

## **AUSTRALIAN FOREIGN MINISTER SAID SOUTH PACIFIC NUCLEAR TREATY BANS AUSTRALIAN URANIUM EXPORTS TO INDIA**

By Leonard S. Spector, with Leah Kuchinsky

Official records show that Australian Foreign Minister Alexander Downer told the Australian Parliament unambiguously that the 1985 South Pacific Nuclear Free Zone Treaty bans Australian uranium exports to states like India. Downer made the statement in 1996, during consideration of uranium exports to Taiwan. The point was repeated before Parliament in 2001 by a more junior Department of Foreign Affairs and Trade diplomat, presumably with Downer's authorization, in conjunction with nuclear exports to Argentina, the Czech Republic, Hungary, and Taiwan.

Australia signed the treaty in 1985. It entered into force in December 1986.

Despite Downer's previous statements, on August 16, 2007, Prime Minister John Howard announced that Australia was prepared to sell uranium to India, ending a long-standing embargo. The announcement anticipates a controversial change in international nuclear trade rules being sought by the United States to permit peaceful nuclear cooperation with India, pursuant to a July 18, 2005, agreement between President George Bush and Prime Minister Manmohan Singh. Under the 1996 and 2001 determinations by the Australian Department of Foreign Affairs and Trade, however, Australian uranium sales to India would be a violation of Australia's treaty obligations.

The South Pacific Nuclear Free Zone Treaty bans nuclear testing in the region. But it also prohibits parties from making nuclear exports to states, like India, that have refused to place all of their nuclear activities under monitoring by the Vienna-based International Atomic Energy Agency (IAEA). The short-hand for these comprehensive inspections is "full-scope safeguards."

India declared itself a nuclear power in 1998. But under the 1968 nuclear Nonproliferation Treaty (NPT), only countries that detonated nuclear explosions before 1967 – the United States, Russia, the UK, France, and China – are considered legitimate nuclear weapon states. All other countries are considered a non-nuclear weapon states.

On October 31, 1996, Downer responded to a Parliamentary Question that asked: "Does article 4(a) of the South Pacific Nuclear Free Zone Treaty impose a formal legal obligation not to provide fissionable material [uranium and other nuclear materials] to any non-weapon state unless subject to article III.1 of the NPT, which means full scope safeguards?"

Downer replied, "Article 4 (a) of the South Pacific Nuclear Free Zone Treaty imposes a legal obligation not to provide nuclear material unless subject to the safeguards required by Article III.1 of the NPT, that is full-scope safeguards."

On August 27, 2001, Mr. Bill Paterson, First Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade, commenting on proposed nuclear exports to Argentina, the Czech Republic, Hungary, and Taiwan said, “as a Party to the Treaty on the Nonproliferation of Nuclear Weapons and the South Pacific Nuclear Free Zone Treaty, Australia is obliged to supply nuclear material only to states in which full-scope IAEA safeguards apply.” Argentina, the Czech Republic, Hungary, and Taiwan, unlike India, meet this standard and have been deemed eligible for Australian nuclear exports.

The statements by the Australian Department of Foreign Affairs raise questions about Australia’s stance at the 45-member Nuclear Suppliers Group. An up-coming meeting of the group is to consider ending the nuclear embargo that the suppliers adopted in 1992, which, like the South Pacific treaty, bans sales to NPT non-nuclear weapon states that reject full-scope safeguards. If Australia is legally barred from nuclear trade with India in light of the statements of the Foreign Affairs Department, for Australia to vote in favor of ending the Nuclear Suppliers Group embargo would be to authorize others to do what it cannot under the South Pacific treaty. This might be seen as violating the spirit, if not the letter, of the South Pacific Nuclear Free Zone pact. Australia’s vote at the Nuclear Suppliers Group is crucial because the group operates by consensus. Thus, a “no” vote by Canberra would block the weakening of the group’s nuclear trade rules.

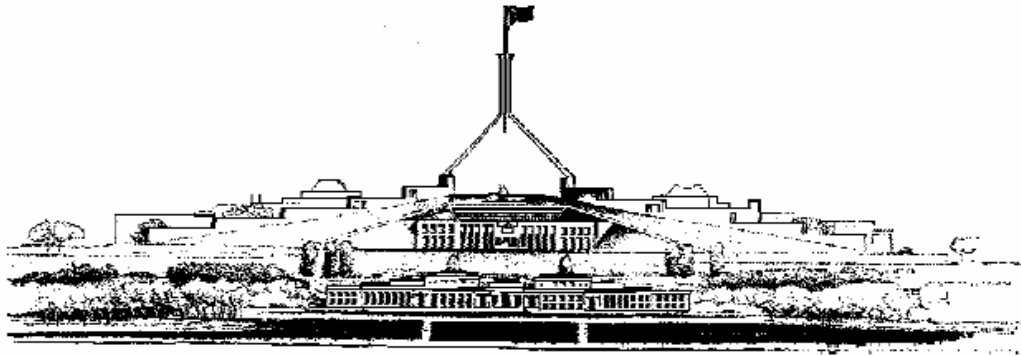
New Zealand, also a member of the Nuclear Suppliers Group and a party to the South Pacific Nuclear Free Zone Treaty, will face a similar choice.

The potential impact of Nuclear Free Zone Treaties on the U.S.-India nuclear deal was first raised publicly by Dr. William C. Potter, the Director of the James Martin Center for Nonproliferation Studies, in May of 2007. (For additional details, see, [http://www.cns.miis.edu/pubs/other/Potter\\_RememberingPrinciples.pdf](http://www.cns.miis.edu/pubs/other/Potter_RememberingPrinciples.pdf).)

FOR DOCUMENTATION OF THE AUSTRALIAN DEPARTMENT OF FOREIGN AFFAIRS STATEMENTS TO PARLIAMENT, SEE BELOW



COMMONWEALTH OF AUSTRALIA  
PARLIAMENTARY DEBATES



**HOUSE OF  
REPRESENTATIVES**

Official Hansard

**THURSDAY, 31 OCTOBER 1996**

THIRTY-EIGHTH PARLIAMENT  
FIRST SESSION—SECOND PERIOD

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES  
CANBERRA

very survival of a State would be at stake), and so Judge Weeramantry's opinion in this respect was in the minority.

(8) United States nuclear doctrine with regard to non-nuclear weapon states is based on the long-standing negative security assurance that the United States will not use nuclear weapons against non-nuclear weapon states parties to the Nuclear Non-Proliferation Treaty except in the case of invasion or any other attack on the United States, its territories, its armed forces or other troops, its allies, or on a state towards which it has a security commitment, carried out or sustained by such a non-nuclear weapon state in association or alliance with a nuclear weapon state.

**Medicare: Wrong and Overpayments  
(Question No. 640)**

**Mr Rocher** asked the Minister for Health and Family Services, upon notice, on 10 September 1996:

(1) How many overpayments and incorrect payments to the wrong provider were made by the Health Insurance Commission for medicare benefits in the financial years ending 30 June (a) 1993, (b) 1994, (c) 1995 and (d) 1996.

(2) What was the sum of incorrect payments in each year referred to in part (1).

**Dr Wooldridge**—The answer to the honourable member's question is as follows:

(1) The Health Insurance Commission's (HIC) archive files were read to identify the number of overpayments. The table below shows the amount of benefit and the number of claims involved for processing of this type for each financial year.

	Benefit (\$)	Claims
Financial Year 1992/93	469,506.70	14,644
Financial Year 1993/94	425,054.44	12,920
Financial Year 1994/95	447,666.91	11,584
Financial Year 1995/96	453,885.85	12,027

The HIC cannot provide a precise answer for the number of payments to an incorrect provider without extreme and lengthy manual interrogation of the HIC database. It is, however, possible to provide an estimate of the number of payments made to an incorrect provider using a sampling method which is indicative of the extent of incidence of payment to an incorrect provider.

In the case of both claims lodged by the patient (non-direct bill claims) and direct bill claims, an incorrect payment is recorded as a line of history on the HIC database. Adjustments are only made after careful assessment and authorisation.

It would only be possible to determine the precise number of cases if each line of data were manually checked to determine the nature of the variation. To do so would require a significant diversion of HIC resources.

The HIC has a quality control system which provides a means of estimating the incidence of payments to an incorrect provider. There are two quality control codes which are used to specifically identify a payment to an incorrect provider.

This data provides a sample only, however, by extrapolating the sample data, the HIC estimates that during the years 1993, 1994, 1995 and 1996, approximately 0.14%, and in any event less than

0.2%, of all claims were made to the incorrect provider.

(2) This method of estimation does not allow an estimate of the monetary amount of payments to incorrect providers, as the amounts can vary significantly from claim to claim and an estimate calculated by applying the above percentage to the total dollar amount of benefits paid in any year, may be misleading.

**Uranium Sales to Taiwan  
(Question No. 641)**

**Mr Melham** asked the Minister for Foreign Affairs, upon notice, on 10 September 1996:

(1) Do Australia's safeguards requirements specify that Australian uranium be sold only to countries who are parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

(2) Is Taiwan a party to the NPT.

(3) Do Australia's safeguards requirements demand that customers for Australian uranium apply full scope safeguards to their nuclear fuel cycles.

(4) Does the recently released report of the Canberra Commission recommend that the importance of nuclear export controls is acknowledged in



the Nuclear Non-Proliferation Treaty Review and Extension Conference and that new supply arrangements should require acceptance of full scope safeguards as a necessary precondition, thereby specifying the full scope supply standard as the accepted global norm for nuclear supply.

(5) Does article 4(a) of the South Pacific Nuclear Zone Treaty impose a formal legal obligation not to provide fissionable material to any non-weapon state unless subject to article III.1 of the NPT, which means full scope safeguards.

(6) Has Taiwan a full scope safeguards agreement under INFCIRC/153 with the International Atomic Energy Agency.

(7) Is it possible for Taiwan to conclude an agreement.

(8) Does Australian safeguards policy require the conclusion of a bilateral safeguards agreement with customers for Australian uranium; if so, (a) when and with which countries have these agreements been signed and (b) has Australia signed an agreement with Taiwan.

(9) Given that Australia does not recognise the Taiwanese Government, how will an agreement with Taiwan be negotiated.

(10) If Australia seeks to sell uranium to Taiwan through means such as utilising US arrangements with that country, what impact will that have on the credibility of Australia's stringent safeguards regime.

**Mr Downer**—The answer to the honourable member's question is as follows:

(1) Since 1977, Australia's policy on the export of uranium has specified that, in the case of non-nuclear weapon states, a minimum requirement is that they be a party to the Nuclear Non-Proliferation Treaty (NPT). Adherence to the NPT is approaching universality and is the most common way in which non-nuclear weapon states have expressed their internationally legally-binding commitments never to acquire nuclear weapons and to accept fullscope safeguards in order to verify this undertaking. Non-nuclear weapon states have expressed similar commitments in other international treaties such as the Treaty of Tlatelolco, which provides for a nuclear weapon free zone in Latin America and the South Pacific Nuclear Free Zone Treaty, or Treaty of Rarotonga, of which Australia is a signatory.

(2) Australia does not regard Taiwan as a state and therefore does not acknowledge it to be a party to the NPT. Before its expulsion from the United Nations in 1971, however, Taiwan (as the Republic of China) had both signed and ratified the NPT. Taiwanese authorities are understood to continue to consider Taiwan bound by the principles and obligations of the NPT. Taiwan expressed its

support for the NPT in a statement welcoming the indefinite extension of the Treaty in 1995.

(3) Treaty-level obligations are placed on uranium exported from Australia and its derivatives in the international nuclear fuel cycle which are identified as Australian obligated nuclear material (AONM). These obligations provide that AONM may only be transferred where, in the case of non-nuclear weapon states, it will be subject to fullscope safeguards. The requirement that nuclear exports be covered by fullscope safeguards in non-nuclear weapon states has in recent years become the international norm and, for example, has been adopted as a supply standard by the Nuclear Suppliers Group. In the case of transfers of AONM to nuclear weapon states Australia requires treaty-level assurances that AONM will only be used for peaceful purposes and arrangements must be in place under which AONM is subject to International Atomic Energy Agency (IAEA) safeguards.

(4) The report of the Canberra Commission states that "The importance of nuclear export controls is acknowledged in the NPTREC 'Principles and Objectives for Nuclear Non-Proliferation and Disarmament'. These state that new supply arrangements should require acceptance of fullscope safeguards 'as a necessary precondition', thereby clearly specifying the fullscope safeguards supply standard as the accepted global norm for nuclear supply."

(5) Article 4 (a) of the South Pacific Nuclear Free Zone Treaty imposes a legal obligation not to provide nuclear material unless subject to the safeguards required by Article III.1 of the NPT; that is fullscope safeguards.

(6) and (7) INFCIRC/153 is the commonly-used reference for the model safeguards agreement set out in the IAEA information circular with that designation. An INFCIRC/153-type safeguards agreement is the standard safeguards agreement which non-nuclear weapon states party to the NPT are required to conclude with the IAEA. Taiwan does not have an INFCIRC/153-type safeguards agreement with the IAEA. In Taiwan, the Agency applies safeguards to nuclear facilities in Taiwan under a trilateral agreement between the IAEA, the United States and Taiwan (INFCIRC/158). The combination of these arrangements and bilateral arrangements between the United States and Taiwan results in the application of de facto fullscope safeguards in Taiwan.

(8) Yes.

(a) Republic of Korea (ROK)— 2 May 1979

United Kingdom—24 July 1979

Finland—9 February 1980

USA—16 January 1981

Canada—9 March 1981



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

**Reference: Treaties tabled on 7 and 21 August 2001**

MONDAY, 27 AUGUST 2001

CANBERRA


BY AUTHORITY OF THE PARLIAMENT

and the Czech Republic. I welcome the representatives of government agencies and departments, the Sutherland Shire Council and non-government organisations to this hearing.

I call on representatives from the Department of Foreign Affairs and Trade, the Australian Nuclear Science and Technology Organisation, the Australian Radiation Protection and Nuclear Safety Agency, the Department of Industry, Science and Resources and the Australian Safeguards and Non-Proliferation Office to begin our hearing. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I do not want to limit you but, given the time available, could I ensure that we can at least use the time usefully in an opening statement? Who would like to start?

**Mr Paterson**—I will commence, with your permission, with a fairly short opening statement addressing all four nuclear agreements, for the sake of brevity.

**ACTING CHAIR**—Yes, thank you.




**Mr Paterson**—The committee has before it today four nuclear cooperation safeguards agreements. The agreement with Argentina relates primarily to the contract between the Australian Nuclear Science and Technology Organisation, ANSTO, and an Argentine firm, INVAP SE, to design and construct a replacement research reactor at Lucas Heights. The other three agreements before the committee have been negotiated in order to permit the sale of Australian uranium for use in Taiwan, Hungary and the Czech Republic.

I will explain the purpose and the contents of the agreement with Argentina first and then turn to the other three agreements. The agreement between Australia and the Argentine Republic concerning cooperation in the peaceful uses of nuclear energy follows the conclusion last year of the replacement research reactor contract between ANSTO and INVAP. The contract has established a relationship with Argentina in the field of nuclear science and technology. Argentina is a country with significant expertise and activity in nuclear science and technology and has a prominent role in international nuclear safety and non-proliferation matters. This relationship, which is already growing, entails scientific collaboration, new commercial links and cooperation between regulatory agencies. The agreement aims to facilitate and enhance this new relationship by creating a broad framework for cooperation and to provide an appropriate level of intergovernmental backing to the commercial arrangement between ANSTO and INVAP.

I draw the committee's attention to four benefits that the agreement will provide for Australia. Firstly, the agreement creates a framework for cooperation between Australia and Argentina in nuclear science and technology which will embrace scientific research activity, regulatory cooperation and new trade and investment opportunities. The agreement refers to fields in which such cooperation can take place and identifies the Australian and Argentine government agencies which are likely to engage in cooperative endeavours. This will assist important regulatory activities, including compliance with the Australian Radiation Protection and Nuclear Safety Act, and facilitate scientific collaboration with potential commercial spin-offs.

The agreements with the Czech Republic and Hungary closely resemble our 15 existing safeguards agreements and contain all elements of the government's uranium export policy. The contents of each agreement vary slightly because of the specific legislative and regulatory arrangements which apply in the Czech Republic and Hungary. Both countries are parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the NPT, and are members in good standing of international non-proliferation regimes. Full-scope IAEA safeguards apply to all of their nuclear activities. The IAEA strengthened safeguards measures are already in effect in Hungary, and the Czech Republic has signed the necessary additional protocol with the IAEA and is working towards bringing it into force. As such, the sale of Australian uranium to the Czech Republic and Hungary is consistent with Australia's non-proliferation commitments.

Since Taiwan is not recognised by Australia as a state, it is not possible to conclude a safeguards agreement with Taiwan like those for the Czech Republic and Hungary. Instead, the government has made arrangements which replicate those which apply in other countries to which Australian uranium is exported. Australian uranium destined for Taiwan will be exported to the United States for enrichment before being transferred to Taiwan. In this way, Australian uranium will be covered by the safeguards agreement between Australia and the United States and agreements between the United States, Taiwan and the IAEA. Canada entered into similar arrangements in 1993. ASNO will track the movement of all Australian obligated nuclear material in Taiwan just as it does elsewhere.



As a party to the Treaty on the Non-Proliferation of Nuclear Weapons and the South Pacific Nuclear Free Zone Treaty, SPNFZ, Australia is obliged to supply nuclear material only to states in which full-scope IAEA safeguards apply. All nuclear activities in Taiwan are subject to IAEA safeguards, and Taiwan was quick to make arrangements with the IAEA to put in place strengthened safeguards measures. Although Taiwan cannot be a party to the NPT, it has given strong and clear commitments to nuclear non-proliferation and has declared its intention not to own, manufacture or use nuclear weapons. The government considers that Taiwan's non-proliferation commitments and the coverage of all of its nuclear activities by IAEA safeguards means that the agreement is consistent with Australia's treaty obligations. It is also important to recall that the proposed agreement concerning Taiwan is fully consistent with the terms of Australia's recognition of the People's Republic of China in 1972.

To conclude, I would say that the agreement with Argentina will facilitate the implementation of the ANSTO-INVAP contract and contribute towards the growth of the relationship between our countries in nuclear science and technology. It will confirm that all of these activities are fully consistent with Australia's nuclear non-proliferation policies and international commitments. The agreements concerning Taiwan, the Czech Republic and Hungary will allow Australian uranium producers to compete for new contracts. These three agreements are likely to result in new exports which could be in the order of \$A30 million per annum. My colleagues and I would be happy to answer the committee's questions about all four agreements.

**ACTING CHAIR**—Senator Cooney has arrived, so I will hand over to him.

**ACTING CHAIR (Senator Cooney)**—Thank you, Senator Ludwig, and thank you for looking after the affairs of the committee. I apologise to the committee and to the witnesses for being late. The first formal thing we have got to do is put to the committee a request by Channel