U.S. Economic Sanctions Regarding the Proliferation of Nuclear Weapons: A Call for Reform of the Arms Export Control Act Sanctions

Sarah P. Schuette

Follow this and additional works at: http://scholarship.law.cornell.edu/cilj

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.cornell.edu/cilj/vol35/iss1/5
U.S. Economic Sanctions Regarding the Proliferation of Nuclear Weapons: A Call for Reform of the Arms Export Control Act Sanctions

Sarah P. Schuette*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>232</td>
</tr>
<tr>
<td>I. The Use of Economic Sanctions</td>
<td>234</td>
</tr>
<tr>
<td>A. What Are Economic Sanctions?</td>
<td>234</td>
</tr>
<tr>
<td>B. U.S. Historical Account of Economic Sanctions</td>
<td>235</td>
</tr>
<tr>
<td>C. Legality of Economic Sanctions Under International Law</td>
<td>237</td>
</tr>
<tr>
<td>II. The Arms Export Control Act and Testing by Non-Nuclear Weapons States</td>
<td>239</td>
</tr>
<tr>
<td>A. U.S. Sanctions Legislation Aimed at the Non-Proliferation of Nuclear Weapons</td>
<td>239</td>
</tr>
<tr>
<td>B. U.S. Response to the India-Pakistan Nuclear Testing Situation</td>
<td>240</td>
</tr>
<tr>
<td>III. Sanctions Reform Proposals</td>
<td>242</td>
</tr>
<tr>
<td>A. Introduction</td>
<td>242</td>
</tr>
<tr>
<td>B. Considerations, Communications, and Procedural Requirements</td>
<td>243</td>
</tr>
<tr>
<td>C. Waiver, Termination, and Suspension of Sanctions Policies</td>
<td>246</td>
</tr>
<tr>
<td>IV. Critiquing the Arms Export Control Act Sanctions</td>
<td>248</td>
</tr>
<tr>
<td>V. Recommendations</td>
<td>252</td>
</tr>
<tr>
<td>A. Demand Greater Use of Import Controls</td>
<td>252</td>
</tr>
<tr>
<td>B. Procedural Revisions for the Arms Export Control Act Sanctions</td>
<td>256</td>
</tr>
<tr>
<td>1. Require the President to First Seek International Cooperation Before Imposing the Sanctions</td>
<td>256</td>
</tr>
<tr>
<td>2. Provide the President with Waiver Authority</td>
<td>258</td>
</tr>
<tr>
<td>Conclusion</td>
<td>262</td>
</tr>
</tbody>
</table>

* JD Candidate 2002; B.S. 1999, Cornell University. The author graciously thanks Carey DeMatteis for his ongoing support and insightful comments.

Introduction

In May of 1998, India initiated three nuclear weapons tests. Pakistan quickly followed India's lead and responded with its own series of nuclear weapons tests on May 28, 1998. India claims its development of nuclear weapons was a critical step towards protecting its national security, because it deters a possible Chinese or Pakistani nuclear invasion of Indian territory. Pointing to its half-century history of wars against both Pakistan and China, India contends that the United States' refusal to intervene in China's ongoing transfer of nuclear weapons technology to Pakistan left India with no other option but to develop nuclear weaponry.

The United States had hoped its guarantee to impose economic sanctions upon states that seek and acquire nuclear arms would deter India and Pakistan from developing nuclear weaponry. U.S. politicians rely on economic sanctions statutes, such as the Arms Export Control Act, as an alternative to the use of force, because they enable the United States to take...
a firm stand against uncooperative or rogue foreign governments without paying the high costs and suffering the loss of human life that armed conflict entails.\textsuperscript{8} Prior to India and Pakistan’s 1998 nuclear tests, the United States enacted the Arms Export Control Act to deter the international spread of nuclear weapon technology by guaranteeing the immediate imposition of U.S. sanctions upon any state that sought and obtained nuclear weapon capabilities.\textsuperscript{9} Both India and Pakistan were aware of these sanctions and the ramifications of their nuclear weapons tests, but both nations chose to upgrade their nuclear weapon capabilities. Their decision to acquire nuclear weapons, knowing what consequences would follow, illustrates that the Arms Export Control Act sanctions does not sufficiently deter nations from acquiring nuclear weaponry.\textsuperscript{10}

Economic sanctions are highly controversial foreign policy tools, which have been the target of an enormous amount of criticism, research, and negative publicity.\textsuperscript{11} Congress has examined the effectiveness of economic sanctions and proposed several bills to reform and improve their effectiveness as foreign policy tools.\textsuperscript{12} This Note examines the Arms Export Control Act’s anti-proliferation sanctions and considers whether or not the proposed legislation will make economic sanctions a more effective tool in the United States’ battle to limit the proliferation of nuclear technology. Specifically, Part I of this Note provides a brief description and background on the United States’ use of economic sanctions. Part II outlines the Arms Export Control Act and discusses the U.S. response to India’s and Pakistan’s nuclear weapons tests. Part III then examines the recent Congressional and executive branch proposals for sanctions reform legislation. Applying the proposals to the India-Pakistan nuclear testing crisis, Part IV

\begin{itemize}
\item 8. “Sanctions can offer a nonmilitary alternative to the terrible options of war or indifference when confronted with aggression or injustice.” \textit{Economic Sanctions and American Diplomacy} 2 (Richard N. Haass ed., 1998); \textit{Hearings on Sanctions Reform: Hearings Before the Senate Committee on Foreign Relations, 106th Cong. 98} (1999) (statement of Christopher J. Dodd, U.S. Senate) [hereinafter \textit{Hearings on Sanctions Reform}].
\item 10. \textit{See Economic Sanctions and U.S. Policy Interests: Hearing Before the House Committee on International Relations, 105th Congress 94} (1998) [hereinafter \textit{Economic Sanctions and U.S. Policy Interests}] (statement of Stuart E. Eizenstat, Under Secretary of State) (“That both countries chose to go forward with their decisions to test, knowing full well the monumental consequences, underscores that ultimately sanctions may not deter nations from actions that they view . . . as fundamental to their national security concerns.”).
argues that the Bush Administration must continue the U.S. sanctions reform movement and push for more significant changes within U.S. sanctions policy to make these foreign policy tools more effective at preventing the spread of nuclear technology and capabilities. Finally, Part V offers specific recommendations to the Bush Administration on how to improve the effectiveness of the Arms Export Control Act sanctions.

I. The Use of Economic Sanctions

A. What Are Economic Sanctions?

Economic sanctions are "coercive foreign policy action[s] ... [that] intentionally suspend customary economic relations such as trade and/or financial exchanges in order to prompt the targeted nation to change its policy or behavior." Experts consider sanctions to be intermediate-level foreign policy tools, since they cost less than armed force, but amount to more than just diplomatic relations. Sanctions also communicate a stronger message to foreign states than other foreign policy measures, such as terminating communication or diplomatic relations, because they exert financial costs on the target state. Sanctions can take many forms including the following: export controls, reduced aid from U.S. government programs, import restrictions, limitations on loans from U.S. private financial institutions, and the denial of support for loans from international financial institutions. And unless a treaty specifies otherwise, most economic sanctions do not violate customary international law.

The United States issues economic sanctions against target countries for a variety of purposes. In the past, the United States has issued san-

---

13. PANACEA OR PEACEBUILDING, supra note 11, at 15 n.3.
14. "There are ... three tools in foreign policy: diplomacy, sanctions, and war. Take away sanctions and how can the United States deal with terrorists, proliferators, and genocidal dictators? Our options would be empty talk or sending in the marines. Without sanctions, the United States would be virtually powerless to influence events absent war." Jesse Helms, What Sanctions Epidemic? U.S. Business’ Curious Crusade, FOREIGN AFF., Jan/Feb. 1999, at 5.
16. Export controls limit the quantity of goods and services that American businesses can sell to the target country. See Raj Bhala, Mrs. Watu: Seven Steps to Trade Sanctions Analysis, 20 MICH. J. INT’L L. 565, 574 (1999) [hereinafter Mrs. Watu].
17. Import restrictions limit the quantity of goods and services that the U.S. may purchase from the target country. See id.
19. Sanctions that deny monetary assistance or government funding to a target country are legal, as customary international law does not require one state to provide monetary assistance to a foreign nation. AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW 4-5 (Peter Malanczuk ed., 7th ed. 1997); Carter, supra note 15, at 1167 n.12 (“The frequent use of ... sanctions by many countries constitutes persuasive evidence that no clear norm exists against them in customary international law.”). But see Farer, Political and Economic Coercion in Contemporary International Law, 79 AM. J. INT’L L. 405, 411-13 (1985).
tions to promote human rights,\textsuperscript{20} to produce governmental change,\textsuperscript{21} to protect the environment,\textsuperscript{22} to combat narcotics trafficking, to end terrorism,\textsuperscript{23} and to stop the proliferation of nuclear weapons.\textsuperscript{24} Economic sanctions achieve these purposes by inducing the target country to alter its behavior, policies, or government; by punishing the target country for its policies; and by sending a message to all other nations considering similar behavior.\textsuperscript{25}

The United States imposes economic sanctions through a number of governmental actions. First, the President can impose sanctions based on powers granted to him or her under existing federal statutes or by exercising his or her constitutional power to issue Executive Orders.\textsuperscript{26} Second, Congress can implement sanctions by enacting public laws that gain the President's support or, without the President's support, by overriding his or her veto.\textsuperscript{27} Third, the United States may issue sanctions pursuant to a United Nations Security Council Resolution.\textsuperscript{28} Finally, and most controversially, state or local governments may impose sanctions against foreign entities.\textsuperscript{29}

B. U.S. Historical Account of Economic Sanctions

Economic sanctions are not native to the United States,\textsuperscript{30} but they have

\textsuperscript{20} Following the Tiananmen Square violence in 1989, the United States imposed sanctions against China in an attempt to induce China to cease its human rights violations. \textit{Economic Sanctions and American Diplomacy}, supra note 8, at 6.


\textsuperscript{22} The United States has imposed sanctions to oppose China's construction of the Three Gorges Dam, to ban the importation of wildlife from Taiwan, and to outlaw the importation of shrimp from nations that do not require fisherman to use turtle excluder devices in their shrimp nets. \textit{Id.} at 334 n.35.

\textsuperscript{23} The United States issued sanctions against Libya in response to the 1988 bombing of Pan Am 103 over Lockerbie, Scotland. \textit{Economic Sanctions and American Diplomacy}, supra note 8, at 7; \textit{Hearings on Sanctions Reform}, supra note 8, at 55.

\textsuperscript{24} The United States imposed restrictions on shipments of nuclear fuel to Argentina, Brazil, India, Pakistan, South Africa, and Taiwan, for those nations' attempts to seek and obtain nuclear weaponry technology. And, the United States applied financial leverage against South Korea to stall its plans to build a nuclear fuel reprocessing plant. Smith, \textit{supra} note 21, at 333 n.26.


\textsuperscript{26} \textit{Economic Sanctions and American Diplomacy}, supra note 8, at 2.

\textsuperscript{27} \textit{Id.}

\textsuperscript{28} \textit{Id.}

\textsuperscript{29} \textit{Id.}; cf. Crosby v. Nat'l Foreign Trade Council, 120 S. Ct. 2288 (2000) (deciding that a federal statute imposing economic sanctions on Burma preempted the Massachusetts Selective Purchasing Law, which imposed sanctions against companies that conducted trade with Burma).

\textsuperscript{30} Ancient Greece used sanctions. In 432 B.C., Pericles, due to Megara's acquisition of land and alleged kidnapping activities, placed restrictions on the amount of Megarian products that could be brought into Athens. \textit{Economic Sanctions Reconsidered}, supra note 11, at 21.
served instrumental foreign policy roles throughout U.S. history. The colonists used sanctions as a means of protest against England prior to and during the Revolutionary War. The U.S. government relied upon economic sanctions prior to the War of 1812 to attempt to isolate itself from the brewing controversies between France and Great Britain. The United States did not again impose sanctions upon another foreign state until World War I, when President Wilson began advocating the use of economic sanctions as a tool of American foreign policy. Sanctions have steadily become more popular since World War I, with a dramatic increase in use during the 1990s. During 1998 alone, for instance, the United States issued sanctions against twenty-six nations, covering one-half of the world’s population and depriving U.S. businessmen of billions of customers. No other nation has relied on the use of economic sanctions so heavily.

Sanctions became prevalent in American foreign policy during the 1990’s for a number of reasons. First, the fall of the Soviet Union and end of the Cold War removed Soviet opposition to U.S. sanctions. During the Cold War, the United States hesitated to issue economic sanctions against

31. In protest against English taxes and authority, the colonists implemented a number of boycotts against British products. Carter, supra note 15, at 1169 n.19.

32. The United States imposed trade embargoes in 1807 and 1811, in attempt to remain uninvolved in the controversies between France and Great Britain that eventually led to the War of 1812. Id.

33. “A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It does not cost a life outside the nation boycotted, but it brings a pressure upon the nation which, in my judgment, no modern nation could resist. President Woodrow Wilson, 1919.” Use and Effect of Unilateral Trade Sanctions: Hearing Before the Subcommittee on Trade of the House Committee on Ways and Means, 105th Cong. 108 (1997) (Statement of Kimberly Ann Elliott, Research Fellow, Institute for International Economics) (quoting AMERICAN COUNCIL ON PUBLIC AFFAIRS, WILSON’S IDEALS 108 (Saul K. Padover, ed., 1942)).

34. Hufbauer and Schott estimate economic sanctions were implemented 103 times between the years of 1914 and 1984. ECONOMIC SANCTIONS RECONSIDERED, supra note 11, at 2, 13-20.

35. Another study estimates that from 1994-1999 the United States issued sanctions 75 times, which is more than half the number sanctions that have been imposed since WWII. GEORGE E. SHAMBAUGH, STATES, FIRMS, AND POWER: SUCCESSFUL SANCTIONS IN UNITED STATES FOREIGN POLICY xiv (1999) (citing Richard Haas, Sanctions Almost Never Work, WALL ST. J., June 19, 1998, at A14.).


37. Hufbauer’s study estimates that between 1914 and 1984, the United States issued sanctions 68 times, the United Kingdom imposed sanctions in 21 instances, and the Soviet Union deployed sanctions 10 times. ECONOMIC SANCTIONS RECONSIDERED, supra note 11, at 7.

38. [S]anctions can now be introduced without Russian opposition, be it political (where a Russian veto in the Security Council is by no means automatic); economic (Russia has less of a commitment to relationships that would lead it to provide aid and thereby offset any penalty imposed on one of its allies); or military (Russia is less likely than was the Soviet Union to block any Western or U.S. attempt to enforce a trade-related sanction).
states politically aligned with the Soviet Union, fearing the Soviet government would challenge the sanctions. Second, the growth of the media, Internet, and satellite technology enabled Americans to receive around-the-clock video coverage of international conflicts, inducing strong emotional reactions and public demand for a U.S. response. Sanctions provided politicians with an easy way to respond to the public demand for a U.S. response. A third contributing factor to the increased use of sanctions was the growth of lobbyists and nongovernmental organizations. These "single-issue consistencies" bombarded U.S. politicians with campaign funding, media campaigns, and slanted data to pressure them into issuing sanctions against foreign governments.

C. Legality of Economic Sanctions Under International Law

Article 2(4) of the U.N. Charter prohibits the "threat or use of force" against another state. Developing nations argue that unilateral economic sanctions, which are sanctions imposed by one nation against another, violate this prohibition on the use of force. Nations targeted by unilateral sanctions also allege that states imposing economic sanctions violate Article 2(7) of the U.N. Charter by intervening within the target nation's domestic jurisdiction and state sovereignty.

Although the United Nations has indicated that economic sanctions do not qualify as a use of force and that countries may use unilateral economic sanctions within other nations to uphold international norms,

---

ECONOMIC SANCTIONS AND AMERICAN DIPLOMACY, supra note 8, at 5.
39. Id.
40. "The . . . CNN effect can increase the visibility throughout the United States of problems in another country and stimulate a desire on the part of Americans to respond." Id. at 3. Senator Helms accused President Clinton of relying on the CNN-effect to appeal to Americans. Helms contends President Clinton attempted to look tough on international wrongdoing by signing sanctions legislation on national television. Helms, supra note 14, at 6.
42. ECONOMIC SANCTIONS AND AMERICAN DIPLOMACY, supra note 8, at 3 ("[These] small, organized, focused groups can have an impact far beyond their actual strength, especially . . . when no equally focused countervailing force exists.").
43. Human rights groups opposed to South Africa's apartheid attracted Congressional attention and successfully lobbied for the imposition of U.S. sanctions. Id. The U.S. business group, USA*Engage, on the other hand, launched a massive lobbying campaign in 1997 to put an end to U.S. sanctions. E.g., USA Engage - About Us, at http://www.usaengage.org/background/about.html (last updated Mar. 4, 2001).
44. U.N. CHARTER art. 2, para. 4.
the U.N. has imposed limitations on the use of unilateral economic sanctions. In 1984, the General Assembly stated that nations should not impose economic sanctions that violate the international norms of the U.N. Charter. Nations cannot use unilateral sanctions "as tools for political or economic pressure against any country, particularly against developing countries, because of the negative effects on the realization of all human rights." Thus, while some unilateral sanctions may be illegal under international law, a state's use of unilateral economic sanctions does not automatically violate the U.N. Charter. However, unilateral sanctions must support internationally agreed upon norms and expectations to qualify as legal actions under the U.N. Charter.

Similar to the prohibition on intervention within Article 2(7) of the U.N. Charter, customary international law forbids states from interfering with the domestic affairs of another nation. Although economic sanctions may qualify as a form of intervention into a foreign nation's domesticity, it is unlikely that a customary international norm against the use of economic sanctions exists. Since the development of the U.N. prohibition on the use of force, nations have turned to economic sanctions to resolve disputes. In fact, Gary Hufbauer estimates that economic sanctions were implemented 103 times between 1914 and 1984. This high use of unilateral sanctions over a sizeable time period indicates that the use of economic sanctions has become an accepted customary international norm. The International Court of Justice solidified this theory in Nicaragua v. United States, finding that economic sanctions do not violate the customary international norm of non-intervention.

50. Cleveland, supra note 45, at 49.
51. Based on the international customary norm against the use of nuclear weapons, it is highly likely that anti-proliferation sanctions comply with the internationally accepted norms within the U.N. Charter.
52. U.N. CHARTER art. 2, para. 7 ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.").
53. Cleveland, supra note 45, at 53.
54. Id.
55. Pires, supra note 46, at 313.
56. ECONOMIC SANCTIONS RECONSIDERED, supra note 11, at 2, 13-20.
57. Cleveland, supra note 45, at 53.
II. The Arms Export Control Act and Testing by Non-Nuclear Weapons States

A. U.S. Sanctions Legislation Aimed at the Non-Proliferation of Nuclear Weapons

The Nuclear Proliferation Prevention Act\(^5\) outlines the U.S. policy for preventing the international expansion of nuclear weapons technologies. The statute commits the United States to encouraging nations to sign the Treaty on the Non-Proliferation of Nuclear Weapons, to rewarding those non-nuclear-weapon states that remain loyal to their non-proliferation pledges, to seeking new non-nuclear energy sources, and to developing international sanctions against non-nuclear-weapon states that seek and obtain nuclear capabilities in contravention of their treaty obligations.\(^6\)

The Arms Export Control Act,\(^6\)(also known as the Glenn Amendment, expands the U.S. commitment to non-proliferation by imposing mandatory sanctions upon any non-nuclear weapons state that receives or detonates a nuclear weapon. Once the President learns that a non-nuclear-weapon state has gained nuclear weapon capabilities, the Arms Export Control Act requires him or her to immediately impose several different types of sanctions and includes the following: termination of all forms of foreign aid and trade promotion programs,\(^6\) prohibition on the sale and financing of U.S. defense materials and services to the target country, prohibition on U.S. financial institutions from engaging in loans or transactions with the target country, and opposition to all international financial institution loans to the target country.\(^6\) The sanctions purport to serve the dual purpose of (1) deterring other non-nuclear-weapon states from obtaining nuclear weapon capabilities and (2) motivating new nuclear-weapon states to pledge to cease all nuclear testing and commit themselves to global disarmament.\(^6\)

The United States did not implement the 1978 Arms Export Control Act’s sanctions for nuclear weapons testing prior to India’s and Pakistan’s nuclear tests in 1998.\(^6\) Hence, President Clinton and Congress had no experience with the mandatory sanctions regime portion of the statute. The statute provides the President with few options in the imposition of sanctions.\(^6\) Regardless of the circumstances surrounding the nuclear weapons testing, the President must either fully implement the stipulated sanctions or get Congressional approval to waive the sanctions through a

\(^6\) Id.
\(^6\)(also known as the Glenn Amendment, expands the U.S. commitment to non-proliferation by imposing mandatory sanctions upon any non-nuclear weapons state that receives or detonates a nuclear weapon. Once the President learns that a non-nuclear-weapon state has gained nuclear weapon capabilities, the Arms Export Control Act requires him or her to immediately impose several different types of sanctions and includes the following: termination of all forms of foreign aid and trade promotion programs,\(^6\) prohibition on the sale and financing of U.S. defense materials and services to the target country, prohibition on U.S. financial institutions from engaging in loans or transactions with the target country, and opposition to all international financial institution loans to the target country.\(^6\) The sanctions purport to serve the dual purpose of (1) deterring other non-nuclear-weapon states from obtaining nuclear weapon capabilities and (2) motivating new nuclear-weapon states to pledge to cease all nuclear testing and commit themselves to global disarmament.\(^6\)

The United States did not implement the 1978 Arms Export Control Act’s sanctions for nuclear weapons testing prior to India’s and Pakistan’s nuclear tests in 1998.\(^6\) Hence, President Clinton and Congress had no experience with the mandatory sanctions regime portion of the statute. The statute provides the President with few options in the imposition of sanctions.\(^6\) Regardless of the circumstances surrounding the nuclear weapons testing, the President must either fully implement the stipulated sanctions or get Congressional approval to waive the sanctions through a
joint resolution in both the Senate and House of Representatives.\textsuperscript{67} The Arms Export Control Act does not contain a termination provision for implemented sanctions.\textsuperscript{68} Therefore, the sanctions do not terminate until both the Senate and House of Representatives pass legislation to lift the sanctions.\textsuperscript{69}

Although the Glen Amendment provides the President with few options for responding to a non-nuclear-weapon state’s acquisition of nuclear weapons, it does not require a total ban on U.S. trade with the violating state.\textsuperscript{70} The statute forbids the sale of items or services, such as computer technology, chemicals, and military equipment that could be used for the proliferation of nuclear weapons.\textsuperscript{71} The sanctions statute also prohibits U.S. trade with government entities that are affiliated with their nation’s military operations or nuclear programs.\textsuperscript{72} Even though the Arms Export Control Act permits all other forms of trade with states that have acquired nuclear weapons, it significantly impacts U.S. businesses through its denial of U.S. government financial assistance to trade promotion programs.\textsuperscript{73} American businesses, for example, depend on the U.S. government’s trade program for their investment projects and trade relations in India.\textsuperscript{74} Withholding such financial support will render many projects unprofitable.

B. U.S. Response to the India-Pakistan Nuclear Testing Situation
Prior to India’s and Pakistan’s nuclear tests in 1998, both states were considered to be non-nuclear-weapon states.\textsuperscript{75} Their testing served as the first formal announcement that their governments had acquired nuclear weaponry. Hence, their testing triggered the immediate imposition of Arms Export Control Act sanctions by the United States.\textsuperscript{76} Displeased with the resulting impact of the Arms Export Control Act on economic relations

\begin{itemize}
\item \textsuperscript{67} Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000); India-Pakistan Nuclear Proliferation, supra note 6, at 49 (statement of Ambassador David L. Aaron, Undersecretary of Commerce for International Trade).
\item \textsuperscript{68} Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000).
\item \textsuperscript{69} Mrs. Watu, supra note 16, at 565.
\item \textsuperscript{70} India-Pakistan Nuclear Proliferation, supra note 6, at 50 (statement of Ambassador David L. Aaron, Undersecretary of Commerce for International Trade).
\item \textsuperscript{71} Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000).
\item \textsuperscript{72} Id.
\item \textsuperscript{73} India-Pakistan Nuclear Proliferation, supra note 6, at 52 (statement of Ambassador David L. Aaron, Undersecretary of Commerce for International Trade).
\item \textsuperscript{74} Id. at 52 (statement of Ambassador David L. Aaron, Undersecretary of Commerce for International Trade).
\item \textsuperscript{75} There are some reports, however, that in 1990 South Asia was on the verge of a nuclear war. Indian officials have denied that such a nuclear crisis ever existed, but a retired Indian official has revealed that India was extremely concerned about a nuclear battle with Pakistan during the spring of 1990 and that the two states were much closer to a nuclear war than the U.S.-U.S.S.R. standoff during the Cuban Missile Crisis. Seymour Hersh, On the Nuclear Edge, THE NEW YORKER, March 29, 1993, at 56-73; Seymour Hersh, Watching the Warheads, THE NEW YORKER, November 5, 2001, at 52.
\item \textsuperscript{76} Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000); see also India-Pakistan Nuclear Proliferation, supra note 6, at 49 (statement of Ambassador David L. Aaron, Undersecretary of Commerce for International Trade).\end{itemize}
with India and Pakistan, Congress passed the India-Pakistan Relief Act\textsuperscript{77} to alleviate some of the sanctions imposed by the United States.\textsuperscript{78} The enactment empowered the President to waive application of any sanction against India or Pakistan, excluding those sanctions directed towards government entities that contributed to the development of India's or Pakistan's nuclear weapons arsenals.\textsuperscript{79} Consequently, President Clinton had one year to waive U.S. sanctions that prohibited American bank loans to India and Pakistan, forbade all U.S. government non-military assistance to both nations, and denied U.S. support for international financial institutional loans.\textsuperscript{80} To exercise these waiver powers, the President had to communicate his intentions to the Committee for Foreign Relations in the Senate, the House International Relations Committee, and the Senate and House Appropriations Committees.\textsuperscript{81} The Relief Act also required the Secretary of State to update these Congressional committees on India’s and Pakistan’s nuclear weapons status.\textsuperscript{82}

President Clinton exercised his Relief Act waiver authority on two separate occasions and waived a portion of the U.S. sanctions against India and Pakistan.\textsuperscript{83} First, President Clinton waived the Arms Export Control Act sanctions pertaining to the Export-Import Bank, Overseas Private Investment Corporation, Trade and Development Agency, and International Military Education and Training program.\textsuperscript{84} President Clinton’s first waiver document also permitted U.S. private financial institutions to issue loans to the Indian and Pakistani governments and opened U.S. assistance to the Asian Elephant Conservation Fund, the Rhinoceros and Tiger Conservation Fund, and Indo-American Environmental Leadership program.\textsuperscript{85} In March 2000, President Clinton lifted additional sanctions against India, re-instituting U.S. assistance to India through the South Asia Regional Initiative/Energy program, Presidential Initiative on Internet for Economic Development, the Financial Institution Reform and Expansion program, and United States Educational Foundation in India Environmental Exchange.\textsuperscript{86}

Political activity surrounding the Arms Export Control Act sanctions against India and Pakistan resumed in 2001 when President Bush took office. Congress developed two bills that proposed to lift all Arms Export

\textsuperscript{78} “It is the sense of Congress that broad application of export controls to nearly 300 India and Pakistan entities is inconsistent with the specific national security interests of the United States and that this control list requires refinement.” Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{84} Proclamation No. 2000-4, 64 Fed. Reg. 60,649 (Oct. 27, 1999).
\textsuperscript{85} Id.
Control Act sanctions against India and Pakistan.\textsuperscript{87} One bill proposed to lift sanctions against both countries,\textsuperscript{88} while the other bill called for an elimination of the Arms Export Control Act sanctions against India.\textsuperscript{89} This pending legislation remains unnecessary, however, as President Bush waived all remaining Arms Export Control Act sanctions against India and Pakistan on September 22, 2001.\textsuperscript{90}

III. Sanctions Reform Proposals

A. Introduction

Not long after India and Pakistan engaged in their nuclear weapons tests, Congress put forth a number of bills aimed at reforming U.S. economic sanctions policy, including the Sanctions Rationalization Act,\textsuperscript{91} the Economic Sanctions Reform Act (ESRA),\textsuperscript{92} the Sanctions Policy Reform Act,\textsuperscript{93} and the Enhancement of Trade, Security, and Human Rights through Sanctions Reform Act (Sanctions Enhancement Act).\textsuperscript{94} The Clinton Administration supported the sanctions reform movement and made numerous recommendations on how to improve U.S. sanctions, including the mandatory addition of termination provisions and Presidential waivers to all future sanctions legislation.\textsuperscript{95} While all the sanctions reform proposals were committed to changing how the United States uses economic sanctions as a foreign policy tool, each of the recommendations proposed to reform U.S. policy in a different way. Some proposals set out specific requirements for the President and Congress, whereas others provided general recommendations on how both branches should handle sanctions policies.\textsuperscript{96} The main points of contention among the proposals concern how

\textsuperscript{88} H.R. 1358, 107th Cong. (2001).
\textsuperscript{89} H.R. 2889, 107th Cong. (2001).
\textsuperscript{95} Hearings on Sanctions Reform, supra note 8, at 62 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs); Agricultural Sanctions: Hearing Before the Senate Committee on Agriculture, Nutrition, and Forestry, 106th Cong. 63, 67 (1999) (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs) [hereinafter Agricultural Sanctions].
\textsuperscript{96} The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform Act and Sanctions Policy Reform Act bills list a comprehensive series of detailed requirements for the sanctions process from establishing how Congress should introduce sanctions legislation to determining when sanctions against a target country end. The Sanctions Policy Reform Act, S. 757, 106th Cong. (1999); The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform Act, H.R. 1244, 106th Cong. (1999). The Economic Sanctions Reform Act of 1999 also discusses the various phases of sanctions policies from implementation through termination, but it does so through a more flexible set of guidelines on what Congress and the President should do at each stage of the sanctions. The Economic Sanctions Reform Act of 1999, S. 1161, 106th Cong. (1999). The Sanctions Rationalization Act of 1999 has the least to say about the entire sanctions process, commenting only on when the President may delay,
Congress and the President should introduce sanctions legislation, whether and how much advance notice should be provided to the general public, whether the President should have the authority to exercise a national interest waiver, and how sanctions should be terminated. None of the proposals became law. However, Secretary of State Colin Powell has indicated that the Bush Administration intends to continue the sanctions reform movement.97

B. Considerations, Communications, and Procedural Requirements

Most of the Congressional bills provided guidelines for both the President and Congress on forming and implementing sanctions policies. The Sanctions Enhancement Act,98 Sanctions Policy Reform Act,99 and Economic Sanctions Reform Act100 bills stressed that Congress must fully assess all available information regarding the proposed economic sanctions before it acts. These bills stipulated that all newly proposed Congressional sanctions legislation must101 state the intended objective and goals of the sanctions regime, structure the sanctions so as only to affect the target state or government while minimizing the impact on humanitarian activities,102 provide contract sanctity, and exclude sanctions on medicine, medical equipment, and agricultural commodities.103 The bills also required Congress to consider the likelihood that the proposed sanctions will achieve suspend, terminate, or resume sanctions and how Congress can voice its disapproval of the President's decisions. The Sanctions Rationalization Act of 1999, S. 927, 106th Cong. (1999).

97. Sanctions reform has been temporarily placed on the legislation backburner, but there are indications that the movement to reform U.S. sanctions is not over. During his confirmation hearing, Secretary of State Colin Powell indicated that he plans to push for change in U.S. sanctions policy. When asked about his views on sanctions, he responded, "I would like to participate with [Congress] in discussing how to get rid of most of them." Robin Wright, Powell Intends to Curb U.S. Use of Diplomatic Sanctions, L.A. TIMES, Jan. 22, 2001, at Al-1.


101. Again, the main difference between these bills is their tone and authoritative-ness. The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform and Sanctions Policy Reform Act required that Congress consider such information, whereas the Economic Sanctions Reform Act of 1999 only recommended that Congress take into account such information. The Economic Sanctions Reform Act of 1999, S. 1161, 106th Cong. (1999); The Sanctions Policy Reform Act, S. 757, 106th Cong. (1999); The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform Act, H.R. 1244, 106th Cong. (1999). However, the Economic Sanctions Reform Act's provision that it "shall not be in order in either the House or Senate to consider sanctions legislation unless they follow the above guidelines" indicated Congress does not have complete flexibility in choosing how to proceed with sanctions legislation. The Economic Sanctions Reform Act of 1999, S. 1161, 106th Cong. (1999).

102. Humanitarian activities include U.S. government programs or non-governmental organizations that are working to improve the humanitarian conditions within the target country. The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform Act, H.R. 1244, 106th Cong. (1999).

the intended goals within a reasonable amount of time, the probable impact of the sanctions on the quality of life of the target state's citizens, and the sanctions' anticipated effect on relations with U.S. allies and U.S. national security.\textsuperscript{104} Furthermore, the proposed legislation would have required Congress to assess the likelihood that other nations will join the United States in issuing sanctions against the target country; the probability the target state or its allies will retaliate against the United States; whether existing U.S. treaty obligations conflict with the proposed sanctions; other diplomatic actions the United States has taken toward the target state in advancing the sanctions' objectives; and whether there are more effective foreign policy alternatives to economic sanctions.\textsuperscript{105}

The proposed Sanctions Policy Reform Act\textsuperscript{106} and Sanctions Enhancement Act\textsuperscript{107} differed from the Economic Sanctions Reform Act bill\textsuperscript{108} in that the former required the President, Secretary of Agriculture, and Congressional Budget Office to present much of the information on the benefits and consequences of proposed sanctions legislation.\textsuperscript{109} Under both bills, once Congress has introduced sanctions legislation, the President must issue a report on the proposed legislation within thirty days.\textsuperscript{110} The Secretary of Agriculture must then report on the proposed sanctions expected impact on agricultural trade, and the Congressional Budget Office must inform Congress of the estimated short- and long-term costs of the proposed sanctions.\textsuperscript{111} The Economic Sanctions Reform Act, on the other hand, did not stipulate how Congress would attain the required information.\textsuperscript{112}

While the Sanctions Policy Reform Act,\textsuperscript{113} Sanctions Enhancement


Act,114 and Economic Sanctions Reform Act115 bills each limited the executive branch's ability to implement unilateral economic sanctions, the bills differed in their approach. Maintaining its flexible, unimposing tone, the Economic Sanctions Reform Act116 bill stated that the President should create sanctions formation guidelines similar to the legislative branch guidelines.117 It also recommended that the executive branch establish its own public relations procedures for notifying the public of changes in U.S. sanctions policy.118 Alternatively, the Sanctions Policy Reform Act119 and Sanctions Enhancement Act120 bills listed specific requirements for the executive branch. If enacted, these bills would create a Sanctions Review Committee within the executive branch to review U.S. sanctions policy and make recommendations to the President.121 After deciding that economic sanctions should be imposed against a target country, the President would have to meet with the Sanctions Review Committee to discuss the benefits and consequences of the proposed economic sanctions.122 Then, the President would have to submit a report, explaining the benefits and consequences, to several Congressional committees.123 Finally, the President must publish his sanctions plan124 within the Federal Register at least forty-five days prior to the date the sanctions would be implemented.125 During the time between publication in the Federal Register and imposition of the sanctions, the President would review the Secretary of Agriculture's and U.S. International Trade Commission's reports on the proposed sanctions policy and continue to negotiate with the target government to try to resolve the underlying issues.126

116. Id.
117. See id.
118. See id.
124. Like the Congressional requirements, the President's sanctions plan would have to include an assessment of the probability of the proposed sanctions policy achieving its goals within a reasonable time, provide for contract sanctity protections for existing contracts at the time of the imposition of sanctions, and aim towards having minimal effect on humanitarian activities, common citizens or entities other than the target government. See The Sanctions Policy Reform Act, S. 757, 106th Cong. (1999); The Economic Sanctions Reform Act of 1999, S. 1161, 106th Cong. (1999).
C. Waiver, Termination, and Suspension of Sanctions Policies

Other issues within the sanctions reform proposals pertain to how existing sanctions policies are suspended or terminated, whether the President has national interest waiver authority to waive imposition of sanctions, and whether Congress can override the President's economic sanctions decisions.127 The Clinton Administration's proposals urged Congress to provide the President with a national interest waiver, which would enable the President to terminate sanctions completely or to alter the quantity, intensity, or length of sanctions to better fit the circumstances of the situation and align the sanctions with their stated objectives.128 The Economic Sanctions Reform Act129 and Sanctions Rationalization Act130 bills granted the President authority to delay, suspend, terminate, and refrain from imposing sanctions whenever he or she determines the sanctions policy's costs outweighs its expected gains, as long as the President provides sufficient notice of such decision to the designated Congressional committees.131 Under these proposals, the President's decision to impose sanctions or refrain from imposing sanctions becomes effective immediately unless Congress enacts a joint resolution within thirty days of the President's announced decision.132 The Sanctions Policy Reform Act133 and Sanctions Enhancement Act134 bills also provided the President with waiver authority, but only during times of national emergency or for specific existing sanctions legislation.135 The President may waive portions of the Arms Export Control Act sanctions, for example, if the President finds that waiving the sanctions would advance the goals of the statute or national security interests.136 If the President exercises his waiver authority, the proposed legislation requires the President to issue bi-annual reports on the developments that have occurred within the target country

and state the reasons for continuing the waiver.\textsuperscript{137}

The legislative and executive branch proposals also differed in their specifications as to how sanctions terminate. Congress' Sanctions Policy Reform Act\textsuperscript{138} and Sanctions Enhancement Act\textsuperscript{139} bills stipulated that economic sanctions expire two years after they are imposed unless renewed by the government branch that initially implemented them.\textsuperscript{140} The Sanctions Policy Reform Act,\textsuperscript{141} Economic Sanctions Reform Act,\textsuperscript{142} and Sanctions Enhancement Act\textsuperscript{143} bills would also require the President to make annual reports on existing sanctions. Within these reports, the President must evaluate whether the sanctions have achieved their intended goals, the likelihood that the sanctions will achieve their objectives within a reasonable time, and the extent to which the existing sanctions have negatively affected humanitarian activities.\textsuperscript{144} The Clinton Administration argued that the decision to terminate or continue a sanctions policy should be based on the sanctions policy's overall effectiveness in achieving its intended goals, rather than a pre-determined date.\textsuperscript{145} The administration proposed that instead of adopting automatic termination provisions, Congress should require the President to annually review ongoing sanctions and determine whether the sanctions should be terminated.\textsuperscript{146} Factors for review would include whether the sanctions met their original objectives, created an excessive amount of negative, unintended consequences, or imposed high costs.\textsuperscript{147} Again, if Congress did not agree with the President's decision to maintain or terminate a sanctions regime, it could enact


\textsuperscript{140} If Congress imposed the economic sanctions through legislation, then Congress has the authority to renew the sanctions at the end of the two-year period. Similarly, if the President imposed the sanctions, then he or she has the authority to renew the sanctions at the end of the two-year period. See The Sanctions Policy Reform Act, S. 757, 106th Cong. (1999); The Enhancement of Trade, Security, & Human Rights Through Sanctions Reform Act, H.R. 1244, 106th Cong. (1999).


\textsuperscript{145} See Hearings on Sanctions Reform, supra note 8, at 62 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs); Agricultural Sanctions, supra note 95, at 67 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).

\textsuperscript{146} See Hearings on Sanctions Reform, supra note 8, at 62 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).

\textsuperscript{147} Agricultural Sanctions, supra note 95, at 67 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).
legislation to override the President’s decision.\textsuperscript{148}

IV. Critiquing the Arms Export Control Act Sanctions

The two major goals of the Arms Export Control Act sanctions are (1) to deter nations without nuclear weapons capabilities from seeking and obtaining weapons of mass destruction, thereby preventing a global arms race; and (2) to coerce the newly created nuclear-weapon states to commit to global non-proliferation treaties.\textsuperscript{149} Focusing on the 1998 India-Pakistan nuclear weapons testing situation, the imposition of U.S. sanctions under the Arms Export Control Act did not successfully accomplish either of these objectives.

A study conducted in India in 1994, four years prior to that country’s nuclear testing, illustrates that the threat of U.S. sanctions was not a powerful deterrent to acquiring nuclear weapons.\textsuperscript{150} The majority of Indian citizens surveyed in the study indicated the threat of international sanctions did not influence their decision to support or oppose India’s possible development of nuclear weapons.\textsuperscript{151} The citizens most commonly identified the threat of nuclear attack by Pakistan as the major factor motivating them to support India’s development of nuclear weapons.\textsuperscript{152} They also indicated that a global nuclear disarmament plan would be the number one reason for opposing India’s development of nuclear weapons.\textsuperscript{153} Hence, the threat of economic sanctions by the United States, which, as India’s largest trade and investment partner since 1991, imported over $7.3

\textsuperscript{148} See \textit{Hearings on Sanctions Reform}, supra note 8, at 62 (statement of Stuart E. Eizenstat, Under Sec’y of State for Economic, Business, and Agricultural Affairs).

\textsuperscript{149} See \textit{India-Pakistan Nuclear Proliferation}, supra note 6, at 4 (statement of Karl F. Inderfurth, Asst. Sec’y of State for South Asian Affairs).

\textsuperscript{150} An Indian market research company interviewed over nine hundred educated elite Indian citizens from seven different Indian cities. The interviewers asked the citizens what they thought about India’s nuclear policy and to explain the reasoning and justification behind their opinions. Respondents were divided into three groups: “(a) supporters of official policy, those who favor neither renouncing nuclear weapons nor acquiring them; (b) nuclear advocates, those supporting India’s acquisition of nuclear weapons; and (c) nuclear opponents, those favoring renunciation of nuclear weapons.” \textit{India and the Bomb}, supra note 4, at 10. The interviewers asked the official policy supporters to explain what would motivate them to advocate India’s acquisition of nuclear weapons and what might persuade them to renounce the quest for nuclear weapons capabilities. The study also requested the nuclear advocates to indicate what factors might persuade them to renounce nuclear weaponry. Nuclear opponents likewise listed what circumstances might induce them to support India’s acquisition of nuclear weapons. \textit{See id.}

\textsuperscript{151} Only 7 percent of respondents within the supporters of official policy category indicated the international threat of sanctions would induce them to renounce India’s nuclear option. Similarly, only eight percent of the nuclear advocate respondents noted that the threat of sanctions would be a consideration for deciding to oppose nuclear weapons development. \textit{See id.} at 15.

\textsuperscript{152} \textit{See id.} at 11.

\textsuperscript{153} \textit{See id.} at 11-12. Ninety-two percent of all respondents supported the development of an international ban on nuclear weapons. \textit{See id.} at 16.
billion of goods and services from India in 1997,\(^{154}\) did not motivate educated, elite, Indian citizens, many of whom were esteemed leaders within India's commercial industries, schools, and government,\(^{155}\) to oppose the development of nuclear weapons by India.

The India-Pakistan Relief Act\(^{156}\) further weakened the deterrent effect of the Arms Export Control Act's economic sanctions. The Arms Export Control Act's rigid requirements left the United States with little flexibility to respond to the highly volatile and overwhelmingly complex international situations created by India's and Pakistan's nuclear testing.\(^{157}\) In response to this lack of flexibility, Congress enacted the India-Pakistan Relief Act,\(^{158}\) which gave the President authority to reduce the Arms Export Control Act sanctions against Pakistan and India.\(^{159}\) The Relief Act, by reducing the level of sanctions initially imposed by the United States, communicates the message to other nuclear-weapon hopefuls that the U.S. sanctions might not be as tough and restrictive as they first seem.\(^{160}\) Congress' last minute change in its anti-proliferation sanctions policy suggests that the United States may respond to future nuclear weapons testing by reducing the Arms Export Control Act sanctions, as it did in the India-Pakistan situation. The Relief Act leads foreign governments to believe that if they prepare for U.S. sanctions in advance and wait them out once imposed, then everything will be fine in the long term.\(^{161}\) Hence, the Relief Act minimizes the fear factor and deterrence value of the Arms Export Control Act sanctions.

\(^{154}\) *India-Pakistan Nuclear Proliferation*, supra note 6, at 9 (Statement of David Aaron, Under Sec'y for Int'l Trade, U.S. Dept. of Commerce).

\(^{155}\) Only the highest class of Indian citizens were interviewed in the study. The respondents represented a number of professions, including "government civil service, academics, science, politics, law, journalism, medicine, business, armed forces, the police, sports, and the arts." *India and the Bomb*, supra note 4, at 11.


\(^{157}\) The Arms Export Control Act required immediate and full imposition of U.S. sanctions if any state without nuclear weapons capabilities sought and acquired nuclear weaponry. The President had little ability to adjust the sanctions or quickly respond to favorable developments within the target states. *See* Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000).


\(^{159}\) *See* id.

\(^{160}\) *See* Mrs. Watu, supra note 16, at 582-83 ("If the Relief Act illustrates a broader proposition about the [Clinton] Administration's sanctions 'policy,' it is that it seems quite content to impose ostensibly tough sanctions up front, and soon thereafter back off, hence undermining the long-term credibility of the sanctions.").

\(^{161}\) One major complaint about the effectiveness of U.S. economic sanctions centers around this notion of reaction time. *Economic Sanctions and American Diplomacy*, supra note 8, at 197. Authoritarian governments are often able to withstand the effects of sanctions by stockpiling items in advance of the sanctions, finding new non-American suppliers for the sanctioned products, and using the U.S. sanctions to build greater national unity. Sanctions trigger rally-round-the-flag nationalist reaction — by creating scarcity, sanctions enable the government to better control distribution of goods and create sense of siege that the government exploits to maintain political control. *Id.* at 203.
Furthermore, the Arms Export Control Act sanctions did not successfully push India and Pakistan into adopting disarmament plans.\textsuperscript{162} The United States implemented the Arms Export Control Act sanctions to place pressure on both states to formalize pledges to cease further nuclear weapons production or testing, work towards regional peace through direct dialogue, and commit to global nuclear weapons disarmament.\textsuperscript{163} Congress did not intend for the sanctions to punish India and Pakistan for their decision to obtain nuclear weaponry, but instead to encourage them to resolve the tensions that led to the nuclear tests and pledge commitments to peace.\textsuperscript{164} The tense situation between India and Pakistan has not been resolved, and both governments refuse to make concessions.\textsuperscript{165} Neither state has formally committed to cease production and testing, nor have they signed the comprehensive test ban treaty.\textsuperscript{166}

Both Congress and the Clinton Administration attempted to improve U.S. sanctions policy, but no laws were enacted, nor were any Presidential guidelines developed. The Bush Administration must take the initiative to make the reform of anti-proliferation sanctions a top priority. It must understand the weaknesses of the United States' current sanctions policy against the proliferation of nuclear weapons and the global implications if the United States fails in the future to deter other non-nuclear-weapon states from acquiring nuclear weaponry. Most importantly, the Bush Administration must apply this understanding to its reform proposals and ensure that the Arms Export Control Act sanctions become more effective in the prevention of a global nuclear arms race.

The Congressional proposals for sanctions reform pertained only to

\begin{itemize}
\item \textsuperscript{162} But see id. at 197 (noting sanctions are unlikely to meet their intended objectives within a short amount of time).
\item \textsuperscript{163} See India-Pakistan Nuclear Proliferation, supra note 6, at 44-45 (Statement of Karl F. Inderfurth, Asst. Sec'y of State for South Asian Affairs).
\item \textsuperscript{164} See id.
\item \textsuperscript{165} See Celia W. Dugger, India and Pakistan Agree Only to Future Talks, N.Y. TIMES, Oct. 19, 1998, at A7; Kenneth J. Cooper, Indian-Pakistani Talks End Without Accord, WASH. POST, Oct. 19, 1998, at A16. India initially maintained that it would not meet with Pakistan's military dictator until Pakistan ceased sending militants into Kashmir. India has since attempted to initiate negotiations with a Burmese representative for Pakistan, but the parties have yet to meet. See CP Bhambri, Handle US with Care, THE PIONEER (Lucknow, India), Dec. 30, 2000, at 3.
\item \textsuperscript{166} In September 1998, Prime Minister Sharif and Prime Minister Vajpayee announced to the United Nations that both Pakistan and India intended to sign the Comprehensive Test Ban Treaty (CTBT), but neither state followed through with the announcement. See Packer, supra note 3, at 658-59. The United States has also been accused of taking a hypocritical approach in arguing India and Pakistan must sign the Comprehensive Test Ban Treaty. See A Delicate Balance, THE STRAITS TIMES (Singapore), Sept. 3, 2001, available at 2001 WL 26055153.
\end{itemize}
future sanctions legislation. The bills neither aimed to amend already existing sanctions policies, nor to address the various goals or objectives of specific sanctions policies. Instead, the proposals applied a set of general guidelines to all future sanctions legislation, regardless of the specific circumstances necessitating the sanctions legislation. The Bush Administration should continue to push for general reform regarding the enactment of sanctions legislation, but the Administration should also advocate a more specific reform of individual, presently existing sanctions legislation. Rather than enacting one comprehensive sanctions reform bill, the Administration should develop multiple reform proposals that individually address and improve presently existing sanctions statutes. Specifically, the Bush Administration must persuade Congress to individually amend the Arms Export Control Act.

The India-Pakistan nuclear weapons tests situation illustrates that the Arms Export Control Act sanctions have a number of problems. First, the sanctions had a minimal deterrent effect on India's and Pakistan's decision to acquire nuclear weaponry. Second, once India and Pakistan conducted their nuclear tests, the Arms Export Control Act granted the President little flexibility to negotiate with the new nuclear-weapon states. Third, the United States had limited international support in its imposition of anti-proliferation sanctions. Finally, the Arms Export Control Act failed to stipulate when the sanctions against India and Pakistan would termi-

---


169. Reforming already-existing sanctions statutes on a case-by-case basis will better serve the intended goals and objectives of the sanctions legislation. No two sanctions policies are alike. Hence, already existing sanctions statutes may have different needs and problem areas. Specific reform legislation will enable Congress to assess the problem areas of each sanctions statute and base their reform provisions upon such weaknesses. Furthermore, only amending the process through which future sanctions legislation is enacted does not address the problems created by existing legislation. Prospective sanctions reform, for instance, will not resolve future implications with the Arms Export Control Act because the already existing statute would be immune from any such proposals.

170. See Economic Sanctions and U.S. Policy Interests, supra note 10, at 94 (statement of Stuart E. Eizenstat, Under Sec'y of State) ("[t]hat both countries [referring to India and Pakistan] chose to go forward with their decisions to test, knowing full well the monumental consequences, underscores that ultimately sanctions may not deter nations from actions that they view . . . as fundamental to their national security concerns."); see also Economic Sanctions and American Diplomacy, supra note 8, at 199-200 ("[T]hreats of sanctions appear to have little effect on behavior, especially if the area of concern is of major importance to the target . . . India's decision to test nuclear devices in 1998 in the face of threatened sanctions further reinforces this point.").
nate. The India-Pakistan Relief Act only provided a temporary solution to the problems with the Arms Export Control Act sanctions, as it only pertained to the India-Pakistan testing situation. The Relief Act did not amend how Arms Export Control Act sanctions would be applied in the future if other states without nuclear weapons choose to seek and obtain nuclear weaponry. The following section provides recommendations on how the Bush Administration should reform the Arms Export Control Act to make the economic sanctions a more effective tool in preventing the proliferation of nuclear weapons.

V. Recommendations

A. Demand Greater Use of Import Controls

The United States no longer enjoys the economic power and influence that it once held. The growth of technology, depreciation of the U.S. dollar, appreciation of foreign currencies, globalization of markets, and foreign states' increasing roles in foreign direct investment have impacted U.S. business and opened the doors for foreign competition. The United States still enjoys economic superpower status concerning its trade levels, but it "increasingly does not have a monopoly" on any good or service. Hence, the inclusion of export controls (which limit the amount of goods and services target nations can purchase from U.S. businesses) within non-proliferation sanctions regimes now has greater detrimental effects on U.S. companies.

U.S. companies rely heavily on export sales because they increase American profits by allowing the manufacturing costs to be spread over a larger consumer base. The increased profits from these export sales enable U.S. companies to hire more workers, pay higher wages, and improve their technology and machinery. Therefore, sanctions that

---

172. See id.
173. See Richardson, supra note 11, at 12 ("US exports have been subject to strong crosscurrents: rapid appreciation of the dollar, then depreciation; internationalization of important markets; revolutionary technological change in transportation, telecommunications, and other sectors; and surging foreign direct investment from Europe, Japan, and elsewhere.").
175. Hearings on Sanctions Reform, supra note 8, at 71 (Statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).
176. U.S. economic sanctions against China prohibit U.S. businesses from exporting products that would be used to develop China's $20 billion nuclear power program. The President's Export Council estimates that these sanctions may eliminate 225,000 jobs in twenty-eight states. See The President's Export Council, Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impact on U.S. Economic Interests with Recommendations for Policy and Process Improvement 11 (1997).
177. Richardson, supra note 11, at 2.
178. Id.
place limits on U.S. exports cause long-term profit loss for American companies. First, target-state consumers turn to non-American suppliers for their goods and services. The loss of export profits has a detrimental financial effect on U.S. companies, not only because American businesses lose out on the profits from the initial sale, but also because they lose out on profits from the sale of replacement parts, repairs, and support services. The missed opportunity for future sales can be severely damaging to American companies because the long-term contracts for replacement parts and support services typically equal the value of the initial sale. Second, even if the U.S. sanctions are lifted against the target state, U.S. businesses have to fight to get their goods and services back into the foreign market. Without U.S. competition, foreign suppliers establish strong market control and economies of scale within the sanctioned markets. Plus, foreign entities become hesitant to enter trade deals with U.S. companies out of fear that future U.S. sanctions may impact the transactions. Many foreign consumers have chosen not to gamble with U.S. suppliers, since the consumers can get the same goods elsewhere with minimal risks of interruption due to sanctions. Foreign businesses take advantage of the potential sanctions-based restrictions on U.S. companies

179. The Institute for International Economics estimates that economic sanctions cost the United States between $15 billion and $19 billion in lost exports during 1995. This estimate, however, does not include $1 billion of lost wages caused by the decrease in U.S. exports. GARY CLYDE HUFBAUER ET AL., U.S. ECONOMIC SANCTIONS: THEIR IMPACT ON TRADE, JOBS, AND WAGES 6 (Inst. for International Econ. Working Paper, 1997). But cf. Helms, supra note 14, at 2. The [claim] ... that sanctions cost the United States vital access to large markets is a sham. The cost of U.S. sanctions is miniscule. According to ... the Congressional Budget Office ... the net cost [of existing sanctions] may be less than $1 billion annually. That compares with $6.6 trillion of total national income in 1997. The United States gave away roughly $13 billion in foreign aid during 1997 ... [Hence,] ... the price tag for U.S. economic sanctions comes to a whopping $3.77 per American—about the cost of a Big Mac and fries.

180. See Smith, supra note 21, at 339-40.
181. Id. at 340-41.
182. See THE PRESIDENT'S EXPORT COUNCIL, supra note 176, at 10.
184. See THE PRESIDENT'S EXPORT COUNCIL, supra note 176, at 10.
185. Smith, supra note 21, at 340.
186. Airbus Industrie, for example, at one time used only U.S. manufactured engines for its airplanes, but now the airplane manufacturing company only uses U.S. engines in approximately one-third of its airplanes. This change not only cost U.S. manufacturers the initial sale of their engines, but also the potential profits for follow-up repairs and parts supply. See NAT'L ASS'N MFRS., A CATALOG OF NEW U.S. UNILATERAL ECONOMIC SANCTIONS FOR FOREIGN POLICY PURPOSES 1993-96, at 10 (1997).
by promoting their products and services as safer investments than U.S.
offerings because their products and services are not subject to economic
sanctions restrictions.\textsuperscript{187}

The high costs on American businesses may exceed the total benefits
received through export control sanctions. However, there are less costly
and more effective ways of imposing economic sanctions on target
states.\textsuperscript{188} Import controls, for instance, often have stronger deterrent
effects on target states, while imposing fewer costs on American busi-
nesses.\textsuperscript{189} The Bush Administration must take note of export control san-
cctions' substantial imposition of costs on American companies and push
Congress to include a greater quantity of import controls within the Arms
Export Control Act sanctions.

Import control sanctions limit the amount of goods and services that
U.S. citizens, government entities, and corporations can purchase from the
sanctions' target state.\textsuperscript{190} Instead of prohibiting the target state from
purchasing U.S. products and imposing financial costs upon American busi-
nesses, import sanctions place the financial burden upon the target
state. Placing the full financial burden of non-proliferation sanctions upon
the target state is more logical than forcing American companies to foot the
bill for the target state's decision to acquire nuclear weapons.\textsuperscript{191} "Hurting
American jobs because of what India did doesn't make sense . . . . How
does it deter India and Pakistan from detonating if the punishment they get
is that we lay off American workers? . . . [W]e should be saying, if you
detonate, your products are no longer welcome in this country."\textsuperscript{192}

Import sanctions have a stronger deterrent effect on target nations,
while exposing Americans to fewer financial costs.\textsuperscript{193} According to Huf-
bauer and Schott's sanctions study, import controls are the most successful
form of economic sanctions.\textsuperscript{194} Import sanctions often have a stronger
impact on target states than export restrictions because they require com-
panies within the target states to locate new markets in which to profitably
sell their goods and services.\textsuperscript{195} Establishing profitable levels of trade
within new markets in response to U.S. import sanctions is usually more

\textsuperscript{187} "The Port of Vancouver advertises that it, unlike Seattle, is not affected by the
U.S.'s annual renewal of China's Most Favored Nation status. Airbus Industrie similarly
informs Chinese customers that Boeing will not be a reliable supplier of new aircrafts,
supplies, and parts for that same reason." Smith, supra note 21, at 341 n.66.

\textsuperscript{188} Sanctions can take the form of export controls, reduced aid from U.S. govern-
ment programs, import restrictions, limitations on loans from U.S. private financial
institutions, and the denial of support for loans from international financial institutions.
See \textit{Economic Sanctions Reconsidered}, supra note 11, at 28-29. "Restrictions on
imports and private financial transactions often cost less than export controls, though
all these sanctions have domestic costs." Carter, supra note 15, at 1181.

\textsuperscript{189} Carter, supra note 15, at 1181.

\textsuperscript{190} See Mrs. Watu, supra note 16, at 574.

\textsuperscript{191} See \textit{India-Pakistan Nuclear Proliferation}, supra note 6, at 26-28 (Statement of
Congressman Donald A. Manzullo).

\textsuperscript{192} \textit{Id}.

\textsuperscript{193} Carter, supra note 15, at 1182.

\textsuperscript{194} See \textit{Economic Sanctions Reconsidered}, supra note 11, at 89.

\textsuperscript{195} Carter, supra note 15, at 1181.
difficult and costly for target states than finding new non-American suppliers when adjusting to U.S. export sanctions. Because import controls make it more difficult and financially burdensome for target states to adjust to the U.S. sanctions, import controls are more likely to succeed. Moreover, although the target state may respond with counter-sanctions and prohibit all trade in its nation with American suppliers, import sanctions are not likely to cause American businesses a significant loss of sales. Import controls do not have a significant impact on U.S. consumers, because American purchasers are usually able to acquire sanctioned products from a number of other suppliers. American consumers may have to pay more to purchase substitutes for sanctioned products, but the additional cost to each individual consumer is not likely to be substantial. Hence, the benefits of import controls are more likely than export-based sanctions to outweigh their costs to American businesses and consumers.

The General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) free trade requirements likely do not foreclose the United States from using import controls in its Arms Export Control Act non-proliferation sanctions. Although the GATT/WTO prohibits member states from restricting free trade or discriminating against other member states' goods and services, these free trade requirements are likely to be inapplicable to U.S. non-proliferation sanctions. First, the GATT/WTO exempts member states from fulfilling the free trade requirements in their trade relations with non-member states. Hence, the United States may freely impose non-proliferation sanctions against any nonmember state. Second, the GATT/WTO contains many broad exceptions to the free trade

196. See SHAMBAUGH, supra note 35, at 22.
197. See ECONOMIC SANCTIONS RECONSIDERED, supra note 11, at 83 ("[C]ountries in distress or experiencing significant [political or economic] problems are far more likely to succumb to the policy objectives of the sender country.").
199. Id.; cf. Mrs. Watu, supra note 16, at 575 ("[B]anning [the] importation of target products, ought to enrage American consumers ... assuming no acceptable substitutes exist.").
200. See Carter, supra note 15, at 1181 ("While these customers will then bear some of the costs, their individual burden will probably be a small share of the total domestic costs of import sanctions, because the costs may be spread among many purchasers at different levels of the distribution process.").
201. Hufbauer and Schott note that "the more it costs a sender country to impose sanctions, the less likely it is that the sanctions will succeed . . . . [A] country should shy away from deploying sanctions when the economic costs to itself are high." ECONOMIC SANCTIONS RECONSIDERED, supra note 11, at 88. Hence, the high costs of export-based sanctions on American businesses make them less likely to succeed than other forms of sanctions, such as import-controls, that have lower economic costs.
202. The President "has authority under the WTO and emergency economic powers to impose import constraints for national security reasons." India-Pakistan Nuclear Proliferation, supra note 6, at 27 (Statement of David Aaron, Under Sec'y of State for Int'l Trade).
203. See Smith, supra note 21, at 363 ("[I]t is clear that GATT and GATS, and multilateral trade agreements in general, do not present a realistic means for controlling the U.S.'s excessive sanctions policy.").
requirements. Article XX exempts member states from GATT trade requirements when trade restrictions are necessary to protect human, animal, or plant life.\textsuperscript{204} Thus, member states may impose economic sanctions aimed at the non-proliferation of nuclear weapons because the proliferation of weapons poses danger to human, animal, and plant life.\textsuperscript{205} Article XXI also provides an exception to the GATT requirements, permitting a member state to impose trade restrictions when that state considers such action "necessary for the protection of its essential security interests, relating to fissionable materials . . . [or] the traffics in arms."\textsuperscript{206} Hence, member states may invoke the Article XXI national security exemption to impose non-proliferation sanctions. Otherwise, "[i]f a sanctioning member had to wait until a hostile power acquires nuclear weapons . . . it would be too late for trade sanctions to have any protective effect."\textsuperscript{207} Therefore, the WTO/GATT is unlikely to prohibit the United States from using import controls within its Arms Export Control Act anti-proliferation sanctions.

The Arms Export Control Act forbids the sale of items or services that could be used for the proliferation of nuclear weapons, prohibits U.S. trade with government entities that are affiliated with their nation's military operations or nuclear programs, and denies U.S. government financial assistance to trade promotion programs.\textsuperscript{208} Hence, the anti-proliferation statute imposes U.S. export restrictions only on nuclear weapons materials and all products requested by military entities affiliated with the target state's nuclear tests. Even when limited to specific goods and services, however,出口-based sanctions can impose high costs on American companies and workers. Import control sanctions, on the other hand, have been shown to be less costly and more effective in achieving the sanctions' intended goals. The Bush Administration should therefore push Congress to amend the Arms Export Control Act sanctions to include the imposition of import controls against any state that chooses to seek and acquire nuclear weapons.

B. Procedural Revisions for the Arms Export Control Act Sanctions

1. Require the President to First Seek International Cooperation Before Imposing the Sanctions

Approximately twelve states coordinated their efforts with the United States to impose sanctions against India and Pakistan for their nuclear

\begin{itemize}
\item \textsuperscript{205} See Smith, supra note 21, at 364.
\item \textsuperscript{206} Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Marrakesh, 15 April 1994 (1994), reprinted in 33 ILM 1144, 1154, 1168, 1197 (1994).
\item \textsuperscript{208} See Arms Export Control Act of 1978 § 102, 22 U.S.C.S. 2799aa-1 (2000).
\end{itemize}
2001-2002  Arms Export Control Act Sanctions

weapons tests.\textsuperscript{209} Most of the sanctions imposed by the twelve states consisted of foreign aid denials.\textsuperscript{210} The United States, on the other hand, issued numerous sanctions, including foreign aid restrictions, export controls, private loan denials, and international financial institutional loan opposition.\textsuperscript{211} Although any form of international assistance typically enhances the strength of economic sanctions, the Arms Export Control Act should require the President to seek stronger international support for the U.S. imposition of anti-proliferation sanctions. President Bush should therefore encourage Congress to include a provision within the Arms Export Control Act that requires the President to seek maximum international support before imposing anti-proliferation sanctions against states that acquire nuclear weaponry.\textsuperscript{212}

Greater multilateral support would strengthen the Arms Export Control Act sanctions' goal of coercing the new nuclear-weapon states into adopting test bans and disarmament treaties. First, multilateral sanctions, or sanctions that are cooperatively imposed against a target state by multiple nations, typically communicate more forceful messages, and expose the target state to greater amounts of pressure.\textsuperscript{213} Hence, multilateral anti-proliferation sanctions inform the target state that the international community strongly disagrees with its decision to test nuclear weapons.\textsuperscript{214} Second, multilateral sanctions fulfill their intended objectives more often than unilateral sanctions.\textsuperscript{215} When multiple nations participate in the imposition of an anti-proliferation sanctions regime, it becomes increas-

\textsuperscript{209} "[T]he steps that have been taken by other countries[, however] are nowhere near as comprehensive as the [U.S. sanctions]." \textit{India-Pakistan Nuclear Proliferation}, supra note 6, at 34 (Statement of David Aaron, Under Sec'y of Commerce for Int'l Trade).

\textsuperscript{210} Canada and Australia, for example, cut non-humanitarian assistance and canceled all military sales to both states. Norway froze bilateral aid and vowed to grant no new export credits. Japan cancelled $30 million of financial development grants. \textit{Id.} at 34.


\textsuperscript{212} The Clinton Administration urged Congress to include a multilateral support provision within any future sanctions reform legislation. \textit{See Hearings on Sanctions Reform}, supra note 8, at 60 (Statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).

\textsuperscript{213} \textit{See Hearings on Sanctions Reform}, supra note 8, at 60 (Statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs); \textit{Economic Sanctions Reconsidered}, supra note 11, at 90 ("[I]nternational cooperation serves three useful functions: it increases the moral suasion of the sanction; it helps isolate the target country from the global community; and it preempts foreign backlash, thus minimizing corrosive friction within the alliance.").

\textsuperscript{214} A multi-parties sanctions regime against the acquisition and testing of nuclear weapons would also promote the formation of an international custom against conducting nuclear weapons test. Stated another way, when multiple states voice their complaints against nuclear weapons tests, they at least prevent the acquisition and testing of nuclear weapons from becoming an acceptable customary norm.

\textsuperscript{215} \textit{See Economic Sanctions and American Diplomacy}, supra note 8, at 200. \textit{But see Economic Sanctions Reconsidered}, supra note 11, at 89-90 ("Contrary to conventional wisdom, multilateral sanctions are not frequently associated with success . . . . Sanctions should be either deployed unilaterally—because the impact on one's allies is slight—or they should be designed in cooperation with one's allies in order to reduce backlash and evasion.").
ingly more difficult for the target state to avoid the full impact of the sanctions by finding new trade partners. Plus, multilateral sanctions cost less to implement than unilateral sanctions because numerous states share in the imposition costs. Multilateral non-proliferation sanctions would therefore reduce the heavy burden of the Arms Export Control Act sanctions on American businesses.216

2. **Provide the President with Waiver Authority**

The Arms Export Control Act sanctions leave the President with little flexibility.217 The statute provides minimal presidential waiver authority.218 Even where the statute does allow a presidential waiver, it limits the President's waiver authority to situations where implementing the sanctions "would have a serious adverse effect on vital United States interests . . . [or] would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security."219 The Bush Administration should urge Congress to create a Presidential waiver provision within the Arms Export Control Act. Greater waiver authority would provide the President with the freedom to adjust the anti-proliferation sanctions and respond to the unique circumstances surrounding the nuclear weapons tests. Congress could limit this Presidential power and remain active regarding the U.S. sanctions by creating an override provision.220 Hence, if Congress disagrees with the President's waiver, it could override the President's decision by attaining a majority vote in both houses of Congress.

Providing the President with greater waiver authority would improve both goals of the Arms Export Control Act sanctions.221 First, creating broader presidential waiver authority would strengthen the statute's deterrent effect. As it exists currently, the Arms Export Control Act demands

---

216. See *Hearings on Sanctions Reform*, supra note 8, at 60 (Statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).

217. The India-Relief Act did provide President Clinton with greater waiver authority. Such expansion of power, however, does not resolve the rigid limitations of the Arms Export Control Act, however, because the India-Relief Act pertains only to the India-Pakistan testing situation. It does not amend how the Arms Export Control Act will be applied in the future. See *India-Pakistan Relief Act of 1998*, Pub. L. No. 106-79, Title IX, § 9001, 113 Stat. 1283.

218. No waiver authority, for instance, is provided to the President for sanctions regarding the opposition to international financial institutional loans. *Mrs. Watu*, supra note 16, at 580-81.


220. See *Agricultural Sanctions*, supra note 95, at 64 (Statement by Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).

221. See *Economic Sanctions and American Diplomacy*, supra note 8, at 209 ("Current legislation that mandates sanctions in specific circumstances should be repealed or modified."). But cf. *Mrs. Watu*, supra note 16, at 585.

[In spite of any statutory requirement incumbent on the President to report the basis for his or her exercise of waiver authority, the decision-making process and the real grounds for the waiver granted may not be transparent . . . . Why offer publicly anything more than a pithy, conclusory explanation that meets just the minimum statutory threshold for reporting to Congress?}
the full and immediate imposition of economic sanctions with little room for exceptions. Its rigid demands and inflexible requirements make it highly likely, as illustrated by the India-Pakistan Relief Act, that Congress will eventually amend the statute to better fit the sanctions to the circumstances and needs of the nuclear testing situation. Such statutory change is often counterproductive to the deterrence aspect of the non-proliferation sanctions, because it sends the message to non-nuclear states that the sanctions will not be as bad as they originally seem. It leads nuclear-weapon aspirants to believe that the United States will amend the heavy economic sanctions after the states acquire nuclear weapons. Amending the statute now and providing the President with greater waiver authority will make the Arms Export Control Act more flexible and realistic. Foreign governments will be less certain that the United States will reduce the sanctions. Plus, expanding the President’s waiver authority will make the anti-proliferations statute less extreme, improving the United States’ credibility in its threat of heavy economic sanctions.

Second, broader waiver authority would provide the President with greater negotiation leverage with new nuclear-weapons states, making it more likely that the United States will be able to push the violating states into adopting test bans and disarmament procedures. The President must not be restricted in his ability to quickly react to emergency international situations like nuclear weapons testing. By reducing the Arms Export Control Act’s rigid requirements, the President will regain bargaining power with new nuclear-weapon states. The President will be better able to craft a specific response to the proliferation crisis and work directly with the new nuclear weapons states to persuade them to commit to test bans and non-proliferation treaties.

Congress must use caution in deciding upon the exact waiver authority terminology. The Clinton Administration suggested the adoption of a national interest waiver in all future sanctions legislation. Such waiver authority would permit the President to refrain from imposing and termi-

---

Id.

224. Mrs. Watu, supra note 16, at 582-83 ("If the Relief Act illustrates a broader proposition about the [Clinton] Administration’s sanctions ‘policy,’ it is that it seems quite content to impose ostensibly tough sanctions up front, and soon thereafter back off, hence undermining the long-term credibility of the sanctions.").
225. See Economic Sanctions and American Diplomacy, supra note 8, at 209.
226. Hearings on Sanctions Reform, supra note 8, at 66 (Statement of Stuart E. Eizenstat, Under Sec’y of State for Economic, Business, and Agricultural Affairs).
nate any sanction that threatens a national interest of the United States. While a national interest waiver would provide the President with greater flexibility, it may be too much flexibility. "National interest" is too broad a term; anything could qualify as a national interest. Such a broad rule opens the possibility for extensive debate as to when a national interest requirement will be satisfied. At the same time, an overly specific rule, such that the President may not waive economic sanctions against the target state for thirty-five days after the initial testing, may be too narrow and defeat the goal of providing the President with greater flexibility.


The Arms Export Control Act fails to specify a termination procedure for its sanctions. This lack of a specific termination provision means that once the President imposes the sanctions, they remain in place until Congress enacts a joint resolution in favor of their termination. A joint resolution requirement can be problematic, as Congress typically struggles to establish the majority vote necessary to terminate the sanctions. Thus, the sanctions remain in place for an extended period of time, slowly losing their effectiveness. The emotional impact surrounding the initial nuclear weapons issue that led to their imposition begins to fade, multilateral support for the sanctions declines once the imposition costs rise, and the target state often averts the full impact of the sanctions by locating new trade partners. Eventually, the costs of the anti-proliferation sanctions greatly outweigh any perceived benefits. The Bush Administration must address the sanctions fatigue syndrome by including annual review and report termination clauses within its Arms Export Control Act reform proposals.

The proposed Sanctions Policy Reform Act and Sanctions Enhancement Act bills propose that all future economic sanctions legislation contain a two-year expiration provision, meaning the sanctions would automatically terminate two years after their date of implementation unless further renewed by Congress or the President. While an automatic

227. Id. at 60 (statement of Stuart E. Eizenstat, Under Sec'y of State for Economic, Business, and Agricultural Affairs).
228. Mrs. Watu, supra note 16, at 585.
229. Id. at 581.
230. ECONOMIC SANCTIONS AND AMERICAN DIPLOMACY, supra note 8, at 205 ("It is often difficult or impossible to build consensus for rescinding the sanctions, even if there has been some progress on the matter of concern, if the sanctions have been showing to be feckless or counterproductive, or if other interests can be shown to suffer as a result.").
231. Id.
232. See id.
termination provision may address sanctions’ diminishing returns problem, it would not promote the Arms Export Control Act’s long-term goal of deterrence. Knowing that the sanctions will only last two years, foreign governments may be more willing to acquire nuclear weapons and ride out the two-year anti-proliferation sanctions. The foreign governments could further minimize the impact of the two-year sanctions by stockpiling goods and developing new trade partners in advance of their nuclear testing. A pre-determined termination date could be helpful, but the decision whether to terminate anti-proliferation sanctions should instead be based on the sanctions’ overall effectiveness in achieving their goals.

President Bush should instead adopt the Clinton Administration’s recommendation that Congress require annual Presidential reviews of existing sanctions. Every year the President would analyze ongoing sanctions to determine whether the sanctions serve their intended functions, assess whether the sanctions create excessive costs on American businesses, and examine whether the sanctions trigger unintended negative consequences. The Arms Export Control Act could further require the President to seek reports on the sanctions from the Secretary of Agriculture, Congressional Budget Office, and International Trade Commission. After reviewing the existing sanctions, the President would then issue a report to Congress, outlining his or her decision to terminate or continue the anti-proliferation sanctions.


238. *Id.*

239. The Presidential report, should include an assessment of the extent to which the sanction had served its purposes; the economic, political, and/or military impact on the target; the humanitarian effect on the population of the target country; the reactions of the target country; the degree of international compliance and noncompliance; the financial costs to U.S. businesses, workers, and the government; and any other perceived costs and benefits of any sort . . . to the United States. *Economic Sanctions and American Diplomacy*, *supra* note 8, at 210. The President must be confident the sanctions in question can attain their goals, “impose sufficient economic pain to command the attention of the target country . . . and . . . not impose insupportable costs on . . . [U.S.] domestic constituents and foreign allies.” *Economic Sanctions Reconsidered*, *supra* note 11, at 91.


Conclusion

The Arms Export Control Act anti-proliferation sanctions ineffectively serve their goals. The sanctions failed both to deter India and Pakistan from acquiring nuclear weapons and to encourage them to sign disarmament treaties. To address these statutory weaknesses and anti-proliferation failures, the Bush Administration must reinitiate the U.S. sanctions reform movement and specifically demand Congressional reform of the Arms Export Control Act. President Bush must urge Congress to amend the anti-proliferation statute to include import controls, Presidential waivers, and annual review and report termination provisions.