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Subcommittee on National Security, International Development and Monetary Policy

Assessing the Use of Sanctions in Addressing National Security and Foreign Policy Challenges

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Chairman Cleaver, Ranking Member Stivers, and distinguished members of the Subcommittee on National Security, International Development and Monetary Policy, I am honored to appear before you today to discuss the use of sanctions and economic statecraft in addressing U.S. national security and foreign policy challenges.

Introduction

I will focus my testimony on the congressional role, as this committee and others consider additional sanctions on Russia, in developing and overseeing the implementation of U.S. sanctions and other coercive economic instruments.

When effectively developed and employed, sanctions provide the United States with an asymmetric instrument imposing costs on our adversaries that far outweigh those borne by the U.S. and our allies. Still, there are limitations on these instruments. They should not be a primary instrument of national power in instances where they would not yield an asymmetric effect.

For both practical and constitutional reasons, Congress has a critical role to play in applying sanctions. Primacy with respect to wielding other instruments of national power – from diplomatic to military tools – is either constitutionally divided or subject to the sole discretion of the executive branch. Congress can neither direct the deployment of military personnel (although it can approve or disapprove of such deployments) nor recognize foreign states or the jurisdiction of foreign states over territory.

Conversely, the executive branch in most instances cannot refuse to implement congressionally mandated sanctions. The unique congressional role in sanctions development and implementation requires close cooperation between Congress and the executive branch in order to deploy sanctions successfully while limiting their adverse effects on the U.S. and our allies. Congress also has a critical role to play in resourcing government agencies involved in U.S. sanctions policy and ensuring the continued power of these tools.

The Congressional Role in Creating Effective Sanctions

Article I, Section 8 of the Constitution provides Congress with the responsibility of regulating "commerce with foreign nations."[1] While the executive branch has no inherent authority to impose sanctions independently, Congress has delegated to the executive branch the plenary authority to design, implement, and enforce most sanctions and other coercive economic measures. This delegation has taken the form of two pieces of landmark legislation: the Trading With the Enemy Act of 1917 and the International Emergency Economic Powers Act of 1977. The former applies to economic sanctions during wartime and the latter applies to economic sanctions during peacetime declarations of national emergencies. Nonetheless, when Congress has become frustrated with the executive branch's actions or lack thereof, it has effectively exerted its authority over the objections of successive administrations, from Cuba to Iran and Russia.

[1] Article I, Section 8 of the United States Constitution.

For example, in the sanctions against Russia contained in the Countering America's Adversaries Through Sanctions Act (CAATSA), Congress mandated that specific sanctions be imposed, and limited the administration's ability to lift existing sanctions in whole or in part against individuals or entities. Even with the significant delegation of power to the executive branch, sanctions are far less subject to the discretion of the executive branch than other instruments of national power.

Despite these limits, successive administrations have increasingly relied on sanctions and other coercive economic measures to achieve their foreign policy objectives. Therefore, this committee, and Congress generally, has an opportunity to exert increased influence on foreign policy. In doing so, Congress should abide by certain principles.

Create a Responsible Sanctions Architecture that Balances Flexibility and Firmness. Congressional sanctions signal to adversaries that there will be significant consequences if they challenge our interests. For example, congressional efforts from 2010 to 2013 to impose new sanctions on Iran's oil and financial sectors played a powerful role in putting pressure on Iran's economy and coercing Iran to negotiate. Likewise, congressional efforts have established important benchmarks and requirements to ensure the executive branch continues to exert pressure on Russia for its malign activities.

To maximize effectiveness, sanctions legislation should strike an appropriate balance between requiring specific actions from the executive branch and giving it sufficient flexibility to implement sanctions effectively. Congress also must closely examine how legislative sanctions are constructed and constituted. It should examine whether there are useful authorities that the Treasury Department, State Department, and other agencies in the executive branch do not already have. Also meriting examination is whether there is or there is likely to be a significant policy dispute or concern that will lead the executive branch to act in a way that is inconsistent with congressional objectives.

In the context of Iran and Russia, for example, Congress helped spur the executive branch to adopt a more aggressive posture when it was reluctant to do so. However, in the case of proposed sanctions legislation on North Korea in late 2017, Congress and the administration agreed on the need for maximum economic pressure. When Congress imposed mandatory sanctions obligations on the Trump administration as it was working toward the shared goal of imposing maximum economic pressure on North Korea, lawmakers only complicated Treasury's ongoing efforts and created additional work. At the same time, some legislators were concerned that a future fissure between the administration and Congress over North Korea policy would leave Congress at a disadvantage. There were also concerns regarding whether the limitations on the administration's flexibility can impact its willingness to take effective actions.

Limiting any administration's flexibility can be appropriate in certain situations, but there can be a significant downside. This is why mandatory sanctions legislation usually includes waiver provisions, licensing authorities, and either termination criteria or sunset provisions that cause the legislation to expire after a certain date or timeframe. Preserving flexibility is good, yet Congress must also guard against the potential abuse by any administration. The key is to ensure that a proper balance is established.

Ensure Sanctions Fits into a Broader Strategy. Sanctions are not a strategy. They are a tool for achieving particular objectives, such as deterring an adversary, degrading a target's capability, or extracting concessions. Too often, sanctions are used in lieu of a well-crafted strategy that uses all elements of national power and that includes buy-in across the branches of government. As Congress considers how to ramp up pressure on adversaries such as Russia, it should ensure that its use of sanctions fits into a broader strategy for achieving our national security and foreign policy objectives. This will require both an assessment of other tools *and* an assessment of how any additional sanctions are going to result in our desired objectives.

As a rule, the strategic objective should drive the choice of a specific sanction; the objective should also drive whether sanctions themselves are a primary instrument or a supporting one. One key objective of sanctions is to deny adversaries the resources necessary to continue their malign behavior. Another key objective is to compel targets to change undesirable behavior. For example, in the Russia context, the United States has used a combination of sectoral, list-based, jurisdictional, and secondary sanctions to impose costs on Putin and his cronies for interfering in U.S. elections, annexing Crimea, destabilizing Eastern Ukraine, supporting the Assad regime in Syria, and using chemical weapons in Europe.

The impact of these tools in Russia is significant. As Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes Marshall Billingslea noted in August 2018 regarding the impact of sanctions against RUSAL, a major aluminum producer owned or controlled by a Russian oligarch, "the combined net worth of Russia's 27 wealthiest people fell by an estimated $16 billion in one day, Moscow-traded stocks had their biggest drop in four years, and the ruble fell to its weakest position since late 2016."[2]

Yet Russia is not any closer to fulfilling its obligations under the Minsk Agreement,[3] and it continues its destabilizing activities including supporting the Assad regime in Syria, using chemical weapons in Europe, and continually interfering in foreign elections.

It is important to recall that these sanctions can be undermined by an unwillingness on the part of our allies and partners to escalate pressure. Congress must be aggressive in its outreach to these allies and partners to develop mechanisms that could reduce further strains on our alliances, particularly the transatlantic alliance. While such tensions should not dissuade Congress from taking aggressive action against Russia, a dialogue would likely yield better methods for doing so.

Coordination between the Executive Branch and Congress on Sanctions Relief. When any administration or Congress levies sanctions on an adversary, it implies that sanctions will be lifted once an adversary's behavior changes. There should be an agreement between the administration and Congress on what constitutes an adequate behavioral change. If there are

[2] U.S. Department of the Treasury, "Statement of Assistant Secretary Marshall Billingslea Before the U.S. Senate Committee on Foreign Relations," August 21, 2018. (https://home.treasury.gov/news/press-releases/sm464)
[3] "Senior Officials Urge Steps to Make Eastern Ukraine Ceasefire Irreversible, Telling Security Council Minsk Accords Remain Largely Unimplemented." United Nations Security Council Press release (SC/13698), February 12, 2019.

competing policy objectives between the executive branch and Congress, promised sanctions relief may not be forthcoming.

Such an approach can be utilized with respect to specific designations. In the case of Venezuela, for example, Treasury's Office of Foreign Assets Control (OFAC) on January 8 designated a network of corrupt Venezuelan businessmen and senior officials for its role in a multi-billion dollar bribery and embezzlement scheme.[4] As part of the designation, OFAC designated the media conglomerate Globovision for being owned or controlled by the corrupt businessmen. In its press release, Treasury made clear that "[t]he path for the United States to provide permanent sanctions relief to these entities is through divestment and relinquishment of control by any Specially Designated Nationals."[5] Likewise, when targeting PdVSA and the Central Bank of Venezuela, the administration made clear that the path to sanctions relief for both is through the expeditious transfer of control to the government of the interim president, Juan Guaido, or a subsequent, democratically elected government.[6]

By signaling to companies designated for being owned or controlled by designated parties that they have a clear path to de-listing, Treasury is trying to incentivize regime officials to change their behavior. In addition, Treasury is also attempting to incentivize companies to overhaul their corporate governance structure in order to remove the ownership or control of such entities by malign actors. To the extent that such an approach is successful, it will allow OFAC to target more significant companies and persons, because the risks of creating long-term negative market disruptions may be lower. This is a method that Congress should contemplate as it develops sanctions legislation.

Conduct Responsible and Effective Oversight. The committees of jurisdiction have an important role in ensuring that U.S. sanctions programs are properly implemented and are as effective as possible. Congress should continue to conduct aggressive oversight – such as formalizing the congressional nomination process for sanctions targets and using the authorization and appropriations process to leverage information requests. At the same time, Congress should balance the need for oversight with a desire to provide Treasury a degree of flexibility in executing its mission.

Absent a compelling national security rationale, Congress should be reluctant to insert itself into working-level decisions, such as whether to issue licenses or waivers for specific companies. Rather, Congress should develop legislative mechanisms to guard against potential abuse – such as utilizing licensing authorities to circumvent statutory sanctions provisions – while not overreaching.

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[4] U.S. Department of the Treasury, Press Release, "Treasury Targets Venezuela Currency Exchange Network Scheme Generating Billions of Dollars for Corrupt Regime Insiders," January 8, 2019. (https://home.treasury.gov/news/press-releases/sm583)

[5] U.S. Department of the Treasury, Press Release, "Treasury Targets Venezuela Currency Exchange Network Scheme Generating Billions of Dollars for Corrupt Regime Insiders," January 8, 2019. (https://home.treasury.gov/news/press-releases/sm583)

[6] U.S. Department of the Treasury, Press Release, "Treasury Sanctions Venezuela's State-Owned Oil Company Petroleos de Venezuela, S.A.," January 28, 2019. (https://home.treasury.gov/news/press-releases/sm594)

Provide Necessary Resources and Authorities. The sanctions apparatus in the U.S. government is small and the budget is spartan given the outsized role that the professionals within the interagency, and particularly those at Treasury's Office of Terrorism and Financial Intelligence (TFI), are asked to play in safeguarding national security. Compared with the hundreds of billions of dollars provided to the Department of Defense each year and DOD's two million personnel, TFI has a staff of approximately 800 employees with a budget of approximately $125 million for FY 2018, and an approved increase to $159 million in FY 2019.[7] The professionals at TFI each handle multiple programs, work long hours, and do more than their fair share.

Given that Treasury must address an expanding set of national security challenges, Congress should provide TFI with increased resources that should include adequate resourcing and authorities for other offices and agencies engaged in the sanctions mission, including but not limited to the Department of Justice, the State Department, the Department of Commerce, the Department of Homeland Security, and the broader intelligence community.

By doing so, Congress can ensure that sanctions remain an effective instrument of national security policy for well into the future.

Thank you for the opportunity to testify and I look forward to your questions.

[7] U.S. Department of the Treasury, "Congressional Budget Justification and Annual Performance Report and Plan: FY 2019," accessed May 13, 2019. (https://www.treasury.gov/about/budget-performance/CJ19/09.%20TFI%20FY%202019%20CJ.pdf)