



## **Memorandum**

March 23, 2006

**TO:** Rep. Edward Markey  
Attention: Jeff Duncan

**FROM:** Sharon Squassoni  
Specialist in National Defense  
Foreign Affairs, Defense, and Trade Division

**SUBJECT:** Analysis of Proposed Legislation to Create an Exception for India from Certain Sections of the Atomic Energy Act

Per your request, this memorandum analyzes the legislation proposed by the Bush Administration to create an exception for India from certain sections of the Atomic Energy Act (AEA). At the Administration's request, Representatives Hyde and Lantos introduced H.R. 4974 and Senator Lugar introduced S.2429 on March 16, 2006. This memorandum describes the existing approval process for a proposed nuclear cooperation agreement with India, the proposed legislation, its impact on congressional approval and review of such cooperation, and potential questions raised by the legislation. A separate CRS memorandum prepared by Todd Tatelman of the American Law Division analyzes the effect of the 1983 *Chadha* decision on the AEA. Please call me at 7-7745 if you have any questions.

### **Background<sup>1</sup>**

The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) governs, among other things, U.S. nuclear cooperation with other states.<sup>2</sup> Three relevant sections of the Act, as amended, would restrict U.S. nuclear cooperation with India unless the President submits several determinations to Congress: Section 123 a. (2), Section 128, and Section 129.<sup>3</sup> These and other sections were added to the AEA in the wake of India's 1974 nuclear test by the Nuclear Non-Proliferation Act of 1978 (NNPA).<sup>4</sup>

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<sup>1</sup> See CRS Report RL 33016, *U.S. Nuclear Cooperation with India: Issues for Congress* for more background on the U.S. proposed agreement.

<sup>2</sup> Nuclear cooperation includes the distribution of special nuclear material, source material, and byproduct material, to licensing for commercial, medical, and industrial purposes. These terms, "special nuclear material," "source material," and "byproduct material," as well as other terms used in the statute, are defined in 42 U.S.C. 2014.

<sup>3</sup> 42 U.S.C. 2153 a. (2), 42 U.S.C. 2157, and 42 U.S.C. 2158, respectively.

<sup>4</sup> P.L. 95-242; 92 Stat. 120.

At issue are the requirements for full-scope nuclear safeguards contained in Section 123 a. (2) for approval of an agreement for cooperation and in Section 128 for licensing nuclear exports. India, a non-party to the Nuclear Nonproliferation Treaty (NPT), does not have full-scope safeguards, nor is it ever expected to adopt full-scope safeguards, since it has a nuclear weapons program that would preclude them. Also at issue is the requirement in Section 129 to stop exports if a non-nuclear weapon state has detonated a nuclear device after 1978, among other things. India detonated several nuclear devices in 1998.

These three sections of the AEA provide mechanisms for the President to waive those requirements and sanctions (in Section 129), which are spelled out in more detail below. The sections also provide legislative vetoes, in the form of concurrent resolutions, of the presidential determinations. In 1983, however, the Supreme Court decided in *INS v. Chadha* that legislative veto provisions that do not satisfy the bicameralism and presentment requirements of Article I of the Constitution were unconstitutional. In 1985, some parts of the AEA were amended to provide for joint resolutions of approval or disapproval (e.g., Section 123 d.). (See accompanying CRS memorandum by Todd B. Tatelman on the impact of *Chadha* on these issues.) The *Chadha* decision affects how Congress would disapprove of such presidential determinations under existing law and therefore affects the impact of the Administration's proposed legislation.

## Requirements under Existing Law

**Agreements for Cooperation.** Section 123 of the AEA (42 U.S.C. 2153) specifies what must happen before nuclear cooperation can take place.

- ! **Section 123 a.** states that the proposed agreement shall include the terms, conditions, duration, nature, and scope of cooperation and lists nine criteria that the agreement must meet. It also contains provisions for the President to exempt an agreement from any of the nine criteria, and includes details on the kinds of information the executive branch must provide to Congress;
- ! **Section 123 b.** specifies the process for submitting the text of the agreement to Congress;
- ! **Section 123 c.** specifies how Congress approves cooperation agreements that are limited in scope (e.g., do not transfer nuclear material or cover reactors larger than 5 MWe.)<sup>5</sup>
- ! **Section 123 d.** specifies how Congress approves agreements that do cover significant nuclear cooperation (transfer of nuclear material or reactors larger than 5 MWe), including exempted agreements.

The United States has about 27 agreements for cooperation in place now, and had an agreement with India from 1963 to 1993. It should be noted that such agreements for cooperation are “framework” agreements – they do not guarantee that cooperation will take place or that nuclear material will be transferred, but rather set the terms of reference

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<sup>5</sup> In the 1954 Act, the provisions in Section 123 c. covered all agreements for cooperation. Section 123 d. was added in 1958 (P.L. 85-479) to cover military-related agreements. In 1974, P.L. 93-485 amended Section 123 d. to include agreements that covered reactors producing more than 5 MW thermal or special nuclear material connected therewith.

and provide authorization for cooperation.<sup>6</sup> The United States reportedly has given India its draft agreement for cooperation, but negotiations have not yet begun. The process of negotiation could last anywhere from a few months to a year or more.

Section 123 a. lists nine criteria that an agreement must meet unless the President exempts the agreement.<sup>7</sup> These are guarantees that (1) safeguards on nuclear material and equipment transferred continue in perpetuity; (2) full-scope safeguards are applied in non-nuclear weapon states; (3) nothing transferred is used for any nuclear explosive device or for any other military purpose; (4) U.S. has right of return if the cooperating state detonates a nuclear explosive device or terminates or abrogates an International Atomic Energy Agency (IAEA) safeguards agreement; (5) there is no transfer of material or classified data without U.S. consent; (6) physical security is maintained; (7) no enrichment or reprocessing without prior approval; (8) storage is approved by United States for plutonium and highly enriched uranium; and (9) anything produced through cooperation is subject to all of the above requirements.

In the case of India, the most difficult of these requirements to meet is the full-scope safeguards requirement for non-nuclear weapon states (Sec. 123 a. (2)).<sup>8</sup> The President may exempt an agreement for cooperation from any of the requirements in Section 123 a. if he determines that meeting the requirement would be “seriously prejudicial to the achievement of U.S. non-proliferation objectives or otherwise jeopardize the common defense and security.” An exempted agreement would not become effective “unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement.”<sup>9</sup> In other words, both chambers of Congress must approve the agreement if it does not contain all of the Section 123 a. requirements.

If Congress votes to approve an agreement for cooperation that was exempted because the recipient state did not have full-scope safeguards (Section 123 a. (2)), such approval would essentially waive the Nuclear Regulatory Commission’s (NRC) obligation to consider full-scope safeguards as an export license authorization criterion under Section 128. However, Congress would still have the authority to review one export license authorization approximately every 12 months after the agreement for cooperation has entered into force. (See discussion below)

Section 123 d., in part, states the following:

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<sup>6</sup> The 1963 U.S.-India cooperation agreement is anomalous in that it did guarantee fuel for the Tarapur reactors, even though other U.S. nuclear cooperation agreements reportedly have not included any such guarantees. United States General Accounting Office, “Nuclear Agreement: Cooperation Between the United States and the People’s Republic of China,” GAO/NSIAD-86-21BR, November 1985, Appendix I-1.

<sup>7</sup> These are listed in Section 123 a., paragraphs (1) through (9), 42 U.S.C. 2153.

<sup>8</sup> India is considered to be a non-nuclear weapon state because it did not, as defined by the Nuclear Nonproliferation Treaty, explode a nuclear device before January 1, 1967. 42 U.S.C. 2153 a.(2). Section 4 (b) of the NNPA specifies that all other terms used in the NNPA not defined in Section 4 “shall have the meanings ascribed to them by the 1954 Act, the Energy Reorganization Act of 1974 and the Treaty [NPT].” S.Rept. 95-467 further clarified that under the NPT, the five nuclear weapon states are the U.S., U.K., China, the Soviet Union, and France. *U.S. Code Congressional and Administration News*, 95<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1978, vol. 3, p. 329.

<sup>9</sup> This new requirement was added by the Export Administration Amendments Act of 1985, P.L. 99-64, Section 301 (b) (2), 99 Stat. 120.

if Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

**Export Licensing.** In addition to specifying criteria for framework agreements, the AEA sets out procedures for licensing exports (Sections 126, 127, and 128 codified as amended at 42 U.S.C. 2155, 2156, 2157). The Nuclear Regulatory Commission (NRC) is required to meet criteria in Sections 127 and 128 in authorizing export licenses; Section 128 contains the requirement for full-scope safeguards for non-nuclear weapon states.<sup>10</sup> Section 126 b. (2) contains a provision for the President to authorize an export in the event that the NRC deems that the export would not meet Section 127 and 128 criteria. The President must determine “that failure to approve an export would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security.” The President would submit his executive order, along with a detailed assessment and other documentation, to Congress for 60 days of continuous session. After 60 days of continuous session, the export would go through unless Congress passes a concurrent resolution of disapproval.<sup>11</sup>

In the case of exports pursuant to an exempted agreement for cooperation (i.e., exempted from the full-scope safeguards requirement), as described above, the NRC would not have to meet the full-scope safeguards requirement in assessing whether it could issue export licenses (Section 128 b. (3)). Congress would review one license every twelve months. If Congress passed a resolution of disapproval, no further exports could be made during that Congress.<sup>12</sup>

In both cases, Section 128 contains a provision for the President to waive termination of exports by notifying the Congress that the state has adopted full-scope safeguards or that the state has made significant progress toward full-scope safeguards, or that U.S. foreign policy interests dictate reconsideration. Such a determination would become effective unless Congress disagrees with the President's determination.<sup>13</sup>

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<sup>10</sup> See CRS Report RL 33016, *U.S. Nuclear Cooperation with India: Issues and Views*, for a description of the Section 127 requirements, which mirror those in Section 123 (a).

<sup>11</sup> In light of the *Chadha* decision, passing a concurrent resolution could invite a legal challenge. Although this is not provided for in the AEA, Congress could choose to pass a joint resolution of disapproval or a bill stating in substance it did not approve.

<sup>12</sup> Section 128 b. (3) refers to a “resolution of disapproval,” and this would likely be a joint resolution of disapproval, in light of the *Chadha* decision.

<sup>13</sup> Section 128 b. (2) refers to a “concurrent resolution.” In light of the *Chadha* decision, Congress could pass a joint resolution disagreeing with the President's determination, or pass a bill barring nuclear exports for a certain period of time to that country.

**Termination of Cooperation.** Section 129 of the AEA (42 U.S.C. 2158) requires ending exports of nuclear materials and equipment or sensitive nuclear technology to any non-nuclear-weapon state that, after March 10, 1978, the President determines to have:

- ! detonated a nuclear explosive device;
- ! terminated or abrogated IAEA safeguards;
- ! materially violated an IAEA safeguards agreement; or
- ! 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.”

In addition, Section 129 would also halt exports to any nation the President determines:

- ! to have materially violated the terms of an agreement for cooperation with the U.S.;
- ! assisted, encouraged, or induced any other non-nuclear weapon state to obtain nuclear explosives or the materials and technologies needed to manufacture them; or
- ! re-transferred or entered into an agreement for exporting reprocessing equipment, materials or technology to another non-nuclear weapons state.

The President can waive termination if he 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 President must submit his determination to Congress, which is then referred to the House International Relations Committee and the Senate Foreign Relations Committee for 60 days of continuous session. The determination becomes effective unless Congress opposes it.<sup>14</sup>

**Implementing a Nuclear Cooperation Agreement with India under Current Law.** The process of implementing an agreement under existing law would be, roughly, as follows:

- ! The President would determine that meeting the requirement for full-scope safeguards in an agreement for cooperation with India would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize that common defense and security.
- ! The President would submit the “exempted” or nonconforming agreement to Congress along with a Nuclear Proliferation Assessment Statement to the Senate Committee on Foreign Relations and the House Committee on International Relations and would consult for 30 days with

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<sup>14</sup> Section 129 specifies that the President’s determination “shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination.” Again, in light of *Chadha*, Congress could choose to enact a joint resolution stating it does not favor the determination, or enact a law expressly rejecting the determination.

the Committees regarding the consistency of the terms of the proposed agreement with all the requirements of the AEA.

- ! The exempted agreement would lie before Congress for 60 days of continuous session (once a Nuclear Proliferation Assessment Statement is received).<sup>15</sup>
- ! An exempted agreement would become effective only if Congress enacts a joint resolution of approval.
- ! If the exempted agreement is approved, no congressional review of exports is required until 12 months after the first export has been licensed. Thereafter, an annual review is required per Section 128. In the event that Congress would pass a joint resolution of disapproval for an export authorization, the President could waive termination of exports, for example, by notifying the Congress that U.S. foreign policy interests dictate reconsideration. Exports could continue if Congress did not disagree with the determination.<sup>16</sup>
- ! Prior to the first export, the President could waive a cutoff in exports pursuant to Section 129, by determining 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.” If Congress passed a joint resolution of disapproval within 60 days of continuous session to halt exports again, and the President did not veto the resolution, exports would cease.<sup>17</sup>

## Description of Proposed Legislation

On March 9, 2006, the Administration submitted its proposed legislation to the chairmen of the House Committee on International Relations and the Senate Committee on Foreign Relations. At the Administration’s request, Representatives Hyde and Lantos introduced H.R. 4974, and Senator Lugar introduced S. 2429, both with the titles “To authorize the President to waive the application of certain requirements under the Atomic Energy Act of 1954 with respect to India.”

The proposed legislation seeks to provide an alternative to the President for waiving Sections 123 a. (2), 128, and 129 of the AEA. The proposed legislation would require the President, instead, to make a determination that the following actions have occurred:

1. India has provided the U.S. and the IAEA with a credible plan to separate civil and military facilities, materials, and programs, and has filed a declaration regarding its civil facilities with the IAEA;
2. An agreement has entered into force 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 paragraph (1) above;
3. India and the IAEA are making satisfactory progress toward implementing an Additional Protocol that would apply to India’s civil nuclear program;

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<sup>15</sup> Specific procedures are found in AEA, Sections 123 and 130.

<sup>16</sup> Congress could disagree with the President’s determination in the form of a joint resolution of disapproval.

<sup>17</sup> Section 129 calls for a concurrent resolution of disapproval, but as noted above, the legislative veto was ruled unconstitutional by the *Chadha* decision.

4. India is working with the United States for the conclusion of a multilateral Fissile Material Cutoff Treaty;
5. India is supporting international efforts to prevent the spread of enrichment and reprocessing technology;
6. India is ensuring that the necessary steps are being taken to secure nuclear materials and technology through the application of comprehensive export control legislation and regulations, and through harmonization and adherence to Missile Technology Control Regime (MTCR) and Nuclear Suppliers Group (NSG) guidelines; and
7. Supply to India by the United States under an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act is consistent with U.S. participation in the Nuclear Suppliers Group.

According to the proposed legislation, once the President makes a determination that all these actions have taken place, he can waive the full-scope safeguards requirement in Section 123 a. (2) of the AEA for an agreement for cooperation with India and submit the agreement through the routine approval process as if it were not exempted. Such an agreement would enter into force unless Congress passed a joint resolution of disapproval. The President would be able to waive the application of Section 128 and the application of sanctions under Section 129 with respect to India. In effect, waiving Section 128 would eliminate the annual Congressional review of exports to India. Waiving Section 129 would eliminate the requirement for an immediate Presidential waiver of the termination of exports, as outlined above.

The proposed legislation would allow for the application of Section 129 sanctions if India tested a nuclear device again:

- (d) A determination under subsection (b) shall not be effective if the President determines that India has detonated a nuclear explosive device after the date of enactment of this Act.

However, the proposed legislation would not require ending nuclear exports to India if India engaged in other activities specified in Section 129.

## **Impact of Proposed Legislation**

The proposed legislation presents three major changes from the existing law. First, it would change the approval process from that of an exempted agreement (one that did not meet all Section 123 a. requirements, or non-conforming) to that of a routine, or conforming agreement. This would mean that the U.S.-India nuclear cooperation agreement would automatically enter into force after sitting before Congress for 90 days (30 days of consultation with the relevant committees and 60 days after an NPAS is submitted). It would take a joint resolution of disapproval by Congress, within 90 days, to oppose the agreement. However, a joint resolution of disapproval would have to be signed by the president and therefore risks a veto, essentially requiring a veto-proof two-thirds majority vote to ensure that the agreement would not enter into force.

In practice, a routine approval process for this agreement would mean less time for members to review the agreement and a higher threshold to meet in the event that Congress opposed the agreement. The time limit (90 days of continuous session) on Congressional consideration under a routine approval process could make it more difficult for Congress to thoroughly review the agreement. This could be an important consideration, particularly in the case of India, since it does not meet the nonproliferation criteria under the AEA and has unique status in the nonproliferation regime. The potential impact of this nuclear cooperation agreement on the guidelines of the Nuclear Suppliers Group, which some Members have identified in earlier hearings as a key issue, may merit considerable review. Another practical effect is that opposing an agreement submitted under the routine approval process is more difficult than opposing an exempted agreement. Some Members may find voting for a joint resolution of disapproval more politically sensitive than opposing an exempted agreement, which could simply require not voting at all. A routine approval process would not eliminate Congress' ability to impose conditions on a nuclear cooperation agreement, but could make imposition of conditions more difficult. In the case of the 1985 nuclear cooperation agreement with China, which was submitted by the Administration as a routine agreement that met all the requirements of Section 123 a., Congress chose to pass a joint resolution of approval that contained conditions that delayed entry into force of the agreement for 13 years.<sup>18</sup>

Second, in contrast to existing law, the proposed legislation contains no provisions for Congress to review or counter the President's determinations. It can be argued that *Chadha* weakened Congress' ability substantially to overturn such Presidential determinations, and therefore, that the proposed legislation does not affect Congressional review very much if at all.<sup>19</sup> Congress would always be free to pass new legislation barring nuclear exports. However, such legislation is subject to the possibility of a presidential veto and thus would require more votes to effectively implement Congress' intent.<sup>20</sup>

Third, the proposed legislation has the effect of eliminating Congressional review of subsequent nuclear exports. Administration officials have suggested that the annual review of licenses would be too cumbersome and the process itself has never been implemented.

It is not clear how the legislation as proposed by the Administration affects meeting other requirements of the Atomic Energy Act. Under the AEA, a proposed agreement that does not meet any one of the Section 123 (a) requirements must be presented by the President as an exempted agreement. If Congress, by passing the proposed legislation, enables the President to submit a nonconforming agreement through the regular approval

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<sup>18</sup> See P.L. 99-183, 99 Stat 1174. See CRS Report RL 33016, *U.S. Nuclear Cooperation with India: Issues for Congress*, for more detail.

<sup>19</sup> See accompanying CRS memorandum prepared by Todd B. Tatelman.

<sup>20</sup> For background on the legislative veto, see Louis Fisher, "The Legislative Veto: Invalidated, It Survives," *Law and Contemporary Problems*, Vol 56. No. 4, 1993 pp. 273-292; and Ellen Collier, "Maintaining the Legislative-Executive Balance in Foreign Policy Without the Legislative Veto," August 22, 1983, Appendix A in "Strengthening Executive-Legislative Consultation on Foreign Policy, Foreign Affairs Committee Print, October 1983.

process, will it be possible to ensure that those other 8 criteria in Section 123 (a) are also met, particularly with only 90 days to review the agreement? It is possible that the 30-day consultation with committees could resolve any issues related to the agreement's meeting the other 8 criteria under Section 123 a., but the proposed legislation does not include specific provisions for Congress to reject the President's determination that the agreement meets all of the requirements but Section 123 a. (2). In the case of the 1985 agreement for cooperation with China, there was some ambiguity in the text of the cooperation agreement, which led some Members to suggest that the agreement should be submitted as an exempted agreement.

In addition, Section 129 calls for a termination of exports for more than just the detonation of a nuclear explosive device. It is not clear whether, under the proposed legislation, there would be an automatic cutoff of U.S. exports if India engaged in any of the following activities:

- ! termination or abrogation of IAEA safeguards;
- ! material violation of an IAEA safeguards agreement;
- ! material violation of the terms of an agreement for cooperation with the United States;
- ! assisting, encouraging or inducing any other non-nuclear weapon states to obtain nuclear explosives or the materials and technologies needed to manufacture them; or
- ! re-transferring or entering into an agreement for exporting reprocessing equipment, materials or technology to another non-nuclear weapons state.

## **Potential Questions Raised by the Proposed Legislation**

There could be several reasons the Administration has proposed legislation to create waivers for Sections 123 a. (2), 128 and 129 of the Atomic Energy Act for India. The first is that the President could not determine that meeting the full-scope safeguards requirement for India would be seriously prejudicial to achieving U.S. nonproliferation objectives or otherwise jeopardize the common defense and security. To be credible, there would have to be another U.S. nonproliferation goal or goals deemed more important to attain than full-scope safeguards for nuclear cooperation, which has been a key U.S. nonproliferation objective for almost thirty years.<sup>21</sup> The Bush Administration

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<sup>21</sup> When President Carter determined that withholding exports of U.S. fuel to India's Tarapur reactors in 1980 would be seriously prejudicial to the achievement of U.S. nonproliferation objectives, the State Department reasoned that 1) U.S. policies to discourage reprocessing and the use of plutonium in reactors could be harmed if India interpreted the cutoff as relieving itself of obligations not to reprocess U.S. fuel, retransfer material or take the Tarapur reactors out of safeguards; 2) A cutoff would make nonproliferation dialogue with India impossible; 3) A cutoff would result in India obtaining fuel from elsewhere; 4) A cutoff would reinforce the "perceptions of many countries of the unilateralism of U.S. nonproliferation policy;" 5) A cutoff would encourage India and other countries who argue for completing their own, independent full fuel cycle. See State Department Fact Sheet, June 19, 1980, Reprinted in *State Department Bulletin*, Volume 80, August 1980. P. 67.

has not named specific nonproliferation policies or objectives, beyond a desire to bring India into the “nonproliferation mainstream.”

A second reason for the proposed legislation could be that annual Congressional review of export licenses would inject too much uncertainty into a nuclear relationship that had been terminated by Congressional action in the past. India’s insistence on four different kinds of fuel supply assurances by the United States in its March 7, 2006 Implementation Document underscores the residual bitterness over the cutoff of U.S. nuclear fuel to the Tarapur reactors after 1980.<sup>22</sup> A third reason could be that the requirement under Section 129 for a halt in exports (because India has tested a nuclear device after 1978 and has an ongoing weapons program) is deemed an unnecessary hurdle, particularly since the Administration has decided to enter into a new cooperation agreement despite those two circumstances. As noted above, the proposed legislation does include a mechanism to cut off exports in the future if India tests again.

The wording of the seven requirements also raises some questions. On the “credible” separation plan, the Administration has not defined “credible” for Congress, and has not described its March 2<sup>nd</sup> agreement with India on the separation plan as “credible.” India, on the other hand, has described the plan as credible, but Indian officials are likely referring to the credibility of the plan from a political and strategic perspective, rather than a nonproliferation perspective. Second, India’s safeguards commitment is worded as “in accordance with IAEA practices.” This does not necessarily imply safeguards in perpetuity on reactors, as the Administration has said it sought and obtained from India, in part because the IAEA has no obligation to negotiate safeguards in perpetuity with India.<sup>23</sup> In addition, the IAEA also has “practices” associated with voluntary safeguards arrangements negotiated with the five nuclear weapon states. With respect to India’s obligation to implement an Additional Protocol, the legislation calls for “satisfactory progress,” which is not defined. Does this mean India must sign or ratify an Additional Protocol, or actually begin implementation? Similarly, the obligations to work toward a multilateral fissile material cutoff treaty, supporting international efforts to prevent the spread of enrichment and reprocessing technology and taking necessary steps to secure nuclear materials and technology are worded in a vague enough manner to raise questions about the actual standards applied. Finally, the last requirement stipulates that nuclear supply by the United States would be “consistent with U.S. participation in the NSG,” which provides no assurance of NSG consensus on this new approach, since compliance with NSG guidelines is strictly voluntary.

In sum, the proposed legislation raises several questions about the basis for presidential determinations on India’s nonproliferation commitments. The proposed submission of the non-conforming agreement as a conforming agreement for the purposes of expedited approval raises the question of whether Congress will be able to

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<sup>22</sup> See [http://indianembassy.org/newsite/press\\_release/2006/Mar/sepplan.pdf](http://indianembassy.org/newsite/press_release/2006/Mar/sepplan.pdf)

<sup>23</sup> See “Ongoing Efforts to Implement the U.S.-India Civil Nuclear Agreement,” Special briefing by Under Secretary of State for Political Affairs, R. Nicholas Burns, March 16, 2006. Available at <http://www.state.gov/r/pa/prs/ps/2006/63270.htm>

review the agreement thoroughly. While the legislation appears to facilitate implementation of nuclear cooperation with India, it also appears to reduce congressional reviews, both in substance and process.