
Export Administration and Export Sanctions

By

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Once again, you have kept us plenty busy over the past year. We processed nearly 12,000 license applications and classification requests in 1997. Those not requiring referral to other agencies took only an average of ten days to finalize. Average processing time including interagency referrals held steady at about 32 days. More than 90 percent of all applications did require referral to other agencies, but we were able to resolve more than 90 percent of those without escalating them. Unfortunately, the number of cases pending past their statutory deadlines increased a bit during 1997, and that number could increase again this year as we attempt to implement new policies such as the India-Pakistan sanctions, about which I will talk in more detail later.

Your use of electronic submissions, which helps us save processing time, continues to increase. Forty (40) percent of applications came in on ELAIN in FY 1997, as compared to 30 percent the year before. Hopefully, that trend will accelerate as we unveil Simplified Network Application Processing (SNAP)—our new on-line filing system which you will get a first look at this morning. While we have continued to make some progress in streamlining the process and licensing requirements, I would be less than frank if I did not admit that the past year has also been one of export control expansion especially through the increased imposition of export control sanctions imposed by Congress. I want to focus the rest of my remarks on the subject of sanctions. We seem to be at a high-water mark in the use of economic sanctions. According to the President's Export Council, sanctions have been imposed more than 60 times since 1993 alone more than in the preceding 80 years since World War I. That does not include nearly 100 state and local sanctions measures that are pending or already in force. BXA, of course, does not administer state and local sanctions. But such sanctions add substantially to the total complexity and obstacles for exporters.

As you may know, the Administration supports, with some revisions, legislation introduced by Congressmen Crane and Hamilton, and Senator Lugar, which is designed to bring greater discipline to the use of sanctions. In the case of the India-Pakistan sanctions, we were not fully able to follow the careful cost-benefit approach recommended by Crane-Hamilton-Lugar because we were operating under a rather rigid, pre-determined legislative mandate, the so-called Glenn amendment. That amendment gave us very little flexibility to tailor these sanctions to the circumstances. Although we did our best to both fulfill the legislative requirements and avoid making these sanctions counterproductive (only time will tell if we succeeded), the Glenn amendment is certainly an example of the faults of predetermined mandatory sanctions.

The President reported to Congress on May 13 that the Indian nuclear tests required him to invoke the Glenn amendment. On May 30, he made the same determination with respect to Pakistan.

The Glenn amendment requires the President to implement six specific sanctions:

- Terminate bilateral assistance;
- Terminate all foreign military sales and financing;
- Terminate munitions list [i.e., direct commercial sales] licenses;
- Deny credit guarantees and financial assistance by the U.S. government, Export-Import Bank financing, and OPIC [Overseas Private Investment Corporation] financing;
- Prohibit U.S. banks from making any loan or providing any credit to the government of India or Pakistan; and
- Prohibit exports of specific goods and technology subject to export licensing.

Since the President's announcements, we have been navigating our way through the array of programs and activities affected by these sanctions. First and foremost, the sanctions needed to send a strong message to India and Pakistan that nuclear testing is unacceptable. Sanctions should not, however, isolate these countries or treat them as pariahs. The sanctions should not constitute punishment for punishment's sake by inflicting needless damage on the general population or on peaceful business relationships with the United States. Finally, the sanctions should recognize and respect India and Pakistan's legitimate conventional national security interests. It would obviously be a huge mistake to attempt to limit conventional capabilities to the point that these countries might be forced to consider nuclear weapons their first or only military option.

In addition to these goals, the Cabinet also approved a set of expectations for the eventual removal of the sanctions—the beginnings of an exit strategy. As we all know, sanctions tend to become permanent, and that is all the more likely in this case because the Glenn amendment requires subsequent legislative action to lift these sanctions. The goals the Administration hopes to achieve with India and Pakistan are: to halt further testing; to gain their signatures as non-weapons states to the Comprehensive Test Ban Treaty; to halt testing and deployment of missiles; to cut off fissile material production and participate in negotiating a fissile material cut-off treaty; to formalize their restrictions on sharing sensitive nuclear technology with other countries; and generally to reduce bilateral tensions between them.

The sanctions we are now implementing, I believe, meet both Congressional and Administration requirements. They concentrate on entities and products directly involved in proliferation activities. U.S. products controlled for nuclear or missile reasons will be denied to all end-users in India and Pakistan. In addition, all U.S. products, whether currently controlled or not, will be denied to a list of entities we will publish shortly. Based on 1997 licensing figures, we estimate these sanctions will eliminate over \$8 million in trade, mostly with the Indian and Pakistani governments.

All other trade in controlled items with India and Pakistan will be subject to individual review on a case-by-case basis, albeit with a greater presumption of denial, particularly with respect to government and private entities significantly involved in military activities. With the exception of computers and listed entities, all current license exceptions will remain valid and available. That includes those for telecommunications, software, and civilian air safety and maintenance, for example. This is particularly important for U.S. companies with operations or joint ventures in India that depend upon services, technical data, and products currently under license exceptions. We have attempted to preserve those projects.

Computers received special attention because of their broad commercial and possible proliferation applications. The broad ban on trade with published nuclear and missile entities will apply to computers. License exception CTP for computers between 2000 and 7000 MTOPS [millions of theoretical operations per second) will be revoked for India and Pakistan, meaning that all computers over 2000 MTOPS will now require an individual validated license. If we receive notifications under the NDAA requirement, we will automatically convert those to license applications.

I want to emphasize that these changes do not alter exporters' responsibilities under the Enhanced Proliferation Control Initiative (EPSI) to seek a license whenever you might know or have reason to know that an export or reexport will be used in proliferation activities. I also want to assure you that BXA will continue to press vigorously for approval of applications where case-by-case consideration applies. I would remind you of the hardship provisions of the current regulations, which still apply. If you encounter situations in which these sanctions impose an extreme or unusual hardship on your company or civilians in India or Pakistan, I would urge you to submit a hardship application that we will make every effort to resolve.

As you know, while this process has been going on we suspended all license applications to India and Pakistan. We have now resumed processing those applications based on these new criteria. We currently have 270 pending applications for India and 16 for Pakistan. We are working to clear this backlog as rapidly as possible.

I wish I could report that this is the end of mandatory sanctions, but that is probably only wishful thinking. Export controls are constantly changing, and there undoubtedly will be further efforts to impose sanctions. As you may know, the President recently vetoed legislation that would impose mandatory sanctions on Russia. Several additional measures are currently pending in Congress, the most far-reaching of which is the so-called religious persecution legislation, which would impose expanded export restrictions on governments declared to be engaged in such activities. As Under Secretary Eizenstat told the Congress in recent testimony, the most essential element of a coherent and well designed (sanctions) strategy is adequate flexibility to allow the President to tailor our response to the specific situation. Through continued case by case reviews, we have managed to preserve an element of flexibility within these mandatory sanctions against India and Pakistan. Working with you, the other agencies involved, and the Congress, our export licensing staff will be making every effort to administer them efficiently and to respond to any unanticipated consequences.

Let me close by reaffirming my commitment to administering this complicated export control system in as transparent and timely a manner as possible. That is one of the purposes of this Conference—to enhance the transparency of the process. If there is one good thing that might emerge from the current scrutiny and reappraisal of satellite licenses to China, it is to remind Congress that export decisions need to be made in a timely manner. The time limits in the current Export Administration Regulations were originally enacted by Congress itself, and are the primary reason that industry has preferred export controls administered under those regulations. Through the interagency process we now have in place, we are able to make export decisions that fully reflect both national security and economic considerations, and to do so within business-like time frames. With your cooperation and support, we can continue to do so.