

110TH CONGRESS
1ST SESSION

H. RES. 711

Expressing the sense of the House of Representatives concerning the United States-India nuclear cooperation agreement.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2007

Mr. BERMAN (for himself, Ms. ROS-LEHTINEN, and Mr. FORTENBERRY) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Expressing the sense of the House of Representatives concerning the United States-India nuclear cooperation agreement.

Whereas President George W. Bush and Indian Prime Minister Manmohan Singh issued a Joint Statement on July 18, 2005, declaring their intention to establish a “global partnership” between the two countries;

Whereas in the Joint Statement the President announced his commitment to achieving the establishment of “full civil nuclear energy cooperation” between the United States and India;

Whereas Congress passed the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (Public Law 109–401), also known as the Hyde Act,

that, among other provisions, would allow the President to waive restrictions in the Atomic Energy Act of 1954 that otherwise would prohibit nuclear cooperation with India;

Whereas the Hyde Act and the Atomic Energy Act of 1954 include several provisions that impose conditions on United States civil nuclear cooperation with India, including—

(1) a requirement that civil nuclear cooperation with India be terminated if India tests a nuclear explosive device or violates its safeguards agreements;

(2) a prohibition on exports to India of sensitive nuclear technology, including enrichment, reprocessing, and heavy water production technology, with exceptions for certain programs to develop a proliferation-resistant fuel cycle or a potential multinational facility in India participating in a program approved by the International Atomic Energy Agency (IAEA) to provide alternatives to national fuel cycle capabilities;

(3) a requirement that India and the IAEA conclude a safeguards agreement that provides for safeguards on designated civil nuclear facilities “in perpetuity in accordance with IAEA standards, principles and practices”; and

(4) a sense of the Congress 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”;

Whereas the Hyde Act requires that Congress affirmatively approve the United States-India nuclear cooperation agreement, also known as a 123 Agreement, for it to take effect;

Whereas on July 27, 2007, the Governments of the United States and India concluded negotiations on a nuclear cooperation agreement;

Whereas under the terms of the Hyde Act, Congress will not consider the nuclear cooperation agreement until India and the IAEA conclude a safeguards agreement for the facilities India has listed as for civil use and the Nuclear Suppliers Group (NSG) approves an exemption for India from its guidelines establishing full-scope international safeguards as a condition of supply;

Whereas it is in the interest of the United States to ensure that the NSG does not approve an exemption for India that allows other countries to engage in civil nuclear commerce with India that is prohibited under United States law, thus putting United States firms at a competitive disadvantage;

Whereas an unqualified exemption for India would create a strong incentive for India to negotiate nuclear cooperation agreements with other countries with less stringent conditions than those contained in the agreement negotiated between India and the United States, thereby undermining United States nonproliferation policy and United States commercial interests;

Whereas to prevent United States nonproliferation policy and United States commercial interests from being undermined by supplier countries continuing to trade with recipient countries that have violated their agreements with the United States, the Hyde Act states it shall be the policy of the United States to “[s]trengthen the NSG guidelines and decisions concerning consultation by members regarding violations of supplier and recipient understandings by instituting the practice of a timely and co-

ordinated 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”;

Whereas it remains to be determined if the nuclear cooperation agreement is fully consistent with the Hyde Act;

Whereas the Government of India has stated interpretations of the meaning and application of the several provisions in the nuclear cooperation agreement that appear to conflict with the intent of the Congress as reflected in the Hyde Act; and

Whereas the Administration should clarify all conflicts of interpretation regarding the nuclear cooperation agreement prior to seeking an exemption for India in the NSG guidelines: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that the Administration—

3 (1) should not propose any change to Nuclear
4 Suppliers Group (NSG) guidelines relating to India
5 until such time as the Administration has—

6 (A) answered all outstanding questions
7 raised by Congress regarding apparent incon-
8 sistencies between the nuclear cooperation
9 agreement and the Henry J. Hyde United
10 States-India Peaceful Atomic Energy Coopera-

1 tion Act of 2006 (Public Law 109–401), also
2 known as the Hyde Act; and

3 (B) resolved with the Government of India
4 all differences of interpretation of the provisions
5 in the nuclear cooperation agreement; and

6 (2) should not support a proposed exemption
7 for India in the NSG guidelines that is not con-
8 sistent with the Hyde Act and the Atomic Energy
9 Act of 1954 and that does not incorporate the fol-
10 lowing provisions:

11 (A) The immediate termination of all nu-
12 clear commerce by NSG member states if India
13 detonates a nuclear explosive device or if the
14 IAEA has determined that India has violated
15 its international safeguards commitments.

16 (B) A requirement that any safeguards
17 agreement concluded between India and the
18 IAEA provides for safeguards in perpetuity for
19 all nuclear materials, equipment, and tech-
20 nology, and all facilities designated as “civil,”
21 in accordance with IAEA standards, principles,
22 and practices.

23 (C) A prohibition on the transfer of enrich-
24 ment and reprocessing technology and heavy
25 water production technology by any NSG mem-

1 ber state to India and a requirement that all bi-
2 lateral nuclear cooperation agreements between
3 NSG member states and India explicitly pro-
4 hibit the replication of any dual-use technology
5 or use of such technology in any unsafeguarded
6 Indian facilities.

7 (D) A stipulation that NSG supplier states
8 may not grant India consent to reprocess nu-
9 clear fuel supplied by an NSG member state ex-
10 cept in a facility that is under permanent and
11 unconditional IAEA safeguards, and that any
12 material produced in such a facility may not be
13 transferred to any unsafeguarded facility.

14 (E) A requirement that NSG member
15 states should promptly consult regarding viola-
16 tions of commitments in any bilateral nuclear
17 cooperation agreement between an NSG mem-
18 ber state and India in order to secure a timely
19 and coordinated response by NSG members to
20 all such violations, including termination of nu-
21 clear transfers to India, that discourages indi-
22 vidual NSG member states from continuing bi-
23 lateral cooperation until such time as a con-

- 1 sensus regarding a coordinated response has
- 2 been achieved.

