

HENRY J. HYDE UNITED STATES-INDIA PEACEFUL  
ATOMIC ENERGY COOPERATION ACT OF 2006

DECEMBER 7, 2006.—Ordered to be printed

Mr. HYDE, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5682]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5682), to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

***TITLE I—UNITED STATES AND INDIA  
NUCLEAR COOPERATION***

***SEC. 101. SHORT TITLE.***

*This title may be cited as the “Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006”.*

***SEC. 102. 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 Nuclear Non-Proliferation Treaty (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 obligation to prohibit the spread of nuclear weapons capabilities;*

*(5) it is in the interest of the United States to the fullest extent possible to ensure that those countries that are not States Party to the NPT are responsible in the disposition of any nuclear technology they develop;*

*(6) it is in the interest of the United States to enter into an agreement for nuclear cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) with a country that has never been a State Party to the NPT if—*

*(A) the country has demonstrated responsible behavior with respect to the nonproliferation of technology related to nuclear weapons 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 on key foreign policy initiatives related to nonproliferation;*

*(C) such cooperation induces the country to promulgate and implement substantially improved protections against the proliferation of technology related to nuclear weapons 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) the United States should continue its policy of engagement, collaboration, and exchanges with and between India and Pakistan;*

*(8) strong bilateral relations with India are in the national interest of the United States;*

*(9) the United States and India share common democratic values and the potential for increasing and sustained economic engagement;*

*(10) commerce in civil nuclear energy with India by the United States and other countries has the potential to benefit the people of all countries;*

*(11) such commerce also represents a significant change in United States policy regarding commerce with countries that*

are not States Party to the NPT, which remains the foundation of the international nonproliferation regime;

(12) any commerce in civil nuclear energy with India by the United States and other countries must be achieved in a manner that minimizes the risk of nuclear proliferation or regional arms races and maximizes India's adherence to international nonproliferation regimes, including, in particular, the guidelines of the Nuclear Suppliers Group (NSG); and

(13) the United States should not seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such exports are terminated under United States law.

**SEC. 103. 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 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 set forth in Article IV of the NPT, as being a right that applies only to the extent that it is consistent with the object and purpose of the NPT to prevent the spread of nuclear weapons and nuclear weapons capabilities, including by refraining from all nuclear cooperation with any State Party that the International Atomic Energy Agency (IAEA) determines is not in full compliance with its NPT obligations, including its safeguards obligations.

(3) Act in a manner fully consistent with the Guidelines for Nuclear Transfers and the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology developed by the NSG, and decisions related to those guidelines, and the rules and practices regarding NSG decisionmaking.

(4) Strengthen the NSG guidelines and decisions 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.

(5) Given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India.

(6) Seek to prevent the transfer to a country of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source if nuclear transfers to that country are suspended or terminated pursuant to this title, the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law.

(b) *WITH RESPECT TO SOUTH ASIA.*—*The following shall be the policies of the United States with respect to South Asia:*

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

(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 of such Initiative;*

(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 and the capability to enrich uranium or reprocess nuclear fuel, 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) *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 the multilateral moratorium described in paragraph (1) or the treaty described in paragraph (2), encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities.*

(8) *Ensure that any safeguards agreement or Additional Protocol to which India is a party with the IAEA can reliably safeguard any export or reexport to India of any nuclear materials and equipment.*

(9) *Ensure that the text and implementation of any agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) meet the requirements set forth in subsections a.(1) and a.(3) through a.(9) of such section.*

(10) *Any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.*

**SEC. 104. WAIVER AUTHORITY AND CONGRESSIONAL APPROVAL.**

(a) *IN GENERAL.*—If the President makes the determination described in subsection (b), the President may—

(1) exempt a proposed agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) from the requirement of subsection a.(2) of such section;

(2) waive the application of section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) with respect to exports to India; and

(3) waive with respect to India the application of—

(A) section 129 a.(1)(D) of the Atomic Energy Act of 1954 (42 U.S.C. 2158(a)(1)(D)); and

(B) section 129 of such Act (42 U.S.C. 2158) regarding any actions that occurred before July 18, 2005.

(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 IAEA with a credible plan to separate civil and military nuclear facilities, materials, and programs, and has filed a declaration regarding its civil facilities and materials with the IAEA.

(2) India and the IAEA have concluded all legal steps required prior to signature by the parties of 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 (1), 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 treaty on the cessation of the production of fissile materials for use in nuclear weapons or other nuclear explosive devices.

(5) India is working with and supporting United States and international efforts to prevent the spread of enrichment and reprocessing technology to any state that does not already possess full-scale, functioning enrichment or reprocessing plants.

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

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

(B) harmonization of its export control laws, regulations, policies, and practices with the guidelines and practices of the Missile Technology Control Regime (MTCR) and the NSG; 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 appropriate congressional committees the 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 report referred to in paragraph (1) shall include the following information:*

(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 capability, 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 with and adherence to MTCR, NSG, Australia Group, and Wassenaar Arrangement guidelines, compliance with United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative.*

(G) A description and assessment of the specific measures that India has taken to fully and actively participate in United States and international 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 and the capability to enrich uranium or reprocess nuclear fuel and the means to deliver weapons of mass destruction.

(H) A description of the decision of the NSG 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.

(I) 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.

(J) A description of the steps taken to ensure that proposed United States civil nuclear cooperation with India will not in any way assist India's nuclear weapons program.

(d) RESTRICTIONS ON NUCLEAR TRANSFERS.—

(1) IN GENERAL.—Pursuant to the obligations of the United States under Article I of the NPT, nothing in this title constitutes authority to carry out any civil nuclear cooperation between the United States and a country that is not a nuclear-weapon State Party to the NPT that would in any way assist, encourage, or induce that country to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices.

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

(3) TERMINATION OF NUCLEAR TRANSFERS TO INDIA.—

(A) IN GENERAL.—Notwithstanding the entry into force of an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) and pursuant to this title, and except as provided under subparagraph (B), exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if there is any materially significant transfer by an Indian person of—

(i) nuclear or nuclear-related material, equipment, or technology that is not consistent with NSG guidelines or decisions, or

(ii) ballistic missiles or missile-related equipment or technology that is not consistent with 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.

(B) *EXCEPTION.*—The President may choose not to terminate exports of nuclear and nuclear-related material, equipment, and technology to India under subparagraph (A) if—

(i) the transfer covered under such subparagraph was made without the knowledge of the Government of India;

(ii) at the time of the transfer, either the Government of India did not own, control, or direct the Indian person that made the transfer or the Indian person that made the transfer is a natural person who acted without the knowledge of any entity described in subparagraph (B) or (C) of section 110(5); and

(iii) the President certifies to the appropriate congressional committees that the Government of India has taken or is taking appropriate judicial or other enforcement actions against the Indian person with respect to such transfer.

(4) *EXPORTS, REEXPORTS, TRANSFERS, AND RETRANSFERS TO INDIA RELATED TO ENRICHMENT, REPROCESSING, AND HEAVY WATER PRODUCTION.*—

(A) *IN GENERAL.*—

(i) *NUCLEAR REGULATORY COMMISSION.*—The Nuclear Regulatory Commission may only issue licenses for the export or reexport to India of any equipment, components, or materials related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water if the requirements of subparagraph (B) are met.

(ii) *SECRETARY OF ENERGY.*—The Secretary of Energy may only issue authorizations for the transfer or retransfer to India of any equipment, materials, or technology related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water (including under the terms of a subsequent arrangement under section 131 of the Atomic Energy Act of 1954 (42 U.S.C. 2160)) if the requirements of subparagraph (B) are met.

(B) *REQUIREMENTS FOR APPROVALS.*—Exports, reexports, transfers, and retransfers referred to in subparagraph (A) may only be approved if—

(i) the end user—

(I) is a multinational facility participating in an IAEA-approved program to provide alternatives to national fuel cycle capabilities; or

(II) is a facility participating in, and the export, reexport, transfer, or retransfer is associated with, a bilateral or multinational program to develop a proliferation-resistant fuel cycle;

(ii) appropriate measures are in place at any facility referred to in clause (i) to ensure that no sensitive



nuclear technology, as defined in section 4(5) of the Nuclear Nonproliferation Act of 1978 (22 U.S.C. 3203(5)), will be diverted to any person, site, facility, location, or program not under IAEA safeguards; and

(iii) the President determines that the export, re-export, transfer, or retransfer will not assist in the manufacture or acquisition of nuclear explosive devices or the production of fissile material for military purposes.

(5) **NUCLEAR EXPORT ACCOUNTABILITY PROGRAM.**—

(A) **IN GENERAL.**—The President shall ensure that all appropriate measures are taken to maintain accountability with respect to nuclear materials, equipment, and technology sold, leased, exported, or reexported to India so as to ensure—

(i) full implementation of the protections required under section 123 a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2153 (a)(1)); and

(ii) United States compliance with Article I of the NPT.

(B) **MEASURES.**—The measures taken pursuant to subparagraph (A) shall include the following:

(i) Obtaining and implementing assurances and conditions pursuant to the export licensing authorities of the Nuclear Regulatory Commission and the Department of Commerce and the authorizing authorities of the Department of Energy, including, as appropriate, conditions regarding end-use monitoring.

(ii) A detailed system of reporting and accounting for technology transfers, including any retransfers in India, authorized by the Department of Energy pursuant to section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)). Such system shall be capable of providing assurances that—

(I) the identified recipients of the nuclear technology are authorized to receive the nuclear technology;

(II) the nuclear technology identified for transfer will be used only for peaceful safeguarded nuclear activities and will not be used for any military or nuclear explosive purpose; and

(III) the nuclear technology identified for transfer will not be retransferred without the prior consent of the United States, and facilities, equipment, or materials derived through the use of transferred technology will not be transferred without the prior consent of the United States.

(iii) In the event the IAEA is unable to implement safeguards as required by an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), appropriate assurance that arrangements will be put in place expeditiously that are consistent with the requirements of section 123 a.(1) of such Act (42 U.S.C. 2153(a)(1)) regarding the maintenance of safeguards as set forth in the agree-

ment regardless of whether the agreement is terminated or suspended for any reason.

(C) *IMPLEMENTATION.*—The measures described in subparagraph (B) shall be implemented to provide reasonable assurances that the recipient is complying with the relevant requirements, terms, and conditions of any licenses issued by the United States regarding such exports, including those relating to the use, retransfer, safe handling, secure transit, and storage of such exports.

(e) *JOINT RESOLUTION OF APPROVAL REQUIREMENT.*—Section 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) is amended in the second proviso by inserting after “that subsection” the following: “, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006.”.

(f) *SUNSET.*—The authority provided under subsection (a)(1) to exempt an agreement shall terminate upon the enactment of a joint resolution under section 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) approving such an agreement.

(g) *REPORTING TO CONGRESS.*—

(1) *INFORMATION ON NUCLEAR ACTIVITIES OF INDIA.*—The President shall keep the appropriate congressional committees fully and currently informed of the facts and implications of any significant nuclear activities of India, including—

(A) any material noncompliance on the part of the Government of India with—

(i) the nonproliferation commitments undertaken in the Joint Statement of July 18, 2005, between the President of the United States and the Prime Minister of India;

(ii) the separation plan presented in the national parliament of India on March 7, 2006, and in greater detail on May 11, 2006;

(iii) a safeguards agreement between the Government of India and the IAEA;

(iv) an Additional Protocol between the Government of India and the IAEA;

(v) an agreement for cooperation between the Government of India and the United States Government arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) or any subsequent arrangement under section 131 of such Act (42 U.S.C. 2160);

(vi) the terms and conditions of any approved licenses regarding the export or reexport of nuclear material or dual-use material, equipment, or technology; and

(vii) United States laws and regulations regarding such licenses;

(B) the construction of a nuclear facility in India after the date of the enactment of this title;

(C) significant changes in the production by India of nuclear weapons or in the types or amounts of fissile material produced; and

*(D) changes in the purpose or operational status of any unsafeguarded nuclear fuel cycle activities in India.*

*(2) IMPLEMENTATION AND COMPLIANCE REPORT.—Not later than 180 days after the date on which an agreement for co-operation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) enters into force, and annually thereafter, the President shall submit to the appropriate congressional committees a report including—*

*(A) a description of any additional nuclear facilities and nuclear materials that the Government of India has placed or intends to place under IAEA safeguards;*

*(B) a comprehensive listing of—*

*(i) all licenses that have been approved by the Nuclear Regulatory Commission and the Secretary of Energy for exports and reexports to India under parts 110 and 810 of title 10, Code of Federal Regulations;*

*(ii) any licenses approved by the Department of Commerce for the export or reexport to India of commodities, related technology, and software which are controlled for nuclear nonproliferation reasons on the Nuclear Referral List of the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulation, or any successor regulation;*

*(iii) any other United States authorizations for the export or reexport to India of nuclear materials and equipment; and*

*(iv) with respect to each such license or other form of authorization described in clauses (i), (ii), and (iii)—*

*(I) the number or other identifying information of each license or authorization;*

*(II) the name or names of the authorized end user or end users;*

*(III) the name of the site, facility, or location in India to which the export or reexport was made;*

*(IV) the terms and conditions included on such licenses and authorizations;*

*(V) any post-shipment verification procedures that will be applied to such exports or reexports; and*

*(VI) the term of validity of each such license or authorization;*

*(C) a description of any significant nuclear commerce between India and other countries, including any such trade that—*

*(i) is not consistent with applicable guidelines or decisions of the NSG; or*

*(ii) would not meet the standards applied to exports or reexports of such material, equipment, or technology of United States origin;*

*(D) either—*

*(i) an assessment that India is in full compliance with the commitments and obligations contained in the agreements and other documents referenced in clauses (i) through (vi) of paragraph (1)(A); or*

(ii) an identification and analysis of all compliance issues arising with regard to the adherence by India to its commitments and obligations, including—

(I) the measures the United States Government has taken to remedy or otherwise respond to such compliance issues;

(II) the responses of the Government of India to such measures;

(III) the measures the United States Government plans to take to this end in the coming year; and

(IV) an assessment of the implications of any continued noncompliance, including whether nuclear commerce with India remains in the national security interest of the United States;

(E)(i) an assessment of whether India is fully and actively participating in United States and international 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 uranium or reprocess nuclear fuel), and the means to deliver weapons of mass destruction, including a description of the specific measures that India has taken in this regard; and

(ii) if India is not assessed to be fully and actively participating in such efforts, a description of—

(I) the measures the United States Government has taken to secure India's full and active participation in such efforts;

(II) the responses of the Government of India to such measures; and

(III) the measures the United States Government plans to take in the coming year to secure India's full and active participation;

(F) an analysis of whether United States civil nuclear cooperation with India is in any way assisting India's nuclear weapons program, including through—

(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 by India 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 by India of highly enriched uranium or plutonium in unsafeguarded nuclear facilities;

(G) a detailed description of—

(i) United States efforts to promote national or regional progress by India and Pakistan in disclosing, securing, limiting, and reducing their fissile material

stockpiles, including stockpiles for military purposes, pending creation of a worldwide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty;

(i) the responses of India and Pakistan to such efforts; and

(iii) assistance that the United States is providing, or would be able to provide, to India and Pakistan to promote the objectives in clause (i), consistent with its obligations under international law and existing agreements;

(H) an estimate of—

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

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

(iii) the rate of production in India of—

(I) fissile material for nuclear explosive devices; and

(II) nuclear explosive devices;

(I) an estimate of the amount of electricity India's nuclear reactors produced for civil purposes during the previous year and the proportion of such production that can be attributed to India's declared civil reactors;

(J) an analysis as to whether imported uranium has affected the rate of production in India of nuclear explosive devices;

(K) a detailed description of efforts and progress made toward the achievement of India's—

(i) full participation in the Proliferation Security Initiative;

(ii) formal commitment to the Statement of Interdiction Principles of such Initiative;

(iii) 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 Controls List of the Wassenaar Arrangement; and

(iv) effective implementation of the decision described in clause (iii); and

(L) the disposal during the previous year of spent nuclear fuel from India's civilian nuclear program, and any plans or activities relating to future disposal of such spent nuclear fuel.

(3) SUBMITTAL WITH OTHER ANNUAL REPORTS.—

(A) REPORT ON PROLIFERATION PREVENTION.—Each annual report submitted under paragraph (2) after the initial report may be submitted together with the annual report on proliferation prevention required under section 601(a) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)).

(B) REPORT ON PROGRESS TOWARD REGIONAL NON-PROLIFERATION.—The information required to be submitted under paragraph (2)(F) after the initial report may be submitted together with the annual report on progress toward

*regional nonproliferation required under section 620F(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2376(c)).*

*(4) FORM.—Each report submitted under this subsection shall be submitted in unclassified form, but may contain a classified annex.*

**SEC. 105. UNITED STATES COMPLIANCE WITH ITS NUCLEAR NON-PROLIFERATION TREATY OBLIGATIONS.**

*Nothing in this title constitutes authority for any action in violation of an obligation of the United States under the NPT.*

**SEC. 106. INOPERABILITY OF DETERMINATION AND WAIVERS.**

*A determination and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this title.*

**SEC. 107. MTCR ADHERENT STATUS.**

*Congress finds that India is not an MTCR adherent for the purposes of section 73 of the Arms Export Control Act (22 U.S.C. 2797b).*

**SEC. 108. TECHNICAL AMENDMENT.**

*Section 1112(c)(4) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501–486)) is amended—*

*(1) in subparagraph (B), by striking “and” after the semicolon at the end;*

*(2) by redesignating subparagraph (C) as subparagraph (D); and*

*(3) by inserting after subparagraph (B) the following new subparagraph:*

*“(C) so much of the reports required under section 104 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 as relates to verification or compliance matters; and”.*

**SEC. 109. UNITED STATES-INDIA SCIENTIFIC COOPERATIVE NUCLEAR NONPROLIFERATION PROGRAM.**

*(a) ESTABLISHMENT.—The Secretary of Energy, acting through the Administrator of the National Nuclear Security Administration, is authorized to establish a cooperative nuclear nonproliferation program to pursue jointly with scientists from the United States and India a program to further common nuclear nonproliferation goals, including scientific research and development efforts, with an emphasis on nuclear safeguards (in this section referred to as “the program”).*

*(b) CONSULTATION.—The program shall be carried out in consultation with the Secretary of State and the Secretary of Defense.*

*(c) NATIONAL ACADEMIES RECOMMENDATIONS.—*

*(1) IN GENERAL.—The Secretary of Energy shall enter into an agreement with the National Academies to develop recommendations for the implementation of the program.*

*(2) RECOMMENDATIONS.—The agreement entered into under paragraph (1) shall provide for the preparation by qualified in-*

dividuals with relevant expertise and knowledge and the communication to the Secretary of Energy each fiscal year of—

(A) recommendations for research and related programs designed to overcome existing technological barriers to nuclear nonproliferation; and

(B) an assessment of whether activities and programs funded under this section are achieving the goals of the activities and programs.

(3) **PUBLIC AVAILABILITY.**—The recommendations and assessments prepared under this subsection shall be made publicly available.

(d) **CONSISTENCY WITH NUCLEAR NON-PROLIFERATION TREATY.**—All United States activities related to the program shall be consistent with United States obligations under the Nuclear Non-Proliferation Treaty.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2011.

**SEC. 110. DEFINITIONS.**

In this title:

(1) The term “Additional Protocol” means a protocol additional to a safeguards agreement with the IAEA, as negotiated between a country and the IAEA based on a Model Additional Protocol as set forth in IAEA information circular (INFCIRC) 540.

(2) The term “appropriate congressional committees” means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(3) The term “dual-use material, equipment, or technology” means material, equipment, or technology that may be used in nuclear or nonnuclear applications.

(4) The term “IAEA safeguards” has the meaning given the term in section 830(3) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6305(3)).

(5) The term “Indian person” means—

(A) a natural person that is a citizen of India or is subject to the jurisdiction of the Government of India;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of India or has its principal place of business in India; and

(C) any Indian governmental entity, including any governmental entity operating as a business enterprise.

(6) The terms “Missile Technology Control Regime”, “MTCR”, and “MTCR adherent” have the meanings given the terms in section 74 of the Arms Export Control Act (22 U.S.C. 2797c).

(7) The term “nuclear materials and equipment” means source material, special nuclear material, production and utilization facilities and any components thereof, and any other items or materials that are determined to have significance for nuclear explosive purposes pursuant to subsection 109 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2139(b)).

(8) *The terms “Nuclear Non-Proliferation Treaty” and “NPT” mean the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (21 UST 483).*

(9) *The terms “Nuclear Suppliers Group” and “NSG” refer to a group, which met initially in 1975 and has met at least annually since 1992, of Participating Governments that have promulgated and agreed to adhere to Guidelines for Nuclear Transfers (currently IAEA INFCIRC/254/Rev.8/Part 1) and Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software, and Related Technology (currently IAEA INFCIRC/254/Rev.7/Part 2).*

(10) *The terms “nuclear weapon” and “nuclear explosive device” mean any device designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one point of trinitrotoluene (TNT).*

(11) *The term “process” includes the term “reprocess”.*

(12) *The terms “reprocessing” and “reprocess” refer to the separation of irradiated nuclear materials and fission products from spent nuclear fuel.*

(13) *The term “sensitive nuclear technology” means any information, including information incorporated in a production or utilization facility or important component part thereof, that is not available to the public and which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water.*

(14) *The term “source material” has the meaning given the term in section 11 z. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).*

(15) *The term “special nuclear material” has the meaning given the term in section 11 aa. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).*

(16) *The term “unsafeguarded nuclear fuel-cycle activity” means research on, or development, design, manufacture, construction, operation, or maintenance of—*

(A) *any existing or future reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, plant for the separation of isotopes of source or special fissionable material, or separate storage installation with respect to which there is no obligation to accept IAEA safeguards at the relevant reactor, facility, plant, or installation that contains source or special fissionable material; or*

(B) *any existing or future heavy water production plant with respect to which there is no obligation to accept IAEA safeguards on any nuclear material produced by or used in connection with any heavy water produced therefrom.*



## **TITLE II—UNITED STATES ADDITIONAL PROTOCOL IMPLEMENTATION**

### **SEC. 201. SHORT TITLE.**

*This title may be cited as the “United States Additional Protocol Implementation Act”.*

### **SEC. 202. FINDINGS.**

*Congress makes the following findings:*

*(1) The proliferation of nuclear weapons and other nuclear explosive devices poses a grave threat to the national security of the United States and its vital national interests.*

*(2) The Nuclear Non-Proliferation Treaty has proven critical to limiting such proliferation.*

*(3) For the Nuclear Non-Proliferation Treaty to be effective, each of the non-nuclear-weapon State Parties must conclude a comprehensive safeguards agreement with the IAEA, and such agreements must be honored and enforced.*

*(4) Recent events emphasize the urgency of strengthening the effectiveness and improving the efficiency of the safeguards system. This can best be accomplished by providing IAEA inspectors with more information about, and broader access to, nuclear activities within the territory of non-nuclear-weapon State Parties.*

*(5) The proposed scope of such expanded information and access has been negotiated by the member states of the IAEA in the form of a Model Additional Protocol to its existing safeguards agreements, and universal acceptance of Additional Protocols by non-nuclear weapons states is essential to enhancing the effectiveness of the Nuclear Non-Proliferation Treaty.*

*(6) On June 12, 1998, the United States, as a nuclear-weapon State Party, signed an Additional Protocol that is based on the Model Additional Protocol, but which also contains measures, consistent with its existing safeguards agreements with its members, that protect the right of the United States to exclude the application of IAEA safeguards to locations and activities with direct national security significance or to locations or information associated with such activities.*

*(7) Implementation of the Additional Protocol in the United States in a manner consistent with United States obligations under the Nuclear Non-Proliferation Treaty may encourage other parties to the Nuclear Non-Proliferation Treaty, especially non-nuclear-weapon State Parties, to conclude Additional Protocols and thereby strengthen the Nuclear Non-Proliferation Treaty safeguards system and help reduce the threat of nuclear proliferation, which is of direct and substantial benefit to the United States.*

*(8) Implementation of the Additional Protocol by the United States is not required and is completely voluntary given its status as a nuclear-weapon State Party, but the United States has acceded to the Additional Protocol to demonstrate its commitment to the nuclear nonproliferation regime and to make United States civil nuclear activities available to the same IAEA inspections as are applied in the case of non-nuclear-weapon State Parties.*

(9) *In accordance with the national security exclusion contained in Article 1.b of its Additional Protocol, the United States will not allow any inspection activities, nor make any declaration of any information with respect to, locations, information, and activities of direct national security significance to the United States.*

(10) *Implementation of the Additional Protocol will conform to the principles set forth in the letter of April 30, 2002, from the United States Permanent Representative to the International Atomic Energy Agency and the Vienna Office of the United Nations to the Director General of the International Atomic Energy Agency.*

**SEC. 203. DEFINITIONS.**

*In this title:*

(1) **ADDITIONAL PROTOCOL.**—*The term “Additional Protocol”, when used in the singular form, means the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna June 12, 1998 (T. Doc. 107–097).*

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—*The term “appropriate congressional committees” means the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate and the Committee on Armed Services, the Committee on International Relations, the Committee on Science, and the Committee on Appropriations of the House of Representatives.*

(3) **COMPLEMENTARY ACCESS.**—*The term “complementary access” means the exercise of the IAEA’s access rights as set forth in Articles 4 to 6 of the Additional Protocol.*

(4) **EXECUTIVE AGENCY.**—*The term “executive agency” has the meaning given such term in section 105 of title 5, United States Code.*

(5) **FACILITY.**—*The term “facility” has the meaning set forth in Article 18i. of the Additional Protocol.*

(6) **IAEA.**—*The term “IAEA” means the International Atomic Energy Agency.*

(7) **JUDGE OF THE UNITED STATES.**—*The term “judge of the United States” means a United States district judge, or a United States magistrate judge appointed under the authority of chapter 43 of title 28, United States Code.*

(8) **LOCATION.**—*The term “location” means any geographic point or area declared or identified by the United States or specified by the International Atomic Energy Agency.*

(9) **NUCLEAR NON-PROLIFERATION TREATY.**—*The term “Nuclear Non-Proliferation Treaty” means the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (21 UST 483).*

(10) **NUCLEAR-WEAPON STATE PARTY AND NON-NUCLEAR-WEAPON STATE PARTY.**—*The terms “nuclear-weapon State Party” and “non-nuclear-weapon State Party” have the meanings given such terms in the Nuclear Non-Proliferation Treaty.*

(11) **PERSON.**—*The term “person”, except as otherwise provided, means any individual, corporation, partnership, firm, as-*

sociation, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality, or political subdivision of any such government or nation, or other entity located in the United States.

(12) *SITE*.—The term “site” has the meaning set forth in Article 18b. of the Additional Protocol.

(13) *UNITED STATES*.—The term “United States”, when used as a geographic reference, means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

(A) the territorial sea and the overlying airspace;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (41), respectively, of section 40102(a) of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).

(14) *WIDE-AREA ENVIRONMENTAL SAMPLING*.—The term “wide-area environmental sampling” has the meaning set forth in Article 18g. of the Additional Protocol.

**SEC. 204. SEVERABILITY.**

If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

## **Subtitle A—General Provisions**

**SEC. 211. AUTHORITY.**

(a) *IN GENERAL*.—The President is authorized to implement and carry out the provisions of this title and the Additional Protocol and shall designate through Executive order which executive agency or agencies of the United States, which may include but are not limited to the Department of State, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Energy, and the Nuclear Regulatory Commission, shall issue or amend and enforce regulations in order to implement this title and the provisions of the Additional Protocol.

(b) *INCLUDED AUTHORITY*.—For any executive agency designated under subsection (a) that does not currently possess the authority to conduct site vulnerability assessments and related activities, the authority provided in subsection (a) includes such authority.

(c) *EXCEPTION*.—The authority described in subsection (b) does not supersede or otherwise modify any existing authority of any Federal department or agency already having such authority.

## **Subtitle B—Complementary Access**

### **SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT COMPLEMENTARY ACCESS.**

(a) *PROHIBITION.*—No complementary access to any location in the United States shall take place pursuant to the Additional Protocol without the authorization of the United States Government in accordance with the requirements of this title.

(b) *AUTHORITY.*—

(1) *IN GENERAL.*—Complementary access to any location in the United States subject to access under the Additional Protocol is authorized in accordance with this title.

(2) *UNITED STATES REPRESENTATIVES.*—

(A) *RESTRICTIONS.*—In the event of complementary access to a privately owned or operated location, no employee of the Environmental Protection Agency or of the Mine Safety and Health Administration or the Occupational Safety and Health Administration of the Department of Labor may participate in the access.

(B) *NUMBER.*—The number of designated United States representatives accompanying IAEA inspectors shall be kept to the minimum necessary.

### **SEC. 222. PROCEDURES FOR COMPLEMENTARY ACCESS.**

(a) *IN GENERAL.*—Each instance of complementary access to a location in the United States under the Additional Protocol shall be conducted in accordance with this subtitle.

(b) *NOTICE.*—

(1) *IN GENERAL.*—Complementary access referred to in subsection (a) may occur only upon the issuance of an actual written notice by the United States Government to the owner, operator, occupant, or agent in charge of the location to be subject to complementary access.

(2) *TIME OF NOTIFICATION.*—The notice under paragraph (1) shall be submitted to such owner, operator, occupant, or agent as soon as possible after the United States Government has received notification that the IAEA seeks complementary access. Notices may be posted prominently at the location if the United States Government is unable to provide actual written notice to such owner, operator, occupant, or agent.

(3) *CONTENT OF NOTICE.*—

(A) *IN GENERAL.*—The notice required by paragraph (1) shall specify—

(i) the purpose for the complementary access;

(ii) the basis for the selection of the facility, site, or other location for the complementary access sought;

(iii) the activities that will be carried out during the complementary access;

(iv) the time and date that the complementary access is expected to begin, and the anticipated period covered by the complementary access; and

(v) the names and titles of the inspectors.

(4) *SEPARATE NOTICES REQUIRED.*—A separate notice shall be provided each time that complementary access is sought by the IAEA.

(c) *CREDENTIALS.*—*The complementary access team of the IAEA and representatives or designees of the United States Government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the location before gaining entry in connection with complementary access.*

(d) *SCOPE.*—

(1) *IN GENERAL.*—*Except as provided in a warrant issued under section 223, and subject to the rights of the United States Government under the Additional Protocol to limit complementary access, complementary access to a location pursuant to this title may extend to all activities specifically permitted for such locations under Article 6 of the Additional Protocol.*

(2) *EXCEPTION.*—*Unless required by the Additional Protocol, no inspection under this title shall extend to—*

(A) *financial data (other than production data);*

(B) *sales and marketing data (other than shipment data);*

(C) *pricing data;*

(D) *personnel data;*

(E) *patent data;*

(F) *data maintained for compliance with environmental or occupational health and safety regulations; or*

(G) *research data.*

(e) *ENVIRONMENT, HEALTH, SAFETY, AND SECURITY.*—*In carrying out their activities, members of the IAEA complementary access team and representatives or designees of the United States Government shall observe applicable environmental, health, safety, and security regulations established at the location subject to complementary access, including those for protection of controlled environments within a facility and for personal safety.*

**SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY ACCESS.**

(a) *IN GENERAL.*—

(1) *PROCEDURE.*—

(A) *CONSENT.*—*Except as provided in paragraph (2), an appropriate official of the United States Government shall seek or have the consent of the owner, operator, occupant, or agent in charge of a location prior to entering that location in connection with complementary access pursuant to sections 221 and 222. The owner, operator, occupant, or agent in charge of the location may withhold consent for any reason or no reason.*

(B) *ADMINISTRATIVE SEARCH WARRANT.*—*In the absence of consent, the United States Government may seek an administrative search warrant from a judge of the United States under subsection (b). Proceedings regarding the issuance of an administrative search warrant shall be conducted ex parte, unless otherwise requested by the United States Government.*

(2) *EXPEDITED ACCESS.*—*For purposes of obtaining access to a location pursuant to Article 4b.(ii) of the Additional Protocol in order to satisfy United States obligations under the Additional Protocol when notice of two hours or less is required, the United States Government may gain entry to such location in connection with complementary access, to the extent such access*

*is consistent with the Fourth Amendment to the United States Constitution, without obtaining either a warrant or consent.*

**(b) ADMINISTRATIVE SEARCH WARRANTS FOR COMPLEMENTARY ACCESS.—**

**(1) OBTAINING ADMINISTRATIVE SEARCH WARRANTS.—***For complementary access conducted in the United States pursuant to the Additional Protocol, and for which the acquisition of a warrant is required, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to such judge all appropriate information regarding the basis for the selection of the facility, site, or other location to which complementary access is sought.*

**(2) CONTENT OF AFFIDAVITS FOR ADMINISTRATIVE SEARCH WARRANTS.—***A judge of the United States shall promptly issue an administrative search warrant authorizing the requested complementary access upon an affidavit submitted by the United States Government—*

*(A) stating that the Additional Protocol is in force;*

*(B) stating that the designated facility, site, or other location is subject to complementary access under the Additional Protocol;*

*(C) stating that the purpose of the complementary access is consistent with Article 4 of the Additional Protocol;*

*(D) stating that the requested complementary access is in accordance with Article 4 of the Additional Protocol;*

*(E) containing assurances that the scope of the IAEA's complementary access, as well as what it may collect, shall be limited to the access provided for in Article 6 of the Additional Protocol;*

*(F) listing the items, documents, and areas to be searched and seized;*

*(G) stating the earliest commencement and the anticipated duration of the complementary access period, as well as the expected times of day during which such complementary access will take place; and*

*(H) stating that the location to which entry in connection with complementary access is sought was selected either—*

*(i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under this title is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or*

*(ii) pursuant to a reasonable general administrative plan based upon specific neutral criteria.*

**(3) CONTENT OF WARRANTS.—***A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition, each warrant shall contain the identities of the representatives of the IAEA on the complementary access team and the identities of the representatives or designees of the United States Government required to display identifying credentials under section 222(c).*

**SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMENTARY ACCESS.**

*It shall be unlawful for any person willfully to fail or refuse to permit, or to disrupt, delay, or otherwise impede, a complementary access authorized by this subtitle or an entry in connection with such access.*

## **Subtitle C—Confidentiality of Information**

**SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMATION.**

*Information reported to, or otherwise acquired by, the United States Government under this title or under the Additional Protocol shall be exempt from disclosure under section 552 of title 5, United States Code.*

## **Subtitle D—Enforcement**

**SEC. 241. RECORDKEEPING VIOLATIONS.**

*It shall be unlawful for any person willfully to fail or refuse—*

*(1) to establish or maintain any record required by any regulation prescribed under this title;*

*(2) to submit any report, notice, or other information to the United States Government in accordance with any regulation prescribed under this title; or*

*(3) to permit access to or copying of any record by the United States Government in accordance with any regulation prescribed under this title.*

**SEC. 242. PENALTIES.**

*(a) CIVIL.—*

*(1) PENALTY AMOUNTS.—Any person that is determined, in accordance with paragraph (2), to have violated section 224 or section 241 shall be required by order to pay a civil penalty in an amount not to exceed \$25,000 for each violation. For the purposes of this paragraph, each day during which a violation of section 224 continues shall constitute a separate violation of that section.*

*(2) NOTICE AND HEARING.—*

*(A) IN GENERAL.—Before imposing a penalty against a person under paragraph (1), the head of an executive agency designated under section 211(a) shall provide the person with notice of the order. If, within 15 days after receiving the notice, the person requests a hearing, the head of the designated executive agency shall initiate a hearing on the violation.*

*(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the order imposed by the head of the designated agency shall constitute a final agency action.*

*(C) ISSUANCE OF ORDERS.—If the administrative judge determines, upon the preponderance of the evidence received, that a person named in the complaint has violated*

section 224 or section 241, the administrative judge shall state the findings of fact and conclusions of law, and issue and serve on such person an order described in paragraph (1).

(D) **FACTORS FOR DETERMINATION OF PENALTY AMOUNTS.**—In determining the amount of any civil penalty, the administrative judge or the head of the designated agency shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(E) **CONTENT OF NOTICE.**—For the purposes of this paragraph, notice shall be in writing and shall be verifiably served upon the person or persons subject to an order described in paragraph (1). In addition, the notice shall—

(i) set forth the time, date, and specific nature of the alleged violation or violations; and

(ii) specify the administrative and judicial remedies available to the person or persons subject to the order, including the availability of a hearing and subsequent appeal.

(3) **ADMINISTRATIVE APPELLATE REVIEW.**—The decision and order of an administrative judge shall be the recommended decision and order and shall be referred to the head of the designated executive agency for final decision and order. If, within 60 days, the head of the designated executive agency does not modify or vacate the decision and order, it shall become a final agency action under this subsection.

(4) **JUDICIAL REVIEW.**—A person adversely affected by a final order may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

(5) **ENFORCEMENT OF FINAL ORDERS.**—

(A) **IN GENERAL.**—If a person fails to comply with a final order issued against such person under this subsection and—

(i) the person has not filed a petition for judicial review of the order in accordance with paragraph (4), or

(ii) a court in an action brought under paragraph (4) has entered a final judgment in favor of the designated executive agency,

the head of the designated executive agency shall commence a civil action to seek compliance with the final order in any appropriate district court of the United States.

(B) **NO REVIEW.**—In any such civil action, the validity and appropriateness of the final order shall not be subject to review.

(C) **INTEREST.**—Payment of penalties assessed in a final order under this section shall include interest at cur-



rently prevailing rates calculated from the date of expiration of the 60-day period referred to in paragraph (3) or the date of such final order, as the case may be.

(b) **CRIMINAL.**—Any person who violates section 224 or section 241 may, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, United States Code, imprisoned for not more than five years, or both.

**SEC. 243. SPECIFIC ENFORCEMENT.**

(a) **JURISDICTION.**—The district courts of the United States shall have jurisdiction over civil actions brought by the head of an executive agency designated under section 211(a)—

(1) to restrain any conduct in violation of section 224 or section 241; or

(2) to compel the taking of any action required by or under this title or the Additional Protocol.

(b) **CIVIL ACTIONS.**—

(1) **IN GENERAL.**—A civil action described in subsection (a) may be brought—

(A) in the case of a civil action described in paragraph (1) of such subsection, in the United States district court for the judicial district in which any act, omission, or transaction constituting a violation of section 224 or section 241 occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in paragraph (2) of such subsection, in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) **SERVICE OF PROCESS.**—In any such civil action, process shall be served on a defendant wherever the defendant may reside or may be found.

## **Subtitle E—Environmental Sampling**

**SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD APPROVAL OF WIDE-AREA ENVIRONMENTAL SAMPLING.**

(a) **IN GENERAL.**—Not later than 30 days after the date on which the Board of Governors of the IAEA approves wide-area environmental sampling for use as a safeguards verification tool, the President shall notify the appropriate congressional committees.

(b) **CONTENT.**—The notification under subsection (a) shall contain—

(1) a description of the specific methods and sampling techniques approved by the Board of Governors that are to be employed for purposes of wide-area sampling;

(2) a statement as to whether or not such sampling may be conducted in the United States under the Additional Protocol; and

(3) an assessment of the ability of the approved methods and sampling techniques to detect, identify, and determine the conduct, type, and nature of nuclear activities.

**SEC. 252. APPLICATION OF NATIONAL SECURITY EXCLUSION TO WIDE-AREA ENVIRONMENTAL SAMPLING.**

*In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any wide-area environmental sampling proposed by the IAEA to be conducted at a specified location in the United States under Article 9 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—*

*(1) the proposed use of wide-area environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party;*

*(2) the proposed use of wide-area environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and*

*(3) the United States—*

*(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving wide-area environmental sampling; or*

*(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of wide-area environmental sampling.*

**SEC. 253. APPLICATION OF NATIONAL SECURITY EXCLUSION TO LOCATION-SPECIFIC ENVIRONMENTAL SAMPLING.**

*In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any location-specific environmental sampling in the United States under Article 5 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—*

*(1) the proposed use of location-specific environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party;*

*(2) the proposed use of location-specific environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and*

*(3) with respect to the proposed use of environmental sampling, the United States—*

*(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving location-specific environmental sampling; or*

*(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of location-specific environmental sampling.*

**SEC. 254. RULE OF CONSTRUCTION.**

*As used in this subtitle, the term “necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party” shall not be construed to encompass proposed uses of environmental sampling that*

might assist the IAEA in detecting undeclared nuclear activities in the territory of a non-nuclear-weapon State Party by—

- (1) setting a good example of cooperation in the conduct of such sampling; or
- (2) facilitating the formation of a political consensus or political support for such sampling in the territory of a non-nuclear-weapon State Party.

## **Subtitle F—Protection of National Security Information and Activities**

### **SEC. 261. PROTECTION OF CERTAIN INFORMATION.**

(a) **LOCATIONS AND FACILITIES OF DIRECT NATIONAL SECURITY SIGNIFICANCE.**—No current or former Department of Defense or Department of Energy location, site, or facility of direct national security significance shall be declared or be subject to IAEA inspection under the Additional Protocol.

(b) **INFORMATION OF DIRECT NATIONAL SECURITY SIGNIFICANCE.**—No information of direct national security significance regarding any location, site, or facility associated with activities of the Department of Defense or the Department of Energy shall be provided under the Additional Protocol.

(c) **RESTRICTED DATA.**—Nothing in this title shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of restricted data controlled by the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), including in particular “Restricted Data” as defined under paragraph (1) of section 11 *y.* of such Act (42 U.S.C. 2014(y)).

(d) **CLASSIFIED INFORMATION.**—Nothing in this Act shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of national security information and other classified information.

### **SEC. 262. IAEA INSPECTIONS AND VISITS.**

(a) **CERTAIN INDIVIDUALS PROHIBITED FROM OBTAINING ACCESS.**—No national of a country designated by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a government supporting acts of international terrorism shall be permitted access to the United States to carry out an inspection activity under the Additional Protocol or a related safeguards agreement.

(b) **PRESENCE OF UNITED STATES GOVERNMENT PERSONNEL.**—IAEA inspectors shall be accompanied at all times by United States Government personnel when inspecting sites, locations, facilities, or activities in the United States under the Additional Protocol.

(c) **VULNERABILITY AND RELATED ASSESSMENTS.**—The President shall conduct vulnerability, counterintelligence, and related assessments not less than every 5 years to ensure that information of direct national security significance remains protected at all sites, locations, facilities, and activities in the United States that are subject to IAEA inspection under the Additional Protocol.

## **Subtitle G—Reports**

### **SEC. 271. REPORT ON INITIAL UNITED STATES DECLARATION.**

*Not later than 60 days before submitting the initial United States declaration to the IAEA under the Additional Protocol, the President shall submit to Congress a list of the sites, locations, facilities, and activities in the United States that the President intends to declare to the IAEA, and a report thereon.*

### **SEC. 272. REPORT ON REVISIONS TO INITIAL UNITED STATES DECLARATION.**

*Not later than 60 days before submitting to the IAEA any revisions to the United States declaration submitted under the Additional Protocol, the President shall submit to Congress a list of any sites, locations, facilities, or activities in the United States that the President intends to add to or remove from the declaration, and a report thereon.*

### **SEC. 273. CONTENT OF REPORTS ON UNITED STATES DECLARATIONS.**

*The reports required under section 271 and section 272 shall present the reasons for each site, location, facility, and activity being declared or being removed from the declaration list and shall certify that—*

- (1) each site, location, facility, and activity included in the list has been examined by each agency with national security equities with respect to such site, location, facility, or activity; and*
- (2) appropriate measures have been taken to ensure that information of direct national security significance will not be compromised at any such site, location, facility, or activity in connection with an IAEA inspection.*

### **SEC. 274. REPORT ON EFFORTS TO PROMOTE THE IMPLEMENTATION OF ADDITIONAL PROTOCOLS.**

*Not later than 180 days after the entry into force of the Additional Protocol, the President shall submit to the appropriate congressional committees a report on—*

- (1) measures that have been or should be taken to achieve the adoption of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties; and*
- (2) assistance that has been or should be provided by the United States to the IAEA in order to promote the effective implementation of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties and the verification of the compliance of such parties with IAEA obligations, with a plan for providing any needed additional funding.*

### **SEC. 275. NOTICE OF IAEA NOTIFICATIONS.**

*The President shall notify Congress of any notifications issued by the IAEA to the United States under Article 10 of the Additional Protocol.*

***Subtitle H—Authorization of  
Appropriations***

**SEC. 281. AUTHORIZATION OF APPROPRIATIONS.**

*There are authorized to be appropriated such sums as may be necessary to carry out this title.*

And the Senate agree to the same.

HENRY HYDE,  
JOHN BOEHNER,  
TOM LANTOS,

*Managers on the Part of the House.*

RICHARD G. LUGAR,  
CHUCK HAGEL,  
GEORGE ALLEN,  
BILL FRIST,  
JOE BIDEN,  
CHRIS DODD,

*Managers on the Part of the Senate.*



## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5682), to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### BACKGROUND AND NEED FOR THE LEGISLATION

With the fading of the Cold War's global divisions and the rise of new challenges such as globalization and trans-national terrorism, there is increasing recognition in both the United States and in India that significant benefits may be obtained from closer cooperation across a broad spectrum of activities and policies. These range from shared strategic interests, such as enhanced stability and security in South Asia and the international system as a whole, to more specific priorities, including greater effectiveness in combating the AIDS epidemic, combating terrorism, and preventing the proliferation of weapons of mass destruction, among others.

To that end, on July 18, 2005, President Bush and Indian Prime Minister Manmohan Singh issued a joint statement announcing a 'global partnership' between the two countries. The Joint Statement covered a range of issues and common interests, including the re-establishment of civil nuclear commerce between the United States and India.

In the Joint Statement, India committed to placing more of its civil nuclear facilities under International Atomic Energy Agency (IAEA) safeguards in perpetuity, signing and adhering to an Additional Protocol with respect to civilian nuclear facilities, working with the United States for the conclusion of a multilateral Fissile Material Cutoff Treaty, refraining from transfer of enrichment and reprocessing technologies to states that do not have them and supporting international efforts to limit their spread, ensuring that the necessary steps have been taken to secure nuclear materials and

technology through comprehensive export control legislation and through harmonization and adherence to Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines, and continuing its moratorium on further nuclear testing.

For the United States, President Bush committed that he would “work to achieve full civil nuclear energy cooperation with India as it realizes its goals of promoting nuclear power and achieving energy security” and to “seek agreement from Congress to adjust U.S. laws and policies” to permit that cooperation. President Bush also promised to “work with friends and allies to adjust international regimes to enable full civil nuclear energy cooperation and trade with India, including but not limited to expeditious consideration of fuel supplies for safeguarded nuclear reactors at Tarapur.”

The Administration’s proposed legislation envisioned Congress granting the President the authority to waive certain provisions of the Atomic Energy Act of 1954 (AEA) that contain restrictions on cooperation that the Administration deemed to be impediments to conducting civil nuclear cooperation with India. Section 123 a.(2) of the AEA requires that a non-nuclear weapon state have IAEA safeguards on all nuclear material in all peaceful nuclear activities in that state, under its jurisdiction, or carried out under its control anywhere (commonly referred to as “full-scope safeguards”) as a condition of continued United States nuclear supply and approval for new nuclear cooperation agreements, a requirement that India does not meet and, as a state with nuclear weapons, would be unlikely to meet for the foreseeable future. Section 128 requires a non-nuclear weapon state (under the NPT, which recognizes only five “Nuclear Weapon States”—Russia, France, China, the United Kingdom, and the United States) to have full-scope safeguards as a prerequisite for receiving U.S. civil nuclear exports. Finally, Section 129 requires the termination of nuclear exports if a non-nuclear weapon state has, among other things, tested nuclear weapons after 1978, which India did in 1998. There are waivers available to the President for these provisions in existing law. But the standard for such waivers is very high.

In addition, international civil nuclear commerce is restricted pursuant to the Guidelines for Nuclear Transfers of the Nuclear Suppliers Group. NSG Guidelines permit such trade with countries only when the receiving State has brought into force an agreement with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful activities.

The Administration’s proposed legislation would have given the President the authority to permanently waive these provisions for India, subject to the President’s determination that India had achieved certain benchmarks, such as engaging in negotiations with the IAEA on a safeguards agreement and that the NSG has agreed to provide an exemption for India to allow its participating states to export civil nuclear materials, equipment, and technology to India.

Under existing law, a nuclear cooperation agreement with a country that does have full-scope safeguards and that satisfies other criteria under 123a. of the AEA would come into force 90



days after its submission for congressional review unless a resolution of disapproval were passed in both Houses. In practice, it is very difficult to secure passage of such resolutions because a veto by the President of the joint resolution would require a two-thirds vote in both Houses to override.

By contrast, nuclear cooperation agreements with countries, such as India, that do not satisfy all the conditions of 123a, such as full-scope safeguards, can come into effect only if both Houses of Congress pass a joint resolution of approval within 90 days. If either chamber does not approve the resolution, the agreement does not enter into force.

The Administration's legislative proposal sought to avoid this latter procedure by providing for a process of congressional consideration of a 123 agreement with India such as that reserved for countries that do have full-scope safeguards. In that event, a nuclear cooperation agreement with India would come into force automatically unless both Houses of Congress passed a joint resolution of disapproval. In effect, the Administration's proposal would have given it excessive latitude in negotiating a nuclear cooperation agreement with India, leaving Congress with little ability to influence the terms of that agreement, regardless of any concerns it might have.

Both the House International Relations Committee and the Senate Foreign Relations Committee rejected this approach, believing that the Administration's proposal did not provide for appropriate congressional oversight over what was, by any measure, an unprecedented nuclear cooperative relationship with India. Both committees were troubled by the lack of consultation by the Administration with Congress before the July 18, 2005 Joint Statement and the March 2006 U.S.-India Declaration (in which the terms by which India would separate its civil and military nuclear facilities and further commitments by the United States were announced).

Consequently, both committees introduced legislation that, while informed by the Administration's proposal, reverts to existing procedures laid out in the AEA for approval of 123 agreements that do not meet the criteria of section 123 a. The Conference agreement grants the President the ability to waive the aforementioned sections of the AEA for a future U.S.-India agreement for civil nuclear cooperation. However, any such agreement cannot enter into force until it has been submitted to the Congress, along with a completed IAEA-India safeguards agreement and other documents and Presidential determinations such as a Nuclear Proliferation Assessment (required by the AEA and by this legislation, as detailed in the section-by-section review of this report), and approved by both Houses according to the existing procedures of Section 130(i) of the AEA. Furthermore, the Administration's ability to waive existing provisions of section 129 of the AEA, which mandates the termination of U.S. civil nuclear exports to a country if that country tests a nuclear explosive device, terminates or abrogates IAEA safeguards, materially violates an IAEA safeguards agreement, or engages in other activities related to nuclear proliferation, is limited to any such activities India engaged in prior to July 18, 2005. Any such future activity by India would invoke Section 129, subject to the waiver provisions already available to

the President in existing law. Thus, the Conference agreement provides that for other conduct that, under section 129, would result in termination of cooperation, that section would continue to apply. If India were to terminate or abrogate IAEA safeguards (129(1)(B)), materially violate IAEA safeguards (129(1)(C)), violate an agreement for cooperation with the United States (129(2)(A)), encourage a non-nuclear weapon state to engage in proliferation activities involving source and special nuclear material (129(2)(B)), or engage in unauthorized proliferation of reprocessing technology (129(2)(C)), the Conference agreement would terminate cooperation. The Administration's bill would have made section 129 inapplicable to such future actions on the part of India.

As further clarified in the section-by-section analysis included in this report, the conferees believe that there should be no ambiguity regarding the legal and policy consequences of any future Indian test of a nuclear explosive device. In that event, the President must terminate all export and reexport of U.S.-origin nuclear materials, nuclear equipment, and sensitive nuclear technology to India. The conferees expect the President to make full and immediate use of U.S. rights to demand the return of all nuclear-related items, materials, and sensitive nuclear technology that have been exported or reexported to India if India were to test or detonate, or otherwise cause the test or detonation of, a nuclear explosive device for any reason, including such instances in which India describes its actions as being "for peaceful purposes." This legal condition is further strengthened in the Conference agreement beyond section 129 of the AEA by a provision that the waiver authority in this legislation terminates with any Indian test. The conferees believe that termination would include the suspension and revocation of any current or pending export or reexport licenses, and that the return of U.S.-origin items and materials should extend to any special nuclear material produced by India through the use of any nuclear materials, equipment, or sensitive nuclear technology exported or reexported to India by the United States.

The prohibition concerning a recipient country not engaging in activities involving source or special nuclear material under Section 129 are permanently waived for India, as India will undoubtedly continue to produce fissile material, until such time after it is able to fulfill its commitment in the July 18, 2005, Joint Statement to work with the United States toward conclusion of a future Fissile Material Cut-off Treaty.

H.R. 5682 reflects the widely held view in both the House and the Senate that peaceful nuclear cooperation with India can serve multiple U.S. foreign policy and national security objectives but that this must be secured in a manner that minimizes potential risks to the global nonproliferation regime. Among the most important considerations are ensuring that NSG guidelines and consensus decision-making are upheld and that a U.S. nuclear cooperation agreement and subsequent U.S. nuclear exports are consistent with the decisions, policies, and guidelines of the NSG. The conferees note that the converse is equally important, namely that the United States must ensure that any decision that the NSG makes regarding granting an exemption for nuclear commerce does not disadvantage U.S. industry by setting less strict conditions for

countries trading with India than those embodied in the conditions and requirements of this Act. Since the NSG operates by consensus, the United States possesses the necessary leverage to ensure a favorable outcome, and the conference agreement reflects this view.

The bill requires, as a condition for the President to exercise his waiver authority, that the NSG agree by consensus to an exception to its guidelines specifically for India and that no U.S. exports may be transferred to India that do not comport with NSG guidelines and decisions. Equally important is the need to ensure that U.S. cooperation does not assist the Indian nuclear weapons program, directly or indirectly, in order to avoid contributing to a nuclear arms race in South Asia and in accordance with U.S. obligations under the NPT.

As in the Administration's proposed legislation, H.R. 5682 requires the President to determine that India is upholding its July 18, 2005, commitments as a prerequisite for using his waiver authority. The conferees believe that India's continued implementation of those commitments is central to the integrity of our bilateral relationship. Therefore, the bill contains reporting requirements and a provision that calls for termination of exports in the event of violations of certain commitments. In addition, the bill seeks to uphold existing statutory congressional oversight of U.S. nuclear cooperation and exports. At a time when many countries are considering nuclear energy as a viable and desirable alternative to carbon-based energy sources, careful oversight of its expansion is crucial.

The establishment of a "global partnership" with India is among the most important strategic diplomatic initiatives undertaken by this Administration. This partnership, along with the extensive set of cooperative agreements that accompany it, embraces a long-term outlook that seeks to strengthen U.S. foreign policy and enhance global stability.

The House International Relations Committee and the Senate Foreign Relations Committee studied carefully the implications of the proposed agreement for nonproliferation policy. Both committees were concerned about the precedent this exception for India could establish and worked to ensure that this agreement does not undercut U.S. compliance with its responsibilities under the NPT. As a result of these efforts, each committee's bill was approved overwhelmingly by its respective chamber. The conferees believe that the conference agreement achieves a proper balance among competing priorities and concerns and will help solidify New Delhi's commitments to implement strong export controls, separate its civilian nuclear infrastructure from its weapons program, and place additional civilian facilities under IAEA safeguards. An agreement for peaceful nuclear cooperation with India approved by Congress according to the procedures and conditions of this conference report would be a powerful incentive for India to cooperate more closely with the United States in stopping proliferation and to abstain from further nuclear weapons tests.

The Administration's decision to establish an increasingly close relationship with this country of enormous potential, and its declaration that the U.S. welcomes India's advancement as a major

economic and political player on the world stage represents a new and significant strategic opportunity to advance U.S. goals. Given that India already possesses a vibrant democracy, a rapidly growing economy, and a well-educated middle class greater than the entire U.S. population, it can serve as an engine of global economic growth. Its increasing economic, military, and political power may also contribute significantly to promoting stability in South Asia and other regions.

India has the potential to become a valued partner in countering the rise of extremism around the world as both countries can cooperate to promote religious pluralism, tolerance, and democratic freedoms. As a country with well-entrenched democratic traditions and the world's second largest Muslim population, India can set an example of a multi-religious and multi-cultural democracy in an otherwise volatile region.

The conferees believe that the conference agreement will help solidify India's commitments to implement strong export controls, separate its civilian nuclear infrastructure from its weapons program, and place additional civilian facilities under IAEA safeguards. An agreement for peaceful nuclear cooperation with India approved by Congress according to the procedures and conditions of this conference report would be a powerful incentive for India to cooperate closely with the United States in halting proliferation and abstaining from additional tests of nuclear weapons. The conferees, along with both Houses, place great emphasis on their expectation that India's full cooperation with efforts by the U.S. and the international community to prevent Iran from acquiring the capability to produce nuclear weapons will be forthcoming.

India is already assuming a more prominent role in world affairs. Its votes in the IAEA Board of Governors in September 2005 and February 2006 regarding Iran's likely efforts to acquire a nuclear weapons capability are evidence that the Government of India is able and willing to adopt a more constructive role on international non-proliferation issues. The Conferees believe the true test of the wisdom of this legislation, which will be the effectiveness of India's new commitments and obligations regarding nuclear nonproliferation, can be judged only over time. India is determined to secure a more prominent role in global affairs. This agreement will provide it with enhanced incentives to use its rapidly expanding influence to promote regional and international stability and global economic progress.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### TITLE I—UNITED STATES AND INDIA NUCLEAR COOPERATION

###### *Section 101. Short title*

Section 101 states that this title may be cited as the "Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006".

###### *Section 102. Sense of Congress*

Section 102 combines provisions relating to the Sense of Congress in the House bill and in the Senate amendment. It expresses the Sense of Congress regarding the nuclear non-proliferation re-

gime and the principles that should guide the United States in entering into an agreement on nuclear cooperation with a country that has never been a State Party to the Nuclear Non-Proliferation Treaty (NPT). Paragraph (1) states that preventing the proliferation of nuclear weapons, other weapons of mass destruction (WMD), and the means to deliver these are critical objectives for United States foreign policy. Paragraph (2) states that sustaining the NPT and strengthening its implementation is the keystone of United States non-proliferation policy. Paragraph (3) states that the NPT has been a significant success in preventing the spread of nuclear weapons capabilities to other countries and in maintaining a stable international security situation. Paragraph (4) states that 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. Paragraph (5) states that it is in the interest of the United States to ensure to the fullest extent possible that those countries that are not States Party to the NPT act responsibly in the disposition of any nuclear technology they develop.

Paragraph (6) states that it is in the interest of the United States to cooperate with a country that has never signed the NPT with respect to civilian nuclear technology if that country meets certain criteria. These criteria include demonstrating responsible behavior with respect to the nonproliferation of nuclear weapons technology and the means to deliver these weapons; the country has a functioning and uninterrupted democratic system of government, has a foreign policy that is congruent with that of the United States, and is working with the United States in key foreign policy initiatives related to non-proliferation; such cooperation induces the country to promulgate and implement substantially improved protections against the proliferation of technology related to nuclear weapons and the means to deliver them and also to refrain from actions that would further the development of its nuclear weapons program; and that such cooperation will induce the country to give greater political and material support to the achievement of U.S. global and regional nonproliferation objectives, especially with respect to dissuading, isolating, and, if necessary, sanctioning and containing states that sponsor terrorism and terrorist groups and that are seeking to acquire a nuclear weapons capability or other WMD capability and the means to deliver such weapons.

Paragraph (7) states that the United States should continue its policy of engagement, collaboration, and exchanges with and between India and Pakistan. Paragraph (8) states that strong bilateral relations with India are in the national interest of the United States. Paragraph (9) states that the United States and India share common democratic values and the potential for increasing and sustained economic engagement. Paragraph (10) states that commerce in civil nuclear energy with India by the United States and other countries has the potential to benefit the people of all countries.

Paragraph (11) states that civil nuclear commerce with India represents a significant change in U.S. policy toward countries not

parties to the NPT and stresses that the NPT remains the foundation of the international non-proliferation regime. Paragraph (12) states that any commerce in civil nuclear energy with India by the United States and other countries must be achieved in a manner that minimizes the risk of nuclear proliferation or regional arms races and maximizes India's adherence to international non-proliferation regimes, including, in particular, the guidelines of the Nuclear Suppliers Group. Paragraph (13) states that the United States should not seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such exports are terminated under United States law.

*Section 103. Statements of policy*

Section 103 contains provisions from the House bill and from the Senate amendment and sets forth two sets of policies of the United States: those general in nature and those specific to South Asia.

Subsection (a) states that it shall be the policy of the United States to:

1. Oppose the development of a capability to produce nuclear weapons by any non-nuclear weapon state, within or outside of 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 set forth in Article IV of the NPT, as being a right that applies only to the extent that it is consistent with the 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 the IAEA determines is not in full compliance with its NPT obligations, including its safeguards obligations;
3. Act in a manner fully consistent with the NSG guidelines concerning nuclear transfers and transfers of nuclear-related dual-use items;
4. Strengthen the NSG guidelines and decisions 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 all 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;
5. Given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, work with members of the NSG, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India; and
6. Seek to prevent the transfer to a country of nuclear equipment, materials, or technology from other participating governments in the NSG or from any other source if nuclear transfers to that country are suspended or terminated pursu-

ant to this title, the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law.

Regarding the second statement, the conferees note that the NPT was conceived for the specific and overriding purpose of preventing the proliferation of nuclear weapons and nuclear explosive devices, as stated in the Preamble and its first three Articles. All provisions of the NPT must be interpreted within the context of preventing the proliferation of nuclear weapons and nuclear explosive devices; and Article IV conditions a country's "inalienable right to develop research, production and use of nuclear energy for peaceful purposes without discrimination" on that country's conformity with Articles I, II, and III, which obligate each non-nuclear weapon State Party "not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices."

The conferees believe that, because the processes of enriching uranium or separating plutonium for peaceful or military purposes are essentially identical, they inherently pose an enhanced risk of proliferation, even under strict international safeguards. Rights under Article IV of the NPT must be properly understood and exercised only insofar as they are consistent with preventing the proliferation of nuclear weapons. Therefore, the world must not accept a claim by a non-nuclear weapon state of a right to develop or possess a complete nuclear fuel cycle if that country has not provided convincing evidence that its nuclear activities are fully safeguarded from contributing to a nuclear weapons capability.

Regarding the third and fourth statements, the Nuclear Suppliers Group, although not a formal organization that can issue legally-binding directives, is nonetheless one of the most effective elements of the nuclear non-proliferation regime. For a generation, U.S. Presidents have forged in this forum an important international consensus on the need to prevent nuclear proliferation by controlling the export of sensitive nuclear material, equipment and technology. The conferees believe strongly that no bilateral objective, even the important objective of a new relationship with India, should be allowed to undermine the NSG's effectiveness. The United States must continue to abide by the NSG Guidelines, which it has worked so diligently to achieve.

Equally, the United States must maintain the consensus decision mechanism of the NSG, and not look for any way around that requirement. The conferees believe that the effectiveness of the NSG rests upon its consensus decision-making, resulting in unified policies and enhanced compliance with those policies. The conferees are mindful that a country outside the regime that seeks an exception from NSG guidelines could agree to stringent safeguards with some NSG members, but later import only from other NSG members that did not impose such requirements. To preclude such a scenario, the conferees urge the Executive branch to persuade other NSG members to act in concert in terms of the timing, scope, and safeguarding of nuclear supply to all countries, including India. In particular, the conferees intend that the United States seek agreement among NSG members that violations by one country of an agreement with any NSG member should result in joint action by

all members, including, as appropriate, the termination of nuclear exports. In addition, the conferees intend that the Administration work with individual states to encourage them to refrain from sensitive exports.

Regarding the sixth statement, if U.S. exports to a country were to be suspended or terminated pursuant to U.S. law, it will be U.S. policy to seek to prevent the transfer to such country of nuclear equipment, material or technology from other sources. This concern could arise if, for example, there were a nuclear test explosion, termination or abrogation of IAEA safeguards, material violation of IAEA safeguards or an agreement of cooperation with the United States, assistance or encouragement of a non-nuclear weapon state in nuclear-weapons related activities or reprocessing-related activities, or (in India's case) failure to uphold its July 18, 2005, Joint Statement commitments. In such a circumstance, the conferees expect the United States to encourage other supplier countries not to undermine U.S. sanctions.

On March 6, 2006, the Indian Prime Minister told the Indian Parliament that the U.S. Government had said that if a disruption of fuel supplies to India occurs, the U.S. would, with India, jointly convene a group of friendly supplier countries, such as Russia, France and the United Kingdom, to pursue such measures as would restore fuel supply to India. The conferees understand and expect that such assurance of supply arrangements that the U.S. is party to will be concerned only with disruption of supply of fuel due to market failures or similar reasons, and not due to Indian actions that are inconsistent with the July 18, 2005, commitments, such as a nuclear explosive test.

Subsection (b) states that, with respect to South Asia, it shall be U.S. policy to:

1. Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China;
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 full participation in the Proliferation Security Initiative (PSI), formal commitment to the PSI's Statement of Interdiction Principles, 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, and demonstration of satisfactory progress toward implementing this decision; and ratification of or accession to the Convention on Supplementary Compensation for Nuclear Damage;
4. Secure India's full and active participation in U.S. efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire WMDs, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel and the means to deliver WMDs;



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

6. Ensure that spent fuel generated in India's civilian nuclear power reactors is not transferred to the United States except under procedures required under section 131f. of the Atomic Energy Act of 1954;

7. Pending implementation of the multilateral moratorium or treaty described in paragraphs (1) and (2), encourage India not to increase its production of fissile material at unsafeguarded nuclear facilities;

8. Ensure that any safeguards agreement or Additional Protocol to which India is a party with the IAEA can reliably safeguard any export or reexport to India of nuclear materials and equipment;

9. Ensure that the text and implementation of any agreement for cooperation with India meet the requirements set forth in subsections a.(1) and a.(3) through a.(9) of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153); and

10. Ensure that any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.

The conferees believe that a U.S.-India nuclear cooperation agreement will mark an important and positive turning point in the U.S.-India relationship. This does not mean, however, that the United States should sacrifice its long-standing objectives for non-proliferation in South Asia. This subsection states that U.S. policy must be to continue to support a fissile material moratorium in South Asia and a halt to the increase in nuclear arsenals in the region, which would bring great benefits to India and its neighbors. The United States must also continue to work for a broader fissile material production halt, whether through Fissile Material Cut-off Treaty negotiations or, for example, through an agreement reached by all the countries that have fissile material for nuclear weapons purposes.

The conferees believe also that India has a significant role to play in preventing the proliferation of dangerous nuclear technologies to other countries and that India must be a part of the international effort to prevent Iran from acquiring weapons of mass destruction, especially nuclear weapons. The conferees fully expect and look forward to the day when India joins the world community in conforming to the full range of nonproliferation and export control regimes. In the July 18, 2005, Joint Statement, India committed to accept the "same responsibilities and practices and acquire the same benefits and advantages as other leading countries with advanced nuclear technology, such as the United States." India's welcome steps regarding nuclear and missile-related export controls are important progress in this regard, but the other leading countries with advanced nuclear technology will expect India to join them also in stemming the flow of items that can contribute to chemical and biological weapons programs and of destabilizing types or amounts of certain conventional weapons. India's partici-

pation in the Proliferation Security Initiative would also be of great benefit to the world and to the region.

It is also vital that India hasten the day when it can halt the production of fissile material for weapons, as four of the five nuclear weapon states under the NPT have openly done. The conferees understand that India cannot do this alone, and therefore urge the Executive branch to pursue a joint moratorium by India, Pakistan and China, as well as a multilateral treaty banning the production of fissile material for nuclear weapons.

The conferees believe it is critical to secure India's full participation in U.S. efforts to prevent Iran from acquiring nuclear weapons, a position held by many members of both houses of Congress. The conferees express their appreciation for India's favorable votes on this issue in the IAEA Board of Governors and its statements that Iran should indeed cooperate with the IAEA and refrain from developing nuclear weapons. They understand also that India has long-standing ties with Iran. Precisely because India has those ties, it can and must play a prominent and positive role in convincing Iran that the path of cooperation and of nuclear development with international assurances, but without an indigenous full fuel cycle, is far preferable to the path of obduracy and isolation in order to develop uranium enrichment and plutonium production capabilities.

The United States has an obligation under Article I of the NPT not to "in any way assist, encourage, or induce a non-nuclear weapon state to manufacture or otherwise acquire nuclear weapons." Many nonproliferation experts have noted the need to avoid a nuclear arms race in South Asia, as well as to ensure that U.S. assistance does not encourage India to increase its production of fissile material at unsafeguarded nuclear facilities. The conferees understand that U.S. peaceful nuclear cooperation with India will not be intended to inhibit India's nuclear weapons program. At the same time, however, such cooperation must be conducted in a manner that does not assist that program. That is why the conferees stress the need for effective safeguards on nuclear-related exports or re-exports to India, the need to meet the requirements in sections a.(1) and a.(3) through a.(9) of section 123 of the Atomic Energy Act, and the need for any nuclear fuel reserve provided to the Government of India to be commensurate with reasonable reactor operating requirements, rather than of a size that would enable India to break its commitments or end its moratorium on nuclear testing and maintain its civil nuclear energy production despite unilateral or international sanctions.

Indian officials have publicly stated that under the U.S.-India agreement, India will be able to produce as much fissile material for weapons purposes as it desires. At the same time, however, many experts have said that there is no reason why India would need or want to increase that production significantly. The conferees hope that India will demonstrate restraint and not increase significantly its production of fissile material. If civil nuclear commerce were to be seen, some years from now, as having in fact contributed to India's nuclear weapons program, there could be severe consequences for nuclear cooperation, for U.S.-Indian relations, and for the world-wide nuclear nonproliferation regime.

India's March 2006 nuclear facility separation plan stated: "The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors." Congress has not been able to determine precisely what was said on this matter in high-level U.S.-Indian discussions. U.S. officials testified, however, that the United States does not intend to help India build a stockpile of nuclear fuel for the purpose of riding out any sanctions that might be imposed in response to Indian actions such as conducting another nuclear test. The conferees understand that nuclear reactor facilities commonly have some fresh fuel stored, so as to minimize down time when reactor cores are removed. They endorse the Senate proposal, however, that there be a clear U.S. policy that any fuel reserve provided to India should be commensurate with normal operating requirements for India's safeguarded reactors.

*Section 104. Waiver authority and Congressional approval*

The conference agreement adopts the framework of the House bill, but adds a number of provisions from the Senate amendment.

Section 104(a) provides the President with authority to exempt an agreement for civil nuclear cooperation with India and nuclear exports to India from certain sections of the Atomic Energy Act of 1954 (AEA) that would otherwise present obstacles to approving and implementing such an agreement. Specifically, the waiver authority applies to sections 123 a.(2), 128, and 129.

Both the House of Representatives and the Senate concurred with the administration regarding the need for relief from the requirement in section 123 a.(2) of the AEA, which would otherwise require that India agree to put all its nuclear facilities under IAEA safeguards. They concluded, in particular, that the Executive branch would be unable to meet the standard in existing law for exempting a U.S.-India agreement from this requirement, namely that failure to make the proposed exception/waiver would be "seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security." The conferees recommend allowing the President to exempt an agreement with India from the requirement in section 123 a.(2) of the AEA without making this determination. Instead, subsection 104(a) requires that the President make the determination in subsection 104(b).

The conferees emphasize their intent, however, that section 123 a.(2) be the only portion of the AEA from which their recommendation provides relief. The Executive branch will still be required to coordinate and submit to Congress a Nuclear Proliferation Assessment Statement under section 123. In addition, an agreement for cooperation with India will still have to meet the requirements of section 123 a.(1) and a.(3) through (9), unless the President can meet the standard quoted above for exempting the agreement from one or more of those requirements.

The conferees recommend subsection 104(e), moreover, which amends section 123 a. of the AEA so as to make clear that an agreement with India for which the President has exercised the waiver provided by subsection 104(a) of this title will be considered under existing AEA procedures for approval of an agreement for co-

operation exempted from one of the requirements of section 123 a. These procedures provide for expedited consideration of a joint resolution of approval of the agreement, but do not permit the agreement to enter into force unless and until a joint resolution of approval is enacted. Parliamentary practice in the two houses of Congress is that the expedited joint resolution will not contain any conditions to their approval of the agreement and will not be subject to amendment. Congress could pass a joint resolution of approval with conditions, but would have to proceed without benefit of the expedited procedures offered by sections 123 and 130 of the AEA.

Section 104(a)(2) provides the President authority to waive section 128 of the AEA with respect to exports to India, without the additional limitations proposed in the House bill.

In addition, this title would allow the President to waive the restrictions of section 129 a.(1)(A) of the AEA for any activity that occurred on or before July 18, 2005, and also to waive the restrictions of section 129 a.(1)(D). This would provide authority to waive a termination of nuclear exports that would otherwise be required because of President Clinton's determination that India had tested a nuclear explosive device in 1998, while keeping in place the requirement to cut off exports should India test in the future. It would also provide waiver authority for cessation of U.S. nuclear exports to India in the event that the President determines that India has "engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities." This waiver will be necessary because India will presumably continue to produce material for its nuclear weapons program, consistent with its separation plan.

Subsection (b) requires the President to make the following determinations:

- (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 and materials with the IAEA;

- (2) India and the IAEA have concluded all legal steps required prior to signature by the parties of 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 its separation plan, 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 treaty on the cessation of the production of fissile materials for use in nuclear weapons or other nuclear explosive devices;

(5) India is working with and supporting U.S. and international efforts to prevent the spread of enrichment and reprocessing technology to any state that does not already possess full-scale, functioning enrichment or reprocessing plants;

(6) India is taking the necessary steps to secure nuclear and other sensitive materials and technology, including through: the enactment and enforcement of comprehensive export control legislation and regulations; harmonization of its export control laws, regulations, policies, and practices with the policies of the MTCR and the NSG, and 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.

The conferees intend that the need for these determinations will make certain that measures needed to ensure that the agreement can safely come into force are in place, e.g., a safeguards agreement negotiated with the IAEA, and that India has fulfilled key obligations it undertook freely in its July 18, 2005, statement and in subsequent statements. The conferees recognize that a number of these conditions will require considerable expenditure of effort and resources to satisfy, such as the negotiation of an Additional Protocol that must be tailored to India's unique needs, and for that reason have 15 allowed for significant latitude regarding their completion. But the conferees believe that none of these conditions, either singly or in combination with others, is onerous. In addition, although they did not impose rigorous measurements or deadlines, the conferees intend that considerable substantive progress on the foregoing measures can be demonstrated, including India's cooperation with the United States to prevent the spread of enrichment and reprocessing technology and its taking steps to strengthen its export laws and regulations.

The House bill required a determination that India and the IAEA "have concluded" a safeguards agreement, while the Senate version required that the agreement "has entered into force." The conferees want to ensure that the Congress can have confidence that the text of the safeguards agreement, which will be provided when an agreement with India is submitted to Congress, is what will actually come into effect. The conferees recognize, however, that there might well be a delay between the approval of a safeguards agreement and the date of its entry into force. They understand also that India may be wary of signing a safeguards agreement with the IAEA before an agreement for cooperation with the United States has been approved.

The conferees recommend that the President be required to determine that India and the IAEA have concluded all legal steps required prior to signature by the parties of a safeguards agreement that conforms to IAEA standards, principles, and practices. They have been assured that signature is the final step in the process of negotiating and approving a safeguards agreement. Normally, safeguards agreements enter into force upon signature. The Executive branch understands that Congress must be confident that the India-IAEA safeguards agreement text it is shown when an agreement for cooperation is submitted is, in fact, what will be signed

and come into force. The conferees believe that Congress will be able to rely upon a text that has gone through all legal steps required prior to signature by the parties.

With regard to Indian adherence to the MTCR and the NSG, the conferees understand that there are specific procedures that a country uses to unilaterally adhere to such regimes. The conferees also understand that the Government of India is aware of those procedures.

Paragraph (7) requires a presidential determination that the Nuclear Suppliers Group has decided by consensus to permit supply to India of nuclear items covered by the guidelines of the NSG. The conferees believe that it is vital to maintain the role and effectiveness of the NSG, a position which is consistent with statements by senior Administration officials. This provision ensures that the NSG will change its guidelines, or grant an exemption from them, only in accordance with its longstanding practice that all such changes require consensus among its participating governments.

Subsection (c) requires the President to submit to the House International Relations Committee and the Senate Foreign Relations Committee the determination described in subsection (b) and a report regarding this determination that includes:

- (1) summaries and copies of India's separation plan and of its declaration of which of its civil nuclear facilities will be placed under IAEA safeguards, including an analysis of the credibility of the plan and declaration;

- (2) a summary of the safeguards agreement between India and the IAEA, including a copy of the agreement and a description of progress toward its full implementation

- (3) a summary of the progress made toward concluding and implementing an Additional Protocol between India and the IAEA, including a description of the scope of that Additional Protocol;

- (4) a description of the steps 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 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;

- (5) 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 nuclear weapons technology, as well as the support that India is providing to the United States to restrict the spread of such technology;

- (6) 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 MTCR, NSG, Australia Group, and Wassenaar Arrangement guidelines, as well

as compliance with United Nations Security Council Resolution 1540, and participation in the Proliferation Security Initiative;

(7) a description and assessment of the specific measures that India has taken to fully and actively participate in United States and international 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 and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction;

(8) a description of the NSG decision regarding India, including whether the U.S.-India civil nuclear cooperation agreement is consistent with the decision and with the practices and policies of the NSG;

(9) 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; and

(10) a description of the measures the United States will take to prevent the use of any United States equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or for any activity related to nuclear explosive devices, and ensure that the provision of nuclear reactor fuel does not result in increased production of fissile material in unsafeguarded nuclear facilities.

Since the IAEA Board of Governors resolved that Iran was in noncompliance with its safeguards and NPT obligations in September 2005, diplomatic negotiations to dissuade, sanction and contain the Iranian nuclear program have been largely unsuccessful. It is imperative to obtain the support of key states to develop measures that would enable the world community once again to have confidence in both Iran's nuclear intentions and the ability to monitor developments. India's support, as a long-time leader of the Non-Aligned Movement and as a state with military and economic relations with Iran, is particularly important. The conferees believe that India's full and active participation in U.S. and international efforts to dissuade, sanction, and contain Iran's nuclear program would greatly benefit both the region and the world, and that the report on its efforts in this regard, required by subparagraph (c)(2)(G) will be of great interest to many Members of Congress.

There has been much concern about the possibility that the provision of nuclear technology and nuclear fuel to India could indirectly assist or encourage India's nuclear weapons program. To increase confidence that no such developments will take place, the conferees recommend the reporting requirement in subparagraph (c)(2)(J). The report should address the potential replication of U.S.-origin nuclear technology in unsafeguarded nuclear facilities in India, as well as the possible utilization of foreign nuclear fuel supplies in a manner that leads to the increased production of fissile material in India's unsafeguarded nuclear facilities using domestic uranium reserves. Further, the conferees urge the Administration to encourage India to exercise the utmost restraint with respect to its nuclear weapons program, including with respect to any

new reactor that would increase India's plutonium production capability.

Subsection (d) provides, in part, that:

(1) nothing in this title constitutes authority to carry out any civil nuclear cooperation between the U.S. and a country that is not a nuclear-weapon State Party to the NPT that would in any way assist, encourage, or induce that country to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices;

(2) no item subject to the transfer guidelines of the NSG may be transferred to India if such transfer would be inconsistent with the guidelines in effect on the date of the transfer; and

(3) exports of nuclear and nuclear-related material, equipment, or technology to India shall be terminated if India makes any materially significant transfer of nuclear or nuclear-related material, equipment, or technology that does not conform to NSG guidelines or ballistic missiles or missile-related equipment or technology that does not conform to MTCR guidelines, unless the President either determines that cessation of such exports would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security; or chooses not to terminate exports because: the transfer was made without the knowledge of the Government of India; at the time of the transfer, either the Government of India did not own, control or direct the Indian person that made the transfer or the Indian person that made the transfer is a natural person who acted without knowledge of any entity described in subparagraph (B) or (C) of section 110(5); and the President certifies to the appropriate congressional committees that the Government of India has taken or is taking appropriate judicial or other enforcement actions against the entity with respect to such transfer.

As stated above, the conferees believe the NPT is the keystone of U.S. nonproliferation policy and must be sustained and strengthened. The United States has always abided by its obligation under Article I of the NPT to not in any way assist, encourage, or induce non-nuclear weapon states to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices. The Nuclear Nonproliferation Act of 1978 set a standard almost thirty years ago for the United States in its civil nuclear cooperation with non-nuclear weapon states by requiring those states to have full-scope safeguards. In making an exception for a future nuclear cooperation agreement with India in this bill, it is paramount to ensure that nothing in such cooperation would undermine America's commitment to abide by Article I of the NPT. The conferees recommend paragraph 104(d)(1) to underscore this view.

Section 104(d)(2) is one of several provisions in the bill intended to ensure that any civil nuclear cooperation between the United States and India strengthens rather than weakens the global nuclear nonproliferation regime. This provision contributes to the achievement of this objective by prohibiting the transfer to India of any item the transfer of which is subject to (1) a U.S.-India agreement for cooperation, (2) the NSG Guidelines for Nuclear



Transfers (INFCIRC/254, Part 1), or (3) the NSG Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology (INFCIRC/254, Part 2), if such transfer would be inconsistent with either of the aforementioned NSG guidelines as in effect on the date of the transfer. No waiver authority is provided to permit transfers to be made notwithstanding this restriction.

This restriction will ensure that U.S.-India nuclear cooperation continues to be carried out in a manner consistent with the transfer guidelines and policies of the NSG. The Administration has expressed confidence that the NSG will adjust its guidelines in order to permit civil nuclear cooperation along the lines contemplated by the July 18, 2005, Joint Statement of President Bush and Prime Minister Singh. Further, Secretary of State Condoleezza Rice has publicly assured Congress, by means of a letter dated June 28, 2006, to Senate Foreign Relations Committee Chairman Richard Lugar, that:

\* \* \* in carrying out the laws and regulations of the United States governing the export of nuclear-related items, the United States Government will continue to act in accordance with IAEA INFCIRC/254, as amended, the Guidelines and Annexes of the Nuclear Suppliers Group. The U.S. will also continue to act within the policies and practices of the decisions taken by the Nuclear Suppliers Group with respect to India. We intend to do so notwithstanding any contrary actions by any other participating countries in the Nuclear Suppliers Group.

Section 104(d)(3) reflects the importance the conferees attach to India's commitments in the July 18, 2005, Joint Statement to secure its nuclear materials and nuclear and missile technology through comprehensive export control legislation and through harmonization and adherence to MTCR and NSG guidelines. These two steps are critical to bringing India closer to the nonproliferation mainstream, one of the benefits attributed to U.S. nuclear cooperation with India by the Administration. Failure to conform to these nuclear and missile export control guidelines, both in principle and in practice, would represent a failure by India to meet the nonproliferation standards expected of other responsible states.

This provision mandates termination of exports under an agreement for cooperation with India if an Indian person engages in transfers that are not consistent with NSG or MTCR guidelines. The term "Indian person," which is defined in subsection 110(5), is used in a legal sense, to encompass both individuals and entities of all sorts that are under India's jurisdiction, as well as governmental entities. The term includes non-Indian nationals, if they are under India's jurisdiction.

As no export control system is perfect, the conferees recommend that the threshold of violation be one of material significance. This should eliminate any concern that the sale of a "widget" to the wrong country could trigger the sanction in paragraph 104(d)(2).

The conferees recommend granting to the President two separate waiver authorities regarding this sanction. The first could be

exercised if 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.

The second waiver could be used if the offending transfer was made without the knowledge of the Government of India, such transfer was made either by an Indian person not owned, controlled, or directed by the Government of India at the time of the transfer, or by an individual who acted alone without the knowledge of the relevant Indian entity, and the President certified to the appropriate congressional committees that the Government of India has taken or is taking appropriate judicial or other enforcement actions against the Indian person with respect to such transfer. The conferees do not intend that an Indian individual working alone for private gain and without the knowledge of the entity for which that individual works would trigger the restrictions in this section. However, if such individual is a senior officer of such entity, the conferees believe that constructive knowledge must be deemed to exist. In a case where it is impossible for the Government of India to bring judicial or other enforcement action against an Indian person because the government cannot exercise jurisdiction over the person or entity, or if the Government of India cannot bring an enforcement action because of its good faith interpretation of applicable law, or for some other reason, the statutory requirement that "appropriate" action be taken to avoid the termination required in subparagraph (A) may be deemed fulfilled. The conferees thus intend not to put an agreement for cooperation with India in jeopardy, but rather to encourage India's compliance with its commitments and to allow sanctions to be waived if compliance efforts are in train. It is the President's responsibility, however, to show in his certification to Congress that such circumstances limiting the Government of India's enforcement actions truly exist, and are not in reality an evasion of the intent of this provision that India exercise true oversight over the persons and entities that operate within its territory or jurisdiction.

The conferees understand that, if necessary, the President could use his waiver authority to give India some time in which to commence appropriate enforcement actions. The conferees intend, however, that any such waiver would be for a limited period and would be withdrawn if the expected enforcement failed to materialize.

Section 104(d)(4) derives from a provision in the Senate bill that prohibited the export and reexport to India of any equipment, materials, or technology related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water to India, except where the Indian end user is a multinational facility participating in an IAEA-approved program to provide alternatives to national fuel cycle capabilities or a facility participating in a bilateral or multinational program to develop a proliferation-resistant fuel cycle, and where the President determines that the export or reexport will not improve India's ability to produce nuclear weapons or fissile material for military uses. The conferees recommend the Senate provision with an amendment.

Section 104(d)(4) regulates U.S. cooperation with India in the areas of uranium enrichment, reprocessing of spent fuel and heavy water production. Under the Atomic Energy Act, such cooperation is not restricted, but agreements for cooperation must specify if such cooperation is to take place.

In dealing with such matters as related to India, the conferees have paid particular attention to the general status of such cooperation under U.S. law and with all nations that currently have 123 agreements with the United States, and to the policies of the present Administration. The conferees note that all but one currently active Section 123 agreement (with Australia) specifically prohibit such cooperation. In order to meet the requirement of Section 123 a.(9) of the Atomic Energy Act (that equipment, material, or production or utilization facilities produced as a result of a U.S. nuclear cooperation agreement will be subject to all the other requirements of Section 123 a.), it has been deemed necessary to amend agreements for cooperation, submitting them to Congress for approval. In 1999, when the United States Government opted to expand U.S.-Australian nuclear cooperation to allow for cooperation in the SILEX uranium enrichment process, an amended agreement was submitted to Congress for approval.

The conferees intend that, should any such cooperation with India be contemplated, either the original agreement for cooperation would specify that such cooperation is authorized or a subsequently amended agreement would be submitted to the Congress. In either circumstance, existing congressional prerogatives to review and approve such cooperation would be maintained. The conferees note that the Administration has already stipulated that "full civil nuclear cooperation," the term used in the July 18, 2005, Joint Statement between President Bush and Indian Prime Minister Singh, will not include enrichment or reprocessing technology. This is consistent with President Bush's February 11, 2004, speech at the National Defense University, in which he stated that "enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes," and the fact that, other than in the SILEX arrangement with Australia, the United States does not currently engage in cooperation regarding enrichment or reprocessing technology with any country.

The conferees recommend an additional provision, not contained in the original Senate bill, that would add a requirement that appropriate measures will be in place to ensure that no sensitive nuclear technology (SNT), as defined in section 4(5) of the Nuclear Nonproliferation Act of 1978 (22 U.S.C. 3203(5)), will be diverted to any person, site, facility, location, or program not under IAEA safeguards.

The conferees believe that this language is necessary to ensure that no SNT related to the enrichment of uranium (which can be used to make highly-enriched uranium for weapons), the reprocessing of spent nuclear fuel (which can provide plutonium for weapons), or the production of heavy water (which is used in reactors that produce weapons-grade plutonium and tritium as a byproduct) is transferred to India, unless under circumstances that provide assurance that this technology would not be diverted to a similar site,

facility, location, or program not associated with peaceful nuclear fuel-cycle activities.

India currently produces heavy water, operates heavy-water moderated reactors, reprocesses spent nuclear fuel, and has a limited uranium enrichment capability. Only a portion of India's facilities will be under IAEA safeguards, and sensitive nuclear technologies will reside in India in both safeguarded and un-safeguarded facilities. The conferees seek to ensure that the United States does not provide, even inadvertently, assistance to India that could further India's development of these technologies for noncivilian purposes. Such assistance could be viewed as a violation of U.S. obligations under Article I of the NPT.

The conferees intend that no licenses be issued pursuant to Parts 110 and 810 of Title 10 of the Code of Federal Regulations by the Nuclear Regulatory Commission (NRC) and the Secretary of Energy except under the requirements of subparagraph (B) of subsection 104(d)(4). Such a restriction on transfers would also extend to any Department of Energy authority to transfer enrichment, reprocessing, or heavy water production-related technology, not pursuant to a Section 123 agreement.

The conferees note that section 104(d)(4) cannot override the terms of an agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act that may not permit such cooperation and would thus bar such exports or transfers, and the conferees do not intend to create such authority. They expect that, as in other nuclear cooperation agreements, the Executive branch would submit an amended or new nuclear cooperation agreement to cover enrichment, reprocessing, or heavy water production-related cooperation, should such a change be undertaken in the future with India. Such an agreement would not be pursuant to the terms of this title, and would have to be submitted under the existing exemption authority contained in section 123 of the AEA.

Section 104(d)(5) contains broad requirements for a nuclear export accountability program to be carried out with respect to U.S. exports and re-exports of nuclear materials, equipment, and technology sold, leased, exported, or reexported to India. Such a program can provide increased confidence in India's separation of its civilian from its military nuclear programs, facilities, materials and personnel, and also would further ensure United States compliance with Article I of the NPT and implementation of section 123 a.(1) of the Atomic Energy Act of 1954. The provision is not intended to reflect poorly on India's July 18, 2005, Joint Statement commitments and its March and May 2006 separation documents. Rather, the conferees believe that the resulting and regular cooperation between U.S. regulatory agencies, in particular with the NRC, can provide a basis for even greater cooperation between the two nations.

Section 104(d)(5) provides a large degree of flexibility to the President. Clauses (B)(i) and (ii) require sufficient measures to ensure that all the assurances and conditions of any licenses or authorizations issued for exports and reexports to India by the NRC (which are issued under 10 CFR Part 110) and by the Secretary of Energy (which are issued pursuant to 10 CFR Part 810) are being

met and complied with in India. Clause (B)(ii) would require that, with respect to any authorizations issued by the Secretary of Energy pursuant to section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)): the identified recipients of the nuclear technology are authorized to receive the nuclear technology; the nuclear technology identified for transfer will be used only for safeguarded nuclear activities and will not be used for any military or nuclear explosive purpose; and the nuclear technology identified for transfer will not be retransferred without the prior consent of the United States, and facilities, equipment, or materials derived through the use of transferred technology will not be transferred without the prior consent of the United States.

Section 104(d)(5)(B)(iii) mandates that, in the event the IAEA is unable to implement safeguards as required by an agreement between the United States and India approved pursuant to this title, there be appropriate assurance that arrangements will be put in place expeditiously that are consistent with the requirements of section 123 a.(1) of the Atomic Energy Act of 1954 (42 U.S.C. 2153(a)(1)) regarding the maintenance of safeguards as set forth in the agreement regardless of whether the agreement is terminated or suspended for any reason. Assurances that there will be such "fall-back safeguards," if needed, are an important feature of agreements for nuclear cooperation; they enable such safeguards to exist more clearly in perpetuity. There is always a possibility that budget or personnel strains in the IAEA will render it unable to fulfill a safeguards mandate. Such strains would likely have nothing to do with India, but would have a major impact on the ability of the United States to assure that U.S. exports were being used responsibly. The conferees intend to assure that the requirements of section 123 a.(1) are fully met; they do not intend to impose a more intrusive regime than arrangements that have been used before in one or more U.S. agreements for cooperation.

Section 104(e) makes a conforming amendment to section 123 d. of the Atomic Energy Act of 1954. The purpose of this provision is to make clear that the U.S.-India agreement on civil nuclear cooperation, even if exempted from subsection a.(2) of section 123, may enter into force only if approved by Congress by a joint resolution of approval, consistent with current law with regard to an agreement that the President exempts from any requirement of subsection a. of section 123. As with any other agreement submitted under section 123 d., the congressional approval procedures under section 130 i. of the Atomic Energy Act would apply.

Section 104(f) provides that the authority under subsection (a)(1) to exempt a U.S.-India agreement on civil nuclear cooperation will terminate if a joint resolution, approved as required under section 123 d. (as amended by subsection (e)), is enacted. The purpose of this provision is to ensure that a future President may not use the authority of this title to exempt a new U.S.-India agreement on civil nuclear cooperation.

Section 104(g) provides for several reports to Congress.

Paragraph (1) requires the President to keep the appropriate congressional committees fully and currently informed of the facts and implications of any significant nuclear activities of India. This requirement includes information on any material noncompliance

on the part of the Government of India with the nonproliferation commitments undertaken in the Joint Statement of July 18, 2005, the March 7, 2006, separation plan, the future IAEA-India safeguards agreement and Additional Protocol, a peaceful nuclear cooperation agreement between India and the United States, the terms and conditions of any approved licenses regarding the export or reexport of nuclear material or dual-use material, equipment, or technology, and United States laws and regulations regarding such licenses. This reporting requirement also encompasses information regarding the construction of a nuclear facility in India after the date of the enactment of this title, significant changes in the production by India of nuclear weapons or in the types or amounts of fissile material produced, and changes in the purpose or operational status of any unsafeguarded nuclear fuel cycle activities in India.

The term “fully and currently informed” creates an obligation upon the Executive branch to inform the appropriate committees whenever significant information becomes available, rather than waiting to include it in a regularly scheduled report. This does not mean that the committees can expect daily or weekly briefings; rather, the Executive branch is trusted to use common sense in determining how best to discharge its duty to keep the committees up to date on important information.

Paragraph (2) requires an “Implementation and Compliance Report” by the President to Congress not later than 180 days after the date on which a civil nuclear cooperation agreement between the U.S. and India enters into force and annually thereafter.

This report must include a description of any additional nuclear facilities and nuclear materials that the Government of India has placed or intends to place under IAEA safeguards; a comprehensive listing of all licenses that have been approved by the Nuclear Regulatory Commission and the Secretary of Energy for exports and reexports to India under parts 110 and 810 of title 10, Code of Federal Regulations; any licenses approved by the Department of Commerce for the export or reexport to India of commodities, related technology, and software which are controlled for nuclear nonproliferation reasons on the Nuclear Referral List of the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulation, or any successor regulation; any other United States authorizations for the export or reexport to India of nuclear materials and equipment; and with respect to each such license or other form of authorization as described: (1) the number or other identifying information of each license or authorization; (2) the name or names of the authorized end user or end users; (3) the name of the site, facility, or location in India to which the export or reexport was made; (4) the terms and conditions included on such licenses and authorizations; (5) any postshipment verification procedures that will be applied to such exports or reexports; and (6) the term of validity of each such license or authorization.

This report must also include information regarding any significant nuclear commerce between India and other countries, including any such trade that is not consistent with applicable NSG guidelines or decisions, or would not meet the standards applied to exports or reexports of such material, equipment, or technology of

United States origin. In addition, the report must include either an assessment that India is in full compliance with the commitments and obligations contained in the agreements and other documents referenced above; or an identification and analysis of all compliance issues arising with regard to the adherence by India to its commitments and obligations, including (1) the steps the U.S. Government has taken to remedy or otherwise respond to such compliance issues; (2) the responses of the Government of India to such steps; (3) the steps the U.S. Government will take to this end in the coming year; and (4) an assessment of the implications of any continued noncompliance, including whether nuclear commerce with India remains in the national security interest of the United States.

Further, the report must contain an assessment of whether India is fully and actively participating in United States and international 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 and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction, including a description of the specific measures that India has taken in this regard; and if India is not assessed to be fully and actively participating in these efforts, a description of: the measures the United States Government has taken to secure India's full and active participation, the responses of the Government of India to such measures, and the measures the United States Government plans to take in the coming year to secure India's full and active participation.

The report must provide an analysis of whether United States civil nuclear assistance to India is in any way assisting India's nuclear weapons program, including through the use of any U.S. equipment, technology, or nuclear material by India in an unsafeguarded nuclear facility or nuclear-weapons related complex; the replication and subsequent use of any U.S. technology by India 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 the provision of nuclear fuel in such a manner as to facilitate the increased production by India of highly-enriched uranium or plutonium in unsafeguarded nuclear facilities.

A detailed description is also required regarding U.S. efforts to promote national or regional progress by India and Pakistan in disclosing, securing, limiting, and reducing their fissile material stockpiles, including stockpiles for military purposes, pending creation of a world-wide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty; the responses of India and Pakistan to such efforts; and assistance that the United States is providing, or would be able to provide, to India and Pakistan to promote the aforementioned national and regional progress by India and Pakistan.

The report must also contain an estimate of the amount of uranium mined and milled in India during the previous year, the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices, and the rate of production in India of fissile material for nuclear explosive devices and of

nuclear explosive devices, along with an estimate of the amount of electricity India's nuclear reactors produced for civil purposes during the previous year, and the proportion of such production that can be attributed to India's declared civil reactors, given that India's military reactors produce some electricity for use in the civil sector. In addition, there must be an analysis as to whether imported uranium has affected the rate of production in India of nuclear explosive devices.

The report must also provide a detailed description of efforts and progress made toward the achievement of India's full participation in the Proliferation Security Initiative and formal commitment to the Statement of Interdiction Principles of the PSI; 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 Controls List of the Wassenaar Arrangement; and effective implementation of these decisions.

Finally, this report requires information regarding the disposal during the previous year of spent nuclear fuel from India's civilian nuclear program, and any plans or activities relating to future disposal of such spent nuclear fuel.

Paragraph (3) allows the President to submit the aforementioned reports under Paragraph (2) with other annual reports. The report shall be unclassified but may contain a classified annex.

*Section 105. United States compliance with its Nuclear Non-proliferation Treaty obligations*

Sec. 105 states that nothing in this title constitutes authority for any action in violation of an obligation of the United States under the NPT. As stated earlier in this report, the conferees consider the NPT to be the cornerstone of U.S. nuclear nonproliferation policy. They expect the Executive branch to keep its NPT obligations in mind when considering each export or reexport, transfer, or retransfer pursuant to an agreement for cooperation, and especially pursuant to such an agreement with a state that is not a State Party to the NPT.

*Section 106. Inoperability of determination and waivers*

Sec. 106 states that a determination and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this Act. The conferees intend this section to make absolutely clear a point that already follows from section 129 of the Atomic Energy Act (42 U.S.C. 2158). This title affords no waiver from section 129 for an Indian nuclear detonation after July 18, 2005.

*Section 107. MTCR adherent status*

Section 107 is included to clarify the status accorded to India. Section 73 of the Arms Export Control Act (AECA) mandates sanctions on transfers of MTCR equipment or technology if the President determines that a foreign person knowingly exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent



and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under the AECA; or if a foreign person conspires to or attempts to engage in such export, transfer, or trade; or if a foreign person facilitates such an export, transfer, or trade by any other person; or if the President has made a determination with respect to a foreign person under section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410b(b)(1)). Section 73 of AECA is, however, inapplicable to MTCR adherents if the export in question is “any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud” or if the export, transfer, or trade of an item is to an end user in a country that is an MTCR adherent (section 73(b)). Section 73 also provides for the termination of sanctions when an MTCR adherent takes steps toward effective judicial enforcement against persons violating the prohibitions in section 73, if such actions are “comprehensive” and are “performed to the satisfaction of the United States” and the findings of such proceedings are satisfactory to the United States (section 73(c)(1)(A) and (B) and section 73(c)(2)).

Secretary Rice has stated that “India would not be considered an ‘MTCR Adherent’ as defined under Section 73” because:

India has committed to unilaterally adhere to the Missile Technology Control Regime (MTCR) Guidelines. The missile sanctions law would generally still apply to a “unilateral adherent” to the MTCR.

Unilateral adherence to the MTCR Guidelines means that a country makes a unilateral political commitment to abide by the Guidelines and Annex of the MTCR. In particular, an MTCR unilateral adherent commits to control exports of missile-related equipment and technology according to the MTCR Guidelines, including any subsequent changes to the MTCR Guidelines and Annex. Inter alia, this means that MTCR unilateral adherent countries need to have in place laws and regulations that permit them to control the export of MTCR Annex equipment and technology consistent with the MTCR Guidelines.

An “MTCR Adherent” is a specially defined status in terms of Section 73 of the Arms Export Control Act (also referred to as the missile sanctions law). An “MTCR Adherent,” as defined in Section 73 of the missile sanctions law, is a country that “participates” in the MTCR or that, “pursuant to an international understanding to which the United States is a party, controls MTCR equipment and technology in accordance with the criteria and standards set forth in the MTCR.” India’s “unilateral adherence” to the MTCR would not meet this requirement.

Since India’s unilateral adherence does not qualify it as an MTCR adherent under section 73 of AECA, the conferees included section 107 to clarify this point. While the provision accomplishes this, it is also drafted in such a manner as to permit India, should it so decide in the future, to enjoy the benefits of AECA section 73 by becoming a full adherent to the MTCR. Because the provision

states a factual finding by Congress, the provision would no longer have effect if India were to meet the requirements laid out as in Secretary Rice's statement. Under section 107, however, India's transfers of missile or missile-related equipment, technology and technical data, remain for now subject to U.S. sanctions if they should violate subsection 73(a) of the AECA.

*Section 108. Technical amendment*

Sec. 108 is a technical amendment regarding Section 1112(c)(4) of the Arms Control and Nonproliferation Authorization Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106-113 and contained in appendix G of that Act; 113 Stat. 1501A-486).

*Section 109. United States-India Scientific Cooperative Nuclear Nonproliferation Program*

Section 109 authorizes the Secretary of Energy to establish a cooperative nuclear nonproliferation program to pursue jointly with scientists from the United States and India a program to further common nuclear nonproliferation goals, including scientific research and development efforts, with an emphasis on nuclear safeguards. The conferees believe that there are exciting opportunities for cooperative efforts between U.S. and Indian scientists and engineers in this area, and they hope that the two countries' civil nuclear power experts, in particular, will share new ideas and best practices for the benefit of all. Section 109 is not intended to create an obligation for India to meet, but rather to open an avenue for increased cooperation on topics of concern to both countries.

Subsection (c) mandates that the Secretary of Energy enter into an agreement with the National Academies to develop recommendations for the implementation of the cooperative nonproliferation program. The National Academies, which include, inter alia, the National Academy of Sciences, the National Academy of Engineering, and the National Research Council, have a long and distinguished history of cooperation with Indian scientists and are skilled at building bridges to further joint efforts. The conferees encourage the Secretary of Energy to arrange for this National Academies assistance in the coming months, even if funds for the cooperative program cannot be appropriated until fiscal year 2008.

*Section 110. Definitions*

Section 110 defines terms used in this Act.

TITLE II—UNITED STATES ADDITIONAL PROTOCOL IMPLEMENTATION

Title II is a Senate provision, based almost entirely upon S. 2489, the U.S. Additional Protocol Implementation Act, reported by the Senate Committee on Foreign Relations on April 3, 2006, in Senate Report 109-226. It implements the Additional Protocol between the United States and the International Atomic Energy Agency (T. Doc. 107-7), to which the Senate gave advice and consent to ratification on March 31, 2004.

The Senate adopted amendments to the S. 2489 text when it was debated as title II of this bill, and the conferees recommend a small number of further amendments. The conferees hereby incorporate by reference Senate Report 109–226, except where provisions were later amended either in the Senate or by the conferees.

Sections 252 and 253 were modified by the Senate, principally to require that location-specific IAEA environmental sampling not be permitted in the United States under Article 5 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that the proposed use of location-specific environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in a non-nuclear weapon state. The conferees are persuaded that the IAEA is unlikely to propose such sampling, given that the United States, as a nuclear weapon state, is not barred from using fissile material for military purposes.

The conferees are further persuaded that these sections will not prevent the United States from fulfilling its obligations under the Additional Protocol. This is true even though section 254, also added by the Senate, limits the purposes that may be construed as covered by the phrase “necessary to increase the capability of the IAEA to detect undeclared nuclear activities in a non-nuclear weapon state.”

Subtitle F of title II, Protection of National Security Information and Activities, was added by the Senate. Section 261(a) provides that no current or former Department of Defense or Department of Energy location, site, or facility of direct national security significance shall be declared or be subject to IAEA inspection under the Additional Protocol. Similarly, under section 261(b), no information of direct national security significance regarding such locations, sites, or facilities shall be provided under the Additional Protocol. These requirements parallel statements that Administration officials have made for several years regarding how the Additional Protocol’s national security exemption will be implemented.

Sections 261(c) and 261(d) provide that nothing in this title shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of restricted data controlled by the provisions of the Atomic Energy Act of 1954 or of national security information and other classified information. These provisions parallel an understanding in the resolution of ratification approved by the Senate in 2004 that the Additional Protocol does not require any such disclosure. The conferees note that these provisions do not bar the Executive branch, however, from using any other authority that it may possess to provide classified information to the IAEA.

Section 262(a) provides that no national of a country designated by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a government supporting acts of international terrorism shall be permitted access to the United States to carry out an inspection activity under the Additional Protocol or a related safeguards agreement. Both the Additional Protocol and the underlying U.S.–IAEA safeguards agreement allow the United States to bar individual inspectors from engaging in inspections in the United States, and the United States

has routinely exercised that right as appropriate. The conferees know of no occasion on which a national of a state sponsor of terrorism has conducted an IAEA inspection in this country.

Section 262(b) requires that IAEA inspectors be accompanied at all times by U.S. Government personnel when inspecting sites, locations, facilities, or activities in the United States under the Additional Protocol. The conferees understand that this provision will not require any change in current practices.

Section 262(c) provides that the President shall conduct vulnerability, counterintelligence, and related assessments not less than every 5 years to ensure that information of direct national security significance remains protected at all sites, locations, facilities, and activities in the United States that are subject to IAEA inspection under the Additional Protocol. The conferees understand that once this title is enacted, the Executive branch will resume such assessments.

Subtitle G of title II provides for several reports from the Executive branch. Sections 271 through 273 provide for prior notice of sites, locations, facilities, and activities in the United States to be declared to the IAEA or removed from that status, along with the reasons for those decisions; and certification that the necessary security assessments have been conducted and appropriate measures taken to ensure that information of direct national security significance will not be compromised.

Section 274 provides for reports on: measures that have been or should be taken to achieve the adoption of additional protocols to existing safeguards agreements signed by non-nuclear-weapon States Party; and on assistance that has been provided or should be provided by the United States to the IAEA in order to promote the effective implementation of additional protocols to existing safeguards agreements signed by non-nuclear-weapon States Party and the verification of the compliance of such parties with IAEA obligations, with a plan for providing any needed additional funding. The conferees believe that the safeguards function is a vital element of U.S. nonproliferation policy and urge the Executive branch to maintain robust funding for U.S. assistance to the IAEA, taking into account the continuing need for improved safeguards in countries of concern, the additional safeguards load that the IAEA will have to bear when India begins to engage in large-scale civil nuclear commerce, and the likely advent of additional safeguards requirements as the world moves to increase nuclear power production.

Section 275 provides that the President shall notify Congress of any notifications issued by the IAEA to the United States under Article 10 of the Additional Protocol. Article 10 says that the IAEA shall inform the United States of activities carried out under the Additional Protocol, including those in response to questions or inconsistencies the IAEA had brought to the attention of the United States, the results of those IAEA activities, and the conclusions that the IAEA has drawn. Article 10 notifications will take place at least annually.

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JOHN BOEHNER,  
TOM LANTOS,  
*Managers on the Part of the House.*

RICHARD G. LUGAR,  
CHUCK HAGEL,  
GEORGE ALLEN,  
BILL FRIST,  
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CHRIS DODD,  
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