

EXPORT CONTROL REFORMS WILL BOOST US-INDIA DEFENSE TRADE

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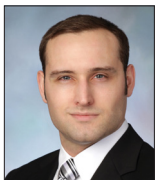
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On the eve of President Obama's trip to India, the U.S. Department of Commerce Bureau of Industry and Security removed export license requirements to India for a broad range of items with homeland security applications. BIS indicated it undertook this step as part of a series of rulemakings to "further transform our bilateral export control cooperation to realize the full potential of the strategic partnership between the two countries."¹ U.S. and Indian firms stand to benefit from these reforms, which will help expand cross-border trade in the defense and homeland and security sectors.

Reforms Undertaken

BIS amended the Export Administration Regulations to remove export license requirements for India for most categories of items controlled for crime control reasons (CC Columns 1 and 3) and regional stability reasons (RS 2). Many of these items may now be shipped to India without a license. This is subject to requirements for the exporter to file an Electronic Export Information in the Automated Export System regardless of value and to include specific language on shipment documents identifying these controls, that the shipment is destined to India and that BIS authorization may be required for re-export. BIS indicated that it lifted these export license requirements because India

had taken steps to ensure such U.S.-origin items are not re-exported from India without a license.

Items Affected

The new regulations remove licensing requirements for a large array of items with homeland security applications. Relevant crime-controlled items affected include law enforcement batons, police helmets and shields, commercial shotguns, optical sighting devices for firearms, smoke bombs and nonlethal grenades, fingerprint kits, voice print identification and analysis equipment, polygraphs, computers for fingerprint equipment and nonmilitary mobile crime science laboratories.

Regional stability items affected include bayonets, explosives detection equipment, concealed object detection equipment, certain radar systems for rotary wing aircraft, seismic detection and seismic intrusion detection equipment, radiation hardened TV cameras and seismic intrusion detection equipment. Licenses are still required for certain thermal imaging cameras and for space-related radiation hardened microelectronic circuits.

Also, no license will be required for certain types of software and technology related to a number of the items above. Thus, the EAR

amendments should not only increase trade of physical items to India, but also facilitate cross-border cooperation by U.S. and Indian companies in the development and production of many of those items.

In addition, the amendments broaden the availability of “license exceptions” for items exported to India. In part, this is because the EAR prohibits the use of most license exceptions where the item is controlled for crime control reasons. BIS has now expressly excluded India from that limitation. License exceptions are also made available in other contexts. For example, exports to India of certain explosives detection equipment are now eligible for License Exception Strategic Trade Authorization, where before this was not the case. Other items currently can be exported to India under existing license exceptions such as body armor and most encryption software.

Stimulating Strategic Trade

This recent amendment elevates India to a special status. India is now among only 31 countries not subject to the general restrictions on crime control equipment and the only such country in Asia besides Japan. India is now also among only 38 countries that are not generally subject to RS 2 controls.

BIS’ rulemaking continues a larger series of India-specific export reforms that began during President Obama’s first visit to India in November 2010. These included (1) removal of certain Indian entities from the Entity List, eliminating a general bar on these entities; (2) movement of India from more restricted country groups, enabling more use of license

exceptions; and (3) support for India’s full membership in the four multilateral export regimes: the Nuclear Suppliers Group, Missile Technology Control Regime, Australia Group and Wassenaar Arrangement.

On this trip, the U.S. and India also renewed the India-U.S. Research, Development, Testing and Evaluation Agreement to facilitate cooperation in defense research and development, and affirmed their commitment to the Defense Trade and Technology Initiative, to ease licensing requirements on exports of defense articles subject to the International Traffic in Arms Regulations and enable co-development and co-production. This follows reforms India undertook in 2014 to increase the limit on foreign direct investment in its defense sector up to 49 percent. The U.S. and India have also reconvened their High Technology Cooperation Group, to encourage trade in homeland security technologies.

India’s Homeland Security Market

Though much is known about India’s burgeoning defense market, less is known about its growing homeland security market. The budget for the Ministry of Home Affairs is expected to grow from \$11 billion in 2014 to near \$20 billion by 2018. Beyond the central government, states and even cities are undertaking their own modernization programs, such as equipping their police forces with state-of-the-art protective gear, weaponry and communications equipment. Procurement opportunities are increasing as India needs to address a multitude of challenges such as border

security, surveillance, intelligence gathering and monitoring, protecting critical infrastructure and growing threats to its cyber networks.

Satisfying Offset Requirements

The homeland security market also has an important role to play in the defense market, whereby global vendors competing for certain Indian defense procurements have to commit to reinvesting upward of 30 percent of the contract value back into the Indian defense market. Specifically, India’s Defense Procurement Procedure, the procurement policy that governs its capital acquisitions for defense equipment undertaken by the Ministry of Defense, allows for offset requirements to be satisfied through purchases, investments or certain transfer of technology in the homeland security market (what India terms “internal security”). Such recognized items include body armor, detection devices and riot control equipment, the same sorts of items for which the U.S. has now lifted export license requirements.

These combined changes potentially will create distinct procurement opportunities for U.S. companies in India’s growing homeland security sector and also help increase the ability of U.S. firms to be successful in bidding on procurements within India’s defense sector. Indian companies also stand to gain by gaining access to U.S. technology.

Endnotes

- 1 U.S.-India Bilateral Understanding: Additional Revisions to the U.S. Export and Reexport Controls Under the Export Administration Regulations, 80 Fed. Reg. 3463 (Jan. 23, 2015).