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

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 13, 1998, in regard to India, and on May 30, 1998, in 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 United States announced certain sanctions on India and Pakistan, as well as supplementary measures to enhance the sanctions. On November 19, 1998, the U.S. amended the Export Administration Regulations (EAR) to codify the June announcement. Consistent with Section 102 (b)(2) of the Arms Export Control Act, the U.S. added Part 742.16 to the EAR codifying a license review policy 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. Commerce implemented the policy in practice in May 1998.

To supplement the sanctions of Part 742.16, the United States 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 Parts 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 listed entities with a presumption of denial, with limited exceptions.

The President signed into law the Defense Appropriations Act of 2000 on October 25, 1999. Title IX of the Act addresses the economic sanctions imposed by the United States on India and Pakistan following the detonation of nuclear devices by these countries in May 1998. The Act states that the broad application of export controls to nearly 300 Indian and Pakistani sanctioned entities is inconsistent with specific national security interests of the United States and that the list requires refinement. Further, the Act states that it is the sense of Congress that "export controls should be applied only to those Indian and Pakistani entities that make direct and material contributions to weapons of mass destruction and missile programs and only to those items that can contribute to such programs." The Act mandates that the President report to Congress within 60 days on the list of sanctioned entities.

Pursuant to the Act, the Administration initiated a review of the list of sanctioned Indian and Pakistani entities with the aim of refining the list and targeting the items controlled. In December 1999, the Administration announced its decision to remove 51 entities from the list. Commerce will publish a regulation implementing this change in early 2000.

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

A. The Purpose of the Control

The United States has imposed these sanctions to send a strong message of concern to the governments of India and Pakistan for their proliferation activities, with the objective of preventing the spread of nuclear weapons and ballistic missiles, an arms race, and increased tension in South Asia.

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. concern regarding the Indian and Pakistani nuclear tests.

2. ***Compatibility with Foreign Policy Objectives.*** This control is consistent with U.S. foreign policy objectives to halt the proliferation of nuclear weapons and other weapons of mass destruction and their delivery systems.

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 similar dual-use export controls. The Secretary has determined that the reaction of other countries to the extension of controls 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 commercial technology, its largest foreign investor, and its best customer. U.S. exports to India in 1998 totaled $3.5 billion, down slightly from $3.6 billion in 1997. Data for the first nine months of 1999 show total U.S. exports to India up 8 percent over 1998 levels.

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 affected by sanctions. The parastatal and private sector entities that are the targets of the sanctions include some of India's premiere aerospace, electronics, and industrial manufacturers. In addition, various departments and agencies of the government of India have historically been the largest players in that country's economy and have been a major market for U.S. high-technology exports.

Top U.S. Exports to India, 1992-1998

SIC	Commodity Description	Total U.S. Exports, 1992-1998, $millions
3721	Aircraft	$1,808
2873	Nitrogenous Fertilizers	$1,502
2869	Industrial Organic Chemicals	$ 798
3728	Aircraft Equipment, NSPF	$ 727
3571	Electronic Computers	$ 708
3511	Turbines and Turbine Generator Sets	$ 696
2911	Petroleum Refinery Products	$ 475
3915	Jeweler's Findings and Materials	$ 433
3533	Oil and Gas Field Equipment	$ 378
2821	Plastics Materials and Resins	$ 370
3569	General Industrial Machinery	$ 328
3531	Construction Machinery	$ 326
2023	Milk and Cream, Condensed or Evaporated	$ 322
3674	Semiconductors and Related Devices	$ 309
2891	Industrial Inorganic Chemicals	$ 290
3663	Radio, TV and Broadcast Equipment	$ 265
3724	Aircraft Engines and Engine Parts	$ 240

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 countries. Western European nations and Japan, in particular, supply similar products to India, as indicated in the table below.

Selected Countries' Exports to India, 1997
(US$ Millions)

Country	Exports	Top Export Categories
United States	$3,474	Transportation Equipment, Electrical Machinery, Industrial Machinery
United Kingdom	$2,581	Mineral Manufactures, Power Generating Machinery
Germany	$2,512	Industrial Machinery, Metalworking Machinery
Singapore	$2,220	Petroleum Products, Computers, Nonferrous Metals
Japan	$2,213	Organic Chemicals, Iron & Steel, Industrial Machinery
Australia	$1,248	Coal, Textiles, Sheep
Italy	$1,060	Petroleum Products, Industrial Machinery, Iron & Steel
China	$ 933	Organic Chemicals, Coal, Textiles
France	$ 846	Industrial Machinery, Iron & Steel, Electrical Machinery

Source: United Nations Trade Data

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 Fiscal Year1998

Export Commodity Classification Number	Description	No. of Applications	Value of Applications ($ 000's)
EAR99	Items Subject to the EAR, n.e.s.	1460	$482,484
5E002	Technology for Development /Production/Use of Information Security	141	$7,461
4A003	Digital Computers	100	$20,383
3A992	General Purpose Electronic Equipment	86	$1,262
9A991	Aircraft and Certain Gas Turbine Engines	57	$8,093
3A001	Electronic Devices/Components	47	$846
1C350	Chemical Precursors	24	$30,203

Source: BXA Licensing Database

Despite the slight overall increase in U.S. exports to India in 1998, we estimate that over $150 million in exports to India were lost during the first year following India's nuclear test due to U.S. sanctions. This figure, while not insignificant, represents a relatively small percentage of global U.S. exports (about 4 percent). The estimate of U.S. exports lost due to sanctions is based, in part, on a nearly ten fold increase in the total value of export license application denials for India during the year immediately following India's May 1998 nuclear test (i.e., from $5.7 million for the period from May 1997-April 1998 to $50.5 million for the period from May 1998-April 1999). Nearly 98 percent of the $44.8 million increase in denials was directly related to Commerce's India sanctions policies. The bulk of these sanction-related denials (95 percent) involved exports to Indian entities listed in the EAR, while a much smaller number (5 percent) involved exports of missile or nuclear items, which are banned to all Indian and Pakistani entities.

In Fiscal Year 1999, the United States approved 651 licenses for exports to India valued at $757 million and denied 995 license applications valued at $73 million; 390 license applications valued at $96 million were returned without action. Many of the license applications -- 70 percent of the returned licenses, 43 percent of the approved licenses, and 79 percent of the denied licenses -- were for EAR99 products. The number and value of licenses denied rose greatly over Fiscal Year 1998 levels, when 211 licenses valued at $9 million were rejected. Again, the vast majority of the license denials involved listed Indian entities and thus are directly related to the newly imposed sanctions. U.S. firms have likely lost these export opportunities to third countries, since most of the items denied for export are lower technology and widely available.

Pakistan: Although the United States is the leading source of Pakistan's imports, overall trade with Pakistan has always been limited and even more limited for controlled trade. U.S. exports to Pakistan average approximately $900 million annually. In 1998, U.S. exports totaled $726 million, down from $1.2 billion in 1997. Wheat and fertilizers are the leading U.S. exports, followed by aircraft and aircraft equipment. Statistics for the first nine months of 1999 show that overall U.S. exports are 45 percent below 1998 levels.

Trade statistics available from the United Nations show that, although the United States is a leading exporter to Pakistan, it has strong competition from several other major industrial countries (including Japan, Germany, the United Kingdom, Australia, and China) in most of Pakistan's leading import categories.

Export licensing statistics from the last two fiscal years indicate that the impact of the new foreign policy-based export controls on licensed U.S. trade with Pakistan has been limited. In Fiscal Year 1999, Commerce approved 21 license applications valued at $1.6 million for Pakistan (only 2 of which were EAR99), denied 19 applications valued at $1.9 million (including 12 applications for EAR99), and returned without action 23 applications valued at $1.8 million (including 11 for EAR99). These figures are not markedly different than Fiscal Year 1998, when 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. With regard to exports to listed Pakistani entities, only 4 of the 19 denied applications in Fiscal Year1999 were for named entities. Thus, the impact of the new foreign policy controls appears to be minimal.

5. ***Enforcement of Control.*** Enforcement of the new U.S. export controls relating to India and Pakistan do not present any new enforcement 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 has 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 three years, the Department of Commerce's export enforcement arm has sent special Safeguards Verification Teams to India to conduct on-site end-use checks there. Commerce has conducted visits to Pakistan in the past and was part of an interagency enforcement team that traveled to Pakistan in January 1999 to assess the state of export control enforcement there.

A long-standing enforcement concern regarding India is the inability of the U.S. government to conduct end-use checks on certain governmental facilities. Licensing or otherwise authorizing for export U.S. commodities or technologies to end-users or end-uses that the U.S. government cannot verify is an enforcement concern. This is particularly important because India is in Tier 3 (as identified in the EAR), and Congress has required that a post-shipment verification be conducted on every high-performance computer (HPC) export. Not only does this pose a substantial resource problem, it also means added scrutiny of license applications to ensure that HPCs are not sent to organizations where Commerce cannot conduct post shipment checks.

C. Consultation with Industry

On November 30, 1999, the Department of Commerce solicited input from industry via a notice in the *Federal Register*. Several companies and industry associations commented on the sanctions on India and Pakistan (see Appendix I).

D. Consultation with Other Countries

The United States is in regular consultation with other countries to urge cooperation with our enforcement of U.S. sanctions on 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 ongoing discussions with the governments of India and Pakistan on nonproliferation and regional stability issues.

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.