

## 10. Atomic Energy Act Provisions on Nuclear Non-Proliferation [42 U.S.C 2153–60]

### COOPERATION WITH OTHER NATIONS

[42 U.S.C. 2153]

#### SEC. 123. COOPERATION WITH OTHER NATIONS.—

No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54a., 57, 64, 82, 91, 103, 104, or 144 [42 U.S.C. 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164] shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements: \* \* \*

b. the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91(c), 144(b), 144(c), or 144(d) [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 [42 U.S.C. 2159]) concerning the consistency of the terms of the proposed agreement with all the requirements of this chapter, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

c. the proposed agreement for cooperation (if not an agreement subject to subsection d.), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130g. [42 U.S.C. 2159(g)]): *Provided, however,* That these committees, after having received such agreement for cooperation, may by

resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], or if entailing implementation of section 53, 54a., 103, or 104 [42 U.S.C. 2073, 2074(a), 2133, or 2134] in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)], the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided*, That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection a., have been submitted to the Congress. *Provided further*, That an agreement for cooperation exempted by the President pursuant to subsection (a) of this section from any requirement contained in that subsection or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States–India Peaceful Atomic Energy Cooperation Act of 2006, shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the proce-

STATUTORY LEGISLATIVE PROCEDURES

§ 1130(10)

dures set forth in section 130(i) of this Act [42 U.S.C. 2159(i)].

Following submission of a proposed agreement for co-operation (except an agreement for cooperation arranged pursuant to subsection 91c., 144b., 144c., or 144d. [42 U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)]) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection a.(2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128b.(3) [42 U.S.C. 2157(b)(3)] for purposes of the Commission's consideration of applications and requests under section 126a.(2) [42 U.S.C. 2155(a)(2)] and there shall be no congressional review pursuant to section 128 [42 U.S.C. 2157] of any subsequent license or authorization with respect to that 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.

The authority of the President to exempt certain agreements with India under the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (sec. 104(f), P.L. 109-401) terminated upon enactment of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (sec. 101(c), P.L. 110-369).

EXPORT LICENSING PROCEDURES

[42 U.S.C. 2155]

SEC. 126. EXPORT LICENSING PROCEDURES.—

a. No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any

[1144]

material by the Department of Energy under sections 54, 64, or 82 [42 U.S.C. 2074, 2094, 2112], for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until— \* \* \*

*Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act [42 U.S.C. 2154] shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 [42 U.S.C. 2156(4) or (5)] for a period of thirty days after March 10, 1978, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 404(a) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2153c(a)]; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section: *Provided further*, That if, upon the expiration of such twenty-month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act [42 U.S.C. 2156(4) or (5)], but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act [42 U.S.C. 2159]: \* \* \*

b. \* \* \* (2) \* \* \* If, after receiving the proposed license application and reviewing the Commission's decision, the

STATUTORY LEGISLATIVE PROCEDURES

§ 1130(10)

President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. [42 U.S.C. 2159(g)]) and shall be referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions: \* \* \*

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act [42 U.S.C. 2159].

Subsection b.(2) should be read in light of *INS v. Chadha*, 462 U.S. 919 (1983).

ADDITIONAL EXPORT CRITERION AND PROCEDURES

[42 U.S.C. 2157]

SEC. 128. ADDITIONAL EXPORT CRITERION AND PROCEDURES.— \* \* \* b. \* \* \* (1) \* \* \* *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or author-

[1146]

ization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act [42 U.S.C. 2155], and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*, That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

STATUTORY LEGISLATIVE PROCEDURES

§ 1130(10)

This provision should be read in light of *INS v. Chadha*, 462 U.S. 919 (1983).

CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS

[42 U.S.C. 2158]

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—(a) No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

\* \* \*

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]), but any such determination shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions.

CONGRESSIONAL REVIEW PROCEDURES

[42 U.S.C. 2159]

SEC. 130. CONGRESSIONAL REVIEW PROCEDURES.—

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 126a.(2), 126b.(2), 127b., 129, 131a.(3), or 131f.(1)(A) of this Act [42 U.S.C. 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A)], the Committee on Foreign Relations of the Senate and the Committee on Foreign Af-

[1148]

fairs of the House of Representatives, shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

b. When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a. of this section) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a. of this section, as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d. of this section.



STATUTORY LEGISLATIVE PROCEDURES

§ 1130(10)

d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, “does not” in lieu of the word “does” if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or of the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

f. For the purposes of subsections a. through e. of this section, the term “resolution” means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: “That the Congress (does or does not) favor the \_\_\_\_\_ transmitted to the Congress by the President on \_\_\_\_\_.”, the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

g. (1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 123 [42 U.S.C. 2153]—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

h. This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that

House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

i. (1) For the purposes of this subsection, the term “joint resolution” means—

(A) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: “That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on \_\_\_\_\_.”,

(B) for a determination under section 129 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: “That the Congress does not favor the determination transmitted to the Congress by the President on \_\_\_\_\_.”, or

(C) for a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, a joint resolution, the matter after the resolving clause of which is as follows: “That the Congress does not favor the subsequent arrangement to 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.”,

with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123d. [42 U.S.C. 2153(d)], a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be in-

troduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91c., 144b., or 144c. [42 U.S.C. 2121(c), 2164(b), 2164(c)], the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15 days after its introduction), the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15-day period) one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives

providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Exports Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

#### SUBSEQUENT ARRANGEMENTS

[42 U.S.C. 2160]

#### SEC. 131. SUBSEQUENT ARRANGEMENTS.— \* \* \*

f. (1) With regard to any subsequent arrangement under subsection a. (2)(E) (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment 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 commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130g. of this Act [42 U.S.C. 2159(g)]),

which plan has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act [42 U.S.C. 2159] for the consideration of Presidential submissions;

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## 11. Trade Provisions

### A. IMPORT RELIEF, § 203 OF THE TRADE ACT OF 1974

[19 U.S.C. 2253]

SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.— \* \* \*

(b) REPORTS TO CONGRESS.—(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or