

COMMENTARIES

NO PANACEA: ANALYZING SANCTIONS BEFORE IMPOSITION*

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The general concept of sanctions is as old as society itself. As early as 432 B.C., the Athenian leader Pericles imposed a trade embargo on neighboring Megara in retaliation for Megara's attempted expropriation of territory and the kidnaping of three women. So sanctions are nothing new.

I am happy to be able to present to you the Clinton Administration's position on sanctions — a position Under Secretary of State Stuart Eizenstat originally presented to Congress.¹ In the interest of clarity and consistency, I would like to share with you the most important points of Under Secretary Eizenstat's testimony.

We live in an age of heightened political and economic global integration and growing interdependence. In today's world, most countries derive their prosperity, and even their power and influence, from their growing engagement in the international economy. At the same time, there is a growing international consensus on appropriate international norms and standards of behavior, not only for relations between differing states, but in the relations between individual states and their own citizens. As a result of these trends, sanctions are increasingly turned to as an important and potentially

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1. See Under Secretary Stuart Eizenstat, *Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means* (visited Mar. 5, 1998) <http://www.house.gov/ways_means/trade/1023eize.htm>.

effective, if problematic, tool for enforcing these standards.

The U.S. has applied some form of unilateral sanctions for foreign policy purposes a total of 103 times since World War I,² at least 91 times since World War II,³ and 61 times since 1993.⁴ Thus, more than half the sanctions imposed in the past eighty years have been imposed in only the past four years. These figures do not include the increasing use of sanctions at the state and local level.

In the U.N., the Security Council imposed sanctions only twice between 1945 and 1990: Rhodesia and South Africa.⁵ Since 1990, however, the U.N. has imposed mandatory sanctions on nine countries: Iraq, Serbia, Libya, Somalia, Liberia, Rwanda, Haiti, the Sudan, and Angola.⁶ More recently, the U.N. also imposed sanctions on the revolutionary junta in Sierra Leone.⁷

Our Department is aware that others have also resorted to sanctions. The European Union (E.U.), Japan, and Canada have imposed sanctions on Burma. The E.U. is withholding aid from Kenya until that country deals with problems of corruption and rigged elections. The International Monetary Fund (IMF) has also moved to condition its lending to Kenya on serious efforts to deal with problems of pervasive corruption. The East African states imposed sanctions on Burundi, the Economic Community of Southeast Asian Nations (ECOWAS) imposed sanctions on Sierra Leone, and the Association of Southeast Asian Nations (ASEAN) imposed sanctions on Cambodia.

We use sanctions for a variety of purposes: to signal disapproval of a government's behavior and as a warning that harsher measures could follow; to punish; to increase the cost of unacceptable behavior and thus seek, not always successfully, to influence the policies of a target country; to challenge our allies to take more forceful action themselves in support of common objectives; or, at times, simply to

2. See BARRY E. CARTER, INTERNATIONAL ECONOMIC SANCTIONS: IMPROVING THE HAPHAZARD U.S. LEGAL REGIME 8-11 (1988).

3. See *id.*

4. See NATIONAL ASSOCIATION OF MFR., A CATALOG OF NEW U.S. UNILATERAL ECONOMIC SANCTIONS FOR FOREIGN POLICY PURPOSES, 1993-96, at 1 (1997).

5. See Rosalyn Higgins, *The United Nations Role in Maintaining International Peace: The Lessons of the First Fifty Years*, 16 N.Y.L. SCH. INT'L & COMP. L. 135, 145 (1996).

6. See *id.*

7. See S.C. Res. 1132, U.N. SCOR, 3822nd mtg. at 1, U.N. Doc. S/RES/1132 (1997).

signal that a business-as-usual approach to a government that violates core values or threatens our vital interests is not acceptable.

We have available a broad array of sanctions measures. But no matter what measures are used, it is not always easy for us to agree whether specific sanctions measures have been effective. Absent clearly specified and measurable objectives, there is no single, common standard against which to measure success or failure. The standards proposed by a firm dependent on sales to Burma (where we imposed targeted unilateral sanctions) would certainly differ from those applied by a committed human rights activist who would see any interaction with that government as immoral.

One thing is clear, however. Sanctions are an important potential tool. They offer important levers for behavior modification, and they will continue to do so, but they are not a panacea and they are not without costs. Sanctions impose economic and other costs, not only on the target country, but also on those imposing the sanctions and on third party countries.

Unilateral sanctions, in particular, impose real costs on U.S. businesses and American workers. A number of organizations — the President's Export Council,⁸ the National Association of Manufacturers,⁹ the European-American Business Council,¹⁰ and the Carnegie Foundation¹¹ — have recently released different studies of the cost and effectiveness of sanctions. Others, such as the Center for Strategic & International Studies, are engaged in ongoing studies on sanctions.¹² USA Engage has been formed with over 600 member companies solely for the purpose of dealing with the sanctions issued from an American business perspective.¹³

8. See President's Export Council, *Unilateral Economic Sanctions: A Review of Existing Sanctions and Their Impacts on U.S. Economic Interests with Recommendations for Policy and Process Improvement* (visited Mar. 5, 1998) <<http://eabc.org/study.html>> [hereinafter President's Export Council].

9. See NATIONAL ASSOCIATION OF MANUFACTURERS, A CATALOG OF NEW U.S. UNILATERAL ECONOMIC SANCTIONS FOR FOREIGN POLICY PURPOSES 1993-96, at 1 (1997).

10. See European-American Business Council, *Is the Price Too High? The Cost of U.S. Sanctions* (visited Mar. 5, 1998) <<http://www.usaengage.org/studies/unilat.html>>.

11. See JOHN STREMLAU, CARNEGIE COMM'N ON PREVENTING DEADLY CONFLICT, SHARPENING INTERNATIONAL SANCTIONS TOWARD A STRONGER ROLE FOR THE UNITED NATIONS 2-6 (1996).

12. See generally Center for Strategic & International Studies (visited Apr. 6, 1998) <http://www.csis.org/>.

13. USA Engage is a coalition of American businesses, agricultural groups, and trade associations that opposes unilateral economic sanctions. For additional information

Most of these studies reach similar conclusions and criticisms on the current use of sanctions. They tend to see sanctions, particularly unilateral economic sanctions, as too often undisciplined, poorly targeted, and/or ineffective. Decisions to impose sanctions may be made with little or no analysis of the actual impact the proposed sanctions are likely to have on various groups within the target country, and on how economic pressure is likely to be translated into political pressure. Alternatives such as diplomatic measures, which sometimes may be more effective, may not always be considered.

Some also argue that the cost to the U.S. economy and U.S. competitiveness can be disproportionate to the results achieved. The President's Export Council, for example, recently estimated the direct cost of unilateral economic sanctions to the U.S. economy in 1995 alone at fifteen to nineteen billion dollars in lost export sales and up to 250,000 jobs.¹⁴ It also suggested that sanctions have an indirect effect through undermining confidence in the reliability of U.S. suppliers and providing an advantage to foreign competitors.¹⁵ Other studies have also pointed to lost exports and lost jobs, to cases in which U.S. components are specifically designed out of products because the producers do not wish to face the prospect of eventual restrictions on exports to particular markets, and to reports that foreign firms have intentionally switched research and development away from the U.S. to Europe because of a desire to avoid sanctions problems.¹⁶

The imposition of sanctions may also place us in difficult policy dilemmas. Would, for example, the imposition of strict sanctions on Syria, a country on the terrorist list (and with good reason), be consistent with our desire and need to engage Syria in the most cooperative way possible in seeking peace in the Middle East?

This policy dilemma may be particularly problematic in the case of unilateral sanctions being imposed on countries by states and localities — such as New York City's¹⁷ and the State of California's¹⁸

regarding this coalition, visit USA Engage on the Internet at <<http://www.usaengage.org/>>.

14. See President's Export Council, *supra* note 8.

15. See *id.*

16. See, e.g., Gary Clyde Hufbauer et al., *U.S. Economic Sanctions: Their Impact on Trade, Jobs, and Wages* (visited Mar. 5, 1998) <<http://www.iese.com/sanctnwp.htm>>.

17. See *New York City*, N.Y., Int. No. 905 (1997) (visited Mar. 5, 1998) <<http://leah.council.nyc.ny.us/leg97/int905.htm>>. The New York City Council is considering a

actions against Swiss banks, or the sanctions imposed by Massachusetts on Burma.¹⁹ While adopted in pursuit of a noble goal to restore democracy in Burma, those measures shifted the focus of the debate with our European Allies away from the best way to deal with the State Law and Order Restoration Council (SLORC) to a potential World Trade Organization (WTO) dispute over the extraterritorial application of U.S. law and its consistency with our international obligations. Let me be clear. We will defend Massachusetts in the WTO dispute settlement process. But we must be honest in saying that the threatened WTO case has been an irritant and has diverted United States's and Europe's attention from focusing where it should be — on Burma. While state and local governments should unilaterally express the democratic will of their citizens, unless sanctions measures are well conceived and coordinated so that the United States is speaking with one voice and consistently with our international obligations, such unilateral measures can put us on the political defensive and shift attention away from the problem to the issue of sanctions themselves.

It is unfortunately also true that too often a decision to impose sanctions may be taken reactively to demonstrate moral indignation. These reactive measures may either be seen as doing something without any real consideration of whether the measures imposed will be an effective means of advancing goals or without consideration of the costs along with the benefits. House Resolution 2431 (the Wolf-Specter Freedom from Religious Persecution Act) is a case in point.²⁰ While we agree with the bill's goal and consider respect

local law to limit the investment or deposit of city funds in Swiss financial institutions until Switzerland establishes an "acceptable" fund to compensate the relatives of Holocaust victims who lost their life savings after depositing funds in Swiss banks during World War II. *See id.*

18. *See* Assembly Con. Res. 43, 1997–98 Reg. Sess. (Cal. 1997). While not restricting state investments outright, the California resolution encourages state entities that conduct financial business with Swiss banks to appeal for the public release of Holocaust victims' account information. *See id.*

19. *See* MASS. ANN. LAWS ch. 7, §§ 22G–22M (Law. Co-op. Supp. 1997). Massachusetts law provides for the State Secretary of Administration and Defense to maintain a list of people and businesses that conduct business with Burma. *See id.* §§ 22G–22H(a). Massachusetts state agencies, authorities, House of Representatives, and Senate are restricted from obtaining goods or services from people or businesses on the list. *See id.* § 22H(a).

20. *See* H.R. 2431, 105th Cong. (1997) (visited Mar. 5, 1998) <ftp://ftp.loc.gov/pub/thomas/c105/h2431.ih.txt>.

for religious freedom a top priority in our human rights policy, the originally constituted bill may negatively impact U.S. foreign policy. For instance, the bill could actually undercut our efforts to promote the very values the bill seeks to foster, adversely impact our diplomacy in regions from South Asia to the Middle East, and undermine our efforts to promote the very regional peace and reconciliation that can foster religious tolerance and understanding. House Resolution 2431 is an excellent example of the need for the Administration and Congress to work together to craft the kind of legislation that will be effective in meeting our common goals.

This is not to say that we should foreswear the use of sanctions or that sanctions are an inappropriate tool. They do have a role to play in our panoply of tools to defend U.S. interests. There is a great need for more dialogue and engagement between the executive and legislative branches, more opportunity for comment by outside U.S. parties, and more careful attention to all the potential consequences before we leap. The issue is how we can ensure that this potentially valuable tool is an effective instrument of policy while minimizing the costs.

The studies to which I have referred generally indicate that thoughtfully designed and implemented sanctions, including unilateral economic sanctions, can be an effective policy tool. The task we face is to substantially reduce the negative effects while still achieving our policy goals. Critics recommended a number of both policy and process changes. These include: broader and more methodical consideration of policy alternatives;²¹ increased emphasis on multilateral sanctions;²² improved consultation and coordination among Congress, the Administration, and state and local governments;²³ and a revisitation of sanctions if the objectives are not achieved within a reasonable period of time.²⁴

We at State, and more broadly in the Administration, are trying to draw the appropriate lessons from our growing experience with sanctions to help improve our future policy decisions. Many in Congress are raising the same sort of questions about the way we deal

21. See L. Kirk Wolcott, *Seeking Effective Sanctions*, 11 EMORY INT'L L. REV. 351, 363 (1997).

22. See *id.* at 357.

23. See *id.* at 361.

24. See *id.* at 357.

with sanctions issues, as exemplified by the Enhancement of Trade, Security, and Human Rights Through the Sanctions Reform Act, introduced on October 23, 1997.²⁵

A number of general observations have already emerged from our review. These were enumerated in Under Secretary Eizenstat's testimony on October 23, 1997, before the House Trade Subcommittee.²⁶

First, we should resort to sanctions only after other appropriate diplomatic options have been aggressively pursued and have failed. Sanctions are, after all, only one of many measures available to us, from symbolic measures like withdrawing an ambassador or reducing embassy staff, to denying visas to target figures or entering into security arrangements with neighboring countries, to military intervention and everything in between. We should also not forget the power of positive inducements: rewarding desired behavior.

Second, the objective of sanctions is to change behavior. Thus, a primary consideration in reviewing a sanctions regime must be whether the sanctions measures are indeed likely to be effective in achieving that goal and whether they are part of an integrated strategy. Sanctions that are ineffective, that are easy to evade or avoid, that are imposed merely to "make a statement," are not only pointless in achieving our objectives, but in the longer run, debase and undermine the value of sanctions as a potent foreign policy tool.

Third, we should design sanctions carefully so that, to the maximum extent possible, the target country, not the innocent citizen, feels the pain. It is too often unfortunately true that the leaders of causes tend to lead long, fruitful, and comfortable lives. The same cannot be said for their followers. We should not use a neutron bomb when laser surgery would be more appropriate; what we need is to find a way to design "smart sanctions." Sanctions should be constructed to minimize the cost to the U.S. and its allies while extracting maximum leverage. Whether we act alone or in concert with others, we should analyze before we penalize, studying in advance the specific purpose, enforceability, cost, and likely effect of any decision to impose sanctions.

Fourth, sanctions are much more likely to be effective when

25. H.R. 2708, 105th Cong. (1997) (visited Mar. 5, 1998) <ftp://ftp.loc.gov/pub/thomas/c105/h2708.ih.txt>.

26. *See supra* note 1.

they have multilateral support and participation. Multilateral sanctions maximize international pressure on the offending state. They show unity of international purpose. And, because they are multilateral, these sanctions regimes are also more difficult to evade or avoid, while minimizing damage to U.S. competitiveness and more equitably distributing the sanctions burden across responsible countries. We should make a maximum effort to develop a multilateral sanctions regime in instances when sanctions are a viable option.

Fifth, if we have been unsuccessful in achieving a multilateral regime, we must nonetheless recognize that, while our preference will be to act multilaterally, there are times when the stakes are so high, when important national interests or core values are at issue, that we must also be prepared to act unilaterally. Such actions must be considered, sometimes applied, if the United States is to play a leadership role. Otherwise, our ability to influence or respond to international threats will always be subject to someone else's veto. But again, a primary consideration in any eventual application of unilateral sanctions must be whether they are effective, whether they are part of a cohesive strategy to change behavior, and whether they contribute to or detract from our efforts to gain multilateral support for our policy objectives. There should be some reasonable expectation that the sanctions will have a significant impact on those targets, and that there is some expectation they can be effectively implemented and enforced.

Sixth, we must recognize that in our democratic system, the impulse to impose sanctions is by no means restricted to the executive branch. If our policies are to be effective, we must work together — Administration, Congress, state and local communities, the business community, and non-governmental organizations — to see that our use of sanctions is appropriate, coherent, and designed to attract international support. Congress should go through the same careful consideration and balancing of interests as does the executive branch.

Seventh, engagement is generally better than isolation, except with certain regimes whose conduct would only be fed by economic benefits. There are many countries that engage in certain practices or policies that we find objectionable, that we seek to change. We need to tailor our approach, whether carrots or sticks or a mix of the two, to fit the individual target. In many cases, engagement at every level may be a better, more effective way to achieve our intended

result. In other areas, these same countries may abide by international norms. In such cases, engagement, including engagement by the U.S. business community, will contribute a positive influence. Cutting off dialogue and engagement with those countries would be counterproductive. In other countries, critical U.S. interests may be so involved that isolation is simply not an option, as is the case with China, where not simply economic but important security interests in the Pacific are at stake. Even during the height of the so-called "evil empire," for example, the Reagan Administration sought to both engage and change the Soviet Union.

In other cases, however, the practices of a country may be so egregious, so outside the norms of international behavior, so threatening to U.S. interests and those of our allies, that any attempt at engagement is pointless. Engagement with a country such as Iraq would simply feed Saddam Hussein's appetite for inappropriate behavior.

Eighth, the President, the custodian of the country's foreign policy under the Constitution, must have the flexibility to tailor our response to specific situations. There can be no "one-size fits all" approach. The President must also be given discretion to waive sanctions when appropriate to the national interest.

Ninth, experience has shown that the early development of appropriate consultative mechanisms on matters of critical concern with countries that share our goals can be helpful. While such mechanisms do not guarantee results, the absence of such a mechanism can almost certainly guarantee failure.

In conclusion, as the world becomes more interdependent, as we move forward to establish codes of acceptable international behavior and the will to enforce them, the effective application of sanctions will be a real asset. But it is no panacea. Thus, it is all the more important that we undertake a rigorous analysis of sanctions before we impose them. We need to know not only how they will affect the target governments, but also how they affect vulnerable groups within those countries, how they affect U.S. interests in other areas, including U.S. business and workers, and how they affect our international partners on whose cooperation we depend to advance key foreign policy goals.

Sanctions can be an effective tool to punish states that violate international norms and threaten vital U.S. interests. And we must keep this tool at our disposal. But we need to work to sharpen our

ability to use it effectively. One lesson is that taking time to forge a consensus both at home with the American people and abroad with our allies can greatly increase the effectiveness of sanctions and reduce the cost to the United States. Building such a consensus in many cases does not come quickly. However, it can help to avoid problems down the road while demonstrating to the offending state that our nation and the international community are united in opposing its unacceptable behavior.

Sanctions are intended to send a serious message. Both the Congress and the Administration need to ensure that, when we do choose to impose them, we do so in a way that has the greatest possible impact with the least possible damage to the U.S. business community and to other U.S. interests.