proposed agreement. However, in light of the unique framework within which nuclear cooperation with India is proposed, the Government is considering legislation to clarify the legal basis for uranium transfers to India. No changes to the existing roles of the Commonwealth or the States and Territories would arise as a consequence of implementing the proposed Agreement'

The SPNWFZ Treaty does not envisage a case such as India. India is not a party to the Nuclear Non-proliferation Treaty (NPT). It cannot become a party to it without disarming itself of its nuclear weapons which is commonly regarded as strategically impossible while its neighbours China and Pakistan remain nuclear armed. Under the terms of the NPT, India does not qualify as a 'nuclear-weapon state' and therefore is classed as a 'non-nuclear-weapon state'. But to regard it as a non-nuclear-weapon state is a legal fiction.

The CNTTI Bill clarifies that decisions approving civil nuclear transfers to India are taken not to be inconsistent with, or have been made with due regard to, Australia's obligations relating to nuclear safeguards under the NPT and the SPNWFZ Treaty.

The bill codifies, for the special case of India, the content of Australia's relevant international obligations for the purposes of the relevant laws.

India's uniqueness is its status as a non-signatory to the NPT. Pakistan, North Korea and Israel are the only other non-signatories. Nuclear cooperation agreements with Pakistan and North Korea are not envisaged due to proliferation concerns. An agreement with Israel is not envisaged as they have no nuclear power plants.

Trade in uranium with India however, became possible in light of changes to international guidelines on nuclear supply to India in 2008, agreed by the 48 members of the Nuclear Suppliers Group (NSG), including Australia which sits of the Board of Governors of the IAEA.

The NSG includes all of the major nuclear supplier countries and others that are active in non-proliferation efforts.

Recommendations

The MCA recommends the bill is passed to allow uranium sales to India to proceed as intended.

The bill clears away any concern and ambiguity on the legality of uranium sales to India. The bill clarifies the consistency of the safeguards applied by the IAEA in India with certain of Australia's international non-proliferation obligations. The issue is relevant to both the Coalition government and the Labor opposition who both support sales of uranium to India.

The issue is in no way related to the quality of Australia's safeguards, the quality of the IAEA's safeguards as they apply to India's civil nuclear activities or India's clear commitments to use Australian Obligated Nuclear Materials (AONM) solely for peaceful purposes.

This bill should be supported as it was always envisaged that India's uniqueness following on from the 2008 Nuclear Suppliers Group (NSG) decision, might require a bill of this kind to clarify Australia's relevant international obligations for the purposes of the relevant laws. The potential need for a bill such as this was understood as far back as 2011 when the ALP amended its policy on uranium sales to India.

India remains an important potential market for Australian uranium in the years ahead.

Australian exporters are currently having preliminary commercial negotiations with Indian customers who are keen to secure Australian uranium. Access to Australian uranium will increase India's ability to obtain material which could in turn assist Indian reactor capacity uptake and also provide India with supply security and diversity. Australian exporters are well poised to take advantage of this growth

opportunity in India as logistically it is significantly closer to Australia than other countries Australia currently supplies.

Australia, with nearly a third of the world's uranium resources and around 10 per cent of global production, can achieve significant additional sales to an expanding Indian market. This would support new projects, jobs and further economic development, mostly in regional Australia.

India is expanding its civilian nuclear energy program. It currently has 22 operable reactors with 6.2 GW capacity and has a further five under construction with 3.3 GW capacity. It has a further 64 reactors totaling 69.6 GW capacity planned or proposed. India expects to have 14.6 GW nuclear capacity on line by 2024 and 63 GW by 2032. It aims to supply 25 per cent of electricity from nuclear power by 2050.¹

According to the International Energy Agency's (IEA) New Policies scenario, India in 2040 will generate 4124 TWh of electricity, an increase of almost 250 per cent from generation in 2013 of 1193 TWh. Nuclear power generation in the IEA's New Policies scenario is expected to grow 7.9 per cent per annum from 34 TWh to 269 TWh during that period. However, such growth would still only see nuclear power grow from its current 3 per cent share of power generation to 7 per cent of power generation.

An India on track to 25 per cent nuclear share of power generation in 2050 could be generating over 800 TWh of nuclear power by 2040, requiring around 18,000 tonnes of uranium per annum. Australia, with almost a third of the world's low cost uranium resources, could sustainably target 30 per cent of this demand. This is approximately equivalent to Australia's entire uranium exports in 2014-15 of 5515 tonnes.

India's potential uranium demand for Australian uranium in the decades ahead is substantial. Should it materialise, such demand will generate construction and operations jobs in the uranium sector as new projects will be needed to support these additional exports.

Australia already lags Canada who's first exports to India occurred in late 2015, following the conclusion of a contract for 3220 tonnes, concluded earlier in the year.

In September 2016, India and the US moved closer to the planned construction of six reactors by Westinghouse with the two sides deciding to immediately commence the work on engineering and site design, and make an early conclusion of a competitive financing package.

Just days ago, Japan and India concluded a nuclear cooperation agreement, opening the door for India to import Japanese nuclear technology.

The MCA recommends the CNTTI Bill be passed so that Australia can suitably follow these and other NSG nations expanding their uranium and nuclear relationships with this vital future market.

Conclusion

The MCA appreciates the opportunity to provide these comments.

Should the Senate Foreign Affairs, Defence and Trade Committee require any further explanation of the issues raised in this submission, please do not hesitate to contact me on

Yours Sincerely

DANIEL ZAVATTIERO
EXECUTIVE DIRECTOR – URANIUM

¹ World Nuclear Association, [*Nuclear Power in India*](#), Updated November 2016