



India's Membership of the NSG: Possible Options

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Summary

In dealing with India as an NPT NNWS, NSG should take care to see that its proposals for India's membership in the NSG (i) do not require India to accept all of the conditions that are required from other NNWS for facilitating transfers of nuclear material and facilities for peaceful purposes; (ii) do not require India to undertake any obligation not currently required from the NNWS. However, this would not preclude India from voluntarily accepting one or more additional requirements, currently not required of the NNWS, as in the case of Additional Protocol; and (iii) make available to India all the rights enjoyed by the NNWS on matters relating to nuclear transfers for peaceful purposes.

During his visit to India late last year, President Obama indicated US support for India's admission to the four export control regimes - the Australia Group (AG), the Missile Technology Control Regime (MTCR), the Nuclear Suppliers Group (NSG) and the Wassenaar Arrangement (WA). Discussions are ongoing, both within these regimes and between India and these regimes, on various aspects related to the consideration of India's membership in these regimes.

While, in principle, India and the regime members may be amenable to the idea of integrating India into these regimes, there are still many procedural problems. These include the consensus rule followed in all these regimes, as well as the criteria that had been set by the regime members in the past that need to be discussed both amongst the regime members and between India and regimes. This will certainly not be a short process, considering the amount of time and effort that was needed to get an India-specific amendment in the NSG to allow civil nuclear trade with India. Moreover, since these four regimes were formed primarily to address the issue of proliferation of weapons of mass destruction (WMD) and military arms, almost all of them require Nuclear Non-proliferation Treaty (NPT) membership as one of the criteria for new members. Since India is not a member of the NPT, this aspect too needs to be resolved by the regime.

The subject of India's membership has evoked considerable attention both in India and elsewhere. It is also being debated whether India should consider taking up membership of all the regimes in one go or in stages, regime by regime. For a variety of reasons, the NSG membership would be an important landmark. The NSG has, by far, the largest number of members - 46 in all. The others have smaller number of members - 40 in AG, 34 in MTCR and 40 in WA, with considerable overlap in the membership. The members of all other regimes are members of NSG - although not the other way around. Thus, if NSG admits India as a member, following the consensus path, the other regimes should have no problem in accepting India as a member, especially since India has the scientific, technological and industrial capabilities in all the fields covered by the other regimes. Thus, NSG membership would be a good indicator of the way the regime members are likely to approach the issue of India's admission to the export control regimes.

How then to evaluate the merits of India's possible candidature in these regimes, and how should India proceed to achieve this goal?

First, it would be useful to examine the current political and technological environment before evaluating the possibility of India's membership in the NSG.

The environment is characterised by the following elements:

- i) India is a nuclear weapon State (NWS) even if it is not so under the NPT;
- ii) The NPT is very unlikely to be amended to admit India as a NWS, as defined in the NPT;

- iii) India will certainly not give up its strategic nuclear programme to join the NPT as a non-nuclear weapon state (NNWS);
- iv) India has already got an NSG exemption allowing NSG members to trade in civil nuclear commerce with India without it having to fulfil the requirement of full-scope International Atomic Energy Agency (IAEA) safeguards;
- v) India has formally declared its adherence to the NSG guidelines;
- vi) India has a robust export control system in place;
- vii) India is, perhaps, the only country that is not a member of NSG but which has the full range of research, development, industrial and production capabilities in the field of nuclear sciences and technology;
- viii) India has vigorous ongoing programmes and projects on various elements of nuclear science and technology. In fact, in some of these areas - , for example, fast breeder reactor technology and use of thorium as nuclear fuel - it is as advanced as, if not ahead of, the current NSG members;
- ix) NSG membership does not confer, at this moment, any additional benefits to India which has already received an NSG exemption to freely trade in civilian nuclear commerce;
- x) NSG does not gain, at this moment, any additional benefits in terms of its non-proliferation goals from India's membership, since India is already committed to adhering to NSG guidelines; and
- xi) Neither side stands to lose anything substantial if the efforts to integrate India in the NSG membership fail at this moment.

Given the above environment, the question that naturally arises is, why India and the NSG should work on means to facilitate India's membership in the NSG. While it appears that both India and the NSG do not gain in the short-term from India's integration into the NSG, they could expect to gain substantially in the long run.

The gains in the long run are:

- a. For India: It has already committed itself to adhere to the NSG guidelines. It would, therefore, be interested in the future evolution of these guidelines, taking into account (i) the NSG's non-proliferation aims; (ii) India's national interests; and (iii) the global/ international political environment. The NSG would benefit from India's inputs in its future decisions. Membership in the NSG would assist India in facilitating its adherence to the NSG guidelines beyond a formal acceptance.
- b. For the NSG: Since the threat of proliferation of WMDs, especially nuclear weapons, has not declined, additional measures will be required in the future to control

such proliferation. These measures will have to be incorporated without affecting the rights of nation states to engage in peaceful uses of nuclear energy, given global concerns about the environment and climate change. As mentioned earlier, India is one of the few countries in the world, which is not a member of NSG, but is most advanced in atomic energy technology, including the production of source materials. Further, as already explained, India is far more advanced in select areas of nuclear science and technology and in the science of nuclear materials, especially plutonium and the use of thorium in civil nuclear applications. It has a strong and vigorous infrastructure, apart from research and development, for training personnel for various civil application programmes of nuclear science in fields such as agriculture, health, medicine etc. India, can therefore, contribute substantially to the deliberations of the NSG and its efforts to control proliferation as well as to ensure that nation states are not adversely affected by such controls as they pursue the development of peaceful applications of nuclear science. In addition, India can also contribute towards other global activities such as establishment of global fuel banks, nuclear forensics, etc. In short, India's active participation in the NSG proceedings would help the NSG achieve the right balance between its efforts towards non-proliferation of WMDs and its efforts to permit the peaceful uses of nuclear energy.

Therefore, it is in the interest of both India and the NSG to incorporate India into the regime. However, a suitable mechanism needs to be worked out to integrate India into the NSG structures. Both sides must remember that they are not doing the other a favour through this process. The only rationale for the discussions is that each would stand to benefit and their common cause would be greatly enhanced through India's integration. Hence, neither side can afford to raise unreasonable demands on the other. A demand for an amendment to the NPT to recognise India formally as a Nuclear Weapon State (NWS) would be a deal breaker. Similarly, for the NSG to demand that India accept one or more restrictions on its nuclear programmes - civil or military - that is **not currently imposed on the NPT-recognised NWS** as well, or to insist that India become an NPT member as a NNWS, would be deal breakers.

So the first requirement is that the NSG can ask India to fulfil all obligations/restrictions/conditions currently accepted by all the NPT-recognised NWS, in so far as they relate to strategic nuclear areas. India and the NSG can discuss how far this can be done. For instance, not all of the NPT-recognised NWS have "ratified" the Comprehensive Test Ban Treaty (CTBT). So this cannot be made a precondition for India's NSG membership. On the other hand, all the NPT-recognised NWS have "signed" the CTBT. This can be a legitimate request for acceptance by India.

On the other hand, since India is not an NPT-recognised NWS, the NSG may request India to forego one or more, **but obviously not all**, of the rights currently enjoyed by the

former, and which are not available for the NPT-defined NNWS. This too, can be a matter of mutual discussion and negotiation. India has already accepted some such restrictions. For instance, NPT-recognised NWS have the freedom to withdraw, at any time, any of the facilities and nuclear materials designated by them as not being of national security significance. India, on the other hand, has accepted, in the most recent safeguards agreement concluded with the IAEA, that facilities designated as civilian by India will not be withdrawn from safeguards at any time in future. Further, neither the NPT nor the NSG guidelines require that nuclear material and facilities transferred - even for civilian purposes - to NPT-recognised NWS by others ought to be placed under the IAEA safeguards. That requirement is a choice to be exercised by the exporter. India, on the other hand, has accepted that all civilian nuclear transfers to India will be under safeguards. Further, neither the NPT, nor the NSG prohibit any transfer of nuclear materials and facilities intended for nuclear explosive purposes between the NPT-recognised NWS. Obviously, India does not enjoy this facility. It has not demanded any such right as well.

Therefore, as a second requirement, India may be asked to forego some of the rights of the NPT NWS, subject to discussions between India and the NSG. However, any final decision on this issue has to be based on the spirit of mutual acceptability and compromise.

On the issue of India's status as a de facto NWS, but not an NPT-recognised NWS, the NSG could, as a starting point, (i) accept that it would be **unreasonable** for India to undertake commitments/obligations not currently accepted by **all** the NPT NWS, (ii) require India to commit itself to accepting all the obligations currently accepted by **all** the NPT NWS, (iii) request India to forego **some** of the rights currently enjoyed by the NPT NWS and (iv) accept that India should not be required to forego **all** the rights enjoyed by the NPT NWS.

However, India is at present, in so far as the NSG is concerned, a NPT NNWS. What view should the NSG then take with regard India's current status? Obviously, India cannot be asked to undertake all the obligations currently imposed on the NNWS. For instance, neither the requirement that the NNWS forego engaging in any and all activities related to nuclear explosive devices nor the requirement that all nuclear material and facilities shall be subjected to IAEA safeguards can be imposed on India. Indeed, the NSG has chosen to forego this requirement when it made the India-specific amendments to its Nuclear Transfer Guidelines in 2008. This does not preclude India, voluntarily, accepting or offering such concessions. For instance, India chose to sign and ratify the IAEA Additional Protocol even though that is not a requirement currently imposed on the NPT NNWS for transfer of civilian nuclear materials and facilities. The NSG cannot ask India to accept fewer rights than currently enjoyed by the NNWS in matters of nuclear transfers. In particular, there can be no restraint on the transfer of sensitive nuclear technologies to India. Such transfers should also be made available to India on conditions **similar** to those imposed on the NNWS, such as the requirement that such transfers will not be diverted to any nuclear explosive device development or manufacture.

In short, in dealing with India as an NPT NNWS, NSG should take care to see that its proposals for India's membership in the NSG (i) do not require India to **accept all of the conditions** that are required from other NNWS for facilitating transfers of nuclear material and facilities for peaceful purposes; (ii) do **not** require India to **undertake any obligation** not currently required from the NNWS. However, this would not preclude India from voluntarily accepting one or more additional requirements, currently not required of the NNWS, as in the case of Additional Protocol; and (iii) make available to India **all the rights** enjoyed by the NNWS on matters relating to nuclear transfers for peaceful purposes.

Needless to add, all these conditions would be in addition to the rights given to and obligations imposed on India as a result of the 2008 NSG India-specific exemption.

If the principles elaborated above are followed it should not be difficult to evolve a criteria-based approach to enable India to join the NSG as a full member and contribute materially and substantially to a future non-proliferation regime that will be acceptable to the international community as a whole.