

200320880

THE DEPUTY SECRETARY OF STATE
WASHINGTON

E18H

August 19, 2003

RELEASE IN FULL

CONFIDENTIAL

DECL: 08/15/2013

MEMORANDUM FOR THE PRESIDENT

FROM: Richard L. Armitage *RLA*REVIEW AUTHORITY: Theodore Sellin, Senior
ReviewerSUBJECT: Waiver of Iraq's Ineligibility Under
Section 2(b)(4) of the Export-Import Bank Act

SUMMARY

I have determined, pursuant to section 2(b)(4) of the Export-Import Bank Act, that Iraq has engaged in an activity proscribed by section 2(b)(4), specifically the violation of a safeguards agreement with the International Atomic Energy Agency (IAEA). This memorandum recommends that you exercise the waiver authority available to you in section 2(b)(4) by determining and certifying to Congress that it is in the national interest for Eximbank to guarantee, insure or extend credit, or participate in the extension of credit, in support of United States exports to Iraq. This action is essential in order for the Export-Import Bank (Eximbank) to proceed with a pending program that is important to Iraq reconstruction efforts.

DISCUSSION

Section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, provides that the Secretary of State shall report to the appropriate committees of Congress and to the Board of Directors of the Export-Import Bank if he determines that any country has, among other things, materially violated a safeguards agreement with the International Atomic Energy Agency (IAEA). The Board is then prohibited from giving approval to guarantee, insure, or extend credit, or participate in the extension of credit, in support of United States exports to such country.

There is compelling evidence, including a determination by the IAEA Board of Governors on July 18, 1991, that Iraq materially violated its IAEA safeguards agreement. Pursuant to

CONFIDENTIALClassified by Deputy Secretary of State Richard L. Armitage
Reasons: E.O. 12958 1.5 (b) and (d)

CONFIDENTIAL

UN Security Council Resolution 687 of April 3, 1991, the IAEA was entrusted with inspections of Iraq's nuclear capabilities. The IAEA discovered the existence in Iraq of a uranium enrichment program not previously submitted to IAEA safeguards pursuant to Iraq's safeguards agreement under the Nuclear Nonproliferation Treaty (NPT). Iraq's safeguards violations included: failing to report a half-kilogram of enriched uranium produced through an electromagnetic process and a smaller quantity of enriched uranium produced through a centrifuge process; failing to provide the IAEA with design information on these enrichment facilities as is required before the introduction of nuclear material into any new facility; failing to report additional large quantities of nuclear material required to be safeguarded; and the undeclared production and separation of 3 grams of plutonium. On July 18, 1991, the IAEA Board of Governors adopted a resolution that Iraq was not in compliance with its safeguards agreement and decided to report the noncompliance to the UN Security Council. On August 15, 1991, the UN Security Council adopted resolution 707, which, inter alia, condemned Iraq's noncompliance with its IAEA safeguards agreement as a violation of Iraq's commitments under the NPT and demanded that Iraq comply fully and without delay with its international obligations including under the NPT.

Based on this information, it is clear that in 1991 and thereafter Iraq materially violated an IAEA safeguards agreement within the meaning of section 2(b)(4) of the Export-Import Bank Act. I have therefore made the required determination pursuant to section 2(b)(4).

The statute also authorizes you to waive the prohibition on Eximbank support if you determine and certify to Congress that continuation of credits, guarantees or insurance is in the U.S. national interest. Eximbank would be able to approve support for exports to Iraq 45 days after your determination and certification to Congress.

A strong case can be made that it is in the U.S. national interest to make available to Iraq Eximbank credits, guarantees and insurance. The violation occurred under the government of Saddam Hussein. That government is no longer in power. The U.S. Government has embarked upon an ambitious program to rebuild Iraq. Eximbank financing could play an important role in this regard.

CONFIDENTIAL

CONFIDENTIAL

Accordingly, I recommend that you sign the Determination at Attachment A, and authorize its transmittal, together with the Justification at Attachment B, to the Congress.

Attachments:

Tab A - Draft Presidential Determination

Tab B - Draft Justification for the President's
Determination

CONFIDENTIAL