

114TH CONGRESS
2D SESSION

H. R. 5370

To provide for restrictions related to nuclear cooperation with the People's Republic of China, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2016

Mr. SHERMAN (for himself and Mr. FORTENBERRY) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for restrictions related to nuclear cooperation with the People's Republic of China, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “U.S.-China Nuclear
5 Cooperation and Nonproliferation Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) A report issued in 2001 by the Department
2 of Defense found that “China supplied Pakistan
3 with nuclear material and expertise and has provided
4 critical assistance in the production of Pakistan’s
5 nuclear facilities”. China is also alleged to have pro-
6 vided Pakistan with 50 kilograms of highly enriched
7 uranium, and designs for a nuclear weapon.

8 (2) An unclassified report submitted to Con-
9 gress in 2011 by the Director of National Intel-
10 ligence found that Chinese entities “continue to sup-
11 ply a variety of missile-related items to multiple cus-
12 tomers, including Iran and Pakistan”. Previous re-
13 ports by the Director of National Intelligence have
14 confirmed that Chinese entities have provided sup-
15 port for the missile program of North Korea.

16 (3) China has failed to bring to justice Li
17 Fangwei, also known as Karl Lee, who has been in-
18 dicted in the United States on charges of providing
19 sensitive missile technology to Iran. According to a
20 report from the Congressional Research Service,
21 “concerns persist about Chinese willingness as well
22 as ability to detect and prevent illicit transfers” of
23 dual-use and sensitive nuclear and missile items.

24 (4) At a May 12, 2015, hearing, members of
25 the Committee on Foreign Relations of the Senate

1 raised concerns that China may have diverted to its
2 nuclear submarine program reactor cooling pumps
3 produced by the Curtiss-Wright Corporation, thereby
4 bolstering the stealth of its submarines, and vio-
5 lating the Previous Nuclear Cooperation Agreement
6 (as that term is defined in section 3(4)).

7 (5) Similarly, at a July 16, 2015, hearing be-
8 fore two subcommittees of the Committee on For-
9 eign Affairs of the House of Representatives, wit-
10 nesses testified that China had likely diverted tech-
11 nology from its civilian nuclear program to its mili-
12 tary programs, and had failed to undertake suffi-
13 cient efforts to prevent the transfer of sensitive dual
14 use and other controlled items.

15 (6) China has announced plans to provide Paki-
16 stan with nuclear reactors, in addition to those
17 China had already agreed to construct prior to 2004,
18 in violation of its 2004 commitments to the Nuclear
19 Suppliers Group (NSG).

20 (7) Five members of the Chinese People's Lib-
21 eration Army have been indicted in the United
22 States on charges of hacking into the computer net-
23 works of Westinghouse and stealing United States
24 intellectual property, including the design of nuclear
25 power plants.

1 (8) China has announced plans to export nu-
2 clear power plants based on technology acquired le-
3 gally from Westinghouse, one of China’s primary
4 commercial partners under its current and previous
5 nuclear cooperation agreements with the United
6 States. While China has committed not to export
7 United States-origin technology without a marketing
8 license from Westinghouse, there is no definition of
9 “United States-origin technology” in statute or reg-
10 ulation, thereby complicating efforts by the United
11 States to control the transfer of United States-origin
12 nuclear technology.

13 (9) China General Nuclear Power Company, a
14 state-owned nuclear power provider, has been in-
15 dicted in the United States on charges of unlawfully
16 producing special nuclear material outside the
17 United States without the authorization of the De-
18 partment of Energy.

19 (10) China’s plans to reprocess United States-
20 origin spent nuclear fuel raises the risk that China
21 could divert plutonium to military purposes, thereby
22 enabling it to produce additional nuclear weapons
23 that threaten the United States and its allies.

24 (11) Secretary of Energy Ernest Moniz told the
25 Wall Street Journal, in Beijing on March 17, 2016,

1 that the United States does not “support large-scale
2 reprocessing”, and China’s plan to proceed with a
3 commercial-scale reprocessing facility “certainly isn’t
4 a positive in terms of nonproliferation”.

5 (12) China’s pursuit of commercial plutonium
6 reprocessing will increase the likelihood that Japan
7 expands its own commercial reprocessing program,
8 and that South Korea will increase efforts to initiate
9 such a program of its own. Growing stockpiles of
10 plutonium in East Asia increase the chances of mili-
11 tary diversion and theft, thereby raising the risk of
12 nuclear proliferation, nuclear terrorism, and inter-
13 state nuclear conflict. It is in the interest of the
14 United States to prevent the stockpiling of pluto-
15 nium in East Asia.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) APPROPRIATE CONGRESSIONAL COMMIT-
19 TEES.—The term “appropriate congressional com-
20 mittees” means the Committee on Foreign Relations
21 of the Senate and the Committee on Foreign Affairs
22 of the House of Representatives.

23 (2) CHINA.—The term “China” means the Peo-
24 ple’s Republic of China.

1 (3) CHINESE PERSON.—The term “Chinese
2 person” means—

3 (A) an individual who is a citizen or na-
4 tional of China; and

5 (B) an entity organized under the laws of
6 China or otherwise subject to the jurisdiction of
7 the Government of China.

8 (4) PREVIOUS NUCLEAR COOPERATION AGREE-
9 MENT.—The term “Previous Nuclear Cooperation
10 Agreement” means the Agreement for Cooperation
11 Between the Government of the United States of
12 America and the Government of the People’s Repub-
13 lic of China Concerning Peaceful Uses of Nuclear
14 Energy, concluded July 23, 1985.

15 (5) UNITED STATES.—The term “United
16 States” means the several States, the District of Co-
17 lumbia, and any territory or possession of the
18 United States.

19 (6) UNITED STATES PERSON.—The term
20 “United States person” means any United States
21 citizen, any alien lawfully admitted to the United
22 States for permanent residence, any entity organized
23 under the laws of the United States or any jurisdic-
24 tion within the United States, and any person in the
25 United States.

1 (7) UNITED STATES-CHINA NUCLEAR COOPERA-
2 TION AGREEMENT.—The term “United States-China
3 Nuclear Cooperation Agreement” means the Agree-
4 ment for Cooperation Between the United States
5 and the Government of the People’s Republic of
6 China that was submitted to the appropriate con-
7 gressional committees under section 123 of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2153) on
9 April 21, 2015, and which entered into force on Oc-
10 tober 29, 2015.

11 **SEC. 4. NOTICE REGARDING TRANSFERS OF NUCLEAR**
12 **TECHNOLOGY TO CHINA.**

13 The Secretary of Energy shall, not later than 5 days
14 after receiving an application for the proposed transfer of
15 nuclear technology to China under section 57b. of the
16 Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), includ-
17 ing an application for specific authorization to be provided
18 for in a subsequent arrangement under section 131 of that
19 Act (42 U.S.C. 2160), notify the appropriate congres-
20 sional committees of the receipt of such application. The
21 notice shall describe with particularity the items contained
22 in the proposed transfer of nuclear technology.

1 **SEC. 5. APPROVAL FOR TRANSFER OF UNITED STATES-ORI-**
2 **GIN TECHNOLOGY WHEREVER LOCATED.**

3 (a) APPROVAL.—Section 57b. of the Atomic Energy
4 Act of 1954 (42 U.S.C. 2077(b)) is amended—

5 (1) by striking “b. It shall be unlawful” and in-
6 serting “b.(1) It shall be unlawful”;

7 (2) by striking “(1) as specifically” and insert-
8 ing “(A) as specifically”;

9 (3) by striking “(2) upon authorization” and
10 inserting “(B) upon authorization”; and

11 (4) by adding at the end the following new
12 paragraph:

13 “(2) The requirements for authorization under para-
14 graph (1) shall apply to any United States-origin tech-
15 nology that may be used in the development or production
16 of special nuclear material, and items derived from such
17 United States-origin technology, regardless of the nation-
18 ality of the ownership of such technology or the location
19 of the technology outside the United States.”.

20 (b) DEFINITION OF UNITED STATES-ORIGIN TECH-
21 NOLOGY.—Not later than 90 days after the date of the
22 enactment of this Act, the Secretary of Energy shall issue,
23 as part of the regulations issued pursuant to section 57b.
24 of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)),
25 a definition of items covered by the term “United States-
26 origin technology” in paragraph (2) of such section, in-

cluding items derived from such technology. The term shall include items developed by United States persons or persons subject to the jurisdiction of the United States, and items developed with the participation of the United States Government, including large, passive light water reactors.

**SEC. 6. ADDITIONAL REQUIREMENT FOR APPROVAL OF RE-
TRANSFERS OF UNITED STATES-ORIGIN
TECHNOLOGY.**

In addition to the requirements applicable to transfers of items under section 57b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), any request for authorization to transfer United States-origin technology (as defined pursuant to section 5(b) of this Act) from China, or with the significant participation of Chinese persons not located in the United States, to a country other than the United States or China, shall be denied unless the applicant can demonstrate—

(1) significant ongoing participation by United States persons in the transfer;

(2) in the case of nuclear reactors and reactor components, significant United States content involved in, or attendant to, the proposed transfer; and

1 (3) in the case of the transfer of technology de-
2 veloped with the participation of the United States
3 Government, timely and adequate reimbursement of
4 the United States Government for any grants or
5 loans provided by the United States Government to
6 entities involved in the development of the tech-
7 nology.

8 **SEC. 7. STATEMENT OF POLICY ON CHINA-PAKISTAN NU-**
9 **CLEAR COOPERATION.**

10 It is the policy of the United States—

11 (1) to oppose the provision by China of assist-
12 ance in the construction of any nuclear reactor in
13 Pakistan other than the first 2 reactors constructed
14 at Chasma, which were consistent with the condi-
15 tions concerning China’s participation in the Nuclear
16 Suppliers Group; and

17 (2) to assist Pakistan with the acquisition and
18 development of sufficient electrical power to meet its
19 domestic requirements for electrical power through
20 means other than nuclear power.

21 **SEC. 8. ADDITIONAL NOTIFICATION REQUIREMENTS.**

22 (a) NOTIFICATION OF PRESIDENTIAL DETERMINA-
23 TION.—

24 (1) NOTIFICATION.—Not later than 30 days
25 after the President makes a determination described

1 in paragraph (2), the President shall notify the ap-
2 propriate congressional committees of that deter-
3 mination.

4 (2) DETERMINATION.—A determination de-
5 scribed in this paragraph is a determination that the
6 Government of China, persons acting on behalf of
7 the Government of China, or Chinese persons have,
8 since the entry into force of the United States China
9 Nuclear Cooperation Agreement—

10 (A) retransferred any United States nu-
11 clear items to a third country without the per-
12 mission of the United States Government;

13 (B) diverted or attempted to divert United
14 States nuclear items to military use;

15 (C) stolen or attempted to steal United
16 States nuclear items;

17 (D) failed to undertake measures necessary
18 to prevent transfers of goods, services, and
19 technology described in section 2(a) of the Iran,
20 North Korea, and Syria Nonproliferation Act
21 (Public Law 106–178; 50 U.S.C. 1701 note), or
22 to make substantial progress in efforts to pre-
23 vent such transfers;

24 (E) failed to undertake measures to en-
25 force the sanctions provided for in United Na-

1 tions Security Council Resolution 2270, adopted
2 on March 2, 2016, and previous resolutions
3 concerning North Korea;

4 (F) refused to adhere to the Nuclear Sup-
5 plier Group guidelines regarding the export of
6 any new civilian nuclear reactors, regardless of
7 any prior or future contract obligations; or

8 (G) otherwise violated the terms and condi-
9 tions of the United States-China Nuclear Co-
10 operation Agreement, or any authorization
11 issued by the United States Government con-
12 cerning transfers of United States nuclear
13 items.

14 (b) PLAN OF CORRECTIVE ACTION.—Not later than
15 60 days after the President makes a determination de-
16 scribed in subsection (a), the President shall provide to
17 the appropriate congressional committees a plan of correc-
18 tive action to—

19 (1) address the activity described in subsection

20 (a) that was the subject of the determination;

21 (2) mitigate any damage to the national secu-
22 rity of the United States because of such activity;

23 and

24 (3) prevent further such activity.

1 (c) MEASURES AUTHORIZED.—At any time the
2 President may, if the President determines it is necessary
3 to address activity described in subsection (a) that was
4 the subject of a determination under that subsection, im-
5 pose any measures authorized by law, including—

6 (1) measures authorized by the International
7 Emergency Powers Act (50 U.S.C. 1701 et seq.);
8 and

9 (2) suspension of cooperation with China under
10 the United States-China Nuclear Cooperation Agree-
11 ment.

12 (d) DEFINITION.—In this section, the term “United
13 States nuclear items” means any items that are trans-
14 ferred to China under—

15 (1) the United States-China Nuclear Coopera-
16 tion Agreement;

17 (2) section 57b. of the Atomic Energy Act of
18 1954 (42 U.S.C. 2077(b)); or

19 (3) part 110 of title 10, Code of Federal Regu-
20 lations.

21 **SEC. 9. IMPLEMENTATION OF AGREED MINUTE.**

22 The President may not bring into effect the proce-
23 dures described in the section of the Agreed Minute to
24 the United States-China Nuclear Cooperation Agreement
25 that appear under the heading “Technology and Informa-

tion Exchanges” unless the President, at least 60 days of continuous session of Congress before those procedures become effective—

(1) provides to the appropriate congressional committees the details concerning the implementation of those provisions; and

(2) certifies to the appropriate congressional committees that those procedures protect the national security of the United States to an extent that is equal to or greater than those procedures provided for under parts 110 and 810 of title 10, Code of Federal Regulations.

SEC. 10. REPROCESSING UNDER THE UNITED STATES-CHINA NUCLEAR COOPERATION AGREEMENT.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should encourage countries in East Asia to forgo the commencement of spent nuclear fuel reprocessing activities, as part of a mutual effort to prevent the spread of separated plutonium in the region.

(b) IMPLEMENTATION OF REPROCESSING CONSENT RIGHTS UNDER AGREEMENT.—The President shall not agree to the reprocessing, recycling, or other alteration in form or content of nuclear material, as described in Article 6.2 of the United States-China Nuclear Cooperation

1 Agreement, at any facility to which the International
2 Atomic Energy Agency (IAEA) safeguards are not ap-
3 plied, unless, for each proposed facility at which such ac-
4 tivity will take place, the President certifies to the appro-
5 priate congressional committees that—

6 (1) the President has made a formal request to
7 the IAEA to apply safeguards to the facility;

8 (2) the IAEA has refused the request described
9 in paragraph (1); and

10 (3) the arrangements and procedures under
11 which such reprocessing, recycling, or other alter-
12 ation in form or content will occur—

13 (A) include a requirement that nuclear ma-
14 terial transferred pursuant to the United
15 States-China Nuclear Cooperation Agreement
16 and nuclear material used in or produced
17 through the use of such material—

18 (i) not be commingled with any other
19 nuclear material;

20 (ii) be clearly marked as United
21 States-obligated nuclear material;

22 (iii) be stored in separate facilities
23 from any other nuclear material; and

24 (iv) be available for inspection imme-
25 diately and without prior notice upon re-

1 quest by the IAEA or either party to the
2 Agreement; and

3 (B) are sufficient to detect in a timely
4 manner—

5 (i) the diversion for military purposes
6 of nuclear material transferred pursuant to
7 the United States-China Nuclear Coopera-
8 tion Agreement and nuclear material used
9 in or produced through the use of such
10 material; and

11 (ii) the transfer to facilities or loca-
12 tions not agreed to by the United States of
13 nuclear material transferred pursuant to
14 the United States-China Nuclear Coopera-
15 tion Agreement and nuclear material used
16 in or produced through the use of such
17 material.

18 (c) NOTIFICATION REQUIRED.—If the President
19 issues a certification described in subsection (b), the Presi-
20 dent shall include with that certification a detailed descrip-
21 tion of—

22 (1) the facility at which the reprocessing, recy-
23 cling, or other alteration in form and content will
24 take place;

25 (2) the safeguards applied to the facility;

1 (3) the measures that will be undertaken to se-
2 cure and prevent the theft or diversion to military
3 purposes of any separated plutonium that will result
4 from the activities at the facility;

5 (4) the amounts of materials to be processed at
6 the facility;

7 (5) the amount of processed fissile material
8 that may be stockpiled as a result of the activities
9 at the facility, and the estimated period of time that
10 it may be stockpiled prior to its civilian use in a nu-
11 clear reactor; and

12 (6) the risks to the national security of the
13 United States that are posed by the potential diver-
14 sion of nuclear material at the facility.

15 **SEC. 11. REPORTS.**

16 (a) INITIAL REPORT.—

17 (1) IN GENERAL.—No later than 90 days after
18 the date of the enactment of this Act, the President
19 shall submit to the appropriate congressional com-
20 mittees a report on China’s history of compliance
21 with the peaceful use and nonproliferation provisions
22 of the Previous Nuclear Cooperation Agreement.

23 (2) ELEMENTS.—The report required under
24 paragraph (1) shall include—

1 (A) a detailed examination of every sus-
2 pected or alleged violation of the Previous
3 Agreement;

4 (B) the response by China to any inquiries
5 by the United States regarding any such sus-
6 pected or alleged violation of the Previous
7 Agreement;

8 (C) an assessment of the likelihood of fu-
9 ture violations under the terms of the United
10 States-China Nuclear Cooperation Agreement;
11 and

12 (D) an assessment of the potential advan-
13 tages that a large civil nuclear infrastructure or
14 program may provide to China as it seeks to
15 meet its future nuclear weapons requirements.

16 (b) ANNUAL INTELLIGENCE REPORT.—

17 (1) IN GENERAL.—Not later than April 15,
18 2017, and annually thereafter, the President shall
19 submit to the appropriate congressional committees
20 a report on the status of the United States-China
21 Nuclear Cooperation Agreement and compliance by
22 China with the Agreement.

23 (2) ELEMENTS.—The report required under
24 paragraph (1) shall include, at a minimum—

1 (A) a detailed examination of every sus-
2 pected or alleged violation of the Agreement by
3 China that may have occurred during the pre-
4 ceding calendar year;

5 (B) the response by China to any inquiries
6 by the United States regarding any such sus-
7 pected or alleged violation;

8 (C) an accounting of the specific roles
9 played in the civil and military nuclear pro-
10 grams of China by all Chinese persons visiting
11 United States nuclear labs and facilities;

12 (D) an assessment of whether China or
13 any entity acting on its behalf has targeted any
14 United States nuclear-related private-sector or
15 governmental entities, enterprises, or assets for
16 any form of cyber trespass, theft, or attack, or
17 has taken specific actions pursuant to such tar-
18 geting by any entity;

19 (E) an assessment of the risks of diversion
20 of special nuclear material transferred pursuant
21 to the Agreement, the likely consequences of
22 such diversion, and steps taken to avert any po-
23 tential diversion;

24 (F) an assessment of the potential military
25 utility of diverted civil nuclear technology;

1 (G) an assessment of any civil or criminal
2 law enforcement actions taken by China against
3 any entities or individuals within its govern-
4 ment or its jurisdiction that have—

5 (i) violated nonproliferation or peace-
6 ful use requirements of the Agreement or
7 any other bilateral or multilateral nuclear
8 agreement to which China is a party;

9 (ii) committed any cyber trespass,
10 theft, or attack on any United States nu-
11 clear-related private sector or govern-
12 mental entities, enterprises, or assets; or

13 (iii) conducted any cyber trespass or
14 cyber exploitation against any private sec-
15 tor nuclear entities, enterprises, or assets
16 for commercial gain; and

17 (H) a description of the extent to which
18 the Government of China has honored requests
19 by the United States for enforcement of legal
20 action against any entities or individuals de-
21 scribed in subparagraph (G), including requests
22 by the United States for extradition.

23 (c) FORM.—The reports required under subsections

24 (a) and (b) may be submitted in classified form, but shall

1 also contain an unclassified executive summary and may
2 contain an unclassified annex.

3 (d) ANNUAL EXPORTS REPORT.—Not later than
4 April 15, 2017, and annually thereafter, the President
5 shall submit to the appropriate congressional committees
6 a report that—

7 (1) identifies all export licenses issued in the
8 preceding calendar year pursuant to the United
9 States-China Nuclear Cooperation Agreement, in-
10 cluding, at a minimum for each license, the license
11 applicant, the items licensed and their value, the
12 proposed end user of the items, and the term of the
13 license; and

14 (2) assesses China’s progress in strengthening,
15 implementing, and enforcing laws to ensure that re-
16 stricted dual-use technology is not transferred to
17 countries of proliferation concern.

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