Provocative, but Effective? Extraterritorial Sanctions as a Tool for Achieving EU Compliance with U.S. Foreign Policy

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This paper examines the United States' use of extraterritorial sanctions against third parties in the European Union (EU). While "primary" sanctions prevent U.S. citizens and firms from doing business with companies or individuals in a target state, extraterritorial —or "secondary"— sanctions prohibit Americans from doing business not only with sanctioned firms and people, but also with any third parties that deal with them. As a result, extraterritorial sanctions constitute one of the most controversial tools the U.S. uses to execute its economic statecraft because they are often viewed as an affront to another nation's sovereignty. Given the EU's status as a U.S. ally, this paper seeks to answer the question: under what circumstances will the EU comply with U.S. extraterritorial sanctions? By conducting a comparative case study of three salient U.S.-EU extraterritorial sanctions cases—the Helms-Burton Act of 1996, the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and the Siberian gas pipeline dispute of 1982—this paper argues that whether the EU complies with U.S. foreign policy objectives is based on a cost-benefit calculation of two main conditions. The first condition is the level of congruence between U.S.-EU security threat perceptions of the target state, and the second condition is the degree to which the economic costs of defying U.S. extraterritorial sanctions are greater than the benefits of continuing economic engagement with the target state. In sum, this paper demonstrates that, despite the provocative nature of U.S. extraterritorial sanctions, they generally achieve some compliance from the EU, suggesting that they may be a valuable tool for U.S. policymakers in the future.

Introduction

A "progressive divorce" due to "no longer speaking the same language" is how past European leaders have characterized U.S.-EU relations in reaction to the United States imposing extraterritorial sanctions on their firms (Jentleson 1986, 195). Yet, harsh words usually constitute just one part of the EU's response to the U.S.'s use of these aggressive measures. In the past, the EU has additionally issued "blocking" statutes to forbid EU citizens from complying with U.S. demands, as well as ordered "clawback" rights for EU individuals to recover any damages resulting from U.S. extraterritorial sanctions (Clark 1999, 82). The EU has previously initiated World Trade Organization (WTO) dispute settlement proceedings and, in the late twentieth century, it also threatened to withdraw from the Coordinating Committee for Multilateral Export Controls (CoCom) (Clark 1999, 82; Mastanduno 2002, 301). It is no secret that, when faced with extraterritorial sanctions, the EU's response is typically best described by one word: outrage.

Of all the tools the U.S. uses to execute its economic statecraft, extraterritorial

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sanctions are probably the most controversial or provocative. Unlike "primary" sanctions, which prevent U.S. citizens and firms from doing business with particular companies or individuals in a target state, extraterritorial—or "secondary" sanctions—bar Americans from doing business not only with sanctioned companies and people, but also with any third parties dealing with them (Lew and Nephew 2018, 141). At their core, extraterritorial sanctions attempt to induce foreign governments, corporations, and individuals abroad to forego economic activity with a target state to advance the foreign policy goals of the U.S. government. These measures are often imposed when the U.S. refuses to tolerate the limited sanctions of other states and wants to lead a comprehensive sanctions strategy devoid of divergence (Mastanduno 2002, 296). The U.S.'s desire for unity in its sanctions programs is often due to the fact that many states today have alternative trade and financial partners whom they can turn to in order to reduce the pain of U.S. sanctions (Martin 1992; McLean and Whang 2010, 427-447). As David Baldwin asserts, sanctions also tend to be more legitimate and powerful as a signaling device when they are enacted multilaterally (1985, 401). Since so many of the world's companies are involved in the U.S. financial system or conduct their business in U.S. dollars, extraterritorial sanctions allow U.S. policymakers to make use of American structural leverage (Lew and Nephew 2018, 142). However, by seeking to pressure these foreign actors to abide by sanctions that have been unilaterally adopted by the U.S., extraterritorial measures intrude upon the sovereignty of other states. As a result, U.S. extraterritorial sanctions elicit angry reactions.

Many scholars question whether traditional economic sanctions against a primary target "work" (Baldwin 1985; Galtung 1967, 378-416; Pape 1997, 90-136; Rowe 1999, 254-287). This paper explores this same line of questioning applied to extraterritorial sanctions against third parties. The EU—a political and economic bloc of 27 European countries—is significant because it has served as one of the U.S.'s most formidable allies since the end of World War II (WWII), helping the U.S. promote liberalism and maintain its hegemonic order. Thus, tension clearly exists between the U.S.'s desire for compliance from important allies such as the EU on its economic sanctions policy and its use of aggressive, unilateral extraterritorial sanctions to achieve this goal. If it is true that nothing outrages European leaders more than extraterritorial sanctions, one might expect the EU to be unwilling to comply with U.S. demands when the U.S. imposes these measures on European firms. But do we observe this in reality? This paper seeks to answer the question: *Under what circumstances will the EU comply with U.S. extraterritorial sanctions?* By "compliance," I specifically refer to the EU compromising or taking actions that help advance U.S. policy goals that, absent extraterritorial sanctions, it otherwise would not have carried out. Whether foreign companies choose to comply with U.S. secondary sanctions is also important to consider. However, this paper will focus on the larger issue of when states comply due to the increasingly significant role that multilateralism plays in both confronting transnational problems and advancing U.S. national interests (Patrick 2002, 2).

Previous Scholarship on Extraterritorial Sanctions and Compliance

Most of the literature on extraterritorial sanctions exists in the field of international law, with various scholars debating the central question of whether these measures are legal. Scholars such as Harry Clark note that under the "foreign state compulsion doctrine" of international law, a country is not allowed to prevent a person or firm from taking action in another country that is required by the laws of that country (Clark 1999, 92). Daniel Marcus similarly argues foreign companies are not U.S. nationals, and thus cannot be subject to U.S. jurisdiction under the "nationality" principle of international law (1983, 1165-1166). Seen in this light, secondary sanctions are arguably illegal because the U.S. does not possess the power to regulate outside its territory. On the other hand, Tom Ruys and Cedric Ryngaert contend that even without a strong territorial or national connection with the U.S., extraterritorial sanctions could nevertheless be justified under the "protective" or "security" principle, which permits jurisdiction "over aliens for acts done abroad which affect the internal or external security of other key interests of the state" (2020, 26). In other words, if secondary sanctions are implemented on the premise that they are necessary to protect U.S. national security, then they could be seen as legal.

The legal context of extraterritorial sanctions is useful for understanding their controversial nature, but it only raises the stakes of investigating European responses to U.S. demands because, if these measures are truly so coercive, why would the EU ever comply with them? A range of answers might follow, with some expecting a nearly complete lack of willingness to comply due to secondary sanctions being overly provocative (Joffe 1983, 574-575). Others might argue that the EU will fully comply because of how powerful the United States is—the EU lacks a military and is economically weaker than the U.S., so it might want to preserve positive relations and thus reap both security and economic benefits from the alliance (Gegout 2010, 37). I advance a middle-ground approach by arguing that the EU will comply with U.S. demands only under certain security and economic conditions.

A Framework for Analyzing EU Compliance with U.S. Extraterritorial Sanctions

In the following sections of this paper, I conduct a comparative study of three salient cases in which the U.S. imposed extraterritorial sanctions on European individuals and firms: the Cuba Liberty and Democratic Solidarity Act (commonly known as the Helms-Burton Act) of 1996, the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010, and the Siberian gas pipeline dispute of 1982. These three cases are particularly valuable because they provide variation across time. Namely, they enable analysis of EU compliance in Cold War versus post-Cold War environments. The Cold War essentially created a well-defined enemy in the eyes of the Western allies and, as a result, U.S. and EU threat perceptions in this environment might have been more congruent (Jentleson 1986, 180). In contrast, in a non-Cold War context, threat perceptions might be less aligned with each other—the

U.S. is geopolitically stronger than the EU, so without a well-established, common enemy, what the U.S. perceives as a security issue may not ring true for the EU. As such, by focusing on extraterritorial sanctions involving different countries and time periods, this paper aims to draw comprehensive conclusions about EU compliance with U.S. extraterritorial sanctions.

I contend that whether the EU complies is based on a cost-benefit calculation of two main conditions: first, the level of congruence between U.S.-EU security threat perceptions of the target state, and second, the degree to which the economic costs of defying U.S. extraterritorial sanctions are greater than the benefits of continuing economic engagement with the target state. I argue that these two variables are fundamental in driving EU behavior under extraterritorial sanctions because ensuring security and economic prosperity are two crucial priorities for any government. The sheer power of the U.S. economy and the dollar as the global reserve currency may mean that European states must comply with the U.S. to varying degrees (Cohen 2018, 98-99; Pieper 2017, 109). If the relative costs of defiance are high and the EU and U.S.'s stance toward the primary target of U.S. sanctions is similar, the EU might initially voice its annoyance with extraterritorial measures, but ultimately agree to some compliance. This reasoning serves as the foundation for the expectations listed in Table 1 (see Appendix).

If the EU believes the primary target state is a high-level security threat and the relative economic costs of defying U.S. extraterritorial sanctions is high, then it may be much more likely to comply than if the primary target state is not a significant security threat and the economic costs of defying U.S. secondary sanctions is low compared to the benefits of continuing business with the target state. Furthermore, I expect that the EU is most likely to meaningfully comply when U.S.-EU security threat perceptions of the target state are highly congruent and the economic costs to the EU of defying U.S. extraterritorial sanctions are relatively high compared to the benefits of continuing economic engagement with the target state. In contrast, I expect the EU to be least likely to comply when security threat perception congruence is low and the relative costs of disobeying U.S. extraterritorial sanctions are greater than the benefits of continuing business with the target state. When U.S.-EU security threat perception congruence and the relative economic costs to the EU of resisting U.S. demands are neither high nor low, and thus stand at a medium level, I anticipate the EU to comply moderately.

Case 1: Helms-Burton Act (1996)

The U.S. economic embargo against Cuba remains the longest and most comprehensive sanctions regime in United States history. Beginning in 1962, the U.S. embargo has sought to achieve a myriad of goals, ranging from regime change to signaling U.S. intolerance for Castro's human rights abuses and domestic politics to the rest of the world (Baldwin 1985, 183). In order to increase Cuba's economic pain and legitimize the embargo, the U.S. tried to enlist multilateral support for its poli-

cy. While the Western Europeans agreed to restrict the exportation of weapons, they were unwilling to join the U.S. embargo and impose broad sanctions on the Cuban economy. It soon became clear that, with the economic and political support of the Soviet Union, Castro was not going to surrender. By the 1970s, trade between Western Europe and Cuba expanded. Frustrated by the lack of multilateral support for the U.S. embargo of Cuba, the U.S. ultimately resorted to pursuing its comprehensive embargo unilaterally (Mastanduno 2002, 304). Following the end of the Cold War and the collapse of the Soviet Union, something changed. Cuba had lost its primary source of trade and economic aid, and the U.S. recognized this vulnerability as an opportunity to inflict maximum pain on the Cuban economy and push Fidel Castro toward reform. In 1992, the Cuba Democracy Act asserted restrictions on trade between Cuba and U.S. subsidiaries abroad. Although these measures impacted $700 million in trade, the majority of Cuba's $5 billion annual trade was conducted with foreign firms that were not subsidiaries of U.S. companies (ibid., 305).

Following increased political pressure from Cuban Americans living in Florida and Cuba's shooting down of two unarmed American planes, Congress passed the Helms-Burton Act in March 1996 (Vermulst and Driessen 1998, 81). Title III of the act allows U.S. individuals or firms to sue "traffickers" —those who participate in or profit from the trafficking of property confiscated or nationalized from U.S. citizens in Cuba after 1959— in U.S. courts (Clark 1999, 74). Title IV of the act also denies entrance into the U.S. by "aliens who traffic in confiscated property that is subject to a claim by a U.S. person" (ibid., 74-75). The provision applies to executives of foreign firms and their families (Mastanduno 2002, 305). The Helms-Burton Act seeks to deter foreign investment in and trade with Cuba by ordering the U.S. executive branch to impose extraterritorial sanctions on foreign firms and individuals.

I. Compliance?

The The EU forcefully objected to U.S. extraterritorial sanctions, as exemplified by both its diplomatic indignation and harsh countermeasures. In October 1996, the EU initiated WTO dispute settlement proceedings against the Helms-Burton Act and the broader U.S. embargo of Cuba, alleging that U.S. extraterritorial sanctions violated EU members' rights under the General Agreement on Tariffs and Trade 1994 and the General Agreement on Trade in Services to export to Cuba (Davidson 1998, 1434). In November 1996, the EU issued Council Regulation 2271/96, which introduced four principal countermeasures: compliance "blocking," non-recognition of judgments, "clawback" rights, and reporting requirements (ibid.). This range of countermeasures essentially prohibited EU individuals and firms from complying with U.S. extraterritorial sanctions, even encouraging them to recover any damages caused by U.S. policy. Indeed, the Austrian government threatened legal action against Bawag, a large Austrian bank, after it decided to comply with U.S. regulations (Giumelli 2016, 72-73). In July 1997, the EU initiated an investigation of the Italian company STET due to its agreement to compensate the US group ITT for its use of

the Cuban telephone system (Clark 1999, 83).

Worried about possible escalation, President Clinton used his waiver authority under the Helms-Burton Act to suspend Title III for an initial period of six months. This allowed Washington and Brussels to begin negotiations, culminating in the EU adopting a "Common Position" on Cuba that emphasized an EU policy of advancing Cuba's transition to "pluralist democracy and respect for human rights and fundamental freedoms" (Common Position of 2 December 1996). In return, Clinton continued suspending Title III. In May 1998, the U.S. and EU reached an understanding on the illegal use of expropriated property as a global concern. The EU suspended its WTO case, but maintained its countermeasures (Smis and Van der Borght 1991, 231-233). Thus, the EU ultimately decided against joining the U.S.'s economic embargo of Cuba. However, short of full compliance with U.S. extraterritorial sanctions, the EU's Common Position suggests that it became more willing to help promote a different U.S. policy goal: democratic change in Havana. As such, in the case of the Helms-Burton Act, the EU displayed a low level of compliance with the U.S.'s broader policy agenda.

II. U.S.-EU Security Threat Perceptions

For the U.S., Cuba has long posed a high-level security threat. After the Cuban Revolution, increased Soviet involvement on the island was seen as an intrusion into the U.S.'s sphere of influence in the Western Hemisphere (Baldwin 1985, 192). Given the history of the Cuban Missile Crisis and the construction of missile launch facilities in Cuba during the Cold War, a successful communist government supported by the Soviet Union threatened U.S. national security and the Western liberal order. Especially considering Cuba's geographic proximity to the United States, officials in Washington were determined to contain communist influence. In fact, in the years leading up to the Soviet Union's dissolution, the U.S. under President Reagan favored an increasingly maximalist strategy toward its Eastern enemy (Jentleson 1986, 37-38). Even after the Cold War, Cuba remained high on the U.S. government's list of national security threats, largely driven by continued violations of the Cuban airspace and the fear that Castro would seek to export revolution to other countries in their shared hemisphere (Baldwin 1985, 64).

Meanwhile, Cuba posed a very low-level security threat to the EU. Located on the opposite side of the Atlantic Ocean, Cuba simply did not present the same type of imminent threat as the Soviet Union did to neighboring European states during the Cold War. The Soviet Union also possessed significantly stronger nuclear capabilities than Cuba (Giumelli 2016, 64). Considering how the EU's strategy for dealing with the Soviet Union before its collapse was one of détente, its approach toward the smaller, militarily weaker, and more distant Cuba in the post-Cold War era was understandably less hostile than the U.S. policy (Jentleson 1986, 37). When the U.S. imposed extraterritorial sanctions on European firms, the EU felt it had little to gain from joining the U.S. embargo; forgoing investment and trade in Cuba would only

hurt European economic interests and achieve essentially none of the EU's security goals.

III. Relative Economic Costs of EU Defiance

Yet, even the relative economic costs to the EU of defying U.S. extraterritorial sanctions were fairly low, primarily due to the EU's understanding that Clinton was hesitant about actually implementing sanctions under Helms-Burton. The driving force for extraterritorial sanctions came from a Republican-led Congress, not the executive branch (Giumelli 2016, 72). After signing Helms-Burton into law, Clinton immediately signaled to the EU that he was willing to negotiate a compromise, as evidenced by his suspension of Title III at the same time his administration began sanctioning foreign firms under Title IV (Mastanduno 2002, 308). This recognition of Clinton's reluctance to pursue Congress's extraterritorial wishes altered the Europeans' calculation of the relative economic costs of defiance. Their thinking effectively became: "if the U.S. is not serious about imposing extraterritorial sanctions, then we can keep doing business with Cuba and not worry about the consequences." Therefore, even though Title III claims against European firms totaled almost $2 billion by 1996, the EU viewed the costs of defying U.S. extraterritorial sanctions as low given that the Clinton administration was not completely intent on allowing those claims in practice (ibid., 309). Emboldened by this understanding, the EU was able to stiffen its resistance to U.S. secondary sanctions and reject U.S. demands to economically isolate Cuba.

IV. Explaining Low-Level Compliance

With low U.S.-EU security threat perception congruence and low relative costs of EU defiance, the Europeans exhibited minimal compliance with U.S. extraterritorial sanctions. The outrage that usually accompanies reactions to extraterritorial measures was somewhat subdued by the EU's awareness that Clinton was forced by Congress to wield this coercive weapon. The EU negotiated with the Clinton administration to dissuade the U.S. from sanctioning European businesses (Meagher 2020, 1012). As a result, an opening emerged for the EU to shift its position on other aspects of U.S. foreign policy—in this case, helping the U.S. promote democracy in Cuba. Furthermore, as predicted by Table 1, the combination of low U.S.-EU security threat perception congruence and low relative costs of EU defiance resulted in minimal compliance by the EU.

Case 2: CISADA (2010)

September 11, 2001, marked a turning point in U.S. officials' willingness to exercise economic statecraft for coercive purposes. Under President George W. Bush and the U.S. war on terrorism, the U.S. Treasury began a comprehensive campaign to make it costlier for terrorists to raise and move money by designating certain banks as "bad" under Section 311 of the Patriot Act. By targeting banks that supported

terrorist groups, the U.S. sought to transform the norms of global financial exchange such that no reputable bank would ever want to be caught facilitating illicit financial activity. Iran was a primary target of the Treasury's campaign. The U.S. has imposed sanctions on Iran since the 1979 hostage crisis and, throughout the 1990s, the U.S. banned all trade with and investment in Iran due to its sponsorship of terrorism and ongoing attempts to develop nuclear weapons. The U.S. identified Iran's Bank Saderat as a principal target in 2003 with the goal of weakening the country's ability to fund its nuclear program and make payments to Hezbollah terrorist cells around the world (Zarate 2013, 292).

Throughout the mid-2000s, however, the Iranian nuclear program became an even more high-profile international issue following the revelation of the uranium enrichment facility at Natanz and the International Atomic Energy Agency (IAEA) report that Iran was not complying with the Comprehensive Safeguards Agreement in 2005. The United Nations Security Council (UNSC) adopted resolutions under Chapter VII of the UN Charter, imposing sanctions on Iran to hamper its ability to acquire equipment, technology, and finances for nuclear enrichment (Han 2018, 138). Following President Obama's failed attempts to achieve a diplomatic deal and the discovery of a covert nuclear facility at Qom on September 6, 2009, the U.S. stepped up its sanctions regime (Zarate 2013, 328). On July 1, 2010, President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), which extraterritorially restricted foreign firms' exports of gasoline, petroleum, and refinery-related products to Iran (Van de Graaf 2013, 148). Given that Iran's oil industry is the country's main source of revenue, CISADA attempted to strip Iran of its ability to fund and execute its nuclear development programs. Additionally, considering how Iran's energy sector serves as the state's primary point of access to foreign markets and countries, CISADA sought to disarm Iran of its ultimate defense against traditional sanctions. CISADA restricted financing to Iranian entities, including oil-related transactions with Iran's central bank, Bank Markazi. Specifically, Section 104 of CISADA enabled the U.S. to turn off foreign bank access to the U.S. if those foreign banks were caught processing transactions for U.S.-designated Iranian financial institutions (Nephew 2018, 336). The message to the rest of the world was clear: "If you want to do business in the United States, you must stop doing business with Iran" (Zarate 2013, 336).

I. Compliance?

The EU did not resist U.S. extraterritorial sanctions or complain about their enforcement, as it did in the case of Helms-Burton. The Council of the EU released a decision on July 26, 2010, prohibiting European investment in the Iranian oil and gas sector, as well as the provision of key nuclear enrichment technology. The European energy sector quickly responded, with the U.S. State Department announcing on September 30, 2010, that European oil giants such as Royal Dutch Shell and ENI reduced their ties to Iran (ibid., 337). In April 2011, the EU passed the mandate requir-

ing all Iranian oil imports to end by July 1, 2012. The EU also called for the Society for Worldwide Interbank Financial Telecommunication (SWIFT) to unplug Iranian banks from the international financial messaging system (ibid., 338). Additionally, the EU banned the opening of new Iranian bank branches in member states and the sale or purchase of Iranian government and bank bonds (Patterson 2013, 135). Clearly, the EU meaningfully complied.

II. U.S.-EU Security Threat Perceptions

After 9/11, both the U.S. and EU increasingly viewed Iran's proliferation activity and support for terrorist groups as a significant security threat. In particular, the compound effect of Iran's expansion of centrifuge capacity at Natanz and the discovery of the site at Qom was the EU's perception that Iran was serious about acquiring weapons of mass destruction (WMD) (ibid., 138). European officials became especially concerned that Iran's development of a nuclear weapon could spark a destabilizing arms race in the nearby Persian Gulf region, which holds the majority of global oil reserves upon which the European continent depends (ibid.). These concerns were amplified by the IAEA's assertion that there were "possible military dimensions to Iran's nuclear program" (Dupont 2012, 304). Furthermore, the EU feared that failure to halt Iran's nuclear program could lead to preemptive war by Israel, particularly given Iranian President Ahmadinejad's repeated Holocaust denials (Lohmann 2016, 932). From the European perspective, such military conflicts could also exacerbate the EU's ongoing migration crisis and create new domestic security problems for its member states.

The EU's view of Iran as a high-level security threat at the time of CISADA's enactment stands in stark contrast to its position under the Iran-Libya Sanctions Act (ILSA) of 1996. While the U.S. throughout the 1990s continued to view Iran as a "rogue" state that dangerously supported international terrorism and developed WMD, the EU was not so convinced (Mastanduno 2002, 311). The EU agreed to maintain export controls of sensitive technologies for WMD, but without any clear revelation of Iran's clandestine nuclear programs, the EU did not deem Iran a legitimate nuclear threat that warranted complete economic containment (Lohmann 2016, 932). The difference between the EU's position on Iran under CISADA versus the ILSA reveals how U.S.-EU security threat perception congruence has increased. Therefore, with a high degree of U.S.-EU security threat perception congruence under CISADA, the EU felt that enlisting in the U.S's financial war against Iran's illicit activity was necessary to defuse the state's explicit nuclear weapons ambitions. As such, the EU did not react as harshly to U.S. extraterritorial sanctions in this case; instead, it meaningfully complied.

III. Relative Economic Costs of EU Defiance

Under CISADA, the relative economic costs of EU defiance were incredibly high. Trade with Iran was valuable, but these connections were far outweighed by the

importance of European access to U.S. financial markets. The sheer size of the U.S. market and the fact that many of the biggest clearance banks operate in New York impacted the Europeans' calculus: if they continued business with Iran, they would not only risk important access to U.S. banks, firms, and technologies, but also send the message that they were facilitating Iran's support for terror and the development of the Iranian nuclear program (Zarate 2013, 297). Although the official impetus for CISADA came from Congress rather than the executive branch, President Obama had made it clear that his administration was fully prepared to act on these extraterritorial sanctions. In September 2010, the U.S. added the German-based European-Iranian Trade Bank AG to its blacklist, and in 2012, the British bank Standard Chartered was fined $340 million for its hidden transactions with Iran (ibid., 332). Thus, unlike Helms-Burton, the EU understood that the relative economic costs of defiance were much higher than any benefits gained by continued trade with Iran. The EU subsequently decided to comply with U.S. demands.

IV. Explaining Low-Level Compliance

U.S. extraterritorial sanctions under CISADA coerced the EU into essentially full compliance. The combination of high-level U.S.-EU security threat perception congruence and high relative costs of defying U.S. sanctions compelled the EU to refrain from enacting countermeasures or taking the U.S. to the WTO, as it did under Helms-Burton. In fact, the EU did more than just comply with U.S. sanctions—it even created its own list of designated entities associated with Iranian proliferation. By May 19, 2011, over one hundred firms were placed on the EU list (Zarate 2013, 339).

Some might contend that a key contextual factor better explains the EU's meaningful compliance with U.S. demands: the legitimacy afforded to the Treasury's campaign by previous UN resolutions. Indeed, just a month prior to CISADA's enactment, the UNSC passed Resolution 1929, which increased scrutiny of Iranian banks and firms (ibid., 331). Yet, if one ponders a counterfactual situation in which there were no UN resolutions to bolster U.S. extraterritorial sanctions, the severity of the economic costs of EU defiance would have remained remarkably high, and the discovery of Iran's covert nuclear sites would have still been sufficient to increase European perceptions of the Islamic Republic as a high-level security threat. Therefore, while additional UN resolutions helped justify sanctions against Iran, they were not as fundamental in driving EU compliance as U.S.-EU security threat perception congruence and the relative costs of violating U.S. extraterritorial measures.

Case 3: Siberian Pipeline Sanctions (1981-1982)

Two weeks after the imposition of martial law in Poland on December 13, 1981, the Reagan administration launched an embargo against the Soviet Union, covering American oil and gas equipment necessary for the construction of the Siberian natural gas pipeline. The pipeline was to stretch from the reserves of the Yamal Peninsula in western Siberia to homes and factories throughout Western Europe.

The construction of the pipeline depended mostly on contracts between the Soviet Union and key EU member states, including West Germany, France, Italy, and the United Kingdom. Moreover, European firms were supplying energy technology to build the pipeline, and in return these countries would receive Soviet natural gas (Jentleson 1986, 183). Importantly, most of the technology sold to the Soviet Union was produced under license from American firms such as General Electric (GE) or under subsidiaries of U.S. companies. In his pronouncement of the embargo, Reagan emphasized two objectives: the symbolic goal of expressing Western anger and the more concrete aim of helping the Polish by compelling the Soviets and certain members of the Polish government to end their repression (ibid., 172-173).

However, in reality, the U.S. was mostly concerned that the increasing dependence on Soviet energy would make its European allies susceptible to Soviet political influence. Indeed, by 1990, the Soviet share of Western Europe's natural gas consumption increased from 10 to as high as 18 percent (Mastanduno 1992, 247). Additionally, the U.S. was concerned the Soviets would use the hard currency earnings from their natural gas exports—which were projected to be $10 billion per year—to finance the modernization of the Soviet military and industrial sector (Jentleson 1986, 200). While European leaders joined the U.S. in condemning the Soviet Union's actions in Poland, they stopped short of joining the U.S. embargo on energy technology. The Europeans adopted limited sanctions on manufactured Soviet goods and luxury products (Martin 1992, 213). Less than a month after the Polish coup, the French natural gas company Gaz de France, with the support of the French government, signed a long-term gas import contract with the Soviet Union (Shambaugh 1999, 82).

Due to frustrations resulting from repeated failed attempts to convince its European allies to join the pipeline embargo, the Reagan administration announced on June 18, 1982, that it would extraterritorially apply its export controls of American energy equipment and technology to European subsidiaries of American companies. The U.S. would also apply these extraterritorial sanctions to European companies producing under license from American firms and to European companies using American-made parts. Penalties for violating these sanctions included denial of trading privileges with the U.S., fines of up to $100,000 for each infraction, and ten-year prison sentences for executives of offending companies (Jentleson 1986, 194). Thus, Reagan's imposition of these extraterritorial measures signified a clear unilateral attempt to block construction of the pipeline by pushing the Europeans to abandon their contracts.

I. Compliance?

The Europeans responded with outcry. They formally protested the U.S.'s "unacceptable interference" in their sovereign affairs (ibid., 195). The British, French, Italian, and West German governments all challenged U.S. extraterritorial sanctions by appealing to national laws to order their companies to fulfill their

pipeline contracts. On August 2, Secretary of State for Trade Lord Cockfield invoked the Protection of Trading Interests Act, which prohibited certain British companies from complying with U.S. sanctions. The French government reinstated a wartime ordinance act, directing French companies to fulfill their contracts and threatening the requisition of certain corporate facilities should contracts be abandoned (Shambaugh 2000, 99). The West German government openly encouraged its firms to make its equipment deliveries on time, while the Italian government declared that their contracts with the Soviets would be respected. Furthermore, many prominent European firms such as John Brown Engineering and Dresser-France continued to export their pipeline parts to the Soviets in direct defiance of U.S. extraterritorial sanctions (Martin 1992, 221).

After nearly five months of confrontation and deadlock, the U.S. rescinded its extraterritorial sanctions in exchange for the EU's agreement to a series of studies on the potential risks of East-West trade for alliance security (Mastanduno 2002, 302). The Europeans agreed only to hold off on new contracts for Soviet gas until the results from a study conducted by the International Energy Agency (IEA) were released. After the IEA issued its study in May 1983, the Europeans responded with a broad statement acknowledging "the potential risks associated with high levels of dependence on single supplier countries" and an agreement "to ensure that no one producer is in a position to exercise monopoly control" (Jentleson 1986, 197). The Europeans also agreed to participate in three other studies to be conducted by the Organization for Economic Cooperation and Development (OECD), CoCom, and NATO. However, at no point did the Europeans agree to be bound by the findings and recommendations of these studies. As a matter of fact, in the ensuing five months of the IEA's study, major energy trade contracts signed between European firms and the Soviet Union totaled more than $1.5 billion (ibid.). The EU's level of compliance with U.S. demands was therefore very minimal. For the Reagan administration, the IEA study served as a face-saving maneuver to demonstrate that extraterritorial sanctions were not for nothing, while for the EU, agreeing to studies on East-West energy trade was a small sacrifice to make in exchange for the lifting of U.S. sanctions.

II. U.S.-EU Security Threat Perceptions

When Reagan decided to impose extraterritorial sanctions, both sides of the Atlantic viewed the Soviet Union as a high-level security threat. In the context of the Cold War and the nuclear arms race between the U.S. and the Soviet Union, high geopolitical and ideological tension manifested itself in NATO's deployment of intermediate-range nuclear missiles on European soil and the continued presence of over 400,000 Soviet troops in East Germany following WWII (Jentleson 1986, 21; Newnham 1999, 428). For particular EU member states such as West Germany, the Soviet Union thus posed the direct threat of military intervention. Even prior to the imposition of martial law in Poland, the U.S. and EU member states had expressed

fears of a potential Soviet invasion to suppress dissent from the Polish labor union (Solidarity) (Martin 1992, 206). When the Polish government eventually declared martial law and imprisoned many of Solidarity's leaders, both U.S. and European officials alleged that the Soviets were directly responsible (ibid., 208). Moreover, both the U.S. and the EU agreed that the Soviet Union was a common adversary and that the main purpose of their alliance was collective security.

However, arguments made by European leaders in favor of the pipeline contracts reveal how the U.S. and the EU's respective security threat perceptions of the Soviet Union diverged due to their differing views on how to counteract the Soviet threat. Their disagreement stemmed from the central question of whether détente and defense were complementary or contradictory strategies for dealing with the Soviets. The U.S. perceived détente and defense as contradictory, viewing the Soviet Union as an "evil empire" armed with nuclear warheads and dangerously bent on totalitarianism that needed to be contained (ibid., 220). In contrast, the EU believed that détente was necessary to avoid a military conflict that, if fought, would likely use European territory as its battleground (Jentleson 1986, 180). West Germany in particular deemed détente important for the sake of potential German reunification, as well as for proving its post-WWII commitment to being a responsible member of the international community. The Europeans thus viewed the Americans as excessively susceptible to escalation. As the president of the European Parliament stated: Europeans reject "the thesis prevalent in the [American] administration that the West is in a state of permanent conflict with the Soviet Union" (ibid., 221).

The EU's view of détente and defense as complementary thus informed its position that the Siberian pipeline was less of a security threat than the U.S. claimed. Three main reasons drove the EU's stance. First, the Europeans actually thought the pipeline would strengthen their security by diversifying their energy imports. Given their structural position in the world economy as energy consumers plus the oil shocks of 1973 and 1999, the Europeans viewed the diversification of their energy import portfolios as a high priority (Martin 1992, 230). By providing gas rather than oil to the EU, the Siberian pipeline satisfied this need. The Europeans also believed that helping to develop Soviet gas reserves would reduce the incentive for Soviet intervention in the Persian Gulf (Mastanduno 1992, 248). Second, the EU had already developed some "safety net" measures prior to U.S. extraterritorial sanctions to protect against any Soviet security threat, particularly vulnerability to a Soviet gas embargo. Measures included the construction of gas storage facilities as strategic reserves and surge capacity contracts with the Dutch and Norwegians (Jentleson 1986, 191). Third, irrespective of such measures, the Europeans doubted that the Soviets would impose a gas embargo. 30% of Soviet machinery imports originated from the West, so Soviet leaders were unlikely to jeopardize crucial economic relations solely for political gain (ibid., 223). The EU viewed the pipeline as a way to bolster its energy security and ease tensions with the Soviets, thereby enhancing its overall security. The EU's approach to dealing with the Soviet Union decreased U.S.-EU security

threat perception congruence from a high to medium level. It thus becomes clear why the Europeans were unwilling to acquiesce to U.S. demands under extraterritorial sanctions—full compliance would have jeopardized their own security objectives.

III. Relative Economic Costs of EU Defiance

While EU defiance would have been economically risky due to many European firms' reliance on American equipment and technology, the Europeans still stood to lose a significant amount of money from the cancellation of their pipeline contracts (Martin 1992, 234). Amid the recession of the early 1980s, unemployment across Western Europe soared, and traditional heavy industries struggled to stay afloat. Firms such as West Germany's AEG-Telefunken had not earned a profit since 1976—company officials estimated that the pipeline contracts would provide up to 25,000 jobs over a two-year period. Additionally, France's Creusot-Loire and West Germany's Mannesmann won a contract valued at $1 billion to install compressor stations. Italy's Nuovo Pignone won a $900 million contract for both compressor stations and turbines (Mastanduno 1992, 249). These Soviet contracts served as a crucial source of revenue for many European firms.

Comparing the value of the pipeline contracts to the volume of European trade to the U.S. in pipeline-related goods further demonstrates the benefits the EU stood to lose from forgoing economic engagement with the Soviet Union. West German contracts were valued at $840 million, British contracts amounted to $135 million, and French contracts totaled $615 million. In comparison, total exports to the U.S. from producers in West Germany, Great Britain, and France equaled $556 million, $121 million, and $184 million, respectively (Shambaugh 2000, 90). Hence, the value of Soviet contracts to the Europeans was considerable. The relative costs of violating U.S. secondary sanctions during the pipeline dispute were also not as grave as those under CISADA, a case where increasing globalization made it more imperative for states to retain access to the U.S. market and dollar (Lew and Nephew 2018, 141). Whereas U.S. extraterritorial measures in 2010 threatened to shut the EU out of the entire American financial system, the pipeline sanctions focused primarily on export controls. The relative economic costs of EU defiance of the pipeline sanctions were therefore moderate.

IV. Explaining Low-Level Compliance

The Siberian pipeline case is puzzling because, unlike Helms-Burton and CISADA, the observed level of EU compliance does not match what would be expected based on Table 1. Specifically, both the moderate relative costs of EU defiance and medium-level U.S.-EU security threat perception congruence should have led to moderate EU compliance with extraterritorial sanctions. Instead, the EU's compliance was minimal: it agreed to conduct studies on the risks of East-West trade but offered no commitment to abide by their findings. Similar to Clinton under Helms-Burton, the EU's agreement to these studies allowed Reagan to save

face and claim some success. However, for the Europeans, this action was merely a small price to pay in exchange for the lifting of U.S. extraterritorial sanctions. The security and material influence of U.S. extraterritorial sanctions in this case should have compelled the EU to agree to more than just a series of nonbinding studies.

What explains this anomaly in EU behavior? Two contextual factors emerge. First, the fact that the Siberian pipeline sanctions were, until that point, the most aggressive case of U.S. extraterritorial measures meant that the EU perceived them as an especially egregious violation of European sovereignty. Given its position as a Western ally opposing a common Eastern enemy, the EU took great offense at this perceived breach of friendship. The significance of this "shock" factor becomes particularly apparent when one compares the Siberian pipeline case to CISADA. In the pipeline case, the impetus for the extraterritorial measures came from the executive branch; thus, the EU knew that Reagan was serious about punishing sanctions violators. Under CISADA, the Obama administration similarly made it clear that the U.S. would carry out these sanctions. The difference between these two cases is the EU's level of shock at the U.S.'s unilateral exercise of power. By the time the U.S. launched its sanctions campaign against Iran, the EU had already grown accustomed to U.S. extraterritorial measures. U.S. secondary sanctions had become baked into U.S.-EU negotiations—something to expect. Furthermore, absent the shock factor, the security threat posed by the Soviet Union and the relative economic costs of EU defiance would have been salient enough for the EU to comply. The EU may not have complied fully, but it would have complied more than it did.

A second contextual factor in this case was Reagan's refusal to impose a grain embargo on the Soviet Union. The Europeans claimed that it was hypocritical for Reagan to demand them to cease energy exports while the U.S. simultaneously sold grain to the Soviets (Martin 1992, 2015). However, in reality, the absence of a U.S. grain embargo merely provided the EU with the political excuse needed to justify its rejection of U.S. demands. To put it another way, if the U.S. actually had imposed a grain embargo on the Soviet Union, then the EU would have simply lost this talking point even as the Soviet security threat and relative economic costs of defiance remained. The EU would have still been offended by these extraterritorial measures, but the security and economic conditions in this case would have been meaningful enough to make the EU set aside some of its anger and moderately comply with U.S. demands.

Conclusion

The preceding cases demonstrate how when targeted with measures as coercive as U.S. extraterritorial sanctions, the EU does comply. The EU's level of compliance, however, depends on two fundamental conditions: (1) the degree of U.S.-EU security threat perception congruence and (2) the relative economic costs of EU defiance of U.S. secondary sanctions. The interplay between these conditions is illustrated in Table 2 (see Appendix).

When both U.S.-EU security threat perception congruence and the costs of EU defiance are low, as seen with Helms-Burton, the EU complies minimally. When both U.S.-EU security threat perception congruence and the costs of EU defiance are high, as was the case with CISADA, the EU meaningfully complies with U.S. demands. The levels of EU compliance in these two cases support the predictions in Table 1. The Siberian pipeline case tells a slightly different story. In that case, two contextual factors—the shock of Reagan's executive action and the U.S.'s unwillingness to impose a grain embargo on the Soviets—contributed to the EU's minimal compliance. Yet, counterfactual analysis demonstrates how, absent these factors, the medium-level U.S.-EU security threat perception congruence and the moderate relative economic costs of EU defiance would have led the Europeans to comply more than they did—not fully with U.S. demands but instead at a moderate level. These security and economic conditions are therefore still fundamental in driving levels of EU compliance with U.S. extraterritorial sanctions. Furthermore, the main finding of this paper is that, despite the outrage provoked by their use, U.S. extraterritorial sanctions do indeed achieve some compliance from third parties such as the EU. In all three cases studied, the EU demonstrated at least some sensitivity to U.S. policy goals and agreed to compromises that would have been unlikely without extraterritorial sanctions. This finding counters claims that secondary sanctions are too coercive to be useful. Secondary sanctions may be provocative, but they can be effective in coercing third parties to comply with certain aspects of the U.S.'s foreign policy agenda.

However, the next logical question to ask is: at what cost is this compliance achieved? Extraterritorial sanctions are still a public affront to states' sovereignty. The anger often characterizing the EU's reaction suggests that there are significant diplomatic costs to U.S. extraterritorial sanctions, such as resentment toward the U.S. or a loss of mutual trust. This loss in diplomatic reputation can translate into similar losses for U.S.-based firms who become seen as unreliable. For instance, following the Siberian pipeline dispute, some European firms in the energy sector reduced their dependence on U.S. technology and firms as a source of supply (Mastanduno 1992, 318). Therefore, perhaps the most profound risk of U.S. extraterritorial sanctions is that states will find ways to avoid enforcement by diverting business away from the U.S. economy and financial system. Indeed, after withdrawing from the Iran nuclear deal, President Trump reimposed extraterritorial sanctions on the EU, leading to talks between the Europeans and the Iranian government about methods for circumventing the dollar-based financial system (Lew and Nephew 2018, 147). In this way, U.S. extraterritorial sanctions could lose their effectiveness.

On the other hand, this comparative case study shows how third parties learn over time to expect U.S. extraterritorial sanctions—as seen in the comparison between the pipeline case and CISADA. It further demonstrates how this learning effect can contribute to states being more open to compliance given the appropriate security and economic conditions. As long as the American banking system and dol-

lar remain central to the functioning of the world economy, high relative economic costs of EU defiance will likely continue to compel the EU to comply. Given how security threat perceptions can also increase over time, as observed when comparing the EU's view of Iran under ILSA versus CISADA, it is also possible that there may be future opportunities for extraterritorial sanctions to be effective. Regardless, any benefits garnered by EU compliance with U.S. secondary sanctions must be weighed against their costs, and doing so makes it evident that imposing extraterritorial sanctions is still, on the whole, a risky foreign policy for the U.S. to pursue.

In the same way that U.S. policymakers need to consider alternatives to economic statecraft to achieve their own foreign policy objectives, they must also consider different techniques of statecraft to convince other states to work toward U.S. policy goals. As Baldwin writes, "Imposing unilateral sanctions is one thing, but clumsy efforts to twist arms to get other countries to follow suit is another" (1985, 195). Though propaganda, diplomatic channels, and even military options exist, it seems that, in practice, the U.S. still resorts to extraterritorial sanctions to coerce third parties into compliance (Erlanger 2021). Further research should explore whether the "learning effect" of U.S. extraterritorial sanctions produces more blow back due to increasing resentment toward the United States or instead leads third parties to begrudgingly comply, at least to some degree. Additionally, to gain more comprehensive insights into the effectiveness of U.S. extraterritorial sanctions as a form of economic statecraft, subsequent research should investigate whether fundamental security and economic conditions similarly impact the levels of compliance exhibited by the U.S.'s adversaries or non-traditional allies faced with extraterritorial sanctions.

Appendix

Table 1: Expected Interaction of U.S.-EU Security Threat Perception Congruence and Relative Economic Costs of Defiance in EU Calculus for Compliance

Table 1: Expected Interaction of U.S.-EU Security Threat Perception Congruence and Relative Economic Costs of Defiance in EU Calculus for Compliance

		Degree of U.S.-EU Security Threat Perception Congruence		
		Low	Medium	High
Relative Economic Costs to the EU of Defying U.S. Extraterritorial Sanctions	Low	Minimal compliance		
	Medium		Moderate compliance	
	High			Meaningful compliance

Table 2: Observed Interaction of U.S.-EU Security Threat Perception Congruence and Relative Economic Costs of Defiance in EU Calculus for Compliance

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		Degree of U.S.-EU Security Threat Perception Congruence		
		Low	Medium	High
Relative Economic Costs to the EU of Defying U.S. Extraterritorial Sanctions	Low	Minimal compliance (Helms-Burton)		
	Medium		Minimal compliance (Siberian pipeline)	
	High			Meaningful compliance (CISADA)

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