14. India and Pakistan (Section 742.16, 744.11, and 744.12)

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Export Control Program Description And Licensing Policy

In accordance with Section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and on May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. In the determination reported to the Congress, the President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in Section 102 (b)(2) of that Act.

On June 18, 1998, consistent with the President's directive, the Department of Commerce announced certain sanctions on India and Pakistan, as well as supplementary measures to enhance the sanctions. On November 19, 1998, Commerce amended the Export Administration Regulations (EAR) to codify the June announcement. Consistent with Section 102 (b)(2) of the Arms Export Control Act, Commerce added §742.16 to the EAR codifying a license review policy, implemented in practice in May, of denial for the export and reexport of items controlled for nuclear proliferation (NP) and missile technology (MT) reasons to all end-users in India and Pakistan.

To supplement the sanctions of §742.16, Commerce added certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear, missile, or conventional weapons activities to the Entity List in Supplement No. 4 to part 744 of the EAR. License requirements for these entities are set forth in the newly added §744.11 and §744.12. Exports and reexports of all items subject to the EAR require a license to listed government, parastatal, and private entities. Exports and reexports of all items subject to the EAR having a classification other than EAR99 require a license to listed military entities. The United States will review license applications for the export or reexport of the restricted items to the listed entities with a presumption of denial.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995, August 14, 1996, August 15, 1997, and August 13, 1998.

Analysis of Control as Required by Section 6(f) of The Act

A. <u>The Purpose of the Control</u>

The United States has imposed the above sanctions to send a strong message of disapproval to the governments of India and Pakistan for nuclear weapon development activities and to encourage the two countries to sign and ratify the Comprehensive Test Ban Treaty, not deploy missiles or nuclear weapons, cut-off fissile material production for nuclear weapons, cooperate in Fissile Material Cut-off Treaty (FMCT) negotiations in Geneva, strengthen legal restrictions on sharing sensitive goods and technologies with other countries, and increasing efforts to reduce regional tensions and resolve outstanding disputes, including Kashmir.

B. Considerations and/or Determinations of the Secretary of Commerce:

1. Probability of Achieving the Intended Foreign Policy Purpose. The Secretary has determined that the sanctions have succeeded in expressing U.S. displeasure with each country's nuclear tests. The Secretary has also determined that the sanction adds weight to U.S. efforts to encourage the governments of India and Pakistan to take the above proposed actions.

2. Compatibility with Foreign Policy Objectives. This control is consistent with U.S. foreign policy objectives to prevent the proliferation of nuclear weapons and ballistic missiles, an arms race, and increased in tensions in South Asia.

3. Reaction of Other Countries. Although other countries have expressed some support for U.S. sanctions against India and Pakistan, no other country has imposed new dual-use export controls. The Secretary has determined that this will not render the controls counterproductive to U.S. policy.

4. Economic Impact on U.S. Industry.

India. The United States is India's leading source of technology, its most valuable investor, and its best customer. U.S. exports to India in 1997 totaled $3.5 billion. The table below presents information on some of the top U.S. exports to India over the past five years; several of the top categories are high technology products. Moreover, among the top export prospects for 1999, according to the Country Commercial Guide prepared by the Department of Commerce's International Trade Administration, are computers, telecommunications equipment, aircraft and parts, electric power generating equipment, machine tools, and construction equipment. The sanctions will likely affect all of these industry sectors.

The precise economic impact on India of U.S. export sanctions on dual-use goods and technologies is difficult to determine. In the year prior to the imposition of new sanctions, the value of licenses for sanctioned items to India was less than $10 million. However, since the sanctions will affect trade in items have heretofore been exportable without a license (as well as those requiring licenses), the affect of the sanctions is unknown. The parastatal and private sector entities that are the targets of the sanctions include some of India's aerospace, electronics, and industrial manufacturers.

Top U.S. Exports to India, 1992-1997

SIC	Commodity Description	Total U.S. Exports, 1992-1997, $millions
3721	Aircraft	$1,445
2873	Nitrogenous Fertilizers	$1,203
2869	Industrial Organic Chemicals	$669
3728	Aircraft Equipment, NSPF	$645
3511	Turbines & Turbine Generator Sets	$634
3571	Electronic Computers	$577
2911	Petroleum Refinery Products	$422
3915	Jeweler's Findings & Materials	$360
2821	Plastics Materials and Resins	$322
3533	Oil & Gas Field Equipment	$298
2023	Milk & Cream, Condensed, Evaporated	$280
3674	Semiconductors & Related Devices	$257
3531	Construction Machinery	$252
3569	General Industry Machinery & Equipment	$250
3663	Radio, TV Communications, Broadcast & Studio Equip.	$200
3724	Aircraft Engines & Engine Parts	$197

Source: U.S. ITC Dataweb (compiled from Census Bureau Statistics)

Although the U.S. is India's leading source of imports, U.S. products face competition in the Indian market from a variety of sources. Western European nations and Japan, in particular, supply similar products to India.

Selected Countries' Exports to India, 1996
($Millions)

Country	Exports	Top Export Categories
United States	$3,205	Transportation Equipment, Electrical Machinery, Industrial Machinery
Germany	$3,116	Industrial Machinery, Metalworking Machinery
United Kingdom	$2,666	Mineral Manufactures, Power Generating Machinery
Japan	$2,432	Organic Chemicals, Iron & Steel, Industrial Machinery
Singapore	$2,078	Petroleum Products, Computers, Nonferrous Metals
Italy	$1,214	Petroleum Products, Industrial Machinery, Iron & Steel
South Korea	$1,177	Industrial Machinery, Vehicles, Plastics
France	$1,072	Industrial Machinery, Iron & Steel, Electrical Machinery
Australia	$948	Coal, Textiles
China	$686	Organic Chemicals, Coal, Textiles
Switzerland	$560	Industrial Machinery

Source: United Nations Trade Data

In Fiscal Year 1998, Commerce received a total of 1,008 license applications for exports to India, with a combined value of $566 million. Of these, 427 applications valued at $60 million were for items classified as EAR99 -- otherwise not requiring a license but submitted due to proliferation concerns. The United States approved 461 licenses valued at $138 million, denied 211 licenses valued at $9 million, and returned 677 licenses without action (many of these were for EAR99 products submitted under provisions of the Enhanced Proliferation Control Initiative and did not raise proliferation concerns). The table below lists the commodity description for the dual-use technologies accounting for the greatest number of export license applications for India.

License Applications Processed for India in FY1998

Export Commodity Classification Number	Description	No. of Applications	Value of Applications ($ 000's)
EAR99	Items Subject to the EAR, n.e.s.	427	$59,576
5E002	Technology for Development /Production/Use of Information Security	108	$50,013
3A001	Electronic Devices/ Components	68	$9,949
3A992	General Purpose Electronic Equipment	54	$1,051
4A003	Digital Computers	43	$11,398
3A292	Oscilloscopes	33	$624
3A993	Electronic Test Equipment, n.e.s.	33	$1,195
9A991	Aircraft and Certain Gas Turbine Engines	31	$182
5D002	Software for Information Security	25	$27,332
1C350	Chemical Precursors	24	$30,203

Source: Department of Commerce Licensing Database

For FY 1998, a single Indian end-user accounted for at least 230 license applications and approximately 100 applications were for Indian nationals working in U.S. high technology companies ("deemed exports"). The majority of the remaining licenses were for entities now targeted by sanctions, including "parastatals," government organizations, and the Indian military. The entities included in the sanctions are among the top industrial firms in India; they generate considerable demand for industrial machinery, computers, test equipment, and other products subject to the Export Administration Regulations. Since there will be a presumption of denial for these entities, the impact on U.S. exports is likely to be considerable.

U.S. trade with India has declined significantly in 1998 (through August) compared with 1997 levels in certain industry sectors. For example, in January through August, 1997, U.S. firms exported $711 million of various types of industrial machinery to India; for January-August, 1998, U.S. exports in this category (Harmonized Tariff Schedule #84, the top export category) totaled only $529 million, a 25% decline. Overall U.S. exports to India were down about 11% in the first eight months of 1998 compared with the same period in 1997.

Pakistan. It is difficult for the United States Government to determine the economic impact of the sanctions imposed on Pakistan following that nation's detonation of nuclear devices. U.S. overall trade with Pakistan has always been limited, even more so for controlled trade. Based on 1997 licensing statistics, Commerce estimates that the annual effect of prohibiting all exports and reexports of items controlled for NP and MT reasons on the Commerce Control List would be approximately $1.3 million. It is much more difficult, however, to predict the effect of the sanctions targeted towards specifically listed government, parastatal and private end-users entities in Pakistan.

Export licensing statistics from the last two fiscal years indicate that the impact of these new foreign policy-based export controls on licensed U.S. trade with Pakistan will be mixed. Commerce licensing data for Fiscal Years 1997 and 1998 show that the vast majority of export licenses that the United States issued for Pakistan during this period did not involve listed entities. In FY 1998, the United States approved 22 license applications valued at $2 million, rejected 8 applications valued at $1 million, and returned 13 applications without action valued at $3 million. These figures varied only slightly from FY 1997, when the United States approved 28 license applications valued at $13 million, including one "deemed export" license valued in excess of $11 million, denied four applications valued at $428,071, and returned 10 applications without action valued at $2,195,655. With regard to exports to listed entities, the United States approved in Fiscal Years 1997 and 1998, only four applications to these entities valued at $407,303. For those items that required a license prior to the imposition of the new foreign policy controls on Pakistan, the impact of the new foreign policy controls is likely to be minimal.

Trade statistics available from the United Nations show that, although the United States is currently the second largest exporter to Pakistan, it has strong competition from several other major industrial countries in most of Pakistan's leading export categories. The United States is, therefore, vulnerable to losing market share if the new foreign policy-based export controls make sales to Pakistan more difficult. Overall United States trade with Pakistan averages approximately $920 million annually. During the period from 1992 through 1996, the United States ($4.6 billion) was second only to Japan ($5.9 billion) as Pakistan's leading source of imports.

5. Enforcement of Controls.

Enforcement of the new U.S. export controls relating to India and Pakistan does not present any new problems. U.S. export controls directed at India and Pakistan have received widespread domestic and international press reporting and the U.S. Government has had many discussions with industry on its concerns with India and Pakistan's nuclear and missile development programs. Commerce recently published a list containing India and Pakistan entities of concern to help guide exporters in their efforts to comply with the U.S. export controls.

For the last two years, Commerce's enforcement arm (BXA/EE) has sent special Safeguards Verification Teams to India to conduct on-site end-use checks there. BXA/EE has done so in the past in Pakistan and will be part of an interagency enforcement team that will travel to Pakistan in January 1999 to assess the state of export control enforcement there.

C. Consultation with Industry

On May 15, 1998, the Department of Commerce met with exporters to preview sanctions and to discuss their effect. In general, although reluctant and concerned, exporters understand the rationale for sanctions.

D. Consultation with Other Countries

The United States is in regular consultation with other countries to urge their cooperation in restricting sensitive exports to India and Pakistan and to keep those countries informed on the ongoing talks with the Governments of India and Pakistan.

E. Alternative Means

The United States is in intensive, ongoing discussions with the Governments of India and Pakistan.

F. Foreign Availability

Many of the commodities and related software and technology affected by the sanctions on India and Pakistan are subject to multilateral controls for national security, missile technology, or nuclear nonproliferation reasons. A considerable number of items that are controlled by Commerce, but not subject to multilateral export controls, are available from numerous foreign sources. However, Congress and the President have recognized that the sanctions on India and Pakistan play an important role in supporting United States policies to prevent the proliferation of weapons of mass destruction.

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