

#40

AMENDMENT TO H.R. _____

OFFERED BY MR. BERMAN OF CALIFORNIA

Add at the end the following:

1 **TITLE ____—NUCLEAR**
2 **COOPERATION**
3 **SEC. ____ . REQUIREMENT FOR CONGRESSIONAL APPROVAL**
4 **OF AGREEMENTS FOR PEACEFUL NUCLEAR**
5 **COOPERATION.**

6 (a) COOPERATION WITH OTHER NATIONS.—Section
7 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153)
8 is amended—

9 (1) in the matter preceding subsection a., by
10 striking “No cooperation” and inserting “Subject to
11 subsection f., no cooperation”;

12 (2) in subsection a.—

13 (A) in paragraph (3), by inserting “or ac-
14 quired from any other source” after “pursuant
15 to such agreement” each place it appears;

16 (B) in paragraph (4)—

17 (i) by striking “or terminates or” and
18 inserting “, terminates,”; and

1 (ii) by inserting “, or violates or abro-
2 gates any provision contained within such
3 agreement” after “IAEA safeguards”;

4 (C) in paragraph (6), by inserting “or ac-
5 quired from any other source” after “agree-
6 ment” each place it appears;

7 (D) in paragraph (8), by striking “and” at
8 the end;

9 (E) in paragraph (9), by striking the pe-
10 riod at the end and inserting a semicolon; and

11 (F) by adding at the end the following new
12 paragraphs:

13 “(10) a guaranty by the cooperating party
14 that no nationals of a third country shall be
15 permitted access to any reactor, related equip-
16 ment, or sensitive materials transferred under
17 the agreement for cooperation without the prior
18 consent of the United States; and

19 “(11) a commitment to maintain and, in
20 the case of a country without such a legal re-
21 gime in place, a commitment to enact at the
22 earliest possible date, and in no case later than
23 one year after the agreement enters into force,
24 a legal regime providing for adequate protection
25 from civil liability that will allow for the partici-

1 pation of United States suppliers in any effort
2 by the country to develop civilian nuclear
3 power.”;

4 (3) in the matter following paragraph (10) (as
5 added by paragraph (2)(F) of this subsection), by
6 striking “The President may exempt a proposed
7 agreement for cooperation” and all that follows
8 through “common defense and security.”;

9 (4) in subsection c., by striking “and” at the
10 end;

11 (5) in subsection d.—

12 (A) in the first sentence—

13 (i) by striking “not” the first and sec-
14 ond place it appears;

15 (ii) by inserting “only” after “effec-
16 tive” the first place it appears; and

17 (iii) by striking “: *Provided further,*”
18 and all that follows through “such agree-
19 ment” and inserting “, unless the proposed
20 agreement includes a requirement as part
21 of the agreement for cooperation or other
22 legally binding document that is considered
23 part of the agreement that no enrichment
24 or reprocessing activities, or acquisition or
25 construction of facilities for such activities,

1 will occur within the territory over which
2 the cooperating party exercises sovereignty,
3 in which case the agreement shall become
4 effective unless the Congress adopts, and
5 there is enacted, a joint resolution of dis-
6 approval (1) during such sixty-day period
7 for a new agreement; or (2) during a pe-
8 riod of 30 days of continuous session for a
9 renewal agreement.”; and

10 (B) by striking the final period and insert-
11 ing “; and”;

12 (6) by redesignating subsection e. as subsection
13 f.;

14 (7) by inserting immediately after subsection d.
15 the following new subsection:

16 “e. the cooperating party—

17 “(1) has acceded to and is fully imple-
18 menting the provisions and guidelines of—

19 “(A) the Convention on the Prohibi-
20 tion of the Development, Production,
21 Stockpiling and Use of Chemical Weapons
22 and on their Destruction (commonly
23 known as the ‘Chemical Weapons Conven-
24 tion’);

1 “(B) the Convention on the Prohibi-
2 tion of the Development, Production and
3 Stockpiling of Bacteriological and Toxin
4 Weapons and on their Destruction (com-
5 monly known as the ‘Biological Weapons
6 Convention’); and

7 “(C) all other international agree-
8 ments to which the United States is a
9 party regarding the export of nuclear,
10 chemical, biological, and advanced conven-
11 tional weapons, including missiles and
12 other delivery systems;

13 “(2) has established and is fully imple-
14 menting an effective export control system, in-
15 cluding fully implementing the provisions and
16 guidelines of United Nations Security Council
17 Resolution 1540;

18 “(3) is in full compliance with all United
19 Nations conventions to which the United States
20 is a party and all Security Council resolutions
21 regarding the prevention of the proliferation of
22 weapons of mass destruction, including—

23 “(A) the Convention on the Physical
24 Protection of Nuclear Material; and

1 “(B) the United Nations International
2 Convention for the Suppression of Acts of
3 Nuclear Terrorism;

4 “(4) is not a Destination of Diversion Con-
5 cern under section 303 of the Comprehensive
6 Iran Sanctions, Accountability, and Divestment
7 Act of 2010 (Public Law 111-195);

8 “(5) is closely cooperating with the United
9 States to prevent state sponsors of terrorism
10 (the term ‘state sponsor of terrorism’ means a
11 country the government of which has been de-
12 termined by the Secretary of State, for pur-
13 poses of section 6(j) of the Export Administra-
14 tion Act of 1979, section 620A of the Foreign
15 Assistance Act of 1961, section 40 of the Arms
16 Export Control Act, or other provision of law,
17 is a government that has repeatedly provided
18 support for acts of international terrorism)
19 from—

20 “(A) acquiring or developing chemical,
21 biological, or nuclear weapons or related
22 technologies; or

23 “(B) acquiring or developing desta-
24 bilizing numbers and types of advanced

1 conventional weapons, including ballistic
2 missiles; and

3 “(6) has signed, ratified, and is fully im-
4 plementing an Additional Protocol to its safe-
5 guards agreement with the International Atom-
6 ic Energy Agency.”; and

7 (8) by adding after subsection f. (as redesign-
8 nated by paragraph (6) of this subsection) the fol-
9 lowing new subsection:

10 “g. For purposes of this section—

11 “(1) the term ‘new agreement’ means an
12 agreement for cooperation with a country with
13 respect to which the United States has not, on
14 or after the date of the enactment of this sub-
15 section, entered into such an agreement; and

16 “(2) the term ‘renewal agreement’ means
17 an agreement for cooperation with a country
18 with respect to which the United States has, be-
19 fore the date of the enactment of this sub-
20 section, entered into such an agreement.”.

21 (b) SUBSEQUENT ARRANGEMENTS.—Section 131 a.
22 (1) of such Act (42 U.S.C. 2160 a.(1)) is amended—

23 (1) in the second sentence, by striking “secu-
24 rity,” and all that follows through “publication.”
25 and inserting “security.”; and

1 (2) by inserting after the second sentence the
2 following new sentences: "Such subsequent arrange-
3 ment shall become effective only if Congress enacts
4 a joint resolution of approval according to the proce-
5 dures of sections 123 d. and 130 i. of this Act. Any
6 such nuclear proliferation assessment statement
7 shall be submitted to the Committee on Foreign Af-
8 fairs of the House of Representatives and the Com-
9 mittee on Foreign Relations of the Senate not later
10 than the 31st day of continuous session after sub-
11 mission of the subsequent arrangement."

12 **SEC. ____ . WITHDRAWAL FROM THE TREATY ON THE NON-**
13 **PROLIFERATION OF NUCLEAR WEAPONS.**

14 (a) STATEMENT OF POLICY.—It is the policy of the
15 United States to oppose the withdrawal from the Treaty
16 on the Non-Proliferation of Nuclear Weapons (in this sec-
17 tion referred to as the "Treaty") of any country that is
18 a party to the Treaty and to use all political, economic,
19 and diplomatic means at its disposal to deter, prevent, or
20 reverse any such withdrawal from the Treaty.

21 (b) PROHIBITION ON CERTAIN ASSISTANCE.—Not-
22 withstanding any other provision of law, no assistance
23 (other than humanitarian assistance) under any provision
24 of law may be provided to a country that has withdrawn

1 from the Treaty on or after the date of the enactment
2 of this Act.

3 (c) RETURN OF ALL UNITED STATES-ORIGIN MATE-
4 RIALS AND EQUIPMENT.—The United States shall seek
5 the return of any material, equipment, or components
6 transferred under an agreement for civil nuclear coopera-
7 tion that is in force pursuant to section 123 of the Atomic
8 Energy Act of 1954 (42 U.S.C. 2153) on or after the date
9 of the enactment of this Act, and any special fissionable
10 material produced through the use of such material, equip-
11 ment, or components previously provided to a country that
12 withdraws from the Treaty.

13 **SEC. ____ . REPORT ON COMPARABILITY OF NON-**
14 **PROLIFERATION CONDITIONS BY FOREIGN**
15 **NUCLEAR SUPPLIERS.**

16 Not later than 180 days after the date of the enact-
17 ment of this Act, the President shall transmit to the Com-
18 mittee on Foreign Affairs of the House of Representatives
19 and the Committee on Foreign Relations of the Senate
20 a report on the extent to which each country that engages
21 in civil nuclear exports (including power and research nu-
22 clear reactors) requires nuclear nonproliferation require-
23 ments as conditions for export comparable to those under
24 this Act. Such report shall also—

1 (1) detail the extent to which the exports of
2 each such country incorporate United States-origin
3 components, technology, or materials that require
4 United States approval for re-export;

5 (2) detail the civil nuclear-related trade and in-
6 vestments in the United States by any entity from
7 each such country; and

8 (3) list any United States grant, concessionary
9 loan or loan guarantee, or any other incentive or in-
10 ducement to any such country or entity related to
11 nuclear exports or investments in the United States.

12 **SEC. ____ . INITIATIVES AND NEGOTIATIONS RELATING TO**
13 **AGREEMENTS FOR PEACEFUL NUCLEAR CO-**
14 **OPERATION.**

15 Subsection f. of section 123 of the Atomic Energy
16 Act of 1954 (42 U.S.C. 2153), as redesignated pursuant
17 to section 1(a)(5) of this Act, is amended to read as fol-
18 lows:

19 "f. The President shall keep the Committee on
20 Foreign Affairs of the House of Representatives and
21 the Committee on Foreign Relations of the Senate
22 fully and currently informed of any initiative or ne-
23 gotiations relating to a new or amended agreement
24 for peaceful nuclear cooperation pursuant to this
25 section prior to the President's announcement of

1 such initiative or negotiations. The President shall
2 consult with the Committee on Foreign Affairs of
3 the House of Representatives and the Committee on
4 Foreign Relations of the Senate concerning such ini-
5 tiative or negotiations beginning not later than 15
6 calendar days after the initiation of any such nego-
7 tiations, or the receipt or transmission of a draft
8 agreement, whichever occurs first, and monthly
9 thereafter until such time as the negotiations are
10 concluded.”.

11 **SEC. ____ . CONDUCT RESULTING IN TERMINATION OF NU-**
12 **CLEAR EXPORTS.**

13 Section 129 a. (2) of the Atomic Energy Act of 1954
14 (42 U.S.C. 2158) is amended—

15 (1) in subparagraph (C), by inserting “or” after
16 the semicolon; and

17 (2) by inserting after subparagraph (C) the fol-
18 lowing new subparagraph:

19 “(D) been determined to be a ‘country of
20 proliferation concern’ under section 1055(g)(2)
21 of the National Defense Authorization Act for
22 Fiscal Year 2010 (50 U.S.C. 2371(g)(2));”.

23 **SEC. ____ . CONGRESSIONAL REVIEW PROCEDURES.**

24 Section 130 i. of the Atomic Energy Act of 1954 (42
25 U.S.C. 2159 i.) is amended—

1 (1) by redesignating subparagraphs (B) and
2 (C) as subparagraphs (C) and (D), respectively; and
3 (2) by inserting after subparagraph (A) the fol-
4 lowing new subparagraph:

5 “(B) for an agreement for cooperation pur-
6 suant to section 123 of this Act, a joint resolu-
7 tion, the matter after the resolving clause of
8 which—

9 “(i) is as follows: “That the Congress
10 does favor the proposed agreement for co-
11 operation transmitted to the Congress by
12 the President on _____.”;
13 and

14 “(ii) includes, immediately after the
15 language specified in clause (i), any other
16 provisions to accompany such proposed
17 agreement for cooperation.”.

18 **SEC. ____ . REQUIREMENT OF LIABILITY PROTECTION FOR**
19 **UNITED STATES NUCLEAR SUPPLIERS.**

20 The Atomic Energy Act of 1954 is amended by in-
21 serting after section 134 (42 U.S.C. 2160d) the following
22 new section:

1 **“SEC. 135. REQUIREMENT OF LIABILITY PROTECTION FOR**
2 **UNITED STATES NUCLEAR SUPPLIERS.**

3 “The President may not issue a license for the export
4 of nuclear material, facilities, components, or other goods,
5 services, or technology to a country pursuant to an agree-
6 ment that has entered into force after the date of the en-
7 actment of this section unless the President determines
8 that such country has liability protection for United States
9 nuclear suppliers that is equivalent to the liability protec-
10 tion specified under the Convention on Supplementary
11 Compensation for Nuclear Damage.”.

12 **SEC. ____ . PROHIBITION ON ASSISTANCE TO STATE SPON-**
13 **SORS OF PROLIFERATION OF WEAPONS OF**
14 **MASS DESTRUCTION.**

15 (a) **PROHIBITION ON ASSISTANCE.**—The United
16 States shall not provide any assistance under Public Law
17 87–195, Public Law 90–629, the Food for Peace Act, the
18 Peace Corps Act, or the Export-Import Bank Act of 1945
19 to any country if the Secretary of State determines that
20 the government of the country has repeatedly provided
21 support for acts of proliferation of equipment, technology,
22 or materials to support the design, acquisition, manufac-
23 ture, or use of weapons of mass destruction or the acquisi-
24 tion or development of ballistic missiles to carry such
25 weapons.

1 (b) PUBLICATION OF DETERMINATIONS.—Each de-
2 termination of the Secretary of State under subsection (a)
3 shall be published in the Federal Register.

4 (c) RESCISSION.—A determination of the Secretary
5 of State under subsection (a) may not be rescinded unless
6 the Secretary submits to the appropriate congressional
7 committees—

8 (1) before the proposed rescission would take
9 effect, a report certifying that—

10 (A) there has been a fundamental change
11 in the leadership and policies of the government
12 of the country concerned;

13 (B) the government is not supporting acts
14 of proliferation of equipment, technology, or
15 materials to support the design, acquisition,
16 manufacture, or use of weapons of mass de-
17 struction; and

18 (C) the government has provided assur-
19 ances that it will not support such acts in the
20 future; or

21 (2) at least 45 days before the proposed rescis-
22 sion would take effect, a report justifying the rescis-
23 sion and certifying that—

24 (A) the government of the country con-
25 cerned has not provided any support for acts of

1 proliferation of equipment, technology, or mate-
2 rials to support the design, acquisition, manu-
3 facture, or use of weapons of mass destruction
4 during the preceding 24-month period; and

5 (B) the government has provided assur-
6 ances that it will not support such acts of pro-
7 liferation in the future.

8 (d) WAIVER.—The President may waive the require-
9 ments of subsection (a) on a case-by-case basis if—

10 (1) the President determines that national secu-
11 rity interests or humanitarian reasons justify a waiv-
12 er of such requirements, except that humanitarian
13 reasons may not be used to justify the waiver of
14 such requirements to provide security assistance
15 under Public Law 87-195, Public Law 90-629, or
16 the Export-Import Bank Act of 1945; and

17 (2) at least 15 days before the waiver takes ef-
18 fect, the President consults with the appropriate
19 congressional committees regarding the proposed
20 waiver and submits to the appropriate congressional
21 committees a report containing—

22 (A) the name of the recipient country;

23 (B) a description of the national security
24 interests or humanitarian reasons that require
25 the waiver;

1 (C) the type and amount of and the jus-
2 tification for the assistance to be provided pur-
3 suant to the waiver; and

4 (D) the period of time during which such
5 waiver will be effective.

6 **SEC. ____ . ADDITIONAL PROTOCOL AS A CRITERION FOR**
7 **UNITED STATES ASSISTANCE.**

8 (a) STATEMENT OF POLICY.—It is the policy of the
9 United States to ensure that each country that is a party
10 to the Treaty on the Non-Proliferation of Nuclear Weap-
11 ons should bring into force an Additional Protocol to its
12 safeguards agreement with the IAEA.

13 (b) CRITERION FOR ASSISTANCE.—The United
14 States shall, when considering the provision of assistance
15 under Public Law 87-195 or Public Law 90-629 to a
16 country that is a party to the Treaty on the Nonprolifera-
17 tion of Nuclear Weapons, take into consideration whether
18 the proposed recipient has in force an Additional Protocol
19 to its safeguards agreement with the IAEA.

1 **SEC. ____ . REPORT ON NUCLEAR ASPIRATIONS OF NON-**
2 **STATE ENTITIES, NUCLEAR WEAPONS, AND**
3 **RELATED PROGRAMS IN NON-NUCLEAR-**
4 **WEAPONS STATES AND COUNTRIES NOT PAR-**
5 **TIES TO THE NUCLEAR NON-PROLIFERATION**
6 **TREATY, AND CERTAIN FOREIGN PERSONS.**

7 Section 1055(a) of the National Defense Authoriza-
8 tion Act for Fiscal Year 2010 (50 U.S.C. 2371(a)) is
9 amended, in the matter preceding paragraph (1)—

10 (1) by striking “and the Permanent” and in-
11 serting “, the Permanent”; and

12 (2) by inserting before “a report” the following:
13 “, the Committee on Foreign Relations of the Sen-
14 ate, and the Committee on Foreign Affairs of the
15 House of Representatives”.

16 **SEC. ____ . SENSE OF CONGRESS.**

17 It is the sense of Congress that the President should
18 ensure that participation in international nuclear pro-
19 grams conducted by the United States is limited to the
20 greatest extent practicable to governmental and non-
21 governmental participants from countries that have adopt-
22 ed nonproliferation provisions in their nuclear cooperation
23 and nuclear export control policies comparable to the poli-
24 cies specified in section 123 of the Atomic Energy Act (42
25 U.S.C. 2153), as amended by this Act.

