Transatlantic Cooperation and Influence:

The Virtues of Crisis and Compromise

by

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From bananas and beef hormones, to rogue states and military interventions, the U.S. - European relationship has seen frequent, and sometimes serious, crises. Every few years, concerns are expressed that the transatlantic alliance is on the verge of collapse as disputes overwhelm a host of shared interests and values. Clearly there is a need to resolve these disagreements and focus instead on creating transatlantic cooperation. But international cooperation — even among close allies — is a little understood phenomenon. Building cooperation on issues where there has been open and direct disagreement would seem particularly difficult.

Thus, one of the central tasks now facing the United States and Europe[1] must be to understand the conditions and strategies that will induce them to overcome their differences and develop closer cooperation. At the very least, they must be able to at least achieve a *modus vivendi* on those issues where transatlantic conflict is itself destabilizing. A review of three fairly recent transatlantic disputes — the agriculture negotiations in the Uruguay Round; the Helms-Burton sanctions controvery; and the disagreement over lifting the Bosnian arms embargo in 1993 — offers some instructive lessons in resolving arguments and building cooperation. Ironically, a key lesson demonstrated by these cases is the usefulness of crisis; but they also demonstrate the necessity of compromise.

Building transatlantic cooperation in the post-Cold War era is both particularly important and especially difficult. It is important because of the emergence of many new issues and new actors since the breakdown of the bipolar structure of the Cold War. Whether it is bringing the former command economies into the international economic system, or establishing technology control regimes to slow the proliferation of weapons of mass destruction, the United States and the countries of the European Union have the most at stake in the existing system. They are also

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[1] The term "Europe" today has many different definitions. In this paper, it will refer to the member states of the European Union (formerly the European Community), acting together formally through the Union or in a less formal coalition. In the three cases discussed here, the primary European actor was the EU/EC, although usually in the intergovernmental framework of the Council.

among the very few with the resources and capabilities to operate in a global context. But the same factors make transatlantic cooperation especially difficult to achieve. During the Cold War, U.S. - Europe collaboration was focused on the transatlantic context, particularly on ensuring European security. In the global arena, the transatlantic partners operated more or less independently, developing their own relationships with different states (often based on very different historical associations) and distinctive approaches to particular issues. Now, at the very time when the unifying Soviet threat is no longer present, the United States and the EU must reconcile these differences at least enough to avoid unproductive and sometimes destabilizing disputes.

Of course, transatlantic cooperation evolves out of many different situations, not all of them requiring the resolution of open differences.[2] In its idealized form, cooperation derives from shared interests and perceptions: The parties almost automatically agree on the issue and what should be done in response, and there is little need for negotiation. This is rare, however, even in the transatlantic context. It is more common that, even if based on shared interests, cooperation may require extensive contacts and negotiations, which allow the parties to exchange information and views. In the U.S.-EU relationship, it has been argued that these contacts and networks are so dense that they have led to a "culture of cooperation."[3] They have certainly contributed to transatlantic cooperation on such issues as indefinite extension of the

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[2] For an examination of transatlantic cooperation on a variety of issues, see Frances G. Burwell and Ivo H. Daalder (eds.), *The United States and Europe in the Global Arena* (London: Macmillan) 1999 (forthcoming). There is also a growing literature on international cooperation, although little focuses specifically on transatlantic relations. One exception is Joseph Greico, *Cooperation among Nations: Europe, America, and Non-Tariff Barriers to Trade* (Ithaca: Cornell University Press), 1990. A thorough review of cooperation theory is presented in Helen Milner, "International Theories of Cooperation among Nations: Strenghts and Weaknesses," *World Politics*, No. 44, April 1992, pp. 466-96. One of the few studies to examine the process of how one country secures the cooperation of another is Lisa Martin, *Coercive Cooperation: Explaining Multilateral Economic Sanctions* (Princeton: Princeton University Press) 1992.

[3] Roy Ginsberg, "Transatlantic Dimensions of CFSP: The Culture of Foreign Policy Cooperation," in Elfriede Regelsberger, Philippe de Schoutheete de Tervarent, and Wolfgang Wessels (eds.), *Foreign Policy of the European Union: From EPC to CFSP and Beyond* (Boulder: Lynne Rienner Publishers) 1997, pp. 297-318.

nuclear Non-Proliferation Treaty, aid to the former Warsaw Pact countries, and funding for KEDO. In fact, the assumption that sharing perspectives through regular working groups can lead to effective collaboration is at the foundation of the 1995 New Transatlantic Agenda and its Joint Action Plan.[4]

But as pointed out above, in a number of cases the United States and Europe have opposing approaches to specific issues, and thus achieving cooperation is much more difficult. Particularly when the difference is public, exchanging information and perspectives is unlikely to be enough to overcome that rift. Moreover, it is not enough simply to resolve the dispute. Arguments between the United States and the EU are often about the rules under which they will cooperate, or at least do business with each other. Thus, the terms on which a disagreement is settled may establish the basis for cooperation, either by specifying required behavior from each party or by mandating a pattern of consultation, or both. Thus, understanding how cooperation can be built in the face of overt disagreement is critically important to the post-Cold War transatlantic relationship.

At its heart, any effort to move from conflict to cooperation — even modest cooperation — is about the exercise of influence. It is about the United States (or the European Union) pressuring, cajoling, or persuading the other into changing its position so that there is a basis for working together. There is no doubt that the United States and the EU each have considerable influence with the other. But it is less clear that either is consistently able to influence the other to adopt particular positions on specific issues; which is, after all, the real test of political influence. The fundamental question is: under what conditions, and by using which strategies, can the United States or Europe cause the other to shift its position from disagreement, to a point at which accommodation is possible? Without such a shift — which is unlikely to come about without pressure or enticement — it would be impossible to move from conflict to cooperation.

Of particular importance are the efforts of the United States to convince its European allies to change their policies. After all, as the only genuine superpower in the post-Cold War

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[4] *New Transatlantic Agenda* and *Joint U.S. - European Union Action Plan* (Washington, DC: U.S. Department of State), issued at U.S.-EU Summit, Madrid, Spain, December 3, 1995.

world, the United States might be presumed to have an advantage in influencing Europe. And it is the United States that has more often assumed a global perspective, urging the Europeans to go beyond their normal regional focus and join Washington in addressing international challenges, such as proliferation. But time and time again, both before and after the break up of the Soviet Union, the countries of Europe have defied U.S. pressure: avoiding the imposition of effective sanctions on Iran after the taking of the U.S hostages; providing support to the Sandinista and Grenadan regimes; opposing U.S. views on international rules affecting climate change; resisting U.S. (and GATT/WTO) demands on bananas and hormone-fed beef; and publicly supporting the idea of a Palestinian homeland, perhaps even a state; among others.

Because it is more usually the United States that seeks to influence Europe to cooperate internationally (rather than Europe seeking to change U.S. policy), this paper will focus on influence from a U.S. perspective. It would be a mistake, however, to see influence as a uni-directional or linear process. In reality, influence is a dynamic process: As one country seeks to influence another, the target country itself exerts influence, and this may in turn affect the pressure exerted by the first country. This is particularly true in a relationship like the transatlantic one, with multiple layers of contacts and dense networks across many issues.

Among U.S. observers of the transatlantic alliance, there are two common models advocated for use by Washington in convincing the Europeans to cooperate on a particular issue. In the first, the United States exerts a strong leadership role, sometimes by having a seat at the "European table." In short, the United States points to a desired course of action and its European allies are expected to follow.[5] The second model is more collaborative; Washington should draw the Europeans into the decisionmaking process early through regular consultations. Washington should respect the development of a true European pillar, making the Europeans "stakeholders" (to use corporate parlance) and be willing to collaborate on a more equal basis.

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[5] See, *e.g.*, Charles A. Kupchan, "Reviving the West," *Foreign Affairs*, Vol. 75, No. 3 (May/June 1996), pp. 92-104, which calls for a merger of NATO and the EU; and David C. Compert and F. Stephen Larrabee (eds.), *America and Europe: A Partnership for a New Era* (New York: Cambridge University Press) 1997, which calls for a formal institutional structure that would incorporate U.S. views in EU decisionmaking.

Although this European pillar will undoubtedly be more difficult to influence at times, it will make a better partner in the longer term, it is claimed.[6]

Neither of these approaches adequately addresses the process of influence, however, or the shift from conflict to even grudging cooperation. Instead, an examination of three episodes in which the United States sought European cooperation (on its own terms, admittedly) and was met with strong resistance, demonstrates that the process of overcoming that resistance — and thus having any hope for cooperation on disputed issues — is extremely complex, with many factors contributing to success or failure. Although definitive conclusions should not be drawn from three cases, two key lessons stand out. First, the successful exertion of influence may depend on the willingness and ability of one country to provoke a crisis, but then be able to manage that crisis so that it can be used to force a resolution. Second, even the country that seeks to "win" must be willing to compromise; in the game of international influence, nobody gets everything they want.

Assessing Influence

The three episodes used here to assess influence and its use in resolving transatlantic disputes are: the agricultural trade negotiations in the Uruguay Round, and particularly the Blair House accord; the controversy over the Helms-Burton legislation and the possible imposition by the United States of extraterritorial sanctions on European companies; and the effort by Washington to convince its European allies to lift the arms embargo on Bosnia, culminating in Secretary of State Warren Christopher's trip to Europe in May 1993. These all took place in the post-Cold War environment; that is, without a Soviet threat to act as a unifying force. They also cover a range of issues, allowing some consideration of whether influence works differently when concerned with security policy or trade policy. And because an examination of influence

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[6] See, *e.g.*, Jenonne Walker, "Keeping America in Europe," *Foreign Policy*, No. 83 (Summer 1991), pp. 128-142. Walker later became a key U.S. policymaker in European affairs while on the National Security Council staff in the first Clinton administration. For a European view, see Willliam Wallace and Jan Zielonka, "Misunderstanding Europe," *Foreign Affairs*, Vol. 77, No. 6 (November/December 1998), pp. 65-79.

and cooperation requires two fairly independent actors, all the cases take place outside the specific NATO framework, and focus on the less hierarchical U.S. - EU relationship.

The three cases all begin with the United States seeking European cooperation on a particular issue, whether it was international farm trade, policy toward the Cuban regime, or resolving the Bosnian conflict. In each case, Washington met with significant European resistance. Yet, the United States could not achieve its goal without European cooperation, even if only grudgingly provided after a long and contentious negotiation. The U.S. objective thus became to influence the Europeans into shifting their position sufficiently so that accommodation could be reached and the foundation for future cooperation laid. In two cases — the Uruguay Round and Helms Burton — the United States was successful, convincing the EU to shift its position enough so that a settlement of the dispute became possible, and establishing new "rules of the road" for farm trade and an approach to Cuba that was more cooperative in some areas. In the case of "lift-and-strike," however, the United States failed to influence the Europeans sufficiently, and the result was an impasse.

Success is always difficult to measure in the international arena, but in these cases, what was required was simply that Washington secure a change in the European position that would allow the issue to be resolved on terms that mostly (but probably not entirely) fulfilled U.S. objectives. It should be kept in mind that a U.S. success does not necessarily require an EU failure. It is in the nature of such negotiations that both parties can gain, although rarely equally so. In any event, politicians from both sides will undoubtedly claim victory for their respective constituencies.

The Uruguay Round

In 1986, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) began in Punta del Este. Over the next seven years, negotiations on a wide range of trade issues — including market access, services, intellectual property rights, and dispute resolution, among others — would proceed in fits and starts. The most central element of the Round were the talks on agricultural trade, and particularly the negotiations between the United States and the

European Community.[7] In previous GATT rounds, the United States had also pushed to adopt rules on agricultural trade, but because of opposition by the EC and others, only very modest accords had been struck on farm issues.[8] The Uruguay Round began with a call for "the reduction of import barriers" affecting agricultural trade and "increasing discipline on the use of all direct and indirect subsidies."[9]

The United States, which had sought more ambitious language, was determined that this Round would complete a significant agricultural accord. Only by achieving an international agreement that restricted export subsidies and restrained internal support programs could Washington achieve and maintain necessary reforms in its own agricultural policy. Although the extent of reductions was an important part of U.S. objectives, even more critical was achieving international acceptance of the principle that trade rules applied to agriculture. The European Community, however, was not eager to have a significant agriculture agreement within the Uruguay Round. The Common Agricultural Policy (CAP) was one of the centerpieces of European integration, and farming interests generally had enormous political influence in Europe. Despite the fact that the CAP was increasingly expensive and generated huge crop surpluses, anything that might challenge the integrity of the CAP or the primacy of European farming was viewed with great alarm. Of course, the members of the EC were not entirely unified on this issue, especially as some became determined to bring CAP expenditures under control. But because the United States was asking for a major shift in European farm policy; even those EC members who were sympathetic would face an enormous battle to secure

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[7] Although the Uruguay Round itself was a multilateral process, because it quickly became clear that U.S. and EC agreement were a *sine qua non* for any farm trade accord, their bilateral negotiations were an intrinsic part of the Round.

[8] It should be acknowledged that in 1986 many of the exceptions to existing GATT rules that governed agricultural trade were the result of U.S. insistance, since it did not want to restrict its own domestic farm policy. Only when the U.S. government realized that serious worldwide overproduction required changes in that policy, did Washington move to bring agriculture into the GATT.

[9] *GATT Ministerial Declaration*, Punta del Este, adopted September 20, 1986. Reprinted in Ernest H. Preeg, *Traders in a Brave New World: The Uruguay Round and the Future of the International Trading System* (Chicago: Chicago University Press), 1995.

agreement within the EC.

For several years, little progress was made in the Uruguay Round agriculture talks; indeed, the EC's unwillingness to negotiate on farm issues led to the collapse of the December 1990 ministerial which was supposed to conclude the Round. In early 1992, the Bush administration increased its efforts to secure a farm deal. Washington hinted that failure reach a deal would lead to a subsidy war and call into question the alliance relationship, while simultaneously indicating areas of possible compromise, especially on the question of internal support. It then increased the pressure further by threatening retaliation in the case of oilseeds, a long-standing U.S. - EC dispute in which a GATT panel had recently ruled for the United States. Although the pace of negotiations seems to have increased throughout the spring and summer of 1992, genuine progress was limited first by the EC's focus on CAP reform, and then by French unwillingness to consider a settlement before their referendum on the Maastricht treaty in September.

Once the French public had narrowly approved the treaty, Washington again stepped up the pressure for an agriculture agreement, to the surprise of some Europeans, who had expected the Bush administration to be absorbed in the reelection campaign.[10] Instead, a variety of factors — including the March 1993 expiration of fast-track negotiating authority and the desire to disprove the charge that Bush was unengaged on economic matters, as well as the personal commitment of the top negotiators — combined to provide new determination to the U.S. efforts. But for the next two months, the course of the negotiations would be exceptionally bumpy; internal divisions in the EC led to shifts in the European negotiating stance and accusations of backtracking by the United States, and very real differences persisted over the appropriate level for government subsidies.

When high-level U.S. and EC negotiating teams met in late November at Blair House, it was clearly the last chance. Both sets of officials were lame ducks: Bill Clinton had won the U.S. election and a new European Commission would be appointed as of January 1. The United

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[10] Hugo Paemen and Alexandra Bensch, *From the GATT to the WTO: The European Community in the Uruguay Round* (Leuven: Leuven University Press), 1995, p. 213.

States had revived its threat to retaliate over oilseeds, with a deadline in early December. Washington had also repeatedly made clear that the United States was content to let the Uruguay Round fail if it did not include a meaningful farm trade accord, and the incoming Clinton administration was viewed as likely to be even tougher. After an intensive two days of negotiations, followed by phone calls and faxes once the EC team had returned to Brussels, the Blair House accord emerged.

The agreement actually consisted of two separate deals: a settlement of the oilseeds dispute and an accord on the major agricultural issues of the Uruguay Round.[11] The EC agreed to limit oilseed production to 5.13 million hectares, with additional land being taken out of production in future years (oilseed production for non-food use was allowed on acreage above the agreed limit). This was a compromise from the original U.S. insistence that limits be placed on actual production rather than on acreage, but it still was expected to achieve a cut in production of almost 30 percent. The Uruguay Round package settled at Blair House included a reduction in the value of export subsidies by 36 percent and in the volume of subsidized exports by 21 pecent, both over six years; a reduction of 20 percent in domestic support levels; an agreement that certain EC payments to farmers under the CAP would be exempt from these disciplines, and would not be challenged as contrary to GATT for six years (the so-called "peace clause"); and an agreement to consult if exports to Europe of certain U.S. feed ingredients exceeded the 1986-90 average and thus "undermines the implementation of CAP reform."[12] Most importantly for the United States, Blair House placed significant restraints on the escalating use of export subsidies in international agricultural trade, thus making that commerce

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[11] Agricultural issues were also under discussion in the market access talks within the Round, which focused on changing all non-tariff barriers to tariffs and then achieving a substantial reduction in tariff levels. Market access issues were not dealt with at Blair House, and would not be resolved until the final December 1993 agreement.

[12] See "Legal Text of U.S.-EC Farm Deal," Washington DC, November 20, 1992, reprinted in *Inside U.S. Trade*, Special Report, December 25, 1992; U.S.-EC Statement on GATT Deal," Washington DC, November 20, 1992, reprinted in *Inside U.S. Trade*, November 27, 1992; letters between USTR and European Commission reprinted in "Confidential Documents Reveal U.S. Concession to EC after November 20 Deal," *Inside U.S. Trade*, Special Report, December 11, 1992; and "U.S.-EC Deal Extends Peace Clause, Comprehensive Tariffication Unresolved," *Inside U.S. Trade*, November 27, 1992.

subject to GATT disciplines in an effective way. The level of reductions represented a compromise for both parties. Similarly, the cuts in internal supports included a complex compromise on how such levels were to be measured. The exemption for some CAP payments to farmers was essential for the EC, but Washington was able to ensure that these payments were structured to limit, rather than encourage, production. But the basic U.S. objective was achieved — with a significant agricultural accord, the rest of the Uruguay Round could now proceed.

Almost immediately, however, the French made known their opposition to Blair House. For more than six months, they managed to delay approval of the oilseeds agreement in the Council of Ministers, finally giving their approval in June, after receiving concessions from the other EC members on farm prices and just as the arrival of the new planting season threaten to make the agreement irrelevant if it were not in place. Paris (along with some other less vocal member states) remained firmly opposed to the rest of Blair House, arguing that it was incompatible with CAP reform and that the agricultural accord could not be considered final until the entire Uruguay Round agreement was done. There was no significant shift in the French position following the installation of the new Balladur government in March.[13] Nor was progress smooth in other areas. The talks on market access went very slowly. The EC had finally accepted the principle of tariffication, but proposed levels that the United States believed would actually reduce access to the European market.[14] One of the few issues that seemed relatively easily resolved was the expiration of fast-track negotiating authority. In March, the Clinton administration announced it would seek an extension of fast track for the GATT talks; this was passed by the Congress in June, establishing a new deadline of December 15, 1993.

In an effort to bring to a head the debate over whether the GATT talks were compatible with the CAP, the French demanded the convening of a "jumbo" Council meeting in

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[13] "French Position on the Uruguay Round Negotiations," Paris: May 7, 1993, reprinted in Inside U.S. Trade, May 21, 1993.

[14] "U.S. Faces Three Major Problems in EC Uruguay Round Market Access Offer," *Inside U.S. Trade*, Special Report, December 25, 1992; "US Officials see new GATT negotiations on Agriculture Market Access," *Inside US Trade*, February 5, 1993; and "US, EC to Kick Off Better Agricultural Market Access in GATT," *Inside U.S. Trade*, May 7, 1993.

September.[15] But the results were ambiguous, with the French saying it supported their insistence that Blair House be "renegotiated," while the EC's main negotiator, Sir Leon Brittan, said it was "not a question of renegotiation, but of interpretation."[16]

The U.S. public response was firm: it would not renegotiate Blair House. High-level officials, including Secretary of State Warren Christopher and USTR Mickey Kantor warned the EC against wrecking the Uruguay Round, while pointedly emphasizing the importance of NAFTA and APEC.[17] The Clinton administration also began a high-level lobbying campaign, as the president called Kohl and Major to urge them to push the French for agreement. But as the same time that the administration raised the pressure on the EC, it also began an internal review of how the implementation of Blair House might be interpreted so that a deal could be reached.[18] Technical level talks resumed in November, followed by negotiations between Kantor, Brittan, U.S. Secretary of Agriculture Mike Espy and EC Agricultural Commissioner Rene Steichen starting on December 1st.

With the fast-track deadline only nine days away, and many other non-agricultural issues waiting for a farm trade accord to emerge before those talks could be concluded, a Uruguay Round farm deal emerged on December 6th. The agreement maintained all the essential elements of the Blair House settlement, with revisions in some of the methods of implementation. The reductions in export subsidies were to be calculated from different base

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[15] "Jumbo" refers to the fact that trade, agriculture, and foreign ministers were all involved.

[16] See "EC Council Conclusions on Uruguay Round," Brussels: September 20, 1993, reprinted in *Inside U.S. Trade*, Special Report, September 24,1993; "US and EC Likely to Clash over Blair House Renegotiation Next Week," *Inside U.S. Trade*, September 24, 1993; and "Brittan Expects No Quick Response in US-EC Trade Row," *Reuters*, September 22, 1993.

[17] See Jurek Martin, "Christopher Cautions EC over GATT," *Financial Times*, October 21, 1993. In the Irish Times, Mickey Kantor wrote: "Our desire in Europe is to have greater access for U.S. goods, not t see U.S. businesses focus on other parts of the globe. If Europe blocks efforts to expand trade, it will be hurting itself most. U.S. trade will continue to expand with Asia and Latin America, and Europe will be left out." Mickey Kantor, "Protectionist Policies in Global Economy Will Hurt Europe," *Irish Times*, October 29, 1993.

[18] "US Begins Internal Exploration of Possible Blair House Changes," *Inside U.S. Trade*, November 5, 1993.

years and to be made in equal annual amounts, rather than "frontloaded" — the result was that both the United States and the EC would be able to increase their subsidized exports over those allowed by Blair House (while still representing a significant reduction from existing trends). The "peace clause" was extended for eight years, rather than six, and a formula found for disposing of the EC's large existing surpluses. On market access, the United States secured a 36 percent reduction in import barriers and a minimum access requirement, while accepting the EC's interpretation that such reductions could be applied across broad product groups, rather than on particular goods.[19]

Despite these compromises, the Uruguay Round agricultural accord must be considered a successful example of the United States influencing the EC, with the result that transatlantic conflict gave way to an agreement establishing the rules for future agricultural trade. Those rules, by restraining ways governments encouraged agricultural overproduction and the export of those surpluses, represented a significant intrusion into the realm of domestic policy and politics. By introducing greater transparency and limiting export subsidies, the rules began to address the root causes of an escalating transatlantic rivalry in agriculture. Farm trade remains a sometimes acrimonious area of transatlantic relations; witness the current dispute over hormone-treated beef. But the Uruguay Round accord, by bringing agriculture into the GATT/WTO, and ending the previous era of lawlessness in farm trade, created a basis for cooperation.

There were many important factors that contributed to the success of the Uruguay Round. The United States repeatedly made clear that, unlike in previous negotiations, it was willing to wreck the entire Round if there was no farm accord. It also called into question the value of the transatlantic relationship at a time when European insecurities about the U.S. commitment were high. It insisted on a resolution of the oilseeds dispute in a way that could only be interpreted in Brussels as a threat.[20] The fast-track deadlines also increased the pressure on the negotiators,

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[19] The final agricultural settlement is very usefully summarized in Jeffrey J. Schott, *The Uruguay Round: An Assessment* (Washington, DC: Institute for International Economics) 1994, pp. 147-149.

[20] According to some former U.S. official, however, the oilseeds issue had to be resolved before a Uruguay Round agricultural accord could be reached, but the timing of potential oilseeds retaliation was not intended to generate leverage over the EC.

sometimes in a beneficial way. But even as Washington pushed the Round toward crisis, it also offered compromise, exempting the CAP payments from internal support reductions, allowing tariff cuts to be calculated across product groups rather than individual goods, and not insisting on "frontloading" of export subsidy cuts, for example. In fact, both parties benefited from these compromises, while keeping the overall agreement intact. The United States was also able to take advantage of divisions within the EC, finding allies (such as Germany) that sought to reduce the budgetary burden of CAP, while still recognizing the need to reach some accommodation with France. Over the course of the Round, both Washington and Brussels came to recognize the limits facing the other: for Brussels, it was essential that the Uruguay Round be compatible with CAP reform, while for Washington, it was pointless to bring home a GATT agreement without farm trade. In the end, what made the difference in reaching agreement was the U.S. willingness to take the negotiations right up to the brink and then carefully and slowly find a compromise that would move everyone away from the edge.

Helms-Burton

In February 1996, after the Cuban air force shot down three planes flown by Cuban emigres based in Florida, Congress passed the Cuban Liberty and Democratic Solidarity Act.[21] During debates on the bill during the previous year, the Clinton administration had made clear its opposition, as Helms-Burton restricted administration prerogatives (primarily by requiring congressional approval to lift the economic embargo on Cuba) and threatened to damage relations with allies. But after the planes were shot down, the administration found itself politically unable to avoid supporting passage of the bill, and President Clinton signed it on March 12.

The U.S. administration then faced an onslaught of criticism from governments around the world who objected to provisions penalizing companies who invested in Cuba. Particularly vociferous in their condemnation of the bill were Canada, Mexico, and the European Union.

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[21] PL 104-44, also known as the Libertad Act or, more commonly, Helms-Burton, after its sponsors, Senator Jesse Helms and Representative Dan Burton

These governments were especially concerned about two elements of the bill. Title III allowed U.S. citizens to sue foreign companies who "trafficked" in property expropriated without compensation after the 1959 Cuban revolution.[22] The president could suspend the effective date of Title III if it was "necessary to the national interests of the United States and will expedite a transition to democracy in Cuba."[23] The first suspension had to be granted no later than July 15, 1996. Title IV of Helms-Burton provided that foreign nationals who trafficked in expropriated property on which a U.S. citizen has a claim could be denied a U.S. entry visa. If a company were involved with such a property, this ban could be applied to its executive, boards members, major shareholders, and their spouses and dependents. Unlike Title III, there was no waiver or suspension available.[24]

Having hoped to avoid the passage of Helms-Burton until the last minute, the Clinton administration had few clear objectives as it tried to cope with a deluge of international criticism. The bill itself established the goals of assisting the Cubans in achieving democracy and freedom; strengthening international sanctions against the Castro regime; and protecting U.S. citizens from illegal expropriations of their property.[25] From the administration's perspective, these were not undesirable objectives, but they were difficult to translate into specific policies without seriously damaging relations with close allies, including the Europeans. In July, there was a hint of the evolving U.S. objectives, when President Clinton suspended the

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[22] Title III applied to any foreign company that "trafficked" in confiscated property three months after the signature of Helms-Burton. The legal remedies were explicitly available to those who were not U.S. citizens when their property was illegally expropriated, but who later became such; a situation which applied to many in the Cuban-American community. By the time Helms-Burton became law, U.S. ctizens had filed 5,911 claims regarding expropriated resources in Cuba. See Cuban Liberty and Democratic Solidarity Act, P.L. 104-144. Also Carole Landry, "U.S. Targets Three Companies for Cuba Blacklist," *Agence France Presse*, May 29, 1996.

[23] Cuban Liberty and Democratic Solidarity (Libertad) Act, PL 104-144, Title III, Section 306(b)(1).

[24] Cuban Liberty and Democratic Solidary (Libertad) Act of 1996, PL 104-144, Title IV, Section 401(a).

[25] Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, PL 104-144, Section 3.

implementation of Title III for six months, saying that the administration hoped to convince others to join the United States in implementing concrete steps in promoting democracy in Cuba and that future suspensions would depend on such cooperation.[26] U.S. goals and policy became more specific after the appointment in late summer of Stuart Eizenstat, former U.S. ambassador to the European Union, as special envoy for Helms-Burton. The administration set out to convince the EU (and other countries affected by Helms-Burton) to change its actions and policies toward Cuba significantly so that Congress would accept continuing Title III suspensions or even a change in the law. Given the strength of congressional feelings about Cuba and the prevailing impatience with Europe on this issue, coupled with European outrage over Helms-Burton, the administration faced an uphill battle to find any common ground.

From the moment Helms-Burton became law, the European Union made clear its strong opposition. It particularly objected to the extraterritorial nature of the U.S. sanctions; that is, to the application of U.S. law to foreign (i.e., European) corporations. Brussels sought not only to avoid the imposition of Title III through a suspension, but to have such extraterritorial legislation recognized as illegitimate state behavior. Its alarm about U.S. extraterritorial legislation was only heightened by the debate and passage of the Iran-Libya Sanctions Act, which was signed on August 5.[27] Through statements such as that made by EU President Jacques Santer at the June 1996 U.S.-EU summit, and by requesting formal consultations with Washington under the WTO, the European Union indicated its determination to resist the implementation of Helms-Burton.[28]

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[26] John Harris, "Clinton Delays Effect of Cuba Lawsuit Act," *Washington Post*, July 17, 1996.

[27] Among its provisions, ILSA required the president to impose two out of seven possible sanctions against foreign companies making new investments worth $40 million or more in the oil and gas sectors of Iran or Libya. The law did include a waiver on national security grounds. See Iran-Libya Sanction Act of 1996, PL 104-172. Since European investment in the energy sector of these countries was considerable (as was EU reliance on that oil and gas), ILSA posed much more of an economic threat to Europe than did any restriction envisioned under Helms-Burton.

[28] Santer commented for the press that "We do not believe it is justifiable or effective for one country to impose its tactics on others and to threaten its friends while targeting its adversaries. If this is done, it is bound to lead to reactions it is in the interests of us both to avoid." "U.S.-EU Summit Opens," *Agence France Presse*, June 12, 1996. Also the request for formal consultations within the WTO is the first step in developing a potential dispute resolution action.

Once Eizenstat was on board as special envoy, consultations began with the Europeans to convince them to distance the EU from the Castro regime. In fact, EU-Cuba relations had recently soured somewhat: in early 1996, the EU had explored establishing a cooperation agreement with Cuba, but negotiations had not gone well, and the effort was now on hold, with Cuba's lack of progress in human rights and other reforms specifically cited as the reason.[29] But to continue the suspension of Title III, the U.S. needed more indications of significant EU policy change toward Cuba. While the EU continued to resist Helms-Burton — passing the so-called "blocking legislation" in November 1996, which penalized European companies who cooperated with the United States in implementing the legislation — the signs of concern about the Castro regime began to increase.[30] In December the EU adopted a common position predicating closer cooperation with Cuba on "improvements in human rights and political freedom," and outlining steps to "facilitate peaceful change in Cuba."[31] A month later, Clinton issued another suspension of Title III, and indicated that he expected to continue to suspension as long as the EU cooperated in encouraging reform in Cuba. In his briefing, Eizenstat cited the EU's Common Position and other actions to justify the suspension, and repeated the need for the EU and others to "continue their stepped-up efforts to promote democracy in Cuba.[32]

But the apparent success in U.S. policy would prove short-lived. In January, the EU began to press forward with its WTO complaint, particularly citing the fact that two UK citizens

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[29] "Shifts in Washington, Brussels, and Madrid Leave Cuba on its own," *Agence France Presse*, May 7, 1996. EU cooperation agreements usually encompassed technical and financial assistance; Cuba was the only Latin American country not to have one.

[30] The legislation forbade companies to provide relevant information to U.S. authorities and allowed them to countersue in European courts if sued by U.S. citizens under Title III of Helms-Burton. See Joint Action of 22 November 1996, *Official Journal of the European Union*, L309, viewed at europa.eu.int/eur-lex/en/lif, (496XO668)

[31] Common Position of December 2, 1996, *Official Journal of the European Union*, L322; viewed at europa.eu.int/eur-lex/en/lif, (496X0697).

[32] Eizenstat, Stuart, Special Representative of the President and Secretary of State for Promotion of Democracy in Cuba, Washington, DC, U.S. Department of State Briefing, January 3, 1997. The statement provides a listing of various activities used by the State Department in its recommendation to the president.

had been banned from the United States under Title IV. By late February the WTO had named a dispute panel, and the United States had responded that if the panel proceeded, Washington would invoke an exemption on the basis that this was a national security matter. This in turn threatened to irreparably damage the new WTO by ruining its credibility in difficult cases. With the EU scheduled to present its first brief to the panel on April 14th, Washington and Brussels seemed to be going right up to the brink, and about to take the WTO with them over the edge.

On April 11, however, disaster was averted when the United States and the EU reached a preliminary settlement. Washington stated its expectation that Title III would continue to be suspended as long as the EU continued its efforts to promote Cuban democracy. The EU agreed to work with the United States to develop principles for dealing with international investment in expropriated property, and U.S. administration promised to seek an amendment to create a waiver for Title IV. The April accord also addressed the ILSA issue, including an agreement to cooperate on curbing terrorism and the proliferation of weapons of mass destruction, while Washington stated its inclination to consider waivers for EU investment in Libya and Iran. Most important, the EU agreed to suspend the WTO proceedings, although it made clear its intention to restart the complaint procedure if EU companies or individuals were penalized under Helms-Burton or ILSA.[33]

For the next year, transatlantic negotiations continued, particularly on the investment disciplines. The EU renewed its Common Position on Cuba (it required reaffirmation every six months), and the United States extended the suspensions of Title III. The EU also continued to be outspoken in its criticism of extraterritorial sanctions, both through public statements and by identifying such measures as a major concern in the annual Commission report *U.S. Barriers to Trade and Investment*.[34] This concern was only heightened when, in September 1997, the French oil company Total announced a group venture worth $2 billion to develop Iranian oil

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[33] See "Understanding between the United States and the European Union," April 11, 1997 (viewed at: eurunion.org/legislat/extrel/cuba/understd.htm).

[34] European Commission, *Report on United States Barriers to Trade and Investment* (Brussels) July 1997.

fields; an undertaking that seemed likely to provoke sanctions under ILSA. The United States, however, responded as it had with Helms-Burton: if the EU undertook adequate steps to address the issues of terrorism and nonproliferation as they applied to Iran, a waiver of the ILSA sanctions might be possible.

In the spring of 1998, pressures grew for a resolution of the conflict. The EU faced an April deadline for deciding whether to reinstate its WTO complaint against Washington. The U.S. administration was increasingly concerned that it might be confronted with more investments in either Iran or Cuba that might require the imposition of sanctions, either under ILSA or Title IV of Helms-Burton. And, with Austria scheduled to succeed Britain in the EU presidency in July, Washington felt that it was about to lose its most effective European partner; the British, in return, saw the resolution of this transatlantic dispute as a potentially major prize for their term at the EU helm. Finally, there was pressure from both sides of the Atlantic to ensure that the regular U.S.-EU summit — which would bring together Tony Blair and Bill Clinton — have an appropriately high international profile.

After a last and unsuccessful attempt by the EU to insist on permanent waivers, a comprehensive settlement of both ILSA and Helms-Burton was announced at the May 18, 1998, U.S. - EU summit.[35] The ILSA part of the package consisted of declarations pledging U.S.-EU cooperation on non-proliferation policy and counterrorism, along with a statement by Secretary of State Albright granting a waiver to Total and indicating that similar cases in the future involving EU companies could expect such waivers as long as transatlantic cooperation on counterterrorism and nonproliferation continued.[36] On Helms-Burton, the major document was

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[35] Coreper, the committee of member states' representatives in Brussels, had determined on May 14 that "without secure and lasting waivers for European countries and companies, there could be no deal." The U.S. responded that a permanent waiver could not be granted without changes in the legislation and sought to convince the EU to accept a pledge that the administration would attempt to secure the necessary congressional amendments. Martin Walker, "Summit stumbles over sanctions law," *Guardian*, May 16, 1998.

[36] See "U.S.-EU Declaration on Common Orientation of Non-Proliferation Policy "; "U.S.-EU Statement of Shared Objectives and Close Cooperation on Counterterrorism"; and Statement on ILSA: The South Pars Case, by Secretary of State Madeleine Albright, (U.S.-EU Summit, Birmingham, UK), May 18, 1998 (viewed at www.state.gov/www/regional/eur/eu and

the "Understanding with Respect to Disciplines for the Strengthening of Investment Protection," in which the two parties announced their intention to apply various disciplines intended to restrict investment in illegally expropriated property. The disciplines forbade the provision of most forms of government assistance to investments involving such property, including both financial and diplomatic support. The Understanding also created a registry of claims to facilitate the tracking of property that was allegedly illegally appropriated, and a provision that if a country had an especially egregious record on such expropriations, the parties would review all investment transactions.[37] In a separate letter, the Commission said that it was "reasonable to assume" that this second provision applied to Cuba.[38] However, in a concession to the EU, the United States agreed that the investment disciplines did not apply to past investments, but only to new transactions on affected properties. As part of the Understanding, the Clinton administration agreed to seek an amendment to Title IV allowing a waiver and an amendment to Title III so that an indefinite waiver could be granted. Finally, the EU issued a statment saying it would not renew its WTO complaint as long as waivers were granted under ILSA and Title III of Helms-Burton and the administration was seeking an amendment to Title IV.[39] The parties also signed the Transatlantic Partnership on Political Cooperation, which acknowledged that economic sanctions were a legitimate response when other options had failed, but pledging to resist passage of extraterritorial sanctions.[40]

As in the Uruguay Round, the United States used its influence to resolve a serious

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secreatry.state.gov/www/statements/1998).

[37] See "Understanding with Respect to Disciplines for the Strengthening of Investment Protection," released by the Bureau of Economic, Business, and Agricultural Affairs, U.S. Department of State, May 18, 1998

[38] Sir Leon Brittain to Secretary of State Madeleine Albright, London, May 18, 1998 (www.state.gov/www.images/ec-letter2.gif).

[39] EU Unilateral Statement, issued by the European Commission/DG1, May 18, 1998 (europa.eu.int/comm/dg01/0518uni/htm).

[40] "Transatlantic Partnership on Political Cooperation," released at U.S.-EU Summit, Birmingham, UK, May 18, 1998 (viewed at www.state.gov/www/regions/eur/eu).

transatlantic controversy (admittedly of its own making) and to lay the groundwork for limited future cooperation on Cuba and international investments. Although the United States (especially the Congress) and the European Union continue to disagree about whether isolation or engagement will best push the Castro regime toward reform, they are more in agreement on the need for democratic and economic reforms as a precursor for closer relations. Apart from the Common Position, the EU has undertaken a series of activities to encourage such reforms, including formal ambassadorial protests on behalf of Cuban human rights activists and criticizing Cuba in international organizations.[41] The May 18 agreement also establishes important disciplines on investment in suspect properties; a set of rules which could become the basis of a multilateral investment agreement. Of course, the May 1998 settlement must still be implemented — currently full implementation of the investment disciplines is awaiting congressional action on Title IV — but an accommodation has been reached that allows Washington and Brussels to move forward in the areas where they can cooperate on Cuba, and that may provide a basis for similar undertakings directed at other so-called "rogue states."

The U.S. efforts to resolve transatlantic tensions over Helms-Burton was effective for some of the same reasons that the Uruguay Round also succeeded. Washington proved equally willing to walk up to the brink: when the EU took the dispute to the WTO, the Clinton administration, by countering that it might use the national security exemption, risked fatally damaging the young institution. Because the suspensions of Title III could only be granted for six months, the legislation provided a continual series of deadlines which could be — and were — used to pressure the EU to toughen its Cuba policy. By banning individuals from the United States under Title IV (even if only a few), the administration demonstrated its intention to go forward with implemention if a resolution was not achieved. Moreover, the U.S. administration was viewed as credible when it threatened even extreme actions during this episode; the

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[41] See Briefings by Stuart Eizenstat, Special Representative of the President and Secretary of State for Promotion of Democracy in Cuba, (Washington, DC: U.S. Department of State), January 3, 1997 and July 16, 1997 and January 3, 1998. (viewed at www.state.gov/www/regions/wha/eizenstat.html. and www.state.gov/www.issues/economic/cuba970716.html). See also George Gedda, "Cuba Sanctions Waiver Extended," *Associated Press*, January 16, 1998.

Europeans were well aware of the strong feelings on Cuba in both the Congress and the larger political community, and recognized that the administration did not have much room for accommodation. But while the U.S. administration escalated the tension toward crisis, it also proved willing to compromise when it could. It suspended Title III, initially on very little evidence of shifts in European policy. It also worked with European NGOs and businesses, as well as the EU, to develop ways of highlighting the need for reforms in Cuba. Similarly, it compromised on ILSA in order to get a complete settlement at the May 1998 summit. Finally, the appointment of Stuart Eizenstat as special envoy provided both a focal point and an added measure of credibility to the U.S. effort. In sum, a U.S. strategy with elements of both crisis and compromise allowed the administration to take a difficult transatlantic controversy and create a more constructive framework.

Lift-and-Strike

When fighting broke out following the secession of Slovenia and Croatia from Yugoslavia in June 1991, one of the first steps taken by the international community was an embargo on arms and military equipment for the entire country (including the break-away republics). Resolution 713 was approved by the UN Security Council on September 25, with the support of the United States and the EC members in the Security Council. After numerous reports of smuggling, UNSC resolution 787 was passed in November 1992, calling for "enforcement" of the embargo, rather simply "monitoring," again with the support of the United States and EC countries. But as the Yugoslav conflict shifted to Bosnia-Hercegovina, and the horrors of ethnic cleansing became apparent, it also became clear that the embargo had put the Bosnian Muslims at a disadvantage. Because most of the Yugoslav weapons factories were in Serbia, the Serbs were significantly better equipped than their opponents. After Slovenia, Croatia, and Bosnia were recognized by the international community in 1992, some (including many of the Muslim states) began to argue that these countries should have the opportunity to defend themselves.

When the Clinton administration came into office in January 1993, it began a

reassessment of U.S. policy toward Bosnia, and lifting the arms embargo quickly became one of the leading options. The new administration was looking for a way to take a more active role in the Bosnian conflict, but without the risks associated with committing military forces. Lifting the arms embargo on the Sarajevo government, coupled with air strikes to prevent a Serb offensive, would allow the Bosnian Muslims to defend themselves from ethnic cleansing and perhaps recover lost territory while presenting minimal risks for the West.

The countries of the EC had a very different agenda in Bosnia, however. The European Community had been actively diplomatically since the beginning of the Yugoslav conflict more than a year before, and was now working closely with the United Nations (which had peacekeeping forces in Bosnia) to develop a negotiated settlement. In January 1993, the Vance - Owen peace plan emerged, and the EC and UN began the process of trying to convince the Bosnian Serbs, Muslims, and Croats to agree to this arrangement.[42] Although many European observers agreed that the arms embargo left the Bosnians at a disadvantage, they saw lifting the embargo as extremely destabilizing, especially while trying to push all parties towards signing the Vance-Owen plan. As protection against ethnic cleansing, the Europeans preferred UNPROFOR and the creation of some safe havens.

U.S. support for lifting the arms embargo was first explored at the end of the Bush administration, but when Secretary of State Lawrence Eagleburger suggested in a meeting of NATO foreign ministers that the embargo should be reexamined, he was met with firm opposition.[43] The same month that Vance - Owen was proposed, President Bill Clinton took office in Washington, having criticized the Bush administration during the campaign for its "hands off" approach to the Bosnian conflict. It soon became clear that the new administration was rather ambiguous in its support of Vance-Owen. Its first full policy statement on Bosnia indicated Washington's intention to participate actively in the Vance-Owen process, emphasized

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[42] Named after UN envoy Cyrus Vance and EC envoy David Owen, the peace plan consisted of three parts, each one of which had to be signed by the three parties. The parts were: a set of constitutional principles for a Bosnian government; a military agreement including a ceasefire and gradual demilitarization; and a map dividing Bosnia into ten provinces.

[43] *Boston Globe*, January 28, 1993.

the importance of consultations with the allies, and committed the administration not to take unilateral initiatives.[44] In reality, however, the administration was deeply divided and had begun to explore other policy options, including lifting the arms embargo.

Over the next two months, a variety of factors would lead the administration to lean toward this option. A vocal contingent in Congress had supported lifting the embargo for a while, even appropriating money for arms. Some in the U.S. armed forces — including the chairman of the Joint Chiefs, General Colin Powell — were very concerned about the potential for U.S. military involvement in Bosnia, and the possibility existed of U.S. participation in a Vance-Owen implementation force. There was also growing frustration among the president's closest advisors at the course of the war, especially as the Serbs launched an assault on Srebrenica, a largely Muslim city. In late March, a re-evaluation of U.S. policy was launched by National Security Advisor Anthony Lake, one of the more activist members of the Clinton team. Within days, Clinton would publicly mention lifting the embargo as an option of the Bosnian Serbs did not quickly sign Vance-Owen, but also made clear that the United States would not act unilaterally.[45]

Throughout April, the United States and its European allies stepped up the pressure on the Bosnian Serbs: NATO began enforcing the no-fly-zone over Bosnia; the UN Security Council declared Srebrenica a "safe area," along with other Bosnian cities; and a new package of economic sanctions for Serbia was approved. But in Washington, administration officials, including Clinton and Christopher, called for stronger actions.[46] These were reinforced by similar statements from congressional leaders and by disclosure of a letter to Secretary Christopher from several State Department Balkan specialists urging a more activist policy,

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[44] "New Steps toward Conflict Resolution in the Former Yugoslavia," Statement by Secretary of State Warren Christopher, February 10, 1993. Reprinted in *U.S. Department of State Dispatch*, February 15, 1993, Vol 4, No. 7, pp. 81-82.

[45] *Washington Post*, March 27, 1993.

[46] See, *e.g.*, Elizabeth Drew, *On the Edge: The Clinton Presidency* (New York: Simon & Schuster) 1994, p. 151; *New York Times*, April 6, 1993; *Washington Post*, April 7, 1993; *New York Times*, April 15, 1993; and *Washington Post*, April 20, 1993.

including lifting the arms embargo.[47] As its policy developed, the Clinton adminstration engaged in extensive consultations with its European allies on the various options under consideration. The Europeans made known their opposition to lifting the arms embargo in very clear terms: U.K. Foreign Secretary Douglas Hurd commented that lifting the embargo would produce "a level killing-field," while French Foreign Minister Alain Juppe said it would "mean the internationalization of the conflict and a general conflagration in the Balkans."[48] This opposition to lifting the arms embargo was confirmed at a meeting of European foreign ministers on April 24-25.[49]

After the Bosnian Serbs rejected the Vance-Owen map on April 26, there was even greater pressure in Washington to take on a more activist role. There were more consultations with the Europeans, who continued to stay united in opposing the option of lifting the arms embargo. Nevertheless, a few days later, Clinton approved a policy of "lift and strike": lifting the arms embargo and using air strikes if needed to prevent a Serb offensive while the Bosnians rearmed. But because the United States did not want to act unilaterally (after all, the embargo was the product of a UN Security Council resolution), making this policy a reality would require European cooperation.

Clinton immediately sent Secretary of State Christopher to Europe to persuade the allies to support the new policy. During May 1-7, Christopher visited London, Paris, Moscow, Brussels, Bonn, and Rome. Unfortunately, the timing of the U.S. effort was terrible — on May 1, negotiations with the Bosnian Serbs resumed, and the next day, they accepted Vance-Owen with the proviso that it be accepted by the assembly in Pale, which would meet on the 5th.[50] Thus, during most of Christopher's trip, the prospect of a negotiated settlement once again appeared

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[47] *New York Times*, April 20, 1993; *Atlanta Constitution*, April 21, 1993; *Washington Post*, April 23, 1993; and *New York Times*, April 23, 1993.

[48] *New York Times*, April 6, 1993; and *New York Times*, April 22, 1993.

[49] *Washington Post*, April 27, 1993.

[50] The assembly did reject Vance-Owen on the 5th, but kept the door open by calling a referendum for May 15-16 to approve their decision.

possible, and it proved difficult for policymakers to focus on options, like "lift and strike," that would be used only if the talks failed. Moreover, Christopher's mandate was limited. He was not to negotiate with the allies, nor did they have veto power. He was to persuade them to accept the U.S. decision, and consult with them on how this would work in practice. If they rejected "lift and strike," he was to get their suggestions for other options.[51] At the same time, the U.S. administration refused to make this an issue of alliance solidarity, thus reducing the pressure on the Europeans to agree.[52]

The Europeans rejected "lift and strike" very publicly and very firmly. There were some reports that the German government might consider the proposal, but only if other EC governments agreed, and that was extremely unlikely.[53] Indeed, the French reaction left no room for doubt: "For us, the arms embargo is an unconditional 'no,'" said one official.[54] To make matters worse, there were reports that the commitment to "lift and strike" was not that firm among Christopher's entourage.[55] Whether that was true or not, the mere existence of the rumors damaged the credibility of the U.S. position.

When Christopher returned from Europe and briefed Clinton and other top officials, it was clear that "lift and strike" could not go forward. Although some key officials remained sympathetic to the option, everyone agreed that European cooperation was essential, and that was simply not forthcoming.[56] For a time, the option was formally kept alive, but on May 22, the United States, along with Russia, France, Britain, and Spain signed the Joint Action Plan, which advocated establishing safe havens and an international war crimes tribunal, and increasing the international presence in Kosovo and Macedonia. Conspicuously absent was the

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[51] *New York Times*, May 2, 1993; *Boston Globe*, May 2, 1993; and interviews.

[52] Drew, p. 156.

[53] *New York Times*, May 7, 1993.

[54] *New York Times*, May 4,1993.

[55] *Washington Post*, May 4, 1993.

[56] Drew, pp. 158-59.

option of lifting the arms embargo, bringing this influence attempt to a close.[57]

Why did the United States fail to win European cooperation in this instance? The most obvious explanation is that the Europeans were simply opposed to "lift and strike." But they were also opposed to Helms-Burton and to bringing agriculture into the GATT, yet Washington did eventually reach an accommodation on these issues. Unlike in those episodes, however, the United States did not push the situation until it became a crisis in transatlantic relations. On the contrary, Washington informed the Europeans that their cooperation — or lack of it — would not affect the health of the alliance overall. Moreover, the United States repeatedly made clear that it would not move forward unilaterally to lift the arms embargo. This not only gave the Europeans a veto over a policy option they already disliked, it also removed any penalty for them if they failed to cooperate. This is in contrast to both the Uruguay Round, in which the United States threatened an export subsidy war if no accord was reached; and Helms-Burton, where full implementation of the law was the alternative to cooperation. Nor did the United States enjoy a great deal of credibility on this issue. It had refused to contribute ground troops to any peacekeeping mission, and even seemed to be prevaricating on its ambiguous pledge to participate in a Vance-Owen implementation force (presumably with air support). To make matters worse, the timing of the "lift and strike" proposal seemed designed to distract from Vance-Owen at a critical point. But if the United States had neither the will nor the credibility to provoke and manage a crisis, neither did it offer a compromise. Christopher appears to have gone on his May mission with no back-up plan other than to ask the European leaders for their suggestions. A major reason the administration was unable to offer even modest compromises was that its own ability to agree internally on an alternative was severely limited; for a variety of reasons, "lift and strike" was the only policy that everyone could support. In this case, the United States was unwilling to go to the brink with its European allies over Bosnia, nor was it able to offer the necessary compromises. Transatlantic differences over Bosnia would persist for

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[57] Although this was the end of the U.S. effort to convince the Europeans to lift the arms embargo, it was not the end of "lift and strike." Congressional pressure for support of this measure would continue to grow. In November 1994, the United States announced that it would no longer enforce the embargo on Bosnia.

another two years, until they became so severe that NATO itself seemed threatened.

Crises and Compromises

In two of the cases under consideration, the United States and the European Union successfully resolved significant differences, and laid the basis for future cooperation, albeit sometimes on a limited basis. In the third case, no progress was made in resolving differences, and indeed those differences would grow, along with transatlantic frustration, as the war in Bosnia went on for another two years. These cases demonstrate that transatlantic disputes — even severe ones — can be ameliorated, and that modest cooperation on such difficult issues is not impossible. Central to this is the process of influence: how the transatlantic partners pressure, convince, or cajol each other to shift their positions until a mutual accommodation can be reached.

Before turning to the process of influence, however, it should be noted that these cases raise questions about other explanations for transatlantic dispute resolution. It has long been argued, for example, that an external threat is required for alliance cohesion to be maintained. In other words, transatlantic disputes will multiply and cooperation will become increasingly rare, without the unifying threat of Soviet aggression.[58] Yet these cases show that transatlantic agreement can be reached even without such a threat. They also demonstrate how difficult it is for the United States and Europe to agree on what constitutes a threat; certainly Cuba is not viewed in the same way. If there was a threat in these cases, it was to the international system — represented by the GATT/WTO or NATO — in which the United States and Europe have so much at stake. Ironically, that threat came from both of them.

It has also been argued that security issues are privileged in the transatlantic relationship; that is, the overwhelming priority given to protecting European security will push both the United States and Europe toward settling disagreements over security issues more quickly. Yet the evidence from these three cases should throw that assumption into question, as it was the

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[58] See, *e.g.*, Stephen M. Walt, "The Ties That Fray: Why Europe and America are Drifting Apart," *The National Interest*, No. 54 (Winter 1998/99) pp. 3-11.

security issue that remained unresolved. Of course, the United States and its European allies all tried to prevent the dispute over "lift and strike" from becoming a test of alliance loyalty, so it can certainly be argued that this study does not present a fair and complete trial. But because it was the non-security issues that were resolved, this study does raise questions about the privileging of security issues, particularly outside the NATO area.

What is demonstrated most clearly by this study is the importance of both crisis and compromise in the resolution of transatlantic disputes. These two seemingly contradictory factors are central to the process of influence through which accommodation is reached. During the Uruguay Round, two U.S. administrations made the hunt for an agricultural accord a crisis of bilateral relations: senior officials made pointed statements about changes in U.S. priorities; retaliation over oilseeds was announced at a critical moment; and, most importantly, the United States repeatedly made clear that it would scuttle the entire Round if a farm trade accord was not included. In the Helms-Burton episode, the crisis was initiated by Congress, but it was the Clinton administration which then had to keep the EU at the negotiating table. To do that, the administration slowly began implementation of the act, and then threatened to discredit the new WTO if the EU sought a judicial end to the dispute. Of course, the United States stood to lose a tremendous amount if either crisis fully erupted; thus the U.S. administrations worked hard to keep the crises from spinning out of control. This required deft management by the administrations, and credibility that they were serious about what they wanted. During the Uruguay Round, that credibility was established over several years, but was eventually secured. On Helms-Burton, the administration was helped first by the reputation of the special envoy, Stuart Eizenstat, and secondly, by the realization in Europe that hardline congressional attitudes on Cuba gave the administration very little flexibility. Crisis management also required frequent consultations between Washington and Brussels, not only to make demands clear, but also to explore possible compromises. Indeed, without compromises, there would have been no settlement in either dispute. In the Uruguay Round, there were compromises at Blair House, and then again a year later, to save the Blair House accord. In Helms-Burton, Washington suspended the most egregious provision, and then made clear the steps that would be required to continue

that suspension.

In contrast to the Uruguay Round and Helms-Burton episodes, what is notable about "lift and strike" is the avoidance of a crisis and the absense of a compromise position. As pointed out above, Washington did not attempt to engineer a crisis; in fact, it made clear that it would not penalize the Europeans if they proved unwilling to support "lift and strike." Nor did the Clinton administration prove capable of compromising with the EU in order to gain European support. Instead, after consulting extensively with the EC governments, Washington chose the one option guaranteed to unite the allies in refusing to cooperate. Because of its own internal political requirements, the Clinton administration was unable to find any significant common ground with the EC.

What is it about crisis and compromise that make them such essential elements in this process? While it may seem counterintuitive to provoke a crisis with close allies as a means of reaching a basis for cooperation, upon closer examination, there is a certain logic. First, escalating a simple disagreement into a crisis forces everyone — including high-level policymakers — to pay attention. In short, it makes the issue a priority among those individuals who have the authority to take appropriate decisions. Given the multitude of issues facing government officials today, bringing a particular matter to the forefront is an important step forward. But it is not enough to have high-level officials engaged — after all, "lift and strike" was essentially devised at the highest levels of the U.S. government. A crisis also makes clear to both parties that one is willing and able to punish the other one in some way. A crisis, almost by definition, must be backed by such a credible threat, otherwise it would simply be dismissed. By incorporating a real possibility of punishment, often linked to specific deadlines, a crisis creates more pressure for an issue to be resolved. Even among close allies, a serious, sustained crisis cannot be tolerated for lengthy periods of time without eroding the relationship. Thus, by intensifying differences and clarifying the consequences of inaction, a crisis can push a simmering dispute toward resolution.

This is obviously a risky strategy, however. Using a crisis to force a resolution of every issue would soon exhaust one's credibility, and make it less likely that crisis could be used on

the truly important matters. Moreover, there is always the possibility that any crisis can spin out of control. Thus, if crisis is to be helpful in resolving transatlantic disputes, compromise will be essential. Compromise helps reduce tensions in the midst of crisis (although it should be noted that reducing tensions too much can be counterproductive if it eliminates incentives to find a resolution). More important, compromise can foster the exploration of alternatives that might lead to an eventual settlement. During Helms-Burton, for example, the suspension of Title III allowed the U.S. administration to indicate a strategy for reaching a settlement and to have a constructive conversation with Brussels about the minimum U.S. requirements. Without that suspension, it is unlikely that the EU would have been willing to move forward cooperatively. Finally, compromise is important in the final resolution of any dispute. In the end, both sides will need to be able to claim victory in some sense. This is especially true in a partnership like the transatlantic one, which depends on shared values and a history of cooperation, as much as on shared national interests. And if the resolution of the dispute is to lay a solid foundation for future cooperation, both the United States and Europe must have a stake in the maintenance of that settlement.

These cases demonstrate a pattern in which transatlantic disputes are resolved through a process of crisis and compromise. While it is easy to fear that each new crisis bears the seeds of the alliance's destruction, the evidence presented here demonstrates that these episodes can be constructive, particularly if modest, well-timed compromises can be used to manage the crisis. As the United States and Europe begin to address issues beyond European security — including many global issues on which they have taken different approaches in the past — disputes may become even more frequent. At the same time, it is also true that transatlantic cooperation is likely to be essential if those issues are to be addressed effectively. Thus, as the need for U.S. - European cooperation becomes more urgent, it will be important to recognize that both crisis and compromise are — and will continue to be — a normal part of transatlantic relations.