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India and Pakistan: U.S. Economic Sanctions

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Summary

In 1998, India and Pakistan each conducted tests of nuclear explosive devices, drawing world condemnation. The United States and a number of India's and Pakistan's major trading partners imposed economic sanctions in response. Most U.S. economic sanctions were lifted or eased within a few months of their imposition, however, and Congress gave the President the authority to remove all remaining restrictions in 1999.

The sanctions were lifted incrementally. President Bush issued a final determination on September 22, 2001, to remove the remaining restrictions, finding that denying export licenses and assistance was not in the national security interests of the United States.

Today, four Indian and 20 Pakistani entities (and their subsidiaries) remain on the Commerce Department's list of entities for which export licenses are required. By comparison, restricted entities numbered in the hundreds in the wake of the 1998 nuclear tests. An export license is still required to ship missile technology-controlled or nuclear proliferation-controlled items to users in either country, but the Department of Commerce no longer views such license applications with a presumption of denying their issuance.

Apart from the sanctions imposed following the nuclear tests, the United States prohibited foreign aid to Pakistan when that country fell into arrears in servicing its debt to the United States in late 1998, a prohibition reenforced when Pakistan's military forces overthrew the democratic government in late 1999. Post-September 11 cooperation between the United States and Pakistan included a rescheduling of the debt and new legislation to waive the so-called democracy sanctions. Pakistan thus became eligible to receive U.S. foreign assistance through FY2003 when, unless it holds free and fair elections, restrictions on foreign aid could be reimposed.

Recap of Nuclear Tests Sanctions[1]

In May 1998, India and Pakistan each conducted tests of nuclear explosive devices, triggering sweeping U.S. economic sanctions as required by the Arms Export Control Act (AECA) and the Export-Import Bank Act.[2] Prior to the tests, for international treaty purposes, the two countries were classified as non-nuclear-weapon states; the tests put each country in jeopardy of world condemnation and sanctions. In the United States, the law required the President to impose the following restrictions or prohibitions on U.S. relations with both India and Pakistan: termination of U.S. foreign assistance other than humanitarian or food assistance; termination of U.S. government sales of defense articles and services, design and construction services, licenses for exporting U.S. Munitions List (USML) items; termination of foreign military financing; denial of most U.S. government-backed credit or financial assistance; U.S. opposition to loans or assistance from any international financial institution; prohibition of most U.S. bank-backed loans or credits; prohibition on licensing exports of "specific goods and technology"; and denial of credit or other Export-Import Bank support for exports to either country.

Since 1990, Pakistan had been under a sanctions regime that was mandated by another provision of U.S. law pertaining to U.S. foreign assistance. The Pressler amendment, added in 1985 to the Foreign Assistance Act of 1961, requires the President to determine that Pakistan does not possess a nuclear explosive device and that any proposed U.S. assistance would reduce the risk of obtaining such a device.[3] President Reagan and President Bush issued determinations each year until 1990, when then-President Bush did not make the finding required to make assistance available. In 1995, this requirement was changed to apply only to military assistance to Pakistan, making the country eligible for other foreign assistance.

Sanctions are Eased

During the Clinton Administration. Almost immediately after the 1998 imposition of sanctions on India and Pakistan required in the Arms Export Control Act, Congress intervened on behalf of U.S. wheat growers by passing the Agriculture Export

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[1] For extensive discussion of the sanctions imposed after the President determined that nuclear tests had been conducted, see LePoer, Barbara, et al., *India-Pakistan Nuclear Tests and U.S. Response*, CRS Report 98-570, updated November 24, 1998, 35 p; and Grimmett, Jeanne, *Nuclear Sanctions: Section 102(b) of the Arms Export Control Act and Its Application to India and Pakistan.* CRS Report 98-486, updated September 19, 2001, 17 p. For in-depth discussion of the respective countries and relations with the United States, see LePoer, Barbara, *Pakistan-U.S. Relations,* CRS Issue Brief IB94041, updated regularly; and LePoer, Barbara, *India-U.S. Relations,* CRS Issue Brief IB93097, updated regularly.

[2] Sec. 102 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2799aa-1), popularly referred to as the Glenn amendment; and sec. 2(b)(4) of the Export-Import Bank Act of 1945 (P.L. 79-173; 12 U.S.C. 635(b)(4)).

[3] Sec. 620E(e) of the Foreign Assistance Act of 1961, as amended (P.L. 87-195; 22 U.S.C. 2375(e)), popularly referred to as the Pressler amendment. Portions of Pressler are also referred to as the Brown amendment and the Brownback amendment.

Relief Act, signed into law on July 14, 1998.[4] The Act amended the AECA to exempt various Department of Agriculture-backed funding from sanctions applied pursuant to section 102 of that Act. This freed up U.S. wheat farmers to participate in auctions in which Pakistan was a substantial buyer. Congress later passed the India-Pakistan Relief Act of 1998, signed into law by the President on October 21, 1998.[5] This Act authorized the President to waive, for a period of one year, the application of sanctions relating to U.S. foreign assistance, U.S. government nonmilitary transactions, the U.S. position on loans or assistance by international financial institutions, and U.S. commercial bank transactions. President Clinton quickly made use of his new authority, announcing on November 7, 1998, that certain transactions and support would be restored.

The authority granted to the President in each of these 1998 laws, however, was limited to a one-year period. Additional legislation was required to make the authority permanent. Congress provided permanent waiver authority in the Department of Defense Appropriations Act, FY2000, signed into law on October 25, 1999.[6] This Act gave the President the authority to waive all the economic sanctions imposed against India and Pakistan in response to the nuclear tests, including for the first time those sanctions related to military assistance, USML licenses, and exports to high technology entities. To waive those sanctions pertaining to the sales of defense articles, defense services, design or construction services, foreign military financing, or export licenses for specific goods and technology (the sanctions related to, or with possible, military applications), current law requires the President to determine and certify to Congress "that the application of the restriction would not be in the national security interests of the United States." President Clinton exercised this authority on October 27, 1999, when he waived the applicability of nonmilitary restrictions for India, on Export-Import Bank loans and credits, Overseas Private Investment Corporation (OPIC) funding, Trade and Development Agency (TDA) export support, International Military Education and Training (IMET) programs, U.S. commercial banks transactions and loans, Department of Agriculture (USDA) export credits, and specific conservation-oriented assistance. For Pakistan, he waived the restrictions on USDA credits and U.S. commercial bank loans and transactions.

During the Bush Administration. Throughout the first eight months of 2001, the Bush administration had hinted that the United States would like to remove the sanctions imposed against India and, to a lesser extent, Pakistan.[7] India's foreign and defense minister visited Washington in April; Chairman of the Joint Chiefs of State, General Shelton visited India in May to discuss military-to-military relations. In May,

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[4] P.L. 105-194 (112 Stat. 627).

[5] Title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, incorporated into the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (P.L. 105-277; 112 Stat. 2681).

[6] P.L. 106-79 (113 Stat. 1283).

[7] The U.S.-India relationship appears straight-forward, even taking into consideration India's Cold War cooperation with the former Soviet Union, or that country's relationship with China. Not all in the Bush administration supported lifting sanctions against India; see Harrison, Selig S., "No More Sanctions: Why the U.S. Needs Closer Ties with India," *Washington Times,* April 5, 2001, p. A17; and Barber, Ben, "State Split Over Lifting Sanctions Against India: Alliance Could Lesson China's Power," *Washington Times*, May 10, 2001, p. A1.

2001, and again in August, Deputy Secretary of State Richard Armitage visited India and publically stated the United States' interests in fully normalizing relations with the country. In August 2001, U.S. Trade Representative Robert Zoellick visited India to promote global trade talks.

Regarding Pakistan, Secretary of State Powell met with its foreign minister in Washington in June. They reportedly discussed Afghanistan and the Taliban, terrorism, democracy, nuclear proliferation, and sanctions.[8]

After the terrorist attack on the United States on September 11, 2001, because of Pakistan's unique position – both geographic and political – vis-a-vis Afghanistan, policymakers recognized the urgency by which U.S.-Pakistan relations had to be mended. At the same time, parity had to be maintained in terms of India. As a result, the President exercised the authority granted him in the Defense Appropriations Act, FY2000, on September 22, 2001, when he lifted all nuclear test-related economic sanctions against the two countries after finding that denying export licenses and assistance was not in the national security interests of the United States.[9] Today, the sole vestige of the nuclear sanctions is the listing of four Indian and 20 Pakistani entities (and their subsidiaries) on the Commerce Department's list of entities for which export licenses are required. By comparison, restricted entities numbered in the hundreds in the wake of the 1998 nuclear tests.[10]

Pakistan continued to be ineligible for most forms of U.S. foreign assistance under a provision of the annual foreign assistance appropriations act that bans foreign assistance "to any country whose duly elected head of government is deposed by military coup or decree." Pakistan's current leader, General Pervez Musharraf seized power and overthrew a democratically elected government in October 1999. He declared himself President on June 20, 2001. Pakistan was also denied most U.S. foreign assistance for falling into arrears in servicing its debt to the United States.[11] Pakistan was found to be in arrears under terms of the Foreign Assistance Act in September 2000, and under terms of the Foreign Operations Appropriations Act in March 2001.[12] At the end of 1999, Pakistan's

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[8] Fidler, Stephen and Edward Luce, "A Fine Line: The Bush Administration Has Signalled That It Wants to Forge Closer Ties With India,"*Financial Times*, June 1, 2001, p. 18. U.S. Department of State. *Daily Press Briefing,* June 20, 2001.

[9] Presidential Determination No. 2001-28, September 22, 2001, pursuant to sec. 9001, Public Law 106-79.

[10] Department of Commerce, Bureau of Export Administration. "India and Pakistan: Lifting of Sanctions, Removal of Indian and Pakistani Entities, and Revision in License Review Policy,"*Federal Register*, October 1, 2001, 66 F.R. 50090-50093.

[11] Sec. 620(q) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(q)) denies foreign assistance to any country that is in default for more than 6 months in servicing or repaying loans to the United States. The President may waive this restriction if he finds that assistance is in the national interest and so notifies Congress. Sec. 512 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2001 (P.L. 106-429; 114 Stat. 1900A-25), the Brooke Amendment, denies foreign assistance to any country that falls into arrears for more than 12 months. This latter restriction includes no waiver authority for the President.

[12] Agency for International Development, *Loan Delinquency Status Report, As of August 31,*

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international debt was $30.7 billion, of which $2.38 billion was owed to the United States ($1.14 billion in AID loans, $981 million in food aid, $139 million in Export Import Bank loans, and $119 million in military loans).

Two steps were taken to relieve the prohibition on U.S. foreign aid. First, on September 24, 2001, the U.S. Ambassador to Pakistan signed an agreement in Pakistan to reschedule $379 million of its debt to the United States, enough to cancel the arrearage.[13] Then Congress passed a bill to exempt Pakistan from the sections of law that prohibit making foreign assistance available to any country governed by a military that overthrew a democratically elected regime. The President signed S. 1465 into law on October 27, 2001; its authority to waive the sanctions related to both democracy and debt arrearage remains available through FY2003, provided the President determines that making foreign assistance available "facilitates the transition to democratic rule in Pakistan" and "is important to United States efforts to respond to, deter, or prevent acts of international terrorism."[14]

Prior to the passage of S. 1465, President Bush invoked the authority granted him in sec. 614 of the Foreign Assistance Act of 1961 (22 U.S.C. 2364) to provide $50 million in Economic Support Funds to Pakistan on September 28, 2001, without regard to restrictions in that Act or the Foreign Operations Act that are applicable to Pakistan. The President made another $50 million available under the same authority on October 16, 2001. These two disbursements were part of the Administration's proposed $600 million package of assistance to Pakistan. The President also released $25 million in Emergency Migration and Refugee Funds to Pakistan around the same time.[15] Funding derived from the 2001 Emergency Supplemental Appropriations Act includes the balance of the President's package to Pakistan ($500 million), and another $73 million for border security between Pakistan and Afghanistan.[16] On October 5, the President made another

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[12] (...continued)
2001.

[13] Chandrasekaran, Rajiv. "Taliban Deploys Its Fighters to Borders," *Washington Post*, September 25, 2001, p. A14. *White House Briefing,* September 25, 2001.

[14] P.L. 107-57; 115 Stat. 403. The law also eases the notification requirements in sec. 73(e) of the AECA (pertaining to transfers of missile equipment and technology), sec. 506(b)(1) of the Foreign Assistance Act of 1961 (pertaining to military assistance in response to unforeseen emergencies), and sec. 516(f)(1) of the same Act (pertaining to the transfer of excess defense articles) as each applies to Pakistan. These provisions of P.L. 107-57 sunset on October 1, 2003. The provisions relating to democracy apply to FY2002 and possibly in FY2003, depending on the President waiving their application. Because the FY2003 foreign operations appropriations bill has yet to be agreed to by Congress, funding continues under terms applicable to the FY2002 appropriations. When, or if, FY2003 appropriations are enacted, the President will have to issue a waiver to allow foreign assistance to continue to be made available to Pakistan. H.J.Res. 2, awaiting conference, contains FY2003 foreign operations appropriations.

[15] Presidential Determination No. 2001-31, September 28, 2001, 66 F.R. 51293 (October 9, 2001); and Presidential Determination No. 2002-02, October 16, 2001, 66 F.R. 53503 (October 23, 2001). Migration and Refugee Assistance in Presidential Determination No. 2001-30, September 28, 2001, 66 F.R. 51291.

[16] P.L. 107-38, 115 Stat. 220, enacted September 18, 2001. $40 billion was made available "for
(continued...)

$100 million available for management of the emerging Afghan refugee crisis – $50 million in food assistance to Afghanistan and neighboring countries, and $50 million in Migration and Refugee Assistance to be administered through the United Nations and associated nongovernmental organizations tending to the Pakistan-Afghanistan border. None of these recent fund releases was subject to sanctions. And on September 26, 2001, the International Monetary Fund determined that Pakistan had met the requirements to become eligible for $135 million, to complete disbursement of a $600 million loan.[17]

The Fiscal Year 2003 Budget Proposal

Any lingering doubts about the repair of U.S. relations with India and Pakistan were dispelled in the President's FY2003 budget proposal, shown below.[18]

INDIA
(in $U.S. millions)

	FY2001 (actual)	FY2002 (estimate)	FY2003 (request)
Development Assistance	53.398	70.878	75.185
Economic Support Fund	4.989	7.000	25.000
International Military Education and Training	0.498	1.000	1.000
Foreign Military Financing	–	–	50.000

PAKISTAN
(in $U.S. millions)

	FY2001 (actual)	FY2002 (estimate)	FY2003 (request)
Development Assistance	–	15.000	50.000
Economic Support Fund	–	9.500	200.000
International Military Education and Training	–	1.000	1.000
Foreign Military Financing	–	–	50.000
International Narcotics Control	3.500	2.500	4.000

[16] (...continued)
additional disaster assistance, for anti-terrorism initiatives, and for assistance in the recovery from the tragedy that occurred on September 11, 2001."

[17] Sipress, Alan and Steven Mufson, "U.S. Readies Financial Aid for Allies," *Washington Post*. October 2, 2001. p. A12; and Dawson, Thomas C., "A Loan for Pakistan," [letter to the editor], *Washington Post*. October 4, 2001. p. A30.

[18] Though both countries were prohibited from receiving U.S. foreign aid when the nuclear sanctions were in place, some foreign aid is exempt from sanctions generally. Funding for child survival and diseases, international narcotics control, and emergency food aid, nonproliferation programs, for example, is allowed regardless of a country's objectionable behavior.

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