CHAPTER-IV

POKHRAH - II SANCTIONS
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Pokhran-II Nuclear Tests

India conducted, for the second time, a series of nuclear tests in May 1998, at the same Pokhran test site in the Thar desert of Rajasthan,¹ breaking a twenty four years of self-imposed moratorium on nuclear testing ever since its Pokhran-I nuclear test in 1974. These Pokhran-II nuclear tests were conducted in two phases. In the first phase, three nuclear tests were carried out on 11 May 1998. In the second phase, in continuation of the planned programme of underground nuclear tests, two more sub-kiloton nuclear tests were carried out at Pokhran range on 13 May 1998. The second phase of the tests were carried out to generate additional data for improved computer simulation of designs and for attaining the capability to carry out sub-critical experiments, if considered necessary.²

The fissile materials used in these 5 tests were completely indigenous, and were produced by local mastery over the relevant technologies by DAE establishments.³ These tests, named “Shakti 98” and coded “Buddha smiled” from the day of Buddha Poornima celebrations, were “contained explosions”⁴ like Pokhran-I nuclear tests conducted in

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1974. Among the first three underground tests, conducted at a depth of 100 meters, the first one, Shakti-I, was a low intensity (0.2 kilo tonne) fission device that released less energy than the Pokhran-I nuclear test, the second one, Shakti-II, was low yield device (12 kilo tonnes) that released energy equivalent to the Pokharan-I test and the third one, Shakti-III, was as a high intensity (43 kilo tonnes) thermonuclear device or, in popular parlance, hydrogen bomb that released much more energy. The sub-kilo tonne devices exploded on May 13 had a varied range of yield from 0.2 to 0.6 kilo tonnes. None of the tests had radioactive venting as the tests were contained shots as the Pokhran-I nuclear test. The Indian scientists were guided by the past experience in Pokhran-I nuclear test in 1974.

Scientists said the low yield device demonstrated India's capability to make warheads that can be fitted on to missiles, while the hydrogen device demonstrated the country's ability to make megaton devices. This qualifies India to become a member of the nuclear club, said P.K. Iyenger, former Chairman of the AEC, who played a key role in the 1974 Pokharan-I nuclear test. Scientific Adviser to the Defence Minister, A.P.J. Abdul Kalam, said at a press conference, "Weaponisation was now complete", adding that the country had now a capability to deter nuclear weapon threats.

As against the single test of Pokhran-I test, a series of five tests were conducted in Pokhran-II test, meant clearly for weapons programme. There was no debate or dispute

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5 "Joint Statement by Department of Atomic Energy and Defence Research and Development Organisation", n. 3; and

The Hindu (Chennai), 13 May 1998.

6 "Joint Statement by Department of Atomic Energy and Defence Research and Development Organisation", n. 3; and


7 The Hindu (Chennai), 18 May 1998.
over the purpose of the Pokhran-II nuclear tests, unlike Pokhran-I test that was described as Peaceful Nuclear Explosion (PNE) by Indians while the US described the test for weapons programme. Pokhran-II nuclear tests were generally regarded as nuclear tests for weapons programme. Indian officials were non-committal on the next step of weaponisation but no one said it was a peaceful explosion, but the obvious impression was that the tests were carried out for nuclear weapons purpose. It could well be understood from the press statement issued by the Government of India on 11 May 1998: “These tests have established that India has a proven capability for a weaponised nuclear programme. They also provide a valuable database which is useful in the design of nuclear weapons of different yields for different applications and for delivery systems”.

According to the Principal Secretary to the Prime Minister, Brijesh Mishra, the reason for carrying out three simultaneous tests was that in view of the dangerous security environment, India did not want to delay the process of building nuclear weapons.

Defence experts said the thermo nuclear explosion had placed India next only to the US and Russia in terms of nuclear capability. These statements of high level Indian officials and defense experts not only clearly indicated that the tests were for nuclear weapons purpose but said loudly also that India’s nuclear capability could deter even the US and Russia – the most advanced nuclear weapons states.

Indian Prime Minister, Atal Behari Vajpayee, explained the logic or rationale behind the tests in his letter to the US President, Bill Clinton, in the same evening. It was well understood that he indirectly pointed at the two neighbouring countries, the China and the historic archrival Pakistan, as a threat to India’s national security. The Prime Minister said in the letter, “I have been deeply concerned at the deteriorating security

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8 Press Statement on Nuclear Tests, n. 4.

9 The Hindu (Chennai), 12 May 1998.

10 Ibid.
environment, specially the nuclear environment, faced by India for some years past. We have an overt nuclear weapon state on our borders, a state which committed armed aggression against India in 1962. Although our relations with that country have improved in the last decade or so, an atmosphere of distrust persists mainly due to the unresolved border problem. To add to the distrust that country has materially helped another neighbour of ours to became a covert nuclear weapons state... The series of tests are limited in number and pose no danger to any country which has no inimical intentions towards India". The Principal Secretary to the Prime Minister, Brijesh Mishra, also accounted the nuclear neighbourhood for the nuclear tests conducted by India. He said, “The Government is deeply concerned, as were previous governments, about the nuclear environment in India’s neighborhood. These tests provide reassurance to the people of India that their national security interests are paramount and will be promoted and protected... The nuclear environment around India is dangerous and we are taking care of it.”

US Reactions to Pokhran-II Tests

India’s Pokhran-II nuclear tests, as its Pokhran-I test, set off a worldwide storm of reactions. While, some countries opposed the tests, some others endorsed India’s right for such an exercise. Among the P 5, besides the US, China and UK were too critical of India’s tests and Russia was not harsh in its reaction. One of the P 5, France, though concerned about impact of India’s nuclear tests on the non-proliferation efforts of the international community, recognised India’s right for such exercise. While some countries including Australia, Canada, Germany, Japan and Sweden were for imposing

14 Ibid., 14 May 1998.
sanctions on India, either for the sake of mere punishment or for achieving non-proliferation demands, Russia, UK and France were firmly against imposing sanctions for any purpose, as they believed that sanctions were counter productive since they hurt the poorest people and preferred diplomatic solution for sanctions. Russian Foreign Minister, Yevgeng Primakov, said that Russia was “very suspicious of sanctions” as it was “an extreme measure and often counter-productive”. UK opposed sanctions as it perceived economic sanctions were counter-productive since they hurt the poorest people. France, which endorsed India’s rights to take decisions on matters related to its security and to exercise independent judgment, also had the similar perception on sanctions.

The US, however, was the first country to react, expressing a strongest condemnation after India came out with its official announcement on the first three nuclear tests, in the series of total five nuclear tests on May 11, 1998. The US President Bill Clinton, during his discussion on building a safer world for 21st Century with German Chancellor, Helmot Khol, and his executive teams in Germany which he traveled to on May 12, 1998, said, “.I am deeply disturbed by the nuclear tests which India has conducted, and I do not believe it contributes to building a safer 21st Century. The United States strongly opposes any new nuclear testing. This action by India not only threatens the stability of the region, it directly challenges the firm international consensus to stop the proliferation of weapons of mass destruction. I call on India to announce that it will sign the Comprehensive Test Ban Treaty now and without conditions. I also urge India’s neighbors not to follow suit, not to follow down the path of dangerous arms race. As most of you know, our laws have very stringent provisions,
signed in to law by me in 1994, in response to nuclear tests by non-nuclear weapons states, and I intend to implement them fully.”

He further said the security rationale or justification for the nuclear tests was not a justified one, while the international community was inching ahead towards nuclear stability. He said, during the discussion, “I believe they (the nuclear tests conducted by India) were unjustified. They clearly create a dangerous new instability in their (South Asian) region... the nuclear tests conducted by India, against the backdrop of 149 nations signing the Nuclear Non-Proliferation Treaty, demand an unambiguous response by the U.S.” In a subsequent press meeting he said that to think that India has to manifest its greatness by behaviour that recalls the very worst events of 20th century on the edge of the 21st century, when everybody else is trying to leave the nuclear age behind, is “just wrong and a terrible mistake”. And India clearly does not need nuclear weapons tests to maintain its security vis-à-vis China, Pakistan, or anybody else.

He expressed concern over the tests possibly setting a worst trend for further proliferation, throwing the validity of the international nuclear non-proliferation norms and efforts into a big question. He said, “…India’s decision to conduct these nuclear test explosions is a serious violation of international non-proliferation norms, and a repudiation of international efforts to contain the further spread of nuclear weapons and purpose of nuclear disarmament. This action constitutes a dangerous precedent for the international nuclear non-proliferation regime.... Clearly, India’s nuclear tests are a serious set back. They highlight the risks associated with the proliferation of nuclear weapons and raise the specter of further proliferation on the subcontinent and in other


19 Ibid., p. 852.

20 Ibid.
regions of the World ... India's tests have created new challenges for the International non-proliferation regime...”21

The President viewed that as India was already a great country with its successful multi-ethnic democratic society and huge potentiality in many respects, it was not necessary for India to go for nuclear weapons tests for demonstrating its greatness. He said, “We have arrived at a historic juncture in our relationship with India. We continue to respect India as a complex, democratic society, and we wish neither to diminish India’s achievements nor underestimate its potential. But we regret deeply that its current leaders believe that they must detonate nuclear weapons in order to be taken seriously as a nation. There are reports from the Indian press which cite gleeful claims that India has now become the world’s sixth super power – a fact which is apparent only to those making the claim. Clearly the world thinks otherwise. We deplore India’s new tests not only because of the breach they represent in global non-proliferation policy, but also because of the harm that it does to India’s reputation and stature.”22 Speaking before a Senate sub-committee on Near Eastern and South Asian Affairs, Inderfurth expressed “deep dismay” over the tests, and indicated the implications of the tests by saying India’s actions have “compelled” the United States to reassess its policies towards India. Inderfurth told the panel that both the United States and the International Community have “clearly rejected” India’s rationale and decision to conduct the nuclear tests.23

Imposition of Sanctions and its Legality

The US government is possessed with strong legal regime for imposition of sanction for the cause of preventing proliferation of Weapons of Mass Destruction


22 Ibid., p. 5.

23 Ibid., p. 1.
(WMD) that includes the case of nuclear proliferation, missile proliferation and chemical or biological weapons as well.

The US has enacted numerous sanctions laws to impose sanctions in order to achieve its non-proliferation policy, as the US considers containment of nuclear proliferation as a major foreign policy goal. The latest such legislation, designed to promote the non-proliferation objectives through deterring nuclear ambition of any country, was the Nuclear Proliferation Prevention Act (NPPA) of June 1994. It is a part of the Foreign Relations Authorization Act of 1994 (Title VIII of FRAA). The rationale for passing NPPA was to consolidate all the existing US domestic non-proliferation laws into one. Major such non-proliferation laws, including the Symington Amendment of 1976, the Glenn Amendment of 1977, the Solarz Amendment of 1985 and the Pressler Amendment of 1985, were enacted during the Pokhran-I Indo-US nuclear conflict. Earlier as we know these laws were parts of different legislation such as the Foreign Assistance Act.

Apart from the sanctions provisions of these laws there are other statutes, which provides sanctions provisions for punishing any nuclear test. Each of the US sanction laws has its own duration, severity and comprehensiveness or selectivity and each section of sanctions law has its own terms for triggering the imposition, as well as reporting on, easing or tightening, waving and terminating the sanction. Some laws make sanctions mandatory; others provide discretionary authority to the President to impose sanctions. Nearly all laws include some sort of waiver the authority that allows the President not to impose the sanction even if an incident warrants it. Only a few laws specifically spell out what recourse congress might take when it finds itself in disagreement with the executive branch on the imposition, waving or termination of sanction.

The following are the non-proliferation related sanction laws that could be invoked by the US Administration to impose sanctions on India for its nuclear tests:
* Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended [12 USC 635(b)(1)(B)], states that the President may determine it is in the natural interest for the EXIM Bank to deny applications for credit to clearly and importantly advance United States Policy in such areas like nuclear proliferation;

* Section 2(b)(4)(A), (C) of the Export-Import Bank Act of 1945, as amended [12 USC 635(b)(4)(A), (C)], authorizes the Secretary of State to determine that a non-nuclear weapon state has detonated a nuclear explosive device, and that therefore Exim Bank guarantees, insurance, or credit, shall be denied;

* Section 701 of the International Financial Institutions Act, as amended [22 USC 262d] requires the Secretary of the Treasury to instruct US executive directors to the international financial institutions to consider whether a country under consideration for receiving financial support has detonated a nuclear explosive device;

* Section 129 of the Atomic Energy Act of 1954, as amended [42 USC 2158], prohibits the exportation of nuclear materials and equipment or sensitive nuclear technology to any non-nuclear weapon state that is found by the President to have detonated a nuclear explosive device; and

* Section 823 of the Nuclear Non-proliferation Prevention Act of 1994, as amended [108 statute 512], requires the Secretary of the Treasury to instruct US executive directors to each of internal financial institutions to oppose any use of institution’s funds to promote the use of any nuclear explosive device by any non-nuclear weapon state.24

Apart from these sanction laws, it also has Arms Export Control Act, popularly known as Glenn Amendment, introduced by the Senator John Glenn. The Arms Export Control Act also has its own comprehensiveness and stringency. The Section 102 (b) of

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the Arms Export Control Act (AECA) prohibits a variety of assistance and commercial transactions between the United States and any country if the President determines that the country — if it is a non-nuclear weapon states — has, among other things, detonated a nuclear explosive device. The language prohibiting US foreign assistance to any non-nuclear-weapons state that detonates a nuclear explosive device was originally incorporated in 1977 in the Foreign Assistance Act of 1961 as Section 670 by Glenn Amendment. It was amended and restated in 1981, and amended again and moved from that Act to the Arms Export Control Act by Sec. 826 (a) of the Nuclear Proliferation Prevention Act (NPPA) and signed by the President in 1994.25 If it was the Pokhran-I nuclear test that provoked the US to formulate non-proliferation regimes including the Glenn Amendment, clearly spelling out the specific, legal provision for imposition of nuclear non-proliferation sanctions, it was the Pokhran-II nuclear tests that threw the efficacy of the same Glenn sanctions (102 (b) (1) of the Arms Export Control Act) into a big question necessitating the Indo-US dialogue to lift the sanctions.

The US President Clinton decided on May 12, 1998 to impose raft of economic sanctions on India under the Glenn Amendment or Arms Export Control Act.26 On May 13, he announced in a memorandum sent for the Secretary of State from the Germany, where he traveled to participate G-8 Summit: “In accordance with the section 102 (b) (1) of the Arms Export Control Act, I hereby determine that India, a non-nuclear weapon state, detonated a nuclear explosive device on May 11, 1998. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose the sanctions described in section 102 (b) (2) of that Act”.27

25 Ibid., p. 20.
The following mandatory sanctions had been imposed on India in pursuant to section 102 (b) 2.28

1. Termination of US assistance under the Foreign Assistance Act of 1961, except for humanitarian assistance, food or other agricultural commodities. [Sec 102, (b) (2) (A)],

2. Termination of US Government sales of defense articles, defense services, design and construction services, and licenses for exportation of US Munitions List items. [Sec. 102, (b) (2) (B)].

3. Termination of foreign military financing under the Arms Export Control Act (Sec. 102, (5) (2) (C)].

4. Denial of any credit, credit guarantee, or other financial assistance by any department, agency, or instrumentality of the US Government, excluding those related to humanitarian assistance or congressional oversight of intelligence activities. [Sec. 102, (b) (2) (D)].

5. Opposition to the extension of any loan or financial or technical assistance by any international financial institution (IFI), in accordance with section 701 of the Internal Financial Institutions Act. [Sec. 102(b) (2) (E)].

6. Prohibition on any US Bank from making loans or providing credit to the governments of India, excluding laws or credits to purchase food or other agricultural commodities. [Sec. 102 (b) (2) (F)], and

7. Prohibition on exports “of specific goods and technology”, excluding food, agricultural commodities, or items related to congressional oversight of intelligence activities, in accordance with section 6 of the Export Administration Act of 1979 (50 USC App. 2405), relating to foreign policy controls.

As the Under Secretary of Commerce for International Trade, David Aaron, quoted to have said on 19 June 1998, the sanctions “will not affect all US trade with India but will still hit the prospects of both countries”. According to him, the sanctions would nevertheless diminish the ability of US companies to pursue projects in India and block new financing by international financial institutions.\(^\text{29}\) Basically, business in the non-defense related areas will be continued.

It is interesting to notice that the Arms Control Act that is a legacy of the US non-proliferation legislation that attained greater momentum owing to India’s Pokharan-I nuclear test, was applied in the case of India’s Pokharan-II nuclear tests, for the first time; it was never before used on any other country. Thus, Pokhran-II tests became acid test to a sanction regime that was spurred by the Pokhran-I test. While a rudimentary sanction regime was upheld in the absence of a formal sanction regime after the Pokhran-I nuclear test, a formal, institutionalised sanctions were imposed as a reaction to Pokhran-II nuclear tests.

Apart from the AEC, there were other statutes by which sanctions could have been imposed against India for the detonation of its nuclear explosive devices. However, the US immediately invoked only the AEC to impose sanctions on India, not those other statutes. First reason for this was that the other statutes were only discretionary; only the section 102 of the AEC mandatorily required the US Administration to impose sanction on detonation of nuclear device by any country. The second was that the Administration was required to invoke the AEC, which was more stringent than the other statutes, as the prevailing sentiments in the US was that India should be punished by most stringent sanctions for its nuclear deed. The provisions of the other statutes were less stringent compared to the AEC; they were either waivable, or only provided guidance towards restricting transactions with a targeted state. The third

reason was that those other statutes were for the most part, redundant to the provisions stated in the Arms Export Control Act.

Immediate Imposition of Sanctions: Cooling off Period not Used

Even though the imposition of sanction was mandatory under the AEC, the section 102(b)(4)(A) of the Arms Export Control Act, as amended, authorises the US President to delay the imposition of sanctions for 30 days of continuous stretch in order to provide the President an opportunity to see if something can be worked out without resorting to imposition of sanctions. But even if that happens, the President, unlike most of the American laws, does not have the power to waive the imposition of sanctions. During the 30 days time, technically known as "the cooling off period", the Congress would then have the opportunity to repeal the sanctions or revise them in some ways.

Failure of Persuasion

Presumably, the President had his authority to delay imposition of sanctions for 30 days in his mind when his administration involved in the process of persuading the government of India after the first round of nuclear tests. The President’s decision to impose sanctions came after a hectic day in which his administration had offered India a way to avoid the sanctions if it would disavow any future testing or deployment of nuclear weapons. According to the section 102(b)(4)(A) of the Arms Export Control Act, the President can delay the imposition of sanctions for 30 days and subsequently waive the sanctions. Section 102 (6) (4) and (5) of the Arms Export Control Act, as amended, lays out a procedure to give the President further authority to waive the sanctions in whole or in part. The procedures, however, is applicable only if the

30 Cronin, n. 24, p. 27.


President had invoked the 30-days-delay section. But it was not possible for the Clinton Administration to utilize these section to delay and then waive, as it appeared for the Administration that India signaled no willingness to consider the Administration’s demands that India conducted no further tests and signed “now and without conditions” the Comprehensive Test Ban Treaty”, which prohibits all experiments with nuclear explosion. A senior American Administration official said, “there are no indications from the Indians that they are prepared to take any significant steps” and India responded merely pleading for more time, without directly addressing the Administration’s concerns.

The mandatory nature of the AECA was meant to possess deterrence effect on future, probable violator of the norms of the non-proliferation law. Karl Inderfruth, Assistant Secretary of State for South Asian Affairs, stated that “these mandatory sanctions were designed primarily as a deterrence”. As the failure of the deterrence of AECA was evident when India conducted nuclear tests, the US Administration tried persuasion and it failed in that attempt also. And, as the Clinton Administration failed to obtain any commitment from India on stopping of any future nuclear test by adhering to the Comprehensive Test Ban Treaty immediately without any condition, the US President decided the imposition of sanctions on India immediately without resorting to the 30 days “cooling off period”.

33 Ibid.; and


Delay in Imposition Might Encourage Further Proliferation

Another dimension involved in this decision was not to use 30 days of cooling off period. The US administration had also perceived that an immediate invocation of the AECA sanctions against India would deter Pakistan from retaliatory nuclear tests to India's nuclear tests, thus attempting to contain a further proliferation from Pakistan side. In other words, it was perceived by the Clinton Administration, a delay in imposition of sanction would encourage Pakistan and other nuclear threshold countries as well to go for nuclear tests in a chain reaction.

Even though the AECA had made the sanctions provisions to be mandatory, it had provided 30 days of "cooling off period" to see if something else can be worked out by the congress. It means the legislators at the time of making the law possibly wanted to avoid the imposition of sanction in certain cases. But in India's case the Administration did not want to avoid imposition of sanctions, because the Administration perceived leaving India unpunished would encourage further proliferation by other threshold countries in the future. The President's decision to impose sanctions on India came, as some American Government officials said, while there were already indications that Pakistan appeared to be preparing a nuclear test in response.

On May 12, 1998, US President said, "I do not believe it (the action of conducting nuclear tests by India) contributes to building a safer 21st century. The United States strongly opposes any new nuclear testing. This action by India not only threatens the stability of the region, it directly challenges the firm international consensus to stop the proliferation of weapons of mass destruction... our laws have very stringent provisions, signed into law by me in 1994, in response to nuclear tests by non nuclear weapons states, and I intent to implement them fully". Inderfurth also said in

the same vain when he testified before Senate panel on India’s nuclear tests: “India’s decision to conduct these nuclear test explosions is a serious violation of international non-proliferation norms and a repudiation of international efforts to contain the further spread of nuclear weapons and pursue nuclear disarmament. This action constitutes a dangerous precedents for the international nuclear non-proliferation regime... Clearly, India’s nuclear tests highlight the risks associated with the proliferation of nuclear weapons and raise the specter of further proliferation on the subcontinent and in the other regions of the world. But while India’s tests have created new challenges for the international non-proliferation regime, we will continue to seek ways to create new opportunities. We will use these developments to call attention to the inherent risks associated with nuclear weapons proliferation and to mobilize internal support for all possible steps to guard against an escalation of tensions and confrontation in South Asia.”

Inderfurth, in his testimony to House International Relations committee, subcommittee on Near Eastern and South Asian Affairs, stated: “We have endeavored to ensure that the implementation of sanctions under the Glenn amendment and other legislative authorities is firm and correct, and that the sanctions are costly to the governments who took these steps. ...In doing so, we are sending a strong message to any other state aspiring to a nuclear weapons capability.” These remarks clearly indicated the US perception that the delay in imposition of sanctions would definitely encourage Pakistan and other threshold countries for horizontal nuclear proliferation in the future. Since the US had firmly determined to discourage further proliferation through imposition of sanctions, it did not have to delay the imposition of sanction for 30 days of cooling-off period.

37 Official Text, n. 21.

Section 102 (6) (4) and (5) of the Arms Export Control Act, as amended, lays out a procedure to give the President further authority to waive the sanctions in whole or in part. The procedures, however, is applicable only if the President had invoked the 30-days-delay section. Section 102 (b) does not otherwise state a standard to be met by the target state- here in this case India- to have the sanctions lifted, nor a means by which the sanctions would be suspended or terminated. This vacuum as to the standards to be met by India provides the US Administration the sufficient pretext to assume power to set its own criteria / standards to be met by India, in accordance with the non-proliferation objectives of the US; otherwise the AEC has to be amended to that extent. In a testimony given before the Senate Committee on Foreign Relations Subcommittee on Near Eastern and South Asian Affairs on May 13, 1998 on India’s tests, Deputy Assistant Secretary to State for Non-proliferation, Robert Binhorn, stated that new legislation by amending the Arms Export Control Act, would be required to waive, suspend, or terminate the sanctions against India at this point.

Making a law in the US Congress could be easier than unmaking it. A favourable situation and justifying reasons in the Congress for a particular law at the time is enough to make that law. But after some that while the government crisis to rescind the same law, there could be a lack of consensus in congressional joint resolution probably due to conservative attitude. Therefore, even if the Administration would have utilized the “cooling off period” of 30 days in India’s case, probably it would have been very difficult to reach consensus and muster support for revoking the Arms Export Control Act or amending it. Such inertia is not unique to sanctions only. It had always been more difficult to change the status quo than to continue with it when the burden of acting falls on those favoring change.
Impact of sanctions on India

(I) Termination of Assitances: Termination of the US assistance under the Foreign Assistance Act of 1961, except for humanitarian assistance, food or other agricultural commodities.

The US has been extending economic assistance to India since 1951. While the US was major donor in earlier years, recently prior to the Pokhran-II nuclear tests its contribution has declined substantially. Because of the imposition of sanctions, the most immediate damage was the blockage of concessional funds to India through both bilateral and multilateral channels. Direct aid from the US, worth $1.14 billion, and from Japan, worth $1.40 billion were with held.39

According to the US government release, India was scheduled to receive an estimated $54.3 million in US development assistance in Fiscal Year 1998. Of the total $36.3 million was obligated to a variety of projects that are exempt from the sanctions as they were for humanitarian assistance. Child survival projects (estimated $13.97 million), polio prevention ($4 million), HIV and AIDS programmes, family planning, women’s support and some projects addressing environment issues were such humanitarian assistances exempted from the sanction. $12 million in obligations for financial sector reform and agribusiness was terminated. $6 million in fund obligated for green house gas pollution prevention was suspended. Further, aid for India approved in previous years that has not yet been expanded was also withheld. India had received $475,000 in FISCAL YEAR 1998 through the International Military Education and Training Program (IMET). $450,000 that was slated for FISCAL YEAR 1999 was blocked.40


40 Cronin, n. 24, p. 21.
India had also been slated to receive $91.88 million in food assistance in FISCAL YEAR 1998 and 91.75 million in FISCAL YEAR 1999 through P.L. 480 title II. These were not affected by the imposition of sanctions.41

The White House Sheet puts loss on account of termination of development assistance at $142.3 million. India's estimate of utilization of aid from the US government, however, puts it at a lower figure. Clearly there is a discrepancy here, at least in perception.42

In this case, even though there was a sharp discrepancy between the estimation of the US and India over the impact of sanctions, the fact that there was loss only to India but not to the US could not be denied. Because, the transactions were one way in nature owing to the fact that the financial assistance was flowing from US to India, not the vice versa. Hence, India was the looser, no matter whatever little assistance it lost.

II Termination of Defense articles: Termination of US Government sales of defense articles, defense services, design and construction services, (Sec. 102 (b) (2) (B) (i)) and licenses for exportation of US Munitions List items (Sec. 102 (b) (2) (B) (ii)).

On May 20, 1998, a notice from the State Department (1) revoked all licenses and other approvals to export or otherwise transfer defense articles and defense services from the United States to India; (2) prohibited the transfer of any US origin defense articles or services from a foreign location to India, or the temporary import of defense articles from India; and (3) commenced a policy of denying all applications and other requests for approval to export or otherwise transfer or re-transfer defense articles and defense services to India.43

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41 Ibid.


But, India has not been a major purchaser of defense articles of services from the US from FISCAL YEAR 1952 to FISCAL YEAR 1987. According to the US Department of Defense, the total value of India's purchase from the US under Foreign Military Sales (FMS) was about $86.2 million in the past, while India has estimated it to be $1.329 million from 1987 to 1996. As per the Indian estimates the Foreign Military Sales transactions between the US and India from 1993 to 1998 have averaged only about $23,000.

The US Department of Defense estimated that for each of FISCAL YEAR 1998 and FISCAL YEAR 1999, India was slated to receive $230,000 in Foreign Military Sales (FMS) orders. For FISCAL YEAR 1997, $29.9 million worth commercial exports licenses were approved for US sales of munitions list items to India. The State Department estimated that $6.85 million and $14.95 million in munitions list item was slated to be delivered to India in FISCAL YEAR 1998 and in FISCAL YEAR 1999 respectively. Completion of all these orders was affected by the President's determination and imposition of sanctions. 44

The other two elements under Sec. 102 (b) (2) (B) (i) are sales of Defense Services and the International Military Education and Training (IMET) programme. There have been no sales of Defense services from the US to India. The sales under the IMET have been minimal averaging $263,000 per year, during the period 1987-1996. The number of students trained under this programme averaged less than 14 in the same period. The programme primarily reflects the US desire for a closer service-to-service cooperation with India rather than any dire India's need for such education or training.

Under the Sec. 102 (b) (2) (B) (ii), the commercial purchase of US military articles by India had been only limited. These purchases had mainly been on account of

44 Cronin, n. 24, p. 22; and
Balachandran, n. 42.
defense research projects such as the LCA rather than for operational purposes. The value of commercial exports licensed under the AECA for the ten-year period (1987-1996), was $325 million. While bulk of items required for LCA project had already been acquired, there were still a few that had not been delivered, but their value was estimated to be marginal.  

In this case of sanction, the nature of loss is obviously double-edged sword that causes damage for both the target and sanctioner since the transaction is two way in nature. But the amount of loss in this case for the FISCAL YEAR 97, 98 and 99 was not a huge one to put effective pressure on India.

And also the partial lifting of sanctions by the US Administration effected the Pentagon to resume international military education and training programmes in both countries, though the IMET was a symbolic one having no strategic or defense value for India. Therefore, there was no significant pressure that could be exerted by the sanctions under Sec. 102 (b) (2) (B) (i) and Sec. 102 (b) (2) (B) (ii) on India to yield desired results.

III Termination of foreign military financing: Termination of foreign military financing under the Arms Export Control Act. (Sec. 102 (b) (2) (C)).

Since there has been no US financing of military sales to India since 1962, obviously there has been no impact on India due to the Pokhran – II sanctions.  

IV EXIM BANK, OPIC, TDA: Denial of any credit, credit guarantee, or other financial assistance by any department agency, or instrumentality of the US government, excluding those related to humanitarian assistance or congressional oversight of intelligence activities. (Sec. 102 (b) (2) (D)).

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45 Ibid., p. 34.

46 Cronin, n. 24, p. 22.
This applied to Export –Import Bank of the US (EXIM BANK) programmes, Overseas Private Investment Corporation (OPIC), Trade and Development Agency (TDA), Commodity Credit Corporation (CCC) and Dept of Agriculture (USDA) funding. In hearing on May 13, 1998, before the Near Eastern and South Asian Affairs Subcommittee of the Senate Committee on Foreign Relations, Karl Inderfurth, Secretary of State for South Asian Affairs, speculated that the prohibition on government financing agencies and US commercial banks could cost hundreds of millions of dollars, affect projects already approved or in the pipeline, and could cause major US companies and financial institutions to rethink entirely their presence and operation in India. The US Administration had estimated that a total $10 billion worth assistance activities related with EXIM Bank, OPIC and TDA were frozen following the announcement of the sanctions.

The EXIM Bank has been notified by the Secretary of State that sanctions required under sec. 2(b) (4) of the EXIM Bank Act of 1945 must be invoked. Its operations, consist primarily of support for export of capital goods through long-term loans, guarantees and insurance.

The EXIM Bank sanctions mainly affect US export to India; and India was cut-off from $500 million in current EXIM Bank projects. The EXIM Bank, in announcing the closing of new business with India on May 13, projected that another $3.5 billion in US exports could be prohibited in the longer run. Not only that, India was cut-off also from $20 million in agricultural export credits through the CCC.

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47 Ibid., p. 23.


49 Cronin, n. 24, p. 23; and

“Overview of the Glenn Amendment Sanctions on India and Pakistan”, n. 48.
According to India's estimation during the financial year 1997 (Oct 1996-Sept. 1997), the EXIM Bank's authorization in respect of India amounted to $304.999 million, consisting of loans amounting to $20.308 million, guarantees for $280.472 million and medium-term insurance for $4.217 million. Overall EXIM Bank exposure in India amounted to $1,403.492 million at the end of September 1997. Therefore, the EXIM Bank cut-off caused loss primarily to US companies. For instance, as the US International Trade Commission reported, on the basis of its investigation conducted in 1999 on the impact of sanctions on the US companies, Boeing Company's planned sale of commercial aircraft to a private airline in India was delayed because of suspension of EXIM Bank operations in India. In the same way the operations of Enron International, the largest single foreign investor in India's electrical energy sector, also was delayed inflicting losses to the company's commercial gain.

Overseas Private Investment Corporation (OPIC) was established as a key federal agency to encourage American private investment in developing countries. Its operation consists primarily of:

- Protecting US investors against political risks overseas by providing insurance;
- Financing US business expansion overseas by providing long-term, limited recourse project financing; and
- Making equity capital available for investments in eligible emerging markets by guaranteeing long-term loans to private equity investment funds.

50 Balachandran, n. 42, p. 35.
51 "Overview of the Glenn Amendment Sanctions on India and Pakistan", n. 48, p. 5.
52 Balachandran, n. 42, pp. 35-36.
OPIC's exposure in India amounted to $320 m insurance coverage in the financial year 1996, and a single project financing of $50 million in 1997. According to an OPIC press release, the sales of $200 million in political risk insurance to Enron Oil and Gas Company in 1996, will result in $310 million worth of supplies of US goods and services to the project in its five year of operation, creating and supporting some 1,100 American jobs. However the White House release had estimated the loss on account of cut-off OPIC guarantees alone to be $10.20 billion for the fiscal year 1998-1999. This estimate, too seems to be more on the basis of expressed interests of probable applicants than on actual data. The total exposure of OPIC in any one year is far less than $5 billion.

The US Department of Commerce announced that it will halt investment of about $10 billion in infrastructure project that it had recommended to US companies. Less tenable was Washington's claim that other investments worth $10.20 billion will also dry up because the OPIC will not underwrite loans worth that amount from state-owned agencies to US Corporation doing business in India. For, last years figure stood at just $700 million. In any case, having invested over $6 billion in the country between 1991 and 1994 without commensurate returns, US corporate will find it difficult to withdraw. Therefore, a battle of wills between corporate USA and the Clinton Administration was obvious. For Exim Bank and OPIC programmes, together a welfare loss was estimated at 10 percentage of annual funding for India during 1995-1997, resulting in an estimated cost of $36 million.

The Trade and Development Agency (TDA) also had to stop funding due to the sanctions. TDA is a US government agency providing funds for US companies to conduct feasibility studies related to major projects in the developing countries thus helping US companies get involved in projects that offer significant export opportunities.

53 Ibid., p. 36.

54 Saran, n. 39.
Funding varies from year to year, but averages less than $1 million per year. TDA had provided about $1 million in support of feasibility studies for US projects in India when sanctions were imposed. It should be remembered, however, that the funding is for US companies to conduct studies and is therefore, a subsidy to US companies and not any assistance to India. 

In 1997, there was a strong move in the US Congress to wind up the operations of OPIC and TDA as critics felt that these agencies were subsidizing US companies in their commercial operations, an act considered against market principles. The agencies, on the other hand mounted a strong lobby claiming their operation assisted US exporters to stay competitive in the global markets. Therefore, it was obvious the sanction was to hurt the US interests more than Indian interests.

Stimulated by the debate relating to the prohibition of wheat sales in 1998, the US policy-making community considered a broader change in the way the sanctions are employed in US foreign policy. The Senate-passed Agriculture Appropriation Bill, included the following language, pending House-Senate conference: “Notwithstanding any other provision of law, the President shall not restrict or otherwise prohibit any exports (including financing) of food, other agricultural products (including fertilizer), medicines or medical equipment as part of any policy of existing or future unilateral economic sanctions imposed against a foreign government.”


56 Balachandran, n. 42, p. 36.

V Opposition to technical assistance by international financial institution: Opposition in accordance with Sec. 701 of the International Financial Institutions Act, the extension of any loan or financial or technical assistance to the target country by any international financial institution (Sec. 102 (b) (b) (2) (E)).

Foreign assistance to India had averaged $3.2 billion over the last six years, prior to the Pokhran-II nuclear tests. The traditional donors had been the World Bank, Asian Development Bank, Japan and Germany. In 1996-1997 they accounted for more than 95% of the total foreign aid. This External Commercial Borrowing (ECB) had become an important source of funding corporate India’s need since the early 1990s. Such foreign assistances to India were frozen, as the section of the Arms Export Control Act required the US Executive Director on the Boards of institutions like the World Bank, ADB, IMF and IFC to vote against all loans and assistance to India. The United States, by itself, can not block loans, financial or technical assistance to any country from the World Bank, International Monetary Fund, Asian Development Bank, or Asian Development Fund. Such efforts would require supporting “NO” votes from a consortium of countries with voting memberships in various banks. Assistant Secretary of State Karl Inderfurth, in the May 13th hearings, stated that the “requirement to oppose loans and assistance in the international financial institution could potentially cost India billions of dollars in desperately needed financing for infrastructure other projects.” Sanctions under this section could be costly for India because of its huge impact on various Indian projects, including developing economic infrastructure. On June 18, 1998, the Clinton Administration announced that it had gained the support of the G-7 countries and Russia to postpone consideration of loans not falling under “humanitarian assistance” for India.


60 Bureau of Economic and Agricultural Affairs, n. 55.
Presumably, on the influence of the US Japan had frozen grant-in-aid and loans to India; and it also declined to host the India Development Forum (IDF) meeting, which was scheduled to be held on 30 June and 1 July 1998.61

As seen in the second Chapter, it was not the first time that such an action was taken as a reaction to India’s nuclear test. For a period of three years from late 1974 to 1977, the US had opposed all the 26 IDA loans to India as a requirement arising out of the Long amendment, but in vain, as the move was not supported by other consortium countries, ultimately leading to repealing the amendment in 1977.

According to the US International Trade Commission’s report, fresh loans from multilateral institutions worth approximately $1.2 billion were postponed to India in 1998. The report in its evaluation stated: “While these project-specific loans would have improved India’s economic infrastructure, the postponement of these loans does not appear to have had an adverse effect on India’s economy.”62

World Bank: As the US gathered support of member countries of international financial institution to block any loans to India for its deed, in the week following India’s tests, at the request of some executive directors, consideration of several loans of non-basic human needs, which were scheduled to be presented in the last quarter of fiscal year 1998, was postponed by the World Bank and its institutions. India had been scheduled to receive approximately $3 billion in loans from the World Bank in fiscal year 1998 (which ended June 30, 1998); approximately $1 billion of that amount was disbursed before the Glenn Amendment sanctions were triggered in May 1998. The projects that were postponed included a proposed $130 million program to support India’s renewable energy program, a $450 million loan to develop India’s power grid into a national grid

61 Monthly Review of Indian Economy, n. 58.

operation and transmission service company, a $275 million loan to improve the highway network in the state of Haryana, and a $10 million International Finance Corporation loan to an Indian motor vehicle parts manufacturer, totaling the cost worth approximately $865 million. Subsequently, the World Bank indefinitely postponed two more loans to India valued at $206 million — a $130 million loan for an agriculture project and a $76 million loan for a health care project. However, in June 1998, the United States did not oppose a $543 million World Bank loan package falling under “basic human needs” to provide resources for health, education, nutrition, and rural development in Andhra Pradesh.63

Asian Development Bank (ADB): India received $250 million in loans from the ADB in 1998 before the US sanctions were triggered, representing 4.2 percent of ADB lending that year. While there were no ADB projects scheduled for India at the time the Glenn Amendment sanctions were triggered, coordinated efforts on the part of the G-7 countries effectively had blocked new ADB loans not pertaining to basic human needs. On December 3, 1998, the ADB approved a $250 million basic human needs loan for the cities of Ajmer, Bikaner, Jaipur, Jodhpur, Kota, and Udaipur, in the Rajasthan province to improve water supply and sanitation facilities.64

Though sanctions by the multilateral institutions are costly, any country like India that borrows huge loans and leave substantial portion of it unutilized could manage the negative effects of these sanctions. At the time of imposition of sanctions India’s unutilized loans were substantial which should have provided sufficient cushion for the

63 Ibid.; Cronin, n. 24, pp. 24-25; and Monthly Review of Indian Economy, n. 58, pp. 219-220.

drop in fresh loans. They stood at more than $16 billion at the end of the March 1996, and $15 billion at the end of March 1997. Even if the US were able to mobilize the necessary support, it could block only fresh loans, not the loans that had been approved prior to the triggering of Glenn sanctions. Already approved loans were disbursed without any hitch, as they were not subject to board approval and they were dependent solely on the fulfillment of contractual obligations on the part of India. Typically, in any year more than 80 percent of India’s withdrawals from these institutions are against loans approved two or more year earlier. Therefore, any stoppage of fresh loan approvals would begin to take effect with a lag of more than two years.

And in a bid to tackle the possible sanctions of non-humanitarian assistance, as a pre-emptive measure, prior to the nuclear tests the Indian government had been concentrating on pushing humanitarian projects that can not be subjected to sanctions rather than non-humanitarian projects at multilateral financial institutions. The Indian Finance Ministry had foreseen the stoppage of “non-humanitarian” loans from the multilateral institutions and took steps to increase inflows from other sectors and NRIs were assiduously being wooed with various attractive proposals to fill the gap.

A qualitative analysis leads to the conclusion that the impact of sanctions under this particular section- “financial assistance cut off from International Financial Institution” – obviously was only on the target country, India. Ultimately, this financial aid cut-off to India affected her various projects, industrial development, infrastructure development like education, health care, inflicting her overall economic growth.

65 Balachandran, n. 42, p. 39.


67 Balachandran, n. 42, p. 38.

VI Prohibition on any US bank: Prohibition on any US bank from making any loan or providing any credit to the government of the target country, except for the purpose of purchasing food or other agricultural commodities (sec.101 (b) (2) (F).

This section of AEC required the US government to prevent the US banks from granting loans not just to the Indian government but also government-owned Indian banks, public sector industries, and trading industries. Since the financial sanctions are against the Indian Government, they can have impact either directly via loans or indirectly through their effects on the holdings of government securities by the entities subject to the jurisdiction of the US. David Lipton, Under Secretary of the Treasury said that the law required that US banks cease to make loans and credits to the government of India. However, the law did not cover banking operations with the private sectors of India, and so banks can continue to operate. In the case of American companies investment in India they will be allowed to invest.\(^69\)

Since the Indian Government had not taken any loan from any US commercial bank or, for that matter, from the controversial bank of any other country, this sanction could not have any direct impact on India. The enforcement of economic and trade sanctions against target countries is administered by the Office of Foreign Assistance Control (OFAC) of the US Treasury Department.

The OFAC issues foreign assets control regulation for: (i) The financial community; (ii) The securities industry; (iii) The insurance industry; (iv) The exporters and importers; and (v) The tourism industry.

The US sanctions against India did not have direct impact on the operation of at least the exporters and importers, the insurance industry and the tourism industry. There was no impact on tourism industry as the tourism was not prohibited by the US and there

\(^{69}\) Cronin, n. 24, p. 25; and Balachandran, n. 42, p. 41.
were no US insurance industry working in India to have been affected. And all the sanctions triggered by the Glenn Amendment were banning of financial assistance, defense exports and imports and dual-use technologies. 70

One of the issues concerned with banking operations was the Indian government securities held by the US banks operating in India as part of their SLR obligations. The US Treasury Department was not clear on the scope of "loan", as the Glenn Amendment had not defined the term "loan" as to whether the term applied also to purchases of foreign government securities to meet statutory reserve requirements. Thus, the securities held by the US banks operating in India were not affected till 1st December 1998 and on that date all the sanctions under this section of AEC were lifted by the Clinton Administration. Likewise, the operations of US financial communities were also not affected by the sanctions, as the Glenn Amendment had not defined the term "bank" as to whether it applied also to non-banking financial institutions. 71

VII Prohibition on export of "specific goods and technology: Prohibition on export of "specific goods and technology" excluding food, agricultural commodities or item related to congressional oversight of intelligence activity, in accordance with section 6 of the Export Administration Act of 1979 (50 USC APP 2405) relating to foreign policy controls. (sec.102 (b) (2)(G)).

As the Nuclear Proliferation Prevention Act (NPPA) of 1994 defines "goods and technologies" under this section of sanctions means wide range of dual-use items that contributes to achieving nuclear weapons potentiality of a non-nuclear weapon state. They include nuclear material and equipment and sensitive nuclear technology and all technical assistance that requires authorization under Sec.57b of the Atomic Energy Act

70 Ibid., p. 40.

71 Balachandran, n. 42, p. 42; and

"Overview of the Glenn Amendment Sanctions on India and Pakistan", n. 48, p. 7.
of 1954. Ever since India conducted its so-called Peaceful Nuclear Explosion in 1974 allegedly using American and Canadian civil nuclear technology and materials that can be used for both peaceful and explosive purposes, the words, "sensitive nuclear technologies and materials", "dual-use" technologies and materials, and "specific goods and technologies" got into the nuclear non-proliferation lexicon.

For India, the US is particularly important from the point of view of import of technologies. During the past decades since independence, India has had many successful collaborations and civil technology transfer deals with the US helping the process of industrialization. The US technological and financial investments have shown an impressive growth in the years that followed the liberalization in India.

But, in the field of sensitive goods and technology, India was subject to denials as a result of its refusal to sign NPT and its PNE. In fact, as a result of this refusal and PNE, India has been subject to an ever stricter such "goods and technology" denial regime, including the NSG, Zangger Committee, MTCR etc. Therefore, sanctions under this section of AEC could not put any additional burden on India.

India and US signed an Memorandum of Understanding (MOU) in 1984 on export of technology and goods. Nevertheless, the US has continued to place obstacles in the way of Indian access to US technologies and goods. In recent years prior to the nuclear tests, the value of import certificate issued by the Indian government under this MOU had fallen to levels much below $100 million, partly because many of these items were freely available from other countries like France and partly because advances in indigenous technology had made such control regimes quite ineffective. For instance, as one US study pointed out, many Indian computer manufactures were able to offer machines of much stronger capabilities than those allowed under export control regimes. The Indian parallel processing super computer technology is quite advanced, offering machines of quite high speeds for in excess of the 2000 MTOPs limit placed by the Bureau of Export Administration (BXA) on computer export to India. The Bureau of
Export Administration (BXA) is a body of US Department of Commerce and it oversees the items to be exported as well as the items not to be exported on the basis of US non-proliferation objectives.

Following India’s nuclear tests, the BXA issued an updated guidelines on 22 June 1998, regarding changes it was implementing in US export control policy. As per the guidelines, under the “nuclear and missile related items and entities of concern”, no license were to be issued on dual-use items controlled for nuclear or missile non-proliferation reasons under the Export Administration Regulations. The BXA had announced also to publish the list of entities involved in such activities. All export licenses were to be denied to these entities, under the Enhanced Proliferation Control Initiative (EPCI).

Accordingly, on 25 June 1998, Washington had published an interim list of 63 Indian entities to be placed under denial regime. Bhaba Atomic Research Centre in Trombay and all laboratories and facilities associated with it, Indira Gandhi Centre for Atomic Research in Kalpakkam and Electronic Corporation of India were among 63 establishments put under US sanctions and listed by the Department of Energy with the view to deny any aid to India for nuclear, missiles or other military programmes. The interim list included even some agricultural and medical institutions, like Agricultural Research Unit in Almora.72 Again on 13 November 1998, the BXA named 40 Indian end users, along with number of subsidiaries, to be added to the interim entity list already published for placing under sanctions. Broadly, three categories of entities were identified viz. government nuclear and missile end users, parastatals and private companies and military end users. On the other hand, under “national security-related items and military entities”, the BXA revoked License Exception CTP for India and controlled the export and re-export of computers greater than 2,000 MTOPS for national

72 The Hindu (Chennai), 26 June 1998.
security reasons regardless of end-use or end-users in nuclear, missile and military aspects, and, in case such computers were in dire need by Indian government entities or non-government entities, the BXA required an export license for all such computers, but with a presumption of denial. The perception of several US companies that sanctions on these entities would only affect the business of their companies, as the products placed under the entity list for ban were available for India from their European and Asian competitors, draws inference that the sanctions on this entities would not contribute to achieve the desired results; only affect American business. The BXA had announced, however, to continue to give favourable consideration on a case-by-case basis to other dual-use exports to the other government and non-government India entities. 73 India was not affected by these guidelines on super computers, as India has been able to manufacture such computers on its own with indigenous technology.

In 1997-98 software exports had risen by about 68% to US $1749 million and domestic software that was essential for the growth of software exports, grew by over 33 percent to Rs.3470 crores. Where the sanctions had really hurt was in the ability of our defence departments to acquire computer systems and software required for a variety of needs, not all of them necessarily nuclear. Institutes like Bhabha Atomic Research Centre (BARC) and Indian Space Research Organisation (ISRO) had found it increasingly difficult to find source for sophisticated hardware and software. But on the flip side it ended up hurting operation of many MNCs in the country. But India’s C-DAC’s super computer PARAM 10000 with its ability to perform at 100 Gigaflops was a major relief in this case. 74

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73 Official Text, “US Sanctions on Export of Dual-Use Goods to India, Pakistan” (USIS, New Delhi), 25 June 1998, pp. 1-2; and


74 Data Quest, 15 June 1998.
As a result of sanctions, fairly high share of license applications was denied. So the impact of sanction on digital computers was valued to be around $10 million annually. The BXA guidelines on export items had caused uncertainty to major programmes like the Light Combat Aircraft (LCA), as the availability of critical parts and components, which were required in small volumes for which the US had been the chief sources, became uncertain.\(^{75}\)

Sanctions on this “goods and technology” had undeniably hurt India in areas like technological development for civilian as well as defense sectors and hurt also the US with affecting its export to India.

**Indirect Impact of Sanctions on India**

Apart from these direct impacts of sanction on India, there were definite indirect impacts too. The nuclear tests and the resultant sanctions added to the ever uncertain political stability in making the balance of payments of India in 1998-99 to significantly become uncertain.

Immediately after the announcement of the sanctions, the US government estimated the impact of the sanctions against India to be $20 billion. However, later the estimation came down to a much lower $5 billion.\(^{76}\) India had speculated it to be much more lower than this and ultimately when it came with the evaluation of the impact, the Government of India announced the impact to be $1.5 billion.\(^{77}\) However this did not reduce the apathy of the international community towards India and Pakistan, the other country also placed under the sanctions, because of their contribution to escalate tension.


\(^{77}\) “Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan”, n. 48, p. vi.
Thus, it was expected that the sanctions would have an adverse impact on the balance of payments.

And it was also reported that owing to adverse impact of sanctions, the cost of Indian borrowings overseas increased, reportedly by about 250 basis points. Immediately after the announcement of the sanctions, propelled by uncertainty and fear over the indirect effect of the sanctions, foreign institutional investors started selling Indian stocks.\(^78\)

One of the fallout for Indian companies and for Indians in MNCs was in the change of perception negatively because of uncertainty arisen out of sanction. The nuclear test in May 1998 followed by lowering of the country’s outlook from stable to negative by Standard & Poor’s and Duff & Phelps and the double downgrade of India’s sovereign rating by Moody’s were expected to increase the cost of borrowing substantially. Thus, a number of corporate either shelved or postponed their foreign borrowing in view of the high cost.\(^79\)

The US sanctions caused great deal of consternation in India regarding their possible consequences, both direct as well as indirect, on the economy. A study conducted by a Crisis Research and Information Service Ltd. reported that higher inflation, steeper interest rates, a sharp fall in the value of the rupee and a decline in stock indices are among some of the indirect negative impact of the imposition of US sanctions on India.\(^80\) Immediately after the announcement of wide range of Glenn amendment sanctions on India, public ignorance, disinformation and government apathy combined to fuel a panic that led to a sharp fall in the value of the rupee and a wave of selling on the


\(^{79}\) Ibid., p. 190.

stock market. The rupee value declined about five percent in 30 days immediately after the tests and the resultant sanctions.\textsuperscript{81}

Apart from these fallouts on the financial sector, the nuclear tests apparently had an impact upon Indian tourism industry. In May 1998 foreign tourist arrivals recorded a sharp decline of 21 percent over and above the nine percent decline in the previous month. Earnings from tourism also declined by four percent during the period over an increase of six percent in May 1997, mainly due to the fall in arrivals since per tourist expenditure had increased to $1, 541 from $1, 265 in May 1997.\textsuperscript{82}

It was reported that several travel groups from Europe had also cancelled their trips to India, fearing unhealthy levels of nuclear radiation in Rajasthan where the nuclear test was conducted. The fear on radiation was apparently fuelled by media reports. In Germany and Australia the media reported that the nuclear test had released radiation into the atmosphere, causing a radiation fear among the travelers.\textsuperscript{83}

Indian economy is a huge economy with its wide range of modern industries, globally competitive computer software industry fed by a large educated population along with traditional village farming, modern agriculture, handicrafts and services. In the ongoing phase of globalisation, India has been liberalising its economy in a staged manner to prevent its economy from subjecting to any unfavourable storm that might take place in the world economy. India’s economic reforms since 1991 have helped it to achieve a large measure of macro-economic stability and liberalize its trade, investment, and financial sectors, with the major political parties extending support to a continued economic reform in the ongoing phase of globalisation. Structural economic reforms introduced in India since 1991 include opening many previously restricted sectors to

\textsuperscript{81}Balachandran, n. 42, p. 2.

\textsuperscript{82}Monthly Review of the Indian Economy, n. 76, p. 188.

\textsuperscript{83}Monthly Review of the Indian Economy, n. 58, p. 217.
foreign investment, such as heavy industrial manufacturing, banking, civil aviation, telecommunications, power generation and distribution, ports and road construction, reducing economic distortions and increasing internal and external competition. Growth in the economy helped to reduce India’s foreign debt from a peak of $99 billion in March 1995 to approximately $94 billion in March 1998.

According to assessments of various economic institutions including the IMF, India was protected from much of the global fallout of the Asian financial crisis, which began in July 1997, because of its large domestic market that constitutes big chunk of Indian economy. This is also because the Indian economy did not rely extensively on earnings from exports to the Asian economies. Moreover, India’s staged approach to economic liberalization rendered it less exposed to financial turmoil in global markets.

The IMF has observed that capital controls, while entailing longer-term costs, appear to have helped to limit India’s vulnerability to abrupt movements in short-term capital, thus dampening the transmission of foreign investor uncertainties about the Asian emerging markets into India’s capital market. In addition, India has relatively low levels of volatile short-term foreign debt, and Indian banks and financial institutions have little exposure to the country’s real estate sector. Nevertheless, in August 1998 IMF report noted that the Indian currency had depreciated by 17 percent against the US dollar between the July 1997 onset of the Asian crisis and the end of August 1998, and that contagion from the regional crisis and cyclical factors had contributed to the recent slowdown in industrial production and exports. The Government of India also reported that economic developments in India in 1998-99 have to be viewed against the backdrop of an exceptionally turbulent and unfavorable international economic environment, and noted that the East Asian crisis and its reverberations on the World economy were an

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important reason for the slow recovery in India’s industrial growth and the continuing declaration in certain sectors. 85

An analysis, at the backdrop of the above observations, on the overall impact of the Glenn Amendment sanctions leads to the evaluation that the sanctions appear to have had a relatively minimal medium to longer-term impact on India’s economy. India’s financial sector and international credit rating deteriorated immediately after the US sanctions were announced. However, India was not affected much by the sanctions. To a large degree, many of the factors that insulated India from the effects of the East Asian financial crisis, described above, also helped insulate India from most of the economic impact of the US sanctions. In addition, India’s relatively large economy does not rely extensively on US Government or multilateral assistance for its developmental projects.

US exports to India declined by 2.6 percent from 1997 to 1998, and increased by 22 percent during the first quarter of 1999 over the same period in 1998. This small economic impact of the Glenn Amendment sanctions explains in part how India’s economy was able to expand by 5.6 percent in 1998, a slight improvement over the 1997 economic growth rate. The most immediate effects of the Glenn Amendment sanctions were reflected in India’s financial markets. The Mumbai (Bombay) Stock Exchange 30 blue chips index declined by 4.01 percent -- its largest point loss in the year -- on May 13, 1998, the day the imposition of sanctions was announced. India was possessing excellent debt servicing record prior to May 1998, record high level of foreign exchange reserves, and relatively small proportion of short-term debt in its total foreign debt obligations. 86 Despite these feel good factors, international assessments of India’s creditworthiness turned less favorable in the second half of 1998. A lack of investor interest initially


prompted several Indian corporations to defer bond issues in late 1998, and some foreign banks reportedly suspended the issuance of letters of credit for India, leading to concerns that rising interest rates for less creditworthy Indian debt would create a credit squeeze and reduce India’s access to foreign financing.

Despite this immediate financial sector downturn in India, foreign institutional investors, including Morgan Stanley, Dean Witter and Merrill Lynch Asset Management, continued to list India among the top markets for foreign investment opportunities in 1998 and 1999. Moreover, India successfully raised $4.2 billion in international markets with its new Resurgent India Bonds (RIBs) in August 1998. Aimed to encourage investment by non-resident Indians and overseas corporate bodies, RIBs were to be used to generate funds for Indian infrastructure projects. Capital inflows from the RIBs also are credited for helping stabilize the Indian exchange rate in late 1998.

According to a report, India estimated the overall annual cost of the Glenn Amendment sanctions to its economy to be approximately $1.5 billion. Though certainly there was impact on foreign investment in India due to the Glenn Amendment sanctions, the extent of the impact was not clear-cut.

Overall Impact on India: Summary of Observations

The following are highlights of the key observations. The Glenn Amendment sanctions have had a relatively minimal overall impact on India’s relatively large and diverse economy, although it is difficult to isolate the effects of the sanctions from other


88 Ministry of Finance, n. 85.

89 Indian Express (New Delhi), 22 September 1998.

90 Ibid., 1 June 1998.
concurrent economic events. India experienced an initial downturn in its financial sector and international credit rating immediately after the Glenn Amendment sanctions were triggered. Since India's economy is not dependent upon foreign bilateral or multilateral assistance, it was not adversely affected by the postponement of several World Bank loans. There were no ADB or IMF loans for India pending approval or awaiting disbursement when the US sanctions were triggered. The Government of India estimated the overall cost of the Glenn Amendment sanctions to the Indian economy in 1998 to be approximately $1.5 billion, equivalent to just about 0.4 percent of India's gross domestic product (GDP). The extent of the impact the sanctions had on India was far less from effectively exerting economic coercion on India to influence India's decision making in favour of the US objectives. The External Affairs Minister of India, Jaswant Singh, said that the US sanctions on India had been counterproductive and did not help for promoting the US non-proliferation goals in India. Jaswant Singh, on being asked about the economic impact of the sanctions on India, said to Los Angeles Times: “India has a continental-size economy that sustains one billion human beings. So far, sanctions have been counterproductive. Trade has grown by 27 percent over the last year, and it hasn't reached its true potential because of sanctions. Exports from India are growing, and imports from the U.S. are sluggish. So you're only hurting yourself.”91 The Finance Minister of India, Yashwant Sinha, also held the same view reflecting the above observations while commenting on the lifting of sanctions and its impact on the Indian economy in September 2001, when the sanctions were near-completely and permanently waived by the Bush administration. Yashwant Sinha, said, “It's a good thing the sanctions have been lifted but it's a minor issue as far as the Indian economy was concerned. Except for certain defence supplies, sanctions have no meaning. I don't think this is a

development of earth-shaking importance."\textsuperscript{92} It is evident from this observation that because of the strong economic stability the US sanctions could not build pressure on India to attain desired results in promoting its non-proliferation goals in India.

**Impact on the US**

The USITC had conducted a research survey with various US industries and their representatives to learn actual loss in the grass root level due to imposition of sanctions on India. The USITC report reveals\textsuperscript{9} various aspects of economic implications the sanctions brought to bear on US industries.

Based on responses received by the US International Trade Commission from American trade associations and industry representatives, the sanctions under Glenn Amendment had no effect on US exports of agriculture and forest products to India, as agriculture related commodities were exempted from the Glenn sanctions. However, uncertainty over the nature of the sanctions in the beginning accounted for reduced demand or erratic purchases of agriculture products by India causing a decrease in US exports of specific products in 1998. Several American industry representatives had aired their view against imposition of any sanctions that would place restrictions on their exports to India.\textsuperscript{93}

While, trade association and industry representatives for certain power generation equipment, certain compressors and parts, certain welding machine parts, and certain machinery for manufacturing reported that the Glenn Amendment sanctions on India had an effect on their business, few other representatives in the sector stated that sanctions had no effect. A power generation equipment producer stated that although sanctions had


minimal impact on its current level of exports, imports, investment, prospective sales, employment, and production, the potential exists for more serious economic effects in the future. Based on this survey it was predicted that future projects in India would be affected by US sanctions, as international financing is important for landing contracts. And a concern was expressed that US companies would not be able to participate in large projects if Indian entities were cut off from US and international funding sources, because all sanctions affected the perceived reliability of a US firm and they reportedly had the potential to discourage future contracts or joint ventures. In addition, it was felt that in case of a US sanctions in place, competitors to US firms, such as those based in the European Union (EU), Japan, and Korea would likely to secure business that would otherwise have gone to US companies. It was also noted that exports to a certain entities were affected by BXA licensing review even though the business relationship existed prior to the implementation of sanctions. The actual US Trade data showed that much of the decrease in the minerals, metals, machinery, and miscellaneous manufactures industry occurred in certain power generating equipment and parts falling from $79 million in 1997 to $11 million in 1998 on the account of sanctions.94

Individual producers of compressors and related parts estimated generally an actual loss and a loss in prospective sales in their exports to India with a total loss of around $38 million in 1998 when it was compared to the $53 million export in 1997 and reduced workforce due to the sanctions. This estimation was reflected also by the US trade data. However, according to trade association and other industry representatives, US sanctions had a minimal effect on the compressor and related parts business and the value of such exports to India comprised not even one percent of their total sales. The individual manufacturers of welding machine parts and their trade associations also contradicted each other in their evaluation of the impact of the sanctions on the particular

94 Ibid., pp. 9-10.
categories, with the former stating a huge negative impact and the later denying any major impact but only minimal impact. However, the trade data showed that the US exports to India dropped from $7 million in 1997 to less than $1 million in 1998 in this particular product category. Some other firms that produce machinery used for the manufacture of other goods and other firms stated they lost sales worth tens of millions of dollars to their European and Asian competitors because BXA denied licenses to their exports to India. 95

Representatives of the sectors of electronics and transportation companies stated that the effects of sanctions on their exports were substantial and the trade data also were closer to the statements, as US exports of particular commodities within the industry category, such as certain engines and parts, certain construction equipment, and certain electronics products, fell from a combined $297 million in 1997 to $97 million in 1998. It was found that many firms were clearly affected by the BXA export licensing denial and many categorically stated that the sanctions on India affected their business. They estimated their export losses as a result of sanctions ranging from several hundred thousand dollars to several million dollars. Trade data tend to support these statements as US exports of such products to India fell from $193 million in 1997 to $65 million in 1998. These companies estimated that potential losses could approach a total of several hundred million dollars per year and affect the employment of several thousand employees. Further, the denial of export licenses and resultant stop in the exports to India damaged their reputation as reliable suppliers paving a smooth way for their European and Asian competitors to fill the vacuum in the Indian market.

As foreseen immediately after the imposition of sanctions, the survey also reported that restricted access to financing from Exim Bank and the Overseas Private Investment Corporation (OPIC) expected to have a negative effect on the firm's business

95 Ibid., p. 10.
as financing from these agencies is used to a great extent. The representative also noted that any future project cancellations or delays as a result of sanctions could lead to losses in sales and in thousands of jobs and pave way for foreign competitors from the EU, Japan, Russia and China to fill the gap of US firms. Although the respondents did not reveal specific losses to India as a result of sanctions, trade data show that US exports of certain construction equipment declined during 1997-98, from $29 million to $6 million.

Most respondents from the electronics industry noted that sanctions had minimal to substantial effects on their exports to India. The BXA's entity list and resultant banning of exports inflicted cost on the export business of component manufacturers to India and caused loss of thousands of jobs to their employees. Competitors located in the EU, Canada, Japan, and Korea were readily available.

Six companies that produce analytic, measuring or testing equipment reported sanctions had negative impacts on their business. Two of these firms also stated that restrictions on private bank, World Bank, and International Monetary Fund financing would directly affect their firms operations as many of their customers in India receive government funds or are involved in projects financed by international financial institutions. There was a widespread perception among the companies that restrictions on Exim Bank and OPIC financing would negatively affect their operations, as most of their sales to these markets were for infrastructure development projects that were partly financed with such funds, causing loss of jobs to their employees and benefit their competitors in other Europe and Asia. The sanctions would have a substantial effect on potential investment in India. It was also felt that in retaliation against the Glenn Amendment sanctions, some Indian firms would no longer purchase from certain US suppliers.

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96 Ibid., p. 11.
Representatives of producers of unrecorded magnetic disks and computer hardware stated that sanctions had no effect on their sales or operations. For the drop in exports from $32 million in 1997 to $6 million in 1998, they attributed other factors such as declining prices and the movement of production facilities overseas. 97

According to the USITC reports based on its research survey, generally very large services firms in the major infrastructure industries of construction, financial services and telecommunications appear to be most affected by sanctions. According to representatives from these industries, adverse effects of the Glenn Amendment sanctions on India were, or would be most deeply felt in projects which involved, or may potentially involve, financing from the Exim Bank or financial assistance from the World Bank. According to US construction firms, restrictions on Exim Bank financing were to have an adverse effect on project financing and final project approval in India. Further, the Glenn Amendment sanctions on India also were reported to have an adverse effect on the reputation of US construction firms as reliable service providers.

In the financial sector, firms involved in banking securities, and asset management reported to have been adversely affected by restrictions placed on Exim Bank guarantees and World Bank financial assistance, as these organizations respectively ensure trade risk and enable governments to repay loans. Further they reported that the sanctions would adversely affect investment, exports and the reputation of US firms as reliable service providers. However, these firms did report that their operations in India were most affected by uncertainty regarding how the sanctions would be implemented.

There were very few US companies in India doing business in telecommunication service sector owing to India's restricting liberalization policy in telecom sector. In the survey, a US provider of telecommunication services in India indicated that the sanctions increased its investment and production costs, as US sanctions prevented firms like this

97 Ibid., p. 12.
from securing World Bank financing and consequently forced to obtain more expensive
financing, delaying network construction projects and vendor payments. Other companies
reported that they were not significantly affected by the sanctions. The limited effect of
sanctions on US telecommunication service firms in India may be a result of government
policy that placed substantial limits on foreign participation in its telecommunications
market. 98

A reading into the report of the US International Trade Commission reveals the
fact that sanctions imposed on India caused loss to the US companies exporting goods
and services to India in millions amounting together loss of billions of dollars.
Consequently, the ban on exports to India affected the reliability of US companies and in
the chain reaction, the competitors in Europe and Asia replaced the US companies
affecting the current level of exports as well as potentially affecting potential future
exports of US companies to Indian purchasers. Further, the sanctions affected also the
imports from India.

Restricted access of US companies to financing from Exim Bank and the
Overseas Private Investment Corporation (OPIC) had negative effect on the companies
business as financing from these agencies was used to a great extent. Many such
companies’ production cost increased, as they had to secure finances from more
expensive financiers. Restrictions on World Bank, and International Monetary Fund
financing affected the US companies operations as many of their customers in India
received were involved in projects financed by these international financial institutions. A
belief that in retaliation against the Glenn Amendment sanctions Indian firms would no
longer purchase from certain US suppliers affected the morale of the US Companies.
Further, in the beginning itself, uncertainty regarding how the sanctions would be
implemented affected the companies operating in India to a large extent. All these factors

98 Ibid., p. 13.
led to loss of thousands of jobs for American employees. In short, it can be argued the sanctions imposed on India affected the US companies in terms of exports, imports, investments, prospective sales, employment, and production.

So far as the United States was concerned, the total cost of the sanctions was estimated to be of $161 million, about 0.002 percent of its GDP of 1995, whereas the total cost on Indian economy was estimated to be approximately $1.5 billion, equivalent to just about 0.4 percent of India's gross domestic product (GDP).

While the Indo-US relationship had many reasons to reach from strength to strength, India faced imposition of sanctions, tremendously affecting bilateral trade relationship between India and the US that gained momentum throughout the post-independence era, even when the US and India have traversed politically a very controversial path in the entire post-independence era. Ultimately, the imposition of the sanctions by the US had an adverse impact not only on India, but on US as well.

The US Secretary of State, Madeleine Albright, expressed worry that the sanctions imposed on India were not only to affect India, but also the US business. For this reason, Senator John Glenn, the author of the current sanctions law, became doubtful about the wisdom of the unilateral punitive action.

Thus, it is proven fact that both India and the US suffered economic costs out of the Pokhran-II sanctions. Therefore, all the above facts and observations on the impact of sanctions on India and the US leads to the conclusion that the sanctions have adverse impact also on the imposer, partially proving the hypothesis that with the global

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100 "Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan", n. 48, p. vi.

environment based more on interdependence in terms of economy and technology under the current globalization phase, the sanctions are hoped to be effective on the imposed and at the same time they have adverse effect on the imposer too. The sanctions adversely affect also the imposer because of the double-edged nature of the instrument of sanctions in the interdependent global system. How far the adverse impact of the sanctions on the target, India, was effective in pushing it to comply with the US non-proliferation objectives will be dealt in the succeeding chapters.

But, an answer to the question ‘did this cost of sanctions on economy and technology of India threaten or influence enough India’s policy making towards the US non-proliferation objectives?’ depends upon other variants too. Whether the cost was weighed down or not (considered less important or not) by the target country, India, while comparing the cost to its other national interests, is a crucial question to be answered before evaluating the role of sanctions in making India to comply with non-proliferation objectives of the US.