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Nuclear Sanctions: Section 102(b) of the Arms Export Control Act and Its Application to India and Pakistan

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Summary

Section 102(b) of the Arms Export Control Act (AECA) requires the President to impose sanctions on any country that he has determined is a "non-nuclear-weapon state" and has received or detonated a "nuclear explosive device." Sanctions include prohibitions on foreign assistance; munitions sales and licenses; foreign military financing; government credits, guarantees, and financial assistance; U.S. support for multilateral financial assistance; private bank lending to the affected government; and exports of certain specific controlled goods and technology. Specific exceptions exist for humanitarian aid; food and agricultural exports; food assistance; private bank loans and credits for purchases of food and agricultural commodities; and certain transactions involving intelligence activities. The statute does not provide for terminating or suspending sanctions once imposed. The President placed § 102(b) sanctions on India and Pakistan in May 1998 following nuclear tests by those countries earlier that month. The statute had never before been invoked and its full implementation give rise to various legal and policy issues. After an inter-agency review, the Administration announced its overall implementation plan for both countries June 18, 1998. Concerns over the lack of an exemption for agricultural goods in § 102(b)(2)'s prohibition on government credits and guarantees led to enactment of the Agriculture Export Relief Act (P.L. 105-194), which exempted Department of Agriculture programs through FY99; it also permanently exempted government financing for medicine and medical goods and allowed private loans for fertilizer exports. In October 1998, Congress authorized the President to waive for one year certain § 102(b)(2) prohibitions applicable to the two countries, as well as other related statutory restrictions (India-Pakistan Relief Act, P.L. 105-277). The President exercised this authority December 1, 1998.

Congress has since authorized the President to waive indefinitely, as they apply to India and Pakistan, all sanctions imposed under §§ 101 or 102 of the AECA; a nuclear-related restriction in the Export-Import Bank Act; and § 620E(e) of the Foreign Assistance Act (FAA)(Pressler Amendment), which restricts military aid and exports to Pakistan (DOD Appropriations Act, 2000, P.L. 106-79, § 9001). The President may waive military and export control sanctions only if he certifies to Congress that applying a restriction would not be in U.S. national security interests; any licenses for defense exports must be notified to Congress and are subject to congressional review. In October 1999, President Clinton waived sanctions with regard to certain programs and commercial transactions specific to each country. In August and early September 2001, both the Bush Administration and Members of Congress began to call for removal of the sanctions, mainly as applicable to India; legislation to lift the measures has also been introduced. Following the September 11 attacks on the World Trade Center and the Pentagon, the President waived for both India and Pakistan prohibitions on exports of defense items and sensitive technology and military financing, citing U.S. national security interests; also waived were any remaining sanctions in §§ 101 or 102 of the AECA, the Export-Import Bank Act, and the Pressler Amendment. Foreign assistance to Pakistan continues to be restricted because of an anti-coup provision in appropriations legislation and other debt-related restrictions; also, three Pakistani entities are subject to two-year AECA missile

proliferation sanctions. Legislation allowing removal of restrictions on Pakistan (S. 1465) was reported by the Senate Foreign Relations Committee October 4. This report will be updated.

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Nuclear Sanctions: Section 102(b) of the Arms Export Control Act and Its Application to India and Pakistan

This report describes the requirements of § 102(b) of the Arms Export Control Act, 22 U.S.C. § 2799aa-1(b)(AECA or Act), which requires the imposition of economic and military sanctions against countries that have engaged in certain types of nuclear proliferation, and discusses its application to India and Pakistan, which conducted nuclear weapons tests in May 1998. It also discusses subsequently enacted legislation authorizing the removal or some or all of these sanctions and presidential action taken pursuant to these new authorities.

Section 102(b), also known as the Glenn Amendment, was enacted in the Nuclear Proliferation Prevention Act of 1994 and is an amended version of the now repealed § 670(b) of the Foreign Assistance Act of 1961, originally enacted in 1977.¹ In pertinent part, § 102(b)(1) requires the President to impose sanctions on any country that he has determined is a "non-nuclear-weapon state" and has received or detonated a "nuclear explosive device" and on any country that has transferred such a device to a non-nuclear-weapons state.

The required sanctions include prohibitions on foreign assistance; sales and licenses under the AECA; U.S. government credits, credit guarantees, and financial assistance; U.S. support for multilateral financial assistance; private bank lending to the affected government; and exports of certain specific controlled goods and technology. Humanitarian aid, food and agricultural exports, food assistance, and bank loans and credits for purchases of food and agricultural commodities are exempted, as are certain transactions involving intelligence activities.

Congress amended portions of these sanctions provisions in July 1998 and subsequently granted the President authority temporarily to waive particular sanctions with regard to India and Pakistan as of October 21, 1998. The President formally exercised this waiver authority December 1, 1998, the waiver expiring October 21, 1999. In an October 25, 1999 enactment, Congress granted the President authority to waive AECA sanctions without time limit; the President used this authority October 27, 1999 to waive statutory restrictions with regard to specified U.S. government programs and commercial transactions involving the two countries.

¹Foreign Assistance Act of 1961, § 670, *added by* P.L. 95-92, § 12, *amended and restated by* P.L. 97-113, § 737(c). The provision adding § 102 to the AECA, which is contained in Part B of the Nuclear Proliferation Prevention Act of 1994, was enacted in § 826(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, P.L. 103-236. The Nuclear Proliferation Prevention Act of 1994 was enacted as Title VIII of P.L. 103-236.

Requirements of § 102(b) of the Arms Export Control Act (AECA)

The text of § 102(b)(1) of the Arms Export Control Act under discussion here provides as follows:

Except as provided in paragraphs (4), (5), and (6), in the event that the President determines that any country, after the effective date of part B of the Nuclear Proliferation Prevention Act of 1994 —

- (B) is a non-nuclear-weapon-state and either —
 - (i) receives a nuclear explosive device, or
 - (ii) detonates a nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in paragraph (2) against that country.

The statute defines a "non-nuclear-weapon state" as "any country which is not a nuclear-weapon state, as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons" (AECA, § 102(c)). Under Article IX(3) of the Treaty, a nuclear weapon state is "one which has manufactured and exploded a nuclear weapon or other nuclear device prior to January 1, 1967" (21 U.S.T. 492-93). The term "nuclear explosive device" is to be defined pursuant to § 830(4) of the Nuclear Proliferation Prevention Act, 22 U.S.C. § 3201 note, and thus includes "any device, whether assembled or disassembled, that is designed to produce an instantaneous release of an amount of nuclear energy from special nuclear material that is greater than the amount of energy that would be released from the detonation of one pound of trinitrotoluene (TNT)."²

Section 102(b)(2) of the AECA sets forth the sanctions to be imposed after a presidential determination. As they existed in May 1998, these sanctions were as follows:

- (A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961, except for humanitarian assistance or food or other agricultural commodities.
- (B) The United States Government shall terminate —
 - (i) sales to that country under this Act [*i.e.* the AECA] of any defense articles, defense services, or design and construction services, and

²Legislative history of § 102(b) indicates that sanctions imposed under § 102(b)(2) are intended to be prospective. House Conference Report language on the provision, which was adopted as a Senate floor amendment and not contained in the House bill, states that the "conference substitute is similar to the Senate amendment, but ... refines the language on sanctions with respect to transfers or detonations of nuclear explosive devices (or transfers or designs or components thereof) to ensure that such sanctions are prospective." H.Rept. 103-482, 103d Cong., 2d Sess. 264 (1994).

- (ii) licenses for the export to that country of any item on the United States Munitions List.
- (C) The United States Government shall terminate all foreign military financing for that country under this Act [*i.e.* the AECA].
 - (D) The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, except that the sanction of this subparagraph shall not apply —
 - (i) to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities), or
 - (ii) to humanitarian assistance.³
 - (E) The United States Government shall oppose, in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d), the extension of any loan or financial or technical assistance by any international financial institution.⁴
 - (F) The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities.

³In addition, § 2(b)(4) of the Export-Import Bank Act, 12 U.S.C. § 635(b)(4)(as amended by § 1303(a) of P.L. 104-201) prohibits the Bank from giving approval to guarantees, insurance, credit extensions or participations in the extension of credit in support of U.S. exports to any country that the Secretary of State has determined is not a nuclear-weapon state and has detonated, after October 26, 1977, a nuclear explosive device. The statute gives the President authority to waive the prohibition if he finds Bank approvals to be in the "national interest." The Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, prohibited the Export-Import Bank from using funds available to it in FY1998 "to make expenditures, contracts, or commitments for the export of nuclear equipment, fuel, or technology to any country other than a nuclear-weapon state as defined in Article IX of the Nuclear Non-Proliferation Treaty eligible to receive economic or military assistance under this Act that has detonated a nuclear explosive after the date of enactment," *i.e.*, November 26, 1997. P.L. 105-118, Title I, 111 Stat. 2386. This is a standard foreign operations appropriations restriction; it currently appears in the Foreign Operations Appropriations Act, 2001, P.L. 106-429, Appendix A– H.R. 5526, Title I, 114 Stat. 1900, 1900A-3.

⁴Section 701 of the International Financial Institutions Act, 22 U.S.C. § 262d, sets forth human rights and U.S. assistance policies with international financial institutions. Among other covered institutions are the International Bank for Reconstruction and Development (World Bank), the International Development Association, the International Finance Corporation, the Asian Development Bank, and the International Monetary Fund (IMF). In carrying out his or her duties, the United States Executive Director of each of the named institutions is to consider, among other things, whether the recipient country has detonated a nuclear device. 22 U.S.C. § 262d(b)(3)(C). In addition, the U.S. Government is to "seek to channel assistance to projects which address basic human needs of the people of the recipient country." 22 U.S.C. § 262d(d).

- (G) The authorities of section 6 of the Export Administration Act of 1979⁵ shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 (relating to congressional oversight of intelligence activities).

While the statute requires that the President impose the sanctions "forthwith," it does not specify a date by which they must be imposed. The President may delay their imposition for a maximum of 30 days of continuous session of Congress, however, if he first transmits to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee "a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of the United States" (§ 102(b)(4)(B)). This section permits only one certification to be transmitted to the Congress for a country regarding the same detonation, transfer, or receipt of a nuclear explosive device.

Section 102(b) does not allow the President unilaterally to waive one or more of the sanctions when they are originally imposed, but does provide for the enactment of legislation on an expedited basis that would permit such a waiver.⁶ The statute does not provide for the possible removal or suspension of one or more of the sanctions once certain conditions are met,⁷ nor does it provide for their termination. Thus, in the absence of other provisions of law that may be invoked, legislation must seemingly be enacted to achieve these ends.⁸

⁵The authorities of the Export Administration Act (EAA), now expired, have been carried forward in Executive Order No. 13222 of August 17, 2001, issued under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.* 66 Fed. Reg. had been extended under Executive Order No. 12924 of August 19, 1994. 59 Fed. Reg. 43437 (1994). Section 6 of the EAA, 50 U.S.C. App. § 2405, authorized the President to impose export controls for foreign policy reasons, subject to certain conditions and restrictions.

⁶If the President transmits a certification to the Congress for the delay of sanctions, a joint resolution to authorize the exercise of waiver authority will be considered under expedited procedures in the Senate if the legislation is introduced in either House within 30 days of continuous session after Congress receives the President's certification. Arms Export Control Act (AECA), § 102(b)(4)(B),(C). The waiver authority allows the President to waive "any sanction" that must otherwise be imposed under § 102(b)(2) if he determines and certifies in writing to the Speaker of the House and the Chairman of the Senate Foreign Relations Committee that "the imposition of the sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security." AECA, § 102(b)(5). The certification must include a statement setting forth the specific reasons for the waiver. The authority would be limited to the country that has engaged in the proscribed conduct.

⁷For example, § 102(b) applies to a country that has detonated a nuclear explosive device when it had the status of a "non-nuclear-weapon state," an act whose character cannot be modified were that status subsequently to change.

⁸Legislative history of P.L. 103-236 does not appear to address the termination of § 102(b) sanctions. *See* 140 Cong. Rec. S411-S413 (daily ed. January 31, 1994) and H.Rept. 103-482, 103d Cong., 2d Sess. 261-266 (1994). Section 102(b) may be compared, however, to § 824

Application of § 102(b) of the AECA to India and Pakistan

On May 11, 1998, India stated publicly that it had conducted three underground nuclear tests that day; on May 13, it announced that it had conducted two additional tests. Pakistan announced May 28 that it had conducted five underground nuclear tests; it reported a sixth test May 30. Because neither India nor Pakistan had detonated a nuclear device before January 1, 1967, each is considered to be a "non-nuclear-weapon state" for purposes of § 102(b)(2).

On May 13, 1998, President Clinton signed Presidential Determination No. 98-22, a memorandum for the Secretary of State, in which he determined "in accordance with section 102(b)(1) of the Arms Export Control Act ... that India, a non-nuclear-weapon state, detonated a nuclear explosive device on May 11, 1998," and directed "the relevant agencies and instrumentalities of the United States Government ... to take the necessary actions to impose the sanctions described in section 102(b)(2) of the Act."⁹ On May 30, the President made an identical determination (No. 98-25) with respect to Pakistan's May 28 tests.¹⁰ In each case, the President decided not to

⁸(...continued)

of the Nuclear Proliferation Prevention Act, which, like § 826(a), the section enacting § 102(b), is also contained in Part B of the Act. Section 824, which provides for the imposition of sanctions on persons found to have assisted nuclear proliferation through the provision of financing, requires that sanctions continue in effect for 12 months and provides that they will cease to apply after that period only if the President makes certain determinations.

It should also be noted that while the President has independent powers in the area of foreign relations, the power of the President (or other entities of the Executive Branch) to engage in the activities covered by the sanctions (*e.g.*, providing foreign assistance, licensing arms exports) and to prohibit the particular transactions listed in the Act is based on statutory grants of delegated authority. In areas where Congress has exercised its express constitutional powers, the President may not use his independent authority to contravene an expression of congressional will. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634 (1952)(Justice Jackson concurring); *Consumers Union of U.S. v. Kissinger*, 506 F.2d 136 (D.C.Cir. 1974), *cert. denied*, 421 U.S. 1004 (1975); *United States v. Guy W. Capps, Inc.*, 204 F.2d 655 (4th Cir. 1953), *aff'd on other grounds*, 348 U.S. 296 (1955). *See generally* L. Henkin, *Foreign Affairs and the U.S. Constitution* 86-96 (1996).

⁹Presidential Determination No. 98-22 of May 13, 1998, 63 Fed. Reg. 27665 (1998).

¹⁰Presidential Determination No. 98-25 of May 30, 1998, 63 Fed. Reg. 31881 (1998). The United States suspended economic and military aid to Pakistan in April 1979 after receiving what it considered to be incontrovertible evidence of covert efforts by that country to construct a uranium enrichment facility. This action was taken under § 669 of the Foreign Assistance Act of 1961 (FAA), known as the Symington Amendment, which prohibited all U.S. economic and military assistance to any nonnuclear weapons country that had received nuclear enrichment equipment, materials or technology which had not been placed under International Atomic Energy Agency (IAEA) safeguards, unless the President made certain certifications. Pursuant to subsequent legislation, sanctions were waived and later reapplied. Section 669 is currently replaced by § 101 of the AECA. The FAA provides that the President may waive the § 101 prohibition as it applies to Pakistan, with respect to any grounds for the prohibition

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invoke that part of § 102(b) allowing a 30-day delay of sanctions. By doing so, the President appeared to forego the possible expedited enactment of a joint resolution authorizing him to waive any sanction with respect to India or Pakistan, as provided in § 102(b)(4)(B). Congress could choose to enact separate legislation, however, authorizing such a waiver or a version thereof.

The President's determination regarding India was the first invocation of § 102(b). At the time, no regulations had been issued governing its implementation. While the Executive Branch has implemented many forms of sanctions legislation in the past and could draw on this experience in implementing § 102(b), it had no prior regulatory precedents for administering this specific statute. The absence of certain definitions in § 102(b) could present problems for agencies, but could also afford them flexibility in implementing these measures.¹¹ Agencies involved in administering the sanctions include the Department of State, the Department of Defense, the Agency for International Development (AID), the Overseas Private Investment Corporation (OPIC), the Department of Commerce, the Office of Foreign Assets Control of the Department of the Treasury (OFAC), the U.S. Export-Import Bank, and the Commodity Credit Corporation (CCC). As noted earlier, absent other provisions of law that may apply, authority for the modification, suspension, or

¹⁰(...continued)

of assistance arising before the effective date of the Nuclear Proliferation Prevention Act of 1994, if he determines that to provide assistance is in the national interest of the United States. FAA, § 620E(d), 22 U.S.C. § 2375(d).

Under § 620E(e) of the Foreign Assistance Act, added in 1985 and amended in 1996 (P. L. 104-107)(Pressler Amendment), Pakistan is prohibited from receiving certain military assistance and military equipment or technology unless the President can certify during the fiscal year in which such assistance or sales or transfers are to take place, "that Pakistan does not possess a nuclear explosive device and that the proposed military assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device." Pakistan has not been certified with respect to non-possession of a nuclear explosive device since Presidential Determination No. 90-1 of October 5, 1989, 54 Fed. Reg. 43797 (1989). The President was able to waive § 101 of the AECA and § 620E(e) of the FAA for one year as these provisions applied to India or Pakistan under the India-Pakistan Relief Act of 1998 (*see* pages 11-13, *infra*) and may now do so without time restriction under authority granted in § 9001 of the Department of Defense Appropriations Act, 2000, P.L. 106-79 (*see* pages 13-15, *infra*). Regarding sanctions imposed on Pakistan, *see generally* CRS Report 92-631, *Economic Sanctions Imposed by the United States Against Specified Countries: 1979 Through 1992*, at 193-96.

¹¹Section 102(b) sanctions are to be imposed against the "country" involved, except for prohibitions on private bank loans, which apply to the "government of that country." Neither of these terms is defined in the statute, however, and thus it is not clear whether they are intended to include sub-national or government-owned entities. (Compare, for example, § 2(b)(4) of the Export-Import Bank Act (*see supra* note 3), which provides that the term "country" is to have the meaning given to the term "foreign state" in 28 U.S.C. § 1603(b), a provision of the Foreign Sovereign Immunities Act. Under this provision, the term "foreign state" is to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state"). Other terms – for example, "humanitarian aid" – also remain undefined. The legislation does not contain a contract sanctity provision, which would bar the President from prohibiting transactions in performance of contracts entered into before the date of the sanctions.

termination of these sanctions would appear to depend on a future congressional enactment.¹²

Details of § 102(b) Sanctions Imposed on India and Pakistan

After conducting an inter-agency review to develop a comprehensive sanctions policy with respect to India and Pakistan, the Administration announced its original implementation scheme for the two countries June 18, 1998.¹³ Highlights of the sanctions, as modified by the Agriculture Export Relief Act of 1998 and the India-Pakistan Relief Act of 1998, are described immediately below. The 1998 enactments are discussed in greater detail in the following section of this report. Provisions of P.L. 106-79, enacted October 25, 1999, granting the President broad waiver authority and repealing the India-Pakistan Relief Act of 1998, along with the President's actions under the new statute, are discussed in the last section of this report.

Foreign assistance: The United States terminated or suspended foreign assistance under the Foreign Assistance Act, with those exceptions provided by law.¹⁴ On December 1, 1998, the President exercised his authority under the India-Pakistan Relief Act of 1998 (enacted October 21, 1998) to waive until October 21, 1999, the § 102(b) prohibition as it applied to Trade and Development Agency (TDA) activities involving both India and Pakistan. The President also exercised his waiver authority to allow assistance to both countries under the International Military Education and Training (IMET) program.¹⁵ Prior to the waiver, TDA would not consider new

¹²In testimony before the Senate Foreign Relations Committee, the State Department expressed the view that new legislation was needed to enable the Executive Branch to terminate § 102(b) sanctions. *Crisis in South Asia: India's Nuclear Tests; Pakistan's Nuclear Tests; India and Pakistan: What Next? Hearings Before the Subcomm. on Near Eastern and South Asian Affairs of the Senate Comm. on Foreign Relations*, 105th Cong., 2d Sess. 18-19 (1998)(testimony of Robert Einhorn, Assistant Secretary of State). See also *Economic Sanctions and U.S. Policy Interests: Hearing Before the House Comm. on International Relations*, 105th Cong., 2d Sess. 25 (testimony of Stuart Eizenstat, Under Secretary of State for Economic, Business, and Agricultural Affairs).

¹³Dep't of State, "Fact Sheet on India and Pakistan Sanctions," June 18, 1998 [hereinafter cited as DOS Fact Sheet]; Dep't of State, "India-Pakistan Sanctions," On-the-Record Briefing, Washington, D.C., June 18, 1998 [<http://www.state.gov>][hereinafter cited as DOS Briefing]. See also *India-Pakistan Nuclear Proliferation in South Asia: Hearing Before the Subcomm. on Asia and the Pacific of the House Comm on International Relations*, 105th Cong., 2d Sess. (1998) [hereinafter cited as HIRC Hearing]. For additional information on the implementation of these sanctions, see CRS Report 98-570, *India-Pakistan Nuclear Tests and U.S. Response*.

¹⁴DOS Fact Sheet, *supra* note 13, at 1. The Fact Sheet cites the § 102(b) exceptions for humanitarian assistance and food and agricultural commodities as examples. The Department also noted that most assistance to Pakistan had already been prohibited. *Id.*

¹⁵The IMET program is authorized in Part II, Chapter 5 of the FAA (§§ 541-546), 22 U.S.C. §§ 2347-2347e. Along with the ban on foreign assistance under § 102(b)(2)(A) of the AECA,

(continued...)

projects in the sanctioned countries,¹⁶ but commitments made by the TDA before May 13, 1998, for India and before May 30, 1998, for Pakistan were honored “in accordance with applicable law.”¹⁷ Policy regarding Overseas Private Development Corporation (OPIC) programs, which are authorized in §§ 231 *et seq.* of the Foreign Assistance Act, is discussed under “Government credits, credit guarantees, and other financial assistance,” below.

Military sales, exports, and financing: The United States has terminated foreign military sales under the AECA, revoked licenses for the commercial sale of any item on the United States Munitions List, and suspended delivery of previously approved defense articles and services to India.¹⁸ Pakistan is prohibited from receiving certain U.S. military assistance, as well as U.S. military equipment and technology, pursuant to § 620E(e) of the Foreign Assistance Act of 1961 (Pressler Amendment), a restriction which may now be waived under § 9001 of P.L. 106-79.¹⁹

Government credits, credit guarantees, and other financial assistance: The Export-Import Bank (Eximbank) had issued notices terminating new business in India and Pakistan prior to the Administration’s June 18 announcement.²⁰ This policy was later adopted by the Overseas Private Investment Corporation (OPIC) and the Commodity Credit Corporation (CCC).²¹ Transactions approved by Eximbank as well as legally binding commitments made by OPIC and the CCC did, however, go

¹⁵(...continued)

§ 101(a) of the Act bars FAA military assistance and grant military education and training as a sanction for engaging in certain nuclear enrichment transfers, unless the President makes specified certifications. The Pressler Amendment ban on military assistance to Pakistan, however, excludes IMET assistance and certain other FAA programs. FAA, § 620E(e)(2), 22 U.S.C. § 2375(e)(2).

¹⁶DOS Fact Sheet, *supra* note 13, at 1.

¹⁷HIRC Hearing, *supra* note 13, at 9 (testimony of David Aaron, Under Secretary of Commerce for International Trade).

¹⁸DOS Fact Sheet, *supra* note 13, at 1. In a May 20 *Federal Register* notice, the Bureau of Political-Military Affairs of the State Department announced that “all licenses and other approvals to export or otherwise transfer defense articles and defense services from the United States to India, or transfer U.S. origin defense articles and defense services from a foreign destination to India, or temporarily import defense articles from India pursuant to Section 38 of the Arms Export Control Act are immediately revoked.” 63 Fed. Reg. 27781 (1998). The Department also stated that it would subsequently “deny all applications and other requests for approval to export or otherwise transfer or retransfer defense articles and services to India.” *Id.* The State Department’s notice revoking munitions export licenses and other approvals for Pakistan is set forth at 63 Fed. Reg. 33122 (June 17, 1998).

¹⁹*See supra* note 10.

²⁰The Export-Import Bank announced a prohibition on financing of new transactions in the public and private sectors in India May 13, 1998. It did the same for Pakistan June 1. The sanctions were imposed under both § 102(b) of the AECA and § 2(b)(4) of the Export-Import Bank Act. Ex-Im Bank Press Releases, May 13, 1998, and June 1, 1998 [<http://www.exim.gov/>].

²¹DOS Fact Sheet, *supra* note 13, at 1.

forward.²² The Agriculture Export Relief Act, enacted July 14, 1998, amended the AECA to provide an exemption through FY1999 for U.S. Department of Agriculture financing covered by § 102(b)(2)(D). This enactment permitted U.S. wheat farmers to participate in a 365,000 metric ton wheat tender by Pakistan that closed the following day.²³ The new statute also permanently exempted from the AECA prohibition federal government financing for medicine and medical supplies. On December 1, 1998, the President used his authority under the India-Pakistan Relief Act of 1998 to waive until October 21, 1999, the AECA prohibition on Eximbank and OPIC activities with regard to both India and Pakistan, as well as nuclear-related restrictions on Eximbank activities contained in § 2(b)(4) of the Export-Import Bank Act.²⁴

Support for international financial assistance: This sanction affects U.S. support for the programs of such international financial institutions (IFIs) as International Bank for Reconstruction and Development (World Bank), the International Development Association, the International Finance Corporation, the Asian Development Bank, and the International Monetary Fund (IMF).²⁵ In the Administration's June 19 press briefing, the Treasury Department spokesman stated that "[t]here is now a G-8 consensus ... on two key points: first, that loans to India and Pakistan in the category of basic human needs will go forward; and second, that loans that are outside of that category — non-basic human needs — will be postponed. With the voting share that the G-8 have at the IFIs, we expect that consensus to be sustained."²⁶ In a written summary, the State Department noted that the United States has "gained G-8 support to postpone consideration of non-basic human needs (BHN) loans for India and Pakistan by the International Financial Institutions (IFI) to bolster the effect of the Glenn Amendment requirement that the U.S. oppose non-BHN loans."²⁷ In July 1998, U.S. officials announced that the United States would not oppose the negotiation of IMF loans to Pakistan, although

²²DOS Briefing, *supra* note 13 (response of Under Secretary of the Treasury David Lipton); HIRC Hearing, *supra* note 13, at 9 (testimony of David Aaron, Under Secretary of Commerce for International Trade).

²³"White House Amends Sanctions Law in Time for Pakistan Wheat Tender," *Inside U.S. Trade*, July 17, 1998. For background on agricultural issues, see CRS Report 98-770, *U.S. Agricultural Exports and the Nuclear Nonproliferation Sanctions on India and Pakistan*.

²⁴Section 2(b)(4) of the Export-Import Bank Act is described at note 3, *supra*.

²⁵See *supra* note 4.

²⁶DOS Briefing, *supra* note 13 (statement of Under Secretary of the Treasury David Lipton). The G-8 countries referred to are the United States, the United Kingdom, France, Germany, Japan, Canada, Italy, and Russia.

²⁷DOS Fact Sheet, *supra* note 13, at 2; see *supra* note 4. The Department added that these restrictions included a postponement of \$1.17 billion in IFI lending for India and "although no IFI loans for Pakistan have been presented for board consideration, \$25 million in IMF assistance has been postponed for failure to meet economic benchmarks." *Id.* The Treasury Department spokesman at the Administration's June 19 press briefing described BHN loans as including loans in "categories such as education, maternal and child health, water and sewage, low-income housing, rural development." DOS Briefing, *supra* note 13 (statement of Under Secretary of the Treasury David Lipton).

it would abstain from an IMF board vote to approve any resulting loan agreement, an action the Administration viewed to be in compliance with its statutory obligation under § 102(b).²⁸ On December 1, 1998, the President invoked the India-Pakistan Relief Act to waive this provision until October 21, 1999, as it applies to “the extension of any loan or financial or technical assistance to Pakistan by any international financial institution in support of the assistance program that Pakistan is negotiating with the International Monetary Fund.”

Private bank loans: The Administration stated that it planned to implement the § 102(b)(2)(F) prohibition on certain private lending in a future Executive Order.²⁹ This prohibition appeared to have posed considerable difficulty for regulators, in part because of the level and nature of governmental involvement in the Indian banking system.³⁰ As noted earlier, the prohibition’s exemption for agricultural commodities was legislatively expanded in July 1998 to include fertilizer. On December 1, the President used his authority under the India-Pakistan Relief Act of 1998 to waive § 102(b) until October 21, 1999, as it applies to “the extension of any loan or the providing of any credit to the Government of India or the Government of Pakistan by any U.S. bank.”

Exports: The Commerce Department's Bureau of Export Administration (BXA) issued interim guidance for exporters May 28 and June 3, 1998, but a number of questions as to which dual-use items were to be covered and which recipients were to be embargoed remained unresolved.³¹ Following the Administration's June 18 statement, the Bureau issued its updated export policy June 22, stating that it would apply this policy to new and pending license applications. As announced, the controls were grouped into three categories addressing items to be exported and end-users, the first category representing the most severe level of controls. These categories are: (1) nuclear and missile-related items and entities of concern; (2) exports of national security-related items (including certain computers) and military entities; and (3) other dual-use items.³² Controls range, for example, from an

²⁸State Department Background Briefing, July 21, 1998, *as reported by* Federal News Service, *available in* LEXIS, News Library, Curnws File; “Despite A-Test, U.S. Won’t Bar Pakistan Bailout,” N.Y. Times, July 22, 1998, at A3. *See generally* CRS Report 98-570, *India-Pakistan Nuclear Tests and U.S. Response*, at 26-27.

²⁹DOS Fact Sheet, *supra* note 13, at 2.

³⁰*See, e.g.*, “Banks Lobby Washington for Slack in India Sanctions,” Wall St. J., May 22, 1998, at A15. For a discussion of banking issues, *see* CRS Report 98-537, *Bank Loan Denial for Nuclear Proliferation under Section 102(b) of the Arms Export Control Act as Applicable to India and Pakistan*.

³¹“U.S. Is Wrestling Over Limits on High-Tech Exports to India,” Wall St. J., June 10, 1998, at A14; “Albright Makes Push for Flexibility on India, Pakistan Nuclear Sanctions,” Inside U.S. Trade, June 12, 1998.

³²Bureau of Export Administration, “U.S. Sanctions on the Export of Dual-Use Goods to India and Pakistan” (June 22, 1998) [<http://www.bxa.doc.gov>]. By prohibiting the export of missile-related goods and possibly some dual-use items, DOC appears to have disagreed with some industry arguments that the NNPA permitted the Department to restrict only nuclear-

absolute prohibition on exports of any dual-use item controlled for nuclear or missile proliferation reasons to all end users (category 1) to end-user based controls on computers of over 2000 MTOPS (category 2) to favorable case-by-case consideration of license applications for dual-use items to Indian and Pakistani entities where neither the item nor the entity is covered by either of the first two categories.

In codifying its regulations November 19, 1998, BXA, among other things, added to its general Entity List at 15 C.F.R. Part 744, Supp. 4, the names of Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities, as well as the names of Indian and Pakistani military entities.³³ The agency stated that, with limited exceptions, it would require a license for the export of any item over which BXA exercises regulatory jurisdiction to the entities cited for nuclear and missile activities, and presume denial with regard to items specifically listed on the Commerce Control List for export to the named military entities.³⁴ In March 2000, BXA removed 51 Indian entities from the Entity List, changed its licensing policy for exports of items not listed on the Commodity Control List (*i.e.*, those classified as EAR99) to Indian and Pakistani government, private and parastatal entities from a presumption of denial to a presumption of approval, and made other changes regarding the treatment of specific entities in both countries.³⁵

³²(...continued)

related goods and technology. *See* "Business Groups Face Uphill Battle in Effort to Limit India Sanctions" and letters of Industry Coalition on Technology Transfer and Electronic Industries Association to Samuel B. Berger, Assistant to the President to the President for National Security Affairs, *Inside U.S. Trade*, May 22, 1998.

³³Dep't of Commerce, Bureau of Export Administration, "India and Pakistan Sanctions and Other Measures; Interim Rule," 63 Fed. Reg. 64322-42 (November 19, 1998). In its June 22 export policy statement (*supra* note 31), BXA announced that, pursuant to the Enhanced Proliferation Control Initiative (EPCI), it would publish a list of Indian and Pakistani government and private entities involved in nuclear and missile activities and would prohibit the exports and reexports of all items subject to the EAR to the listed entities. Under the EPCI, originally imposed by Executive Order 12735 of November 16, 1990 (55 Fed. Reg. 48587) and a December 1990 presidential directive (26 Weekly Comp. Pres. Docs. 2033 (1990)), foreign policy export controls have been imposed on specific items intended for proliferation-related uses and on goods that a U.S. exporter knows will be used for proliferation purposes. Bureau of Export Administration, "Imposition of Foreign Policy Export Controls under the Enhanced Proliferation Control Initiative; Report to the Congress" (February 1991).

³⁴63 Fed. Reg. at 64322-23. Current regulations are set forth in 15 C.F.R. §§ 742.16; 744.11; 744.12; Part 744, Supp. No. 4 (Entity List), and related provisions; *see also* Department of Commerce, Bureau of Export Administration, "Dual-Use Export Control Sanctions: India and Pakistan," posted at [<http://www.bxa.doc.gov/Entities/Ind-Pak2.html>].

³⁵65 Fed. Reg. 14444 (2000). BXA stated that it was taking its action to remove the 51 Indian entities from the List "[b]ased on a consensus decision by the Administration to more tightly focus on those Indian entities which make direct and material contributions to weapons of mass destruction and missile programs and items that can contribute to such programs" and cited as support for the regulatory revisions "sense of Congress" language in § 9001(d) of the

(continued...)

1998 Sanctions Relief Legislation

Concern over the lack of an exemption for food and agricultural products in the § 102(b)(2)(D) prohibition on government credits, guarantees, and financing led to the July 14, 1998, enactment of the Agriculture Export Relief Act (AERA), P.L. 105-194, which amended this AECA section to exempt credits, credit guarantees, and financial assistance programs provided by the U.S. Department of Agriculture (USDA) to support the purchase of food or other agricultural commodities, and makes this amendment applicable to USDA credits, guarantees, and assistance made before, on, or after the date of enactment, through September 30, 1999.³⁶ The Act also lifted, through September 30, 1999, any sanctions that had already been imposed under § 102(b) involving these USDA programs.³⁷ Additionally, the AERA made the general prohibition on U.S. credits, credit guarantees, and financial assistance inapplicable to medicine and medical supplies and permanently lifted any sanctions imposed on such items before the date of enactment.³⁸ Finally, the Act amended the private loan exemption for agricultural commodities to specifically include fertilizer and permanently lifted any sanctions imposed on such items before the date of enactment.³⁹

³⁵(...continued)

FY2000 DOD Appropriations Act calling for refinement and focusing of the list (*see infra* page 14 for statutory language).

³⁶Agriculture Export Relief Act (AERA), Pub. L. No. 105-194, § 2(a)(3), § 2(d). Of primary concern at the time were the CCC General Sales Manager (GSM) programs, which provide export credit guarantees for U.S. agricultural commodities (7 C.F.R. Part 1493). The Justice Department had reportedly concluded that § 102(b)(2)(D) did not allow the Administration to provide agricultural credits for exports to sanctioned countries. "No Flexibility for Food," Dow Jones News Service, June 11, 1998, *available in* WESTLAW, ALLNEWSPLUS File; "U.S. moves to exempt Pakistani wheat credits from sanctions," AP, June 12, 1998; "Congress May Lift Ban on Wheat Sales to India and Pakistan," N.Y. Times, June 15, 1998, at A17. Unlike certain other sanctions that must be imposed under § 102(b) — namely, the prohibition on Foreign Assistance Act assistance, the prohibition on private bank lending, and the use of Export Administration Act authority to prohibit exports — the prohibition on government credits, credit guarantees and financial assistance does not include an express exemption for food and agricultural commodities. *Compare* AECA, § 102(b)(2)(D), as in effect in May 1998, with AECA, §§ 102(b)(2)(A), (F), (G).

Amendments exempting USDA programs were originally attached to the reported version of H.R. 4101 (105th Cong.), the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Bill, 1999, at § 737 (H.Rept. 105-588, 105th Cong., 2d Sess.) and to the reported version of S. 2159, the Senate agriculture appropriations bill for FY1999, at § 738 (S.Rept. 105-212, 105th Cong., 2d Sess.). The Agriculture Export Relief Act of 1998 was later enacted as freestanding legislation.

For further discussion of economic sanctions as they relate to the agricultural sector, *see* CRS Report RL30108, *Economic Sanctions and U.S. Agricultural Exports*.

³⁷AERA, §§ 2(d), 2(e).

³⁸AERA, §§ 2(c), 2(e).

³⁹AERA, §§ 2(b), 2(e).

The India-Pakistan Relief Act of 1998 (IPRA), enacted October 21, 1998, authorized the President to waive “for a period not to exceed one year upon enactment” all or part of the § 102(b) sanctions imposed on India or Pakistan related to FAA and governmental financial assistance, international financial assistance, and private bank loans, as well as all or part of the following: § 620E(e) of the Foreign Assistance Act, prohibiting military assistance to Pakistan based on its nuclear activities (Pressler Amendment); § 2(b)(4) of the Export-Import Bank Act, generally restricting financing based on the detonation of a nuclear device; and § 101 of the AECA, which prohibits certain FAA and AECA assistance to countries engaged in nuclear enrichment transfers.⁴⁰ The Act maintained § 102(b) prohibitions on sales of defense articles and services, export licenses for U.S. Munitions List items, foreign military financing under the AECA, and export controls under § 6 of the Export Administration Act (EAA).⁴¹ Before exercising his waiver authority, the President was required to consult with the Senate Foreign Relations Committee, the House International Relations Committee, and the Senate and House Appropriations Committees. In addition, the Secretary of State was required to submit a report to these committees, at least 30 days before a one-year waiver period expired, on economic and national security developments in India and Pakistan.

On November 7, 1998, the President announced that he would waive some of the existing nuclear sanctions because of Indian and Pakistani commitments regarding further nuclear testing.⁴² As noted earlier, the President formally exercised his IPRA authority December 1, 1998, waiving until October 21, 1999, the statutory provisions covered by the new law, with regard to specific programs and activities.⁴³

⁴⁰Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, P.L. 105-277, § 101(a), Title IX, § 902(a), 112 Stat. 2681-40.

⁴¹P.L. 105-277, § 101(a), Title IX, § 902(b).

⁴²“President Clinton Eases Some Sanctions Against India, Pakistan After Nuke-Test Ban,” 15 Int’l Trade Rep. 1931-32 (BNA 1998).

⁴³Presidential Determination No. 99-7, December 1, 1998, 34 Weekly Comp. Pres. Doc. 2401 (1998). At the request of the House Ways and Means Committee, the International Trade Commission (ITC) in April 1999 began a factfinding investigation regarding the economic effect of the AECA sanctions imposed on India and Pakistan, publishing its report in September 1999. As the ITC stated in the report’s abstract, AECA sanctions “appeared to have had a relatively minimal overall impact on India, while they appeared to have had a more pronounced adverse impact on Pakistan. However, for both countries it is difficult to isolate the effects of the U.S. sanctions from other concurrent economic events, such as each country’s domestic economic policies and sanctions imposed by other countries.” The ITC also stated that “[r]ecent trade data indicated that reimposition of the Glenn Amendment sanctions prohibiting USDA export credits and guarantees most likely would adversely affect U.S. wheat exports to Pakistan, which is an important customer for white wheat grown in the U.S. Pacific Northwest states.” U.S. Int’l Trade Comm’n, *Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan* iii (September 1999)(USITC Publication 3236).

1999 Sanctions Relief Legislation and Presidential Action

A number of bills were introduced in 1999 to narrow the application of § 102(b) of the AECA and other provisions of law as they pertain to India and Pakistan.⁴⁴ Three bills containing sanctions relief legislation for India and Pakistan were acted upon: **H.R. 973** passed the House June 15, 1999; **H.R. 2415** passed the House July 21, but passed the Senate August 3 in a form that did not contain sanctions relief provisions; **S. 1122** passed the Senate June 8, and was later inserted into **H.R. 2561**, the Department of Defense Appropriations Act, 2000. H.R. 2561 passed the Senate as amended July 28, and was enacted into law October 25 with sanctions relief language.

The new law, P.L. 106-79, § 9001, authorizes the President to waive, without time limitation, all of the sanctions contained in §§ 101 or 102 of the AECA, the nuclear-related restriction in § 2(b)(4) of the Export-Import Bank Act, and § 620E(e) of the Foreign Assistance Act (Pressler Amendment), as these apply to India or Pakistan. The President may waive military and export control sanctions in § 102(b)(2), however, only if he certifies to Congress that a particular restriction would not be in U.S. national security interests. Further, the issuance of a license for defense exports is subject to the same requirements as those contained in § 36(c) of the AECA, 22 U.S.C. § 2776(c), which requires the President to certify to Congress specified information on a proposed defense export before an export license is issued.⁴⁵

The statute also contains “sense of Congress” language that (1) the “broad application of export controls to nearly 300 Indian and Pakistani entities is inconsistent with the specific national security interests of the United States and that this control list requires refinement” and (2) “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.”

Waivers issued under the law will cease to apply to India or Pakistan if the respective country detonates a nuclear explosive device or takes one of the nuclear-

⁴⁴Undersecretary of State Stuart Eizenstat reportedly stated in testimony before the House Agriculture Committee in June 1999 that the Administration favored having “waiver authority, full and permanent waiver authority, for all of the Glenn sanctions with respect to India and Pakistan.” *Economic Sanctions and the Effect on U.S. Agriculture; Hearing Before the House Comm. on Agriculture*, June 9, 1999, transcript reported by Federal News Service, available in LEXIS, News Library, Curnws File (response of Mr. Eizenstat to question by Mr. Pomeroy).

⁴⁵Section 36(c), as written, applies to exports of major defense equipment and other defense articles and services valued over threshold dollar amounts. It also provides that unless the President states in his certification that an emergency exists which requires the proposed export in the U.S. national security interests, such a license may not issue until 30 calendar days after the certification is received by Congress, unless a joint resolution of disapproval is enacted in the interim.

related actions that would require the President to report to Congress under § 102(b)(1) of the AECA. The statute also repeals the India-Pakistan Relief Act of 1998.

On October 27, the President waived the statutory restrictions covered by the new law as applicable to specific U.S. government programs and commercial transactions.⁴⁶ The waiver for India covers the following:

- Export-Import Bank programs;
- OPIC programs;
- Trade and Development Agency programs;
- assistance under the International Military Education and Training (IMET) program;
- private U.S. bank loans and credits to the Government of India;
- assistance to the Asian Elephant Conservation Fund, the Rhinoceros and Tiger Conservation Fund, and the Indo-American Environmental Leadership program; and
- USDA credits, credit guarantees, and other financial assistance to support the purchase of food or other agricultural commodities.

The waiver for Pakistan is more limited, covering private U.S. bank loans and credits to the Government of Pakistan, and USDA credits, credit guarantees, and other financial assistance to support the purchase of food or other agricultural commodities. The United States had earlier terminated aid to Pakistan under an annual foreign operations appropriations act provision cutting off all assistance financed by funds appropriated under the statute to any country whose duly elected head of government is deposed by military coup or decree, a provision that was triggered by the October 12, 1999 military coup in Pakistan.⁴⁷ The 2001 Foreign Operations Appropriations Act, however, allows appropriated funds for certain Foreign Assistance Act programs to be made available for basic education programs for Pakistan, “notwithstanding any provision of law that restricts assistance to foreign countries.”⁴⁸

As noted earlier, the Commerce Department in March 2001 removed 51 Indian entities from the Entity List, made other revisions regarding the treatment of specific entities of both countries, and instituted a presumption of approval for applications to export goods to certain government, parastatal, and private entities in India or Pakistan where the goods are subject to DOC jurisdiction but not listed on the

⁴⁶Presidential Determination No. 2000-04 of October 27, 1999, 64 Fed. Reg 60649 (1999).

⁴⁷Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, § 508, P.L. 105-277, § 101(d), 112 Stat. 2681-171. Aid may be resumed if the President determines and reports to the House and Senate Appropriations Committees that a democratically elected government has taken office subsequent to the termination of aid. This is a standard appropriations restriction and currently appears in § 508 of the Foreign Operations Appropriations Act, 2001, P.L. 106-429, Appendix A–H.R. 5526, 114 Stat. 1900, Stat. 1900A-24.

⁴⁸P.L. 106-429, Appendix A–H.R. 5526, § 597, 114 Stat. 1900, Stat. 1900A-61.

Commodity Control List. The Department referred to the “sense of Congress” language in the 1999 statute as supporting its regulatory revisions.⁴⁹

Recent Developments

On August 9, 2001, the President waived the application of restrictions in §§ 101 and 102 of the AECA with regard to Pakistan relating to exports of defense articles and services to the extent that the restrictions applied to “the sale of certain specified U.S.-origin helicopter and armored personnel carrier spare parts and ammunition to Pakistan for use in its deployment in Sierra Leone in support of UN peacekeeping operations.”⁵⁰

Later in the month, the Bush Administration indicated that it was reviewing its sanctions policy with the primary aim of easing sanctions currently imposed on India.⁵¹ Sen. Joseph Biden, Chairman of the Senate Foreign Relations Committee, wrote to the President August 24 urging him to use his waiver authority to lift economic sanctions (mainly export controls) imposed on India, and stating that “a case can be made for the use of waiver authority to lift sanctions on Pakistan as well,” but that concerns over missile technology from China to Pakistan should first be resolved.⁵² Ranking Member of the House International Relations Committee Tom Lantos sent a letter to the President August 28 also stating his support for lifting the nuclear sanctions imposed on India. On September 5, Rep. Jim McDermott and Rep. Ed Royce (co-chairmen of the Congressional Caucus on India), along with 48 other House Members, wrote to the President in support of Administration statements regarding removal of sanctions and asking that he “strongly consider re-evaluation and substantially changing” the Entity List.

Following the September 11 terrorist attacks on the World Trade Center and the Pentagon, the President, on September 22, waived § 101(b)(2) sanctions and prohibitions on exports of defense items and sensitive technology and military financing with respect to both India and Pakistan, having determined that continuation of the measures would not be in U.S. national security interests.⁵³ He also waived any

⁴⁹See text at *supra* note 35.

⁵⁰Presidential Determination No. 2001-23 of August 9, 2001, 66 Fed. Reg. 44521 (2001). The waived restrictions had been imposed under the International Traffic in Arms Regulations (ITARS).

⁵¹“U.S. Seeks to Lift Sanctions on India; Aim Is to Bolster Military Relations,” *Wash. Post*, August 12, 2001, at A1; “U.S. Ready to End Sanctions on India to Build Alliance,” *N.Y. Times*, Aug. 27, 2001; “Administration to Work with Congress to Lift Economic Sanctions Against India,” 18 *Int’l Trade Rep.* 1387 (2001).

⁵²“Biden Calls for Easing India Sanctions, Urges Talks with Administration,” *Inside U.S. Trade*, August 31, 2001.

⁵³Presidential Determination No. 2001-28, September 22, 2001, posted at [<http://www.whitehouse.gov/news/releases/2001/09/20010922-4.html>]. See also Dep’t of Commerce, Bureau of Export Administration, “India and Pakistan: Lifting of Sanctions,

remaining sanctions in §§ 101 or 102 of the AECA, the Export-Import Bank Act, and the Pressler Amendment. As noted above, however, foreign assistance to Pakistan is currently restricted because of the anti-coup provision in the FY2001 foreign operations appropriations act.⁵⁴ In addition, the Pakistani Ministry of Defense and its sub-units and successors, as well as two other Pakistani entities (the Space and Upper Atmosphere Research Commission (SUPARCO) and the National Development Complex) are currently subject to two-year AECA missile proliferation sanctions. These consist of prohibitions on granting export licenses under the EAA and the AECA and on entering into U.S. government contracts involving the sanctioned entities.⁵⁵

Legislation

H.R. 1358 (McDermott), introduced April 3, 2001, would remove all nuclear sanctions imposed on India and Pakistan. The bill has been referred to the House International Relations Committee and the House Financial Services Committee.

H.R. 2889 (Lantos), introduced September 14, 2001, would permanently remove nuclear sanctions as they apply to India. The bill has been referred to the House International Relations Committee.

H.R. 2506, the foreign operations appropriations bill for FY2002, as passed the House, provides that assistance may be resumed to countries subject to the anti-coup amendment not only if the President certifies that a democratically elected government has taken office, but also if he certifies that “substantial progress has been made towards the holding of democratic elections” (§ 508). The bill, as reported by the Senate Appropriations Committee, does not contain this additional language. Both bills, however, would provide for basic education assistance for Pakistan (H.R. 2506, § 577, as passed by the House; § 572, as reported in the Senate).

⁵³(...continued)

Removal of Indian and Pakistani Entities, and Revision in License Review Policy,” 66 Fed. Reg. 50090 (October 1, 2001).

⁵⁴ The State Department has also cited as currently applicable to Pakistan § 620(q) of the Foreign Assistance Act and § 512 of the Foreign Operations Appropriations Act (the Brooke Amendment), which bar certain assistance for countries in default on U.S. Government loans. “Sanctions on India and Pakistan,” Fact Sheet, September 28, 2001, posted at <<http://www.state.gov>> (under “Press Releases (Other)).

⁵⁵The Ministry of Defense is also subject to a two-year import prohibition covering products produced by the Ministry. The missile proliferation sanctions are imposed under § 73 of the AECA 22 U.S.C. § 2797b(a)(1), and § 11B(b)(1) of the EAA, 50 U.S.C. App. § 2401b(b)(1). For further details, *see* Dep’t of State, “Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against Entities in Iran and Pakistan,” 65 Fed. Reg. 71348 (November 30, 2000)(Ministry of Defense; Space and Upper Atmosphere Research Commission), and Dep’t of State, “Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against a Chinese Entity and a Pakistani Entity,” 65 Fed. Reg. 47256 (September 11, 2001)(National Development Complex). For further discussion of existing sanctions and other statutory restrictions applicable to India and Pakistan, *see* CRS Report RS20995, *India and Pakistan: Current U.S. Economic Sanctions*.

S. 1465 (Brownback), as reported by the Senate Foreign Relations Committee October 4, 2001, would make a number of statutory aid-related restrictions inapplicable to Pakistan and allow flexibility in the use of other related authorities until October 1, 2003, unless otherwise provided in the bill. Regarding the anti-coup restriction, it would make inapplicable to Pakistan any such provision in the foreign operations appropriations act for FY2002 (or for any earlier fiscal year) (§ 1(a)). It would also authorize the President to waive, with respect to Pakistan, any anti-coup provision in the foreign operations act for FY2003 if the President determines and certifies to Congress that the waiver would facilitate the transition to democratic rule in Pakistan and is important to United States efforts to respond to, deter, or prevent acts of international terrorism (§ 1(b)). Congressional consultation requirements would be required before either of these authorities were invoked. Regarding EAA and AECA missile proliferation sanctions, it would allow the President, with respect to a sanction imposed on a foreign person in Pakistan prior to January 1, 2001, to exercise the waiver contained in the underlying authorities after consultation with appropriate congressional committees and without regard to the notification period set forth in the waiver provisions (§ 2). Regarding other foreign assistance restrictions, it would make § 620(q) of the Foreign Assistance Act, prohibiting assistance to countries in default on certain debt owed the United States, and any similar provision in the foreign operations appropriations act for FY2002, inapplicable to Pakistan (§ 3). The reported bill also contains provisions modifying FAA notification deadlines for drawdowns and transfers of excess defense articles carried out to respond to, deter, or prevent acts of international terrorism (§ 4).

As introduced September 25, 2001, the bill would have authorized the President through September 30, 2003, and notwithstanding any other provision of law, to provide assistance, authorize the export of defense articles or defense services, authorize the export of dual-use items, or extend other financial assistance to India or Pakistan, under the Foreign Assistance Act, the Arms Export Control Act, the Export-Import Bank Act, or any other provision of law, if the President determined that to do so was in the national interest of the United States and important to U.S. efforts to respond to, deter, or prevent acts of international terrorism. The President would have been required to notify Congress before using this authority; the statute could not have been construed to authorize the President to provide for nuclear cooperation with either country.

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