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By Richard Nephew

MAY 2015

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ISSUE BRIEF: THE FUTURE OF ECONOMIC SANCTIONS IN A GLOBAL ECONOMY

By Richard Nephew*

MAY 2015

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EXECUTIVE SUMMARY

The United States currently maintains an asymmetric advantage in the application of economic pressure on partners and adversaries to achieve its national goals, based on its immense economy and position in the middle of the world's economic activity. But, it is not certain that this advantage will persist in the future or that it will be as strong, as other countries expand and develop economically. Moreover, the lessons gleaned from the U.S. experience in its application of sanctions over the past ten years could make them easier to use against the United States. By embracing targeted sanctions that achieve their effect primarily through the discrete application of pressure on individuals and banks, the United States may have inadvertently shown future adversaries a way to apply pressure on the United States without engaging in implausible, counterproductive, and mutually destructive countrywide sanctions initiatives. As with the use of cyber warfare and drone strikes, the United States may find in the future that, having created a precedent that targeted sanctions are an appropriate response for all circumstances determined by the United States unilaterally, it is facing similar measures against its own companies, banks, and citizens.

Mindful of these risks, this paper argues that the United States should consider the possibility and implications of such a global environment and adjust its sanctions policies accordingly. This should include efforts to:

1. Recognize that U.S. trade policy, regulation and sanctions can impact other countries in unintended ways and drive them away from the US and the international system it has fostered. To minimize such risks, the United States should take a more measured approach to using such tools and powers;
2. Conduct the necessary economic analysis of short- and long-term implications of individual actions, as well as the net effect of all US sanctions programs;
3. Operate in a transparent manner so that US and international actors understand and can follow US sanctions steps;
4. Combat perceptions of favoritism by creating regularity in the sanctions process and conform international practice to US efforts. This should include the adoption of a public information period—akin to the Federal Register process—before broad categories of sanctions are imposed and making available licenses or similar "safe conduct" passes from the US government for foreign companies otherwise at risk of sanctions; and,
5. Consider international approaches to sanctions regulation akin to international arms control efforts.

Similarly, I advise that companies with international operations should work now to identify their current vulnerabilities to future sanctions risks and consider ways to protect themselves, such as through the incorporation of force majeure clauses into contracts within risky jurisdictions and insurance against the risk of sanctions imposition.

By adapting its sanctions policies now, the United States may be able to change some aspects of the trajectory of an otherwise prejudicial future international operating environment, preserving its ability to continue using sanctions as an effective foreign policy tool and improving their effectiveness.

INTRODUCTION

Sanctions have the potential to be one of the most powerful tools of a state's arsenal. They have been employed throughout world history (including in the Peloponnesian war), and, though disagreements exist as to exactly how effective sanctions are in achieving their desired objectives, there is little disagreement that they can produce significant results.

Over the past ten years, the United States has been the most active country in the world in the design, development, and imposition of sanctions. US sanctions efforts have played a role in the undermining of two substantial economies in the past five years alone: Iran and now Russia. As a direct consequence of these successes, the perception of sanctions by the international community and – critically -- US policymakers have changed radically, and they have become the preferred tool of the US foreign policy establishment. When a crisis emerges internationally, there is almost always a call to impose sanctions on the offenders. Perhaps no other anecdotal sign is more telling of the growing importance of sanctions in foreign policy than the number of references made to them in the US National Security Strategy (NSS). This document, which is mandated to be produced in the National Security Act of 1947, as amended by the Goldwater-Nichols Act of 1986, presents the overall U.S. national security approach to be undertaken by the sitting President. In President Bush's 2002 NSS, sanctions were not mentioned. In 2015, more than half a dozen separate mentions of sanctions were made, with lengthy paragraphs to explain the role and context of sanctions in the overall approach.

Discussions of sanctions often fail to consider the fact that the United States is not the only country that can impose them or that its opportunity to impose sanctions may be a function of a particularly conducive economic environment for US economic pressure. The 2015 NSS comes close, in its description of present evolutions in international affairs that will affect US national security:

> ". . . Power among states is more dynamic. The increasing use of the G-20 on global economic matters reflects an evolution in economic power, as does the rise of Asia, Latin America, and Africa. As the balance of economic power changes, so do expectations about influence over international affairs. Shifting power dynamics create both opportunities and risks for cooperation, as some states have been more willing than others to assume responsibilities commensurate with their greater economic capacity. In particular, India's potential, China's rise, and Russia's aggression all significantly impact the future of major power relations."[1]

However, the NSS stops short of acknowledging that, with rising and diverse economic power globally, there are costs and vulnerabilities for the United States as well as advantages. Some of these vulnerabilities, ironically, may be the result of the overuse of US national economic power in its foreign policy and a complex regulatory environment that many increasingly judge to be extraterritorial in its application.

An effective strategy for economic statecraft would acknowledge these risks and seek to ameliorate them to the extent possible, thus preserving as many advantages for the practitioner as possible. In some cases, this is beyond the scope of US foreign policy professionals, particularly if the irritants at risk of undermining US strength come from legislative mandates, tax systems, and similar national structures beyond their control. However, in the application of sanctions, there are changes that could be made to US practices that—at a minimum—could avoid contributing to future national risk and—at a maximum—could ensure that foreign governments are less able to exert the same kind of national power at the expense of the United States in the future.

This issue brief represents an initial examination of the possibility of foreign sanctions being applied against the United States and strategies that the United States could use to reduce and manage this risk. It begins with an outline of the strategic use of US sanctions and lessons that foreign audiences may have gleaned from them. It then proceeds to describe the US economic situation internationally, highlighting the present vulnerability that the United States has—and US companies, more specifically, have—to international sanctions. It then reviews two illustrative cases in which sanctions imposed by foreign countries could, over time, be applied to affect US economic interests and policies. Finally, it concludes with recommendations about the next steps that the United States ought to undertake to appropriately address this risk.

Importantly, this issue briefing does not argue against the further use of sanctions by the United States. Rather, this briefing argues that sanctions are a powerful tool, but they are best used judiciously and carefully, mindful of the risk that today's asymmetric advantage can become tomorrow's asymmetric vulnerability.

CONCEPTS IN US SANCTIONS

Previous Center on Global Energy Policy research has detailed at length the nature of US sanctions against Iran, as well as against Russia.* This briefing will not repeat this description. Instead, in this section, I outline a few specific concepts that have formed the center of US sanctions policy over the last ten years. They are, in sum:

1. Use of tailored sanctions tools that isolate vulnerabilities and apply maximum pressure;
2. Description of sanctions as "defensive" measures rather than as offensive tools; and,
3. Targeting companies and individuals, not countries, for specific bad acts or for supporting bad acts.

USE OF TAILORED SANCTIONS TOOLS THAT ISOLATE VULNERABILITIES AND APPLY MAXIMUM PRESSURE

One of the characteristics of modern US sanctions efforts is that they rarely involve cookie-cutter approaches. Instead, the pattern is that the United States has designed sanctions tools that apply specifically designed pressure on specifically designed targets. This strategy emerged from years of less successful sanctions efforts in situations as diverse as Iraq in the 1990s—where sanctions damaged the local economy but not the stability of Saddam Hussein and, some would argue, may have sustained his rule—and in response to nuclear weapons tests by India and Pakistan in 1998.

Sanctioners now tend to focus on trying to apply discrete pressure on discrete vulnerabilities as well as on how US advantages can be applied. For example, the sanctions imposed against Iran's financial institutions in 2010 through the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA) relied on subtle design and pinpoint application of pressure on foreign banks. Through CISADA, the United States was able to pressure foreign banks to not do business with specifically designated Iranian banks at the risk of their ability to have correspondent account relationships with US banks. Doubtless many in the foreign policy arena were unaware of the term "correspondent account" prior to the passage of CISADA (though it was part of the USA PATRIOT Act). It refers to the system of relationships that permit the international financial system to function with ease.[2] But, through these few words, the US Treasury Department was able to leverage access to the entire US financial system in order to persuade foreign banks to stop doing business with a few isolated Iranian banks.

The results were dramatic: From 2010 to 2012, third-party banks stopped doing business with Iranian banks in droves. In that period, only two third-party banks were found to be engaged in transactions in violation of CISADA: Elaf Bank (Iraq) and Kunlun Bank (China). Kunlun remains under US sanctions today; Elaf Bank was able to extricate itself in 2013. Although it is certainly possible that a few banks escaped US notice, the likelihood is that banks found the idea of being cut off from the United States sufficiently risky so as to force them to quit Iran. By being so precise, the United States had the same effect as a blanket set of prohibitions might have, but with less draconian phraseology and more artful application.

The targeting of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) in the 2012 Iran Threat Reduction Act (TRA) had a similar intent and effect. SWIFT is the system by which modern banks process the instructions that make international finance efficient. Seen prior to 2012 as roughly analogous to the Internet or to phone lines, US sanctions targeted Iran's ability to use SWIFT by making a compelling argument: SWIFT provides financial services. As it is based in Belgium, it is subject to European Union legislation, which prohibits financial services being supplied to certain Iranian banks. Therefore, SWIFT should not provide financial services to these banks. Under TRA,

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* See the Center's webpage for the Economic Statecraft, Sanctions, and Energy Markets program for a comprehensive listing: http://energypolicy.columbia.edu/research/featured-topic-economic-statecraft-sanctions-and-energy-markets.

SWIFT was threatened with being denied the ability to operate in the United States and, effectively, with being shut down if it did not stop conducting transactions with entities that were supposedly persona non grata in Europe. The result: the EU passed legislation, clarifying that the denial of financial services included access to financial messaging services like SWIFT.

Of course, Iran is not the only instance in which the United States and its partners applied clever and incisive sanctions tools to significant effect:

- In Russia, for example, the prohibition on the extension of credit to certain Russian entities and sectors for longer than thirty or ninety days has had the effect of drying up those entities' ability to finance internationally. This, in combination with the drop in oil prices, has undermined the availability of hard currency in Moscow, led to the depreciation of the ruble, and soured the overall business climate in Russia.
- In Myanmar, sanctions were imposed on its export of a variety of raw materials and natural resources by the United States, European Union, and other likeminded partners. In part in response to the denial of aid and investment created by the sanctions (even though some countries did not cooperate with the sanctions campaign), Myanmar has taken a variety of political steps intended to assuage international concerns and relieve the sanctions.
- In Libya, the United States responded to then-leader Qaddhafi's attacks against his own people by freezing the assets of the Libyan regime and Qaddhafi's family and senior advisors. Libya's sovereign wealth was directly targeted, as much of it was located in Western banks. The result was that Libya quickly lost access to billions of assets.[3]

Though other examples could also be cited, the point is that sanctions employed by the United States and its partners over the past decade demonstrate an ability to isolate particular vulnerabilities and to apply pressure against them, even in seemingly novel ways, without necessarily using countrywide sanctions.

DESCRIPTION OF SANCTIONS AS "DEFENSIVE" MEASURES RATHER THAN OFFENSIVE TOOLS

Today, US rhetoric increasingly matches the reality of what sanctions are intended to do: deter aggression and impose consequences on those who violate international norms. But in the early days of the renewed US sanctions campaign, the focus was almost exclusively on the need to protect the US financial system from abuse. Flashes of this earlier message occasionally reappear in speeches and announcements of sanctions. Examples abound:

- During a budget hearing in early March 2015, Treasury Secretary Lew described the use of financial intelligence, sanctions policy, and enforcement activities as playing "a significant role in protecting our financial system from threats to national security."[4]
- The Treasury Department described the aforementioned CISADA as such: "CISADA is consistent with the global consensus regarding Iranian behavior and is in line with the US Government's core role of protecting its domestic financial system from exposure to Iran's illicit and deceptive financial practices."[5]
- The White House declared that US sanctions against Venezuela on March 9, 2015, were—in part—intended to protect "the US financial system from the illicit financial flows from public corruption in Venezuela."[6]
- And, of course, the aforementioned USA PATRIOT Act of 2001 contained Section 311, which explicitly focused on preventing misuse of the US financial system to support terrorism.[7]

The United States has also successfully encouraged international partners to take up the chorus. For instance, the Financial Action Task Force frequently urges members to take steps to "protect their financial systems" by, among other things, isolating them from Iranian and other bad actors.[8]

Such efforts are legitimate. It is true that those who seek to use the international financial system for illicit purposes undermine the integrity of that system and make it harder for normal, legitimate business to take place. As such, without the efforts of the United States and its partners to ensure the global financial system is—in general—a safe place in which to conduct business, international financial institutions' ability to conduct appropriate due diligence in conducting transactions on behalf of customers would be compromised.

That said, the focus on the use of sanctions as a defensive instrument does create precedents that others can use. After all, though the United States is able to defend its decision to deem this or that international problem as a threat meriting a sanctions response, such decisions may appear capricious or even cynical to others. (Nowhere is this more the case than in the area of human rights sanctions, which have been notoriously difficult to defend publicly, less because there is disagreement that human rights violations need a response and more because similar bad acts in different contexts are ignored.)

As such, while appealing to the defensive nature of certain sanctions, the United States can secure international support for its efforts but risks a similar determination going against it in the future. After all, "defense" can be liberally interpreted.

TARGETING COMPANIES AND INDIVIDUALS, NOT COUNTRIES, FOR SPECIFIC BAD ACTS OR FOR SUPPORTING BAD ACTS

Of course, one of the ways in which the United States has sought to manage international frustration with its sanctions policy is to focus its efforts on individual bad actors and the activities that they undertake.

In earlier incarnations of sanctions policy, entire countries were often the focus of sanctions. Individuals and companies may have been isolated for particular punishment, but it was usually in the context of a broader, comprehensive embargo. Noted sanctions researchers Hufbauer, Schott, Elliott, and Oegg found in a survey of all of the sanctions cases in the twentieth century after World War I, only in twenty out of 174 were "smart sanctions"—for example, arms embargoes, asset freezes, and travel sanctions—used outside the framework of a comprehensive embargo.[9] They further found that, even in these twenty cases (nine of which were imposed since 1990), "the sanctions targeted on individuals or groups were almost always imposed in combination with selective export restrictions or aid restrictions."[10] In other words, out of all of the sanctions imposed in the twentieth century, 88 percent used blunt economic pressure in order to achieve their results, while only 12 percent used a more selective approach.

This bias has shifted over the last ten years. Though certainly there remain many broad-brush sanctions regimes—against Iran and Cuba, for example—this is no longer the norm. Regimes as diverse as North Korea, Syria, Venezuela, Zimbabwe and Russia have instead been targeted with discrete measures for individual bad acts.

Selectivity serves three main purposes. First, it helps to create a substantive backing for the sanctions action, which is necessary to sell it internationally and gain support from partners. Second, it makes the imposition of sanctions a more targeted act, ideally sharpening sanctions pressure on a particular point. And, third, it ameliorates to some degree the nature of the resulting confrontation between states that results from a sanctions action. Taking aside for a moment whether this approach works, the point is that a general norm of focusing sanctions on those who have engaged in misdeeds has been reinforced by US actions over the last ten years.

US sanctions against Iran have taken this approach to the next level by also threatening action against individuals and entities that do business with individuals and entities under US sanctions (specifically those on the US Specially Designated Nationals and Blocked Persons or "SDN" list). This enhancement of sanctions from CISADA, as described previously, puts at risk the financial interests of foreign companies while leaving their governments alone. This company-based approach, as noted, disincentivizes bad behavior without, in theory, requiring the intervention of foreign governments in their company's business activities. This concept increases the potential avenues for applying pressure on adversaries and thus also expands the foreign policy operating space of the US government. Even if a foreign government is disinclined to be cooperative, its businesses may feel differently. By focusing sanctions on businesses—which in most cases make the actual decisions about trade volumes absent international legal requirements—the United States was able to advance its policy interests in a new fashion. But, this development also means that the United States has endorsed the principle that bringing businesses into international disputes is an acceptable way of exerting statecraft.

At the same time, of course, larger disputes among states—particularly partners—are minimized. Consider the Central Bank of Iran/oil sanctions put in place against Iran in 2011: they required actions on the parts of states (overall crude oil purchase reductions) to indemnify actions on the part of entities (transactions with the CBI). From the perspective of simplicity, it would have been arguably more efficient to simply threaten the opposite country with sanctions than to threaten individual actors in that country's economy. In such a concept, the United States would not have had to deal with the problem of intransigent companies and could instead have focused its attention on the opposite government. But, of course, this also raises the stakes tremendously for the imposition of sanctions. Choosing to impose sanctions on a seemingly random Chinese bank is less aggressive than imposing sanctions on all of China's financial sector, and with less risk of unintended consequences. This has advantages from a sanctions enforcement perspective. But, it also establishes a very clear precedent that a state can maintain its overall (and profitable) trade ties with a country hosting a sanctioned entity, and therefore that sanctions are less costly to impose from the standpoint of the originator.

Perhaps more interesting, the definition of what constitutes supporting a bad act has changed over time and as circumstances warrant. For example, in the case of Iran, the initial sanctions position was that those supporting Iran's nuclear program directly were at risk. Then, sanctions efforts focused on those providing services in support of the program followed by sanctions efforts on those providing services for those providing services to the program. This ever-widening net then targeted those supporting Iranian industries, culminating in June 2013 with sanctions against those who sell parts for the manufacture of automobiles in Iran due to the contribution the auto sector could make to the overall Iranian economy. The result became a secondary boycott, but gradually and over time. The present sanctions focus on Russian energy companies—which ostensibly have little to do with the crisis in Ukraine—shows the same characteristics as the early days of the US sanctions campaign against Iran.

Ultimately, the lesson learned here is that companies could be held liable for even innocuous-sounding interactions with bad actors, so long as the foreign policy interests of the sanctioning country support it.

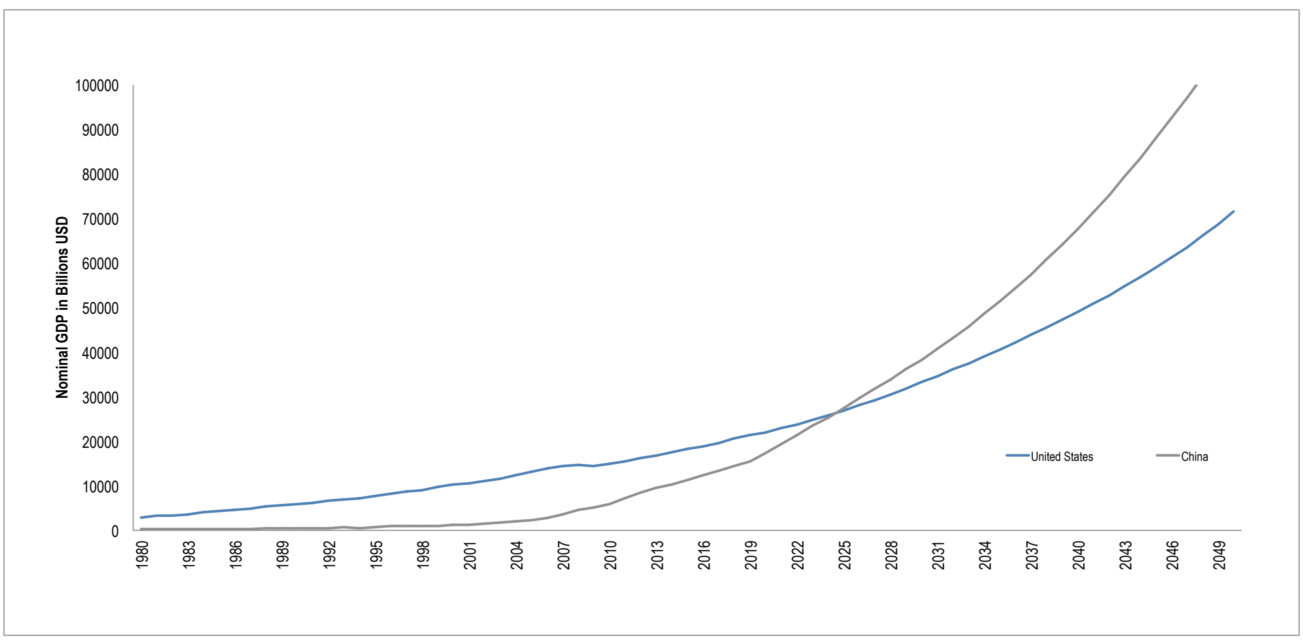
US ECONOMY IN A GLOBAL WORLD

Modern US sanctions efforts would not have been possible were it not for the economic supremacy of the United States in the post–Cold War world. The United States emerged as the undisputed leader of the free economic world after the Second World War. After the Cold War ended with the collapse of the Soviet Union, the US-sponsored economic system became the unchallenged architecture for global finance. At the center throughout this time were a number of institutions and practices that reinforced the centrality of the United States, among these the use of the US dollar as the global reserve currency.

Many observers think this US economic supremacy is waning, even if at a slow rate. They point to the market collapses of 2001 and 2008, as well as the rise of new transnational institutions in Europe and Asia. It is true that the global economy is more diverse today than twenty years ago. Further analysis of the shifts in global financial power and what it means for the broader US economy are beyond the scope of this paper, which accepts as given that—in all likelihood—China and other emerging markets will create counterweights to the US economy in the coming decades. Figure 1 describes this in simplistic terms, reflecting the analysis developed by the Economist Intelligence Unit of nominal GDP in the United States and China through 2050. This chart makes clear that, at some point around 2025, the size of the Chinese economy will likely exceed that of the United States, and that that gap will expand dramatically in the decades that follow. Today, China's economy is 60–65 percent the size of the US economy in nominal GDP terms. By 2050, expectations are that the situation will be reversed. The size of the gap between the economies could be larger than the gap between the US economy today and in 2040.

If realized (and there is some possibility that the trends are exaggerated in our present forecasting), this will have implications for the use of the US economy for strategic ends. The 2015 NSS acknowledged this when it noted that "despite its success, our rules-based system is now competing against alternative, less-open models . . ." and that "we must be strategic in the use of our economic strength to set new rules of the road, strengthen our partnerships, and promote inclusive development."[11]

Figure 1: Comparison of US and China nominal GDP (In billions of US dollars)



Source: Haver Analytics/EIU, Extracted on March 20, 2015.

But, this may be easier said than done in a world in which the US economy is no longer dominant and simultaneously sees the results of foreign investment as important to US economic performance.

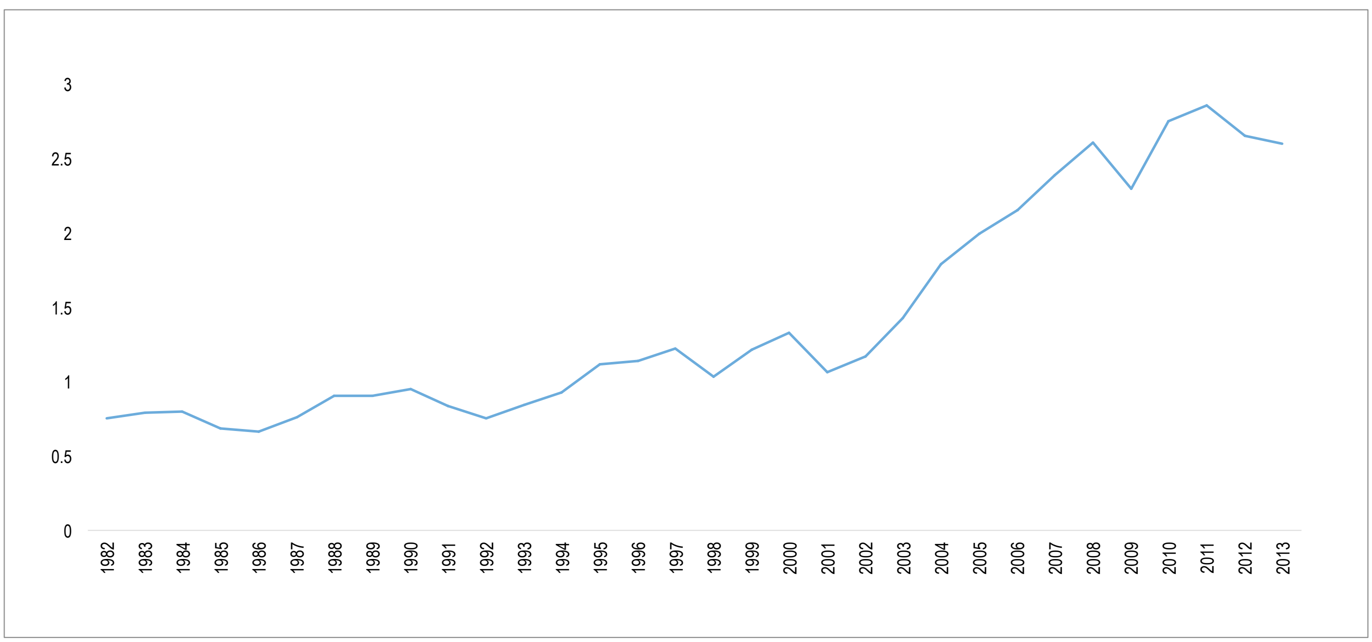
US-earned income abroad is considered to be an important aspect of the overall balancing of the US current account deficit. A paper by the two economists at the Board of Governors of the Federal Reserve in 2012 that examined the accounting and economics behind this thinking, noted that:

> The income received on the US external position plays an important role in one of the biggest issues confronting international macroeconomists—the sustainability (or lack thereof) of the US current account deficit. Net income receipts, which equaled 33% of the goods and services balance in 2010, provide a significant stabilizing force for the current account. Future sustainability will depend, in part, on the persistence of these net income receipts.[12]

Moreover, between 2000 and 2013, US Gross National Income (GNI) derived from international investments grew from 1 percent to 3 percent of GNI (see Figure 2). An increase in the value of international investment from 1 to 3 percent of US GNI might not seem like a lot, taken in comparison to the overall size of the US economy. However, in 2013, it accounted for $439 billion. For purposes of illustration, that is larger than the nominal GDP of all but the top 28 economies in the world.[13]

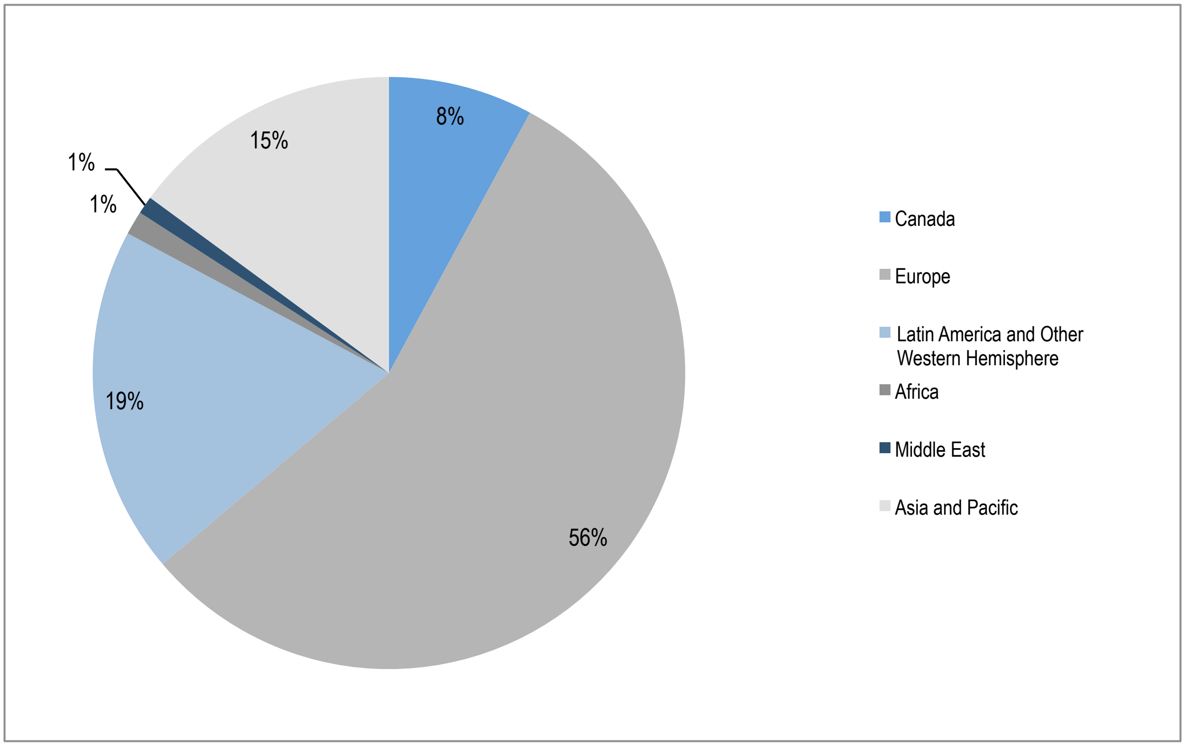
And, of course, this is just a measure of the national income derived from foreign investment, not a complete picture of the investments abroad made by US companies (and, therefore, what they have at risk abroad). The US Direct Investment Abroad position in 2013 was $4.6 trillion. (To put this in perspective, the total market capitalization of the NY Stock Exchange was $16.6 trillion at the time of this writing.)[14] Though most of this was in Europe (around $2.6 trillion), there is some measure of diversity in US companies' investment holdings, reflecting the global nature of US business. This also means that US companies are exposed to potential foreign sanctions risk around the world, even if they are themselves not doing anything most people would view to be illegitimate.

Figure 2: US GNI derived from international investments (Percent)



Source: US Bureau of Economic Analysis, Department of Commerce.

Figure 3: US direct investment position abroad in 2013



Source: US Bureau of Economic Analysis, Department of Commerce.

At the same time, there are ample indications that US policy efforts—including sanctions as well as frustrations with a wide range of other US actions—could be souring international interest in the United States. On a seemingly daily basis, press stories outline the myriad ways in which foreign governments and businesses are seeking to diversify the risks of too much partnership and trade with the United States. Three recent stories will help demonstrate this point:

- **Total seeking reliable, alternative financing for natural gas investments in Russia:** Press reports, including quotes from Total's chief executive, Patrick Pouyanne, indicate that the French energy company is "seeking the equivalent of up to $15 billion from Chinese investors to finance its part of the development of a giant gas field in Russia due to US sanctions."[15] Pouyanne noted that "we would have preferred to do it with dollars" but that the imposition of US sanctions against Russia forced Total to consider alternative means of financing the project.[16] Neither US nor EU sanctions explicitly target natural gas, though Russian energy companies have been themselves subject to financing-related sanctions.

- **China infrastructure investment bank draws in US partners:** China's bid to create an Asian Infrastructure Investment Bank (AIIB) has received new support from Australia, France, Germany, Italy, South Korea, and the United Kingdom, partially in response to frustrations with US failure to support reforms at the international financial institutions that would give emerging countries greater say.[17] The development of the Chiang Mai initiative in Southeast Asia can also be seen as a similar development. Treasury Secretary Lew "acknowledged that the failure by Congress to agree to a 'very mild and reasonable' set of reforms of the IMF had prompted countries to look elsewhere.'"[18] Washington is concerned about this bank because of the risk that it will lessen the standard safeguards of "transparency, creditworthiness, environmental sustainability, and concern for labor and human rights that took decades to put in place"[19] while partners grow frustrated that US inaction has forced them to join China at the AIIB to unlock China's large foreign reserves for investment.

- **Argentine bond payments blocked by US judicial process:** Argentina, which was long-ago sued by a small group of "holdout" hedge fund managers in New York for full repayment on bonds that had been restructured after its 2001 default, was nearly prevented from making regular interest payments on its restructured debt. Citibank was prohibited by a federal district court judge in Manhattan from making interest payments on behalf of Argentina to investors holding $2.3 billion in Argentine notes until Argentina paid the "holdout" hedge funds.[20] Described by the New York Times as "a move that reverberated through the international debt markets," this decision could have had the practical effect of forcing Argentina to default on its debt and forcing Citibank to choose between breaking US law or breaking local Argentine law. The decision was reversed on March 22, permitting Citibank to make the necessary interest payments on behalf of Argentina,[21] but overall, the decision may lead sovereign bond issuers to avoid a US nexus to prevent a situation in which the application of US law forces default or an intermediary into an impossible legal quagmire. Citi itself has paid a price for this, as its decision to make the interest payments was interpreted by the Argentine government as serving the interests of the hedge fund managers rather than Argentine investors; Citi Argentina's ability to trade in the country's capital markets was suspended on March 27.[22]

Each of these incidents points to a certain amount of US overreach that undermines the future US use of economic statecraft and even sanctions. Moreover, by legitimizing such tools, the United States risks them being used against US firms in the future.

TURN-ABOUT IS FAIR PLAY

The United States may find over time that its ability to impose its will upon the international system by economic means has been dramatically reduced. This alone would reduce the impact and effectiveness of sanctions, prompting some to disregard diktats from Washington.

It is also possible that the United States could itself become subject to international sanctions pressure. This theory, which is sometimes (and in oddly American-centric fashion) referred to as "reverse sanctions," postulates that, over time, other economies will become sufficiently robust so as not to require trade with the United States or—at a minimum—to be prepared to sacrifice some portion of their economic interests in the United States in order to exert political pressure on it. This has been occasionally raised in the context of Chinese holding of US sovereign debt, but often without recognition that it is hardly in the purely economic interest of an investor in US treasuries to seek the erosion of the value of its investment.

It is true, however, that over time, the degree to which the United States is dependent on good economic ties with partners for its growth will also impede the US ability to freely use its economy to generate pressure on those partners. This is common sense: it is far easier to exert pressure on countries that are wholly dependent upon a sanctioner than it is to exert pressure on those independent of the sanctioner. The United States found this in the early 2000s with Iran and remedied the situation by seeking to impose pressure on those with whom Iran still did business in Europe and in East Asia. By doing so, the United States leveraged its stronger relationship with Europe (and its companies' stronger integration with European ones) to create political pressure against Iran.

It is therefore worth considering whether, in a future scenario, the same could be done with respect to the United States and using aspects of the concepts that underpinned US sanctions over the past ten years. To recap, they are: use of tailored sanctions tools; description of sanctions as "defensive"; and targeting companies and individuals, not countries.

The following are two scenarios that have been developed to help demonstrate the point that, over time, the United States or its key companies and banks could be forced into a choice between doing business in one country (or economic bloc) and business in another. Though entirely suppositional, they draw upon existing political problems and differences between the United States and two global trading partners: China (as relates to Taiwan) and the European Union (as relates to Israel). Of course, by developing these scenarios, this assessment is not endorsing either of them. To the contrary, I believe that sanctions are inappropriate in either case and that the US response to such steps would need to be substantial to protect our economic and political interests.

Nor is this assessment intended to suggest that either scenario will necessarily come to pass. For purposes of expediency, these scenarios omit altogether any real consideration of whether these US partners would actually decide to impose a sanctions regime affecting US interests—purposefully ignoring the fact that both China and the EU have historically opposed the development of what they deem to be extraterritorial sanctions regimes—in order to focus on whether or not they could do so.

Last, both of these scenarios deliberately dodge the question of how coalition politics might influence the decision to apply sanctions or the US ability to undermine them. It is certainly possible that the United States could respond to a decision by either China or the EU by seeking to develop a coalition to oppose the moves in question. It is even possible that such an arrangement could undermine the efforts of the sanctioners or deter them from going forward with the sanctions in question. However, abstracting out beyond what is already contained in these scenarios requires making assumptions about future behavior that is difficult to model credibly and any attempt to do so would probably create an impression of precision that is unfounded. For example, to be truly accurate in predicting European behavior and a US countermove we would have to make assumptions whether, for instance, Greece remains in the euro and the UK in the EU. The point of these examples is not to create ironclad predictions of realistic future behavior. It is rather to demonstrate that our assumptions about whether these scenarios are even remotely possible may need to be re-examined in light of future economic potentialities and the lessons countries and groups may learn from the US sanctions experience.

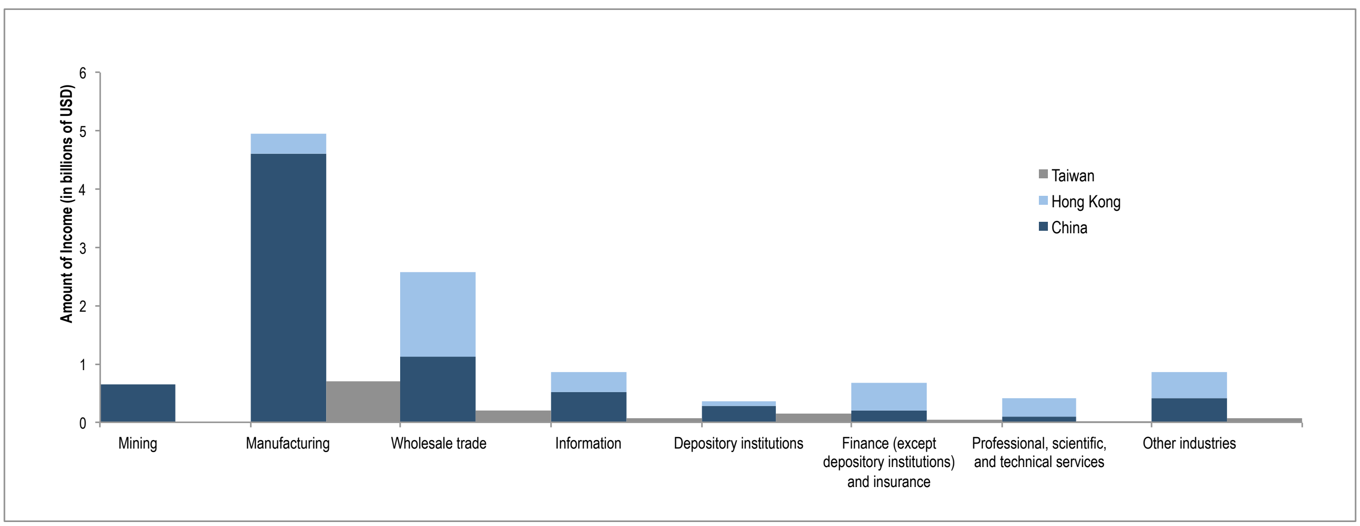
CHINA-TAIWAN

One need not be a foreign policy expert to know that the status of Taiwan remains a potential flashpoint of tension between the United States and China. Though the United States adopted a "One China" policy in the 1970s, it simultaneously reaffirmed its commitment to the defense of Taiwan and has reinforced this with arms sales since that time. For China, Taiwan's status remains a perpetual sore and, according to the Annual Report by the Department of Defense on Military and Security Developments Involving the People's Republic of China in 2013, "Preparing for potential conflict in the Taiwan Strait, which includes deterring or defeating third-party intervention, remains the focus and primary driver of China's military investment."[23] And, of course, for the people of Taiwan, there remains a constant tension between a desire for independence and a well-reasoned interest in trade and cultural links with the mainland.

It is therefore entirely conceivable that, at some point in the future, a crisis could erupt between China and Taiwan. Most US planning has focused on this crisis having a military aspect or, as of late, perhaps a cyber warfare aspect. However, it is also conceivable that China could design a sanctions regime against Taiwan. Such a regime could incorporate lessons from the US sanctions approach. For example, China could develop a targeted sanctions regime against Taiwan that forbids access to Chinese markets by any company that invests in Taiwan's electronics, machinery and petrochemicals sectors (described in CIA World Factbook as the drivers of the Taiwanese economy).[24] China's own substantial imports from Taiwan—which the Factbook notes represents 27 percent of Taiwan's exports—could support a robust sanctions effort on Taiwan, but China may feel that it is appropriate to seek external sources of pressure to complement its own.

Even if China never sought to engage the US government to support its efforts or to impose sanctions on trade with the United States (which would probably be profoundly damaging to its own interests), such an externally applied, secondary sanctions regime could force US companies to dramatically reconsider their investment decisions and cooperation with Taiwan. Figure 4 shows how US GNI derived from direct investment in the Chinese manufacturing sector dwarfs that of US GNI from Taiwan.

Figure 4: Comparison of US GNI derived from direct investment in China/Hong Kong and Taiwan (In billions of US dollars)



Source: US Bureau of Economic Analysis, Department of Commerce. Note: Holding company data was excluded from these graphs to make a clearer picture as to the direct economic value of the relationship.

Moreover, the US investment position is similarly skewed to China and Hong Kong, as opposed to Taiwan. In 2013, the US investment position in China and Hong Kong was valued at $120 billion ($61 billion and $59 billion, respectively), versus a little less than $17 billion in Taiwan.[25]

US companies are already at risk to possible Chinese sanctions over Taiwan based on their present investment position. However, if we consider this scenario in ten years' time, when the US and Chinese economies are predicted to be roughly the same size, then it is straightforward to imagine an even greater vulnerability at that time. And, of course, this problem would become magnified in the years that followed.

EUROPEAN UNION-ISRAEL

A different sort of scenario could play out in Europe. Predictions that the European Union would overtake the United States in economic clout have been set aside given the turbulence that has afflicted the Euro area since 2008 (which also serves as a reminder that the projections about China's economic ascent could similarly disappoint). It nonetheless remains the case that the European Union is both a significant economic power in its own right and that its trade and investment ties with the United States are substantial. As noted previously, around 56 percent of the overall $4.6 trillion US investment position abroad stems from investment in Europe.

It is also true that the United States and the European Union are frequently on the same side of many global issues. To some extent, this reflects a shared political heritage and strategic outlook following World War II. There are also broad cultural and social ties that lend themselves to more common viewpoints on issues such as human rights. That said, there are divisions in European and US opinions on many international and domestic issues (e.g., capital punishment, gun control, and economic equality). One area of potentially dramatic future discord lies in the Middle East, specifically with respect to perspectives on Israel and Palestine.

Public opinion polling in Europe is generally against Israel and blames Israel for the conflict with the Palestinians.[26] This is not the case in the United States (nor, to be sure, is this a uniform opinion within Europe).

Over time and absent any improvement in the situation, Israel may find itself further isolated in Europe as a general matter. This is not mere speculation: The Economist reported that Israel's finance minister in 2014, Yair Lapid, said that, if negotiations with the Palestinians fail and a European boycott was arranged, even partially, ten thousand Israelis would "immediately" lose their jobs. He calculated that trade with the EU would slump by a third.[27] More recently, press reports indicate that a leaked document prepared by EU diplomats may encourage consideration of European sanctions against Israel for "heavy-handed" approaches to the Palestinians.[28] .[29] It is reasonably certain that no such document exists in the United States, though the growing divestment movement on US university campuses suggests that a European drift away from Israel and the United States is neither as far-fetched as it may seem nor would the Europeans be as isolated in their sentiments as perhaps in the past.

It is also possible that, in such a scenario, the European Union could decide to impose more sweeping sanctions against Israel, for example by prohibiting investment by European companies in Israel or particular sectors of the Israeli economy. An extensive document prepared by the European Commission on the EU-Israel economic relationship makes clear that sanctions against Israel would be costly to Europe as a whole: Israel is the EU's twenty-eighth largest trading partner, responsible for 29 billion euros in trade in 2013.[30] However, as with the US-led sanctions efforts against Russia and Iran, a decision to apply sanctions need not automatically extend to trade across the board. It is conceivable that a selective and highly focused boycott—for example, on any goods determined to have been produced in territories beyond the 1967 borders of Israel or by companies with substantial investments in those areas—could apply pressure and due diligence requirements stringent enough to chill European business.

Europe could also decide to export its sanctions policies. This would be decidedly contrary to the EU's normal inclinations. The EU, in fact, has opposed US sanctions that seek to modify behavior beyond US borders as extraterritorial. However, policy inclinations have been known to change.

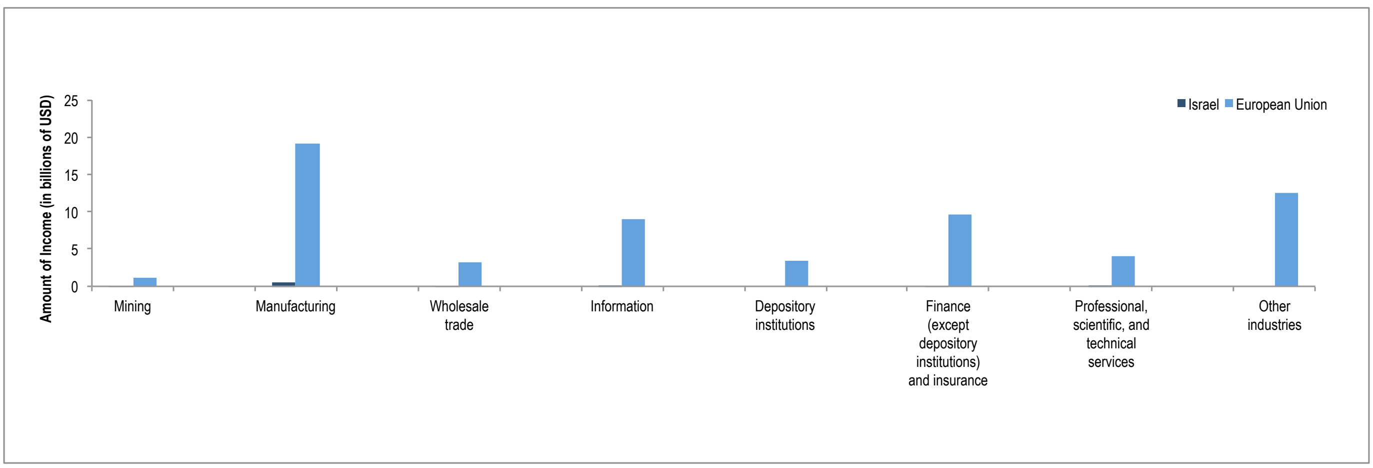
Were the EU to determine that secondary sanctions were desirable, US companies would have a tough decision to make on economic grounds, as Figure 5 demonstrates.

As with the China–Taiwan scenario, the EU–Israel scenario would also put front and center the disproportionate economic weight of US investments in Europe versus Israel: $2.6 trillion in Europe as compared to $9.5 billion in Israel.[31]

Of course, as discussed earlier, such a scenario would be a significant departure from past EU practice and would constitute a very significant step politically. However, from a European domestic political perspective, it would likely not be an unpopular one at home (especially if Europe is still struggling to manage its internal relationships with its diverse immigrant populations). Consequently, the decision to impose such a sanctions regime could be less difficult to arrange than might otherwise be expected.

Assuming of course that internal European politics were to be overcome in support of such an audacious response, the primary international objection would doubtless come from the United States, which—notwithstanding current frustrations with the Israeli government—would almost certainly resist such a move. One could easily imagine a scenario in which counter-sanctions are imposed against the European Union by the United States, the converse situation from 1996, when the US imposition of sanctions on those investing in Cuba (via the Helms-Burton Act) and Iran and Libya (via the Iran-Libya Sanctions Act) prompted the EU to pass legislation that prohibited European companies from complying with extraterritorial law. Still, US companies with an interest in Israel would have to make a decision about their economic interests in Europe, which could have a chilling effect on Israeli trade even beyond what would already be the case.

Figure 5: Comparison of US GNI derived from direct investment in the EU and Israel (In billions of US dollars)



Source: US Bureau of Economic Analysis, Department of Commerce.

AN APPROPRIATE RESPONSE

One could (wrongly) take from the preceding analysis the conclusion that international trade is the problem, exposing the United States as it does to the vagaries and whims of foreign governments to impose sanctions and pressure upon it. This is a risk in engaging in any international trade or, for that matter, trade of any sort. But, trade is sustained by a sense that there are rules and predictability built into the system; this was one of the fundamental messages of the 2015 NSS. It is possible that, through overuse of sanctions in combination with other structural issues, the United States could undermine the very system it has designed and nurtured over the last seventy years.

There are three paths available to the United States in response to this possibility and risk:

1. It can ignore the possibility that its actions will have future consequences and proceed along its current path, confident that the size and strength of the US economy will protect it from future risks.

2. It can abandon the use of its economy and markets for statecraft purposes, reducing its reliance on sanctions tools and becoming more acquiescent to foreign economic interests.

3. It can acknowledge that with its actions come consequences and therefore that a holistic approach ought to be taken to ensure that the combination of sanctions tools, economic development and aid policies, and other forms of economic statecraft it employs are calculated to fulfill the president's vision of a "strategic" use of US economic strength.[32]

The first path, frankly, is reckless and assumes a level of control over the international economy that is out of step with many projections for global economic growth and the US place in the international economy. The second path is unnecessarily defeatist and would deprive the United States of a tool that it can use—and arguably has used—to address national security challenges through nonmilitary means, preserving US capabilities and credibility in the international community.

This assessment concludes that the third path is the only sensible response to the risks facing the United States in the future. This path balances an appropriate use of an important tool against a sensible awareness of future risk, preserving US foreign policy options. But, this path requires work and adaptation of the prevailing US sanctions approach. Coming from endemic, global economic trends as some of the risk to the United States does, it is not possible to address such risks altogether. In addition, the United States is in no position now to put the genie back into the bottle with respect to how useful certain sanctions approaches can be. This knowledge is available and usable to those who may, in the future, have the leverage to employ in such a manner.

That said, this does not mean that the US is simultaneously powerless to mitigate these risks to some degree. First, the United States can make sure that when it chooses to utilize sanctions, it does so in full, conscious awareness of the consequences. Doing so may create pause before imposing sanctions in situations in which they are not the best tool and, even better, ensure that sanctions – if used – are appropriately calibrated to achieve their desired end goal. Second, the United States can demonstrate leadership in making its sanctions decisions transparent and legible. Opponents may not agree with the use of the tool but a well-articulated rationale for the sanctions actions undertaken as well as what they cover and for how long may go a long way in dispelling some of the myths surrounding US sanctions. Third, the United States could standardize the processes through which it undertakes sanctions and ensure that foreign companies are treated fairly within a US sanctions regime that increasingly targets foreign economic behavior as well as the choices of its own resident companies and individuals. And, fourth, the United States can work to create global rules of the road, potentially restraining its own power but while this power is at its peak, with all the leverage that comes along with it.

More specifically, I recommend:

1. **The United States should recognize that its actions across a range of economic issues are interrelated and may be driving countries**

away from it and the international system altogether.

This is not immediately obvious given US growth potentials and so forth. But, there is weariness in the international economy from dealing with the myriad of US demands, policies and complaints. Coming as it does during a time of global economic realignment, countries and companies have begun exploring a world without the US at the center. Although I believe many countries would find a move away from the US system would ultimately be to their detriment, there would also be a cost to the United States in real economic terms and in its ability to use its economic power for good. As such, it would be wise for there to be a real conversation between the branches of government as to what US interests are in the global economy and how to prioritize what it does and when. Failing that, there should be a recognition that there are real limits to US power and that these limits can grow overtime due to changing global circumstances as well as US actions. Ultimately, executing effective economic statecraft requires careful use of US economic statecraft.

2. **Conduct the necessary economic analysis of short- and long-term implications of individual actions, as well as the net effect of all US sanctions programs.**

Future sanctions programs should come with an assessment of the individual risk of the program to the US and global economy, as well as an assessment of the overall risks both near and long term. Presently, to create a new sanctions program, the president needs to determine pursuant to the International Emergency Economic Powers Act (IEEPA) that there is an international emergency that threatens the US national or economic security. The president is required to submit a report to Congress that outlines the nature of the emergency and the actions taken, but there is no requirement for an assessment of the economic consequences of this decision. Such an assessment would be a prudent addition to the process and would demonstrate both to supporters and critics of the action that the various issues associated with a decision have been considered. Many times, the assessment might conclude that there is negligible economic impact, particularly immediately. For example, it is highly unlikely that sanctions against terrorist groups would have a negative impact on the US economy. But, conducting the review would add rigor to the process and could be adopted as an executive branch standard, if not incorporated into an amendment of IEEPA. Moreover, it would force the executive branch to come face to face with the reality that sanctions actions may have negative, unintended consequences.

Congress should also provide economic assessments of the impact of sanctions that it chooses to impose. As congressional enthusiasm for sanctions has increased over the past decade, there have been many claims made about the economic impact of this sanction or another. However, though Congress often establishes reporting requirements on the executive branch to validate its decisions—for example, for exempting a party from sanctions—it is rare that Congress will commission authoritative reports on potential sanctions actions before deciding to pass the law requiring such sanctions. In the case of the FY12 NDAA, Congress did provide the president with the ability to determine that sanctions would be detrimental to the US and global economy if they upset oil prices and similarly commissioned the US Energy Information Administration (EIA) to produce reports every two months on the state of the oil market. This was a responsible and appropriate concession by Congress to the economic risks of the sanctions being imposed and ought to be replicated in similar future sanctions laws in the form of an overall US and international economic assessment.

3. **Operate in a transparent manner so that US and international actors understand and can follow US sanctions steps.**

Sanctions actions ought to be taken with the utmost possible transparency and explained in clear, straightforward language to those who ask. Sanctions have achieved some success from their direct action but potentially an even larger amount from the climate of fear that is created from their imposition. This climate comes both from the threat that sanctions could be expanded to cover whatever business is not presently affected and from the ambiguous nature of some of the sanctions imposed. This is advantageous to US sanctioners, who can respond quickly to requests for clarity with a statement that "it is up to the business community to conduct the necessary due diligence and make its own decisions about sanctions risk," but hardly illuminating from those who seek to cooperate but don't know how. In the author's time in government, he was frequently asked by businesses to answer simple "yes or no" questions about sanctions risk and just as frequently deferred those questions to avoid giving a stamp of approval. While beneficial from an enforcement side, such unnecessary evasiveness simply perpetuated the sense that US sanctions efforts were attempts at "gotcha" games.

It is also possible that such practices undermine other US foreign policy initiatives involving the target at hand. Both Iran and Myanmar illustrate this point. In Iran, the United States had a direct interest in Iran receiving some benefit from the Joint Plan of Action (JPOA) reached in November 2013. It is this benefit that would keep Iran interested in a comprehensive arrangement. At the same time, because of concerns that Iran would take inordinate advantage of the JPOA and criticism that the JPOA gave away too much, the United States aggressively messaged the risks of doing business outside of the JPOA framework in early 2014, such that the Iranians complained that relief was not extant. Adjustments were made in US messaging, and, as a result, Iran received some clear—but limited—benefit from the JPOA. In Myanmar, the United States has struggled to demonstrate that it remains concerned about the pace of political progress in the country and the treatment of the Rohingya, while at the same time welcoming responsible US investment in the country. Myanmar has received some benefit from the relaxation of US sanctions, but the lack of clear, bright lines and ambiguity about the future of business in Myanmar may contribute to lessened interest in investment there and, perversely, a lack of direct benefit to the Burmese necessary to keep them on the reform path.

There is therefore a clear tension between the value of ambiguity around the reach and extent of US sanctions (creating deterrence) and the risk that—with an ever-expanding array of US sanctions programs—foreign interlocutors decide there is no good way to navigate the US system and decide not to play.

On balance, I believe that the power of US sanctions comes in the risk that is presented to those targeted through them, not in clouding the nature of what is covered. With this view in mind, US sanctions offices ought to publish clear standards and rules, in tenth-grade English, to outline what is covered by sanctions and what is not. This should not be prejudicial to sanctions efforts, provided that clear caveats are made as to the lack of legal indemnification that would come from these descriptions and care was used in the drafting.

4. **Combat perceptions of favoritism by creating regularity in the process and conform international practice to US efforts.**

As noted, sanctions campaigns have benefited to a certain extent from the chilling effect created by uncertainty in the next target to be chosen. They have also benefited from the reality that international actors respect and respond to actions taken by the United States. But, the use of sanctions has also come to be seen as capricious or, at a minimum, skewed to punish one group of actors at the expense of another. Frequently, while in government, the author's entreaties to foreign governments to take action against serial violators of US sanctions were met with responses such as: "But country X is doing it, and you're not stopping them." Though the ability to use flexibility and discretion in the imposition of sanctions is a vital, necessary element of the tool, it does lend itself to charges of unpredictability.

Moreover, foreign companies have often seen the fact that, though both US and foreign companies can be subject to penalties for violations of US sanctions, only US companies can receive specific licenses with which to operate. This breeds a powerful misconception that the United States uses sanctions to advance its economic interests. This is not true. But, given the prominence of US businesses abroad and the common international practice of advocacy on behalf of national companies, it is a beguiling untruth.

The United States needs to combat all of these risks in order to lessen the negative impression of sanctions abroad. Two ideas could assist in this effort:

a. New sanctions measures should be subject to some kind of public information period, akin to the Federal Register process or similar federal regulatory procedures. There could be a discussion period, in which interested parties could file comments with the sanctioning department and proposals could be modified or enhanced on the basis of those comments. Such a discussion period could be limited to help preserve responsiveness to the national security threat prompting consideration of sanctions—perhaps to thirty days—but would permit those with an interest to offer their views.

   There are doubtless many conceptual frameworks that could be developed for such a process, but the idea would be to give public note of an intended sanctions action and to permit public comments to be registered. This would not apply to individual designations, which should be kept confidential until unveiled so as to avoid asset flight, but it would be reasonable to give public notice of the intent to create new sanctions authorities that could have a major impact on US and foreign business.

   The biggest risk from such a concept would be that foreign adversaries become witting of the sanctions steps being contemplated by the administration and take steps to counter them. This is a real problem, though not without its advantages. Indeed, one could argue that the deterrent effect of US sanctions would be enhanced by such a process, as it would give the government an opportunity to show more of its cards in an escalating diplomatic confrontation but without having to deploy them while diplomacy goes on. Moreover, congressional sanctions are not made in secret and have served similar purposes in the past.

   But, these virtues aside, there is some risk that imaginative sanctions—such as those that targeted Qaddhafi in 2011–2012—would be undermined with this proposal. Therefore, this should be promulgated as a guideline to be followed, not as a legal requirement, so that national security–sensitive exceptions could be made. One could easily imagine the decision to impose new asset freeze prohibitions on foreign banks as qualifying for such an exception, but a decision to impose sanctions on Russian export of oil would not. The former risks asset flight; the latter has been in the press for months as a possibility.

b. Foreign companies ought to be eligible for licenses or similar "safe conduct" passes from the US government. At the present moment, the best that foreign companies can hope for is inclusion of their business under a general license and sufficient parallels to US business to avoid sanctions. This is a dangerous way to operate for foreign businesses. Furthermore, it begs the obvious question from foreign businesses: if you can sanction me for conducting illegitimate business, can't you license legitimate business? The US government's disinclination to this practice stems from two general arguments: the first is the enormous resources that would be consumed in the effort, and the second is that it is harder to verify that foreign companies are fulfilling their obligations under a license.

For the first, this is a problem that merits real discussion between the executive and legislative branches: if sanctions are key tools of US foreign policy, then resources ought to be made available to support them and not at the expense of the other vital missions conducted by the departments responsible for sanctions enforcement. As a national security instrument, they ought to be given priority in budgeting the same way as the Intelligence Community and Defense Department. For the second argument, the penalties that could be imposed for breach of a license could be severe, just as they are for violations of US export laws for the reshipment of US goods (including prohibitions on further export privileges). Surely something similarly draconian could be a condition of the breach of a license. This would risk foreign companies still deciding not to bother doing business in the United States, but at least with such a construct, there would be a clear sense that US and foreign companies are being treated fairly.

5. **Consider international approaches to sanctions regulation akin to international arms control efforts.**

   From a US perspective, an ideal world would permit the United States to retain the ability to engage in unilateral action as it sees fit while others stand aside. This is not that world, and the asymmetric advantages for conducting sanctions campaigns presently enjoyed by the United States very well may become, at best, even competitions. In previous such instances, the United States has often looked to constrain all sides equally through arms control and similar restraint mechanisms.* In the Cold War, this became a ban on nuclear testing and eventually the Nuclear Nonproliferation Treaty, as well as bilateral arms control arrangements between the United States and the Soviet Union. In the twenty-first century, a similar approach may be necessary in order to prevent the abuse of sanctions instruments against the United States and its partners.

   The basis of such an approach merits further analysis, and there are many hurdles in the creation of a "sanctions control" strategy. For example, would it be better to seek a global consensus on the use of sanctions (which, given global differences of opinion about sanctions as a tool would basically undermine any chances of success), or should regional or likeminded coalition approaches be enlisted to create smaller blocs that hopefully lead to bigger ones via a bottom-up approach (which could mean the creation and eventual ossification of power blocs within which no sanctions would be imposed, but outside of which sanctions could be plentiful)?

   Even such a simple question underscores the difficulty of applying arms control principles to sanctions. That said, there are a few pillars that could form the basis of a nonbinding "code of conduct" that eventually could lead to something more permanent. Its pillars could include:

   a. Concurrence that sanctions can be legitimate tools for national self-defense, but that their abuse would have significant consequences for the global economy.

      1. On that basis, concurrence that the preference ought to be on UN-led sanctions with national enforcement

* The arms control and nonproliferation comparison appeals to this author given his background, but similar examples from economic foreign policy (e.g., the WTO system) could also be cited.

meeting minimum standards.

2. Concurrence that exceptions to this standard can be made on the basis of national self-defense. However, in this case, then it should be standard that states provide justification for failure to adhere to international guidelines.

b. Development of standards on acceptable means of applying sanctions, legitimate targets, and mitigation measures. There can be consideration of standard approaches to humanitarian carve-outs to sanctions, for example.

c. Development of a common set of enforcement and evidentiary best practices. Classified targeting practices would not need to be disclosed, but rather information could be shared about how to conduct investigations, the burden of proof required before imposing penalties, and how to work with those sanctioned to—eventually—remove the penalties.

Such an initiative would not be easy to achieve Manysimilar projects, including sanctions reform at the UN, have been attempted but have yet to come close to a common approach for how sanctions will be implemented within the UN system, let alone among national programs. However, as with other difficult international issues, this problem will not get easier to solve if ignored on the hope that its salience would wane or risks would go away. Instead, it would be better to get ahead of the problem, sooner rather than later.

WHAT ABOUT BUSINESSES?

The recommendations in the previous section all offer guidance for the US government but offer little of benefit for US businesses that, if the US sanctions playbook were to be copied by foreign governments, are probably the most at risk:

As with the US government, there are three paths available to US businesses:

1. Abandon conducting international business to avoid future foreign risk;
2. Engage in complex restructuring of your business so as to minimize risk from all potential sanctions avenues; and,
3. Incorporate into ongoing risk mitigation efforts a structured approach to anticipate and respond to future sanctions risk.

The first two options can be generously described as straw men, considering that they would require complex and expensive contortions to be undertaken in response to unrealized risks now. Instead, as Peter Harrell (a former deputy assistant secretary of state responsible for economic sanctions and colleague) observed, companies should begin to evaluate now the future risks to their supply chains and operations from foreign sanctions efforts and design game plans for responding to them.[33] Additional analytic work could be done to develop an approach for assessing potential risks, but an elementary approach could involve a simple inclusion into everyday risk assessments the likelihood of sanctions being imposed on the country involved in the next one, three, and five years. The risk could be assigned a standard value, which then would need to be built into the overall risk assessment for those countries of expropriation, recession, or other economic problems. Even an arbitrary rating system—assigning "1" for low risk and "5" for high risk—could at least help companies work through both the 1) likelihood of sanctions being imposed and 2) vulnerability to the core operations of the company from sanctions that halted their ability to conduct business. Moreover, such an appraisal system would then prompt additional scrutiny of high-risk jurisdictions by those companies, permitting their executives to make a clear-eyed appraisal of the risk/reward calculus involved in business in those countries.

In any event, both US and foreign companies would be well warned to begin calibrating their future investment decisions with a responsible appreciation of future sanctions risk, to ensure that contracts they write with risky jurisdictions include force majeure clauses covering sanctions, and consider seeking insurance options for sanctions risk.

CONCLUSION

Sanctions are here to stay. They offer the promise of strategic pressure on diverse adversaries without requiring the use of force. They fit within the general mold of a diplomatic effort while granting backbone to the talking. And, they use the growing importance of the integrated global economy for their effect, thereby neatly taking advantage of global facts on the ground to create an opportunity for national statecraft.

The United States, as the innovative force behind most global sanctions efforts, has developed a clear, asymmetric sanctions advantage, in part drawing on its economic power. As a consequence, US policymakers are inclined to keep using the tool whenever convenient.

However, there is danger in that convenience. By creating sanctions precedents and a permissive global norm to their use nationally, the United States may have also laid the foundation for a counteroffensive from its strategic adversaries and economic competitors that will seek to use their own asymmetric advantages in furtherance of their own aims. Readers may disagree that this is a high-risk scenario and suggest that, as with many other such claims, warnings of imminent US decline are overblown. That said, even if one takes this view, the US government has a responsibility to plan for even low-likelihood scenarios if they bring with them high risk.

It is therefore in the US strategic interest to seek ways to mitigate this future risk and to seek common ground with other states that might, one day, see it in their interest to apply the same lessons learned by Washington since 2000. Sanctions have been useful, but, like many things, the cost of this utility may not be borne until years to come.

NOTES

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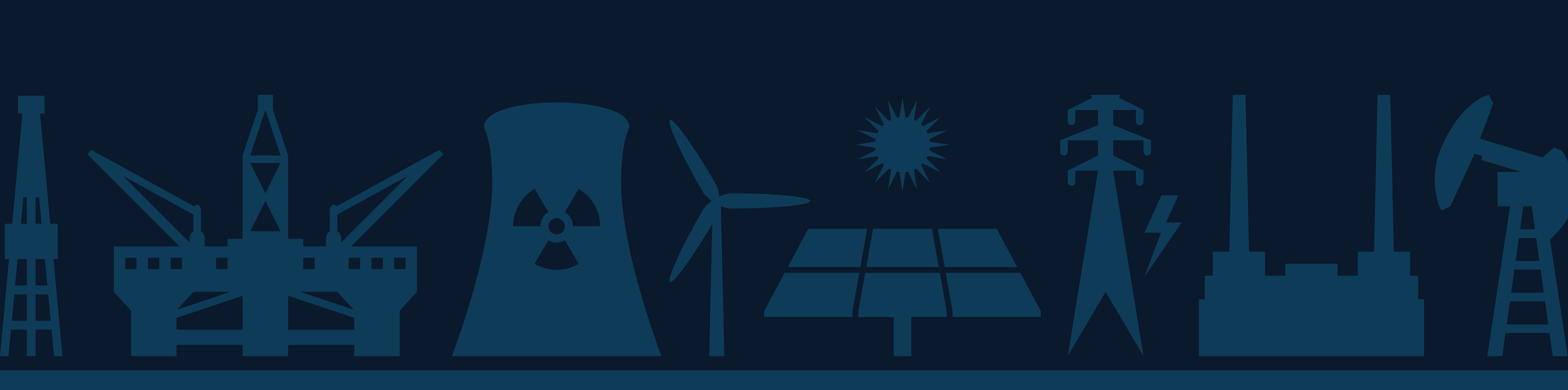

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