



EUROPE PROGRAM

**Transatlantic Approaches to Sanctions:
Principles and Recommendations for Action**

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Preface

The use of sanctions as an effective and manageable instrument of national foreign policy or multilateral action has come under serious question in recent years. At the same time, the sense of interdependent vulnerability that characterizes international relations today has raised the interest of the international community in devising new ways to influence the choices made by certain states or groups whose actions could endanger international peace and stability. The United States and the EU and its member states have strategic, security, and commercial interests that span the globe. And, more than most other countries, their weight in the international economy (as markets and as sources of investment funds), their security capabilities, and their diplomatic clout – individually or collectively within international organizations – mean that they can bring great pressure to bear on other countries or on specific groups to modify their actions. For both of these reasons, the United States and the EU will be at the forefront of debate over the viability and best ways to use sanctions in pursuit of individual or common foreign policy goals. However, it is clear that both sides approach the question of sanctions from very different perspectives.

With this dichotomy in mind, and conscious that the persistence of this dichotomy is likely to cause increasing transatlantic tension at a time that U.S. and European diplomats find themselves forced to work together to confront common challenges to their interests – whether in Iran or Belarus, specifically, or to confront the dangers of WMD proliferation and international terrorism, in general – the CSIS Europe Program launched a project in September 2005 to examine the U.S. and European approaches toward sanctions. Its objective was not to provide a comprehensive review of U.S. and European sanctions policies and their implementation, but rather to develop and offer to the two sides some common principles that could guide their approaches to the use of sanctions and to recommend some ways that they could implement sanction policies in concert so as to maximize the opportunities for successful execution and results.

The program was able to undertake this study thanks to the generous support of the German Marshall Fund of the United States and UBS Investment Bank. The insights and recommendations in the report also drew heavily on the input from the participants in the project's two workshops, which took place in London and New York. Under the chairmanship of CSIS Senior Adviser David Aufhauser, they brought to the meetings not only their experience, but also their desire to search for creative ways forward in this vital area of foreign policy and, as a result, the project was able to move forward to areas of practical consensus. The content of this report and its conclusions, however, remain the sole responsibility of its authors.

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Introduction

Too often obscured by the smoke of transatlantic tensions over the best “means” to reach foreign policy goals is the fact that the United States and the states of Europe still tend to agree fundamentally on what are the desired “ends.” Shared transatlantic global interests today span questions such as countering international terrorism, promoting democratic government, economic development, and regional security and stability, and preventing the proliferation of weapons of mass destruction. But disagreement between the United States and its European partners over exactly how to pursue such broad objectives can sometimes call into question each side’s perception of whether the other really is committed to achieving the same end result.

Few policy areas have illustrated this dilemma more clearly than that of the design and application of international sanctions to support foreign and security policy objectives. With no reliable strategic transatlantic framework agreeing on the utility and effectiveness of sanctions to undermine the regime of Saddam Hussein in Iraq, for example, it is arguable that the failures of the measures in place since the end of the Gulf War became in themselves fuel for justification for the use of force in Washington and in certain European capitals. And long-standing U.S. unilateral sanctions on Cuba and Iran appear to many in Europe to reflect a U.S. desire to overthrow the current regimes in these two countries, rather than improve human rights, promote democracy, or control the spread of nuclear technology.

Given the fact that there are serious differences between and within the United States and Europe as to the utility of using force to pursue foreign policy goals—and that, in any case, military action remains an instrument of last resort for both—it is imperative that U.S. and European leaders make a serious effort over the coming months and years to develop a more coordinated approach to the use of sanctions as an instrument of foreign policy. The United States, the EU, and its member states today continue to face shared dangers to their security and prosperity from the actions of a number of governments, such as North Korea and Iran. In addressing such cases, there again exists the danger that a lack of accord on the appropriate tools of statecraft will cause tactics to fracture strategic transatlantic cooperation in pursuing commonly desired outcomes.

In the post 9/11 world, there is also a relatively new, but equally urgent need for the two sides to coordinate better their respective sanctions policies. Historically, sanctions have been enacted to change the behavior of states. The rise of a new breed of international terrorism, sometimes neither state-based nor state-sponsored, presents new challenges for sanctions strategy and policy. U.S. and European policymakers are developing a new generation of smarter sanctions to counter this threat. Sanctions must not only deter actions on the part of states, but actually help prevent or disrupt the ability of terrorists to commit terror acts. New sanctions must be able to strike at the operational capabilities of targeted groups or individuals by finding and closing the choke points in their infrastructure—namely, movements of people, money, information, goods and supplies. They must also punish those who work with the perpetrators of terrorism.

Fighting terrorism with sanctions carries many of the same challenges as trying to influence state behavior—good intelligence, for example, is a crucial component in targeting terrorist networks or in closing down their potential access to money, goods, and weapons. In the context of the fight against international terrorism, however, 21st century sanctions must also have the capacity to serve as an extension of war-fighting rather serving simply as tools of diplomacy. And the stakes in this struggle are too high to afford constant transatlantic discord.

With these factors in mind, this paper lays out, first, a broad brush review of the lessons that have been learned from the use of sanctions over the past few decades. Second, it compares the different ways in which U.S. and European governments have absorbed these lessons and the different approaches that they have taken toward the use of sanctions within their foreign policies. The paper then offers some common principles that should guide the United States and EU governments in the design, use, and implementation of sanctions when these are applied jointly, whether on a transatlantic basis or as part of a larger multilateral effort. Finally, the paper concludes by suggesting some practical as well as conceptual steps that both sets of governments could undertake to improve the likelihood of a more common transatlantic approach to the use of sanctions and to strengthen the likely effectiveness of sanctions should they be undertaken.

Defining Sanctions

The word “sanctions” covers an enormous array of policy instruments designed to try to influence the behavior of a target state or group. As a category of state action, sanctions traditionally fall into a gray zone between diplomacy and war, employed once all other diplomatic options have been exhausted and as the last step before military action. More recently, sanctions have also been used to send a political message to target states, absent any intent to escalate to more drastic measures. As a result, there are great differences between various types of sanctions, as they can range from the simple withdrawal of a preference to the active imposition of a punishment.

Sanctions are most often economic in nature, encompassing embargoes and boycotts, investment bans, asset freezes, tariffs, and restrictions on trade, business contacts, and aid. Within these measures, there are wide possibilities in terms of scope, as sanctions can be comprehensive, aimed at an entire country, or more targeted, aimed at a particular sector, company, or commodity, or at a specific group or set of individuals. But the concept of sanctions also goes well beyond the economic. Political and diplomatic sanctions include the expulsion or withdrawal of embassy staff, travel bans, visa restrictions and denial of flyover or landing rights, opposition to membership or participation in international organizations and conferences, and the cancellation of official state visits. Cultural sanctions include restrictions on academic exchanges or scientific cooperation, and opposition to participation in international sporting events or cultural organizations. Smart sanctions can include freezing the overseas financial assets of specific individuals or denying them access to health care services in developed countries through travel bans. Lastly, sanctions can also be military in nature, ranging from full or partial arms embargoes to restrictions on training and officer exchange programs and other forms of military cooperation.

Some General Lessons Learned

There is no shortage of case studies that analyze the effectiveness of sanctions against sovereign states, be they imposed unilaterally or multilaterally, in or outside of

the UN framework.¹ These studies often compare long-standing unilateral U.S. sanctions against countries such as Iran, Libya and Cuba to multilateral sanctions, such as those imposed upon Iraq, the former Yugoslavia / Serbia, South Africa, Sudan, Rwanda and Sierra Leone. However, the value of comparisons is limited in terms of producing universally applicable formulas and frameworks. In the first place, altering the behavior of other states is not always either the sole or even the primary reasons for the imposition of sanctions—broader goals such as sending a political message of disapproval have also served as a motivation in the past. Moreover, each instance tends to be so idiosyncratic in terms of objectives and the characteristics of the sanctioned state that few lessons can be drawn together and transferred wholesale into viable sanctions strategies. With these caveats in mind, it is nevertheless possible to make the following general observations:

- Comprehensive multilateral sanctions regimes tend to be hard to implement, not least because securing political consensus for complete international participation has proven exceedingly difficult over the past fifty years. Even incomplete comprehensive regimes (whether imposed by one country, a group, or multilaterally) have the tendency to affect unintended parties both within and outside a sanctioned state.² Given the uncertainties as to their effectiveness, it is all the more difficult politically, therefore, to impose sanctions that fly in the face of the norm of modern statecraft not to do harm indiscriminately to large, innocent segments of any state's population.
- This consideration fueled the movement in the 1990s to develop so-called "smart" sanctions, which are targeted toward individuals or institutions within a given regime. Smart sanctions take a holistic approach that holds actions targeting the finances of individuals or their political or cultural prestige and legitimacy, (such as diplomatic expulsions as well as travel bans to international forums and conferences) to be as effective potentially as traditional economic measures aimed at entire states, such as trade restrictions or boycotts, embargoes, investment bans, and denial of aid, military or otherwise. However, it has become apparent over the past

decade that smart sanctions, apart from the difficulties involved in acquiring the necessary underlying information, require constant monitoring and review in order to be effective and relevant. It is not yet possible to argue that the more narrow and targeted sanctions are, the more likely they are to produce a desired result.

- Third, it is commonly argued that unilateral economic sanctions cannot be effective. Europeans point to the U.S. sanctions regimes against Cuba or Iran and question what have they accomplished, apart from sending a political signal, both to the governments in Havana and Tehran and to domestic constituencies within the United States. The sanctions may deny these countries access to U.S. markets, investment, and technology, but they do not prevent them from trying to do their business elsewhere and have tended to strengthen rather than weaken the domestic position of the targeted group.

On the other hand, unilateral sanctions by a powerful state such as the United States can be effective to a point. U.S. unilateral sanctions regimes have dissuaded companies from other countries from “back-filling” in Iran and Cuba, for fear of the potential effect on their U.S. and international business opportunities. It is also possible to develop smart unilateral sanctions which have a real impact—for example, the recent U.S. targeting of Chinese companies believed to be proliferating weapons of mass destruction-related technologies. And the EU is not averse to using a form of sanction in its near abroad on a unilateral basis. The closing of accession or cooperation agreements with countries on its periphery in the past decade (Serbia being the most recent example) is a clear case in point. On balance, therefore, it is not possible to conclude that unilateral sanctions are automatically ineffective in comparison to their multilateral counterparts.

- Conversely, nor is it possible to argue that the most effective sanctions are those that are imposed multilaterally. The case of the apartheid regime of South Africa is often cited as a prime instance of the international community achieving its desired results through multilateral sanctions. But the time it took for them to bear fruit has led some to argue that other factors were equally if not more important.³ While the joint U.S.-EU measures taken against the Milosevic regime in Yugoslavia during the Bosnia conflict represent a real success in this context, numerous other examples—including both Iraq and Zimbabwe—point to the fact that the international political consensus needed to enact multilateral sanctions can often be tremendously difficult to achieve and sustain.
- Finally, setting aside all of these ambiguities about the potential effectiveness or ineffectiveness of sanctions, thinking about sanctions inevitably breaks down to a simple core truth: *Effectiveness stems from leverage and consistent application and implementation. When countries have leverage and when they implement sanctions consistently, sanctions can work.* In each instance, therefore, the toolbox of sanctions options must be weighed not only against the desired foreign policy objective, but, just as important, against the target state's or group's economic and political ties to other countries and groups, the strengths and weaknesses of the target's leadership, and the stances of all major powers toward its behavior. This means that there is an inherent dilemma in trying to establish universal rules about sanctions policy and practice, when lessons are often being drawn from unique cases with unique leverage points or a lack thereof. Comparisons may well be intriguing and instructive to a point, but, before long, an overabundance of variables rules out solid maxims that can be confidently applied elsewhere, or tucked away for future use.

Recent U.S. and European Sanctions Policies

Alongside these uncertainties over the general lessons that can be drawn from international sanctions policy in recent years, we must add substantial transatlantic differences in approaches to the value and use of sanctions. These differences may be too substantial and deeply rooted to expect convergence to the point of commonality.

What the U.S. Has Done

The history of U.S. sanctions in the last few decades is rooted in the bipolarity of the Cold War, under which consensus United Nations action was generally not possible. Prior to the fall of the Soviet Union, therefore, successive U.S. administrations tended to use sanctions unilaterally as a component of their global fight against communism, often to demonstrate ideological opposition to communist regimes. The ostensible purpose of most Cold War-era sanctions was to alter the external behavior of such states or to weaken their internal standing. Cuba represents the classic example of this type of approach, with the Kennedy administration imposing a trade embargo and forbidding U.S. citizens from engaging in financial transactions with Cuba. Sanctions against Cuba continue under the 1996 Helms-Burton Act which, among other measures, also penalizes foreign companies that do business in the country.

Starting in the 1990s, following the end of the Cold War, U.S. sanctions policy shifted its emphasis toward trying to affect the internal behavior and external policies of states on a broader range of concerns, such as human rights, proliferation of weapons of mass destruction, and democracy promotion.⁴ Sanctions also became a more widely-used tool of U.S. statecraft. In a study commissioned in the mid-1990s, it was found that the United States had 61 unilateral sanctions of different focus and scope in place against 35 countries, including new measures added on by the Clinton administration to those already in place against Sudan (for support of terrorism), China and Pakistan (both for proliferation transgressions), Iran (for support of terrorism and proliferation transgressions), and Cuba (for human rights violations and failure to democratize).⁵ Many of these measures persist to this day.

Most unilateral U.S. sanctions have tended to be economic in nature, often taking the form of a restriction, or total end, to bilateral trade, investment, and/or development aid. Withholding aid has been commonly used as a tool against smaller third world states in Africa and Central America—as in cases in the 1990s with Cameroon, El Salvador, Guatemala, Kenya, Liberia, Nicaragua, Nigeria, and Sudan. Withholding aid and finance has also played a significant role with regard to Middle East states, although U.S. sanctions against states such as Iraq, Iran, Libya, Syria, and Yemen have also often incorporated a more explicitly military element, either a full arms embargo or at least a restriction on sales of certain types of equipment and/or suspension of training or officer exchange programs. Sanctions against larger states, such as China, India, and Pakistan, have tended to come as larger, more comprehensive bundles of restrictions on finance, development aid, and military trade.

While the United States has been by far the most active user on the world stage of unilateral sanctions to pursue its foreign policy goals, the general perception is that these sanctions have had little effect on the specific behavior of the target states. Whether greater international support for U.S.-inspired sanctions regimes would have made them more effective is hard to gauge. And, in many cases, tangible results were not the central U.S. objective as much as sending a political signal or aligning its economic policies with its foreign policy. While this is a perfectly reasonable motivation for imposing sanctions, the desire to send a political message through a sanction can also override dispassionately reasoned analysis of the likely overall effectiveness of the sanction over time.

U.S. attempts to oblige its allies to conform to U.S. sanctions policy through secondary extraterritorial boycotts—as occurred with the congressional enactment in 1996 of both the Iran-Libya Sanctions Act (ILSA) and the Helms-Burton Act—have tended to strengthen international skepticism about the U.S. approach rather than deepen transatlantic or international solidarity. For example, the negative European reaction to Helms-Burton led to the passing of specific EU legislation that forbade EU companies from abiding by the act, entailing painstaking waiver negotiations between the U.S. administration and its European counterparts.

What Europe Has Done

The history of European use of sanctions over the past fifty years confirms an obvious European preference for multilateral action, coupled with serious doubts about the effectiveness of unilateral sanctions. Compared to the United States, the EU has rarely enacted sanctions on state actors outside a United Nations framework. The 1990s show only a scattering of instances—for example, 1990 against Zaire, 1992 against Togo, and 1993 against Nigeria—when the EU took action (alongside the United States in these cases) without a UN mandate. More often, European Council regulations are enacted in duplicate—in support of and parallel to—UN measures. Thus, there is a great deal of overlap in the targets of UN and EU sanctions regimes—including those currently in place against Ivory Coast, Liberia, Congo, Rwanda, Somalia, Sudan, the Taliban, al-Qaeda, and terrorism in general.

This does not mean that the EU does not act on its own when the urge to communicate a political message becomes compelling enough. Beyond the three cases cited above, all of which involved restrictions of aid money, the EU has imposed autonomous arms embargoes on some of the more egregious repressors of democracy and human rights, including Myanmar and Zimbabwe. And the EU arms embargo against China, enacted alongside the United States in the wake of the 1989 Tiananmen Square massacre, remains in place seventeen years later, despite recent pressure from the Chinese and from some EU governments to lift it. The experience of civil war in Yugoslavia in the 1990s served as Europe's brutal introduction to the post-Cold War world, and the embarrassment of failing to halt atrocities in the EU's own backyard led it to enact an autonomous arms embargo against Bosnia and Herzegovina in 1996, even after a similar UN measure had been lifted.⁶ In the most recent example, the EU extended the scope of sanctions already in place against a small group of top Belarusian leaders in response to the “fundamentally flawed” presidential election in Belarus in March 2006.⁷ Aiming to send a political signal for a failure to fulfill OSCE standards for democratic elections, the EU added several dozen top Belarusian officials to the travel and visa ban list (a move mirrored by travel and financial restrictions imposed by the United States). And the EU has, in a number of cases, either developed or suspended negotiations on EU accession or on preferential access to EU markets in order to try to

influence the political choices of governments with which it interacts on a collective basis.

On balance, ‘EU-only’ action appears to occur only in the most extreme cases, with Europe maintaining reservations, alleviated primarily through UN consensus, about the utility of sanctions against states in the majority of cases that arise.

Thinking Behind the U.S. and European Approaches

For the United States and the EU, the stated basic objectives in imposing sanctions are often the same, or at least contain a significant amount of overlap. While not engraved in any formal document, a succinct description of the main goals of U.S. sanctions policy are “national security, non-proliferation, human rights, environmental protection, and combating narcotics and terrorism...”⁸ The European Union’s official objectives in sanctions policy are formally listed as the support of the Common Foreign and Security Policy (CFSP) and its ability to:

- Safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- Strengthen the security of the Union in all ways;
- Preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter and the Helsinki Act, and the objectives of the Paris Charter, including those on external borders;
- Promote international cooperation;
- Develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms;⁹

Beyond these general statements and goals, however, the United States and the EU generally start with divergent perceptions of what it takes to fulfill such broad foreign policy objectives, and this often leads to differing interpretations of how useful sanctions can be in meeting those objectives. The U.S. approach to dealing with rogue nations over the last fifty years has been to isolate, cauterize, and ultimately, defeat the target state,

and sanctions are seen as an important tool in this process. In contrast, the EU approach to problem states has generally been to engage, trade, and exchange not just commercial goods, but also views and perceptions with the target state. The goal is to “convert” more than it is to “defeat,” and the reticence either to use sanctions at all or to ensure that they are as targeted and flexible as possible reflects this general proclivity. This is not the place to analyze why the United States and European governments tend to take this different approach to dealing with problem states, but it is a fact that the difference in general foreign and security policy plays through into the realm of sanctions as an instrument of statecraft.

The transatlantic divergence in this area is further reflected in the thinking in Washington and in European capitals as to which are the most useful sanctions tools to achieve a given goal. The United States has far fewer issues with due process when setting up sanctions regimes than does the EU, and U.S. politicians appear to be comfortable using sanctions to send a political or moral message, irrespective of the political effectiveness of the measures. As a result, certain unilateral U.S. economic sanctions, such as those imposed against Cuba, have also tended to lack counterbalancing policy ‘carrots’—incentives for a state to change its behavior alongside the punitive measures.¹⁰

The EU’s approach, which is incorporated in its 2004 “Basic Principles on the Use of Restrictive Measures (Sanctions),” emphasizes the need for targeted or “smart” sanctions, including caution in imposing economic sanctions and careful assessment of their likely effectiveness in promoting the desired outcome; strict compatibility with the obligations of international law and the principles of liberty, democracy and human rights; greatest possible targeting of individuals and entities responsible for unacceptable policies or actions and minimization of negative effects on others; and regular review of the measures.¹¹ The fact that individuals targeted by EU governments for specific sanctions have ready access to challenge the measure in the European Court of Human Rights underscores the underlying European belief that holding governments to account this way in fact strengthens a sanctions regime from the point of view of its long-term domestic political legitimacy, even at the cost of making the sanction harder to impose or sustain.

Differences in Sanctions Enactment and Enforcement

These differences in general approach carry through to the policy mechanisms under which sanctions are enacted. In the United States, sanctions can be initiated via either the executive branch or congressional legislation. Not only can tensions between the two branches of U.S. government be divisive when it comes to formulating and enacting sanctions, but this arrangement also fractures the execution of U.S. sanctions policy—especially in the areas of enforcement and review—into an unsystematic agglomeration based on particular political interests of rather varying scope. This state of affairs is what makes analyzing, much less categorizing, U.S. sanctions policy extremely difficult to do on anything but a case-by-case basis.

Efforts to rationalize U.S. sanctions policy, such as the Lugar-Hamilton-Crane Sanctions Reform Bill of the late 1990s, have not been adopted. Within the U.S. Congress, coalitions on both the left and right of the political spectrum have so far prevented revival of the bill, and there is not a sufficiently strong or committed majority consensus to overcome this opposition. Meanwhile, the Bush administration has not made reform of sanctions policy a key policy objective. As a result, in the U.S. political process, broad foreign policy imperatives still tend to prevail in debates about whether to impose, sustain, or reform sanctions.

Even though there can be significant competition between the executive and legislative branches of U.S. government in conceptualizing and deciding upon sanctions, the United States possesses well-established and tested judicial and administrative structures that allow U.S. sanctions to be implemented swiftly. For example, the existence of the U.S. Treasury Department's strongly resourced Office of Foreign Assets Control (OFAC) permits the United States to impose, monitor, and tailor economic and trade-related sanctions instruments with considerable speed and agility. On the other hand, the opposite is also true: reversing a U.S. sanctions listing is extremely difficult, whether toward countries (the inability of the U.S. government to repeal the Jackson-Vanik Amendment against Russia is a good case in point) or toward an individual—the latter has become especially relevant in the wake of the 9/11 attacks and the focus on

closing down terrorist financing networks. A bias toward caution prevails across the entire U.S. system. For example, the decision to overturn an administrative listing of an individual for financial sanctions must meet at least two requirements—the most relevant expert government agency must recommend the de-listing and the individual must completely negate, i.e. must prove the arbitrary nature, of the decision to list them in the first place. The latter can be nearly impossible, as the U.S. government is not required to share with the litigant classified information used in the case.

While European leaders often tend to consider economic sanctions counterproductive and a last resort in meeting their policy objectives, sanctions do capitalize on the EU's principal foreign policy strength: economic power. Thus, the EU and its member states appear to be increasingly interested in being leaders in the conceptualization and implementation of international sanctions policy.

Enacting sanctions is relatively easy for the EU from a procedural standpoint, as there is little legislative interference in European sanctions policy. Sanctions must be adopted collectively through a combination of instruments. The European Council must agree to impose sanctions as a common position within the Common Foreign and Security Policy (CFSP), either in duplication of a UN Security Council resolution or autonomously. While common positions are binding on EU member states, the measure must also be adopted through a European Community regulation or national regulations in order to take legal effect. For measures that fall within the competence of the European Community—such as trade and movement of goods, services, and money—the Council adopts a regulation (which is first proposed by the European Commission) that becomes directly applicable across the EU and is also subject to judicial review by the European Court of Justice. For measures falling under national competence—arms embargoes and travel bans, for example—member states adopt national regulations implemented within existing legal frameworks. No additional legislative process is required.¹²

The EU process raises its own set of problems, however. Securing unanimity to establish a sanctions regime or policy among twenty-five member states, each with its own set of national interests, is no simple matter, involving tortuous debate and compromise. And the lifting or reviewing of sanctions faces the same limits of a

consensus-based system, as the recent European debate about lifting the arms embargo on China revealed.

In addition, although European Council regulations are immediately binding on member states under the CFSP, the EU, like the UN, has no true implementation and enforcement mechanisms. Both are left to the member states, who behave variably in doing so. Implementation can pose a special challenge for the EU, not only because of its organizational complexity, but also because of its unique forms of sovereign integration, such as the Schengen border-free trade area, which makes travel bans difficult to enforce. For example, despite the enactment of EU measures paralleling those adopted by the UN,¹³ initial application of the UN terrorist travel ban list was extremely slow, owing largely to the constraints of national laws preventing the placement of individuals on such sanctions lists absent sufficient due process. As sanctions become more targeted on non-sovereign actors, issues of evidence, due process, and transparency emerge with the listing and de-listing of individuals as problem areas for EU nations, with their emphasis on judicial oversight.

Thus, while the EU provides the mechanism for member states to coordinate their disparate sanctions approaches, national systems have not yet been able to adapt sufficiently to turn sanctions into a coherent tool in the EU's emerging common foreign policy. In many key areas of sanctions, the EU today fails to operate as a single actor. Until the national systems of member states catch up to common policy in practice, the EU process is stuck sending signals, able to facilitate but not steer. Nor have EU member states invested sufficiently in the human or technical resources necessary to coordinate or enforce their sanctions policies.

This is by no means a static situation. In cases of non-enforcement of EU sanctions, the European Commission can technically resort to the instrument of referring violators to the European Court of Justice (ECJ), although this is not yet commonly used in practice. The ECJ also gives an avenue of legal recourse to EU citizens to challenge their inclusion on sanctions lists (this mechanism for de-listing has no UN equivalent). Moreover, the release of the 'Basic Principles' in 2004, as well as the formation of a Foreign Relations Counsellors Working Party (DG RELEX / Sanctions) to develop and

monitor best practices, leaves plenty of room for hope for increasingly efficient coordination in EU sanctions strategy in the years ahead.¹⁴

Principles and Recommendations for a Transatlantic Approach to Sanctions

With sanctions, as with so many other aspects of transatlantic relations, exasperating differences about tactical approaches appear to co-exist alongside an encouraging degree of overlap and congruity in fundamental objectives. What might be done to bring these tools of statecraft into a more beneficial alignment across the Atlantic? The answers run the gamut from strategic political dialogue, to institutional structures and relationships, to the technical nuts and bolts of sanctions formulation, implementation, and monitoring. But, at this stage, there are two additional preliminary steps that would be worthwhile.

First, the two sides would benefit from a consultation exercise that would map the range of sanctions instruments to political objectives. A clearer comprehension of where we differ with regard to the technical side of sanctions policy—of the ‘how’ to use these instruments to achieve particular goals—will help form the basis of a more productive, and necessarily political, dialogue addressing the ‘who, why and when’ of using sanctions. A useful starting place might be with a comprehensive review of the most effective sanctions instruments, such as that outlined in “An Illustrative Matrix of Selected Options,” created in the 1990s by the Sanctions Working Group of the State Department Advisory Committee on International Economic Policy.

While this exercise would be useful in terms of “socializing” U.S. and European officials about their different approaches to the use of sanctions, shifting from theory to practice would still need to overcome the underlying challenges of coordinating the targeting, securing leverage, and monitoring implementation that have bedeviled all multilateral sanctions strategies in the past.

In addition to this review of “how” to use sanctions, therefore, U.S. and European officials would also benefit from instituting a serious dialogue to define common principles toward the use of sanctions. Principles to consider could include:

- Recourse to international sanctions should be *limited to those exceptional circumstances* that most governments have identified as constituting genuine threats to international peace and security, such as the proliferation of WMD, sponsoring or the use of terrorism, and gross violations of human rights;
- The preferred option should be to achieve the *broadest possible international support for a sanctions regime* in order to ensure maximum effectiveness and legitimacy (the UN Security Council should be the first avenue of choice for a coordinated U.S. and European approach);
- Even in these circumstances, sanctions should be threatened or imposed *only after other diplomatic options have been tried*;
- Sanctions should always have a *clearly defined objective* in mind—it should be possible to define what response is required from the country or the entity on which sanctions are imposed. It should always be possible to define, therefore, *what are the conditions for the lifting or the suspension of sanctions*;
- Sanctions should be *carefully-crafted both to achieve the objective and to avoid undesired effects*; they should also be coherent with other tools of diplomacy;
- Sanctions should be *credible and sustainable*; this means taking into account in advance the potential costs to the international community as well as an anticipation of potential retaliation by the targeted country or entity;
- *Successful sanctions take time to build, implement, and take effect. Sanctions cannot be used to have a near-term effect.* This means that one cannot choose a sanctions path and then say that resolving the situation is urgent.

- Sanctions should be designed *with sufficient flexibility* to be able to be adapted or suspended depending on the behavior of the targeted country or entity;
- They should be *sufficiently transparent* for the target country or group to know what it is they need to do to see the sanction removed;
- Transparency requires the establishment of *adequate monitoring and periodic review of the effects of the sanctions and the target's response* – not only by government-appointed sanction committees and inspectors, but also by panels of independent experts;
- The U.S. and European governments must *ensure that they invest sufficient resources* to implement and monitor their sanctions regimes.¹⁵

Even if the United States and EU member states are able to move toward greater agreement on the principles behind the use of sanctions, it is clear from recent experience that significant problems would still exist in the area of implementation. The following recommendations suggest steps to help overcome these deficiencies.

- Senior U.S. officials and their EU counterparts—most probably at the Political Director level—should make a discussion of ongoing and potential future sanctions a regular item on the agenda for their joint meetings, on a case-by-case basis. Included in the discussion of these senior level meetings would be transatlantic consultation on the cost-benefit trade-offs of imposing a particular sanctions regime. Having this item regularly on their agenda would send an important political signal to third parties, as well as to legislators on both sides of the Atlantic. While the senior level meetings could take place with the “troika” of EU participants (in other words, the Political Director of the rotating EU Presidency, representatives of the office of the EU High Representative for the Common Foreign and Security Policy, Javier Solana, and of the European Commission), there should also be a working level group at a more junior level

whose task it would be to share experiences and best practices from sanctions implementation. U.S participants should be drawn from all relevant agencies— Treasury, State, Commerce, NSC, and DHS, while EU participants should include their counterparts from member states and of the EU Commission.

- U.S.-EU cooperation on sanctions should focus, as it is doing today in the case of Iran, on bringing third countries—especially China, India, Japan, and Russia— into a specific sanctions strategy. Attention will also need to be paid to increasingly influential countries, such as Brazil, South Africa, and Nigeria, and, here, European connections with these governments could play an important role in building the necessary international consensus for future sanctions regimes to be as effective as possible.
- The area of intelligence sharing is a perennial problem for the implementation of transatlantic approaches to sanctions and is likely to continue to be for the indefinite future. The sharing of sensitive intelligence is generally not possible through the United Nations, which makes specific bilateral intelligence-sharing agreements, especially those between the United States and individual European nations, vital to support common sanctions approaches. Still, the U.S. government and its European counterparts will always be very reluctant to share intelligence if the possibility exists that it could then be demanded as evidence in a foreign legal system. In the context of sanctions implementation, it would be better for the U.S. and European governments to agree that information based on intelligence will be used confidentially to guide sanctions approaches toward specific targets and not filter over into judicial cases related to sanctions enforcement or to related cases.
- The use of sanctions as a key component of the fight against international terrorism has made the resolution of “due process” issues especially important. There is considerable room to improve the transparency and consistency of the criteria for listing individuals or groups on sanctions lists and also to enable

individuals or groups to appeal their listing or seek a de-listing later. Serious consideration should be given to the French proposal to create a “focal point” for such decisions. This focal point would centralize the requests for de-listing, and would ensure that these requests would be considered by the relevant sanction committee. Whatever the institutional arrangement, providing room for better procedural guarantees will be vital to sustain the legitimacy and effectiveness of targeted sanctions in the context of a “long war” against international terrorism.

- As principal members of the community of “donor” countries in the area of foreign assistance, the United States, the EU, and its member states should work out a more open and coordinated system for compensating key third countries or parties that are affected negatively by the imposition of sanctions. Article 50 of the UN Charter already provides a legal mechanism for compensation, but the process is ad hoc and would benefit from specific transatlantic consultation.
- European and U.S. governments are increasingly reliant on the private sector for the implementation and enforcement of sanctions. And, in many cases, the relevant private sector companies are operating in both U.S. and EU jurisdictions as well as in relation to the targeted countries, groups, or individuals. In this context, there is a desperate need for a more regular and open dialogue between governments and regulators on how they intend to involve the private sector in sanctions regimes and also between these officials and the private sector.

Currently, government changes in regulatory standards or in required or expected business practices are conveyed through enforcement requirements and rarely following prior discussion. The growing recognition that bank involvement is necessary for enforcing financial sanctions should be reflected in a dialogue between government and bank officials about objectives, pooling efforts, and the direction of bank regulation so as to achieve clarity and consistency across national jurisdictions. Discussion of financial sanctions should also be brought into international structures. One near-term step could be to bring the discussion of financial sanctions approaches formally onto the agenda of the

Financial Action Task Force (FATF).¹⁶ There could also be overlaps with ongoing coordinated efforts to combat money-laundering. And thinking about sanctions in the energy and commodity-trading context could draw lessons from the UK's new Extractive Industries Transparency Initiative (EITI).

- Enforcement and monitoring after the imposition of sanctions is a critical part of instituting a potentially effective sanctions regime. However, the United States and its European partners have not done enough to follow through on the capacity-building, training and common statute proposals drawn up under the Interlaken Process.¹⁷ Improving the technical capabilities of the UN's new Counter-Terrorism Committee or ensuring that the G-8's Counter-Terrorism Action Group (CTAG) can better match needs with resources would also start to build up the necessary infrastructure to monitor the enforcement of multilateral sanctions regimes. In their capacity as major international donors, the United States and the EU should also do more to support third countries in their efforts to build up their own sanctions implementation and enforcement capacities.
- The EU is equipped legally to handle trans-border threats and threats posed by non-residents, but it must continue to refine the tools developed since 9/11 to address threats posed by residents, without weakening its standards of due process. Progress in this area requires continued legal and judicial standardization as part of a larger intra-European dialogue toward developing a common approach to sanctions policy. EU member states must take it upon themselves to respond to Council initiatives and adapt their implementation and enforcement systems so as to allow common EU mechanisms to succeed.
- European states should commit significantly more financial and personnel resources to enforcing and monitoring sanctions policies. The lack of a central clearing house in Europe in which to share information, compare experiences, and adopt best practices can make not only intra-European cooperation difficult, but also complicates further transatlantic cooperation in this area. In particular,

Europeans need to find ways to improve their capacity and cooperation in the field of intelligence about individuals that are European nationals. A professional cadre of individuals with careers in sanctions implementation ought to be developed within and among EU member states.

- The United States and EU member states must also find ways to better sanction the “sanctions-busters.” A relatively successful system was established to do precisely this during the conflict in the former Yugoslavia, when large numbers of sanctions violators were stopped along the Danube under UN Security Council authority. In most other cases, however, jurisdictional confusion opens up major loopholes that severely weaken any sanctions regime. One solution could be to find ways to raise the costs of insurance liability for individuals or companies that do business with sanctioned states or groups – this could be done by including a provision to this effect in the sanctions resolution and by ensuring that the provision is reflected in national implementation laws. As one example, any cargo company breaking an arms embargo to an African conflict zone could automatically lose its insurance. Flights by these sorts of companies could also lose over-flight rights.

Conclusion

Ultimately, the ability of U.S. and European leaders to work effectively on the establishment and implementation of a powerful sanctions regime will depend on more than their agreeing in advance on common principles and their adopting the tactical recommendations offered above for successful execution. Sanctions are a tool, and their effectiveness will depend above all on what scale of effort those imposing the sanctions are willing to make (politically and economically) to reach their objectives; what level of commitment they can develop between themselves and secure from key partners, such as Russia and China in the UN Security Council, or with regional actors; and, once sanctions are in place, on how they can keep the political initiative vis-à-vis the sanctioned state or entity over time.

In other words, sanctions, like any instrument of foreign policy, have no guarantee of success. But there is no doubt that the potential for success will be severely diminished if, first, the process of developing and imposing the sanctions regime itself involves a constant process of friction and disagreement between the United States and its European partners – these early frictions will either allow others to undercut the overall effort or, at best, are likely to turn into flaws in an overall structure that will come under considerable pressure over the extended period that it takes for sanctions to have their impact. Second, a sanctions regime will fall apart if the two sides disagree on the ways that sanctions should be implemented, reviewed, and supported over time. Like any other instrument of foreign policy, sanctions cannot be static. They need to be adapted to changing circumstances.

Developing an effective sanctions regime can appear to be an impossible task. However, the shared need to counter international terrorism and to prevent nuclear proliferation and other international threats, combined with the fact that there will be few cases where either inaction or military force are viable options, demand that the United States and Europe work together in this domain. Even working together on sanctions outside a complete multilateral agreement on a global sanctions regime, the United States and Europe can bring real force to bear on a given problem. Together, their influence through sanctions can be potent. That joint influence, however, is likely to erode over the coming decades, as other actors who do not share the same goals provide increasing opportunities for targeted countries to evade the force of a sanctions regime. Now is the time for U.S. and European leaders to come to agreement on the best ways to design and implement this broad array of tools of international influence and to develop the confidence in their potential effectiveness that will make them a credible instrument in their foreign policies in the future.

Endnotes

¹ See, for example, Meghan L. O’Sullivan, *Shrewd Sanctions*, (Washington, DC: Brookings Institution Press, 2003).

² “Eizenstat on U.S. Sanctions Policies,” *Remarks at Update 2000 - U.S. Department of Commerce Export Control Conference*, July 10, 2000, <http://www.useu.be/ISSUES/sanct0710.html>

³ Kathleen C. Schwartzman and Kristie A. Taylor, “What Caused the Collapse of Apartheid?” *Journal of Political and Military Sociology*, Vol. 27, No. 1, Summer 1999, pp. 109-139 summarizes the impact of systemic shortages of skilled labor and domestic protests in addition to the effects of international sanctions. See also Mats Lundahl, *Apartheid in theory and practice: an economic analysis*, (Boulder: Westview Press, 1992.)

⁴ O’Sullivan, pp15-16.

⁵ “Unilateral Economic Sanctions,” *Interim Report of the Steering Committee of the CSIS Project on Unilateral Economic Sanctions*, June 10, 1998, pp. 1.

⁶ Vanessa Shields, “Verifying European Union Arms Embargos,” *Verification, Research, Training and Information Centre (VERTIC)*, April 18, 2005.

⁷ “Speech of Commissioner Ferrero-Waldner at European Parliament plenary session discussion on Belarus Elections,” April 5, 2006. <http://www.delbir.cec.eu.int>

⁸ See Eizenstat.

⁹ Treaty on European Union, Title V: Provisions on a Common Foreign and Security Policy, Article 11. http://eurlex.europa.eu/en/treaties/dat/12002M/htm/C_2002325EN.000501.html

¹⁰ “U.S. Challenges and Choices in the Gulf: Unilateral U.S. Sanctions,” Atlantic Council Policy Brief #10, December 13, 2002, http://www.acus.org/docs/021213-U.S._Challenges_Choices_Gulf_Unilateral_Sanctions.pdf

¹¹ Basic Principles on the Use of Restrictive Measures (Sanctions), Council document 10198/1/04). http://ec.europa.eu/comm/external_relations/cfsp/sanctions/index.htm

¹² Francois Carrel-Billard, CSIS Working Paper “Sanctions regimes in the EU,” April 10, 2006.

¹³ Namely, Council Regulation No. 2580/2001 and subsequent amendments, Council Common Position 2001/931/CFSP, and Council Regulation No. 881/2002.

http://ec.europa.eu/economy_finance/about/activities/activities_freecapitalmovement_sanctions_en.htm

¹⁴ Joakin Kreutz, “Hard Measures by a Soft Power? Sanctions policy of the European Union 1981-2004.” Bonn International Center for Conversion, paper 45, 2005, p. 13.

¹⁵ Francois Carrel-Billard, CSIS Working Paper “EU – US cooperation on sanctions,” April 5, 2006.

¹⁶ The Financial Action Task Force on Money Laundering (FATF) was created at the 1989 G7 Summit. Thirty-one countries, as well as the European Commission and the Gulf Co-operation Council, are currently members. <http://www.fatf-gafi.org/>

¹⁷ The Interlaken Process refers to a series of seminars and conferences organized by the Swiss government from 1998 to 2001 with the aim of strengthening the application of targeted financial sanctions. www.smartsanctions.ch

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