Order Code RS20995
Updated October 12, 2001

CRS Report for Congress

Received through the CRS Web

India and Pakistan: Current U.S. Economic Sanctions

Dianne E. Rennack
Specialist in Foreign Policy Legislation
Foreign Affairs, Defense, and Trade Division

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 denying export licenses and assistance not to be in the national security interests of the United States.

Today, the United States imposes no economic sanctions against India. Pakistan continues to be denied U.S. foreign assistance as a result of its military overthrowing its democratically elected government in 1999, and for falling into arrears in servicing its debt to the United States in 2000. U.S. and Pakistani representatives signed an agreement to reschedule the debt on September 24; sanctions can be lifted 30 days after Congress is so notified. The Senate passed S. 1465 on October 4, 2001, which would remove the impediments on foreign assistance for Pakistan for the next two fiscal years, if that aid is granted as part of the war against international terrorism. On September 23, 2001, the President issued Executive Order 13224 to block property and transactions with 27 organizations or individuals who commit, threaten to commit, or support terrorism. The Secretary of the Treasury added another 39 entities and individuals to the list on October 12, 2001, in part to include the 22 persons listed among the Federal Bureau of Investigation's Most Wanted. Some of the organizations listed are based in Pakistan and others may have ties to that country.

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 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

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 Relief Act, which President Clinton signed into

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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 (Public Law 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.

law on July 14, 1998.[4] The Act amended the Arms Export Control Act to exempt various forms of U.S. Department of Agriculture-backed financial support from sanctions applied pursuant to section 102 of that Act. This freed up U.S. wheat farmers to participate in early summer auctions in which Pakistan was a substantial buyer. Later in the year, Congress 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, FY 2000, 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 banks loans and transactions.

What Is in Place Today

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;

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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 (Public Law 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,
(continued...)

Chairman of the Joint Chiefs of State, General Shelton visited India in May to discuss military-to-military relations. In May, 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]

With two notable exceptions pertaining to Pakistan, discussed below, all of the economic sanctions against India and Pakistan imposed pursuant to the Arms Export Control Act, the Export-Import Bank Act of 1945, and the Pressler amendment in the Foreign Assistance Act of 1961 have been waived by the President, pursuant to the authority granted him in the Defense Appropriations Act, FY 2000. The President exercised this authority incrementally, and finally lifted all nuclear test-related economic sanctions against the two countries on September 22, 2001, finding that denying export licenses and assistance not to be in the national security interests of the United States.[9]

Other Provisions of Law Affecting Assistance to Pakistan. Pakistan continues 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. Musharraf, however, has pledged to hold parliamentary elections by October 2002, as directed by Pakistan's Supreme Court. The current foreign operations appropriations act requires that the President determines and certifies to Congress that a democratically elected government has taken office before aid can be restored. Language in the foreign operations appropriations bill for FY2002 may establish a different threshold (see discussion below). Passage of S. 1465, already cleared in the Senate, would also alter the application of foreign aid restrictions for anti-terrorism support.

Congress enacted an exception to the prohibition on aid to Pakistan for fiscal year 2001. Section 597 of the that year's foreign assistance appropriations makes Development Assistance and Economic Support Funds available to Pakistan for basic education programs, "notwithstanding any provision of law that restricts assistance to foreign countries." Other programs that use a "Notwithstanding" clause, either in authorizing legislation or in appropriations, can also be made available to Pakistan.

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[7] (...continued)
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.

[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 ([http://usinfo.state.gov/]).

Pakistan is also denied most U.S. foreign assistance for falling into arrears in servicing its debt to the United States.[10] 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.[11] At the end of 1999, Pakistan's 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). 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.[12] Current law provides that foreign assistance may resume 30 days after Congress is notified of the rescheduling. In addition, of the total $30.7 billion owed by Pakistan, $14.1 billion was owed to multilateral development banks.[13]

The President 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 is expected to make another $50 million available under the same authority in the new fiscal year, which began October 1, 2001. The authority in sec. 614 had never been used before to assist a country sanctioned under the military coup terms in annual foreign assistance appropriations acts. The President also released $25 million in Emergency Migration and Refugee Funds to Pakistan around the same time. On October 5, the President made another $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 is subject to current sanctions. For the longer term, the Administration is considering constructing a $600 million package of assistance to Pakistan, in anticipation of passage of S. 1465, which would remove all impediments on aid to that country if the assistance relates to anti-terrorism efforts. 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.[14]

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[10] 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.

[11] Agency for International Development, *Loan Delinquency Status Report, As of August 31, 2001*.

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

[13] Department of the Treasury and Office of Management and Budget. *United States Government Foreign Credit Exposure as of December 31, 1999*, Part II.

[14] 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.

Proposals During the 107th Congress

General Musharraf has pledged to hold parliamentary elections in October 2002. In the meantime, the House has proposed a change in the law restricting foreign aid to states under military rule. H.R. 2506, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, sent to the Senate on July 25, would authorize the President to resume foreign aid to a country "...if the President determines and reports to the Committees on Appropriations that subsequent to the termination of assistance a democratically elected government has taken office or substantial progress has been made towards the holding of democratic elections." The Senate has reported H.R. 2506 without the new language authorizing the President to waive the sanction. On October 12, a cloture motion was filed in the Senate to require the completion of the measure.

S. 1465, introduced on September 25, 2001, by Senators Brownback and McConnell, and passed, as amended, by the Senate on October 4 by unanimous consent, specifically removes the government of Pakistan from the application of restrictions on foreign assistance because of its military regime. The measure exempts Pakistan from the requirements of the Foreign Operations Appropriations Act for the upcoming fiscal year, and for any previous fiscal year. It authorizes the President to waive the application of sanctions related to Pakistan's military regime in fiscal year 2003 if he determines and certifies to Congress that waiving the restriction would facilitate a transition to democracy and is important to the United States' anti-terrorism efforts. S. 1465 waives the application of sanctions related to Pakistan's debt arrearage for fiscal years 2001 and 2002. The measure requires the President to consult with Congress if he seeks to waive missile proliferation sanctions imposed against Pakistani entities prior to January 1, 2001.[15] More broadly, S. 1465 reduces the time required to notify Congress before the President draws down military assistance or transfers excess defense articles to respond to, deter, or prevent acts of international terrorism. All provisions of S. 1465 terminate on October 1, 2003, unless otherwise specifically stated.

Some Pakistani entities and individuals remain under economic sanctions imposed by the United States and other nations. On September 23, 2001, the President issued Executive Order 13224, to block the property and prohibit transactions with persons who threaten, commit, or support terrorism. This Order freezes all U.S.-based assets of 66 organizations and individuals and authorizes the Secretary of State or Secretary of the Treasury to add to that initial list. The original issuance listed 27 individuals and entities; the Secretary of the Treasury added another 39 on October 12, 2001, in part to include the 22 persons listed among the Federal Bureau of Investigation's Most Wanted. The Order prohibits U.S. citizens from engaging in financial transactions with the named entities, some of whom are Pakistani or have close ties to Pakistan. The President circulated the list internationally, and stated that the United States will freeze assets of third-country entities that do not freeze the assets of those entities named in the Order.[16] In announcing the expansion of the original list, the Department of the Treasury reported that some 66 countries had ordered assets frozen in their jurisdictions, and that over $20 million had been blocked by the international effort.

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[15] Pursuant to sec. 73 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797b) and sec. 11B of the Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. app. 2401b).

[16] Executive Order 13224, September 23, 2001 (66 F.R. 49079; September 25, 2001).