



EUROPE PROGRAM

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

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EXECUTIVE SUMMARY

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Introduction

In today's security environment, the United States and Europe face many common challenges, from preventing the proliferation of weapons of mass destruction, to countering international terrorism, and promoting democratic government. The problems require strategies to deal with state actors such as Iran, North Korea, and Belarus, as well as with a whole host of non-state entities. However, despite this prevalence of overlapping foreign policy objectives, transatlantic cooperation in pursuing common goals is prone to breaking down in debates over which means to use.

Few policy areas illustrate this dilemma more clearly than that of the design and application of international sanctions. 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, and it is clear that both sides approach the question of sanctions from very different perspectives. Yet, with differences over the utility and use of force likely to persist well into the future, it is imperative that U.S. and European leaders make a serious effort to develop a more coordinated approach to the use of sanctions as an instrument of foreign policy.

In the fall of 2005, the CSIS Europe Program launched a project to examine the U.S. and European approaches toward sanctions. The uniqueness of each historical case prevents the formulation of universal conclusions about the effectiveness of different sanctions approaches (whether multilateral versus unilateral or comprehensive versus targeted sanctions, for instance). Generally speaking, *effectiveness stems from leverage and consistent application and implementation. When countries have leverage and when they implement sanctions consistently, sanctions can work.* The objective of the project, therefore, was not to conduct a comprehensive review of U.S. and European sanctions policies and their implementation nor to provide a set of rules, but rather to offer 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.

Differences in U.S. and European Thinking about Sanctions

With the end of the Cold War, U.S. sanctions shifted from being a tool to fight against communism into a way to address a broader range of concerns, such as human rights, proliferation of weapons of mass destruction, and democracy promotion. The United States has been by far the most active user on the world stage of unilateral sanctions to pursue its foreign policy goals, with most unilateral U.S. sanctions economic in nature. While opponents of U.S. sanctions argue that sanctions have had little effect on the specific behavior of the target states, tangible results are often not the central U.S. objective as much as sending a political or moral message. Use of sanctions is rooted in the wider U.S. approach to rogue nations, emphasizing the isolation and ultimate defeat of the target state or regime.

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. Overall, EU use of sanctions reflects a general approach of engagement and exchange, seeking to “convert” rather than “defeat” a target state. Compared to the United States, the EU has rarely enacted sanctions on state actors outside a United Nations framework—although there have been a number of such instances, including Myanmar, Zimbabwe, and Belarus. More often, European Council regulations are enacted in duplicate—in support of and parallel to—UN measures. The EU, however, is not averse to using sanctions in its near abroad

on a unilateral basis—occasionally closing accession or cooperation negotiations with countries on its periphery.

Principles and Recommendations for a Transatlantic Approach to Sanctions

Given these significant differences in approach and the fact that there is now a pressing need for transatlantic cooperation on sanctions policies in a number of cases around the world, U.S. and European governments as well as EU officials urgently need to institute a 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.
- The preferred option should be to achieve the *broadest possible international support for a sanctions regime* in order to ensure maximum effectiveness and legitimacy. Even in these circumstances, sanctions should be threatened or imposed *only after other diplomatic options have been tried*.
- *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 always have a *clearly defined objective* in mind, with a consequent definition of *what the conditions are for the lifting or the suspension of sanctions*. They should also be *sufficiently transparent* for the target country or group to know what it is they need to do to see the sanction removed. And 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.
- Transparency requires the establishment of *adequate monitoring and periodic review of the effects of the sanctions and the target's response*. The U.S. and European governments must *ensure that they invest sufficient resources* to implement and monitor their sanctions regimes.

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 the long-term effectiveness of sanctions will suffer unless the two sides can come to closer agreement on the area of implementation. The following recommendations address this problem.

- *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. 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.
- In order to resolve intelligence sharing issues, U.S. and European governments should 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.

- Regarding *due process* issues, there is 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. Providing *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.
- There is a desperate need for a more regular and open dialogue between governments and regulators on how to *involve the private sector in sanctions regimes*. Greater dialogue must also occur between these officials and the private sector before sanctions are imposed.
- *Enforcement and monitoring* of sanctions is a critical part of instituting an effective sanctions regime. More must be done to follow through on the capacity-building, training and common statute proposals drawn up under the Interlaken Process; to improve the technical capabilities of the UN’s new Counter-Terrorism Committee; and to ensure that the G-8’s Counter-Terrorism Action Group (CTAG) can better match needs with resources. 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 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 sanctioned individuals that are European nationals*.
- The United States and EU member states must find ways to better *sanction the “sanctions-busters.”* Jurisdictional confusion often 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 by including a provision to this effect in the sanctions resolution and by ensuring that the provision is reflected in national implementation laws.

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. But 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.