

gas emissions than would be emitted by the same entity or sector in the same country in the absence of the Fund's project, taking into account, unless impracticable, effects beyond the physical boundaries of the project or program that result from project or program activities.

(B) Public sector activities

The term "public sector activities" may include sovereign loans assumed by the recipient country to contribute to the financing of the investment plan.

(C) Clean energy technology

The term "clean energy technology" means a technology that, as compared with technologies being deployed at that time for widespread commercial use in the country involved—

- (i) achieves substantial reductions in greenhouse gas emissions;
- (ii) does not result in significant incremental adverse effects on public health or the environment; and
- (iii) does one or more of the following:
 - (I) generates electricity or useful thermal energy from a renewable resource;
 - (II) substantially increases the energy efficiency of buildings, industrial, or agricultural processes, or of electricity transmission, distribution, or end-use consumption; or
 - (III) substantially increases the energy efficiency of the transportation system or increases utilization of transportation fuels that have lifecycle greenhouse gas emissions that are substantially lower than those attributable to fossil fuel-based alternatives.

(Pub. L. 111-117, div. F, title VII, § 7081(g), Dec. 16, 2009, 123 Stat. 3398.)

CODIFICATION

Section was enacted as part of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, and also as part of the Consolidated Appropriations Act, 2010, and not as part of part C of the Global Environmental Protection Assistance Act of 1989 which comprises this chapter.

CONTINUATION OF PRIOR LAW

Pub. L. 112-74, div. I, title VII, § 7062(c)(8), Dec. 23, 2011, 125 Stat. 1250, provided that: "Section 7081(g)(2) and (4) of division F of Public Law 111-117 [22 U.S.C. 7909(2), (4)] shall continue in effect during fiscal year 2012 as if part of this Act [div. I of Pub. L. 112-74, 125 Stat. 1164]."

**CHAPTER 87—UNITED STATES AND INDIA
NUCLEAR COOPERATION**

Sec.	
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§ 8001. 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 non-proliferation 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 non-proliferation, 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 2153 of title 42 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 non-proliferation 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.

(Pub. L. 109-401, title I, § 102, Dec. 18, 2006, 120 Stat. 2726.)

SHORT TITLE

Pub. L. 109-401, title I, § 101, Dec. 18, 2006, 120 Stat. 2726, provided that: "This title [enacting this chapter and amending section 2652c of this title and section 2153 of Title 42, The Public Health and Welfare] may be cited as the 'Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006'."

UNITED STATES-INDIA NUCLEAR COOPERATION APPROVAL AND NONPROLIFERATION ENHANCEMENT

Pub. L. 110-369, Oct. 8, 2008, 122 Stat. 4028, provided that:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act'.

"(b) TABLE OF CONTENTS.—[Omitted.]

"SEC. 2. DEFINITIONS.

"In this Act:

"(1) AGREEMENT.—The term 'United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy' or 'Agreement' means the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.

"(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

"TITLE I—APPROVAL OF UNITED STATES-INDIA AGREEMENT FOR COOPERATION ON PEACEFUL USES OF NUCLEAR ENERGY

"SEC. 101. APPROVAL OF AGREEMENT.

"(a) IN GENERAL.—Notwithstanding the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(b) and (d)), Congress hereby approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, subject to subsection (b).

"(b) APPLICABILITY OF ATOMIC ENERGY ACT OF 1954, HYDE ACT, AND OTHER PROVISIONS OF LAW.—The Agreement shall be subject to the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Henry J. Hyde United States-India Peaceful Atomic Energy Co-

operation Act of 2006 (22 U.S.C. 8001 et seq.; Public Law 109-401), and any other applicable United States law as if the Agreement had been approved pursuant to the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954.

"(c) SUNSET OF EXEMPTION AUTHORITY UNDER HYDE ACT.—[Amended section 8003 of this title.]

"SEC. 102. DECLARATIONS OF POLICY; CERTIFICATION REQUIREMENT; RULE OF CONSTRUCTION.

"(a) DECLARATIONS OF POLICY RELATING TO MEANING AND LEGAL EFFECT OF AGREEMENT.—Congress declares that it is the understanding of the United States that the provisions of the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy have the meanings conveyed in the authoritative representations provided by the President and his representatives to the Congress and its committees prior to September 20, 2008, regarding the meaning and legal effect of the Agreement.

"(b) DECLARATIONS OF POLICY RELATING TO TRANSFER OF NUCLEAR EQUIPMENT, MATERIALS, AND TECHNOLOGY TO INDIA.—Congress makes the following declarations of policy:

"(1) Pursuant to section 103(a)(6) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8002(a)(6)), in the event that nuclear transfers to India are suspended or terminated pursuant to title I of such Act (22 U.S.C. 8001 et seq.), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law, it is the policy of the United States to seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the Nuclear Suppliers Group (NSG) or from any other source.

"(2) Pursuant to section 103(b)(10) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8002(b)(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.

"(c) CERTIFICATION REQUIREMENT.—Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to Congress that entry into force and implementation of the Agreement pursuant to its terms is consistent with the obligation of the United States under 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 (commonly known as the 'Nuclear Non-Proliferation Treaty'), not in any way to assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices.

"(d) RULE OF CONSTRUCTION.—Nothing in the Agreement shall be construed to supersede the legal requirements of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 [22 U.S.C. 8001 et seq.] or the Atomic Energy Act of 1954.

"SEC. 103. ADDITIONAL PROTOCOL BETWEEN INDIA AND THE IAEA.

"Congress urges the Government of India to sign and adhere to an Additional Protocol with the International Atomic Energy Agency (IAEA), consistent with IAEA principles, practices, and policies, at the earliest possible date.

"SEC. 104. IMPLEMENTATION OF SAFEGUARDS AGREEMENT BETWEEN INDIA AND THE IAEA.

"Licenses may be issued by the Nuclear Regulatory Commission for transfers pursuant to the Agreement only after the President determines and certifies to Congress that—

"(1) the Agreement Between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear

Facilities, as approved by the Board of Governors of the International Atomic Energy Agency on August 1, 2008 (the ‘Safeguards Agreement’), has entered into force; and

“(2) the Government of India has filed a declaration of facilities pursuant to paragraph 13 of the Safeguards Agreement that is not materially inconsistent with the facilities and schedule described in paragraph 14 of the separation plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the separation plan.

“SEC. 105. MODIFIED REPORTING TO CONGRESS.

“[Amended section 8003 of this title.]

“TITLE II—STRENGTHENING UNITED STATES NONPROLIFERATION LAW RELATING TO PEACEFUL NUCLEAR COOPERATION

“SEC. 201. PROCEDURES REGARDING A SUBSEQUENT ARRANGEMENT ON REPROCESSING.

“(a) IN GENERAL.—Notwithstanding section 131 of the Atomic Energy Act of 1954 (42 U.S.C. 2160), no proposed subsequent arrangement concerning arrangements and procedures regarding reprocessing or other alteration in form or content, as provided for in Article 6 of the Agreement, shall take effect until the requirements specified in subsection (b) are met.

“(b) REQUIREMENTS.—The requirements referred to in subsection (a) are the following:

“(1) The President transmits to the appropriate congressional committees a report containing—

“(A) the reasons for entering into such proposed subsequent arrangement;

“(B) a detailed description, including the text, of such proposed subsequent arrangement; and

“(C) a certification that the United States will pursue efforts to ensure that any other nation that permits India to reprocess or otherwise alter in form or content nuclear material that the nation has transferred to India or nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment that it has transferred to India requires India to do so under similar arrangements and procedures.

“(2) A period of 30 days of continuous session (as defined by section 130 g.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2159(g)(2)) has elapsed after transmittal of the report required under paragraph (1).

“(c) RESOLUTION OF DISAPPROVAL.—Notwithstanding the requirements in subsection (b) having been met, a subsequent arrangement referred to in subsection (a) shall not become effective if during the time specified in subsection (b)(2), Congress adopts, and there is enacted, a joint resolution stating in substance that Congress does not favor such subsequent arrangement. Any such resolution shall be considered pursuant to the procedures set forth in section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159(i)), as amended by section 205 of this Act.

“SEC. 202. INITIATIVES AND NEGOTIATIONS RELATING TO AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION.

“[Amended section 2153 of Title 42, The Public Health and Welfare.]

“SEC. 203. ACTIONS REQUIRED FOR RESUMPTION OF PEACEFUL NUCLEAR COOPERATION.

“[Amended section 2158 of Title 42.]

“SEC. 204. UNITED STATES GOVERNMENT POLICY AT THE NUCLEAR SUPPLIERS GROUP TO STRENGTHEN THE INTERNATIONAL NUCLEAR NONPROLIFERATION REGIME.

“(a) CERTIFICATION.—Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to the appropriate congressional committees that it is the policy of the United States to work with members of the Nuclear Suppliers Group

(NSG), individually and collectively, to agree to further restrict the transfers of equipment and technology related to the enrichment of uranium and reprocessing of spent nuclear fuel.

“(b) PEACEFUL USE ASSURANCES FOR CERTAIN BY-PRODUCT MATERIAL.—The President shall seek to achieve, by the earliest possible date, either within the NSG or with relevant NSG Participating Governments, the adoption of principles, reporting, and exchanges of information as may be appropriate to assure peaceful use and accounting of by-product material in a manner that is substantially equivalent to the relevant provisions of the Agreement.

“(c) REPORT.—

“(1) IN GENERAL.—Not later than six months after the date of the enactment of this Act [Oct. 8, 2008], and every six months thereafter, the President shall transmit to the appropriate congressional committees a report on efforts by the United States pursuant to subsections (a) and (b).

“(2) TERMINATION.—The requirement to transmit the report under paragraph (1) terminates on the date on which the President transmits a report pursuant to such paragraph stating that the objectives in subsections (a) and (b) have been achieved.

“SEC. 205. CONFORMING AMENDMENTS.

“[Amended section 2159 of Title 42.]”

[Functions of President under section 201(b) of Pub. L. 110-369, set out above, delegated to Secretary of Energy by Memorandum of President of the United States, May 4, 2010, 75 F.R. 27155.]

[Functions of President under section 204(c) of Pub. L. 110-369, set out above, delegated to Secretary of State by Memorandum of President of the United States, Mar. 10, 2010, 75 F.R. 13427.]

CERTIFICATIONS PURSUANT TO THE UNITED STATES-INDIA NUCLEAR COOPERATION APPROVAL AND NONPROLIFERATION ENHANCEMENT ACT (PUBLIC LAW 110-369)

Determination of President of the United States, No. 2009-6, Oct. 20, 2008, 73 F.R. 63841, provided:

Memorandum for the Secretary of State

Pursuant to section 102(c) and section 204(a) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, I hereby certify that:

1. Entry into force and implementation of the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy pursuant to its terms is consistent with the obligation of the United States under the Treaty on the Non-Proliferation of Nuclear Weapons not in any way to assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and

2. It is the policy of the United States to work with members of the Nuclear Suppliers Group, individually and collectively, to agree to further restrict the transfers of equipment and technology related to the enrichment of uranium and reprocessing of spent nuclear fuel.

You are authorized and directed to publish this determination in the Federal Register.

GEORGE W. BUSH.

Determination of President of the United States, No. 2010-04, Feb. 3, 2010, 75 F.R. 7337, provided:

Memorandum for the Secretary of State

Pursuant to section 104 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110-369), I hereby determine and certify that:

1. The Agreement between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities, as approved by the Board of Governors of the International Atomic Energy Agency on August 1, 2008 (the ‘Safeguards Agreement’), has entered into force; and

2. The Government of India has filed a declaration of facilities pursuant to paragraph 13 of the Safeguards

Agreement that is not materially inconsistent with the facilities and schedule described in paragraph 14 of the Separation Plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the Separation Plan.

You are authorized and directed to publish this determination in the Federal Register.

BARACK OBAMA.

§ 8002. 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 the those¹ 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 chapter, 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 [42 U.S.C. 2153(a)(1), (3)–(9)].

(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.

(Pub. L. 109–401, title I, §103, Dec. 18, 2006, 120 Stat. 2727.)

¹ So in original.