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U.S.-India Nuclear Cooperation: A Side-By-Side Comparison of Current Legislation

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Summary

In mid-March 2006, the Bush Administration proposed legislation to create an exception for India from certain provisions of the Atomic Energy Act to pave the way for a future nuclear cooperation agreement. After hearings in April and May, the House International Relations Committee and the Senate Foreign Relations Committee considered bills in late June 2006 to provide an exception for India to certain provisions of the Atomic Energy Act related to a peaceful nuclear cooperation agreement. This report provides a thematic side-by-side comparison of the provisions of the two bills, H.R. 5682 and S. 3709, with the Administration's proposed legislation, H.R. 4974/S. 2429.

The report concludes with a list of CRS resources that provide further discussion and more detailed analysis of the issues addressed by the legislation presented in the table. This reported will be updated as necessary.

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Overview

In July 2005, President Bush announced his intention to conclude a peaceful nuclear cooperation agreement with India. India, which is not a party to the Nuclear Nonproliferation Treaty (NPT), is considered under U.S. law to be a non-nuclear weapon state, yet has tested nuclear weapons and has an ongoing nuclear weapons program. For these reasons, U.S. nuclear cooperation under the Atomic Energy Act (AEA) would require certain waivers and determinations from the President before nuclear cooperation with a state such as India could proceed.

The Administration proposed legislation (introduced as H.R. 4974/ S. 2429) in March 2006 that, in addition to providing waivers of relevant provisions of the AEA (Sections 123 a. (2), 128, and 129), would have allowed a nuclear cooperation agreement with India to enter into force without a vote from Congress, as though it conformed to AEA requirements. In late June, the House International Relations Committee and Senate Foreign Relations Committee reported their versions of legislation (H.R. 5682 and S. 3709), both of which provide the requisite waivers, retain the requirement for a joint resolution of Congress for such an agreement to enter into force and contain some restrictions.

H.R. 5682

The House International Relations Committee met on June 27, 2006 to consider H.R. 5682, "United States and India Nuclear Cooperation Promotion Act of 2006," introduced on June 26 by Representative Hyde. The Committee voted to adopt 6 of 12 amendments (one was withdrawn):

- Representative Royce offered an amendment to ensure that nothing in the Act shall be interpreted as permitting any civil nuclear cooperation with India that would in any way assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons (Section 4 (d) (1));
- Representative Sherman offered an amendment to strengthen one of the determinations the President must make to implement the

¹ The National Journal and Congressional Quarterly wrote reports of the HIRC mark-up, available at [http://nationaljournal.com/members/markups/2006/06/mr_20060627_5.htm] and [http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/committees/109/committees109-2006062700228055.html@committees&metapub=CQ-COMMITTEEMARKUPS&searchIndex=0&seqNum=1].

- waivers pertaining to the Nuclear Suppliers Group (NSG), stipulating that the required NSG decision would not permit nuclear commerce with any other non-nuclear weapon state that does not have full-scope International Atomic Energy Act (IAEA) safeguards (Section 4 (b) (7)).
- Representative Schiff offered an amendment with three components: to add a provision to U.S. policy with respect to South Asia (Section 3 (b)(7)) encouraging India not to increase its production of fissile material at military facilities pending a multilateral moratorium on production of such material for nuclear weapons; to add a reporting requirement for the Presidential submission to implement the waivers (Section 4 (c) (2) (I)) on steps taken to ensure the U.S. transfers will not be replicated by India or used in its military facilities and that U.S. nuclear fuel supply does not facilitate military production of high-enriched uranium or plutonium; and to add a reporting requirement for an annual report on the same (Section 4 (o) (2) (C)).
- Representative Crowley offered an amendment to add a requirement (Section 4 (o)(3)) for an annual report on new Indian nuclear facilities.
- Representative Berkley offered two amendments related to India's spent fuel disposal: an annual report describing the disposal of spent nuclear fuel from India's civil nuclear program (Section 4 (o) (4), and a statement of policy that any spent civilian nuclear fuel in India that might be stored in the United States is considered by Congress under existing procedures of the Atomic Energy Act (Section 3 (b) (7)).

An amendment by Ms. Berkley to prohibit any Indian spent fuel from being stored in the United States was rejected by a vote of 15-19. The Committee also voted down four other amendments, including two by Representative Berman designed to place limits on U.S. cooperation until India halts production of fissile material for nuclear weapons. The first Berman amendment, rejected by a vote of 13-32, sought to condition the President's use of waiver authority (by adding a new determination by the President in Section 4 (b) of the bill) on India's adherence to a unilateral or multilateral moratorium or a multilateral treaty prohibiting the production of fissile material for nuclear weapons. The second amendment, rejected by a vote of 12-31, sought to restrict transfers of U.S. nuclear material under a cooperation agreement until such time that India halted fissile material production for weapons, either by adhering to a unilateral or multilateral moratorium, or a multilateral treaty. The Committee also rejected by a vote of 10-32 an amendment by Representative Sherman to condition the President's use of waiver authority on an additional determination, under Section 4 (b) of H.R. 5682, that India's nuclear weapons program was not using more domestic uranium than it had before July 2005. The amendment would have attached an annual certification that required termination of nuclear cooperation if the certification could not be made. Finally, the Committee rejected, by a vote of 4-37, an amendment by Representative Lee that would have required India to join the Nuclear Nonproliferation Treaty (NPT) before the President could exercise his waiver authority.

S. 3709

On June 29, 2006, the Senate Foreign Relations Committee considered legislation (See Senate Report 109-288) to create an exception for India from relevant provisions of the Atomic Energy Act.² The Committee voted to adopt 2 of 3 amendments:

- Senator Chafee offered an amendment making it U.S. policy to ensure that exports of nuclear fuel to India did not encourage India to increase its production of fissile material (Section 103 (9));
- Senator Obama offered an amendment to ensure that the United States did not encourage other states to continue nuclear exports to India, if the United States exports to India terminated under U.S. law (Section 102 (6)).

The Committee rejected an amendment by Senator Feingold requiring an additional presidential determination in Section 105 of the bill by a vote of 5-13. The Feingold amendment would have conditioned the President's use of waiver authority on a determination that U.S. civil nuclear assistance to India would in no way assist, encourage, or induce India to manufacture nuclear weapons or nuclear devices. The amendment was identical in text to the Schiff amendment to H.R. 5682, but sought instead to require a determination rather than a report.

Details on the mark-up are available at Congressional Quarterly, [http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/committees/109/committees109-2006062900228090.html@committees&metapub=CQ-COMMITTEEMARKUPS&searchIndex=0&seqNum=1] for report of the mark-up.

Table 1: Comparison of Current Legislation on Waivers for U.S.-India Nuclear Cooperation

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Waiver authority	Provides authority for President to waive Atomic Energy Act (AEA) requirements.	Section 1 (a): President may waive sections of AEA (see below) if he makes a determination.	Section 4 (a): Same as H.R. 4974.	Section 104 (a): Same as H.R. 4974.
Section 123 a. (2) of Atomic Energy Act (AEA)	Full-scope safeguards.	Section 1 (a) (1): Waived AND the future cooperation agreement enters into force as though it met all Section 123 a. requirements (does not require a Joint Resolution of Approval).	Section 4 (a) (1): Waived BUT entry into force requires Joint Resolution of Approval as all other exempted agreements (See also Section 4 (e)).	Section 104 (a) (1): Equivalent to H.R. 5682. See Section 104 (b).
Section 128 of AEA	Annual review by Congress of export license for an agreement exempted from full- scope safeguards requirement.	Section 1 (a) (2): Application of Section 128 waived without conditions.	Section 4 (a) (2): Waiver ends if India engages in any Section 129 actions (see description below for Section 129), except for its ongoing weapons program [129 a. (1) (D)] and future reprocessing transfers to a non-nuclear weapon state [129 a. (2) (C)].	Section 104 (a) (2): Section 128 waived without conditions.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Section 129 of AEA	a. Terminate U.S. nuclear exports if President determines that a (1) non-nuclear weapon state: (A) Has tested a nuclear device (B) terminates or abrogates IAEA safeguards (C) materially violates IAEA safeguards (D) Has ongoing nuclear weapons program OR if President determines (2) any state (A) materially violates a cooperation agreement (B) assists non-nuclear weapon state in nwrelated activities (C) Has agreement or transfers reprocessing material, technology, or equipment to a non-nuclear weapon state.	Section 1 (a) (3): "Sanctions" under Section 129 waived.	Section 4 (a) (3): Waiver of Section 129 limited to: Indian nuclear tests before 2005 [Section 129 a. (1) (A)] and ongoing nuclear weapons activities [Section 129 a. (1) (D)].	Section 104 (a) (3): Equivalent to H.R. 5682 but worded differently. The language specifies waiver for sanctions under Section 129 a. (1) (D), but covers the 1998 Indian nuclear test by waiving any Section 129 sanctions regarding any actions that occurred before July 18, 2005. (There has only been one Presidential determination for India prior to 2005 that is relevant to Section 129 – for the Indian nuclear test in 1998).

Issue/Provision		H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Determination	Establishes threshold for President to use waiver authority.	Section 1b: President must make 1 determination that 7 actions have occurred (see below).	Section 4 (b): Same requirements with minor changes that strengthen measures. Specifies safeguards in perpetuity.	Section 105: Same requirements with minor changes that strengthen measures. Specifies safeguards in perpetuity.
Separation plan	Identification of Indian civilian nuclear facilities to US and IAEA.	(1) India has provided to US and IAEA a credible plan to separate civil and military facilities, materials, and programs, and has filed a declaration regarding its civil facilities with the IAEA.	Section 4 (b) (1): Same language as H.R. 4974.	Section 105 (1) and (2) Same language as H.R. 4974 but separates the declaration provision into Section 105 (2).
Safeguards plan	India committed to placing additional civilian nuclear facilities under IAEA safeguards under the July 18, 2005, Joint Statement.	(2) Entry into force of safeguards agreement in accordance with IAEA practices for India's civil nuclear facilities as declared in the plan.	Section 4 (b) (2): Specifies safeguards in perpetuity in accordance with IAEA standards, principles and practices. Also mentions safeguards on materials and programs, including materials used in or produced through use of civil nuclear facilities.	Section 105 (3) Specifies safeguards in perpetuity in accordance with IAEA standards, principles and practices. Also mentions safeguards on materials and programs.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Additional Protocol	An agreement with IAEA to enhance inspections, access, and declarations relevant to safeguards.	(3) Making satisfactory progress toward implementation.	Section 4 (b) (3) Specifies "substantial progress" consistent with IAEA principles, practices and policies.	Section 105 (4) Specifies "substantial progress."
FMCT (Fissile Material Production Cutoff Treaty)	Future negotiations to end production of fissile material for nuclear weapons.	(4) Working with the United States for conclusion of a multilateral FMCT.	Section 4 (b) (4) Specifies working "actively" for the "early" conclusion.	Section 105 (5) Equivalent to H.R. 4974.
Halting enrichment/ reprocessing transfers	July 18, 2005, commitment by India to support U.S. policy to restrict access to enrichment and reprocessing.	(5) Supporting international efforts to prevent the spread of enrichment and reprocessing technology.	Section 4 (b) (5) Specifies "working with and supporting US and international efforts."	Section 105 (6) Specifies preventing spread "to any state that does not already possess full-scale, functioning enrichment and reprocessing plants."
Export controls	July 18, 2005, commitment by India to strengthen export controls and adhere to international norms, including Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines.	(6) Ensuring that necessary steps are taken to secure nuclear materials and technology through comprehensive export control legislation and regulations; and harmonization and adherence to MTCR and NSG guidelines.	Section 4 (b) (6) Specifies enactment and enforcement of export control laws; specifies harmonization of laws, regulations, policies and practices with the policies and practices of MTCR and NSG.	Section 105 (7) Specifies effective enforcement actions.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Nuclear Suppliers Group (NSG)	NSG guidelines currently prohibit nuclear transfers to India; a decision must be taken to allow cooperation. NSG operates by consensus.	(7) Supply to India is consistent with US participation in NSG. This assumes that the NSG will agree to an exception for exports to India.	Section 4 (b) (7) Specifies NSG consensus decision that does not permit exception for another non-nuclear weapon state.	Section 105 (8) Specifies NSG consensus decision that does not permit exception for another non-nuclear weapon state.
Report on Determination	Notify Congress that 7 actions have occurred to allow waiver.	Section 1 c. Report to HIRC, SFRC that 7 actions have occurred, including basis for determination.	Section 4 (c) (2): Provides details about what reports to HIRC, SFRC should contain, specifically on the 7 actions. Also, two other reports are required for the determination: a description of the scope of the 123 agreement with the US and the steps taken to ensure that U.S. assistance will not aid India's nuclear weapons program (Schiff amendment).	those reports are not tied to

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Termination	Establish a threshold for halting U.S. exports to India (now contained in Section 129 of the AEA and in the proposed peaceful nuclear cooperation agreement itself, which is not yet drafted).	Section 1d. All waiver authorities (for Section 123 a. (2), Section 128, and Section 129) terminate if India tests a nuclear explosive device.	Section 4 (a) (3): All termination provisions of Section 129 of the AEA (except 129 a.(1) (D)) would be in effect (see description of sec.129 waiver above). ALSO Section 4 (d) (3): Exports would terminate if India makes a materially significant transfer of items in violation of NSG guidelines, or of items in	(except 129 a.(1) (D)) would be in effect (see description of sec.129 waiver above). No equivalent provision to H.R. 5682 but Section 108
			violation of MTCR guidelines.	annual certification that India is in full compliance with all July 18, 2005 commitments.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Sense of Congress	To describe Congress's policy objectives with respect to nuclear cooperation with India.	None	Section 2 Notes importance of nonproliferation and NPT and focuses on how the United States could strengthen its nonproliferation policy by engaging NPT outliers like India. Sets up criteria (nonproliferation record, democratic government, support for U.S. nonproliferation aims) for engagement and notes India meets criteria.	Section 102 Notes that engaging India is in the national security interest of the United States, but need to minimize proliferation risk. United States should not facilitate trade by other nations if U.S. exports terminated.

Issue/Provision		H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Statements of Policy (I)	To describe U.S. policy objectives, with respect to nonproliferation.	None	Section 3 (a) General (1) Oppose nuclear weapons development. (2) Support peaceful uses of nuclear energy, but only with full NPT compliance. (3) Strengthen NSG	Section 103 Section 103 (8): maintain support for NPT. No equivalent Similar to Section 103 (6)
			implementation, including cutoff of exports for violations.	on support for NSG.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Statements of Policy (II)	To describe U.S. policy objectives, with respect to South Asia, U.SIndia bilateral relations, and South Asian proliferation.	None	Section 3 (b) South Asia (1) Fissile material production moratorium for India, Pakistan, China.	Section 103 (1), but moratorium does not include China.
			(2) FMCT	No equivalent
			(3) Other nonproliferation activities, like PSI, Australia Group, Wassenaar, Convention on Supplementary Compensation.	Section 103 (2), but no mention of Convention on Supplementary Compensation.
			(4) Support for U.S. policies to prevent Iran from acquiring nuclear weapons.	No equivalent
			(5) Cap, roll back and eliminate South Asian nuclear arsenals.	No equivalent
			(6) No spent fuel transfer without Congressional approval.	No equivalent
			(7) Encourage cap on production of fissile material for weapons, pending moratorium.	Similar to Section 103 (9)

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Statements of Policy (III)		None	No equivalent provision	Section 103 (3): Full compliance with all nonproliferation obligations.
			No equivalent provision	Section 103 (4): Ensure reliability of safeguards and Additional Protocol.
			No equivalent provision	Section 103 (5): Agreement must meet all other Section 123 a. requirements.
			No equivalent provision	Section 103 (6): Consistency with NSG guidelines.
			No equivalent provision	Section 103 (7): Work with NSG members to restrict transfers of enrichment and reprocessing, also to India.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Expedited procedures	To provide procedures for expedited consideration of Joint Resolution of Approval	None, except as provided already in Section 130 of AEA	Section 4 (f) and (g): track with existing law (Section 130 of AEA). Section 4 (h): Changes committee discharge from 45 to 60 days Section 4 (i): Adds floor consideration, which is not in Section 130 of AEA.	None, except as provided already in Section 130 of AEA.
End-Use Monitoring	To provide reasonable assurances that the recipient is complying with relevant requirements, terms and conditions of U.S. export licenses.	None	None	Section 107 requires following measures: (1) Obtain and implement assurances and conditions regarding end-use monitoring; (2) a detailed system of reporting on technology transfers, including those authorized by Section 57 b of AEA. (3) Fall-back safeguards, should IAEA be unable to implement safeguards in India.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Restrictions on cooperation		None	Section 4 (d) (1) No assistance that would aid India's nuclear weapons program.	No equivalent
			(2) No transfers if they would violate NSG guidelines.	Similar to Section 103 (6): to act in a manner fully consistent with NSG guidelines (but this is only a Statement of Policy).
			(4) President should seek to prevent cooperation by other states with India if United States terminates exports.	Section 102 (6): United States should not seek to facilitate cooperation by other states with India if United States terminates exports.
			No equivalent provision	Section 106 Bans cooperation on enrichment, reprocessing, and heavy water materials, equipment, and technology with exception for multilateral and bilateral fuel cycle cooperation, if President determines that the export will not improve India's ability to produce nuclear weapons. ability to produce fissile material for weapons.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Other reporting		None	Section 4 (o) (1): annual report on U.S. policy objectives for South Asia (i.e., steps taken by the United States and India, extent of success, and cooperation by other countries).	No equivalent
			Section 4 (o) (2): annual report on U.S. nuclear exports to India, including estimates of Indian uranium mining, fissile material and nuclear weapons production rates; as well as impact of imported uranium on such rates. Report also to describe India's use of any U.S. nuclear equipment, material or technology in an uninspected facility; replication of anything transferred and whether imported nuclear fuel has helped to increase fissile material production for weapons.	Section 108 (b) requires annual report on Implementation and Compliance.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Other reporting, continued			Section 4 (o) (3): annual report on new Indian nuclear facilities.	Section 108 (b) (2): list of licenses approved by NRC, DOE, Commerce or any other U.S. authorizations of exports and reexports of nuclear materials and equipment.
			Section 4 (o) (4): annual report on India's spent fuel disposal.	Section 108 (b) (1): description of additional nuclear facilities/materials India places under IAEA safeguards.
		None	No equivalent provision	Section 108 (b) (3): Any significant nuclear commerce between India and other countries that does not comply with NSG guidelines, or would not meet standards applied to U.Sorigin material.

Issue/Provision	Description/Purpose	H.R. 4974/S. 2429 as introduced	H.R. 5682 as reported	S. 3709 as reported
Other Presidential certifications		None	None	Section 108 (b) (4): That India is in full compliance with following obligations (listed in Section 108 (a) (1)): Joint Statement commitments, separation plan, safeguards agreement, Additional Protocol, 123 agreement, terms and conditions of approved export licenses. If certification is not possible, report on steps, responses and implications.
Consultation with Congress		None	Section 4 (e) (2): Requires monthly consultations with Congress on progress in 123 agreement negotiations and IAEA safeguards agreement negotiations. No equivalent provision	Section 108 (a): keep Congress fully informed on India's: (1) non-compliance (2) nuclear facility construction (3) fissile material production (4) changes in operational status of nuclear facilities.

Additional Resources

CRS Report RL33016, U.S. Nuclear Cooperation with India: Issues for Congress, by Sharon Squassoni.

CRS Report RL33292, *India's Nuclear Separation Plan: Issues and Views*, by Sharon Squassoni.

CRS Report RL33072, *U.S.-India Bilateral Agreements in 2005*, by K. Alan Kronstadt.

CRS Report RS22474, Banning Fissile Material Production for Nuclear Weapons: Prospects for a Treaty (FMCT) by Sharon Squassoni, Andrew Demkee, and Jill Marie Parillo.