

**A CRITICAL ANALYSIS TO UNDERSTAND THE LEGITIMACY OF ECONOMIC
SANCTIONS ADOPTED BY THE US IN EXERCISE OF NATIONAL SECURITY
EXCEPTIONS UNDER GATT AND GATS**

**A Dissertation submitted to the National University of Advanced Legal
Studies, Kochi in partial fulfilment of the requirements for the award of
LL.M Degree in International Trade Law**



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DECLARATION

I, declare that this dissertation titled '**A Critical Analysis to Understand the Legitimacy of Economic Sanctions Adopted by the US in Exercise of National Security Exceptions under GATT and GATS**' researched and submitted by me to The National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of the Degree of Master of Laws in International Trade Law, under the guidance and supervision of Asst. Prof. Hari S. Nayar, is an original, bonafide and legitimate work. It has been pursued academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other university.

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CERTIFICATION

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Date: 11.10.2021

Place: Ernakulam

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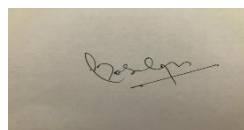
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LIST OF ABBREVIATIONS

AALCO	Asian - African Legal Consultative Organisation
ACU	Asian Clearing Union
ASEAN	Association of Southeast Asian Nations
BIS	Bureau of Industry Security
CAATSA	Countering America's Adversaries Through Sanctions Act
CACR	Cuban Assets Control Regulation
CAFC	Commission for Assistance to a Free Cuba
CCL	Commerce Control List
CDA	Cuban Democracy Act
CIA	Central Intelligence Agency
CPC	Calcined Petroleum Coke
CRIEEA	Countering Russian Influence in Europe and Eurasia Act
CRS	Congressional Research Service
DDTC	Directorate of Defence Trade Controls
DoC	Department of Commerce
DOD	Department of Defence
DOS	Department of State
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAA	Export Administration Act
EBA	Emergency Banking Act
EaEU	Eurasian Economic Union
EC	European Commission
ECA	Export Control Act
ECEPR	European Centre for Entrepreneurship and Policy Reform
EIU	Economist Intelligence Unit
EO	Executive Order
EU	European Union
FAA	Foreign Aid Act
FBI	Foreign Bureau of Investigation
FY	Financial Year
GATS	General Agreement on Trade in Services

GDP	Gross Domestic Product
GATT	General Agreement on Tariff and Trade
IAEA	International Atomic Energy Agency
IAF	Indian Air Force
ICJ	International Court of Justice
ICRA	Investment Information and Credit Rating Agency of India Limited
IEEPA	International Emergency Economic Powers Act
IFCA	Iran Freedom and Counter-proliferation Act
ILC	International Law Commission
IMF	International Monetary Fund
INKSNA	Iran-North Korea-Syria Nonproliferation Act
IT	Information Technology
ITO	International Trade Organisation
JCPOA	Joint Comprehensive Plan of Action
LDC	Least Developed Country
LIBERTAD	Cuban Liberty and Democratic Solidarity
LNG	Liquefied Natural Gas
MFN	Most Favoured Nation
MOU	Memorandum of Understanding
MT	Million Tonnes
NATO	North Atlantic Treaty Organisation
NDAA	National Defence Authorization Act
NIOC	National Iranian Oil Company
OFAC	Office of Foreign Assets Control
OHRLLS	Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
OPEC	Organisation of Petroleum Exporting Countries
PDVSA	Petróleos de Venezuela, S.A
PTI	Press Trust of India
R&D	Research and Development
RBI	Reserve Bank of India
RIL	Reliance India Limited
SDN	Specially Designated National
SRE	Significant Reduction Exception

SSIDESUA	Support for the Sovereignty, Integrity, Democracy, and Economic Stability Of Ukraine Act
SORT	Strategic Offensive Reductions Treaty
TEA	Trade Expansion Act
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
TSRA	Trade Sanctions Reform and Export Enhancement Act
TWEA	Trading With Enemy Act
UAE	United Arab Emirates
UFSA	Ukraine Freedom Support Act
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States
USD	US Dollar
USDT	US Department of the Treasury
USML	United States Munitions List
USMCA	U.S.-Mexico-Canada Agreement
USSR	Union of Soviet Socialist Republic
USTR	United States Trade Representative
VCLT	Vienna Convention on Law of Treaty
WMD	Weapon of Mass Destruction
WTO	World Trade Organisation
WW	World War

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CHAPTER – 1

INTRODUCTION

1.1 STATEMENT OF PROBLEM

Otto Tod Mallery¹ said, “*When goods don't cross borders, Soldiers will.*”² This very statement signifies the importance and strength of free trade. Free trade is a highly potent tool to build and nurture economic, political, cultural, and social ties between the economies. Free trade is the primary goal that WTO seeks to promote. However, total adherence to the free trade principle under all circumstances will be detrimental and nearly impossible. Considering the need or imperativeness to strike a balance between free trade and other aspects such as Human Rights, Environment, state sovereignty, public morality, etc a set of exceptions are provided under the WTO system.

National security exceptions are one such leeway provided under Article 21, Article 14, and Article 73 of GATT, GATS, and TRIPS, respectively. It provides the member states the right to confidentiality in matters of national security and permits them to take proportional sanctioning measures with respect to “*fissionable materials and their derivatives*”, “*the traffic in arms, ammunition, and implements of war*”, and “*international emergencies*”. Further, none of these WTO agreements prevent a member from “*taking any action in pursuance of its obligations under the UN Charter for the maintenance of international peace and security*”. Though these exceptions were incorporated with such noble intention to equip the member states to deal with national security threats, it is often abused by member states. This can be attributed to the non-definable nature of National security. What constitutes a national security threat to a particular member may not be a threat to another. The concept, to a great extent, is relative and largely depends on the economy, polity, societal setup, geographical location, priorities, or goals of the State. Owing to this amorphous nature of the term 'National security threat,' it is generally considered to be self-serving in nature, and the DSB is endowed with limited reviewing power over acts or omissions taken in exercise of national security exception.

¹ Otto Tod Mallery, known as the “Father of Recreation in Philadelphia,” was an economist, “citizen volunteer,” and leader in the local, national, and international recreation movement of the early 20th century.

²OTTO TOD MALLERY, ECONOMIC UNION AND DURABLE PEACE (Harper & Brothers 1943)

Due to these limitations, the Panels and Appellate Body have always stayed aloof from deciding on national security measures. However, the landmark decision given by Panel in Russia- Traffic in Transit wherein it was held that “ *panel has jurisdiction to review actions under Article XXI, and any such act can be justified only if the if satisfies the conditions specified under Article XXI (b) (i),(ii),(iii)*³.” This decision is likely to substantially dilate DSB's jurisdiction over the matters concerning national security exceptions. At this juncture, the Researcher finds it essential to discuss certain highly debated sanctioning measures adopted for the protection of national security.

Here, the Researcher has taken the measures adopted by the US in the name of national security exceptions under GATS and GATT as the primary area of research. If asked why the US, the reasons are numerous. The US, the world's largest economy (21433.20 USD Billion in 2019), is a major player in WTO and the largest exporter and importer of goods and services. De jure, the US is the same as any other member of WTO, however owing to economic, political, technological, military imminence, the US enjoys greater privileges as compared to other states in WTO. Further, when we consider the phrase 'controversial or debated sanctioning measures,' some of the prominent trade-restrictive measures that come to our mind are the ones employed by the US. Further, the US is a major trade player, both inside and outside WTO, the measures adopted by the US are often overarching in effect and have the potential to distort the global economy. Thus it is imperative to critically analyse the legality of National Security measures adopted by the US.

The US sanctions adopted for guarding national security are innumerable in number. The Researcher will be discussing 5 scenarios. Recently, the US imposed 25% and 10% import tariffs on Steel and Aluminium products from all countries except Australia, Argentina, and South Korea. In the case of steel, Brazil was also excluded. The measure has been challenged by many of the aggrieved parties such as China, the EU, India, and Switzerland, etc. The US has invoked National security exception under Article XXI of GATT, and the matter is now pending before the DSB.

The second scenario under consideration is US measures against Venezuela. Venezuela is currently under the reign of an undemocratic, dictatorial, unstable government that is known

³ Panel Report, Russia- Measures Concerning Traffic in Transit, WT/DS512/7 (2019)

for its notorious violation of human rights. The US has alleged such undemocratic events to be a matter of security concern for the US and its neighbors. Thus, the US has imposed certain crucial sanctions to protect human rights and reinstate democracy in Venezuela. The US considers itself to be a protector of democratic values and Human rights and has inflicted economic sanctions on many states. In few instances, such economic interventions have proved to be mere extensions of the US's selfish and baseless political motives. Thus, it is essential to find the reality. Venezuela will serve as a representative for such states where the US had/ have intervened in the name of protection of democracy, national security.

The next in line is US sanctions against Russia. Russia in 2014 intervened in Ukraine. Moreover, Russia is alleged to have committed cyber-attacks, such as malpractices against US institutions. The US considers Russia to be a national security threat. Considering the economy, Russia's geopolitical equation with other states, especially the US, it is essential to analyze the legitimacy of measures under national security exceptions.

The US sanctions on Iran are indeed a controversial one with a humongous impact on international trade. Iran is not a member of WTO; it is just an observer state which has been arduously trying to obtain a full member status at WTO. While framing sanctions against non-member states, the member states often cross all limits; they even discard the customary principles of human rights protection. Here, the Researcher will be analyzing whether the US measures against Iran can be justified under National Security Exceptions if Iran has been a member of WTO? Such a hypothetical examination would help us understand in-depth the plight of states which are denied access to WTO.

Yet another scenario discussed is the 'US embargo against Cuba.' Owing to its close ties with the erstwhile USSR, undemocratic, authoritarian system of government, human rights violations, etc., the US considers Cuba to be a threat to its national security and has kept the Island nation under stringent sanction measures since the early 1960s. The US measures against Cuba are a highly debated issue on different international platforms, and the majority of the international community has condemned the US actions against Cuba. Thus, it is essential to decide whether WTO national security exception protection can be extended to US policy towards Cuba.

Undoubtedly, owing to the extraterritorial nature of US sanctions, the above-mentioned US

policies have got a tremendous impact on international trade as well as the individual economies. India being a prominent player in the international arena, with strong ties with the US as well as targeted states, is likely to have been impacted by US actions. Moreover, the Researcher being an Indian, it is relevant to discuss the US measures from India's perspective.

When we talk about effects on individual economies, the case of LDCs cannot be ignored. 'To promote the growth and development of LDCs' is indeed an inevitable objective enshrines in Marrakesh Agreement. Moreover, the US being a developed State is conferred with the responsibility to aid and assist such LDCs, and it demands an inquiry into consequential fallouts on such poor states.

1.2 RESEARCH QUESTIONS

- 1) Whether the sanctions employed by the US for National Security are in consonance with WTO agreements?
- 2) What is the impact of such sanctions adopted by the US for national security on India?
- 3) Whether the exercise of National Security measures adopted by the US has adversely affected the rights of Least developed Countries?
- 4) Whether the economic measures or sanctions adopted by the US in exercise of National Security are violative of its Human Rights?

1.3 RESEARCH OBJECTIVES

- 1) To understand the legality of US Economic Sanctions imposed under National Security Exceptions.
- 2) To study the implications of National security exceptions on International Trade.
- 3) To understand the impact of National Security Exceptions employed by the US on Least Developed Countries.
- 4) To understand the impact of US's National Security sanctions on Human Rights.

1.4 HYPOTHESIS

The US has abused National Security exceptions, and the sanctions imposed by the US have an adverse effect on International trade, Interests of India, and Least Developed Countries and have violated Human Rights.

1.5 RESEARCH METHODOLOGY

The method used in this research is purely doctrinal.

1.6 CHAPTERIZATION

CHAPTER 1: INTRODUCTION

This Chapter shall provide a brief introduction to the area of study, its relevance and significance, the research problem, research questions, and literature review conducted concerning this research.

CHAPTER 2: NATIONAL SECURITY EXCEPTIONS AND THE JURISDICTION OF WTO DISPUTE SETTLEMENT BODY

Revolves around the concept of National security exceptions provided under WTO and the jurisdiction of Dispute Settlement Body to review national security measures adopted by states. It also discusses instances where states invoked national exceptions and the consequent response of DSB and trade council.

CHAPTER 3: THE LEGALITY, IMPACT AND EFFECTIVENESS OF THE US SANCTIONS

This is one of the most important chapters of this research work. Here the Researcher has analysed the legality of sanctions, their impact on the economy and human rights of targeted states, the effectiveness of the sanctions in serving the desired objectives of the US.

CHAPTER 4: EXTRATERRITORIAL IMPACT OF US SANCTIONS ON INDIA

Deals with the effect of sanctions on the Indian economy and trade.

CHAPTER 5: IMPACT OF US SANCTIONS ON LEAST DEVELOPED COUNTRIES AND INTERNATIONAL TRADE

Deals with the effect of US sanctions on targeted states on LDCs and international trade in general.

CHAPTER 6: CONCLUSION AND SUGGESTIONS

It contains the major findings of the Researcher. Also provides some relevant suggestions to tackle the identified issues.

CHAPTER 7: BIBLIOGRAPHY

1.7 LITERATURE REVIEW

Mona Pinchis- Paulsen, in her article , ‘*Trade Multilateralism and US National Security: The Making of the GATT Security Exceptions*⁴’ elucidates the economic and political factors that contributed to the incorporation of National Security Exceptions into the charter of ITO, and subsequently to GATT. According to the author, the US has played an imperative role in the adoption of the National Security Exception. She opines that a Security exception in many ways serves as a 'loophole' that enables the member states to avoid the legal obligations under international trade law.

In the article titled ‘*The GATT Security Exception: Systemic Safeguards Against Its Misuse*⁵’, author Sandeep Ravikumar, argues that open-ended wordings of Article 21 of GATT render it quite complicated and controversial. However, the WTO system provides strong systemic safeguards to regulate National Security Exceptions, and therefore the risk of misuse of this provision is overstated. Nation Security is a cardinal component of the State's sovereignty, international relations, and therefore author believes that Diplomacy and other informal means like mediation, conciliation are the best means to solve such rifts born out of security concerns.

⁴ Mona Pinchis-Paulsen, *Trade Multilateralism and US National Security: The Making of the GATT Security Exceptions*, 41 MICH. J. INT'L L. 109 (2020). <https://repository.law.umich.edu/mjil/vol41/iss1/4>

⁵ Sandeep Ravikumar, *The GATT Security Exception: Systemic Safeguards Against Its Misuse*, 9 NUJS L. REV. (2016) pp 321- 340, https://nujlawreview.org/wp-content/uploads/2017/01/2016-9-3-4-Sandeep-Ravikumar-The-GATT-Security-Exception_-Systemic-Safeguards-Against-Its-Misuse.pdf

Peter Van den Bossche and Sarah Akpofure in the World Trade Institutes' working paper titled '*The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994*'⁶ assert that the trade policies adopted by the US for the protection of National Security has a diminishing effect on multilateral trade system and it has paved the way for Economic nationalism and anti-globalist unilateralism. The invoking of National Security Exceptions has become frequent now, especially the one provided under Article 21 of GATT. Article 21 provides for 'carte Blanche freedom to abjure WTO obligations. Further, the authors have appreciated the DSB's ruling in Russia- Traffic in Transit for enhancing WTO's power to review a scenario where national security exception is invoked.

Hannes L. Schloemann & Stefan Ohlhoff, In their article titled '*Constitutionalization and Dispute Settlement in the WTO: National Security As an Issue of Competence*'⁷ Opines that National security Exceptions are a function of contemporary sovereignty, and as such demands, individualization and states are thus given the prerogative to decide what constitutes a threat to their national security. However, WTO has the power and obligation to limit this definitional prerogative by reviewing and interpreting the prevailing conditions. Any abuse of this provision will destabilize the international trade order, it will change the phase of constitutionalisation of the world, and this will eventually place WTO in an uncomfortable position.

In the report titled, '*The National Security Pillar*'⁸ authors opine that the existing National Security Exceptions were formulated in the backdrop of Cold War tensions and the experiences from World War. The situation has changed; the challenges in the digital era are essentially different. Thus National Security exceptions should be revamped or modified. Continuing with

⁶ Peter Van den Bossche and Sarah Akpofure, *The Use and Abuse of the National Security Exception under Article XXI(b)(iii) of the GATT 1994*, WTI Working Paper No. 03/2020, https://www.wti.org/media/filer_public/87/32/8732476a-852d-48bf-a947-7416bb115b87/preadvies_vhr_2020-druk.pdf

⁷ Schloemann & Stefan Ohlhoff, *Constitutionalization and Dispute Settlement in the WTO: National Security As an Issue of Competence*, 93 AM. J. Intl L. 424 (1999)

⁸ Dan Ciuriak and Maria Ptashkina, *The National Security Pillar, In: Toward a Robust Architecture for the Regulation of Data and Digital Trade*, Centre for International Governance Innovation (2020): <http://www.jstor.com/stable/resrep24300.11>

such open-ended terms will have a deteriorating effect on international trade.

The paper titled, *'EU and US Sanctions: Which Sovereignty'?*⁹, depicted instances where the US and EU resorted to extraterritorial sanctions in the name of National Security. It is argued that America's definition of National Security is quite subjective, wide, and temporal. On the other hand, the EUs' definition of National Security is collective and based on objective and permanent criteria. As per the article, the US has more often resorted to extraterritorial sanctions in the name of national security, and this has widened the transatlantic division.

As per the article titled *'America's Use of Coercive Economic Statecraft: A Report from Select Members of the CNAS Task Force on the Future of US Coercive Economic Statecraft'*¹⁰, the US sanction economic sanction regime has evolved tremendously in the last two decades. Initially, the US employed economic sanctions to contain the proliferation of weapons of mass destruction, military aggression by adversaries; terrorism; narcotics trafficking; and other serious violations of human rights. But the US has begun to use sanctions to pursue a wider range of targets, including cybercrime, intellectual property theft. The US sanctions have deteriorated many diplomatic channels or connections and have caused a crushing effect on sanctioned economies; for example, sanctions against Iran and Venezuela have cut both countries' oil exports far more than most experts predicted. Moreover, the increase in the use of sanctions has increased the cost on the US; for instance, Trump's steel tariffs cost US consumers and businesses \$900,000 for every job saved or created.

Lucas Queiroz Pires, in his article, *'Recent US Trade Actions On The Grounds Of National Security: A Brief Overview Of US Sanctions And Their Impacts To Non-U.S. Parties'*¹¹, elucidates potential violation of WTO rules by and its impact on other states, persons

⁹ Jaques Delors Institute, *This text is the outcome of a workshop with Marieh  l  ne B  rard, Farid Fatah, Pascal Lamy, , Louis Schweitzer, Pierre Vimont*, (2018), <https://institutdelors.eu/wp-content/uploads/2018/10/EUandUSSanctionswhichsovereignty-Lamyetalii-Oct18.pdf>

¹⁰ Center for a New American Security, *America's Use of Coercive Economic Statecraft: A Report from Select Members of the CNAS Task Force on the Future of US Coercive Economic Statecraft*, (Dec 2020), <https://www.jstor.org/stable/resrep28734>

¹¹ Lucas Queiroz Pires, *Recent US Trade Actions On The Grounds Of National Security: A Brief Overview Of US Sanctions And Their Impacts To Non-U.S. Parties*, *Revista de Direito do Com  rcio Internacional*, <https://www.alston.com/-/media/files/insights/publications/2019/05/artigolucasrevista-de-direito-comercial-internacio.pdf>

and international financial institutions. The financial institutions have often failed to fulfill their duties and assist sanctioned states or any other entity related to the sanctioned State. For instance, Corpolec, a Venezuelan state-owned power company, supplies electricity to the northern Brazilian state of Roraima through the Brazilian company Eletronorte. In 2018, Eletronorte owed over \$30 million to Venezuelan Corpolec and was ready to make the payment. However, owing to the US sanction against Venezuela, none of the banks were ready to facilitate the transactions.

Clark Packard, in his article '*Steel Imports, Pose No Threat to National Security*¹²' asserts that the US had always tried to keep the National Security exception as a judging clause ever since GATT 1947; for instance, the US invoked this defence when its export restriction to Eastern Europe was challenged by Czechoslovakia. The same defence was instituted to justify the US trade embargo on Nicaragua (1985). The author avers that the import of steel poses no threat to US National Security, and this very act would "*harm the domestic economy, jeopardize the rules-based trading system and needlessly provoke allies.*"¹³

The US has often justified its economic sanction in response to human rights violations, for instance, Helms-Burton's secondary boycott against Cuba, as a measure of National security. The international community has condemned such moves; they argue that Human rights violations in a foreign land do not pose any threat to US National Security. In this article, titled '*Norms and National Security: The WTO as a Catalyst for Inquiry*¹⁴', the author has supported the US stance. He claims that the US's act has nurtured human rights regimes and international order. The author believes that legal and social history following World War 2 has incorporated the notion of human rights conditions in other countries into National security. However, the author acknowledges that the US taking such a stance or defence before WTO was prejudicial to free trade.

¹²Clark Packard, *Steel Imports Pose No Threat To National Security*, R STREET POLICY STUDY NO. 127, (2018), <http://www.jstor.com/stable/resrep19129>

¹³ *Id* at 12

¹⁴ Goodman, Ryan, *Norms and National Security: The WTO as a Catalyst for Inquiry*, Vol. 2: No. 1 Chicago Journal of International Law, (2001). <https://chicagounbound.uchicago.edu/cjil/vol2/iss1/7>

CHAPTER 2

NATIONAL SECURITY EXCEPTIONS AND THE JURISDICTION OF WTO DISPUTE SETTLEMENT BODY

2.1 INTRODUCTION

What is National Security? Scholars have given different definitions of national security. International scholar Mario Nobile has defined National Security as “*an intricate interaction between political, economic, military, ideological, legal, social and other internal and external factors through which individual states attempt to ensure acceptable provisions to maintain their sovereignty, territorial integrity, the physical survival of their population, political independence and possibilities for a balanced and rapid social development on an equal footing.*¹⁵”

National Security connotes ensuring holistic protection of the nation-state. The international events, especially the ones post-1945, have concretized national security and rendered the concept more complex and comprehensive. Post - WW II, there has been greater internationalization and globalization, which resulted in the greater integration of the world. Moreover, international security and development became the predominant objective. International Institutions or other state conglomerations were identified as the effective medium to balance or regulate state powers and actions to ensure international security. Security of individual states coupled with amicable ties between these individual states is the essential basis of international security.

As hinted, post-1945, there has been a greater inclination towards institutionalization, with the development of global institutions, entrenchment or spread of noble notions or practices like

¹⁵Anton Grizold . “*The Concept Of National Security In The Contemporary World*, vol. 11, no. 3, Int’L J on World Peace 37-53 (1994)

democracy, Rule of Law, sovereignty, human rights protection, etc., the instances of direct wars had considerably reduced. However, the power imbalances continue to persist. The idea of nationalism, state sovereignty, and the development agendas of different states at different stages of development conflicted with international security and well-being. The skirmishes in one or the other form continued; moreover, numerous unconventional threats such as terrorism, white collar crimes emerged. Thus, actual and perceived threats to national security have augmented.

Post-1945, the concept of national security and what constitutes a threat to national security has evolved significantly¹⁶. The right of states to protect themselves in times of severe crisis by employing otherwise unavailable means has been a pivotal feature of the international legal system¹⁷. In order to balance international security and national security, the international community incorporated certain 'Escape Clauses' in international treaties or conventions. The National Security Exception provided under GATT 1947 (now WTO) is one such 'Escape Clause' which qualifies the states to abjure their international obligations in the interest of their national security.

2.2 NATIONAL SECURITY EXCEPTIONS UNDER THE WTO SYSTEM

The GATT system was constituted in response to the destructive results caused by the World War. The Economy was ailing. The international community found great potential in the liberalized, free trading system to refurbish the situation. This led to the establishment of several economic institutions, including GATT 1947. The initial notion was to constitute an International Trade Organisation (ITO). However, due to the lack of support from the US, ITO failed to come into existence. During its negotiations, certain states, especially the US, highly deliberated for the inclusion of certain national security exceptions. Considering the then prevailing cold war situation, the same was accepted. National Security Exceptions were initially incorporated in the Havana Charter, as ITO failed to come into existence, the said exceptions were moved to the GATT. After 47 years, GATT 1947 was succeeded by the WTO in 1994. Unlike GATT 1947, WTO has a broad scope, a better institutional structure. The alleged crucial provisions on national security exception were incorporated into the WTO

¹⁶ UNCTAD Series on International Investment Policies for Development, THE PROTECTION OF NATIONAL SECURITY IN IIAs (UNCTAD/DIAE/IA/2008/5)

¹⁷ SCHLOEMANN, OHLHOFF, *supra* note 7

system as well. Article XXI, Article XIV, Article 73 of GATT, GATS, and TRIPS respectively deals with the National Security Exceptions, and it reads as follow;

“Nothing in this Agreement shall be construed.

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”¹⁸.

As stated above, the ITO and GATT negotiations happened in the backdrop of the Cold war, and it was essential to incorporate national security exceptions to protect the interest of sovereign member states. However, the principle was not well applauded by all. During the GATT negotiations, the delegate for Netherland opined that the exception would create “a very big loophole in the GATT”¹⁹.

During GATT negotiations, the representative of the US has commended that the exceptions provided are undoubtedly limited in nature, and parties shall not use these provisions to further commercial purposes. Further, According to the International Law Commission (ILC), the action taken must be “*the only way for the State to safeguard an essential interest against a grave and imminent peril,*” and it is essential that the action “*does not seriously impair an essential interest*” of another State. Thus it is inevitable to stick to the principle of good faith while exercising these provisions, and good faith can be defined as “fairness, reasonableness,

¹⁸ Art XXI, General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994); Art XIV General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 UNTS 183, 33 ILM 1167 (1994); Art 73 Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299, 33 ILM 1197

¹⁹ SCHLOEMANN and OHLHOFF, *supra* note 7

integrity, and honesty in international behavior”.

In the Case instituted by Nicaragua against the US, the issue of national security came before the Panel. Panel refrained itself from answering the legality of US acts. However, Panel observed that *“Article XXI gives predominant importance to the security of member states; however, such embargoes on other members contravenes basic aims of the GATT, such as to foster non-discriminatory and open trade policies, to further the development of the less-developed contracting parties and to reduce uncertainty in trade relations, etc. And therefore, members, while invoking Article XXI, should carefully weigh its security needs against the objectives of GATT,1947”*²⁰. The said exception is merely a means of self-defence.

On a cursory reading, the provision looks well explained and comprehensive. A proper analysis will expose the deep-seated lacunae or ambiguities. None of these covered agreements have explained the vital phrases or terminologies, and this, in turn, has contributed to controversies and vexatious debates as to what constitutes a National Security threat and what are its limits? Whether such invocations can be subjected to Judicial Review? Owing to the lack of clarity regarding these questions, national security provisions were abused and used as a political tool by states. Let us now consider the prominent instances where national security exceptions were invoked by members in the past.

2.3 INSTANCES WHERE NATIONAL SECURITY EXCEPTIONS WERE INVOKED

In 1948, the US substantially controlled and reduced its export to Eastern European states that did not participate in the Marshall plan under the Comprehensive Export Schedule. Czechoslovakia was one such State, and products destined for its borders were subject to export licensing controls. Aggrieved by this, Czechoslovakia sought relevant information regarding the restrictions²¹. The US contended that the exports control is intended to prevent the export of any products that may enrich the military potential of Eastern Europe. Thus the measure is

²⁰ Report of the Panel, United States — Trade Measures Affecting Nicaragua, L/6053 (Oct. 13, 1986)

²¹ GATT Contracting Parties, Third Session, Statement by the Head of the Czechoslovak Delegation Mr. Zdeněk AUGENTHALER to Item 14 of Agenda (CP.3/2/Rev.2), GATT/CP.3/33, p. 3 (referring to the official publication of the US Department of Commerce – "Comprehensive Export Schedule" No. 26, issued on 1 October 1948, p. 18.)

based on Article XXI (b)(ii) of GATT²². The US further asserted that Article XX (a) exempts from furnishing information demanded by Czechoslovakia as the matter relates to the national security of the US and its allies.

In 1949, at the meeting of the GATT Council, Czechoslovakia requested a decision on this issue; whether the export control regime instituted by the US was violative of its GATT obligations. All members except Czechoslovakia voted negative and favoured the US stand that matters taken on account of national security under Article XXI is self-judging in nature.²³

In 1951 the US inflicted certain restrictions on dairy imports from the Netherland and Denmark under Article 104 of the Defence Production Act. Netherlands and Denmark challenged the same by issuing a memorandum. Denmark and Netherlands asserted the US restriction are violative of Article 11 of GATT, 1947. The US, on the other hand, resorted to a national security exception²⁴. In October 1951, the contracting parties adopted a resolution that prompted the US to withdraw the restriction by repealing section 104. The US acknowledged the violative nature of section 104 and amended the same instead of repealing it. The US further expressed its willingness to face such proportional retaliation from other states.²⁵

The US in 1962 adopted a statute titled the Trade Exceptions Act, which conferred immense power to the US President to adopt appropriate measures in the interest of national security. The US, under section 232 of the Trade Expansion Act of 1962, maintained a global quota on petroleum. The same was notified to the GATT Joint Working Group on Import Restrictions in 1970. The EC and Canada asserted that the measure amounts to protectionism, and it is violative of GATT. EC and Canada rejected the US justification that such restrictions are imposed in the interest of national security under section 232 of the 1962 Act in accordance with Article XXI. The Joint Working Group decided to review the issue further in its subsequent meetings; however, the Joint Working Group did not meet again after 1970²⁶.

²² GATT Contracting Parties, Third Session, Reply by the Vice Chairman of the United States Delegation, Mr John W. Evans, to the Speech by the Head of the Czechoslovak Delegation under Item 14 on the Agenda, GATT/CP.3/38, pp. 2-3 and 9-11.

²³ GATT Contracting Parties, Third Session, Summary Record of the Twenty-Second Meeting held on 8 June 1949, GATT/CP.3/SR.22, p. 6

²⁴ GATT Contracting Parties, Sixth Session, Item 30 – Imports Restrictions on Dairy Products into the United States,

²⁵ Panel Report, Russia- Measures Concerning Traffic in Transit, WT/DS512/7 (2019) p. 109

²⁶ *Id.* at 25

Austria had imposed certain import licensing restrictions or quotas on penicillin, tyrothricin, and related medicaments. In 1970, the Joint Working Group on Import Restrictions discussed the said matter, and Austria defended its act under Article XXI (b)(ii) of the GATT 1947. Austria asserted that “*in order to have available a local source of supply in case of emergency, such restrictions are inevitable.*” In 1971, these restrictions were considered again by the Group of Three. The Group of Three noted that ‘other countries are able to deal with the matter without such restriction, and therefore the import restrictions imposed by Austria are not necessary.’ Austria, however, stuck to its stand. In 1972 the issue was discussed in the Committee on Trade and Development, wherein Austria asserted that ‘it will not withdraw the measures, however, promised to extend ‘sympathetic consideration’ developing countries²⁷. Austria continued its measure and was finally abolished in 1990 at the US's request during Uruguay Rounds.

Owing to huge production costs and liberal import policies adopted by Swedish Government in earlier years, the domestic shoe industry has become inefficient, and the production is quite low. The low domestic production capacity possessed “*a critical threat to the emergency planning of Sweden's economic defence as an integral part of its security policy*”²⁸. Thus in order to equip its domestic industry in 1975, Sweden imposed import quota restrictions on “*leather shoes*”, “*plastic shoes*”, and “*rubber boots*”. Several contracting parties challenged the measure during the GATT Council meeting of 1975. Sweden defended its act under Article XXI of GATT 1947; Sweden’s security policy necessitated the maintenance of a minimum domestic production capacity in vital industries to meet the needs of war, and such other international emergencies²⁹. And, finally, in July 1977, it withdrew its restrictions with regard to leather shoes and plastic shoes.

In 1985, the US imposed a fully-fledged import and export embargo on Nicaragua due to the extraordinary threat to national security concerns. Nicaragua raised the issue before the GATT council and requested a consultation with the US. Nicaragua averred, it poses no threat to the US, and the alleged US measure defeats the legitimate benefits of Nicaragua from the GATT system³⁰. The US, on the other hand, contended that the issue is highly political in nature, and

²⁷ Committee on Trade and Development, Proceedings of the Twenty-First Session, Note Prepared by the Secretariat, COM.TD/87, para. 13.

²⁸ Communication from Sweden, Sweden – Import Restrictions on Certain Footwear, L/4250, paras. 1 and 3.

²⁹ GATT Secretariat, Minutes of Meeting, GATT Doc. C/M/109, at 8-9 (Nov. 10, 1975); GATT, Sweden — Import Restrictions on Certain Footwear, GATT Doc. L/4250 (Nov. 17, 1975)

³⁰ GATT Council, Minutes of Meeting held on 29 May 1985, C/M/188

the measures are based on Article XXI (b)(iii). Thus, the GATT system shall not review the embargo. At Nicaragua's request, the Panel allowed an informal consultation. Later, a panel was constituted, with certain limitations and exclusions as demanded by the US. US put forth the condition that the panel "*shall not examine or judge the validity of or motivation for the invocation of Article XXI(b)(iii) by the US.*"³¹ The Panel observed that measures adopted by the US, irrespective of whether it is justified under Article XXI, contravenes the GATT objectives. However, the Panel abstained itself from answering whether actions under Article XXI could nullify or impair GATT benefits of the adversely affected contracting parties. Dissatisfied with the findings, Nicaragua requested the council to direct the US to remove the embargo. The US stuck to its stand. Nicaragua. The report issued by the Panel was never adopted. Finally, in 1990, the US lifted the embargo owing to the change in circumstances that necessitated such embargo under Article XXI.

During 1990 Yugoslavia was embroiled in huge scale violence, and this led to a state of instability in Europe. Thus in the interest of national security, EC invoked Article XXI of GATT, 1947, and suspended the benefit of certain trade concessions that had been granted to Yugoslavia. Yugoslavia contended that measures adopted EU are non-justifiable under GATT national security exception as "*the majority do not relate to the contractual obligations under the GATT.*"³² Yugoslavia thus requested a consultation, and it failed. Yugoslavia then requested to constituted a panel, and the same was opposed by EC on the ground that "*EC is vehemently involved in reinstating peace in the region, and panel proceeding will have a detrimental effect on the same.*" Finally, in 1992, the chair of the GATT Council allowed for the establishment of a panel; however, it did not proceed as Yugoslavia was dissolved³³.

In 1996 the US enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act or the Helms-Burton Act. The Act placed a plethora of restrictions on Cuba, and moreover, it was of extraterritorial application, whereby foreign individuals and entities that collaborated with Cuba were sanctioned by the US. Cuba had shot down two unarmed US civilian aircraft, and this provoked the US to enact the alleged Act. The US asserted that the Helms-Burton Act is essentially intended to restore democracy in Cuba. In May 1996, the EU requested

³¹ Communication from the United States, US – Nicaraguan Trade, L/5803

³² Communication from Yugoslavia, Trade Measures Against Yugoslavia for Non-Economic Reasons

³³ Trade Measures Taken by the European Communities against the Socialist Federal Republic of Yugoslavia, L/6948,

consultations in respect of the extraterritorial application. The consultation didn't bring about any fruitful results. In 1996 October EU requested the establishment of a panel. The US defended its measure under Article XXI of GATT 1994 and vehemently opposed the idea of constituting a panel. Finally, a panel was constituted. Meanwhile, parties resorted to an informal negotiation, and thus, in 1997 EU requested for the suspension of the Panel.³⁴.

India and Pakistan share strained trade and diplomatic ties. As a result, Pakistan has not granted MFN status to India. During the 2002 Trade Policy Review of Pakistan, India raised the issue of denial of MFN status, and Pakistan asserted that considering the ties between both the nation, non-granting of MFN status is in consonance with Article XXI(b)(iii) of GATT, 1994³⁵.

Brazil incorporated an import licensing system for certain Lithium products. According to Brazil, Lithium compounds can be used as potential raw material for making nuclear energy and thus imposed certain import restrictions in the interest of national security. It was challenged by the US before Committee on Import Licensing.³⁶

From the above instances, it can be concluded that one sect of the international community believes and asserts that National security exceptions are self-judging, vehemently opposes the idea of judicial review of national security exceptions. According to them, a perusal of actions taken under Article XXI by WTO amounts to unwanted interference with state sovereignty. If a state invokes a national security exception, all that the WTO panel may do is recognize that invocation and make no further findings.³⁷. And there are multiple instances where similar views were adopted by member states, WTO panels, and other judicial bodies.

2.4 ARGUMENTS AGAINST SELF-JUDGING

There is yet another school that believes granting self-judging status to national security defences is detrimental to free trade and will leave the Panel or Appellate Body handicapped. Hannes L Scholeaman and Stefan Ohlhoff have tried to strike a balance by retaining judicial review and the self-judging element. According to them, “*essentially, states have the ultimate*

³⁴ Panel Report, Russia- Measures Concerning Traffic in Transit, WT/DS512/7 (2019) p. 135-137

³⁵ Trade Policy Review Body, Trade Policy Review, Pakistan, Minutes of Meeting held on 23 and 25 January 2002, Addendum, WT/TPR/M/95/Add.1, p. 21.

³⁶ Panel Report, Russia- Measures Concerning Traffic in Transit, WT/DS512/7 (2019) p.131

³⁷ United States-Certain Measures on Steel and Aluminium Products, WT/DS548/13

right to decide what is necessary to uphold the nation's security; however, Panel is at liberty to check whether there exists a war or such other emergency.” National security exceptions under GATT, GATS, and TRIPS has inherent limits, extending self-defining element to the whole of the provision will violate the limiting intend of negotiators³⁸. The scope, objective, multilateralism, and the comprehensive Dispute Resolution System featured in the WTO indicates that it has the power to limit the ambit of its discretionary and ambiguous provisions. As provided under VCLT, 1969, any interpretation shall further the objectives of WTO.³⁹

Nevertheless, another argument leveled against self-judging based on Arbitrators' interpretation of Article 22.3 of DSU. As per Article 23 of DSU, if the matter contains a question relating to trade, the DSB undoubtedly has the capacity to review it; the presence of political issues cannot impede the same. In EC- Banana⁴⁰ case the Appellate Body held EC had violated the GATT obligations by imposing import conditions instituted to promote the EC importers. As EC failed to withdraw the measures, Ecuador was allowed to retaliate against EC by suspending the concessions. Ecuador, instead of retaliating under GATT, resorted to TRIPS and defended the same under the 'party considers' clause provided in Article 22.3 (c)⁴¹. Ecuador contended that retaliating under GATS is impractical, and the phrase 'the party considers' dilates the discretionary power of the retaliating party, and any such actions are beyond the jurisdiction of the Panel or arbitrators. The arbitrators rejected and affirmed their reviewing power over such measures. Similarly, actions taken under the phrase 'as it considers' provided under National Security exceptions are also subject to judicial review.

People supporting judicial review of actions under XXI have relied on the averments of other institutions as well. ICJ in *Gabčíkovo-Nagymaros*⁴² Case held that “*if a state invokes necessity defence under customary international law, it can be reviewed; the State concerned is not the sole judge of whether those conditions have been met*”.

³⁸ Antonio F. Perez, *WTO and UN Law: Institutional Comity in National Security*, 23 YALE J Int'l L

³⁹ *Id.* At 38

⁴⁰ the decision by the Arbitrators, *European Communities — Regime for the Importation, Sale, and Distribution of Bananas — Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB/ECU, 24 March 2000

⁴¹ *If that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement*

⁴² *Gabčíkovo-Nagymaros Project, Hungary v Slovakia*, [1997] ICJ Rep 7

2.5 THE CONUNDRUM CLARIFIED

The recent decision by WTO panel in Russia- Measures Concerning Transit of Traffic is path-breaking. A panel for the first time answered the question 'whether state's measure under national security exception can be subjected to review by panel'? Since 2014, the relation between Russia and Ukraine has deteriorated owing to the non-joining of Ukraine in Eurasian Economic Union (EaEU Treaty), collaborations between Ukraine and the EU, illegal occupation of Russia in the territory of Ukraine. These events resulted in Ukraine and Russia imposing tariffs on each other goods. Further, Russia imposed transit restrictions and imposition of stringent border measures on Ukrainian goods destined for Kazakhstan and other Central Asian countries. In 2016, Ukraine challenged the same before WTO. Russia invoked Article XXI (b)(iii) and resisted any interference from DSB. At Ukraine's request, a panel was constituted, and considering the opposition from Russia, the Panel first delved into the issue of whether the Panel has jurisdiction over such matters where a national security exception is invoked?

The Panel asserted that WTO enjoys inherent jurisdiction over all matters arising in relation to the exercise of their own substantive jurisdiction. *Further, in the case concerning US – 1916 Act*⁴³, the Appellate Body has observed, 'the Panel has the power to determine its jurisdiction over. The Panel relied on the customary international law principles enshrined under Articles 31 and 32 of VCLT. 1969. Article 31(1) deals with the concept of good faith, and Article 32 emphasizes the significance of preparatory works in drawing meaningful conclusions. Whether interpreting, 'it considers' in para. (b) to provide total deference in favour of State will defeat the very purpose of Article XXIII of DSU. Article 23.1 DSU provides other WTO Members with a right to redress the violations of trade obligations under DSU rules.

In the interest of justice, the Panel interpreted the three conditions provided under XXI(b) as limitative qualifying clauses. That is, these clauses limit the discretionary power endowed upon the states under 'it considers.' Demystifying further Panel observed that the phrase 'relating to' mentioned under XXI (b)(i) and (ii) mandates a “close and genuine relationship of ends and means between the measure and the objective of the Member adopting the measure”. The

⁴³ Appellate Body Report, United States — Anti-Dumping Act of 1916, WT/DS136/AB/R, WT/DS162/AB/R(2000)

circumstance or matters mentioned under (i) and (ii) are more clear. However, the necessary conditions laid under (iii), especially the phrase ‘emergency in international relation’, is quite ambiguous. The Panel averred that use of the conjunction ‘or’ in-between ‘war’ and other emergency in international relations suggest that political or economic differences between Members are not sufficient to constitute an emergency in international relations. Further, relying on the negotiating history of GATT 1947, the Panel observed that the *“balance that was struck by the security exceptions was that Members would have some latitude to determine what their essential security interests are and the necessity of action to protect those interests, while potential abuse of the exceptions would be curtailed by limiting the circumstances in which the exceptions could be invoked to those specified in the subparagraphs of Article XXI(b).”*⁴⁴

In short, the Panel concluded that Article XXI does not provide for any unlimited powers to states; *“the provision is not totally self-judging”*. *“The Panel has jurisdiction to review actions under Article XXI, and any such act can be justified only if it satisfies the conditions specified under Article XXI (b) (i),(ii),(iii). Interpreting Article XXI as a completely self-judging provision will defeat the security and predictability of the multilateral trading system”*.⁴⁵

The WTO panel has reiterated the similar view in the case of *Saudi Arabia-Measures Concerning Protection of Intellectual Property Rights*⁴⁶. Here, Qatar instituted a case against Saudi Arabia for violating its obligation under TRIPS. Saudi Arabia, since 2017 imposed several economic, political, diplomatic measures against Qatar, and this resulted in the violation of the Intellectual property rights of Qatari nationals and entities. Saudi Ministry of Culture and Information, together with the General Commission of Audio and Visual Media, banned beIN Media Group LLC and affiliates (beIN), a Qatari company, from operating or broadcasting content in Saudi Arabia. Followed by this, a Saudi-based pirate, “beoutQ,” started broadcasting the contents of beIN without permission. The Saudi government supported this beoutQ and initiated no criminal proceeding on beIN's request. Further, Saudi Arabia prevented Qatari companies from seeking civil remedies before Saudi Courts. In response to all these episodes, Qatar initiated disputes against Saudi Arabia under Articles 3.1, 4, 9, 14.3, 16.1, 41.1,

⁴⁴ *Supra* note 3

⁴⁵ *Id.* at 44

⁴⁶ Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights, WT/DS567/8 (2020)

42, 61⁴⁷.

Saudi Arabia, along with other grounds, invoked the national security exception provided under Article 73(b)(iii) of TRIPS to oust the Panel's review. The Panel relied on the stand delivered in Russia- Traffic of Transit and reviewed the measures.

2.6 CONCLUSION

This chapter analysed the concept of National Security and the relevance of National Security Exceptions or such 'Escape Clauses' in modern-day treaties and global institutions to protect the sovereign state interests. The discussion revolved around the National Security exceptions provided under the WTO and its precursor GATT 1947. Article XXI of GATT, Article XIV of GATS, and Article 73 of TRIPS exempt the member states from the written obligation under circumstances of serious threat to national security.

The researcher briefly dealt with multiple instances of matters involving the invocation of national security exception was brought before GATT Council and WTO General Council, and various other bodies since 1947. The analysis of these instances reveals the basic attitude of aggrieved parties and the states that invoked the exception. It is noted that invoking states are generally reluctant to submit to the jurisdiction of GATT 1947 or WTO, and this can be attributed to the following reasons - the delegations or negotiation via diplomatic channels offer better and effective solutions as compared to the dispute resolution paradigm offered under 1947 GATT or WTO. Further, assenting to DSB jurisdiction in matters of national security concerns can have a derogative effect on state sovereignty. Thus since its inception, most of the states have maintained the argument, 'National Security Exceptions are self-judging in nature, that is it is up to the concerned member state to decide what constitutes a national security threat, what are the appropriate measures to counter the same. Are National Security Exceptions self-judging? Was this the original intent of drafters and founders of the document or institution, respectively? This has been a highly debated question since the GATT 1947.

⁴⁷ Communication from Qatar, Saudi Arabia - Measures concerning the Protection of Intellectual Property Rights, WT/DS567/8 (2020)

The recent decision by the WTO Panel in *Russia- Transit of Traffic* has clarified this conundrum to a great extent. The Panel held that 'National Security Exceptions are not completely self-judging, rather the panel and the Appellate Body has the jurisdiction to check the veracity of state action, that is, they can review whether the circumstance constitutes a threat to the national security of the member state.' The Panel has reiterated the same view in a subsequent matter titled *Saudi Arabia- Protection of Intellectual Property Rights*.

CHAPTER 3

THE LEGALITY, IMPACT AND EFFECTIVENESS OF THE US SANCTIONS

3.1 INTRODUCTION

Economic Sanctions can be defined as “*coercive economic measures taken against one or more countries (or individuals or entities) to force a change in policies, or at least to demonstrate a country’s opinion about the other’s policies.*”⁴⁸ The phenomenon of globalization or integration of international community has dilated the scope of economic sanctions. International economic organizations promote the concept of free trade and investment; however, states, especially the developed ones, tend to use these sanctions to build, maintain or enhance favourable environment. The US is one such nation that has vehemently adopted such sanctions to uphold international and national security, peace, human rights, etc. As noted in the previous chapter, WTO permits such aberrations from written obligation in case of genuine concerns. However, many of these sanctions are steely attempts to maintain or enhance the global eminence of the US in different fields. Restricting imports and exports, Freezing the assets or properties of targeted states located within the jurisdiction of the US, denying US aid, prohibiting the targeted states from being members to International organisations, denying loans from the US-based Banks, prohibiting third states from extending trade or aid to the targeted state, etc. are some the prominent ways in which the US has been exercising the sanctioning power. Therefore, it is of vital importance to examine the veracity of US claims and sanctions. In this chapter, the researcher has attempted to understand the legitimacy, impact, and efficiency of US sanctions.

3.2 THE US LEGAL FRAMEWORK FOR IMPOSING SANCTIONS

Before we delve further, it is essential to understand the meticulously weaved US security regime to counter the negative impacts of international trade. The US has a wide and comprehensive, and strict sanctioning regime, and there have been regular ardent efforts to fix

⁴⁸ Barry E. Carter, *International Economic Sanctions: Improving the Haphazard US Legal Regime*, Cambridge University Press, 4 (1988).

the lacunae. During the past 15 years, the number of US statutes imposing economic sanctions has increased from 17 to 30⁴⁹. A few of the prominent sanctioning statutes will be discussed in brief.

As per the constitution of the US, Congress is the pivotal body to decide upon matters related to international trade; however, Section 232 of the Trade Expansion Act of 1962 sets a significant deviation from this practice. Section 232 confers the President the power to impose restrictions on imports to the US without Congressional approval if such import poses a threat to US national security and if the Department of Commerce affirms the same by conducting an investigation to the matter⁵⁰. That is, upon request by the head of any US department or agency, by petition by an interested party, or by self-initiation, the Secretary of Commerce conducts a Section 232 investigation in consultation with the Secretary of Defence and other US officials, as appropriate, to determine the effects of the specified imports on national security. The statute provides no definition for the term 'National Security, however, the said departments, while conducting the investigation, shall take into consideration the following factors such as *“domestic production needed for projected national defence requirements; domestic capacity; the availability of human resources, and supplies essential to the national defence; and potential unemployment, loss of skills or investment, or decline in government revenues resulting from the displacement of domestic products by excessive imports”*⁵¹. And a report will be submitted to the President within 270 days. The President has the liberty to follow or discard the recommendations provided in the report. The President shall then submit a written statement to Congress explaining his action or inaction.

Trading With Enemy Act (TWEA)⁵² was enacted in 1917 to empower the President to impose trade restrictions on foreign nations, citizens, and nationals of foreign countries, or other persons aiding a foreign country during the war. In 1933, the Emergency Banking Act (EBA) was enacted to stabilize the banking system in the US, and TWEA was accordingly amended to extend the authority of the President to invoke trade restrictions under TWEA even during a national emergency. . However, in 1977, the President's power to invoke sanctions during a national emergency as provided under section 5(b) of the Act was curtailed through the International Emergency Economic Powers Act of 1977. IEEPA restricted the application

⁴⁹ David Uren, *Economic Sanctions*, Australian Strategic Policy Institute (2020)

⁵⁰ Trade Expansion Act, 1962, § 232, (19 USC § 1862) (USA)

⁵¹ *Id.* at 50

⁵² The Trading with the Enemy Act, 1917 (12 USC § 95)(USA)

of TWEA only in times of war.

The IEEPA, 1977 empowers the President to declare impose appropriate economic sanctions in matters of “*unusual and extraordinary threat to the national security foreign policy or economy of the US*”. Section 1702 empowers him to investigate, regulate, or prohibit any financial transaction. Further, if the US is embroiled in armed attacks or hostilities with a foreign state, the President may confiscate the properties belonging to any foreign person, foreign organization, or foreign country that aids the alleged attacking state subject to the jurisdiction of the US. Likewise, section 1707 empowers the President to inflict multinational economic embargoes with governments in armed conflict with the US. Any measure imposed under IEEPA last for a year unless extended by the President or terminated by a joint resolution⁵³. The IEEPA was first invoked against Iran in 1979, and it is still operative.

The Export Administration Act (EAA) of 1979 is yet another prominent legislation concerning US economic sanctions. EAA authorizes the President to control the export of sensitive dual-use goods and technologies, that is “*items that have both civilian and military applications, including those items that can contribute to the proliferation of nuclear, biological, and chemical weaponry in the interest of national security, foreign policy or short supply purposes*”⁵⁴. The Act allows President to establish export licensing mechanisms for items detailed on the Commerce Control List (CCL). The Act finally lapsed in 1994, and in the year 2018, the US enacted a new statute titled the Export Control Act (ECA). ECA is the primary statute that controls the export of commercial and dual-use items. Sanctions under ECA are enforced by the Department of Commerce (DoC) and Bureau of Industry and Security. As per ECA, DoC shall not restrict the export of exempted items such as humanitarian aid. The Act also reflects the US concern over the national security threat possessed by critical technology and infrastructure. Apart from these general statutes, the US maintains a catena of country-specific and sector-specific sanctioning legislation such as Cuban Assets Control Regulation (CACR) 1963, Helms-Burton Act, 1996, Iran- Libya Sanctions Act of 1996, Iran Freedom and Support Act of 2006, Countering America's Adversaries through Sanctions Act of 2017.

The US established multiple executive agencies for identifying security threats and proper implementation and regulation of these statutes. The US Department of Commerce is endowed with myriads of goals such as to promote American economic interest, to maintain and augment American

⁵³ International Emergency Economic Powers Act 1977 (PL 95-223, 91 Stat. 1626) (USA)

⁵⁴ *Export Administration Act*, 1979, Pub. L. 96-72, 93 Stat. 503

leadership, to create job opportunities, etc. Maintaining US security by sanctioning or restricting harmful trade practices is another prominent responsibility imposed on the said body. Bureau of Industry Security (BIS), which is a part of the Department of Commerce, seeks to uphold the national security and economic objectives of the US by maintaining effective export control and treaty compliance system. Further, BIS strives to ensure US eminence and hegemony in strategic technologies. BIS, in consultation with the Department of Defence (DOD), plays a significant role in thwarting the proliferation of WMD⁵⁵. United States Department of State (DOS), the executive wing which is equivalent to the foreign affairs ministry in other states, plays a pivotal role in ensuring security by identifying, advising the President, the Congress, and the crucial executive agencies such Department of Commerce, Treasury in matters of foreign policy. DOS complements the other executive wings by setting a favorable international environment and building international support for the effective implementation of sanctions. Directorate of Defence Trade Controls (DDTC), a body within DOS, is responsible for regulating the export and import of defence articles and defence services covered by the US Munitions List (USML). DDTC secures US defence technology from its adversaries and at the same time promotes coalitions and interoperability with allies of the US. Department of the Treasury (USDOT) is yet another body that seeks to protect the US economy and security by countering and prohibiting transactions that are detrimental to the security and integrity of financial institutions and the financial system of the US.⁵⁶ Office of Foreign Assets Control (OFAC) is yet another integral body that administers US sanctions. OFAC publishes a list of Specially Designated Nationals (SDNs), which contains the name of people, organizations, and vessels with whom US citizens and permanent residents are prohibited from doing business⁵⁷. OFAC strive to prevent all kind of prohibited transactions'. OFAC supervise and enforce US sanctions by blocking assets, imposing fines barring parties from operating in the US etc⁵⁸.

⁵⁵ Bureau of Industry and Security, US Department of Commerce, Mission Statement, <https://www.bis.doc.gov/index.php/about-bis/mission-statement> (Last visited Jul 15, 2021, 10:00 PM)

⁵⁶ US Department of Treasury, Role of Treasury (Last visited Jul. 15, 2021, 10:30 PM) <https://home.treasury.gov/about/general-information/role-of-the-treasury>

⁵⁷Office of Foreign Assets Control, OFAC Sanctions List, <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information> (Last visited Jul 15, 2021, 12:00 PM)

⁵⁸ PIREs, *supra* note 11.

3.3 THE US SANCTIONS UNDER NATIONAL SECURITY EXCEPTION

3.3.1 IMPORT RESTRICTIONS ON STEEL AND ALUMINIUM

In determining whether the import of Steel and Aluminum at the existing tariff rate constitutes a threat to US national security, relying on its 2001 report on *'The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security'*, the Department of Commerce defined National security as “*general security and welfare of certain industries, beyond those necessary to satisfy national defence requirements, which are critical to minimum operations of the economy and government.*”⁵⁹. The US Department of Commerce, in the light of Section 232 of TEA 1962, analyzed the entire scenario and observed that Steel and Aluminium play a pivotal role in the US defence sector and other crucial sectors. The decline in domestic production and high import penetration constitutes a potential national security threat

Based on the investigation report published by the Department of Commerce, In 2018 May, the US imposed 25% and 10% import tariffs on Steel and Aluminium products, respectively, from all countries except Canada⁶⁰, Mexico⁶¹ Australia, Argentina, Korea, Brazil, and the European Union. However, later on, the policy was revised to the extent 25% tariff on steel imports from the EU, Canada, and Mexico. Likewise, a 10% tariff was made applicable to aluminum imports from Brazil, Canada, Mexico, and the EU. Later on, the US imposed a quota on steel imports from Korea, Argentina, and Brazil. In 2018 June, an import quota was placed on Aluminium imports from Argentina. Followed by this, in 2018 August, the import tariff on steel imports from Turkey was increased to 50%, and in 2020 January, the 25% and 10% tariff was extended to cover the derivatives of steel and aluminium, respectively.

EU challenged the measure under Articles I:1 , II:1(a) , II:1(b) , X:3(a) , XI:1 , XIX:1 , XIX:2 GATT 1994, Articles 2.1, 2.2, 3.1 , 4.1, 4.2 , 5.1, 7 , 9.1 , 11.1(a) , 11.1(b) , 12.1 , 12.2 , 12.3 Safeguards Article XVI:4 Agreement Establishing the WTO⁶². Other states like

⁵⁹ Department of Commerce, Bureau of Export Administration- *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security*- Oct/ 2001 (2001)

⁶⁰ Mutually settled the matter with the US

⁶¹ Settled the matter with the US

⁶² United States - Certain Measures on Steel and Aluminium Products WT/DS548/17

India⁶³, China⁶⁴, Canada⁶⁵, Norway⁶⁶Mexico⁶⁷, Switzerland⁶⁸, Russia,⁶⁹ Turkey⁷⁰ has also challenged the matter before WTO on similar grounds.

3.3.1.1 FINDINGS OF INVESTIGATION CONDUCTED UNDER SECTION 232 OF TEA, 1962

The Department of Defence (DoD) consumes around 3% of domestically produced steel for fabricating weapons and related systems for the nation's defence. Likewise, steel acts as a cardinal resource in critical infrastructure industries such as transportation systems, the electric power grid, water systems, and energy generation systems. According to the American Society of Civil Engineers, the US should invest around \$4.5 trillion in infrastructure by 2025, and this essentially requires a humongous amount of steel. Thus, the investigation report concluded that DoD and other crucial sectors need a substantial quantity of steel, but due to the augmented import penetration, the domestic producers have become less efficient and effective. During the 1970s, the import penetration was around 19%; during the 1980s, it was 21%. During the 1990 and 2000s, the figure reached 23%, and by 2016, the import penetration leaped to 30%. The domestic steel dealers substantially lost their markets to lower-priced imported steel and steel products. Owing to market loss, many steel mills have closed down, which rendered Hundreds jobless⁷¹. US steel industry employment has declined 35 percent (216,400 in 1998 to 139,800 in January 2016 - December 2016). The Stern School of Business at New York University reported that “*US steel industry players in the last five years experienced negative net income of 17.8 percent*”. Consequently, there has been an erosion of profit, owing to which domestic manufactures are unable to invest in Research and Development (R &D). Total capital spending dropped to “*\$3.87 billion in 2014 and further to \$3.11 billion in 2015 – 32 percent below 2010 levels of \$5.66 billion*”. Competition from imported steel has declined the facilities in smelting houses; for instance, “*in 1975, there were around 38 basic oxygen*

⁶³ United States - Certain Measures on Steel and Aluminium Products WT/DS547/11

⁶⁴ United States - Certain Measures on Steel and Aluminium Products, WT/DS544/11

⁶⁵ United States - Certain Measures on Steel and Aluminium Products WT/DS550/R

⁶⁶ United States - Certain Measures on Steel and Aluminium Products, WT/DS552/13

⁶⁷ United States - Certain Measures on Steel and Aluminium Products WT/DS551/R

⁶⁸ United States - Certain Measures on Steel and Aluminium Products, WT/DS556/18

⁶⁹ United States - Certain Measures on Steel and Aluminium Products, WT/DS554/20

⁷⁰ United States - Certain Measures on Steel and Aluminium Products WT/DS554/20

⁷¹ *RG Steel suffered three closures: Sparrows Point, Maryland; Steubenville, Ohio; and Warren, Ohio. In 2012, more than 2,000 employees were displaced in Maryland alone and another 2,000 in the Midwest. Gerdau Sand Springs in Oklahoma lost 300 employees after closing in 2009 because of a long-term drop in demand for steel. In 2013, at least 345 employees were laid off in response to the closure of the Claymont steel mill in Delaware*

furnaces, which is now decreased to 13. Similarly, from 1990 to 2016, the number of electric arc furnace facilities decreased from 127 to 98⁷². Global steel production has increased humoungously, and the share of the US in total global production has decreased significantly; in 2000, the US share of global steel production stood at 12 percent. “The US share of global steel production fell to 8% in 2005, 5% in 2009⁷³ And 4.8% in 2015. On the other hand, the Chinese share of global steel production is 49.7%”⁷⁴.

Similarly, Aluminium constitutes an inevitable role in ensuring the effective and efficient working of US DoD and other critical sectors such as transportation, manufacturing, power transmission, etc. Since 2012, 6 smelters have been closed, rendering the domestic production of Aluminium substantially low. In 2013, US aluminium production was 2 Metric Million Tons per year, and in 2016 785,000 metric tons. Owing to this reduced domestic production, in the yesteryears, the US has been importing Aluminium in large quantities. In 2012, the import penetration was 66 %, while in 2016, the import penetration level was about 90 %. 64% of Aluminium consumed by the US economy was imported. Aluminum import in 2018 was 18% above the tonnage basis of 2016. Further, there are only five smelters working, out of which the only one produces high-purity aluminum needed for defence and other critical sectors. According to the US, these factors have detrimentally affected the US interest⁷⁵.

Further, the investigation remarked that Chinese Aluminium producing industries are “unresponsive to market forces” and are overproducing in nature. US asserts that the 'excess aluminum capacity of China positions have weakened US aluminum industry.

Therefore US Secretary of Commerce, based on the findings, the US Secretary of Commerce asserted that “US domestic production of aluminium and steel is not good enough to meet its industrial requirements and US industries, especially the defence and the critical domestic industries are highly dependent on the imported steel and aluminium. Such insufficient production, weakening of the internal economy, and over-dependence on foreign players constitute a national security threat for the US”⁷⁶.

⁷² The Effect Of Imports of Steel on the National Security—An Investigation Conducted Under Section 232 of the Trade Expansion Act Of 1962, as Amended, US Department of Commerce 50-60 (2018)

⁷³ *Id.* at 72

⁷⁴ *Id.* at 72

⁷⁵ The Effect of Imports of Aluminum on the National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended, US Department of Commerce, 21-34 (2018)

⁷⁶ The Effect Of Imports of Aluminum on The National Security, An Investigation Conducted Under Section 232 of the Trade Expansion Act Of 1962, As Amended, US Department of Commerce, 3-6(2018)

3.1.1.2 WHETHER UNRESTRICTED IMPORT OF STEEL AND ALUMINIUM CONSTITUTE A NATIONAL SECURITY THREAT TO THE US?

Steel and aluminium are of inevitable importance in the defence sector and other crucial industries. However, a close analysis will prove that the measures adopted by Trump are unnecessary. The US has instituted this measure in a non-uniform fashion. A tariff rate of 25% does not apply to Canada, Mexico, Argentina, Korea, Australia, Brazil. Likewise, Australia, Canada, Mexico, Argentina, Korea are exempted from the tariff on Aluminium. Thus, the MFN principle enshrined in Article I of GATT is infringed. Article 2.2 of the Safeguard Agreement also stands violated. Similarly, the quantitative limits imposed on Korea, Brazil, and Argentina violates Article XI (1). In the case of steel, the amount of steel imported is 14.8 million metric tons, 21.8 million metric tons, 26.0 million metric tons, 30.5 million metric tons, 29.2 million metric tons, 40.3million metric tons, 35.4, 30 million metric tons, 34.5 million metric tons, 30.8 million metric tons in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 respectively. Parallely, domestic production and domestic consumption have also increased accordingly. The domestic production were 59.4 million metric tons, 80.5 million metric tons, 86.4 million metric tons, 88.7 million metric tons, 86.9 million metric tons, 88.2 million metric tons, 78.8 million metric tons, 78.6 million metric tons, 81.6 million metric tons, 86.6 million metric tons respectively during the period 2009 to 2018. Likewise, the domestic consumption of steel by the US were 65.1 million metric tons, 90.7million metric tons, 99.6 million metric tons, 106.0 million metric tons, 104.0 million metric tons, 117.0 million metric tons, 104.7 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 respectively⁷⁷. Thus, the share of import steel was in harmony with the domestic production and consumption and did not inflict any threat on domestic industries or national security.

Similarly, in the case of Aluminium, 3.68 million metric tons, 3.61 million metric tons, 3.71 million metric tons, 3.76 million metric tons, 4.16 million metric tons, 4.29 million metric tons, 4.56 million metric tons, 5.41 million metric tons, 6.2 million metric tons and 5.55 million metric tons were imported during 2009 to 2018⁷⁸. Here again, the decrease and increase in imported quantity were in consonance with the domestic needs. Therefore it can be concluded that import of steel and aluminium import does not constitute a threat to the US. The measures

⁷⁷ Steel Imports Reports: US, International Trade Administration, (2020) P. 5, <https://legacy.trade.gov/steel/countries/pdfs/imports-us.pdf>

⁷⁸ M. Garside, *US Import of Aluminium for Consumption 2006-2020*, STATISTA (Feb 23, 2021) <https://www.statista.com/statistics/209327/us-aluminum-imports-for-consumption/>

adopted by the US, thus violative of Article XIX(1)(a) of GATT and Article 2.1, Article 3.1, Article 4.1, Article 4.2, and Article 5.1 of Safeguard Agreement, are also violated.

In 2016 only 3 % of domestic production of steel was used for national defence and homeland security⁷⁹. Likewise, the Chinese Ministry of Commerce has asserted that *“the amount of aluminum required by the national defence and homeland security is only 1.7 % of the US total domestic consumption of aluminum and less than 4 % of the US total domestic supply of aluminum”*⁸⁰. Based on this, James Mattis, the US Defence Secretary during Trump's reign, has said, *“broad-based import restriction on steel and aluminium are unnecessary.”*

Moreover, the US imports a major share of steel and aluminium from its close allies. Canada, Brazil, Mexico, and South Korea are major exporters of steel to the US. And the major sources of aluminium are Saudi Arabia, UAE, India, and Netherland Antilles⁸¹. Therefore, there does not exist any imminent threat. The existing level of domestic production of steel and aluminium coupled with the imports from the close allies are good enough to meet the demands of the defence and other crucial sectors.

Further, the 2001 section 232 investigation for determining the effect of import of iron ore and semi-finished steel is of relevance here. In a 2001 investigation, the US Department of Commerce concluded, 'imports were not a national security threat'. Affirming this conclusion, the Defence Department noted that, *“even if national security issues demand more domestic production, it is okay to import from “diverse and reliable trading partners”*⁸²”.

Moreover, the US aluminium and steel industries are highly competitive and technologically advanced enough to ensure the required domestic supply. US Aluminium companies have their factories in different parts of the world and have access to rich Bauxite deposits. Bauxite reserved by Alcoa (American Aluminium Company) in Australia, Brazil, and other countries amounts to 230 million tons. As mentioned earlier, the US Aluminium industry is abreast with the developments and highly tactical; recently, they have shifted the electrolytic Aluminum

⁷⁹ International Trade Administration, Steel Industry Executive Summary: December 2017," US Dept. of Commerce, (Dec. 2017), p. 3. <https://enforcement.trade.gov/steel/license/documents/execsumm.pdf>

⁸⁰ Testimony of the Ministry of Commerce of the People's Republic of China, (Jun 22, 2017) https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

⁸¹ Aluminium Imports in to the USA-List of Aluminium Importers in USA, EXPORT GENIUS, (May 10, 2018) <https://www.exportgenius.in/blog/aluminum-imports-into-the-united-states-list-of-us-aluminum-importers-268.php>

⁸² *Supra* note 79

production plants to energy-rich countries like Iceland, Middle -East states.

In November 1975, Sweden imposed an import quota on various footwear to expand its domestic production. Sweden based its measure on Article XXI GATT and asserted that *“the continued decrease in domestic production has become a critical threat to the emergency planning of Sweden's economic defence as an integral part of the country's security policy. This policy necessitates the maintenance of a minimum domestic production capacity in vital industries. Such a capacity is indispensable in order to secure the provision of essential products necessary to meet basic needs in case of war or other emergencies in international relations.”*⁸³The matter was not registered as a formal case under WTO; Sweden reversed its measure in 1977. However, the measure was condemned by the majority of the contracting parties; they found the justification to be irrational⁸⁴. The US adopted measure can be equated to Sweden's case. The justification and data presented by the US do not stand the test under GATT XXI (b)(iii). Thus, import from contracting states does constitute a national security threat.

Additionally, Trump has failed to comply with the procedures prescribed under section 232 while imposing the tariff. As per the procedure laid under section 232, any measure can be imposed only after a comprehensive investigation, and before finalizing the measure, 'public consultation and thorough impact assessment' is mandatory⁸⁵. Once the measures and subject matters are finalized, any adjustment or change can be made only during the next 15 days. In the given case, the act of augmenting the import tariff on steel from Turkey is violative of section 232. Similarly, in 2020 January, deviating from the alleged rules, Trump extended the measures to derivatives of steel and aluminum. Both the acts were held violative of section 232 by the US Court of International Trade⁸⁶. Further, there are gross allegations prevailing against the negotiations and tariff exclusion process for domestic industry. In October 2019, the US Department of Commerce's Office of the Inspector General issued a memorandum stating that *“the Section 232 exclusion request review process is neither transparent nor objective” and cited concerns of “the appearance of improper influence in decision-making for tariff exclusion requests.”*⁸⁷

⁸³ Sweden - Import Restrictions on Certain Footwear, GATT Doc. L/4250 (Nov. 17, 1975)

⁸⁴ Sweden - Import Restrictions on Certain Footwear, GATT Doc. L/4250/Add. I (Mar. 15, 1977).

⁸⁵ Scott Lincicome; Inu Manak, Protectionism or National Security? The Use and Abuse of Section 232, Cato Institute 7-11 (2021)

⁸⁶ *Id.* at 85

⁸⁷ *Id.* at 86

3.3.2 THE US SANCTIONS AGAINST VENEZUELA

3.3.2.1 BACKGROUND

The US – Venezuela relation has deteriorated since the Cold. The friction between these states aggravated during the reign of Hugo Chávez, who became the President of Venezuela in 1999⁸⁸. Venezuela, under his governance, shared close ties with USSR, Cuba and promulgated the principle of Socialism in Venezuela. The US was utterly unhappy with this fact. The US started imposing full-fledged economic measures against Venezuela since 2017 to beat the Nicolas Maduro government in power. Maduro's government, since the time it was elected in 2013 is involved in gross human rights violations and corruption. Before 2017, the US had formulated different measures which were primarily non-economic in nature, such as since 2006, the sale of arms to Venezuela was prohibited, strengthen its drive against drugs, the US has placed economic restrictions on various Venezuelan individuals and 27 companies by designating them as Specially Designated Narcotics Traffickers according to the Foreign Narcotics Kingpin Designation Act. In 2014, Venezuela's Defence of Human Rights and Civil Society Act to fight against human rights violations in Venezuela.

3.3.2.2 EXISTING SANCTIONS

Sanctions on the Oil Industry

In 2019, the US sanctioned the Venezuelan Petroleum company Petróleos de Venezuela, SA, or PdVSA and Central Bank of Venezuela. All the US-based assets of PdVSA are blocked by the US. US nationals and companies are not permitted to enter into any transaction with this company. To hinder oil Venezuela's oil production, prohibited exporting naphtha to Venezuela.

Sanctions on the Gold Industry

The World Gold Council reported that there had been a tremendous fall of 69% in the foreign-held gold reserves of Venezuela during Maduro's rule due to corruption among officials. In 2019 US Department of Treasury sanctioned the state-owned gold sector company, Minerven.

Sanctions on the Shipping Industry

⁸⁸ Adája Stoetman;Anna Zeverijn, entinel of the Caribbean: *US Foreign Policy towards Venezuela*, Clingendael Institute (2020) https://www.jstor.org/stable/resrep29359?seq=1#metadata_info_tab_contents

In 2020, several shipping companies and vessels were sanctioned for transporting Venezuelan oil and such other petroleum products⁸⁹.

Sanctions on the Financial Sanctions

In August 2017, Trump, through EO 13808, prohibited the Venezuelan government and entities from accessing US financial markets. Via EO 13827 and 13835, the use of Venezuelan digital currency and the purchase of Venezuelan debt were prohibited, respectively.

Sanctioned and blocked the assets of individuals and companies involved in Venezuela's national food distribution network Local Production and Supply Committees (CLAPs)⁹⁰.

3.3.2.3 WHETHER VENEZUELA CONSTITUTES A SECURITY THREAT TO THE US?

According to Pew Research Center surveys on “Global Attitudes,” Venezuelans have great affection and respect for the US and its people. The survey ranks the Venezuelan population as the greatest admirers of the US⁹¹. However, the attitude or relation between the governments of the US and Venezuela are just the opposite. US Secretary of State Mike Pompeo “*I don’t think there is any doubt that ... the Maduro regime presents a threat to the United States of America*”⁹². The US alleges that the Venezuelan government is funding educational institutions to break this affinity towards the US⁹³. The increased presence or support from powers like China and Russia is alarming.

Further, the US claims that Venezuela has been receiving huge funds to destabilize the system in neighboring states like Bolivia, Nicaragua, Colombia, and Ecuador⁹⁴. The US believes that if China, Russia, and Cuba were not supporting the Maduro government, the US would have succeeded in removing him from power. Disagreement from Russia and China has impeded

⁸⁹ Clare Ribando Seelke, *Venezuela: Overview of US Sanctions*, Congressional Research Service (Jan 22 2021) <https://fas.org/sgp/crs/row/IF10715.pdf>

⁹⁰ Lucas Koerner, *US Imposes New Sanctions Targeting Venezuela’s Food Program*, VENEZUELANALYSIS (Sept 18, 2019, 4:14 PM), <https://venezuelanalysis.com/news/14659>.

⁹¹ J. Michael Waller, *What to Do About Venezuela*, Center for Security Policy (2005) <http://www.jstor.com/stable/resrep05069>

⁹² Lesley Wroughton and Patricia Zengerle, *Maduro Government a Threat to US National Security: Pompeo*, THE REUTERS (Apr. 10, 2019, 9:35 PM) <https://www.reuters.com/article/us-venezuela-politics-pompeo-idUSKCN1RM25K>

⁹³ WALLER, *supra* note 91

⁹⁴ WALLER, *supra* note 91

the adoption of UNSC Resolution to tackle the humanitarian crisis going on in Venezuela.

The argument that Venezuela is a threat to the US and regional stability is a highly exaggerated, politically motivated statement to further isolate the nation. With an intention to augment its international influence and role as arbiter of international issues, Russia and China has meddled in the Venezuelan issue⁹⁵. The support extended by Russia, China, Cuba to Maduro's government is one of the factors that has disturbed the US. The economic, political situation in Venezuela is pathetic, and therefore, Venezuela is in no position to disturb the stability or security of the US or any nation.

Former US National Security Advisor John R. Bolton said: *“that his government was ready to impose sanctions on any international company doing business with Nicolás Maduro, an act that could ensnare its dealings with its allies such as Russia, China.”*⁹⁶ This essentially proves that the ultimate aim of the US is not to instill peace or democracy in Venezuela as touted by the US but to eliminate the influence of Russia, China.

In 2020 May, a group of terrorists was aided by the US was arrested by the Venezuelan government. Of these 13, 2 were US citizens (they were employed under Jordan Goudreau, a US military veteran who runs a security firm called 'Silvercorp USA'). According to an *Associated Press* report, the very aim of this operation was to raid the military camps and ignite rebellions in Venezuela. On May 3rd, 2020, the Silvercorps USA tweeted, *“Strikeforce incursion into Venezuela. 60 Venezuelan, 2 American ex-Green Beret...”*. Then-President Donald Trump was tagged in this tweet⁹⁷. Although Trump denied these claims, evidence substantiates US involvement in the incursion. Thus basically, Venezuelan security is under the threat of the US. Subsequent statement given by Trump that *“the involvement of the US government in Venezuela would have occurred through an invasion”*⁹⁸ has rendered the situation more alarming and deteriorating.

⁹⁵ John E. Herbst, Jason Marczak, *Russia's Interference at Venezuela: What's at Stake?*, ATLANTIC COUNCIL (Sep 12, 2019) <https://www.atlanticcouncil.org/in-depth-research-reports/report/russias-intervention-in-venezuela-whats-at-stake/>

⁹⁶ Mitra Taj, *US Ready to Target Other Countries for Supporting Venezuela's Maduro*, THE REUTERS (Aug. 6, 2019, 1:19 AM) <https://www.reuters.com/article/uk-venezuela-politics-usa-idUKKCN1UV240>

⁹⁷ Explained: *Why is Venezuela accusing the US of the attempt to topple its govt?* THE INDIAN EXPRESS, (May 7, 2020, 8:27 PM) <https://indianexpress.com/article/explained/explained-why-is-venezuela-accusing-us-of-attempt-to-topple-its-govt-6397237/>

⁹⁸ Brian Ellsworth, *Trump Says US Military Intervention in Venezuela 'an Option'; Russia Objects*, THE REUTERS (Feb. 3, 2019, 7:47 PM) <https://www.reuters.com/article/us-venezuela-politics-idUSKCN1PS0DK>

Yet another factor that prompts the US to move against Venezuela is its desire to become an oil-exporting giant. Venezuela is endowed with huge oil deposits, and the US has been quite envious of this. Thus, the attempt to meddle in Venezuelan affairs can be attributed to the US's desire to get hands-on these resources. According to William LeoGrande, a professor at American University in Washington, DC, who specializes in Latin America, *“through the sanctions against Venezuela US also intends to aggravate the Cuban⁹⁹ crisis¹⁰⁰.”*

According to the US, the ultimate reason for Venezuela's economically downtrodden state is the vehement corruption committed by authorities. US State Department said, US sanction on respective sectors *“closes another avenue for corruption by denying the Venezuelan regime the ability to earn money by selling off public assets at 'fire sale' prices at the expense of the Venezuelan people.”* But it is to be noted that the measures imposed by the US are in blatant violation of GATT and GATS. The restrictions imposed on Gold and oil industries have infringed Article 1, Article II (1) (a) and (b) of GATT. The EO 13808, which prohibited the Venezuelan government and entities from accessing US financial markets, is violative of Article III, Annex on Financial services under GATS.

3.3.3 THE US SANCTIONS AGAINST RUSSIA

3.3.3.1 BACKGROUND

Russia joined WTO in 2012. Post disintegration of the USSR, US- Russian relations were apparently warm until 2014, except for the impasse during 1999 due to NATO's intervention into Yugoslavia. During this period (1991-2004), the US and Russia have passionately collaborated on multiple missions, such as the fight against terrorism, curtailment of North Korea's nuclear activities, the conclusion of the Strategic Offensive Reductions Treaty (SORT) in 2002 to promote arms reduction, conducted a joint anti-hijacking exercise called Vigilant Eagle-2010, concluded: “New Strategic Arms Reduction Treaty” (New start) in 2011, etc. However, as a result of Russian's intervention in Ukraine, the relation deteriorated substantially. Russia's alleged cyber-attacks and interference in the 2016 US Presidential

⁹⁹ *“They hope that by toppling the Venezuelan government and cutting off oil exports to Cuba, they can bring about an economic crisis in Cuba that causes political collapse there as well,”*

¹⁰⁰ Chase Winter, *New Policy on Seized Property in Cuba Threatens EU ties*, DW, (May 02, 2019) <https://www.dw.com/en/new-us-policy-on-seized-property-in-cuba-threatens-eu-ties/a-48364287>

election worsened the bond. The US found these acts to be a significant threat to national security and imposed economic sanctions.

US action against Russia is a combination of sectoral sanctions and designation of individuals, vessels, entities, aircraft, in SDN list, around 680 individuals, entities, vessels and includes key personals or officials, Russian public and private companies, banks, etc. Sectoral sanctions are mainly imposed in the defence, energy, and financial sectors. As of 2020, 13 Russian companies and their subsidiaries are placed in the Sectoral Sanction Identification (SSI)list.

3.3.3.2 EXISTING SANCTIONS

On April 1, 2015, then-President Obama issued an EO recognizing and acknowledging the persistent cyber-attacks instituted against critical infrastructures of the US for financial gains by individuals and entities located outside the US. In December 2016, US President Obama released EO 13757, sanctioning the individuals and entities embroiled in tampering, altering, or undermining the US election process.

The President, through EO 13660, declared Russian invasion of Ukraine constitutes a National Emergency. The US condemned Russia for undermining Ukraine's sovereignty, security, and peace. EO 13685 prohibited US firms and enterprises from conducting business or trade or investment in the Russian-occupied region of Ukraine. In 2014, invoking his power under IEEPA and NEA, enacted the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act (SSIDESUA) of 2014 and the Ukraine Freedom Support Act (UFSA) of 2014. Further, in 2017, Mr. Trump consolidated and codified Ukraine related and cyber-related sanctions through the Countering Russian Influence in Europe and Eurasia Act¹⁰¹ (CRIIEA) of 2017.

Sanctions on the Defence Sector

Invoking the authority under section 5 of UFSA 2014, the US imposed financial and trade restrictions on Russian entities that supply defence articles to Syria, Ukraine, Georgia. The US denied export licenses for defence products or services to Russia. Around eight major defence companies are sanctioned. By 2014 April, the US stopped exporting those goods that added

¹⁰¹ CRIIEA; PL 115-44/H.R. 3364, Countering America's Adversaries Through Sanctions Act [CAATSA], Title II

Russia's military and defence capacity.

Sanctions on the Energy Sector

The United States places restrictions on the export of various oil and gas technologies to Russia. The US Treasury bans US companies from supplying goods and technologies to “*Gazprom, Lukoil, Transneft, Gazprom Neft, Surgutneftegaz, Novatek, and Rosneft*”.

Sanctions on the Financial Sector

The US Treasury imposed sanctions on major banks like Gazprombank and VEB, VTB, Bank of Moscow, and the Russian Agricultural Bank, Sberbank, Vneshekonombank. Strict Capital restrictions were imposed on these banks.

3.3.3.3 WHETHER RUSSIA CONSTITUTES A NATIONAL SECURITY THREAT TO THE US?

The US has asserted that Russia possesses a 'hybrid threat' to its security. Russia has instituted multiple cyber-attacks against the US. Owing to Russian 'SolarWinds' software, it has suffered a data breach in 2020 December. Russian involvement in the 2016 US Presidential election is yet another prominent instance where Russia interfered to undermine or destruct the democratic setting in the US. According to the US, Russia had put strenuous efforts in sowing disinformation through social media, hacking the voting machines¹⁰².. Russia has ardently dismissed all accusations of Cyberattacks; it is all 'farcical.' “*We have been accused of all kinds of things, election interference, cyber-attacks and so on and so forth, and not once, not one time, did they bother to produce any kind of evidence or proof, just unfounded accusations*”¹⁰³.” However, these findings are confirmed by Select Committee on Intelligence, CIA, FBI¹⁰⁴.

Russia's intervention into Ukraine's territory is a gross infringement of the international principle of territorial sovereignty and integrity. Russia has been defending acts on the principle

¹⁰²“Where Is Proof?”: Russia's Vladimir Putin Denies Cyberattacks On US, NDTV, (Jun 14, 2021) <https://www.ndtv.com/world-news/where-is-proof-russias-vladimir-putin-denies-cyberattacks-on-us-2463770>

¹⁰³*Id.* at 102

¹⁰⁴ Mary Louis Kelly, *FBI Agrees with CIA on Russian Interference in Presidential Election*, NPR, (Dec 16, 2016, 4:30 PM) <https://www.npr.org/2016/12/16/505892960/fbi-agrees-with-cia-on-russian-interference-in-presidential-election> “*Major intelligence agencies now agree that Russia interfered in the US election to help Donald Trump win the presidential race. Earlier reports had suggested there was a difference of opinions between the CIA and the FBI*”.

of 'Self Determination. Russia argues that the “*annexation of Crimea does not pose any threat to the US or EU. In the Crimean Referendum dated 16th March 2014, 95.5% of participating voters in Crimea has seconded the notion to join Russia, and it is in accordance with the principle of 'Self Determination.*”¹⁰⁵.

The said act was recognized as internationally illegal by the UN through its multiple resolutions demanding Russia’s withdrawal. The UNGA has issued around 7 Resolutions in this regard¹⁰⁶. The alleged referendum dated March 16th, 2014 is illegal, “*violates both the Ukrainian constitution and general principles of international law*”¹⁰⁷.” Report by Evgeny Bobrov, a member of the Russian President's Human Rights Council, suggested that “*the official results were inflated and only 15% to 30% of Crimeans eligible to vote actually voted for the Russian option*”¹⁰⁸. Moreover, going by Article 73 of Ukrainian Constitution, ‘any change in the territory of Ukraine can be effected, only if approved by all people of Ukraine’¹⁰⁹.

The UNGA has also rejected the referendum through its resolution dated 1st April 2014, wherein it affirmed that “*territorial integrity of Ukraine within its internationally recognized borders*”¹¹⁰. In 2016, UNGA passed another resolution and condemned the Russian act¹¹¹. It is to be noted that Russian intervention into Ukraine is not an isolated event; rather, Russia

¹⁰⁵ Mike Collett-White, *Ronald Popeski, Crimeans vote over 90 percent to quit Ukraine for Russia*, REUTERS, (Mar 16, 2014, 8:12 AM) <https://www.reuters.com/article/cnews-us-ukraine-crisis-idCABREA1Q1E820140316>.

¹⁰⁶ Res. 68/262, March 27, 2014, “Territorial integrity of Ukraine.”

Res. 71/205, December 19, 2016, "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)

Res. 72/190, December 19, 2017, “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine.”

Res. 73/194, December 17, 2018, "Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov."

Res. 73/263, December 22, 2018, “Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine.”

Res. 74/17, December 9, 2019, “Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov.”

Res. 75/29, December 7, 2020, “Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov.”

¹⁰⁷ John Bellinger, *Why the Crimean Referendum Is Illegitimate*, CFR, (Mar 16, 2014, 2:53 PM) <https://www.cfr.org/interview/why-crimean-referendum-illegitimate>

¹⁰⁸ Paul Roderick Gregory, *Putin’s Human Rights Council Accidentally Posts Real Crimean Election Results*, FORBES, (May 5, 2014) <https://www.forbes.com/sites/paulroderickgregory/2014/05/05/putins-human-rights-council-accidentally-posts-real-crimean-election-results-only-15-voted-for-annexation/?sh=45d792d0f172>

¹⁰⁹ Art 73, Constitution of Ukraine, 1996 ‘Altering the territory of Ukraine IS resolved exclusively by an All-Ukrainian referendum.’

¹¹⁰ United Nations General Assembly, Resolution 68/262. The territorial integrity of Ukraine (1 Apr 2014)

¹¹¹ United Nations General Assembly, Resolution 71/205. The situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) (1 Feb 2017)

is repeatedly involved in such illicit measures. Russian intervention into Georgia, Serbia, and Syria, etc., are some of the notable incidents. Scholarly opinions suggest that such interventions have substantially undermined the stability of Europe. Russian acts have proved to be a direct threat to all European states, including the 29 NATO members and their trading, political allies.¹¹² There exist a 'one for all, all for one' system in NATO, and going by this fundamental, the US is obliged to “*promote stability and well-being in the North Atlantic area*” and are “*resolved to unite their efforts for collective defence and the preservation of peace and security*”¹¹³.

Russia has violated Article 2(4) of UN Charter, Articles 1(a) I, 1(a) II, 1(a) III, 1(a) IV, 1(a) VI, 1(a) VII, 1(a) X of the Helsinki Final Act. Further, it has breached, such as the CFE, INF, and Open Skies Treaties.

During the hearing before the Commission on Security and Cooperation of in Europe, regarding 'The Growing Russian Military in Europe,' Dr. Micheal Carpenter, Senior Director, Penn Biden Center for Diplomacy and Global Engagement, noted that repeated and prolonged interventions are all an extension of Russia's effort to “*roll back Western influence in the post-Soviet region by subverting the foundations of Western democracy and undermining NATO and the EU*”¹¹⁴. He further noted that to achieve its political motives, Russia usually employs military interventions in non-NATO countries and agents NATO states; Russia use tactics such as “*cyber-attacks, covert subversion operations, and information warfare.*” Thus, it is asserted that “*security of Europe, and to the US.*”¹¹⁵

Owing to the above said reasons, Russian actions squarely affect the security of the US under Article XXI (b)(iii) and Article XIV (b)(iii) of GATT and GATS, respectively. Therefore, the US is politically, economically, and legally entitled to impose economic restrictions in the interest of human rights, national and regional security, and peace. The imposed measure can therefore be protected under National security exceptions. The measures adopted by the US with respect to Russia are apt and judicial. The oil and Sector happen to be one of Russia's most

¹¹² The Growing Russian Military Threat in Europe (May 17, 2017), 52 Human Rights, the Helsinki Accords and the United States: Selected Executive and Congressional Documents I (2017).

¹¹³ North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 UNTS 243.

¹¹⁴ The Growing Russian Military Threat in Europe (May 17, 2017), 52 Human Rights, the Helsinki Accords and the United States: Selected Executive and Congressional Documents I (2017).

¹¹⁵ *Id.* at 114

profitable or revenue-generating industries. Likewise, the defence sector happens to be yet another rewarding arena. Sanctioning these industries will inflict substantial economic pressure on Russia, which might prompt Russia to withdraw from Ukraine. Moreover, sanctioning the defence sector essentially limits Russia's sale or supply of arms and defence equipment to such radical states.

3.3.4 THE US SANCTIONS ON IRAN

3.3.4.1 BACKGROUND

The US holds numerous sanctions against Iran. These sanctions depict US efforts to restrain Iran's nuclear activities, to counter Iran's acts of terrorism and its support to terrorist groups such as Hamas, Hezbollah, to ensure no violation of human rights. The first-ever sanction was imposed in 1979 during the Presidency of Jimmy Carter in response to the 'Iranian Hostage incident, wherein the US Embassy at Iran was seized by a group of radical Iranian students. Via Executive Order (EO) 12170, the US froze Iranian assets in US Jurisdiction and imposed a trade embargo on Iran. These sanctions were withdrawn in 1981 when the hostage crisis was settled under the Algiers Accord. The 1979 sanction was just the beginning; in the latter days, the US imposed innumerable and comprehensive sanctions on all fields of Iran, including the strategic ones such as the Energy sector, Banking, Airline, shipping, defence, etc.

In 1984, owing to Iran's support to terrorist groups, the US branded Iran as 'State sponsor of Terrorism,' under section 6(j) of the Export Administration Act of 1979, and a set of restrictions were imposed in this regard, such as sales of US dual-use items to Iran were restricted, sale of arms and direct US financial assistance were banned, threatened and opposed multilateral institutions from lending to Iran, etc. In 1995, President Clinton prohibited the US companies from knowingly exporting goods to a third country for incorporation into products destined for Iran. Post-2001, in response to the 09/11 attack, the US augmented its sanctions on terrorist organizations and states sponsoring terrorism, including Iran, via EO 13224.

3.3.4.2 EXISTING SANCTIONS

Sanctions on Airlines

In 2011, Iranian Airlines were sanctioned through EO 13382 and 13224, whereby the US

stopped exporting aircraft and spare parts to Iran.

A comprehensive analysis is not possible; thus, we will be looking into some of the specific activities of the US.

Sanctions on the Oil And Energy Sector

In 1995 US enacted the Iran and Libya Sanctions Act; however, in 2006, the Act was renamed the Iran sanctions Act as the US dropped its sanctions against Libya. The Act is purported to limit the developments and investments in the Iranian energy sector. The act is extraterritorial in nature, and thus, any entity investing more than \$20 million in one year in Iran's energy sector will attract US sanctions. Other elements that trigger US sanction are, sale of chemical or nuclear or biological or related technologies to Iran, sale of gasoline or related services or technologies which helps Iran to make gasoline¹¹⁶. In 2012, EO 13622 was issued whereby ISA jurisdiction was extended to bar US banks from transacting with National Iranian Oil Company (NIOC) or Naftiran Inter-trade Company (NICO). Further, ISA sanctions the construction of gas pipelines involving Iran. Initially, the sanctions under ISA were not applicable to Liquefied Natural Gas (LNG); however, CISADA amended the definition of 'Petroleum resources' under ISA to include LNG. And now ISA restricts investment in Iran and supply of LNG tankers to Iran. But it is to be noted that Iran has not yet developed an LNG export capability to date¹¹⁷.

Sanctions on Finance Sector

In 2012, the US enacted National Defence Authorization Act (NDAA). As per NDAA, no foreign bank can open an account in the US, and serious restrictions will be imposed on the existing accounts if the said bank has been involved in a significant financial transaction with the Central Bank of Iran or any other sanctioned Iranian banks. The said provision applies to Foreign Central Banks if the financial transaction is with regard to payment for oil. Till 2019, under a scheme called Significant Reduction Exception (SRE), Banks of certain countries which have significantly reduced the purchase of oil from Iran were exempted from the above-said sanction. The countries are namely China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey. In April 2019, the SRE system was abolished to push Iran's oil export to

¹¹⁶ Kenneth Katzman, *Iran Sanctions*, CRS (Apr 6, 2021) <https://sgp.fas.org/crs/mideast/RS20871.pdf>

¹¹⁷ *Id.* at 116

as close to zero as possible¹¹⁸.

Until 2019, certain exceptions were provided to facilitate transactions relating to food, medicine, medical devices, agricultural products, etc. However, via EO 13224 dated 20th September 2019, the Central Bank of Iran was designated as a terrorist entity and the following exceptions were dropped.

To conduct effective and efficient export of goods, Iran needs proper insurance coverage. 13 major insurance companies are US-based, and they are prohibited from insuring Iranian vessels, which has caused huge hardships to Iran.

Sanctions on Shipping Industry

In 2012, the US amended ISA to sanction vessels that transport oil from Iran. Sanctions on the Iranian Shipping sector were augmented during Trump's reign. However, Trump presented such oil shipping activities as acts of illegal and ulterior intention. . On September 4, 2019, the OFAC rendered “bunkering services” for Iranian oil shipments a punishable act¹¹⁹.

Sanctions on Arms and Weapons-Related Technology Transfers

The Iran-Iraq Arms Nonproliferation Act, 1993 (This statute was renamed as Iran-North Korea-Syria Nonproliferation Act (INKSNA) in the year 2000) and National Defence Authorization Act, 1992 imposes such stringent restrictions to deter the arms and ammunitions capacity of Iran. These statutes sanction foreign entities that supply Iran with WMD technology or “destabilizing numbers and types of advanced conventional weapons. Similar sanctions are imposed under section 5(b)(1) and section 5(b)(2) of the Iran Sanctions Act. Sections 620G and 620H of the Foreign Assistance Act provide that the US shall not accept any aid from a foreign state that provides financial assistance to Iran or any other country listed for sponsoring terrorism. EO 13382, dated June 28, 2005, empowers the President to block the assets of proliferators of WMD. The CAATSA of 2017 mandates “*sanctions on arms sales to Iran and on entities that materially contribute to Iran's ballistic missile program*”. The UN Resolution 2231, which banned the transfer of arms to and from Iran, was to expire on October 18, 2020. The US wanted to extend the same but failed to gather UN support of UNSC, thus issued EO 13949, which provided for blocking property of entities involving the transfer of arms and

¹¹⁸ *Id*

¹¹⁹ *Id*

related items to or from Iran¹²⁰.

Sanctions on other Sectors

In 2013, the US enacted Iran Freedom and Counter-proliferation Act. As per section 1244 (IFCA), 2013, any entity providing goods, services, or other support to any Iranian individual or entity designated as SDN will attract US sanctions. Section 1247 prohibits US-based banks from facilitating transactions for SDN. Further, any entity serving Iran's energy, shipbuilding, and shipping sectors, or port operations in Iran, with any kind of financial, or technological, or any other support will be sanctioned under section 1244 (1). Supply of precious metals, semi-finished metals, or software for integrating industrial processes into Iran will trigger sanctioning measures under section 1245. The US under section 1246 sanctions any entity providing underwriting services, insurance, or reinsurance for any transaction or act sanctioned by the US under any of its statutes or Executive orders¹²¹.

On July 14, 2014, the JCPOA was concluded between Iran and the P5+1 (“China, France, Germany, Russia, the United Kingdom, and the United States”). Followed by this, the US suspended sanctions on the Iranian oil and banking sector. Iran was allowed to export carpet, food items to the US. Several entities, individuals were released of their designation under SDN. Moreover, travel bans were relaxed, and Iran was allowed to purchase Aircraft from US companies. However, post US withdrawal, these measures were re-imposed.

3.3.4.3 WHETHER IRAN CONSTITUTES A NATIONAL SECURITY THREAT TO THE US?

Iran claims that its geographical location and the geopolitical events unfolded in the region in the recent past such as the assassination of Major General Qasem Soleimani, US invasion into Iraq, Afghanistan, attacks from Iraq, Iran-Israel proxy war, frequent militant acts by extremist groups, etc. positions Iran in great threat, and its nuclear missions are essentially intended to ensure national and regional security¹²². To defend its nuclear programs, Iran has relied on some of the prominent verdicts of the ICJ - ICJ in the case of *Nicaragua v. the United States of America* have held that, “*in international law, there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level*

¹²⁰ *Id*

¹²¹ *Id*

¹²² Steven R. David, *Why a Rational, Nuclear Iran Is an Unacceptable Risk to Israel*, Begin-Sadat Center for Strategic Studies 6 (2013)

of armaments of a sovereign State can be limited.”¹²³ Likewise, the ICJ, while exercising its “Advisory Opinion in Legality of the Threat or Use of Nuclear Weapons”, has opined that “*there is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such.*”¹²⁴

However, the unfettered nuclear missions of Iran undoubtedly constitute a global threat. Despite its dire economy, Iran has developed and furthered its ballistic missile potential. These missiles are capable of reaching Europe. In 2018, Iran launched a ballistic missile attack at Kurdish Democratic Party headquarters in Iraq. In 2019, Iran directed a drone attack against Saudi oil infrastructure. In 2020, Iran attacked a US base in Iraq with ballistic missiles.¹²⁵ Iran's proximity with the Hormuz Strait, one of the most important chokepoints, is again a matter of concern. Lately, Iran bombed an Israeli ship, seized a South Korean tanker, and held it for ransom; Iranian naval mine damaged a US tanker. Further, Iran's support to militant groups like Hezbollah, Hamas, the Houthis immerse the region in great threat¹²⁶. Thus allowing Iran to become a full-blown nuclear power is detrimental to global peace and security.

Clause (a) (i) of the national security exception allows a member to resort to economic restrictions if a state is engaged in activities “*relating to fissionable materials or the materials from which they are derived.*” Thus, Iran clearly falls in this category and constitutes a legitimate threat. Moreover, the 7 UNSC resolutions pertaining to Iran's nuclear enrichment acknowledge this fact. The UNSC issued its first Resolution 1696 in 2006 July and was not sanctioning in nature. Resolution 1696 warned and demanded Iran to suspend all its nuclear (Uranium) enrichment programs. Owing to the noncompliance, Security Council issued Resolution 1737 on 23rd December 2006, whereby the UN obligated Iran to suspend work on its heavy-water reactor projects and ratify IAEA's Additional Protocol. Further, it called up states to refrain from providing any nuclear and ballistic missile-related goods, related technologies, financial assistance, and training to Iran. The said resolution listed entities and individuals engaged in nuclear activities and demanded states to freeze their funds, financial assets, and economic resources. Followed by this, in 2007, UNSC came up with Resolution

¹²³ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. the United States of America) (1. CJ Reports 1986, p. 135, para. 269

¹²⁴ The legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1. CJ Reports 1996, p. 266

¹²⁵ Iran More than a Nuclear Threat, SENATE RPC, (Mar 12, 2021) <https://www.rpc.senate.gov/policy-papers/iran-more-than-a-nuclear-threat>

¹²⁶ *Id.* at 125.

1747, which called on states to “*exercise vigilance and restraint in the supply, sale, or transfer of major military weapons systems and related material to Iran. States and international organizations were asked not to enter into new commitments for grants, financial assistance, and concessional loans*” with Iran unless for humanitarian and developmental projects. Due to the repeated non-compliance, Iran issued 1803 in March 2008, wherein the list of designated individuals and entities were extended. In 2006, reaffirming the previous sanctions, UNSC adopted Resolution 1835. Resolution 1929, in similar lines, banned Iran from “investing in nuclear and missile technology,” “investment in uranium mining.” It played a complete embargo on the sale of arms and ammunition to Iran. States were asked to inspect vessels suspected of carrying prohibited goods to Iran, minimize interactions with financial Institutions of Iran. Further, assets of a set of 40 new companies were frozen. Thus, the US is also obliged under clause (c) of the National Security Exception to institute necessary economic actions against Iran.

3.3.5 SANCTIONS ON CUBA

3.3.5.1 BACKGROUND

The US always had an eye on Cuba. The US always desired to acquire a strong influence or control over this island nation. The former US Secretary of State James G. Blaine wrote in 1881 about Cuba, “*that rich island, the key to the Gulf of Mexico, and the field for our most extended trade in the Western Hemisphere, is, though in the hands of Spain, a part of the American commercial system ... If ever ceasing to be Spanish, Cuba must necessarily become American and not fall under any other European domination*¹²⁷.” Cuba was a colony under Spain, and following the Spanish- America War of 1898, the US acquired control over Cuba. Until 1902, the US kept Cuba under its military rule. 1902, via an amendment to the Army Appropriations Act (famously known as the Platt Amendment), withdrew American troops from Cuba, however, saved the rights to militarily interfere into Cuba's internal affairs “to maintain good Government.” The US thus interfered with Cuban affairs in the later years, and during this period US and Cuba were actively involved in trade; in fact, US nationals acquired huge financial interest and properties in Cuba. Cuba and the US shared warm relations until

¹²⁷ Jerry A. Sierra, *Jose Marti: Apostle of Cuban Independence*, HISTORY OF CUBA (Jul 7, 2006) <http://www.historyofcuba.com/history/marti/marti4.htm>

the overthrow of Fulgencio Batista's Government in the 1959 Cuban revolution. During the Cuban revolution, the properties owned by Americans were nationalized, and under the leadership of Fidel Castro, Cuban embraced Communism. The subsequent inclination towards the USSR and the contiguous events like the Missile Crisis of 1962 largely deteriorated the US- Cuba ties, and the US retaliated through the embargo.

3.3.5.2 EXISTING SANCTIONS

In late 1961, the US unilaterally suspended the MFN status and preferential treatment offered to Cuba. Followed by this, in February 1962, via a Presidential order 3447 issued under the Foreign Aid Act (FAA) of 1961, the US placed strict embargos on export and import from Cuba. All goods manufactured in Cuba partly or fully were placed under the embargo; in fact, goods imported via Cuba was also barred from entering the US market¹²⁸. To tighten the embargo further, in March 1962, the Department of Treasury invoked the TWEA against Cuba. In the US, by 1963, all Cuban assets in the US's jurisdiction were frozen, and all kinds of financial transactions between the US and Cuba were blocked. In the same year, the US amended the FAA to deny aid to states that extend assistance to Cuba. Further US replaced the Cuban Import Regulation with Cuban Assets Control Regulations (CACR). CACR retained the import restrictions provided under CIR and furthered the sanctions by prohibiting any and all transactions between Cuba or Cuban nationals and persons subject to the jurisdiction of the United States. By 1964 sanctions started taking ruthless forms; the US stopped shipping food items and medicaments to Cuba. However, there was a shift in Cuba –US relations during the reign of Jimmy Carter (1977-1980). Carter intended to dismantle the US embargo on Cuba, thus relaxed the travel restrictions, to ensure proper management of blocked Cuban properties, OFAC placed all those assets in interest-bearing accounts. Carter convened negotiations to reinstate diplomatic relations and trade relations with Cuba. Further, he tries to revoke the extraterritorial nature of sanctions against Cuba. In 1980, Reagan was sworn in as the President and rolled back Carter's efforts to normalize ties with Cuba¹²⁹. In 1988 November the Treasury Department released a list of 32 Cuban-based companies with which US firms were barred from doing business. The said list was further extended in the later years. In 1990

¹²⁸ GATT Council, Trade Policy Review Mechanism, United States, Statement by Cuba, Spec(90)4, https://www.wto.org/gatt_docs/English/SULPDF/92270005.pdf

¹²⁹ Alberto R. Coll, *Harming Human Rights in the Name of Promoting Them: The Case of the Cuban Embargo*, 12 UCLA J. INT'L L. & FOREIGN AFF. 199 (2007).

USSR started disintegrating, and it stopped providing subsidies to Cuba. The international community was expecting the US would relax the sanctions, but surprisingly the US continued. In 1992 US enacted the Cuban Democracy Act (CDA), which essentially resembled a stick and carrot approach. The Act promised slight relaxation of restrictions if Cuba agree to renounce Communism. On the other hand, CDA prohibited foreign states from providing any assistance to Cuba. From 1975 onwards, subsidiaries of the US Company located in foreign states were allowed to conduct business with Cuba, CDA struck down this exception. Under CDA, Ships carrying Cuban nationals and goods were prohibited from entering US ports¹³⁰.

On Feb 24, 1996, the Cuban Air Force shot down two civilian planes of an anti- Castro organization titled 'Brothers for Rescue,' consequentially the US enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act or the Helms-Burton Act in March 1996. The Act denuded the President of his authority to lift or modify the sanctions. The ultimate goal of the Helms-Burton Act was to establish a new democratic government by ousting the Castro brothers to drive Cuba towards an open, market-based economy. Further, the Act empowered US citizens to raise claims or demand compensation in lieu of their property confiscated during the Cuban revolution. The Act denies visas to any person involved in the trafficking of confiscated property. The Act was highly criticized by the international community, and in 1998, Pope visited Cuba; in response to all these overwhelming demands and events, US President Clinton resumed direct flights from the US to Cuba, eased restrictions as to remittances, and travel to Cuba.

In 2000 the Congress enacted the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA), under which the US diluted agricultural and medical sanctions on Cuba. The Act disempowered the President from imposing any agricultural or medical sanctions without Congressional approval through a joint resolution. Further, the President was divested of his power to regulate travel to Cuba. Moreover, banned all tourism-related travel to Cuba. In 2001, George W Bush became the US President. In 2003 he constituted Commission for Assistance to a Free Cuba (CAFC). CAFC subsequently came up with various controversial recommendations which augmented the sanctions on Cuba. CAFC, in its first report recommended measures to accelerate measures to topple the Castro government of Cuba, to block the Government's revenue, to tarnish Cuba's image in the international arena, to disrupt the tourism sector. In 2006 CAFC issued its second report. The primary objective of the second

¹³⁰ *Id.* at 129

report also remained the same; to topple the Cuban Government. To accelerate this process, CAFC recommended to provide financial and other assistance to opposition groups in Cuba. To crush the economy further, sanctions were imposed on Nickel to prevent its import to the US.

In the later years also the US vehemently tried to reinforce and strengthen the restriction on Cuba. However, during the presidency of Obama, there were some sincere efforts from the side of the US to normalize ties with Cuba, such as, in 2015- 2016 US delinked Cuba's designation as a state sponsoring terrorism, restored diplomatic relations with Cuba, eased restrictions on trade, travel, telecommunications, banking, etc. All these relaxations were rolled back by Donald Trump. Since 2019, several Cuban shipping companies that import oil from Venezuela have been sanctioned by the US.

3.3.5.3 WHETHER CUBA CONSTITUTES A THREAT TO US SECURITY?

Since the early 1960s US has considered Cuba to be a potential threat to its National security and has always defended its embargo in the name of “*individual and collective self-defence*” and to “*promote national and hemispheric security*” under Art XXI and Art XIV of GATT and GATS respectively.

The US intentions were to overthrow the Castro regime, retaliate for the confiscation of US properties in Cuba during the Cuban Revolution, and, most importantly, break Cuba's ties with the USSR and contain the spread of Communism. A cursory reading into early US action post-WW II will substantiate this fact. The US overthrew Pro- Moscow Leftist Government. The Government in Guatemala was overthrown in 1953; likewise, in 1965, 1974, 1983, 1989, the US toppled the Leftist system of the Dominican Republic, Chile, Grenada, Panama, respectively. However, the US attempt to replace the rule in Cuba failed¹³¹. During the 1962 Missile Crisis, the US and the USSR concluded a pact wherein “*USSR agreed to remove its missiles from Cuba; in return, the United States promised not to invade Cuba*”. The US was therefore not in a position to directly intervene in Cuba to topple the Government. Thus, employed stringent, continuing economic and political embargo to accomplish the goal.

¹³¹ Donald Nuechterlein, *Venezuela: Major Threat to US Interest in the Caribbean*, THE ROANOKE TIMES, (May 12, 2019) https://roanoke.com/opinion/commentary/nuechterlein-venezuela-major-threat-to-u-s-interests-in-the-caribbean/article_b63128c7-8095-500b-a9a0-c872b7fab8e2.html

There are various instances that show US restrictive measures are politically oriented, primarily to wipe out Communism. The CDA of 1992 and Helm –Burton Act in 1996 were two major steps in this regard. The 1992 Act promised to drop the sanctions against Cuba on denouncing Communism. Further, it is to be noted that the US has resorted to illegal, criminal measures to meet its objectives in Cuba. For instance, some of the reliable literature notes the US has “came up with or executed plans¹³² to assassinate Fidel Castro about 638 times¹³³”.

The US embargo against Cuba has been a matter of heated discussion in different councils of GATT, 1947, WTO, and UN. Cuba has raised its concerns and complaints regarding US measures before GATT 1947 and various other bodies of WTO at multiple instances.¹³⁴ EU in 1996 had initiated a dispute¹³⁵ against the US condemning its measures against the US under Helms-Burton Act, a panel was constituted to delve into the matter, and however, the same was suspended at the request of the EU. Cuba's concerns were seconded by many contracting states such as Nicaragua, Argentina, Brazil, Hungary, Peru, Czechoslovakia, Poland, Uruguay, Canada¹³⁶. These states opposed the measures and labeled it “*politically motivated, coercive and discriminatory*”¹³⁷. Further, in June 2021, the UNGA for the 29th time adopted a resolution

¹³² “These plans ranged from spiking Castro’s cigars with a botulinum toxin that would explode when used, to contaminating Castro’s diving suits with deadly fungi, to “character assassination attempts” that involved spraying his broadcasting studio with LSD-like drugs”.

¹³³ Ricky Zhong, *Harm, and Inefficacy: The US Sanctions on Cuba*, BRWON POLITICAL REVIEW, (Mar 22, 2020) <https://brownpoliticalreview.org/2020/05/harm-and-inefficacy-the-u-s-sanctions-on-cuba/>

¹³⁴ In 1968, “Cuba submitted a notification to the Committee on Trade in Industrial Products stating that the embargo constituted a non-tariff barrier that adversely affected Cuba's trade”. [GATT Council, Trade Policy Review Mechanism, United States, Statement by Cuba, Spec(90)4, p. 2.]

“In 1987, in the context of the meetings of the United Nations Conference on Trade and Employment, the Cuban Vice-Minister for Foreign Trade made a statement asserting that the embargo imposed by the United States violated the objectives and principles of the GATT, including those enumerated in Articles I, II and V and Part IV” [GATT Contracting Parties, Forty-Third Session, Cuba, Statement by Mr. Alberto Betancourt Roa, Vice Minister, Ministry of Foreign Trade, SR.43/ST/10, p. 7.]

“In 1996, Cuba circulated a Communication noting the adoption by the United States of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (Helms-Burton Act).³⁸⁷ Cuba argued that the objective of the Helms-Burton Act was to “intimidate the world business community and prevent it from participating in the ever-widening economic opportunities for foreign investment” in Cuba. [Communication from Cuba, United States - Cuban Liberty and Democratic Solidarity Act of 1996, WT/L/142. The Helms-Burton Act, amongst other things, empowered the President to “encourage” other countries to restrict their trade and credit relations with Cuba, withheld payments to international financial institutions which approved loans to Cuba, and denied entry into the United States for companies with certain investments and assets in Cuba”. (See Negotiating Group on Market Access, Market Access for Non-Agricultural Products, Non-Tariff Barriers - Requests, Communication from Cuba, TN/MA/NTR/2, pp. 6-7.)]

¹³⁵ United States - The Cuban Liberty and Democratic Solidarity Act - Lapse of the Authority for Establishment of the Panel WT/DS38/6 1998

¹³⁶ GATT Council, Minutes of Meeting held on 22 May 1986, C/M/198, p. 33

¹³⁷ Id. at 136.

demanding the withdrawal of US sanction¹³⁸. The resolution was seconded by 184 members. The UN Thus, it can be concluded that the international community is strictly opposing US actions and does not find Cuban actions to have any threat to US security.

As mentioned above, during the reign of Barrack Obama, there were some serious efforts to drop US sanctions and normalize relations with Cuba. However, all these positive changes were undone by the subsequent President stating security reasons. Similar relaxation was carried out by President Jimmy Carter as well. Further, US President Joe Biden, during his election campaign, vowed to relax and reverse some of the US measures on Cuba. Such differences amongst the Presidents suggest that the restrictive measures are an extension of political aspirations or views of people in power. If national security were the actual ground, there wouldn't have been any inconsistencies with the change in Presidency.

Considering the Cold War incidents such as the Cuban Missile Crisis, the measures inflicted until the disintegration of the USSR can be justified to some extent. The act of continuing embargoes post-USSR disintegration without valid grounds amounts to an utter violation of International law. The US measures against Cuba are highly condemned by other world players¹³⁹.

The measures cannot be protected under National security exceptions. The US sanctionary measures have violated not just the cardinal principles of GATT, GATS but have deterred the growth and development of Cuba. The fate of this small island would have been something different and bright sans these US sanctions. It is to be noted that US sanctions on Cuba are essentially based on political reasons. The Ministerial Declaration adopted on 29 November 1982 specifically demands the states not to adopt trade-restrictive measures for such non-economic reasons. Further, there is an inherent violation of Article XXXVI and Article XXXVII of GATT, which emphasize the need to promote the trade and development of less developed countries. Article III, Article V, XIII of GATT also stands violated. Article IV of Agreement on Agriculture, Article IV, XVI of GATS is also infringed.

3.4 ECONOMIC IMPACT OF US SANCTIONS ON TARGETED STATES

¹³⁸ Michelle Nichols, *U.S. again votes against UN call to end Cuba embargo*, REUTERS, (Jun 23, 2021, 11:14 PM)

¹³⁹ *Id.* at 138

US sanctions have produced impartial and unequivocal effects on all these economies. The measures were quite comprehensive, covering almost all the sectors. However, the US was quite emphatic about investing greater focus on the core industries and strategic projects of each of these states. The oil and Energy industry serves as the primary source of revenue as far as Iran is concerned, and a large chunk of US sanctions falls on Oil and energy sector. Again, in the case of Nicaragua and Venezuela, the sanctions are oriented at the Oil exports. The US has weaved exhaustive measures for Cuban Sugar export. And when it comes to Russia, the cascading US sanctions are inclined towards the Defence and energy industry.

3.4.1 ECONOMIC IMPACT ON VENEZUELA

UN Special Rapporteur on unilateral coercive measures and human rights, Alena Douhan, in a report released on 2021 February, observed that 'many major powers have imposed sanctions on Venezuela and the US-led sanctions are most severe among these. As per Douhan's report, government revenue has declined by 99% as compared to the pre-sanction period. One of the primary reasons for the huge decline in revenue is sanctions on Oil Exports. The sale of Crude oil to traditional and existing buyers has declined. Venezuelan crude oil is of inferior quality due to the presence of high sulphur content, and therefore it is a hard task for Venezuela to find new buyers during the prevalence of such stringent sanctions. Due to this financial crisis, the state has considerably reduced the salaries in public sectors, and this, in turn, has resulted in the scarcity of workers, especially in the service sector¹⁴⁰. The economists have termed term Venezuela's predicament as "the single largest economic collapse outside of the war in at least 45 years."¹⁴¹

3.4.2 ECONOMIC IMPACT ON RUSSIA

The impact of US sanctions on Russia was prominent during the years 2014-15. During this period, the Russian economy faced a recession characterized by an 8% decline in GDP by 16% inflation, the collapse of the Ruble, decreased investment. In 2016, the oil price started

¹⁴⁰ Meg Harding, *Humanitarian Impact of Sanctions on Venezuela*, HUMAN RIGHTS PULSE, (Mar. 9, 2021) <https://www.humanrightspulse.com/mastercontentblog/humanitarian-impact-of-sanctions-on-venezuela>

¹⁴¹ Hari Seshasayee, *Why US Sanctions on Venezuela Have Hit Oil Exports to India*, THE WIRE (Aug 10, 2019) <https://thewire.in/trade/us-sanctions-venezuela-oil-exports-india>

increasing; oil price was around 25 USD per barrel during 2014-15; by 2016, it crossed 50 USD per barrel, and this kind of helped Russia to resurrect the economy. However, in general, the economic growth, foreign investments, and credit to Russia were hindered. IMF in 2019 remarked that economic growth was reduced by 0.2% every year from 2014 to 2018. On average, since 2015, Russia has lost US \$ 54 billion in exports. Russian imports are also declined from 470 billion USD in 2013 to 429 billion in 2014 and 282 billion in 2015, and this is attributed to “*weaker Ruble and the decrease in Russian purchasing power.*” Russia's financial debt rose tremendously during 2014; however, it declines to US\$ 74 Billion from US\$ 214 Billion¹⁴².

Mirzosaid Sulstonov, in his study titled, 'The Impact of International Sanctions on Russian Financial Markets,' concluded that, “Economic sanctions had a negative long-term significant impact on the returns and variance of the exchange rate and a significant positive long-term impact on the returns of the stock price index.¹⁴³”.

Daniel Ahn and Rodney Ludema, in their study, found that the sanctioned companies are losing on an average one-third of their operating revenue. Further, studies suggest that owing to the sanction on import of dual-use technology, Russia is now forced to employ its relatively less novel and domestically produced tools, technologies in the defence sector¹⁴⁴. Inaccessibility to sophisticated technologies has diminished Russia's scientific and technological progress. Such impediments might augment corruption and opaqueness¹⁴⁵. Further, in order to cope up with economic constraints, during 2017-2019, Russia has reduced its investment in the military by 17 %., and will possibly endanger the security of Russia¹⁴⁶.

3.4.3 ECONOMIC IMPACT ON IRAN

With 10% of the world's proven oil reserves and 15% of its gas reserves, Iran is considered an “energy superpower.” Due to continuous sanctions from the US, Iran's crude oil exports have

¹⁴² Likka Korhonen, *Economic Sanctions on Russia and Their Effects*, 20, Iss. 04, Ifo Institute – Leibniz Institute for Economic Research at the University of Munich 19-22 (2019)

¹⁴³ Mirzosaid Sulstonov, *The Impact of International Sanctions on Russian Financial Markets*, Economies 1-14 (2020)

¹⁴⁴ Peter E. Harrell, Tom Keatinge, Sarah Lain, Elizabeth Rosenberg, *The Future of Transatlantic Sanctions on Russia*, Centre for New American Security 4 (2017)

¹⁴⁵ *Nataliia Slobodian; Iryna Ptasnyk*, Sanctions on Russia: Effectiveness and Impacts, EUROPE NOW (Feb 5, 2018) <https://www.europenowjournal.org/2019/02/04/sanctions-on-russia-effectiveness-and-impacts/>

¹⁴⁶ HARRELL, *supra* note 144.

fallen by more than 50%, and this has seriously devastated the Iranian Economy¹⁴⁷. Relaxing US sanctions on Iran can undoubtedly accelerate the growth of Iran. For instance, in 2015, under the Joint Comprehensive Plan of Action (JCPOA), the US had relaxed relevant sanctions imposed on Iran, and during this period Iranian economy witnessed tremendous growth at a rate of 12.5%¹⁴⁸. The Iranian Rial enjoyed a decent value, that is, in “2015, 28,000 Rials would buy US\$1 at official exchange rates, but that figure is now closer to 42,000 Rials to \$1, or 115,000 on the black market”¹⁴⁹. However, all such relaxations were short-lived as President Trump re-imposed the restrictions in May 2018.

In 2020 Iran’s economy contracted by 4.99%¹⁵⁰. According to IMF, Iran's GDP grows at a rate of 3%. The IMF further suggests that Iran's oil export will continue to fall in the coming years due to the sanctions. The restrictions imposed on Iranian ships and the shipping industry have also made imports and exports difficult. Thus, a chance for economic recovery amidst these vociferous sanctions is meager. The Unemployment rate is also increasing steadily. As of 2021, 12.4% of the population is workless. Further, inflation has reached 50%, and this has substantially raised the living cost for civilians. In the backdrop of declining social welfare, the Iranian Government dropped subsidies to oil companies. This saves the US \$2.5 Billion and allows the Government to provide additional help to 18 million families.¹⁵¹.

In response to the US's demand, several states have frozen Iranian assets and reserves in their banks. Assets worth US\$10 Billion is blocked by various foreign financial institutions¹⁵². This has resulted in a severe liquidity crisis in Iran, and the state is now negotiating with blocked states or institutions to release the funds¹⁵³.

The sanctions imposed on Iran’s shipping industry, ‘Islamic Republic of Iran Shipping Lines

¹⁴⁷ KATZMAN, *supra* note 116

¹⁴⁸ Abhigail NG, *These Six Charts Shows How Sanctions are crushing Iran’s Economy*, CNBC (Mar 22, 2021, 8:49 PM) <https://www.cnbc.com/2021/03/23/these-6-charts-show-how-sanctions-are-crushing-irans-economy.html>

¹⁴⁹ Declan Butler, *How US sanctions are crippling science in Iran*, NATURE (24 Sept 2019) <https://www.nature.com/articles/d41586-019-02795-y>

¹⁵⁰ ABHIGAIL, *supra* note 148

¹⁵¹ Six charts that show how hard US sanctions have hit Iran, BBC, (Dec 9, 2019) <https://www.bbc.com/news/world-middle-east-48119109>

¹⁵² Parisa Hafezi, *Iran urges Japan to release billions in blocked funds amid US sanctions*, REUTERS, (Aug 22, 2021, 5:11 PM) <https://www.reuters.com/world/iran-urges-japan-release-billions-blocked-funds-amid-us-sanctions-2021-08-22/>

¹⁵³ \$2.5bn in savings would allow the Government to provide additional help to 18 million families

(IRISL), its China-based subsidiary, E-Sail Shipping Company Ltd (E-Sail) were sectioned via EO 13382, have inflicted significant economic dent, and the supply of essential, humanitarian goods are also affected¹⁵⁴.

US-induced sanctions have endangered research and scientific experiments in Iran. Iran Science Minister Mansour Gholami told *Nature*, “Iranian scientists are banned from traveling abroad for conferences and such other activities, purchasing or procuring research materials from foreign markets is almost impossible.” Iranian Art market's connection with the international art network was significantly reduced due to US sanctions. To tackle this, the dealers have now adopted online marketing and exhibition. Transition to this non-tangible form have considerably changed the nature and essence of artistic production¹⁵⁵.

3.4.4 ECONOMIC IMPACT ON CUBA

The US served as a significant market for Cuban goods such as Sugar, Nickel, etc., and the embargo induced huge revenue loss, especially Sugar industry, tourism sector, and entities involved in nickel export. After the post-US embargo, the USSR emerged as the major trading partner of Cuba. Other states from Soviet Block also cooperated with Cuba. 80% of Cuban sugar was exported to the Soviet Union, China, and other allies of the USSR. By exporting sugar, Cuba managed to get oil and other essential goods from the Soviet Union. Though USSR cooperated strenuously, it couldn't bring any great leap or development in the tourism sector. By the 1980s, the aid and contributions from USSR dipped immensely. With the fall of the USSR, the consequences of US sanctions became palpable. During the 1990s, Cuba was one among the LDCs with a per capita GDP of US\$ 1560¹⁵⁶.

According to Cuban Foreign Affairs Minister Bruno Rodriguez, the cost incurred by the Island due to the US imposed sanctions or restrictions since 1960 is around \$144 Billion. In 2019-2020 alone, due to US sanctions. Cuban economy suffered a loss of \$ 5.57 Billion. Cuba is

¹⁵⁴ Bart M. McMillan; Lise s. Test; Callie Lefevre, *US Government, designates IRISL, E-Sail, and Mahan Air under Executive Order 13382*, INTERNATIONAL TRADE COMPLIANCE, (Dec19, 2019) <https://www.internationaltradeupdate.com/2019/12/19/us-government-designates-irisl-e-sail-and-mahan-air-under-executive-order-13382/>

¹⁵⁵ Ahmad Rafiei Vardanjani, *United States Economic Sanctions on Iran and Their Impacts on the Middle Eastern Art Market*, MDPI Journals, p.3

¹⁵⁶ Christy M. DeMelf, *Nothing but the Facts: An In-Depth Analysis of the Effects of Economic Sanctions Against Cuba*, 5 J for Int'l BUS L 137-173 (2006),<http://scholarlycommons.law.hofstra.edu/jib>

heavily dependent on other states to ensure food security; it imports huge varieties of food items. As a result of the US embargo, Cuba spends around \$2 Billion for import food items, more than double the actual price. Tourism is the second -leading source of income for the Cuban economy. As per official reports, in 2019, the Tourism sector added US\$2.645 billion to Cuban revenue. Income from the Tourism sector constitutes 10 % of Cuba's GDP. Moreover, Tourism generates a half-million jobs in the public and private sectors. In 2018, the Trump administration had strengthened the blockades on Cuba, and as a result, the inflow of tourists was reduced by 28% ¹⁵⁷.

3.4.5 ECONOMIC IMPACT OF US MEASURES RELATING TO ALUMINIUM AND STEEL

The imposition of import tariff on steel and aluminum have a negative impact on metal producing industries of sanctioned states. Steel and aluminium supplied by targeted states on which tariff is imposed costs higher than domestically produced. Thus, these states have suffered trade lose. Russia, China is the most affected. The exports of metal by sanctioned states have decreased up to 4.7 % . . Further, the extended impacts have slightly weakened the mining and metal fabrication industry of India. Firms involved in the manufacture of coke and refined petroleum products are affected by tariff measures. Studies further show that tariff changes have increased jobless in the metal industry.

3.5 IMPACT OF US SANCTION ON HUMAN RIGHTS IN TARGETED STATES

3.5.1 VENEZUELA

Douhan, in his interview with 'The Grayzone', stated, “*Before the Blockade, Venezuela was spending 76% of its oil revenues on social programs. Now it can't even invest 1% of that*¹⁵⁸.” Thus, the humungous decline in revenue has impeded welfare programs in Venezuela. The salaries in Venezuela's Public sector ranged from US\$150-500 in 2015. The same has been reduced to US\$1-10 in 2020 owing to the financial crisis in the state. Low wages or income

¹⁵⁷ *Right to Live Without Blockade: The Impact of US Sanction on the Cuban Population and Women's Lives*, OXFAM, (May 2021) <https://webcache.googleusercontent.com/search?q=cache:bNxuuph71BEJ:hhttps://oxfamlibrary.openrepository.com/bitstream/handle/10546/621191/bp-cuba-blockade-women-250521-en.pdf%3Fsequence%3D3%26isAllowed%3Dy+&cd=5&hl=en&ct=clnk&gl=in>

¹⁵⁸ Mark Weisbrot and Jeffrey Sachs, ‘*Economic Sanctions as Collective Punishment: The Case of Venezuela*,’ Center for Economic and Policy Research 15 (2019).

has pushed the majority of Venezuelans to live pathetic life. Further, 50% of food items were imported and were seriously hit by sanctions, bringing one-third of the population under the clutches of acute food insecurity. As reported in other targeted states, the health conditions have deteriorated, the infant mortality rate and maternal mortality rates have increased considerably¹⁵⁹. The smooth functioning of the Venezuelan Education system is disrupted due to decreased investment from the state. The financial crisis has pushed the state to discontinue the mid-day meal system in many State-run schools, and this has increased school dropouts. Moreover, Economists Mark Weisbrot and Jeffrey Sachs reported that “*US sanctions have resulted in the death of 40000 plus people (of Venezuela) during 2017-18*”¹⁶⁰. According to the United Nations High Commissioner for Refugees, “four million people have already fled the country as of June 2019, and this could reach up to eight million, or one-quarter of the entire population.”¹⁶¹. The Authors have contended that the act of the US amounts to “*collective punishment as described in both the Geneva and The Hague International Conventions.*”¹⁶²

3.5.2 RUSSIA

In the case of Russia, the US sanctions have affected the lives of the most vulnerable ones in the society¹⁶³. Russia counter-sanctioned the US and other Western powers by the declining import of agricultural products and other food items. The decline in the import of essential goods, coupled with inflation, has made things difficult for commoners. However, compared to the human rights situation that arose out of national security sanctions in other countries, the effects on Russians are mild. Russia is a developed country whose business and markets are highly diversified. US sanctions on Russia are relatively less comprehensive, and Russia has succeeded in finding certain leeways and loopholes over these sanctions to promote its economic and social interest¹⁶⁴.

¹⁵⁹ Meg Harding, *Humanitarian Impact of Sanctions on Venezuela*, HUMAN RIGHTS PULSE, (Mar. 9, 2021) <https://www.humanrightspulse.com/mastercontentblog/humanitarian-impact-of-sanctions-on-venezuela>

¹⁶⁰ *Id*

¹⁶¹ Hari Seshasayee, *Why US Sanctions on Venezuela Have Hit Oil Exports to India*, THE WIRE, (Aug 10, 2019) <https://thewire.in/trade/us-sanctions-venezuela-oil-exports-india>

¹⁶² Mark Weisbrot and Jeffrey Sachs, ‘*Economic Sanctions as Collective Punishment: The Case of Venezuela*,’ Center for Economic and Policy Research 15 (2019).

¹⁶³ Unilateral sanctions against Russia hurt most vulnerable groups with limited impact on international businesses; UN expert finds, UNHRC(2017)

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21552&LangID=E>

¹⁶⁴ *Id.* at 163

3.5.3 IRAN

Apparently, the US has provided for humanitarian exceptions on Iran; despite these leeways, Iranian are besieged in human rights violations. Human Rights Watch reported that Iranians afflicted with serious, chronic diseases have no access to vital drugs. Human Rights Watch asserts that pharmaceutical companies and banks often indulge in excessive caution or “over-compliance” with sanctions. This results in the unavailability of such essential drugs in Iran. For instance, a European pharmaceutical company refused to sell special bandages needed by patients with EB despite the humanitarian exemption. Similarly, banks are unwilling to authorize humanitarian transactions with Iran.¹⁶⁵ Companies are seriously concerned about their credulity and reputation in the eyes of the US Government. Iran being a nation tagged as a sponsor of terrorism by the US, firms try to avoid transactions with Iran despite the human rights exceptions. According to Parham Habibzadeh, a human geneticist at Shiraz University of Medical Sciences in Iran, “*Iranian Health, Education and Research sectors grossly affected by US sanction. Researching any area of science has become an impossible task*¹⁶⁶”.

3.5.4 CUBA

In some of the states, the US sanctions had a direct impact on the availability of food and essential medicines. The case of Cuba is notable in this regard. Cuba is a small island nation, predominantly dependent on imports for a variety of food items and pharma products. Trade restrictions resulted in decreased flow of goods to its territory. Till 1989 Cuba somehow managed to maintain a minimum standard in the health care sector with the help of the USSR. In 1992 US passed the Cuban Democracy Act in 1992 and the said Act barred US pharmaceutical companies and their subsidiaries from selling medicines and related products to Cuba. According to American Association for World Health, in their report titled “*Denial of Food and Medicine, The Impact of the US Embargo on Health and Nutrition in Cuba*” noted that the restrictions and licensing regime promulgated through CDA 1992 had a devastating effect on the Cuban health sector.¹⁶⁷ There was an immense shortage of vital drugs, surgical

¹⁶⁵ Iran: Sanctions Threatening Health, HUMAN RIGHTS WATCH (Oct 19, 2019)
<https://www.hrw.org/news/2019/10/29/iran-sanctions-threatening-health>

¹⁶⁶ Declan Butler, *How US sanctions are crippling science in Iran*, NATURE (Sept 24, 2019)
<https://www.nature.com/articles/d41586-019-02795-y>

¹⁶⁷ Cassandra LaRae-Perez, *Economic Sanctions as a Use of Force: Re-evaluating the Legality of Sanctions from an Effects-Based Perspective*, 20 BU. Int'l LJ 161 (2002).

equipment. Simultaneously, there was a serious water crisis in Cuba; due to the unavailability of clean water, there was a spread of water born diseases like Typhoid, Dysentery, etc.¹⁶⁸.

3.6 EFFECTIVENESS OF US SANCTIONS IN ACHIEVING ITS TOUTED OBJECTIVES

3.6.1 HOW EFFECTIVE ARE THE US SANCTIONS ON VENEZUELA?

In February, a UN rights claim that the sanctions have “exacerbated pre-existing calamities.” Currently, over 90 percent of the country is living in poverty¹⁶⁹. The sanctions have pushed the economy into a dire economy; however, it failed to remove the undemocratic Government. D.S Cohen and Z.A.Y Weinberg, in their article titled ‘*Sanctions, Can’t Spark Regime Change*’ remarked that “*they are no guarantee of a change in Government in Venezuela*”¹⁷⁰. US measure now serves as a “scapegoat” on which the Maduro can blame the economic crisis. In short, US activities have a toll on the civilians rather than the undemocratic Government. The UN High Commissioner for Human Rights, Michelle Bachelet, said US sanctions “*fail to contain sufficient measures to mitigate their impact on the most vulnerable sectors of the population*”.¹⁷¹ The US sanction exercised in the guise of national security has, in turn, threatened the territorial security, economic security, social and political stability of Dutch Caribbean Islands, especially Aruba, Bonaire and Curaçao¹⁷².

3.6.2 HOW EFFECTIVE ARE THE US SANCTIONS ON RUSSIA?

In the case of Russia, US sanctions were directed in response to Russia's cyberattacks on US systems and to ensure Russia's withdrawal from Ukraine. Unfortunately, the goal remains unachieved. As discussed above, US sanctions did produce some undesired effects on the

¹⁶⁸ PEREZ, *supra* note 167.

¹⁶⁹ *Explained: Why is Venezuela accusing the US of an attempt to topple its govt?* THE INDIAN EXPRESS, (May 7, 2020, 8:27 PM) <https://indianexpress.com/article/explained/explained-why-is-venezuela-accusing-us-of-attempt-to-topple-its-govt-6397237/>

¹⁷⁰ Ryan C Berg, *Assessing the effectiveness of sanctions against Venezuela: Illegal gold trading and Maduro's authoritarian resilience*, 3 FORO CUBANO (2020) <https://www.programacuba.com /assessing-the-effectiveness-of-sanc>

¹⁷¹ Venezuela Solidarity Campaign, 'Briefing: The Effects of the Economic Blockade of Venezuela,' Venezuela Analysis (24 June 2019)

¹⁷² Adája Stoetman, Anna Zeverijn, *Sentinel of the Caribbean US Foreign Policy towards Venezuela*, Clingendael Institute 11 (2020) <https://www.jstor.org/stable/resrep29359>

Russian economy, but Russia has, to a great extent, overcome the restrictive measure through commercial diversification¹⁷³. United Nations human rights expert Idriss Jazairy noted, “*the measures are intended to serve as a deterrent to Russia but run the risk of being only a deterrent to the international business community, while adversely affecting only those vulnerable groups which have nothing to do with the crisis.*”¹⁷⁴ However, the US ardently believes that US sanctions have deterred Russia's aggressiveness and ambitions over Ukraine. For instance, former US sanctions coordinator Daniel Fried once asserted, “*Had we done nothing, Russia might well have attempted to do still worse, such as trying to seize the Ukrainian city of Mariupol, pushing further west to create a land-bridge to Crimea, or opening new fronts in Ukraine*”¹⁷⁵. However, there is solid evidence to prove this assertion.

3.6.3 HOW EFFECTIVE ARE THE US SANCTIONS ON IRAN?

The US sanctions has pushed Iran's economy into a dire state, and lately, due to the reimposition of the US sanctions, Iran's budget allocation for Defence and military has been reduced by 28%. Based on these statistics, the US often claims that its actions in Iran are largely effective. But most of the sources connotes that economic sanctions have failed to reduce the threat possessed by Iran against the US and global interest. Firstly, these sanctions have not prevented Iran's nuclear program. Though the US has vociferously demanded all states to deny monetary and financial assistance to Iran, Iran has succeeded in mustering goods, services, and other assistance from the US's traditional rivals such as Russia, China to keep its nuclear missions in momentum.¹⁷⁶ Over the years, the US has imposed measures of varying intensities and nature; however, none of these have reformed Iran's regional behavior. For instance, during 2011-2015, Iran intervenes into Syria, Iraq, and Yemen¹⁷⁷.

3.6.4 HOW EFFECTIVE ARE THE US SANCTIONS ON CUBA?

¹⁷³ Nataliia Slobodian; Iryna Ptasnyk, *Sanctions on Russia: Effectiveness and Impacts*, EUROPE NOW, (Feb 5, 2018) <https://www.europenowjournal.org/2019/02/04/sanctions-on-russia-effectiveness-and-impacts/>

¹⁷⁴ UNHR, Unilateral sanctions against Russia hurt most vulnerable groups with limited impact on international businesses, UN expert finds (2017)

¹⁷⁵ Jarret Blanc; Andrew S Weiss, *US Sanctions on Russia: Congress Should Go Back to Fundamentals*, CARNEGIE ENDOWMENT, (Apr 3, 2019) <https://carnegieendowment.org/2019/04/03/u.s.-sanctions-on-russia-congress-should-go-back-to-fundamentals-pub-78755>

¹⁷⁶ Sanctions in Iran: How Effective are they? DRT, (Last visited Aug 11, 2021) <https://diazreus.com/sanctions-in-iran-how-effective-are-they/>

¹⁷⁷ KATZMAN, *supra* note 116.

In 2014, in the context of Cuba, former President Obama said, “50 years have shown that isolation has not worked.¹⁷⁸”. This very statement reveals the inherent flaws and failure of US sanctions on Cuba. As we discussed earlier, US measures have enacted such a huge toll on Cuba, not just the economy, on human welfare also. US sanctions were touted as an effort to strengthen the humanistic and democratic order in Cuba, and the ulterior motive was to spread capitalism. The US has spectacularly failed to materialize these intentions and has worsened the situation in Cuba. Cuban people are fraught with restrictions on civil, political freedom. The world powers like the EU, India, China, the UN, etc., have endorsed this fact. The consecutive or uninterrupted resolutions passed by the UN with an overwhelming majority since 1992, demanding withdrawal on US sanctions on Cuba, reveals the attitude of the world international community. The best way to better the Cuban political and economic environment is to drop the sanctions and aid the state by fostering a reliable relation.

Though insignificant, these US sanctions on Cuba have detrimentally affected the interest of the US as well. For instance, According to US International Trade Commission, sans such an embargo, the export of agricultural products from the US to Cuba will increase by \$1.8 Billion. Thus, Billions and Billions are lost via such sanctions. Further, Cuba has developed a vaccine called CIMAvax-EGF for lung cancer and owing to sanctions, Americans have no access to this novel medicine. The normal day-to-day conduct of common people stumbled. Thus, it is high time that the US should resort to diplomatic and friendly means to accomplish its interests.

3.6.5 HOW EFFECTIVE ARE THE MEASURES ON STEEL AND ALUMINUM IMPORTS?

As mentioned in the previous section, the primary reasons touted by the US to justify their import tariff on Steel and Aluminum are: 'that measures are imperative to protect national security, 'measures will help the US in concluding better trade deals' and 'the measures are advantageous to American workers'¹⁷⁹. How far have the measures succeeded in accomplishing the factored reasons?

¹⁷⁸ Mergen Doraev, *The Memory Effect of Economic Sanctions against Russia: Opposing Approaches to the Legality of Unilateral Sanctions Clash Again*, 37 U. PA. J. Intl L. 355 (2015).

¹⁷⁹ Geoffrey Gertz, *Did Trump's tariffs benefit American workers and national security?* BOOKINGS (Sept 10, 2020) <https://www.brookings.edu/policy2020/votervital/did-trumps-tariffs-benefit-american-workers-and-national-security/>

After imposition of the tariff, the US has concluded two prominent agreements: the U.S.-Mexico-Canada Agreement (USMCA) and the “Phase One” China deal. The US claims that tariff pressure has significantly contributed to shaping these deals. This might be true; however, it is to be noted that both these deals are in their initial stage, and as of now, the US has not made any substantial gains from the deals. In fact, the USMCA is Just an updated version of NAFTA; the general conditions are the same as in NAFTA. Further, under Phase One deals, the US and China have concluded only a few basic purchase agreements. States tend to trade with reliable partners with stable and predictable policies. Economists predict that, in the long run, these protectionist measures will instigate trading partners to distance away from the US¹⁸⁰.

When it comes to workers, we will find that it has benefited the workers involved in steel and aluminium manufacturing. The protection has generated new employment. But, the impact of tariffs on other sectors, especially manufacturing sectors where imported steel and aluminium-related products are used as input materials, are quite distressing and have resulted in significant job loss. A paper published by Federal Reserve Board economists in 2019 reveals that ‘steel tariffs led to 0.6% fewer jobs in the manufacturing sector’¹⁸¹

Likewise, the retaliatory tariffs imposed by targeted states have affected American manufactures and consumers. In short, the US move has produced mixed effects, and economists have concluded that the net impact on American workers and job creation is not that conducive to the American economy. Further, studies suggest that “*American consumers have paid, \$900,000 in higher prices attributable to the tariffs for every job created in the steel industry*”¹⁸².

As proved earlier, the import of steel and aluminium does not constitute a national security threat, and the US attempt to raise their production of steel and aluminium by reducing their import has reduced the US real income by “\$1.4 billion per month in deadweight losses,” and

¹⁸⁰ *Id.* at 179.

¹⁸¹ Aaron Flaaen; Justin Pierce, *Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected US Manufacturing Sector*, Finance, and Economics Discussion Series, FEDERAL RESERVE BOARD 17 (2019) <https://www.federalreserve.gov/econres/feds/files/2019086pap.pdf>

¹⁸² *Id.* at 181.

cost US consumers an additional \$3.2 billion per month in added tax¹⁸³.

3.7 CONCLUSION

The US has got a highly complex and comprehensive legal regime to impose and regulate sanctions. The legal system confers tremendous power on authorities, especially the President, to impose and sanctions. However, the system has got numerous lacunae or shortcomings. The ineffectiveness of sanctions and unintended repercussions from these measures affirms the existence of deep-seated shortcomings in the US sanctioning system.

Here the researcher has discussed the nature and ambit of US sanctions against Venezuela, Russia, Iran, Cuba, and US import tariff measures on Steel and Aluminum. Venezuela, Cuba, and the import of steel and aluminum do not constitute a national security threat to the US. In the alleged scenarios, US measures were motivated by several political considerations. The economy of Venezuela and Russian are hard struck by US sanctions. Owing to the economic backwardness induced or exacerbated by the US sanctions has degenerated the human rights standards. When it comes to the impact of the measure on steel and aluminum, the short-term impacts have proved to be negative on all the states. However, it is forecasted that in the long run, the alleged measure will have no effect. And when it comes to Russia and Iran, the sanctions are legitimate; they constitute a substantial threat to the US. In the case of Russia, though grave sanctions are instituted by the US, the economic and human rights effects are relatively shallow when compared to other states. Owing to its product diversification and financial wellness, Russia has succeeded in tackling. The nuclear programs conducted by Iran are a matter of global threat, and the US is legally entitled to impose a sanction under Article XXI (b)(i) and (c) and Article XIV (b)(i) and (c) of GATT and GATS. The UNSC has also demanded states to sanction Iran. However, the US has surpassed UNSC sanctions in its length and breadth. For instance, the US has imposed extraterritorial sanctions on the Iranian oil industry, prohibited the US companies from selling aircraft to Iran, restricted investment in

Iranian LNG. But it is to be noted that Iran has not yet developed an LNG export capability to

¹⁸³ Mary Amity, Stephen J. Redding and David E. Weinstein, *The Impact of the 2018 Tariffs on Prices and Welfare*, Vol. 33, No. 4 The Journal of Economic Perspectives 187-210 (2019)

date. Considering the economic and human rights impact on Iran, the extra sanctions induced by the US, especially the measures relating to the Oil industry, requires reconsideration.

CHAPTER 4

EXTRATERRITORIAL IMPACT OF US SANCTIONS

ON INDIA

4.1 INTRODUCTION

The ever-increasing number of US sanctions of varying effects and intensity can be attributed to the economic leverages and privileges that the US enjoys. One of the cardinal factors that contribute to the so-called economic leverage is the power and prominence of the US Dollar. Since the end of WW II, US Dollar has been the most significant and celebrated currency. Dollar accounts for approximately 60 % of total global sovereign reserves and more than 50% of total global debt issuance. In other words, 40% of cross-border financial transactions happen through the Dollar. The US being the largest holder of the Dollar, plays a significant role in international transactions. The US is considered to be the largest lender of dollars. Further, most of the transactions in dollars are cleared in the US or in offshore dollar-clearing centers that generally comply with US sanctions. This, in turn, allows the US to restrict states from accessing dollars. As mentioned, a significant percentage of international transactions employs Dollar, and any restriction from accessing Dollar thwarts states from successfully trading with other states¹⁸⁴.

The US market is massive, and it is undoubtedly of strategic importance to any player in international trade. Because of these very facts, the US is at liberty to be choosy; that is, the US can deny foreign players from accessing its market, and the US can cut itself from other foreign states or entities. Moreover, the US occupies a significant position in Global Supply Chain. Some of the world's most innovative and finest technologies rest in the hands of US and US-based companies. Other states and entities are highly dependent on these US technologies in developing and producing various products and services. For instance, Russia's arctic offshore, deep-water, and shale-oil formation project is thwarted as the US and EU refused to

¹⁸⁴ Peter E. Harrell, Elizabeth Rosenberg, David S. Cohen, Gary M. Shiffman, Daleep Singh, and Adam Szubin, *Economic Dominance, Financial Technology, and the Future of US Economic Coercion: The Foundations of US Economic Coercion*, Center for a New American Security (2019)

sell expertise and goods that are vital to the said project¹⁸⁵. A well-integrated and comprehensive legal framework to effectively organize its economy and maintain its global eminence is yet another factor that augments the US's economic assertiveness. Being a major economy and a significant financial contributor in most of the international and regional organizations, the US occupies pivotal positions in all these institutions. The US enjoys a special connection with other entities in the international arena. The above-discussed privileges and liberties endow immense authority and coercive economic power to the US. This peculiar position and leverages enjoyed by the US is termed as “Weaponized Interdependence”. These factors give immense potential to impose Primary, Secondary and Extraterritorial sanctions on states and such other entities.

4.2 EXTRATERRITORIAL SANCTIONS

The world is phenomenally integrated via Globalisation and has made the targeted states less vulnerable to primary sanctions. A primary sanction often fails to serve the purposes¹⁸⁶. Extraterritorial sanction is an offshoot of unilateral primary sanctions whereby third states are abstained from trading with targeted states. The Sanctioning states try to keep away third states from involving in trade or economic transactions with targeted states by keeping them under threat of sanctions.

Extraterritorial economic sanctions are highly precarious in effect, and the international community has condemned this practice. Extraterritorial sanctions are violative of UN objectives and principles. The UN charter, in general, promotes the idea of non-interference. However, the Charter permits rational interferences for furthering international peace, security, human rights. Article 2(4) of the UN Charter prohibits the threat or use of force against any state irrationally and arbitrarily that would defeat the objectives of the UN. Article 39 permits States to inflict economic sanctions in accordance Articles 41 and 42 to promote peace and security. But, the UN strongly disapprove the practice of Extraterritorial sanctions, and the General Assembly, through its resolutions, has labeled such sanctions as “*coercive measures used as a means of political and economic compulsion*.”¹⁸⁷” The UN calls for the “immediate

¹⁸⁵ *Id.* at 184

¹⁸⁶ John J Forrer, *Secondary Economic Sanctions: Effective Policy or Risky Business?* ATLANTIC COUNCIL, (May 2018) https://www.atlanticcouncil.org/wp-content/uploads/2018/05/Secondary_Sanctions_WEB.pdf

¹⁸⁷ Elimination of Unilateral Extraterritorial Coercive Economic Measures as a Means of Political and Economic Compulsion, Resolution of the United Nations General Assembly, A/RES/51/22, 6 December 1996; Elimination of Unilateral Extraterritorial Coercive Economic Measures as a Means of Political and Economic

repeal” of extraterritorial laws and has invited affected states to take prompt legislative and administrative measures to surmount such secondary impacts¹⁸⁸.

Former Delegate of Republic of China to AALCO in 2014 stated that “*every state has to choose and formulate the foreign policies, and economic relations. When a state compels the third state to the embargo to realize de facto multilateral sanctions, it is an utter violation of principles of jurisdiction in international law, sovereignty*”. Similar views are expressed by other AALCO members; also, AALCO considers the imposition of extraterritorial sanctions as impermissible under International Law.

As discussed in the previous chapter, US sanctions on Russia, Iran, Cuba are extraterritorial in nature. In the subsequent part of this chapter, the researcher will be examining the impact of US extraterritorial sanctions on India. But before we analyze the US's extraterritorial effect on India, it is important to understand the nature and relevance of Indo- US relations.

4.3 INDIA- US RELATION

Former Prime Minister Indira Gandhi, in her article titled, ‘India and the World friends.’¹⁸⁹, referring to India – US ties stated, “despite fluctuations of mood, our relationship as a whole has been uneasy over a long period. It has been a relationship of ‘unfriendly friends’¹⁹⁰” This was indeed the reality of India –US relation till 2000. However, a catena of events that unfolded during the 1990s, such as the fall of the Soviet Union, economic reforms in India, the 9/11 attack etc., changed the nature of India –US relations. Since the inception of the 21st century, India and the US have been actively collaborating in multiple sectors ranging from trade and investment, defence and security, science and technology, space and technology, cyber security, high-technology, education, civil nuclear energy, agriculture, clean energy, environment, health. Furthermore, over the years India – US relation has developed into ‘Global Strategic Partnership.’

In 2019-20, the trade between the US and India stood at \$ 88.75 billion. The US is one of the

Compulsion, Resolution of the United Nations General Assembly, A/RES/53/10, 3 November 1998; Elimination of Unilateral Extraterritorial Coercive Economic Measures as a Means of Political and Economic Compulsion, Resolution of the United Nations General Assembly, A/RES/57/5, 1 November 2002.

¹⁸⁸ Human rights and unilateral coercive measures, Resolution of the United Nations General Assembly, A/RES/61/170, 27 February 2007.

¹⁸⁹ Indira Gandhi, *India and the World*, 51 Foreign Affairs (1972)

¹⁹⁰ P K Panigrahi, *Indo- US relation: A Critical Analysis of Arms Supply to Pakistan*, 52 Indian Quarterly (1996)

few countries with which India has a trade surplus. The US goods and services trade deficit with India was \$28.8 billion in 2019¹⁹¹. In terms of investment, the US is India's second-largest source of FDI with an inflow of \$13.82 Billion¹⁹².

India- US defence partnership has evolved in a remarkable way within the last 16 years. New Framework for India-U.S. Defence Relations was concluded in 2005¹⁹³ which furthered defence trade, personnel exchanges, and cooperation in maritime security. Defence Technology and Trade Initiative (DTTI) has intensified and eased defence technologies' flow between the states.

The US is India's major partner in achieving Sustainable Development objectives and Environment protection. In 2005, these states launched the U.S.-India Energy Dialogue to trade and investment in the energy sector. The India-U.S. S&T cooperation has been thriving under U.S.-India Science, and Technology Cooperation Agreement signed in October 2005. In 2009, the U.S.-India Science & Technology Endowment Fund, established to commercialize jointly developed technologies to further societal good.

India has gained immensely by cooperating with the US in the health sector. India- US launched Health Initiative in 2010 for disease prevention, improvement of child health, vaccine development, etc. Global Disease Detection-India Centre was established in 2010 to build up India's disease surveillance and epidemiological capacity. Since 2015, India – US are hosting Health Dialogue under which mental health and capacity-building aspects of traditional medicine are brought to the focal point.

Apart from the associations or collaborations in different fields as discussed above, Indian-American population, which accounts for 1% of the total population of the US, has contributed and continues to contribute immensely to foster Indo- US ties.¹⁹⁴

The US is undoubtedly the best prospective ally that India can ask for to counter Chinese hegemony¹⁹⁵ in Asian and Indo- pacific region. Thus it can be concluded that the US is

¹⁹¹ US- India Trade Facts, USTR, (Oct 2020) <https://ustr.gov/countries-regions/south-central-asia/india>

¹⁹² PTI, *US replaces Mauritius as the second-largest source of FDI in India in 2020-21*, BUSINESS TODAY, (Jul 5, 2021, 05:34 PM) <https://www.businesstoday.in/latest/economy-politics/story/us-replaces-mauritius-as-second-largest-source-of-fdi-in-india-in-2020-21-297302-2021-05-29>

¹⁹³ The Defence Framework Agreement was updated and renewed for another ten years in June 2015.

¹⁹⁴ *Brief on India- US Relations, Ministry of External Affairs, India*, https://www.mea.gov.in/Portal/ForeignRelation/India_US_brief.pdf

¹⁹⁵ PTI, *No Nation is More Important than India as the US seeks to counter China: Think Tank*, (Apr 13, 2021, 09:20 AM) <https://www.livemint.com/news/india/no-nation-is-more-important-than-india-as-us-seeks-to-counter-china-think-tank-11618284677328.html>

undoubtedly a prominent ally of India. Any act of outright discard or neglect of US measures will cost India a lot.

4.4 IMPACT OF US SANCTIONS ON INDIA

4.4.1 INDIA AND THE US IMPORT MEASURES ON STEEL AND ALUMINIUM

India is not a major exporter of Steel and Aluminum to the US. India's steel export to the US will come to just 3.3% of its total steel exports. Therefore, the impact of the imposition of 25 % and 10% tariffs on exported steel and aluminum, respectively, from India and several other countries is ambivalent. According to the reports published by the independent Congressional Research Service (CRS) post imposition of the tariff, 'India's steel export to the US in 2018 declined by 49 percent to \$ 372 million, while that of aluminum increased by 58 percent to \$ 221 million.¹⁹⁶. India's Steel Minister, Chaudhary Birender Singh, asserts that the US imposition of tariffs on Steel and Aluminum will have only slight direct impact on India's economy; however, the said measure may induce significant indirect effects on India in the form of Dumping. According to him, the major steel exporters of the US who are hardly hit by the tariff rates are now in search of a profitable alternate market. India being a major Consumer of Steel and Aluminum, appears to be a potential alternative market for them, and this might result in Dumping, which would detrimentally affect the domestic economy¹⁹⁷. Further, the aggrieved states in search of the potential alternate market for steel and aluminum may conquer the export markets of India. Thus, the alleged measure is expected to have several indirect effects on the Indian economy.

4.4.2 INDIA AND THE US SANCTIONS ON IRAN

The ties between India and Iran are centuries old, and their bond is not purely defined on the basis of trade; rather, it features a highly intertwined civilizational and cultural history. When it comes to post-independent days, India and Iran established diplomatic links on 15 March 1950. However, owing to the differences in ideologies and stands taken by these countries during crucial political events in the region, there were slight lumps and rifts in Indo- Iranian relations. For instance, during the Cold War era, Iran stayed with the Soviet block, while India

¹⁹⁶ PTI, *India's steel export to the US in 2018 down by 49%, aluminum up 58%: Report*, BUSINESS STANDARD,(Apr 16,2019,1:31 AM) https://www.business-standard.com/article/pti-stories/major-decline-in-india-s-steel-export-to-us-increase-in-aluminum-report-119041500171_1.html

¹⁹⁷ *Id.* at 196

embraced the principle of Non-Alignment. During the Soviet invasion in Afghanistan in 1979, the Northern Alliance was led by Ahmad Shah Masud, whereas India backed the Soviet-installed Government of Babrak Karmal. Despite these differences, India and Iran keenly cooperated in economic and development activities¹⁹⁸.

India is the world's third-largest importer of oil. In the year 2018, India imported around 231.1 million tons of oil. India's demand for oil is expected to increase in the coming years owing to population growth and development. By 2040, India's share of total global energy demand will be 11%. And to meet these augmenting energy demands, India is highly reliant on Iran. Apart from the collaboration in the energy sector, both countries have invested highly in maritime cooperation and maritime security. In 2003, Iran and India concluded the 'New Delhi Declaration' for ensuring regional security. Similar initiatives were taken in 2006 as well. As an extension of this, during the Indian Ocean Naval Symposium in Tehran in 2018, both Iran and India vowed to cooperate and facilitate each other in counterterrorism, counter-piracy, and counter-narcotics trafficking.¹⁹⁹ India has made some significant or substantial investments for the development of ports that are strategic to India. India has invested USD 85.21 million and an annual revenue expenditure of “\$22.95 million for developing Chabahar port and is also constructing a USD 1.6-billion railway line from Chabahar to Zahedan”, near the Iran Afghan border.

Despite the cordial ties for ages and sincere economic collaboration, India and Iran have failed to elevate their relations to the desired level. The primary factor that impedes India –Iran ties is the US sanctions on Iran and coercion on India. 30 years after the US had imposed sanctions on India for her first nuclear weapons testing in 1974, in 2005, India and the US embarked on their Civil-Nuclear Agreement or the 123 Agreement, under which India was recognized as a Nuclear weapon state by justifying India's strong non-proliferation record²⁰⁰. However, in return pressured India to compromise its sovereignty in dealing with Iran. “Bush administration warned India that *“India’s failure to cooperate with the US on Iran could have negative implications for the civil nuclear agreement.”* India had to vote against the nuclear aspirations

¹⁹⁸ Mahwish Hafeez, *India-Iran Relations: Challenges and Opportunities*, 39 Strategic Studies (2019) https://www.jstor.org/stable/48544308?seq=1#metadata_info_tab_contents

¹⁹⁹ Gabriel Honrada and Daniyal Ranjbar, *US Sanctions against Iran and Their Implications for the Indo-Pacific*, *E- International Relations* (Dec 15, 2020), <https://www.e-ir.info/2020/12/15/us-sanctions-against-iran-and-their-implications-for-the-indo-pacific/>

²⁰⁰ Dr. V. Balaji, *The Impact Of Indo-US 123 Agreement – A Holistic Analysis*, <https://www.reading.ac.uk/web/files/123agreement/Balaji.pdf>

of Iran at IAEA²⁰¹. This not just toppled the Indo- Iranian ties rather paved the way for strong political unrest in India. The Government spearheaded by Manmohan Singh was severely criticized by the opposition parties for leaving India's policies at the whims of the US.

The US sanctions coupled with distrust between Iran and India caused India to leave the Iran-Pakistan- India (IPI) Gas Pipeline Project. For similar reasons, in 2010, RBI discontinued the Asian Clearing Union (ACU) currency swap mechanism, and this placed India in a significant financial crisis. Indian oil companies had to pay US\$ 5 Billion for already purchased crude oil. Through the Europaisch Iranische Handels bank, a German-based bank, India managed to pay two-third of this money. Later, this bank also stopped receiving payments from India.

Similarly, in 2011 US brought the business with Iran in refined petroleum products under the clutches of sanctions. Indian industrial tycoons such as Reliance were denied loans from the US Exim Bank close to US\$900 million for the purchase of US equipment. Reliance didn't want to come under US restrictions and stopped exporting refined gasoline to Iran. In 2012, the US pressured India to reduce its oil imports from Iran. In 2009 -10 14.37% of India's total oil import was from Iran. In 2010-11, the share reduced to 10.5 %. Indian Oil imports from Iran in the subsequent years were 9.03 % in 2011-12, 7.13 % in 2012-13, 5.95 % in 2013-14, 5.96 % in 2014-15.²⁰². However, following the JCPOA, when sanctions were relaxed, there was a drastic increase in the flow of oil from Iran to India. In 2016, 2017, and 2018, Iran was India's third-largest oil supplier.

When the US re-imposed the sanctions on dropping the JCPOA on May 8th, 2018, the situation turned deplorable again; all states, including India, were asked to stop oil imports for Iran. India, Italy, Greece, and Turkey were given a waiver from sanctions for a period of 6 months (till 2019 November). Consequentially, imports of crude oil from Iran dipped to “1.7 Million Tonnes (MT) in FY20, down from 23.9 MT in 2018-19”²⁰³. In FY 2016, India exported 80.6% of the oil it consumed. But in recent years, India's domestic production of crude oil has

²⁰¹ “The IAEA was established as an autonomous organization on 29th July 1957. Though established independently of the United Nations through its international treaty, the IAEA Statute, the IAEA reports to both the UN General Assembly and Security Council. Since its inception, IAEA has been involved in improving the international nuclear legal regime as part of its general aim to improve nuclear safety worldwide and ensure the peaceful use of nuclear energy. The international agreements developed under the IAEA's auspices have had an essential impact on the adoption and unification of norms and rules on nuclear energy in a great variety of legal systems”

²⁰² HAFEEZ, *supra* note 198.

²⁰³ Shine Jacob, *Iran crude oil imports dip to 1.7 mt in FY20, down from 23.9 mt in FY19*, BUSINESS STANDARDS (Jan 2, 2020, 00:57 AM), https://www.business-standard.com/article/economy-policy/iran-crude-oil-imports-dips-to-1-7-mt-in-fy20-down-from-23-9-mt-in-fy19-120010200019_1.html

decreased, and as a result, export Import dependency has increased to 83.7%. US sanctions on Iran and Venezuela (two major oil suppliers) has forced India to look for alternate suppliers²⁰⁴. India being a major international player, finding alternate suppliers was quite an easy process; however, distancing away from Iran was politically and economically an expensive and risky deed for India. Oil import from Iran is quite conducive to India on multiple grounds. Iran had allowed a “discount on freight and insurance, 60-day trade credit, and payment in rupee terms of 45 percent of total supply from Iran”. Trade-in Rupee allowed India to retain or save its foreign exchange reserves. Further, according to K Ravichandran, Senior Vice-President at ICRA, “The processing of Iranian crude also give better yields and better-operating margins²⁰⁵.”

On the other hand, there has been a reduction in crude oil production at the global level lately. In 2019, OPEC decided to limit oil production to 1.2 million barrels per day. Further, due to output cuts in Canada and the steep decline in the North Sea, total non-OPEC dropped to 740-kilo barrels per day. Crude oil supplies from Algeria, Angola, Nigeria, Libya, Iran, and Venezuela²⁰⁶ also declined. An interplay of these factors increased the Crude oil price from ~\$57 per barrel²⁰⁷ to \$ 73 in 2019²⁰⁸. And this resulted in a humongous leap in India's oil import Bills. India had spent \$87.8 Billion on oil imports during 2017-18, and in the 2018-19, the expenses incurred from oil import was \$111.9 Billion²⁰⁹. In 2019-2020, the bill was around \$ 102 Billion. On an estimate, “India's import bill on crude oil accounts for more than 20 percent of total imports in value terms”. “\$1 increase in oil price can increase trade deficit by \$1.2 billion²¹⁰”. And thus, the increase in the Crude oil bill has widened India's trade deficit. Impact of oil price on the value of India rupee also left India in a disadvantages position”. According to Forbes India, “if oil increase by \$ 5 per barrel, the Indian rupee will depreciate by 1.4 % against the US dollar²¹¹”.

²⁰⁴ Arun Singh, *Impact of Iran Oil sanctions on India*, FORBES INDIA (Jun 24, 2019, 06:09 AM) <https://www.forbesindia.com/blog/economy-policy/the-impact-of-iran-oil-sanctions-on-india/>.

²⁰⁵ Bilal Abdi, *India's Crude Oil Imports from Iran Jumped 52 in June*, ENERGY WORLD, (Jul 24, 2018, 6:43 PM) <https://energy.economicstimes.indiatimes.com/news/oil-and-gas/indias-crude-oil-imports-from-iran-jumped-52-percent-in-june/65119168>

²⁰⁶ The decline of crude oil production by Venezuela and Iran is induced.

²⁰⁷ Monthly Average in the Month of December 2018

²⁰⁸ SINGH, *supra* note 204.

²⁰⁹ Sanjeev Chaudhary, *India's Crude oil Import Bill fell 9% to 102 Billion in 2019-20*, THE ECONOMIC TIMES (Apr 30, 2020, 08:26 PM) <https://economicstimes.indiatimes.com/news/economy/foreign-trade/indias-crude-oil-import-bill-fell-9-to-102-billion-in-2019-20/articleshow/75473757.cms?from=mdr>

²¹⁰ SINGH, *supra* note 204.

²¹¹ *Id.* at 210.

As mentioned earlier, Chabahar port development Project is India's ongoing flagship program with Iran and Afghanistan. Port is located in Sistan and Baluchestan province in the Southeastern part of Iran, on the Gulf of Oman. Under this project, India has invested in developing and operating two terminals of Chabahar port and the railway line linking Chabahar to Zahedan. The project allows India to efficiently trade with Afghanistan, bypassing Pakistan. It acts as the gateway to the International North-South Transport Corridor, which is a combination of road, rail, and sea routes connecting Russia, Europe, Central Asia, Iran, and India. Moreover, the port is a "strategic counter" to Pakistan's Gwadar port operated by China, which is about 170 km away²¹².

US measures have caused considerable loss and reputational damage to India. The Chabahar development agreement was signed in 2015, and in 2018, the US re-imposed the sanctions on Iran. US Administration had exempted Indian actions in Chabahar from sanction under "Afghanistan Reconstruction." However, prevailing uncertainties and fear of US sanctions have largely delayed the Chabahar port project²¹³. Moreover, there is no clarity as to whether India is still involved in Chabahar Railway Project. According to the reports drawn by 'The Hindu,' Iran has decided to go it alone on the rail line. Reports also suggest that China has concluded new investment projects with Iran in "*infrastructure, manufacturing and upgrading energy and transport facilities, to refurbishing ports, and other installations*"²¹⁴. Losing opportunities to China is absolutely a matter of political and economic concern for India.

Apart from the adverse results in investment and oil trade, the impact of US sanctions is felt on India's spice exports to Iran. Iran is the largest importer of Indian spices, export of turmeric to Iran has declined to owe to US sanctions on Iran. Ajay K Tahiliani, the partner of Asian Food Industries, prominent spices exporting country, stated that "*in the absence of Iran, there are no big orders for Indian turmeric. Bangladesh is now buying but not in large quantities*"²¹⁵.

²¹² Suhasini Hiader, *The Hindu Explains | Why is India out of Chabahar Rail Project?*, THE HINDU (Jul 19, 2020, 10:26 AM) <https://www.thehindu.com/news/international/the-hindu-explains-why-is-india-out-of-the-chabahar-rail-project/article32126361.ece>

²¹³ PTI, *Chabahar Port Likely To Be Ready By May As India Accelerates Work: Report*, NDTV (Apr 9, 2021, 7:30 AM) <https://www.ndtv.com/india-news/chabahar-port-likely-to-be-ready-by-may-as-india-accelerates-work-report-2409534>

²¹⁴ ET Online, *India shunted out of key Iran railway project, plot set to thicken as China's shadow looms in the background*, THE ECONOMIC TIMES (Jul .15, 2020, 10:08 AM) <https://economictimes.indiatimes.com/industry/transportation/railways/india-shunted-out-of-key-iran-rail-project-plot-set-to-thicken-as-chinas-shadow-looms-in-the-background/articleshow/76952974.cms>

²¹⁵ P K Krishnakumar, *Turmeric exports hit by US sanctions against Iran*, THE ECONOMIC TIMES, (Jul 30, 2019, 12:51

4.4.3 INDIA AND THE US SANCTIONS ON RUSSIA

The Indo- Russia ties have been pleasant and smooth since the 1950s. Russia has assisted India in multiple capacities- as a mediator between India and Pakistan, as a technology transferor in the defence sector, as a credible investor in multiple infrastructural projects. Moreover, Russia has contributed immensely in training and building the faculties of Indian defence personals. Russia's assistance in the 1971 India- Pakistan war is commendable. Over the years, India and Russia have developed a "special and privileged strategic partnership."

As mentioned in the previous paragraph, Russia is India's primary defence partner. Victor Komardin, the Deputy Director of Rosoboronexport, remarked in a seminar in New Delhi in 2002, "*The history of Russia forced the country to develop its military industry and science...The Russian defence sector provided armament and war equipment not only for the Russian Armed Forces but also for the armed forces of friendly states*"²¹⁶. India was one such friend who immensely benefited from allying with Russia. As of 1992, India and Russia had negotiated arms agreements worth \$650 million²¹⁷. Till 1998, India was an importer or buyer of Russian defence technologies. However, in the later years, Indo- Russian relations started evolving from "*a purely buyer-seller relationship to joint research, design development, and production of state of the art military platforms.*" The Brahmos missile is one such successful episode of India- Russia defence cooperation. In 2010, Indo- Russia inked 'Declaration on Strategic Partnership,' and the defence alliance was further extended for another ten years²¹⁸. In 2014, these states signed 'Strategic Vision for Strengthening Cooperation in Peaceful Uses of Atomic Energy. Followed by this in 2016, India and Russia agreed on a 'Partnership for Global Peace and Stability. Indo- Russian collaborations are not limited to the field of defence; rather, these states complement each other in wide-ranging sectors such as oil and energy, space and technology, aviation, IT. Thus it can be undoubtedly concluded that Russian has been a strong and engaging partner throughout history.

As we discussed, the existing sanctions against Russia were imposed in 2014 and 2016 in

PM)<https://economictimes.indiatimes.com/news/economy/foreign-trade/turmeric-exports-hit-by-us-sanctions-against-iran/articleshow/70446034.cms?from=mdr>

²¹⁶ Victor Komardin, *Military-Technical Co-operation in the Environment of Defence Sector Reforms in India and Russia*, Indian Defence Review, 17 (2), April-June 2002, p. 129.

²¹⁷ Ian Anthony, *Economic dimensions of Soviet and Russian arms exports*, SIPRI, accessed (May 25, 2021)

²¹⁸ Jyotsna Bakshi, *India-Russia Military Relations*, India's National Security Annual Review (2001)

response to the Russian invasion in Ukraine and the former's alleged interference in US Presidential Election. The major stumbling block in Indo- Russian economic aspirations is the CAATSA of 2017. Section 231 of CAATSA allows the US to “*impose extraterritorial sanctions on parties that “engages in a significant transaction with a person that is part of, or operates for or on behalf of, the defence or intelligence sectors of the Government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation”*”²¹⁹. And IN 2018 October, India and Russia inked a deal worth \$5.4 billion to purchase an S-400 Triumf missile system²²⁰.

Since 2016, the US has recognized India as its major defence partner, whereby India can buy more advanced and sensitive technologies from the US. Now, this constitutes a substantial transaction under CAATSA; according to the US, “*acquisitions by countries like India on significant systems would either expose or put at risk platforms and its technologies to an adversary.*” India is a potential candidate who can be sanctioned under section 231. However, till now US has held itself up from sanctioning India by temporarily waiving the same under Section 231(b) of CAATSA.

As mentioned in the footnote, S-400 is highly sophisticated, and it enables the Indian force to cover an entire spectrum of aerial threats. S-400 will further equip the Indian forces to play the defensive and offensive roles effectively against China or Pakistan, who are inducted with inducted cutting-edge fighter jets like Block 52 F-16s. The Indian Air Force has advised the Government to purchase it “*even at the risk of incurring US wrath*”²²¹,

Although the US has waived the application of extraterritorial sanctions on India, it is essentially a matter of concern as it is just a temporary and conditional waiver. If India fails to substantially reduce its defence imports from Russia, the US will decline the waiver. Thus, CAATSA has made “*what should have been a straightforward bilateral deal into a complex trilateral balancing game for India*”²²². As mentioned above, Russia India's prominent ally

²¹⁹Countering America’s Adversaries Through Sanctions Act, 2017, §231, 7 U.S.C. 5602 (USA)

²²⁰ “*The S-400 is known as Russia’s most advanced long-range surface-to-air missile defence system. Each S-400 system has four types of missiles from the 400-km range, 200-km range, 100-km, and 40-km range, forming a nearly impenetrable interlocking grid of missiles. It can detect and destroy targets flying as low as 100 feet to as high as 40,000 feet*”.

²²¹ Sandeep Unnithan, *Why the IAF Wants the S-400 Missile*, (Jul 17, 2019, 7:47 AM)

<https://www.indiatoday.in/india-today-insight/story/why-the-iaf-wants-the-s-400-missile-1569823-2019-07-16>

²²² HAIDER, *supra* note 212

and any disengagement is will cost India. It is to be noted that Russia is an ally of China as well. Thus, rifts between India and Russia will render China-Russian ties more cohesive²²³. And that would have an overhauling impact on the geopolitics and power alignment in Asia. Owing to the dictatorial moves of China in the South China Sea, in the Northern borders, in Hong Kong, Taiwan, etc, the politics in Asia, especially the South Asian region, is quite critical, and power is tilted towards China. Thus, if the US imposes sanctions on India, it will further Chinese dominance in Asia.

4.4.4 INDIA AND THE US SANCTIONS VENEZUELA

India has shared a cordial relation with Venezuela since the beginning. Various commodities are transacted between these states. India exports pharmaceuticals, chemicals, textiles, calcined petroleum coke (CPC), engineering products such as scooters, equipment, and machinery, etc., to Venezuela. On the other hand, Venezuela exports products such as Iron pellets, Electrical cables etc., to India. However, the primary trading commodity between India and Venezuela is Crude Oil. In 2017-18, Crude petroleum exports from Venezuela to India accounted for 98.54 % of its total exports and had contributed \$ 7.39 Billion as revenue. And Venezuela is India's fourth-largest source of crude oil after Iraq, Saudi Arabia, and Iran. The US sanction of Venezuelan Oil companies does have a direct impact on India's oil imports. Research conducted by Mumbai-based researcher Hari Seshasayee suggests that "due to US pressure import of oil from Venezuela has declined to 200,000 barrels per day (bpd) in June 2019, which is only about half the oil India imported on average from Venezuela in 2018." ²²⁴.

The import of oil from Venezuela to India is spearheaded by Reliance Industries Limited (RIL). On the other hand, RIL is a party to certain lucrative deals with the US. The company exports millions of dollars' worth of goods to the US. *"Again, the company is deeply integrated with the US market through joint ventures in shale gas blocks in Texas and Pennsylvania with Chevron and Pioneer Natural Resources. The US being a potential partner of economic and political significance, RIL had to downed oil import in compliance with US sanction"*²²⁵. However, it is to be noted that US sanction is not the sole reason for

²²³ Dr Anil Kumar Lal, *Why should the US 'waive sanctions' against India for buying S-400 'Triumph' air defence system from Russia?*, TOI, (Jan 14, 2021) <https://timesofindia.indiatimes.com/blogs/rakshakindia/why-should-us-waive-sanctions-against-india-for-buying-s-400-triumf-air-defence-system-from-russia-part-2/?source=app&frmapp=yes>

²²⁴ Hari Seshasayee, *India- Venezuela Relations: A case study in Oil Diplomacy*, WILSON CENTRE, (26 June, 2021) <https://www.wilsoncenter.org/publication/india-venezuela-relations-case-study-oil-diplomacy>

²²⁵ *Id.* at 224

the decline in oil import by India; rather, sudden decline in production by Venezuela is also a crucial factor. According to recent estimates, the average monthly oil production by PDVSA in 2019 was 720,000 bpd. The average production in 2015 was 2.3 Million bpd²²⁶. As discussed earlier, the decline in oil import from Iran coupled with Venezuela has caused apparent revenue loss to India. Further, US sanction has paved for a substantial geopolitical change. Venezuela is now more inclined to China. In 2019 it imported around “450,000 bpd to China, which is more than double the exports to India”²²⁷.

4.4.5 INDIA AND THE US SANCTIONS ON CUBA

Indo-Cuba relations have been traditionally friendly. In fact, India was one of the first states to recognize Cuban statehood after the 1959 Revolution. As per the data released in 2017, the Bilateral trade between India and Cuba stands at US\$38.81 Million. The major exports from India to Cuba are Pharmaceutical products, textile products, plastic products, metal products, organic chemicals. On the other hand, it imports tobacco, pharmaceutical products from Cuba. India has always responded quite benevolently to Cuban needs and necessities. In 2008, Cuba was badly hit by multiple hurricanes, and India had donated US\$ 2 Million to Cuba. Further, in the same year, India had written Cuban debt worth UD\$ 62 Million to assist Cuban recovery. Similar financial assistances were extended in 2016 and 2017 to mitigate the effects of Hurricane Mathew and Irma²²⁸. Cuba sees India as the potential player who can bring about better, non-discriminate world order and has always favored India's entry to UNSC as a Permanent Member. Indian economy does not rely on Cuba, and thus US embargo doesn't have any significant impact on India. However, India has consistently voted for lifting US sanctions on Cuba.

4.5 CONCLUSION

The military, political, economic, technological, and financial eminence of the US enables it to impose rigorous primary and extraterritorial sanctions on other players in the interest of its national security.

Relation with the US is of immense strategic importance to India. The above-mentioned five

²²⁶ SESHASAYEE, *supra* note 141

²²⁷ *Id* at 226.

²²⁸ *India- Cuba Bilateral Brief*, Embassy of India, Cuba, <https://eoi.gov.in/havana/?1640?000>

targeted states are also of great relevance to India, especially Iran, Russia, and Venezuela. Going by the principle of sovereignty, India has all right to frame its foreign policies and trade decisions. However, India is well aware that neglecting US sanctions in-toto will have a detrimental impact on India's social, political, economic, and scientific aspirations and has always strived to strike a balance between India's ties with the US targeted states and US sanctions. From the above analysis, it can be concluded that, despite all such efforts, US measures against Iran, Russia, and Venezuela have caused a significant adverse effect on the Indian Economy. The measure relating to Steel and Aluminium also has a certain indirect effect on India's trade.

CHAPTER: 5

IMPACT OF US SANCTIONS ON LEAST DEVELOPED COUNTRIES AND INTERNATIONAL TRADE

5.1 LEAST DEVELOPED COUNTRIES

The Least Developed Countries (LDCs) constitute the world's poorest or economically vulnerable population. According to United Nations, currently, there are 46 LDCs, and out of this, 35 are members of WTO.²²⁹ The United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries, and Small Island Developing States (OHRLLS) report says that “880 million people are about 12% of the world's population in these LDCs”. However, less than 2% of the world's GDP can be attributed to these states. LDCs share in international trade is again a stagnating figure of 1%. These states are characterized by poor institutional or political setup, unskilled human resources, limited financial resources, poverty, unemployment, income inequality. Though LDCs are not active players in international trade, these traits render them quite vulnerable to economic decisions, trade policies of prominent players.

At present, US has not imposed economic sanctions on any LDCs in the interest on national security, thus on a cursory reading, LDCs appears to be unaffected by US sanction. However, considering the integrated arrangement in the world, the reliance of LDCs on developed and developing countries, and their economic susceptibility, the LDCs are likely to have affected by the US sanction regime on Iran, Russia, Cuba, Venezuela, and tariff policy on Steel and Aluminum.

To uplift the LDCs and promote their participation in international trade is one of the touted objectives of WTO. WTO provides a comprehensive strategy called the ‘Special and Differential Treatment’ (S & D Treatment) to achieve this goal. For instance, the S & D

²²⁹ Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, the Central African Republic, Chad, the Democratic Republic of the Congo, Djibouti, the Gambia, Guinea, Guinea-Bissau, Haiti, the Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, the Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Togo, Uganda, the United Republic of Tanzania, Yemen and Zambia.

Approach endows the developing states and LDCs with a greater compliance period; LDCs are given certain special privileges while settling disputes with developed states. Apart from this, WTO authorizes and demands the Developed countries to take special steps in uplifting and improving the trade opportunities of LDCs. Going by the Principle of non-reciprocal preferential treatment, the developed states, while providing concessions to LDCs, shall not expect the latter to respond with similar concessions. Article 67 demands the developed states to help LDCs and developing countries by ensuring technological assistance and transfer.

Further, other institutions like the UN have also placed enormous responsibilities on the international community to help and stimulate the growth of LDCs. For example, the UN Istanbul Programme of Action for the LDCs for 2011-2020 lays down the “*international community's vision and strategy for the sustainable development of LDCs for the next decade with a strong focus on developing their productive capacities*²³⁰”.

Thus, it can be concluded that the US being a developed state and an active player, has the legitimate duty to assist the development of LDCs and to avoid measures detrimental to their interest. Furthermore, it is essential to draw the effect of US acts on LDCs. In this section, the researcher will address the issue, 'whether US sanctions on targeted states have a negating impact on the LDCs?'

5.2 IMPACT OF US SANCTIONS ON LEAST DEVELOPED COUNTRIES

5.2.1 AFGHANISTAN

Being a landlocked, economically, politically unstable, poor least developed state, Afghanistan shares such strategic ties with Iran, and thus Afghan economy is seriously hit by US sanctions on Iran. Iran had been a significant trading partner of Afghanistan. 35% to 40% of exports to Afghanistan comes from Iran and annual bilateral trade between these countries is worth \$ 2 Billion²³¹. According to Saad Khatebi, the chief of the Chambers of Commerce of Herat, “The effects of the sanctions are hugely felt in Afghanistan’s western region, particularly, Herat²³². Iran has immensely invested in the infrastructure, telecommunication, education, and

²³⁰ UNOHRLLS, Istanbul Programme of Action for the LDCs (2011-2020)

²³¹ Sumitha Narayanan Kutty, *Iran, and Afghanistan: The Urgent Need for Inclusive Regional Diplomacy*, Asia Policy (2014) https://www.jstor.org/stable/24905252?read-now=1&seq=1#page_scan_tab_contents

²³² Sayed Salahuddin, *Sanctions on Iran have Negative Impact on Afghanistan*, ARAB NEWS, (Nov 7, 2018, 3:44 PM) <https://www.arabnews.com/node/1399991/world>

agriculture sectors of Afghanistan, and a majority of these investments are concentrated in the state's western side. Again Iran is involved in developing the 'Golden Transit route.'²³³ that connects different parts of Afghanistan to Iran. As a result of the economic crisis induced by US sanctions, Iran has failed to maintain or continue the aid or investment flow to Afghanistan. Moreover, this has detrimentally affected the development, lives, and aspirations of Afghans. Further, Afghanistan was an interested party in the Chabahar Port development program, as it allows India and Afghanistan to efficiently conduct their trade without relying on Pakistan.²³⁴ Though the US has exempted Chabahar development activities from sanctioning, US measures have caused considerable delay in the completion of the project. As a result, Afghanistan did suffer revenue loss.

Thousands of Afghans are employed in the industries of Iran, and the economic crisis that unfolded in Iran rendered these thousands unemployed. As sanction pressure increased, Iran failed to focus on its anti-drug trafficking missions, which resulted in the flow of drugs into and through the territories of these states. Further, Iran currently accommodates around 3 Million Afghan refugees. US sanctions also hinder their repatriation.²³⁵

5.2.2 BANGLADESH

Bangladesh is yet another LDC that is heavily dependent on Iran. Bangladesh has concluded FTA with Iran to prosper their trade; however, due to US sanctions, they have failed to squeeze its full potential. The primary area of concern is the oil imports from Iran. Iran has been providing its prized light crude oil to Bangladesh at such favorable rates. Bangladesh Media have reported that "*the state would suffer more if the US sanction on Iran continues the same.*"²³⁶ Similar views are expressed by Porimol Palma, in the e-newspaper 'The Daily Star..

The US measure of imposing a tariff on Steel and Aluminum has also impacted Bangladesh. According to an Article published by Peterson Institute of International Economics, ' poor

²³³ Golden Transit Route – a 125 km road running from Iran's Dugharoun region to Herat, 176 km railroad to Herat

²³⁴ Asha Swaney, *Chabahar Port: Unlocking Afghanistan's Potential*, CENTRE FOR STRATEGIC AND INTERNATIONAL STUDIES, (Jul 4, 2021) <https://www.csis.org/chabahar-port-unlocking-afghanistans-potential>

²³⁵ Sumitha Narayanan Kutty, *Iran, and Afghanistan: The Urgent Need for Inclusive Regional Diplomacy*, *Asia Policy* (2014) https://www.jstor.org/stable/24905252?read-now=1&seq=1#page_scan_tab_contents

²³⁶ Ashish Biswas, *US sanctions to hit Iran's trade with Bangladesh, India*, DHAKATRIBUNE (May 25, 2018, 2:53 PM) <https://www.dhakatribune.com/bangladesh/foreign-affairs/2018/05/25/us-sanctions-to-hit-iran-s-trade-with-bangladesh-india>

states, for instance, Bangladesh is hit hard by US import tariff on steel.²³⁷. The authors have condemned the measure to be violative of WTO obligation to “*shield vulnerable, innocent bystanders from the fallout of protectionist actions*” and have categorically designated the act to be a reflection of the 'America First' approach. According to the authors, the reasons for such negating effect on poor states despite being minor exporters of steel to the US are unclear.²³⁸.

5.2.3 CAMBODIA

Cambodia owing to its energy vulnerability, has attempted to foster trade deals with Iran. In 2013, Cambodia and Iran had signed an MOU to cooperate on oil and gas projects. The plan was to process the imported Iranian Crude oil from Cambodia’s oil refinery and to export the excess oil to China, and South Korea²³⁹. In fact, China had promised to invest US\$ 2 Billion in the refinery project. Nevertheless, due to the US's coercive, political, and economic warnings or threats, it had to drop its ventures. The US demanded, “*All UN Member States, including Cambodia, to fulfill the objectives of UNSC Resolution 1929*”. US intervention has caused huge economic loss to Cambodia. Moreover, scholars have argues that such efficient economic cooperation between Cambodia and Iran has the potential to integrate Iran and ASEAN economies.²⁴⁰.

5.2.4 HAITI

Haiti and other Caribbean states are relied on Venezuela to satisfy their oil and gas requirements²⁴¹. In 2005 Venezuela and 18 other neighboring states founded PetroCaribe, which is a strategic oil alliance wherein Venezuela loaned oil to its members at low interest rates. PDVSA, which is the state-owned oil company, provided Haiti and other members oil “and allowed them to defer payment on 40% of what they bought for up to 25 years. These

²³⁷ Chad P. Bown, Euijin Jung, Eva (Yiwen) Zhang, *Trump’s Steel Tariff have hit Smaller and Poorer Countries the Hardest*, PETERSON INSTITUTE OF INTERNATIONAL ECONOMICS(Nov 15, 2018, 3:45 PM)<https://www.piie.com/blogs/trade-and-investment-policy-watch/trumps-steel-tariffs-have-hit-smaller-and-poorer-countries>.

²³⁸ Ibid

²³⁹ *Cambodia to Import Oil from Iran*, TEHRAN TIMES (Feb 1, 2012, 4:00 PM) <https://www.tehrantimes.com/news/396350/Cambodia-to-import-oil-from-iran>

²⁴⁰ Stephen Kurczy, *As Iran sanctions threaten Iran sees a new friend in Cambodia*, THE CHRISTIAN SCIENCE MONITOR (Aug 8, 2021) <https://www.csmonitor.com/World/Asia-Pacific/2010/0826/As-Iran-sanctions-threaten-Iran-sees-new-friend-in-Cambodia>

²⁴¹ Roberta Rampton, *Trump dangles investment to Caribbean leaders who back Venezuela's Guaido*, REUTERS (Mar 22, 2019, 3:39 PM) <https://www.reuters.com/article/us-venezuela-politics-caribbean-idUSKCN1R313H>

members' states often sold the loaned oil at the international market at a higher price.²⁴² Thus, PetroCaribe, spearheaded by Venezuela, has been an excellent source for cheap oil and revenue for Haiti and other member states. Post US sanctions, PDVSA's oil production dropped to 830,000 barrels a day and stopped providing oil to petroCaribe members. The Economist Intelligence Unit (EIU) has reported that owing to Venezuela's failure to loan oil, "Haiti is suffering fuel shortages²⁴³"

5.2.5 NEPAL

Lately, on understanding the Hydro energy potential of Nepal, and the mutual benefits that can be incurred by Russia and Nepal, Russia has strengthened its trade cooperation with Nepal. Russia has planned to invest in the energy, metallurgy, infrastructure, and civil aviation sectors of Nepal. As we know, Russia is highly advanced and equipped when it comes to the Energy sector. The former has already supplied Mi-17 helicopters.²⁴⁴ Russia can thus bring about tremendous developments here. However, these plans are likely to get affected by US sanctions on Russia.

5.2.6 AFRICAN STATES

In recent years, Russia has invested in African states' defence and energy sectors (mainly Guinea, Zimbabwe, Algiers, Angola, Mali, CAR). Russia –Africa summit held at Sochi in 2019 is a notable event intended to promote Russia – Africa ties. Recently, 30 African countries have 'concluded military and technical cooperation related agreements.'²⁴⁵ . Russia's mission in Africa includes investment in Angola's telecommunication sector, financial ad technical assistance to Nigeria and Angola for space exploration. The US sanctions coupled with US policy on Africa are likely to thwart the progress of these Russian initiatives in Africa. However, many scholars argue that Russia should be kept away from Africa, as Russia is

²⁴² Ciara Nugent, *Why a Venezuelan Oil Program Is Fueling Massive Street Protests in Haiti*, TIME (Jun 24, 2019, 1:12 PM) <https://time.com/5609054/haiti-protests-petrocaribe/>

²⁴³ *Id.* at 242

²⁴⁴ Nikola Mikovic, *What Are Russia's Interests in Nepal?* , AUSTRALIAN INSTITUTE OF INTERNATIONAL LAWYERS, (Jan 14, 2020) <https://www.internationalaffairs.org.au/australianoutlook/what-are-russias-interests-in-nepal/>

²⁴⁵ Rajen Harshe, *Reassessing the magnitude of the growing Russo-African ties*, ORF,(Sept 1, 2020) <https://www.orfonline.org/expert-speak/reassessing-the-magnitude-of-the-growing-russo-african-ties-72576/>

extensively supplying arms.²⁴⁶ to radical African states such as Angola, Ghana, Mali, etc²⁴⁷ . A group often justify US sanction on the Iranian oil industry on the ground that, it has brought more buyers for African Crude oil. To some extent, it is true. However, African states like Angola, Nigeria, Congo have failed to attract buyers. Many firms, especially those from China, still purchase from Iran despite the threat of sanctions.²⁴⁸.

5.3 GENERAL IMPACT ON INTERNATIONAL TRADE

The imposition of import tariffs and quotas on Aluminium and Steel has impacted the metal trade. Among the targeted states, Russia, Turkey, and the EU are the most affected. The said measure has attracted retaliation from various targeted players; for instance, China retaliated by increasing the export tariff on US exports by 20.7%. EU reacted inflicted tariff on 180 products ranging from agricultural products, automobile products, etc. India imposed a tariff on 28 products exported from the US, such as almonds, apples, walnut. The “retaliatory tariffs resulted in a 9.9% decline in US exports within products”²⁴⁹. Thus so far, the measure has proved to be disadvantageous to the US. According ‘Mary Amiti, Stephen J. Redding, and David E. Weinstein, these “tariffs have declined aggregate US real income of \$1.4 billion per month in deadweight losses, and cost US consumers an additional \$3.2 billion per month in added tax²⁵⁰”.

The extraterritorial nature of US measures has made crucial changes in the trade arrangements between Iran and other Asian countries. Despite Iran's political and ideological differences, almost all Asian countries were availing oil and various other commodities and services from Iran. US sanctions made it difficult for Persian Gulf states to conduct trade with Iran. Southeast Asian states like Singapore and Taiwan have stopped importing oil from Iran since 2018. Japan

²⁴⁶ Russia struck arms orders worth \$14.6 billion with African countries, and sales to the African continent amount to one-third of Russian military exports.

²⁴⁷ Maxim Matusevich, *Russia In Africa: A Search For Continuity In A Post-Cold War Era*, 21 Insight Turkey,(2019) Pp. 25-40

²⁴⁸ Jevans Nyabiage, *China's 'teapot' buyers import more Iran oil, a headache for African crude producers*, SOUTH CHINA MORNING POST, (Mar 27, 2021, 6:00 PM) <https://www.scmp.com/news/china/diplomacy/article/3127256/chinas-teapot-buyers-import-more-iran-oil-headache-African>

²⁴⁹ Pablo D. Fajgelbaum, Pinelopi K. Goldberg, Patrick J. Kennedy & Amit K. Khandelwal, *The Return to Protectionism*, *The Quarterly Journal of Economics*, (2019) pp. 1-55

²⁵⁰ Mary Amiti; Stephen J. Redding; David E. Weinstein, *The Impact of the 2018 Tariffs on Prices and Welfare*, 33 *Journal of Economic Perspectives* (2019) pp. 187-210

and South Korea also stopped buying oil from Iran. Till 2012 the EU sanctions against Iran were as comprehensive as the US. However, in response to the JCPOA, the EU lifted its sanctions except on sales to Iran of arms, missile technology, and other proliferation-sensitive. However, when the US withdrew from the treaty, most of the European companies exited the Iranian market²⁵¹. China and Russia, for an exception, have continued their trade engagements with Iran. China is the largest importer of Iranian oil and is highly engaged in development activities in Iran. The continued engagement of Russian and China can be attributed to their political rivalry with the US and the geographical relevance of Iran.

As we discussed above, US policy against Russia is a hanging sword on India. India is highly dependent on Russia, especially for its defence product. The US has currently waived its sanctions against India; however, if the US lifts the waiver, it can have a devastating effect on the Indian economy.

Along with the US, the EU has also cascaded Russia in the name of regional security. However, it is ironic that the EU is the most affected by US sanctions against Russia. The EU has suffered significant trade loss due to US sanctions. And among the members of the EU, Germany is in the most disadvantaged position. Germany bears “40% of the Western trade loss.”²⁵² Traditionally, one of one-third of the EU’s oil and gas imports requirements are supplied by Russia. European companies have a strong presence in Russia. When the US sanctioned Nord stream 2, several European companies had to dissociate with this pipeline project, causing huge revenue loss. Though insignificant, the US also suffered a trade loss of 0.6% sanctions on Russia.

The impact of US sanctions on Cuba is largely felt in the Western sphere. The US has always amended and upgraded its sactionary measure to keep Cuba aloof. The latest in line is the activation of the Title of Helms-Burton Act of 1996, which permits US citizens to sue “foreign companies operating on properties that were seized from Americans during Cuban Revolution.” The policy change has detrimentally affected the interest of numerous business firms, especially from Canada and the EU. It has made it a hardsome task for new companies to invest or involve in trade deals with Cuba and Caribbean Islands. EU is Cuba's largest

²⁵¹ KATZMAN, *supra* note 116

²⁵² Dennis Avorin, Judith Levy, *Unintended Consequences of Sanctions on Russia*, Begin-Sadat Center for Strategic Studies (2018) p. 3

investor, and to mitigate the effects of the Helms-Burton Act, the EU has constituted the Sanction Statute which empowers the aggrieved corporations to sue the US administration for damages in European courts²⁵³.

US sanctions on Venezuela were supported by other prominent players like the EU, Mexico, Canada, Switzerland, etc. US measures have impacted Venezuela's trade relations with India, Netherland. In the case of the Netherlands, the strains go beyond trade. US sanctions have a deteriorating effect on the economic, political, social security of Dutch Caribbean Islands Aruba, Bonaire, and Curaçao. China is the only major importer which continues to import oil from Venezuela now.²⁵⁴ Further, as mentioned in the previous section, measures against Venezuela have the energy or fuel security of members of PetroCaribe.²⁵⁵

The nature of US sanctions on Cuba, US withdrawal from JCPOA, and US's unfettered sanctions on Russian industries, projects which are of strategic importance to EU, has developed enough friction between the US and EU. This, in turn, has weakened the transatlantic bond²⁵⁶. Many of the EU members opines that US extraterritorial sanctions "infringing Europe's sovereignty²⁵⁷". In fact, recognizing the weakening of US-EU ties, US President Biden recently waived sanctions on a German company involved in the construction of Nord stream 2²⁵⁸.

Further, US sanctions on Russia and Iran have made significant changes in geo-politics. Russia and China have been engaging partners for years; however, as opined by President of France Emmanuel Macron, continuous sanctions from the US and EU have deepened Russia - china

²⁵³ Andreas Knobloch, *US Sanctions Against Cuba keep Europe Puzzled*, DW (Feb 12, 2020) <https://www.dw.com/en/us-sanctions-against-cuba-keep-europe-puzzled/a-52430829>

²⁵⁴ Luc Cohen, Marianna Parraga, *How China Got Shipments of Venezuelan Oil Despite US Sanctions*, REUTERS, (Jun 12, 2020, 8:00 PM) <https://www.reuters.com/article/us-venezuela-oil-deals-specialreport-idUSKBN23J1N1>

²⁵⁵ Antigua and Barbuda, the Bahamas, Belize, Cuba, Dominica, the Dominican Republic, Grenada, Guyana, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Haiti, Nicaragua.

²⁵⁶ Simond de Galbert, *The Challenge to Building a Balanced Transatlantic Sanctions Policy between the United States and the European Union*, Center for Strategic and International Studies (2016):<https://www.jstor.org/stable/resrep23406>

²⁵⁷ Agathe Demarais, *Why Europe and the US need to Talk About Sanctions*, EUROPEAN LEADERSHIP NETWORK, (May 7, 2021) <https://www.europeanleadershipnetwork.org/commentary/why-europe-and-the-us-need-to-talk-about-sanctions/>

²⁵⁸ *Nord Stream 2: US and Germany Reach Deal on Controversial Russian Gas Pipeline*, BBC, (Jul 21, 2021) <https://www.bbc.com/news/world-europe-57923655>

ties²⁵⁹. Likewise, despite the sanctions spanning for decades, China has always purchased oil from Iran, and the recent 25-year economic and security agreement between Iran and China cements their bond²⁶⁰.

And it is often generalized that non –sanctioning states, in the absence of extraterritorial sanctions, get a less competitive environment and better deals with sanctioned states. However, studies conducted by 'European Centre for Entrepreneurship and Policy Reform' (ECEPR) states “reality is counterintuitive.” For instance, Israel and Switzerland have abstained from sanctioning Russia for invading Ukraine. Both these states have suffered significant losses despite the cascading sanctions on Russia by other prominent players. As per the data of 2016, the export from the US, Japan, EU to Russia decreased by 70%. While, export from Israel and Switzerland to Russia also faced a significant fall of 75% and 74%, respectively, with an export loss of US\$680 million and US\$2.3 billion, respectively²⁶¹. This is a phenomenon seen across all countries. This trade loss can be attributed to the fact that all states same global value chains. Sanction interferes and impedes the smooth working of the value chain; as a result, non-sanctioning states get affected.

The world is highly globalized and interconnected. The global value chain constitutes one of the cardinal elements that connect the world. Thus any effort to tamper or break the chain will affect all the states.

5.4 CONCLUSION

From the above, it can be concluded that though sanctions were imposed only on very few states, their effect is overarching. Developed states, Developing states, LDCs, trading partners of the US all were impacted by US sanctions (on Russia, Cuba, Venezuela, Iran, and US measures relating to Steel and Aluminum) in varying degrees and forms. China is a notable exception to this. To a great extent, China has succeeded in countering US sanctions; despite the threat of sanctions, China continues to trade with sanctioned industries of targeted states

²⁵⁹ Agathe Demarais, *Why Europe and the US need to Talk about Sanctions*, EUROPEAN LEADERSHIP NETWORK, (May 7, 2021) <https://www.europeanleadershipnetwork.org/commentary/why-europe-and-the-us-need-to-talk-about-sanctions/>

²⁶⁰ Brahma Chellaney, *US's Sanctions Often Advance China's Interests*, NIKKEI ASIA, (Apr 5, 2021. 5:00 PM) <https://asia.nikkei.com/Opinion/US-sanctions-often-advance-China-s-interests>

²⁶¹ Dennis Avorin, Judith Levy, *Unintended Consequences of Sanctions on Russia*, Begin-Sadat Center for Strategic Studies 3 (2018)

(Iran, Russia, Venezuela). When it comes to LDCs, African states are not really affected by US sanctions. But, Bangladesh, Nepal, Cambodia, Afghanistan, Haiti have paid some toll. On the whole, US sanctions have caused a decline in international trade.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

6.1 INTRODUCTION

As discussed in chapter 2, the National Security Exceptions' was essentially incorporated to protect the genuine or legitimate security concerns of member states; however, over the years, the said provisions are being exploited spectacularly to enlarge the political and such other ulterior intentions of States, especially the developed ones. Owing to the volatile and sensitive nature of national security concerns, actions taken in the exercise of national security exceptions were treated as self-judging. The WTO DSB has categorically restrained itself from adjudging such issues, and such an approach has, in fact, caused irreparable damage to international trade, economy, human rights, and the environment. However, lately the DSB, in the matter of 'Russia- measures concerning traffic in transit,' has deviated from the self-restraining approach. This is likely to pave way for a new jurisprudence and thus makes it essential and relevant to analyze certain controversial measures adopted to protect national security.

The Conclusions and findings based on the analysis of US Sanctions against Venezuela, Russia, Iran, Cuba and the measures restricting the import of steel and aluminium are discussed below.

6.2 CONCLUSION

The US imposition of tariff and quota on steel and aluminium are violative of its obligations under GATT and Agreement on Safeguards. The assertion that unrestricted import of steel and aluminium has caused a dent in US national security is baseless. Except for Russia and China, the major steel and aluminium importers of the US are its allies. The increased import of steel and aluminium is in harmony with these metals' domestic consumption and production. Further, the extension of tariff coverage to aluminium and steel derivatives and the heightening of tariff on steel imports from Turkey were not in compliance with the procedure laid under section 232. Basically, measures on steel and aluminium amount to disguised protectionism; however, the measures have proved to be detrimental to the US interest, the GDP has dropped,

consumer surplus has decreased, and employment has decreased. The big dealers of steel and aluminum are the only benefited ones.

US sanctions on Cuba are again arbitrary and groundless. Cuba poses no threat to the US. As explained in chapter 3, the US sanctions on Cuba are highly political in nature; it is driven by the US intention to destruct the Communist setting in Cuba. For instance, when the Helms-Burton Act- the most controversial of all US sanctions inflicted on Cuba, was enacted in 1996, the US offered to drop its sanctions if Cuba denounced Communism. Considering the Cold War incidents such as the Cuban Missile Crisis, the measures inflicted until the disintegration of the USSR can be justified to some extent. The act of continuing embargoes post-USSR disintegration without valid grounds amounts to an utter violation of International law. The US measures against Cuba are highly condemned by other world players. In June 2021, the UNGA, for the 29th time, adopted a resolution demanding the withdrawal of US sanctions.²⁶²

The political and economic situation prevailing in Venezuela is quite pathetic. The system needs to be resurrected. But, as claimed by the US, the political, economic instability, corruption going on in Venezuela is no threat to the US. Moreover, though the touted goal of the US, which is to reinstate democracy in Venezuela, happens to be a noble one, the method chosen by the US to achieve this is totally flawed and illegal. The gross sanctions on the Oil Sector of Venezuela, gold industry, shipping industry, instituted asset freezing measures, and this has exacerbated the economic and human rights scenario in Venezuela. In addition to the goal of installing democracy, the US has certain ulterior intentions in Venezuela, primarily to oust the Russian, Chinese influence from Venezuela and secondly to get hands over its rich oil deposits. Thus, Venezuela possess no security threat to the US.

Iran is intensely involved in nuclear missions, illegal interventions and serves as fertile land for Islamic extremist groups. Iran, thus undoubtedly poses a huge threat to global and US security. Despite the gross sanctions imposed by the US, EU, and other countries in response to UN Resolutions, Iran has continued to pursue its nuclear programs. Clause (a) (i) of the national security exception allows a member to resort to economic restrictions if a state is engaged in activities “*relating to fissionable materials or the materials from which they are*

²⁶² NICHOLAS, *supra* note 138

derived". Thus, Iran clearly falls in this category and constitutes a legitimate threat.

Russian intervention into Ukraine and its alleged interference in the 2016 US Presidential election are the cardinal factors that instigated the US to invoke sanctions against Russia. Though Russia has been defending the former act in the guise of the doctrine of 'Self-determination', a keen factual analysis leaves Russian defences baseless, and the act does constitute an internationally wrongful act that has destabilized the peace and security of the Western world. Likewise, Russia has denied to admit the alleged attempt to tamper

2016 US election, however, the US agencies such as the FBI, CIA, Select Committee on Intelligence have affirmed the illicit Russian involvement and the potential threat to US national security²⁶³. Thus, the US sanctions with respect to Russia are legit under Article XXI (b)(iii) and Article XIV (b)(iii) of GATT and GATS, respectively.

Irrespective of the legality of the US measures under the national security exceptions provided under the WTO system, US sanctions have worsened the economic and human rights scenario of targeted states.

The impact on the Russian economy is relatively mild; however, it is likely to produce a humongous crisis in the long run. However, the Russian retaliation by declining the import of essential agricultural products has caused a food crisis among the populace in the lower strata. Further, the measures on the import of steel and aluminium have no such direct impact on human rights; however, it has affected the steel and aluminum manufactures of targeted states, especially China, Russia.

The impact of US sanctions is not just limited to the targeted state, rather has significant ramifications of several LDCs such as Haiti, Afghanistan, Nepal, Cambodia, Bangladesh, and few African states. These states have lost numerous trade and investment deals; for instance, the US induced economic issues on Iran delayed and impeded certain Iran-sponsored developmental projects in the Herat region of Afghanistan. Likewise, the sanctions on the Iranian oil sector have rendered oil purchase an expensive deal for Bangladesh. Bangladesh is also hard hit by the US policy of import of steel and aluminium. Similarly, fear of the wrath of

²⁶³ Mary Louis Kelly, FBI Agrees with CIA on Russian Interference in Presidential Election, NPR, (Dec 16, 2016, 4:30 PM) <https://www.npr.org/2016/12/16/505892960/fbi-agrees-with-cia-on-russian-interference-in-presidential-election> Major intelligence agencies now agree that Russia interfered in the US election to help Donald Trump win the presidential race. Earlier reports had suggested there was a difference of opinions between the CIA and the FBI'

the US induced Cambodia to back out from its flagship project of importing and reselling of oil, and this was intended to ensure domestic energy security. The US restrictions on Venezuela tremendously decreased the productivity of PDVSA, and this resulted in the failure of PetroCarib. This destroyed the flow of cheap oil to members of PetroCaribe, including Haiti. However, the impact on African states is limited as compared to other states.

Moreover, these sanctions have put Indian interests at stake, especially the measures against Iran, Russia, and Venezuela. The US has been quite critical of India's ties with Iran since 2005. Lately on the US demand to reduce Iranian oil import to zero percent has pressurized India to reduce its import to 1.7 MT in FY20, down from 23.9 MT in 2018-19²⁶⁴. The implied coercion related to the sanctions on PDVSA has also abstained India from purchasing oil from Venezuela. All these measures collectively have augmented India's expenditure on importing oil.

Moreover, the extraterritorial restrictions on Iran have delayed and thwarted the infrastructure development collaboration between India and Iran, especially the Chabahar port development Project. As we know, Russia has been a longtime ally of India, which has effectively contributed to the development of the defence and scientific capacity of India. The extraterritorial nature of US sanctions under Section 231 of CAATSA requires India to disengage in defence deals with Russia. Although the US has waived the extraterritorial sanctions on India, it is essentially a matter of concern as it is just a temporary and conditional waiver. Cuba is not a close political, economic partner of India, and thus Indian interests are not affected by sanctions on Cuba. However, the measures relating to steel and aluminium have induced significant indirect effects on India in the form of dumping.

6.3 SUGGESTIONS

Out of the five scenarios analyzed, three of them, that is, US sanctions against Cuba, Venezuela and the measures adopted relating to Steel and Aluminum, do not inflict any security threat on the US. Therefore, the sanctions adopted against these states are violative of the national security exception and should be withdrawn. On the other hand, the act of Russia and Iran constitute a threat to US security, and therefore, the US measures against these states can be

²⁶⁴ JACOB, *supra* note 203.

justified to a large extent under Clause (b)(i) and Clause (c) of National Security Exception provided under Article XIV and XXI of GATS and GATT respectively.

- However, measures against Iran have essentially exceeded the acceptable limits or what is 'necessary 'to curtail the threat. Thus, US sanctions against Iran shall be modified. The conclusion of the JCPOA affirms that there are better options than sanctions available to keep Iran away from nuclear activities. JCPOA shall be revived, and the US shall drop the sanctions as prescribed in the agreement.
- Since 1996, Iran has desired to become a member of WTO. In 2005 it was admitted as an Observer state. The US has constantly blocked the entry of Iran into the system on the ground of its nuclear activities. Iran should somehow find its way to the WTO as a full member. On becoming a full-time member of WTO, Iran gets to integrate more into the global economy, and it will considerably limit the US's sanctions on Iran.

Apart from this, the incorporation of the following suggestions will improve the scenario.

Changes to be made to the WTO System

- As we discussed, the National Security Exceptions are often abused by member states. The interpretation adopted by the Panel in Russia-Measures concerning traffic in transit is a landmark one, which has a huge potential to avoid disguised sanctions. The interpretation given the said case was reiterated in Qatar. The DSB shall continue to adopt the same interpretation in future disputes as well.
- WTO shall strictly prohibit Extraterritorial sanctions.
- WTO shall constitute a special council to analyses the impact of sanctions on the targeted economy, especially on human rights.
- Under WTO system mandates the member states to notify and promulgate any trade restrictive measure. But states often ignore this obligation. Such practices detrimental to international trade and the targeted state. The WTO may impose a fine on member states on failure to notify restrictive measures.

Need to revamp US Legal framework

- The US legal system through various statutes gives immense power to the President to impose extensive economic sanctions. Such unfettered sanctioning authority of the President can be attributed as one of the significant reasons for cascading, irrational US sanctions. Thus, it is essential to have some Congressional regulation or scrutiny over the sanctioning power of the President. Section 232 of TEA is one such controversial provision that allows the President to invoke import restrictions based on the investigation report issued by the Department of Commerce. The Department of Commerce is often criticized for not conducting the public hearing properly. Public hearing forms a crucial step in the investigation process where the concerns and opinions of stakeholders are considered. Thus, the reports often lack veracity and can be manipulated easily. The investigation report on Steel and Aluminium import is often criticized as ‘documents favouring the interest of big business firms’. Thus measures shall be taken to strengthen the transparency and procedural compliance of the 232 investigations.
- Section 232 of TEA does not define the term ‘National Security’. An attempt to define the term ‘National Security’ may avoid trade-restrictive measures to a great extent.
- The section shall be amended in such a way that the import restriction opted by the President shall be enforced only on approval by both the Houses of Congress.
- Most of the US sanctions have extraterritorial jurisdiction. It is this extraterritorial nature that renders the US sanctions highly destructive or noxious. Thus, the US should stop adopting sanctions with extraterritorial effect.
- Instead of resorting to sanctions, the US shall try to effectively utilize diplomatic channels to further its political objectives.

Measures for the Protection of LDCs

- If at all US adopts to impose extraterritorial sanctions, the LDCs shall be exempted from the extraterritoriality. LDCs being economically and politically weak, it is quite hard for them to arrange or conclude feasible trade or investment deals with an alternative player. Thus, in the interest and well-being of poor economies, LDCs shall

be allowed to continue trade with targeted states.

- Further, if LDCs happen to incur any loss or damage from US sanctions targeted on a third state, the US shall take appropriate measures to amicably retribute or compensate the affected LDCs. For instance, as discussed in our study Haiti, Afghanistan, Nepal, Bangladesh, Cambodia have suffered substantial losses owing to US sanctions on Venezuela, Iran, Russia, and Iran, respectively. Supplying the affected LDCs with required commodities at a low price, transferring technology, investing in their economy would compensate their loss.
- The affected LDCs may collectively initiate proceedings against the US before the WTO.

Suggestions to avoid and minimize the Extraterritorial Impact of US Sanctions on India

- As discussed in chapter 4, the US sanctions on Iran and Venezuela have inflicted a massive toll on India, and the waiver in engaging with Russia if retreated will squarely affect India's defence sector. The US considers India as its engageable and formidable ally. A cordial India - US relations are of strategic significance to both countries. For example, if looking at the recent developments, the US requires strong cooperation from India to counter terrorism, limit Chinese influence, and fulfill its aspirations in the Indo-Pacific region. India shall effectively utilize its significance to persuade US to relax extraterritorial sanctions in its favour.
- India may enact legislation declaring extraterritorial trade restricting measures as unlawful and not applicable to it. Such legislation is largely ineffective in countering stringent extraterritorial measures of the US; however, it is an efficient tool to condemn the measure and depict the affected State's stand and will.
- If the US withdraws the waiver with respect to Russia-India defence transactions, it is likely to cause a national security threat to India as *"70 per cent of the weapons fielded by India's armed forces and 60 per cent of the country's defence imports are of Russian origin"*²⁶⁵. Therefore, any measure to prohibit India-Russia defence collaborations is

²⁶⁵ Rakesh Krishnan, Countering CAATSA: How India can avoid America Arm Twisting, BUSINESS TODAY (Mar.6, 2019, 6:30 PM) <https://www.businesstoday.in/opinion/columns/story/caatsa-how-india-can-avoid-us-arm-twisting-150307-2018-10-26>

detrimental to India's defence potential and national security. India may file a complaint before the WTO DSB.

- India may threaten to issue counter sanctions, but this might induce strong political, and economic repercussions.
- An immediate effect of US extraterritorial sanction was/ is an incapacity to use US Dollar for such sanction deals. Thus, India shall try to reduce its reliance on US Dollar for its imports. The 'Rupee - Rial Mechanism' employed by India and Iran to transfer goods and services between them is an ideal example for 'Dollarless' transaction. In 'Rupee- Rial mechanism' Iran opened an account in UCO Bank (an Indian Bank), and India deposited its import Bills in Iran's UCO Bank account and Iran in turn used this Indian rupee to pay for its imports from India.

Suggestions to avoid Unintended Consequences

Economic sanctions are not best and fit remedy always. It does produce desired outcomes under a certain scenario. In contrast, it can be the wrong tool in certain other scenarios. It largely depends on the myriads of political and economic factors. For instance, the US imposed a gross embargo on Cuba. These restrictions have undoubtedly induced an economic crisis in Cuba. However, they were unsuccessful in accomplishing the US agenda because the Cuban economy is relatively less reliant on the foreign financial market²⁶⁶. Therefore, a state shall restraint from imposing sanctions under uncondusive environment.

While imposing sanctions, states shall try to keep sanctions minimal or what is required to achieve the desired outcome. The US measures are often too wide. Wide sanctions will definitely crush the economy of the target but often lacks effectiveness, and the actual toll will be on the populace. It will have myriads of unintended fallouts such as food scarcity, the decline in basic health facilities, environmental pollution, an increase in corruption, etc. Thus, so as to avoid such outcomes and to accomplish the desired objectives, the US shall properly research, analyze and model before enforcing the sanctions. And such analysis and assessment shall continue throughout the period of sanctions. Imposing sanctions and just leaving them in place

²⁶⁶ Edward Fishman, Even Smarter Sanctions: How to fight in the Era of Economic Warfare, 96 Foreign Affairs 102-111 (2017)

with no assessment will prove ineffective²⁶⁷. Further, it is always better to keep sanctions more specific and precise by limiting them to certain industries. Moreover, to avoid irreparable damages to human rights, the sanctioning states shall strive to reward any compliance or positive response from the side of the targeted state by relaxing the sanctions.

²⁶⁷ David Povey, *Four Ways to Make Sanctions more Effective*, COMPLIANCE WEEK (Mar. 3, 2020, 10:04 PM), <https://www.complianceweek.com/sanctions/four-ways-to-make-sanctions-more-effective/28538.article>

CHAPTER 7

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