

HYDE ACT

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IN THE SENATE OF THE UNITED STATES

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AN ACT

To exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Henry J. Hyde United States and India Nuclear Cooperation promotion Act of 2006`.

SEC.2. SENSE OF CONGRESS.

It is the sense of Congress that -

(1) preventing the proliferation of nuclear weapons, other weapons of mass destruction, the means to produce them and the means to deliver them are critical objectives for United States foreign policy; (2) sustaining the NPT and strengthening its implementation, particularly its verification and compliance, is the keystone of United states nonproliferation policy; (3) the NPT has been a significant success in preventing the acquisition of nuclear

weapons capabilities and maintaining a stable international security situation; (4) countries that have never become a party to the NPT and remain outside that treaty's legal regime pose a potential challenge to the achievement of the overall goals of global nonproliferation, because those countries have not undertaken the NPT's international obligation to prohibit the spread of dangerous nuclear technologies; (5) it is in the interest of the United States to the fullest extent possible to ensure that those countries that are not NPT members are responsible with any nuclear technology they develop; (6) it is in the interest of the United States to enter into an agreement for nuclear cooperation as set forth in section 123 of the Atomic Energy Act of 1954 (42 U.S.C.2153) with a country that has never been an NPT member with respect to civilian nuclear technology if-

(A) the country has demonstrated responsible behavior with respect to the nonproliferation of technology related to weapons of mass destruction programs and the means to deliver them;

(B) the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent to that of the United States, and is working with the United States in key foreign policy initiatives related to non-proliferation;

(C) such cooperation induces the country to implement the highest possible protections against the proliferation of technology related to weapons of mass destruction programs and the means to deliver them, and to refrain from actions that would further the development of its nuclear weapons program; and

(D) such cooperation will induce the country to give greater political and material support to the achievement of United States global and regional nonproliferation objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups, that are seeking to

acquire a nuclear weapons capability or other weapons of mass destruction capability and the means to deliver such weapons;

(7) (A) India meets the criteria described in paragraph (6); and (B) it is in the national security interest of the United States to deepen its relationship with India across a full range of issues, including peaceful nuclear cooperation;

(8) the South Asia region is so important that the United States should continue its policy of engagement, collaboration, and exchanges with and between India and Pakistan; and

(9) the United States Government, pursuant to the restrictions in this Act, shall not participate in, or contribute to, the manufacture or acquisition of nuclear weapons or nuclear explosive devices.

SEC. 3. STATEMENTS OF POLICY.

(a) In General – The following shall be the policies of the United States:

(1) Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 433; commonly referred to as the 'Nuclear Non-Proliferation Treaty' or the 'NPT').

(2) Encourage states party to the NPT to interpret the right to develop research, production and use of nuclear energy for peaceful purposes', as described in Article IV of the NPT, as being a qualified right that is conditioned by the overall purpose of the NPT to prevent the spread of nuclear weapons and nuclear weapons capability, including by refraining from all nuclear cooperation with any state party that has not demonstrated that it is in full compliance with its NPT obligations, as determined by the IAEA.

(3) Strengthen the Nuclear Suppliers Group guidelines concerning consultation by members regarding violations of supplier and recipient

understandings by instituting the practice of a timely and coordinated response by NSG members to all such violations, including termination of nuclear transfers to an involved recipient, that discourages individual NSG members from continuing cooperation with such recipient until such time as a consensus regarding a coordinated response has been achieved.

(b) With Respect to South Asia - The following shall be the policies of the United States with respect to South Asia:

(1) Achieve a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China at the earliest possible date.

(2) Achieve, at the earliest possible date, the conclusion and implementation of a treaty banning the production of fissile material for nuclear weapons to which both the United States and India become parties.

(3) Secure India's –

(A) full participation in the Proliferation Security Initiative;

(B) formal commitment to the Statement of Interdiction Principles:

(C) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Control Lists of the Wassenaar Arrangement;

(D) demonstration of satisfactory progress toward implementing the decision described in subparagraph (C); and

(E) ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage, done at Vienna on September 12, 1997.

(4) Secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability (including the capability to enrich or process nuclear materials), and the means to deliver weapons of mass destruction.

(5) Seek to halt the increase of nuclear weapon arsenals in South Asia, and to promote their reduction and eventual elimination.

(6) To ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the United States except pursuant to the Congressional review procedures required under section 131 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2160 f.)

(7) Pending implementation of a multilateral moratorium, encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.

SEC. 4. WAIVER AUTHORITY AND CONGRESSIONAL APPROVAL

(a) In General - Notwithstanding any other provision of law, if the President makes the determination described in subsection (b), the President may -

(1) exempt a proposed agreement for nuclear cooperation with India (arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) from the requirement in section 123 a. (2) of such Act, and such agreement for cooperation may only enter into force in accordance with subsection (f);

(2) waive the application of section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) with respect to India, provided that such waiver shall cease to be effective if the President determines that India has engaged in any activity described section 129 of such Act (42 U.S.C. 2158), other than

section 129 a.(1)(D) or section 129 a.(2)© of such Act, at any time after the date of the enactment of this Act; and

(3) with respect to India -

(A) (A) waive the restrictions of section 129 a.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2158 a.(1)(A)) for any activity that occurred on or before July 18, 2005; and

(B) (B) section 129 a.(1)(D) of such Act.

(b) Determination by the President - The determination referred to in subsection (a) is a determination by the President that the following actions have occurred:

(1) India has provided the United States and the International Atomic Energy Agency with a credible plan to separate civil and military nuclear facilities, materials, and programs, and has filed a declaration regarding its civil facilities with the IAEA.

(2) India and the IAEA have concluded an agreement requiring the application of IAEA safeguards in perpetuity in accordance with IAEA standards, principles, and practices (including IAEA Board of Governors Document GOV/1621 (1973)) to India's civil nuclear facilities, materials and programs as declared in the plan described in paragraph (i), including materials used in or produced through the use of India's civil nuclear facilities.

(3) India and the IAEA are making substantial progress toward concluding an Additional Protocol consistent with IAEA principles, practices, and policies that would apply to India's civil nuclear program.

(4) India is working actively with the United States for the early conclusion of a multilateral Fissile Material Cutoff Treaty.

(5) India is working with and supporting United States and international efforts to prevent the spread of enrichment and reprocessing technology.

(6) India is taking the necessary steps to secure nuclear and other sensitive materials and technology, including through -

(A) the enactment and enforcement of comprehensive export control legislation and regulations;

(B) harmonization of its export control laws, regulations, policies, and practices with the policies and practices of the Missile Technology Control Regime and the Nuclear Suppliers Group; and

(C) adherence to the MTCR and the NSG in accordance with the procedures of those regimes for unilateral adherence.

(7) The NSG has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG.

(c) Submission to Congress:

(1) IN GENERAL - The President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate information concerning any determination made pursuant to subsection (b), together with a report, detailing the basis for the determination.

(2) INFORMATION TO BE INCLUDED - To the fullest extent available to the United States, the information referred to in paragraph (1) shall include the following:

(A) A summary of the plan provided by India to the United States and the IAEA to separate India's civil and military nuclear facilities, materials and programs, and the declaration made by India to the IAEA identifying India's civil facilities to be placed under IAEA

safeguards, including an analysis of the credibility of such plan and declaration, together with copies of the plan and declaration.

(B) A summary of the agreement that has been entered into between India and the IAEA requiring the application of safeguards in accordance with IAEA practices to India's civil nuclear facilities as declared in the plan described in subparagraph (A), together with a copy of the agreement, and a description of the progress toward its full implementation.

(C) A summary of the progress made toward conclusion and implementation of an Additional Protocol between India and the IAEA, including a description of the scope of such Additional Protocol.

(D) A description of the steps that India is taking to work with the United States for the conclusion of a multilateral treaty banning the production of fissile material for nuclear weapons, including a description of the steps that the United States has taken and will take to encourage India to identify and declare a date by which India would be willing to stop production of fissile material for nuclear weapons unilaterally or pursuant to a multilateral moratorium or treaty.

(E) A description of the steps India is taking to prevent the spread of nuclear-related technology, including enrichment and reprocessing technology or materials that can be used to acquire a nuclear weapons technology, as well as the support that India is providing to the United States to further United States objectives to restrict the spread of such technology.

(F) A description of the steps that India is taking to secure materials and technology applicable for the development, acquisition, or

manufacture of weapons of mass destruction and the means to deliver such weapons through the application of comprehensive export control legislation and regulations, and through harmonization and adherence to Missile Technology Control Regime, the Nuclear Suppliers Group, the Australia Group, Wassenaar guidelines, and United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative.

(G) A description of the decision taken within the Nuclear Suppliers Group relating to nuclear cooperation with India, including whether nuclear cooperation by the United States under an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is consistent with the decision, practices, and policies of the NSG.

(H) A description of the scope of peaceful cooperation envisioned by the United States and India that will be implemented under the Agreement for Nuclear Cooperation, including whether such cooperation will include the provision of enrichment and reprocessing technology.

(I) A description of the steps taken to ensure that proposed United States civil nuclear assistance to India will not directly, or in any other way, assist India's nuclear weapons program, including –

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex;

(ii) the replication and subsequent use of any United States technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any

activity related to the research, development, testing, or manufacture of nuclear explosive devices; and

(iii) the provision of nuclear fuel in such a manner as to facilitate the increased production of highly enriched uranium or plutonium in unsafeguarded nuclear facilities.

(d) Restrictions on Nuclear Transfers to India -

(i) IN GENERAL – Pursuant to the obligations of the United States under Article I of the NPT, nothing in this Act, or any agreement pursuant to this Act, shall be interpreted as permitting any civil nuclear cooperation between the United States and India that would in any way assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices.

(2) NSG TRANSFER GUIDELINES - Notwithstanding the entry into force of an agreement for nuclear cooperation with India pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and approved pursuant to this Act, no item subject to such agreement or subject to the transfer guidelines of the NSG may be transferred to India if such transfer would violate or be inconsistent with the transfer guidelines of the NSG as in effect on the date of the transfer.

(3) TERMINATION OF NUCLEAR TRANSFERS TO INDIA - Notwithstanding the entry into force of an agreement for nuclear cooperation with India pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and approved pursuant to this Act, exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if India makes any materially significant transfer of –

(A) nuclear or nuclear – related amterial, equipment, or technology that does not conform to NSG guidelines, or

(B) ballistic missiles or missile-related equipment or technology that does not conform to MTCR guidelines, unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.

(4) PROHIBITION ON NUCLEAR TRANSFERS TO INDIA - If nuclear transfers to India are restricted pursuant to this Act, the Atomic Energy Act of 1954, or the Arms Export Control Act, the President should seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source.

(e) Approval of Agreement for Nuclear Cooperation Required –

(i) IN GENERAL - An agreement for nuclear cooperation between the United States and India submitted pursuant to this section may become effective only if –

(A) the President submits to Congress the agreement concluded between the United States and India, including a copy of the safeguards agreement entered into between the IAEA and India relating to India's declared civilian nuclear facilities, in accordance with the requirements and procedures of section 123 of the Atomic Energy Act of 1954 (other than section 123 a.(2) of such Act) that are otherwise not inconsistent with the provisions of this Act; and

(B) after the submission under subparagraph (A), the agreement is approved by a joint resolution that is enacted into law.

(2) CONSULTATION – Beginning one month after the date of the enactment of this Act and every month thereafter until the President submits to Congress the agreement referred to in paragraph (1), the

President should consult with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the status of the negotiations between the United States and India with respect to civilian nuclear cooperation and between the IAEA and India with respect to the safeguards agreement described in subsection (b)(2)

(f) Joint Resolution of Approval -- For purpose of this section, a joint resolution referred to in subsection (e)(1)(B) is a joint resolution of the two Houses of Congress –

(1) the matter after the resolving clause of which is as follows: ‘That the Congress hereby approves the Agreement for Nuclear Cooperation Between the United States of America and the Republic of India submitted by the President on with the blank space being filled with the appropriate date;

(2) which does not have a preamble; and

(3) the title of which is as follows: ‘Joint Resolution Approving an Agreement for Nuclear Cooperation between the United States and India’.

(g) Consideration of Joint Resolution of Approval -- The provisions of paragraphs (2) through (6) of section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159 i) shall apply to a joint resolution under subsection (f) of this section to the same extent as such provisions apply to a joint resolution under section 130 i. of such Act. No amendment to, or motion to recommit, a joint resolution under subsection (f) of this section is in order.

(h) Section 123 of Atomic Energy Act of 1954 Not Affected -- Notwithstanding subsection (e)(i), this section does not preclude the approval, under section 123 of the Atomic Energy Act of 1954 (42 U.S.C.

2153) of an agreement for cooperation in which India is the cooperating party.

(i) Sunset -- The procedures under this section shall cease to be effective upon the enactment of a joint resolution under this section.

(j) Reports -

(i) POLICY OBJECTIVES -- The President shall, not later than January 31, 2007, and not later than January 31 of each year thereafter, submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on –

(A) the extent to which each policy objective in section 3(b) has been achieved;

(B) the steps taken by the United States and India in the preceding calendar year to accomplish those objectives;

(C) the extent of cooperation by other countries in achieving those objectives; and

(D) the steps the United States will take in the current calendar year to accomplish those objectives.

(2) NUCLEAR EXPORTS TO INDIA -

(A) IN GENERAL - Not later than one year after the date on which an agreement for nuclear cooperation between the United States and India is approved by Congress under section 4(f) and every year thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing United States exports to India for the preceding year pursuant to

such agreement and the anticipated exports to India for the next year pursuant to such agreement.

(B) NUCLEAR FUEL -- The report described in subparagraph (A) shall also include (in a classified form if necessary) --

(i) an estimate for the previous year of the amount of uranium mined in India;

(ii) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices;

(iii) the rate of production of --

(I) fissile material for nuclear explosive devices; and

(II) nuclear explosive devices; and

(iv) an analysis as to whether imported uranium has affected such rate of production of nuclear explosive devices.

(C) UNSAFEGUARDED NUCLEAR FACILITIES -- The report described in subparagraph (A) shall also include (in a classified form if necessary a description of whether United States civil nuclear assistance to India is directly, or in any other way, assisting India's nuclear weapons program, including --

(i) the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear -- weapons related complex;

(ii) the replication and subsequent use of any United States technology in an unsafeguarded nuclear facility or unsafeguarded nuclear weapons-related complex, or for any activity related to the

research, development, testing, or manufacture of nuclear explosive devices; and

(iii) the provision of nuclear fuel in such a manner as to facilitate the increased production of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities.

(3) NEW NUCLEAR REACTORS OR FACILITIES - Not later than one year after the date of the enactment of this Act and annually thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing any new nuclear reactors or nuclear facilities that the Government of India has designated as civilian and placed under inspections or has designated as military.

(4) DISPOSAL OF SPENT NUCLEAR FUEL -- Not later than one year after the date on which an agreement for nuclear cooperation between the United States and India is approved by Congress under section 4(f) and every year thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report describing the disposal of spent nuclear fuel from India's civilian nuclear program.

(5) GROWTH IN INDIA'S MILITARY FISSIONABLE MATERIAL PRODUCTION -

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(A) IN GENERAL – Not later than one year after the date on which an agreement for nuclear cooperation between the United States and India is approved by Congress under section 4(f) and every year thereafter, the President shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report that –

(i) measures the effectiveness of the civil nuclear cooperation agreement in achieving the goals and objectives described in section 2; and

(ii) assesses the relative level of India's nuclear fissile material production compared to the previous year.

(B) CONTENTS -- The report described in subparagraph (A) shall also include information relating to -

(i) the amount of natural uranium India has mined and milled during the previous year;

(ii) the amount of electricity India's civilian reactors have produced during the previous year;

(iii) the amount of domestic natural uranium India has used in its declared civilian reactors to produce electricity during the previous year;

(iv) the amount of fissile material India has produced for military purposes during the previous year;

(v) the amount of domestic natural uranium and domestic enrichment capacity India has used to produce such fissile material;

(vi) the amount of domestic uranium India has otherwise stockpiled for possible civil or military use;

(vii) an identification of any changes with regard to these quantities from the previous year; and

(viii) any additional qualitative factors determined to be relevant with respect to subparagraph (A) as appropriate, such as the location of production facilities.

(C) PREPARATION; FORM OF REPORT -- The report should rely on public information to the extent possible. The report shall include a classified annex if necessary.

(k) Definitions -- In this Act:

(i) IAEA – The term ‘IAEA’ means the International Atomic Energy Agency.

(2) MTCR – The term ‘MTCR’ means the Missile Technology Control Regime.

(3) NPT - The term ‘NPT’ means the Treaty on the Non-Proliferation of Nuclear Weapons.

(4) NPT MEMBER – The term ‘NPT member’ means a country that is a party to the NPT.

(5) NSG - The term ‘NSG’ means the Nuclear Suppliers Group.

Passed the House of Representatives July 26, 2006.

Attest:

KAREN L. HAAS

Clerk